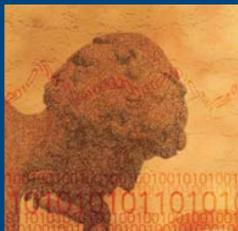


Services and Capabilities



Statistical Sampling and Survey Design

Make sure you know



A survey asked potential car buyers, “Do you expect to buy a car in the next 12 months?”

Of those who actually bought a car, only 32% had answered “yes.”

the facts about fact-finding.

When litigation may hinge on the hard facts from survey results, if those facts aren't as hard as you thought, your case can be compromised. Courts are relying more and more on surveys to provide critical data not found elsewhere. New guidelines have accordingly raised the bar for standards of statistical sampling and survey research. Yet with this increased reliance comes increased risk; in court and in arbitration, evidence based on unsound survey work can quickly discredit counsel. Today, judges are asking tough questions—not only about the assumptions that go into how a survey is designed, but also regarding the credentials of the survey experts themselves.

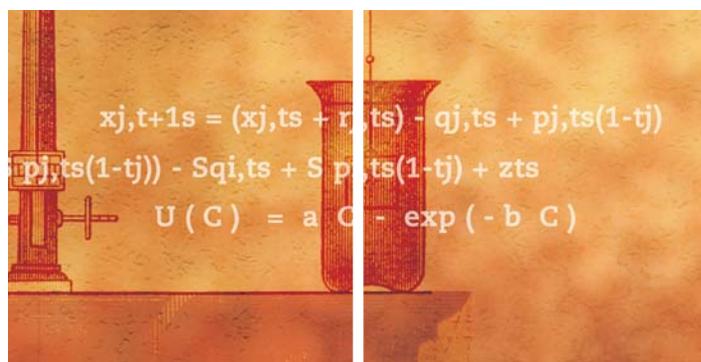
Courts now demand survey designs and samples built on sound statistical principles and backed by longtime expertise.

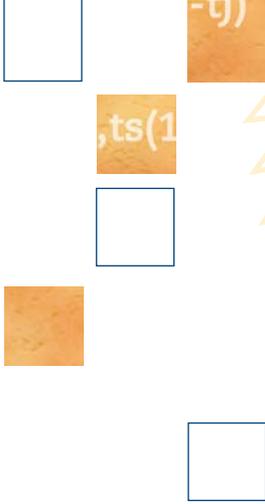
The Trouble with Numbers

A number of recent courtroom decisions indicate that judges are more likely to test the admissibility of survey evidence. This scrutiny places the burden on lawyers to defend survey methodologies, and all but ensures that a superficial survey will no longer stand up in court. Samples are being more closely examined as well: opponents can be quick to claim bias if a sample population is not chosen with statistical precision. Traditional approaches have erred toward simple random sampling, with survey elements weighted after the fact. While such approaches are fast, easy to implement and easily explained to non-experts, they are rarely accurate enough or appropriate for the real-world nuances of a case.

Rigorously developed surveys are critical today because of several converging factors:

- There are more cases over trademark infringement and deceptive advertising under the Lanham Act—the influential ruling that contains the federal statutes governing trademark law in the United States;
- U.S. judiciary bodies have issued new guidelines regarding survey design; and
- Courtroom expectations are rising, with the real possibility that critical survey or sample evidence will be rejected if the survey expert is seen as unqualified.





questions that judges routinely ask

Was the survey designed to address relevant questions?

Was participation in the design, administration and interpretation of the survey controlled to ensure the objectivity of the survey?

Are the experts who designed, conducted or analyzed the survey appropriately skilled and experienced?



What Businesses Need

When assessing sample size or the value of a survey, businesses must be certain of what the survey is meant to accomplish. Most companies expect the results to clarify the view of the risks they face, or to resolve disputes quickly and at less cost. In court, they often want survey data to anticipate (and debunk) opponents' arguments.

But few companies have the in-house resources to develop surveys that are statistically rigorous and defensible. All too often, companies instead turn to off-the-shelf software—or to the “neighborhood” market research firm. The limitation with such an approach is that traditional market research often seeks answers to match business decisions that have already been made.

The result of such an approach can be flawed data and weak survey methodologies that are easily dismantled in court. Courtroom evidence suggests a pressing need for survey designs and samples built on sound statistical principles and backed by longtime expertise.

With the right answers—based on the right population samples and survey structure—businesses can see rapid resolution of disputes and lower costs of litigation. A well-crafted and properly conducted survey can lead to a far stronger case, thereby increasing your chances for a more favorable courtroom outcome—and settlement award—as a consequence.

NERA combines the highest levels of rigor with a sophisticated, cross-disciplinary approach.

Our Approach

NERA economists use quantitative research, choice models and other survey techniques to reach conclusions in a range of disputed issues—such as claimed theft of trade secrets and Lanham Act claims of alleged trademark infringement or false advertising. Our surveys can help identify how consumers choose among service or product configurations, which attributes sway purchase decisions or whether certain names or designs have achieved meaning in the marketplace.

Our Focus

NERA survey experts combine a deep knowledge of sampling techniques, survey administration and analyzing complex sets of data with a firm grounding in econometric principles and practice. Our consultants regularly testify on statistical issues. They employ advanced tools such as choice modeling, and are current with the latest research on survey procedures and statistical sampling. Most are active members of the American Association of Public Opinion Research, and have taught survey methodology at leading universities.

Taking the right samples and asking the right questions leads to the right answers.

Services and Capabilities

Survey Design

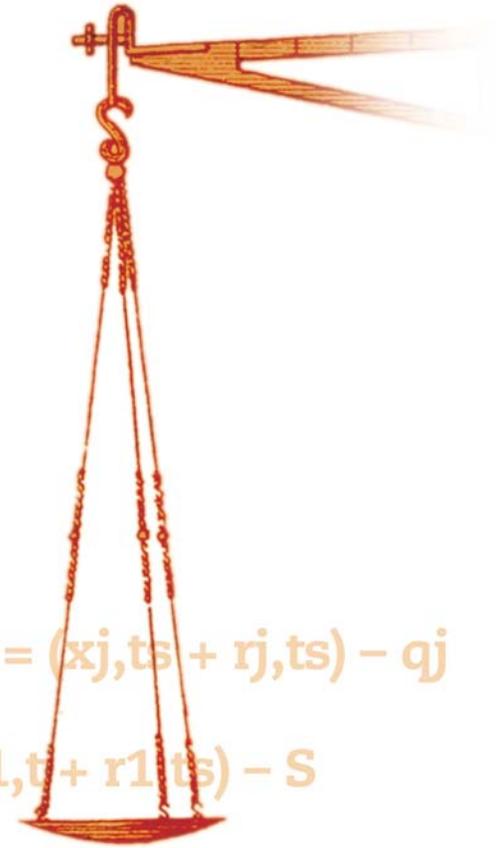
- Trademark: Assessing likelihood of consumer confusion.
- Non-trademark: Conducting a survey (for example, “willingness to pay”) to help determine patent infringement damages.
- Antitrust: Determining whether consumers see groups of products occupying the same market.
- False advertising: Testing whether consumers are really influenced by advertiser claims.
- Survey critiques: Fast-turnaround evaluation of weak surveys.

Statistical Sampling

- Gauging precision and level of confidence.

Demographic Analysis

- Descriptions of population change over time.
- Analysis of characteristics in certain groups, such as births, incidence of disease and economic welfare.
- Forecasts to help assess future liability.



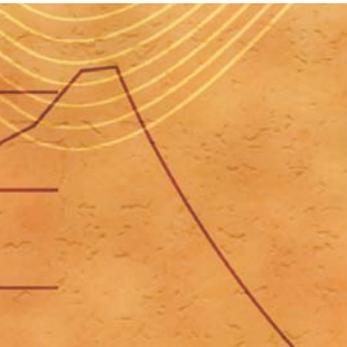
$$x_{j,t+1s} = (x_{j,ts} + r_{j,ts}) - q_j$$
$$+1s = (x_{1,t} + r_{1,ts}) - S$$

the myth of large samples

Conventional wisdom suggests that surveys cannot be accurate without large sample sizes. However, NERA's experts have found that precision surveys can employ surprisingly small samples with confidence. Proven techniques include stratifying key variables—by geography, gender, age, time or cost.

NERA experts regularly advise on contentious litigation matters, often rebutting the flawed math of opposing experts.

Case Profiles



Our expert statisticians and economists help clients in industries including automotive, healthcare, entertainment, consumer products, software and food products, among others. Our work ranges from short-deadline sampling assignments and constructive critiques of existing surveys to rigorous survey projects that successfully resolve multimillion-dollar lawsuits. Here are a few representative examples:

1

Trademark Survey: The Essence of a Cookie

A well-known food producer found that a rival had copied the exact look of its distinctly shaped cookie. The company asked NERA to develop a trademark survey to establish patent-infringement damages.

NERA designed and conducted a two-part survey to prove that the cookie's shape had an independent, recognizable meaning. The survey's "control" element distinguished between confusion and guesswork. Our finding—that consumers were confused precisely because of specific aspects of the cookie's trademark shape—led to a favorable settlement for the cookie producer.

2

Statistical Sampling: Accurate Projections from Minimal Resources

A leading insurer asked NERA to sample insurance claims so it could estimate the percentages of claims being overpaid, underpaid and paid properly. Our task was to determine samples that would be precise and that would engender confidence in those reviewing the results. NERA used its proven techniques to excerpt a small sample whose results could be projected across the universe of claims. The insurer quickly obtained representative numbers that were defensible and cost-effective.



3

Trademark Survey: The Case of the Copycat

A well-known footwear company created a shoe using the company's unique design. Another company mimicked the design's highly recognizable features, sparking a trademark-infringement case. The shoe-maker retained NERA to test whether consumers would assume that the copied shoe's features made them think it was made by the plaintiff.

NERA designed and conducted a statistically accurate survey and found the "copycat" design did indeed lead to considerable confusion among consumers. The case was settled in favor of the plaintiff.

4

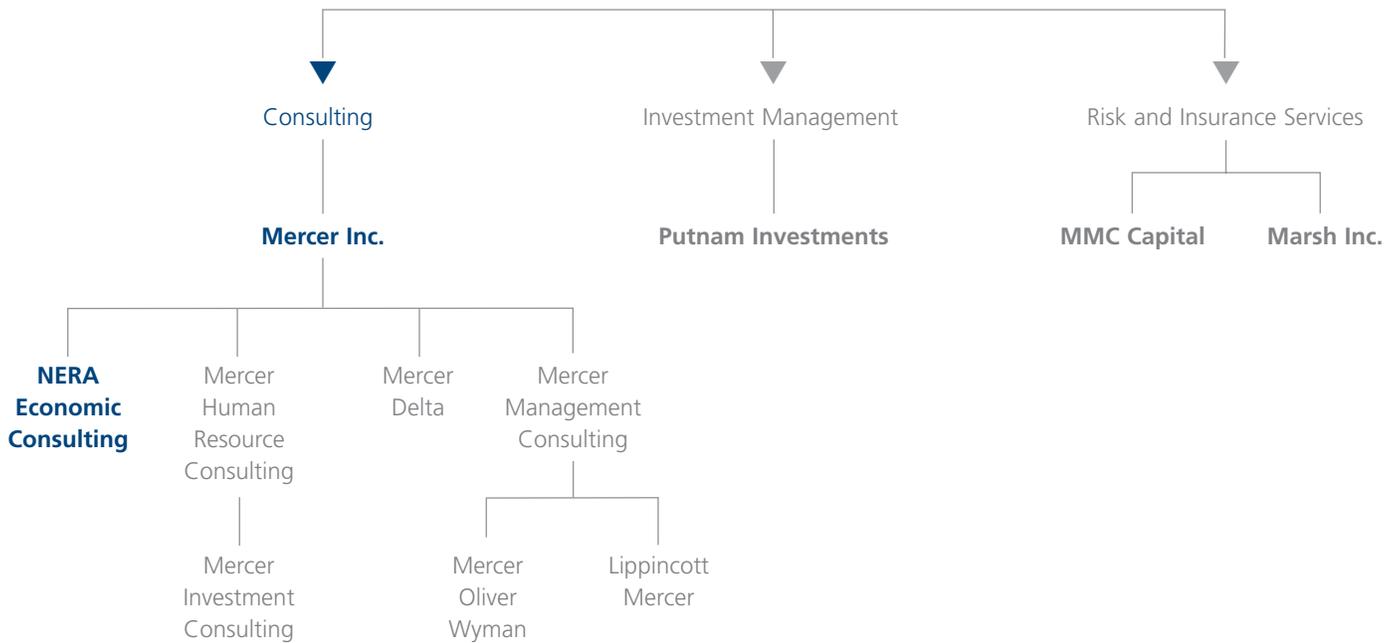
Survey Critique: Exposing a Flawed Design

The producer of a popular soft drink was unhappy with a survey that found no consumer confusion between its brand and that of a competitor whose trademark infringement it was contesting. With little time to defend its claim, the soft drink producer commissioned NERA to analyze the survey.

Our analysis exposed flaws in the survey's design: the correct consumers had been omitted, data had not been gathered in the correct markets, and only one aspect of the trademark had been tested. The survey evidence was disallowed in court and the competitor was forced to stop using its mark.



Marsh & McLennan Companies (MMC)



About NERA

NERA Economic Consulting is an international firm of economists who understand how markets work. Our clients include corporations, governments, law firms, regulatory agencies, trade associations and international agencies. Our global team of 500 professionals operates in 18 offices across North and South America, Europe, Asia and Australia.

NERA economists devise practical solutions to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance and litigation. Our more than 40 years of practical experience creating strategies, studies, reports, expert testimony and policy recommendations reflects our specialization in industrial and financial economics.

Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity; they understand this sometimes calls for their willingness to listen to unexpected or even unwelcome news.

NERA Economic Consulting (www.nera.com), founded in 1961 as National Economic Research Associates, is a subsidiary of Mercer Inc., a Marsh & McLennan company.

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