



## Summer 2007 AMA Educators' Conference High Impact Sessions

### Sessions 5.5 and 6.5: The Science of Forensic Research in Marketing

Session Chair: Gregory T. Gundlach, University of North Florida

Panel Members:

William Wilkie, University of Notre Dame  
David W. Stewart, University of Southern California  
Rahul Guha, Cornerstone Research  
Albert A. Foer, American Antitrust Institute

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The first question on most people's minds at the beginning of this session was: what exactly is forensic marketing? In broad terms, it is the application of theory and methods from marketing to uncover evidence and aid in the workings of the justice system. While marketing scholars can have an impact in any case which involves a law that marketing touches, the types of cases in which marketing researchers are most often involved are those concerning antitrust, consumer protection, and intellectual property issues, although panel members have also worked on cases involving contracts and tort issues.

The role that marketing scholars can take in the legal process can vary depending on both the type of case being brought and the expertise of the scholar. Participation can range from acting as an expert witness, to conducting market research on consumer perceptions of product similarity in intellectual property cases, to analyzing scanner data to detect the influence of an ad campaign, to helping to define the market of a product for an anti-trust case, to how marketing can be used to fix an earlier deception in consumer protection cases. While participating in this kind of work can be extremely demanding, most panelists cite the unique access to information and the insights that the work can give them into their academic research as their reasons for becoming involved in forensic marketing.

There are several aspects of forensic marketing that distinguish it from academic research. One that was almost universally noted by the panelists is the intense level of rigor required when working on a legal case. One panelist noted that when working with lawyers, one is always very conscious that the other side is going to be looking for any possible flaws in the research, so all work is done with an eye to possible omissions and careful documentation. This leads to intensive levels of rigor and consciousness on the part of the researcher. Also, while in academics there is often pressure to cite the most

\* Was in attendance

recent and cutting edge research and theory, the opposite is true when working on legal cases. In fact, one panelist suggested the opposite is true since those methods, theories, and concepts which have the greatest general acceptance in the discipline and in practice are what carry the most weight in the courtroom due to issues of credibility and evidentiary criteria.

When asked how they became involved in forensic marketing, the general response was serendipity. Individuals are often contacted based on their academic expertise in an area relevant to a case. Once someone has participated in one case, they are likely to be contacted again in the future. There are a variety of possible roles that one can take ranging from that of a nontestifying consultant to that of an testifying expert. As a consultant you are privy to much more information and are more involved in strategy, as such confidentiality is an important consideration. On the other hand, as an expert witness your role is often more focused on providing expertise for informing specific legal elements and virtually everything you do is discoverable. Regardless of the role in the case, it is very important to remain impartial, and maintain objectivity. Another bit of advice offered by the panelists, along the same lines, is to never try to win the case for the lawyers. Rather, when working as an expert, your job is to present your research and what you know without trying to offer legal opinions or making legal decisions.