

“will there be fries with that?”

a discourse on the benefits and risks of probing

by Ruth M. Corbin, Ph.D., LL.M.

We know it's just good sales strategy, and we still succumb. Drive through a McDonald's take-out and order the Quarter Pounder. Expect the following comeback question, courteously delivered by the well-trained server: "Would you like fries and a drink with that?" You hadn't originally planned to have the whole meal, but the explicit question elicits a latent desire – your taste buds tickle with the remembered taste of those franchised fries. "Okay, I'll have the fries and drink too," you respond.

Chalk one up for the power of probing.

There is at least sixty years of evidence in cognitive psychology that the "explicit ask" elicits latent information, behaviour, or attitudes that may not emerge immediately. Concrete cues of something specific being requested are triggers for additional responses to a situation. An example is provided by the research and experience of the United Way. A market segmentation of United Way donors revealed a segment of consumers who are charitable and well-meaning but need to be asked to donate.

Whatever their reason – busy lives, crowded brains, feeling of depersonalization, ambiguity of where and how to donate – a personalized request delivered by phone, letter, or on the doorstep of their home, can elicit from them a generous donation. Another example is taken from studies of so-called bystander apathy in emergencies.¹ Why do some bystanders just stand and watch when a person collapses on a subway platform? One of the reasons documented by social scientists is the ambiguity of what action is required. But just have one person take leadership of the crisis and give instructions to others ("You—go to the payphone and call 911") and helpful behaviour can be elicited from many of those previously frozen by inaction. The comprehensive research program of

Daniel Kahneman and Amos Tversky² expanded the body of available evidence that people's judgments are significantly affected by cues immediately available to them.





APPLICATIONS TO QUESTIONNAIRE DESIGN

Market researchers have drawn on work by cognitive psychologists and linguistics experts to strengthen the scientific foundation of questionnaire design.³ They have found that open-ended questions designed to capture attitudes, experience or opinions can frequently elicit more comprehensive and valid responses when followed by a probe: “Anything else?” “Any other reasons?”

There are several reasons why probes to open-ended questions are frequently considered essential. Some people are less forthcoming or more reserved by nature. Some may be impatient to move the discussion along. Some may assess subjectively the amount of information expected by the interviewer and stop before they have said everything on their minds. Whatever the cause for initially limited answers, respondents who are encouraged by way of a probe question to disclose more of their opinion, experience or attitude, will frequently do so. Put another way, the absence of probing to open-ended questions in some circumstances risks incomplete or selective responses. It may even result in a bias in the data toward the most popular, common or obvious answers.

APPLICATIONS TO VALID LEGAL EVIDENCE

Regulators and courts have expressed approval for open-ended questions as part of a funneling approach to an interview, with questions moving from the general to the specific, and with appropriate probes. A hearing officer of the Trade-marks Opposition Board offered the following advice with respect to measuring reactions to trade-marked names, symbols or designs.

[A] survey should be designed to elicit a consumer’s first impression by the use of open-ended questions such as “What do you think of when you see (or hear) this mark?” or “What word comes to mind when you see this mark?” This allows a respondent to reply in any number of ways. He might state that the mark reminds him of another mark, that it reminds him of a particular company, that he associates it with particular wares or services, that he associates it with a particular emotion or feeling; etc. Such a question should be followed up by one or more prompts in which the respondent is asked if there is anything else he thinks of when he sees the mark or what does he think of when the mark is associated with particular wares or services.

This allows for a more complete assessment of the respondent’s first impression.⁴

One cause for legal dispute between companies is whether a name, symbol or design has become sufficiently distinctive of a particular single source to function as a trade-mark. STARBUCKS, for example, is inherently a distinctive name in North America for coffee services. SECOND CUP may not be inherently a distinctive name, but it likely has acquired distinctiveness through many years of use and advertising in association with coffee services. Distinctiveness is an important component of the tests for whether a name, symbol or design is protectable under the *Trade-marks Act*. The issues for testing distinctiveness came into sharp relief in 2004 when Microcell, owner of the FIDO trade-mark, took exception to the use of dogs in advertising by Telus, Bell and Rogers to promote their cellular phone services.



PROBING MAKES A DIFFERENCE IN TESTS OF DISTINCTIVENESS

Are dogs distinctive of a particular company in the field of cellular telephone services? Here is a possible survey question to test that proposition.

A. "What cellular telephone company or companies, if any, use pictures of dogs in their advertising?"

In 2004, that question produced an estimate of 58% of cellular telephone users saying FIDO. Eight percent (8%) named FIDO and at least one other company, most frequently Telus, but also scattered mentions of Rogers or Bell. Note that although the question allowed for more than one name ("what company or companies"), it contained no probe.

A parallel questionnaire was implemented with a matched demographic sample of cellular telephone users, which contained a probe in that question. The probe question was worded

B. "Any other companies? Any others?"

Now 25% offered the name of a second company – more than three times the percentage of "additional mentions" compared to the survey where there was no probe. Telus, Rogers and Bell were again featured among the additional mentions, as was Virgin and Nokia. Clearly, people had more to say after the initial part of the survey question but offered it only after a probe.

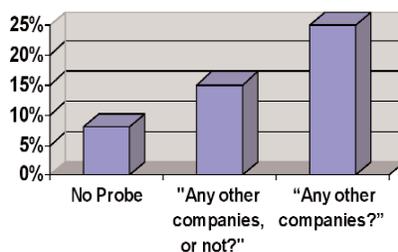
Who benefits from the omission of a probe question? The party who maintains a hypothesis of distinctiveness. No probing makes it less likely to obtain more than one association. Arguably, if researchers are working for a client who believes its name, symbol or design is distinctive, they are obliged to allow for probing. Otherwise, the absence of a probe question risks being self-serving by under-reporting the number of other associations which respondents may hold.

WHAT ABOUT THE JUNK?

A dissenting researcher may complain about the opposite risk. "Asking 'any other companies' may make respondents think you want more answers, that their first answer isn't good enough. Then you could get guessing and junk answers, which could weaken the evidence that the trade-mark really is distinctive. That's not fair to my client."

In the author's opinion, that complaint does not contradict the necessity of a probe. Rather, it reminds survey designers of their onus to design questions or experimental designs which minimize the risk of a different kind of bias. They have to avoid appearing to pressure the respondent or to create a social desirability bias or demand effect.⁵ The marketing research literature offers several ideas. One option is to rephrase the probe as "Any other companies, or not?" The phrase "or not" is thought to issue an explicit cue that there may not be other companies and that an answer of "no, no others" is readily acceptable. Corbin-Partners Inc. expanded the dog study described above to incorporate an extra group of respondents who were asked the probe at Question B with the words "or not" added at the end of the probe. As shown in the middle bar in the accompanying graph, the tendency to offer additional names declined to a modest extent. In particular, when the "or not" was added, there were no mentions of Virgin or Nokia.

Frequency of Additional Mentions



In other words, the strength of evidence of distinctiveness of dogs in association with cellular services declined somewhat when a probe question was

added. Since Telus, Bell and Rogers really were using dogs in advertising at about that time, the use of probing was consistent with more valid evidence. Since Virgin and Nokia (who have not been known for using dogs in advertising) were mentioned by two people in the group where the probe was worded "Any other companies?" there was evidence that too broad a probe question could introduce guessing.

CASE LAW EXAMPLE

Canadian Tire recently received opposition to its registration of the name NORDIC, combined with a snowflake design, for winter tires. The opponent was a Quebec company selling auto parts and tools, and doing business under the name Accessoires d'Autos Nordiques Inc. The opponent claimed that NORDIC and Nordiques sounded the same to a francophone, and that Canadian Tire's brand would not distinguish its tire products from the products and services of Accessoires d'Autos Nordiques Inc. Canadian Tire responded with a survey of what the name *NORDIQUES* would bring to mind, even among those who would think "Nordiques" to be the spelling of Canadian Tire's winter tires. In the course of the survey, purchasers of auto parts and tools were shown a card with the word *NORDIQUES* printed on it. They were asked the following.

"Please tell me what, if anything, first comes to mind when you see what is printed on this card?"

"Did anything else come to mind when you saw what appeared on that card or not?"

[If so] "What else?"

As reported by the court,⁶ "the most interesting conclusion from the survey was the 80% of those surveyed as a matter of first impression thought of the former [Quebec] hockey team when pre-

sented with the word *NORDIQUES*. Only 4% thought first of a store that sells auto-parts.” The court approved the survey design as valid and relevant, relying on it in part for its decision to overturn an earlier judgment of the Trade-marks Opposition Board. The court found that *NORDIC* and the snowflake design could function as a distinctive trade-mark and permitted Canadian Tire to register it.

SUMMARY

Consideration should always be given to whether an open-ended question regarding attitude, opinion or experience does or does not require a follow-up probe. Accumulating scientific evidence suggests that probes may be necessary in certain situations to increase the likelihood of obtaining valid measurement.

The seemingly small technical point in survey research about follow-up probes is central to tests of distinctiveness (or acquired distinctiveness) in law, where the very issue is whether consumers are aware of none, one, or more than one company in association with a particular name, symbol or design.

Use of an explicit invitation through probing for more information needs to be tempered with careful wording to avoid the pressure to guess. Market researchers have techniques available to them to reduce the risk of different kinds of biases being introduced by probing.

A control condition is another tool available to discount for guessing. The design of effective control conditions has been discussed in previous columns in this magazine.

Researchers’ judgments of question design for trade-mark surveys should always be informed by the ultimate goal – to learn what really comes to mind in the everyday lives of consumers when they encounter a name, symbol or design in connection with goods and services in the marketplace.

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¹ B. Latane & J. Darley. “Bystander ‘Apathy.’” *American Scientist*, 1969: 57, 244-268.

² See e.g., D. Kahneman & A. Tversky. “Choices, Values, and Frames.” *American Psychologist*, 1984: 341-350.

³ R. Tourangeau, L. J. Rips, & K. Rasinski. *The Psychology of Survey Response*. Cambridge: Cambridge University Press, 2000.

⁴ “Canada Post Corp. v. Mail Boxes Etc.” USA Inc. (1996), 77 C.P.R. (3d) 93 at 103 (T.M.O.B.). See also “Canadian Tire Corp. Ltd. v. Cooper Tire & Rubber Co.” (1994), 59 C.P.R. (3d) 402 at 407-08 (T.M.O.B.).

⁵ *Social desirability bias* and *demand effect* are technical terms describing documented biases that could operate in survey interviews in the absence of properly designed questions.

⁶ “Canadian Tire Corporation, Ltd. v. Accessoires d’Autos Nordiques, Inc.,” Federal Court File T-1003-05.

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