

Using Internet and Social Media Analytic Tools For Valuation and Damages Calculations

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Nevium
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Nevium specializes in intellectual property valuations and expert testimony related to trademarks, copyrights, patents, brands, publicity rights and intangible assets.



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Our services include:

IP Valuation: Valuation related to tax, M&A, estate and business transactions.

IP Experts: Expert testimony related to causation and damages for IP infringement, defamation, licensing, business interruption, and publicity rights.

Strategic Advisors: Services related to licensing and leveraging IP assets and connecting IP to financial performance.

Infringement Investigation: Analysis of IP infringement on websites, social media, SEO and online advertising.



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Publication

The Comprehensive Guide To Economic Damages – Seventh Edition



Chapter 33.

Using Internet Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases

By Doug Bania, CLP

1.0 Introduction

The internet and social media have become increasingly essential elements of conducting business in the United States and globally, which raises new issues for calculating damages and performing valuations. With almost every business now using the internet and social media to conduct business, cases of internet IP infringement, IP misuse, and defamation have increased and evolved. Before the rise of these new media, cases of infringement and defamation typically occurred in print or on television, or through word of mouth, and were obvious to all. Today, however, infringement and misuse via the internet can be hidden in metadata or keywords and may not be visually obvious. Historically, such misuse was usually geographically constrained to the area or region where the actual misuse occurred or was broadcast. In the world of traditional media, the number of people who would have been exposed to a billboard, sign, or even a television show could only be estimated at best. Today, internet infringement has the possibility of being seen by anyone in the world, and a social media post can immediately go viral, but it also leaves a trail that can be followed.

This chapter describes the ways in which internet and social media analytics can be used to accurately measure and quantify the spread, awareness, and impact of IP misuse. In doing so, it explores the overlap between internet and social media analysis and IP analysis and also provides examples showing the use of the data as part of traditional valuation and damages analyses.

This chapter begins with four concepts key to understanding effective internet use and analysis that valuation experts will want to clarify for clients, judges, jurists, or mediators: *search*, *optimization*, *social media*, and *analytics*. It then discusses the principles and readily available tools that analysts can use to uncover facts essential to determining whether clients have a case for legal action and to what financial damages they may be entitled.

2.0 Key Concepts of Internet and Social Media Analysis

Internet and social media analysis assignments begin with the process of educating the audience (i.e., client or trier of fact) about how important the internet has become to the success of a business. The client and participants in a possible court case need to understand that the internet is no longer primarily a source of information and entertainment but a serious business platform. Most businesses have at least a website, and a rapidly increasing number utilize a combination of websites and social media to promote their business and connect with customers. The internet has replaced the Yellow Pages as the first place potential customers turn to find a product or service, and the plethora of books, publications, and websites offering internet and social media-oriented advice to business owners indicates that the internet has become an essential part of virtually every company's advertising.

www.bvresources.com

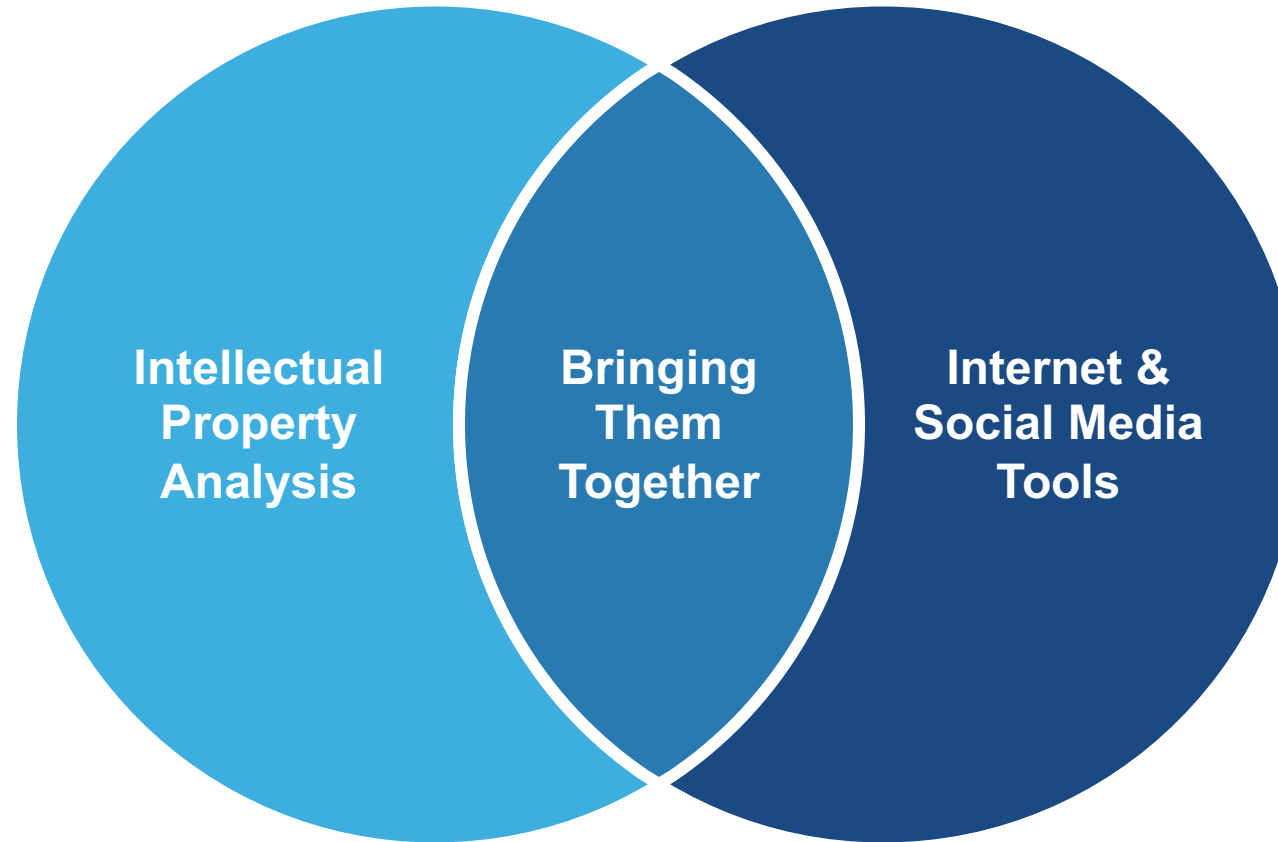
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Introduction

A Financial And Economic Perspective on Internet & Social Media IP



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Intellectual Property Analysis

Basic concepts in valuation and damages calculations



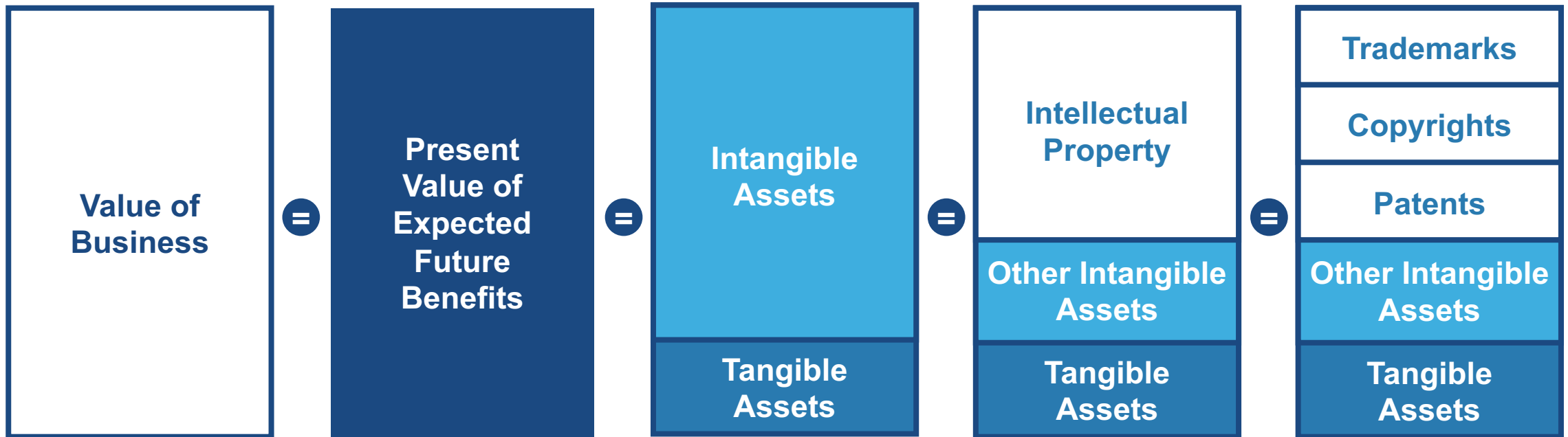
Intellectual
Property
Analysis



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Drivers of Value

IP Depends on Other Assets and Resources to Generate Economic Benefits



Business Value > Value of IP Assets owned by the Business

Identify the portion of future benefits derived from use of the Subject IP



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Drivers of Economic Damages

IP Depends on Other Assets and Resources to Generate Economic Benefits



Identify the portion of damages derived from the misuse of the Subject IP



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Internet & Social Media Tools

Why the internet and social media are important, and how to tell a story using the tools available



Internet &
Social Media
Tools



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New World Infringement

Internet Misuse Can Be Accurately Measured And Quantified

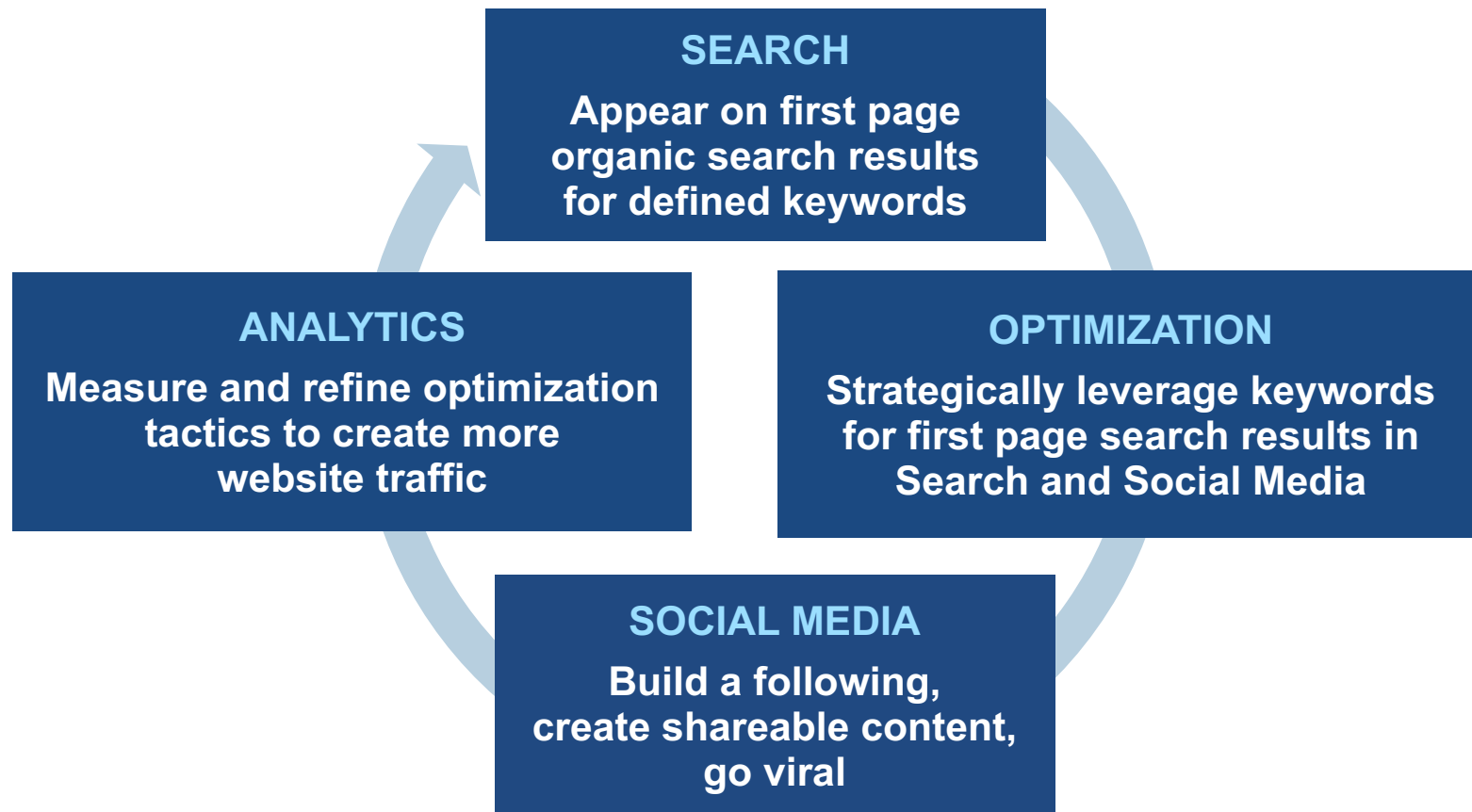
Old Misuse Traditional Media		New Misuse Search & Social Media
Obvious misuse in television and print	➡	Internet misuse can be hidden in html and keywords
The number of people witnessing the misuse is geographically constrained	➡	Worldwide audience and the potential of misuse going viral
How many customers actually acted is not accurate	➡	Data regarding how many customers acted is very accurate



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Key Concepts of Internet Use: Business Owner

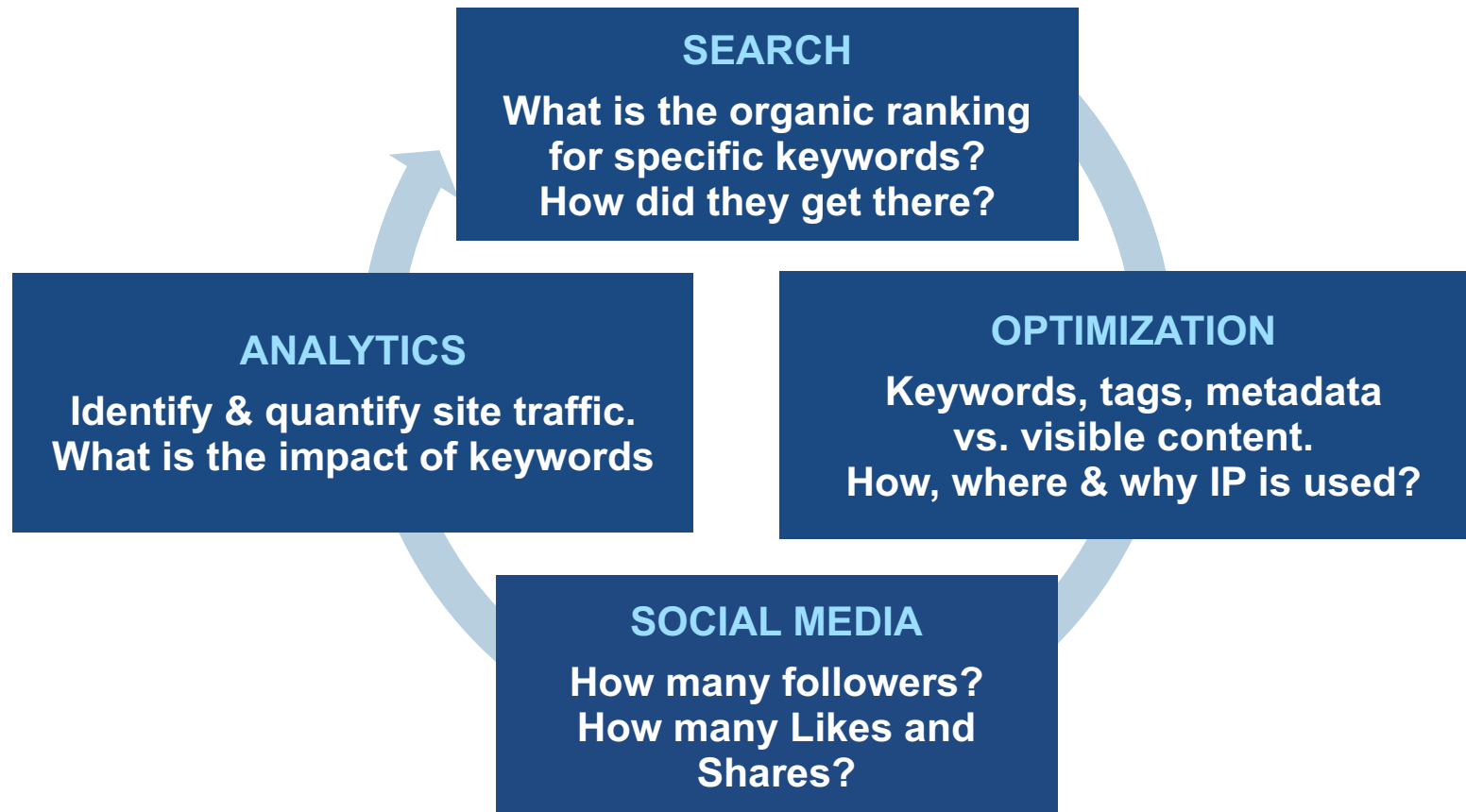
Websites are the New Corner Stores, and Foot Traffic is Search and Social Media



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Key Concepts of Internet Use: Analyst

Search + Social Media + Optimization + Analytics = Defensible Analysis



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Educating the Audience

Educate First to Set the Stage for Your Calculations



Valuation and damages experts must educate their audience regarding the basics of search & social media prior to approaching any analysis or calculation



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Educating the Audience

All Analysis Using Internet and Social Media Tools Starts Here

- **Importance of the Internet for businesses** – Websites and social media accounts are essential business tools that assist in generating revenue
- **Search and How it Works** – Google results are based on websites that are optimized with relevant keywords
- **Search Engine Optimization (SEO)** - First page search results are not an accident
- **Importance of First Page Search Results** – 50% to 75% of people click on the top 3 organic search results
- **Use and Leverage of Google Analytics** - Google provides tools and tactics to measure and analyze website performance
- **Importance of Social Media** - Key platforms for marketing and building demand



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Educating the Audience

Educate First to Set the Stage for Your Calculations



Valuation and damages experts must also educate their audience regarding the internet and social media tools used to assist in any analysis or calculation



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The Tools

Tools to Improve Valuation and Damages Analyses



Google Trends



Historic Search
& Wayback
Machine



SEO & Google
Analytics



Google
Keyword
Planner

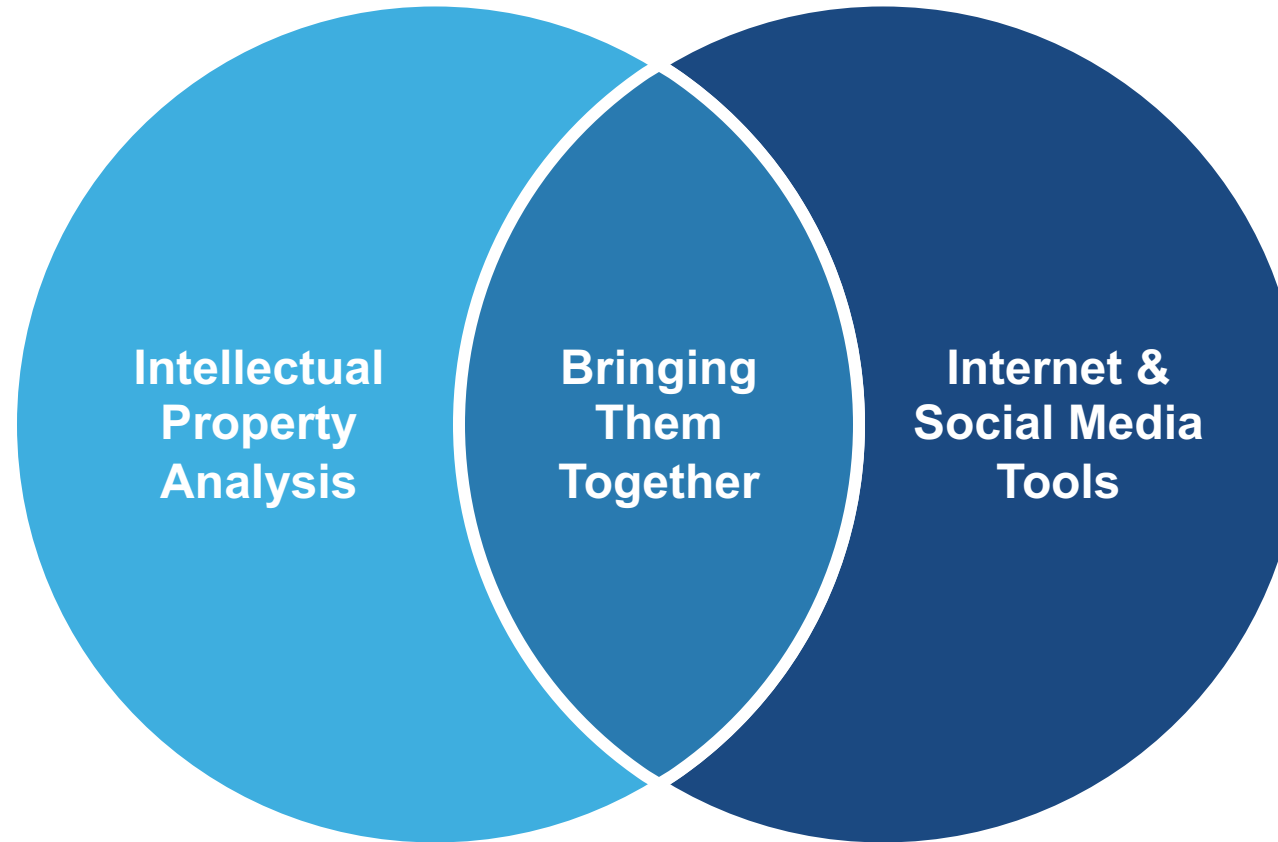


Social Media
Analytics



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Bringing Them Together



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The Tool: Google Trends



Google Trends

- Identify dates of trending search activity for the Subject IP
- Compare and analyze search terms related to the Subject IP

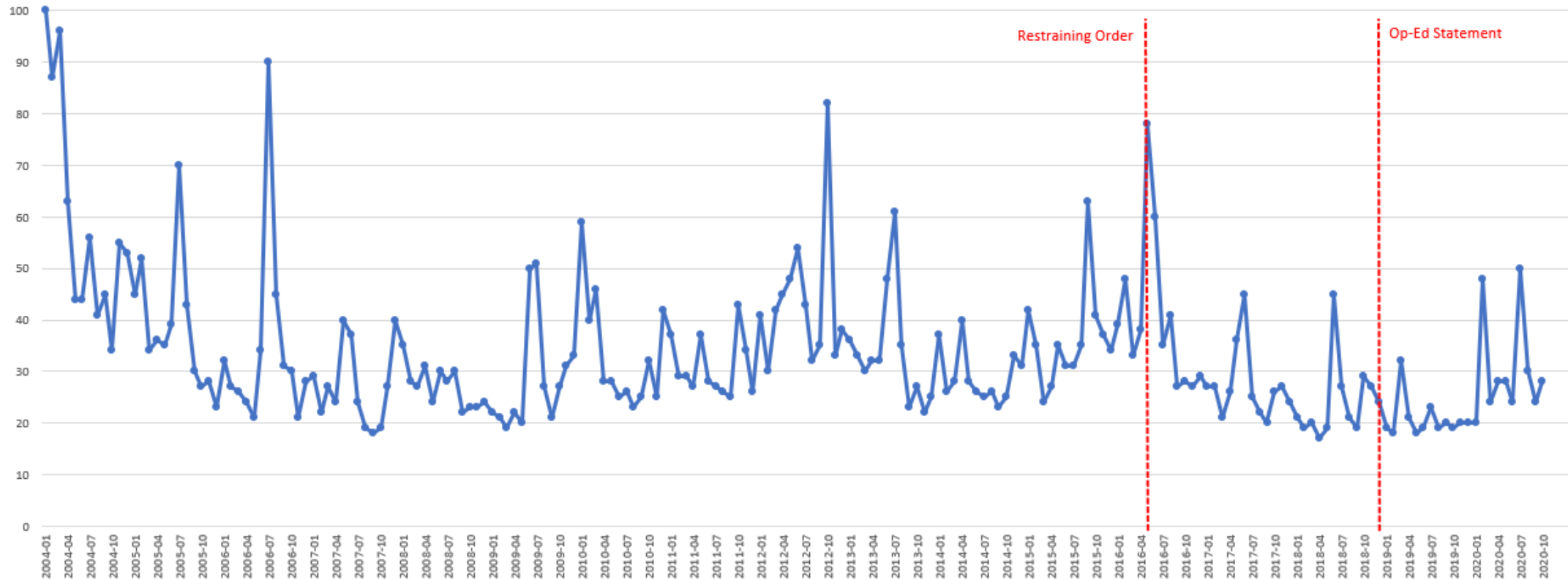
The Tool: Historic Search & Wayback Machine



Historic Search & Wayback Machine

- Identify historic search results related to the Subject IP
- Compare and analyze historic content and website SEO strategies

Google Trends and Historical Search Tools: Proving No Negative Publicity Before Defamatory Statements



None of the Google Trends spikes were related to negative news before the restraining order and Op-Ed



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Historic Search Tool: Proved Plaintiff Did Not Dominate Search Results

Plaintiff calculated damages based on false claim Defendant pushed them off first Google page

Google unbreakable sunglasses

Before Aug 14, 2015 All results Clear


Ads · Shop unbreakable sunglasses

 goodr grey sunglasses ... \$25.00 goodr ★★★★★ (9k+)	 Signature Series - Blac... \$54.00 Shady Rays E... ★★★★★ (9k+)	 Toroe 'Range' Polarized... \$75.00 toroeeyewear... ★★★★★ (6)	 Ombraz Classics... \$150.00 Ombraz Arml... ★★★★★ (75)	 SunGod Renegades... \$80.00 SunGod »
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<https://www.maximueyewear.com/> : hercules-sungl... :
Indestructible Hercules Sunglasses Global Vision ...
Jan 15, 2005 — Hercules **Sunglasses** are UV-400, feature **shatterproof** polycarbonate ANSI Z87.1 safety Glass Lenses and are a fully functional authentic safety glass. Frames are ...



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<https://www.youtube.com/watch...> :
Flexible titanium eyewear the glasses that do not break
 The revolutionary flexible titanium **glasses**. Bend them, flex them, they will not deform or break. Made of memory titanium ...
YouTube · EyeShop Optical Store · Feb 25, 2011




People also ask :
What is the strongest frame for glasses? ✓
Are Flexon frames unbreakable? ✓
Are titanium frames unbreakable? ✓
What glasses are the most durable? ✓
Feedback

<https://www.firmoo.com/> : indestructible-glasses :
Indestructible Glasses | Buy Cheap Prescription ...
Sep 19, 2010 — Firmoo offers various cheap yet nearly **indestructible** eyeglasses & **frames** for men & women like **Indestructible** prescription reading glasses, first pair FREE ...

<http://www.swingeyewear.com/> :
The best Unbreakable and Antibacterial eyewear in the World.
May 27, 2011 — The best **Unbreakable** and Antibacterial eyewear in the World. ... SWING brand prescription **glasses** and sunglasses are produced with Tr-90 Natur technology, ...

<https://www.indiamart.com/> : ... : Spectacle Frames :
Unbreakable Frame Glasses - Eyewear - IndiaMART
Feb 8, 2013 — We offer a range of **Unbreakable Frame** Glasses that are comfortable and safe for long working hours. We are in making of: - Light Weight - Unbreakable

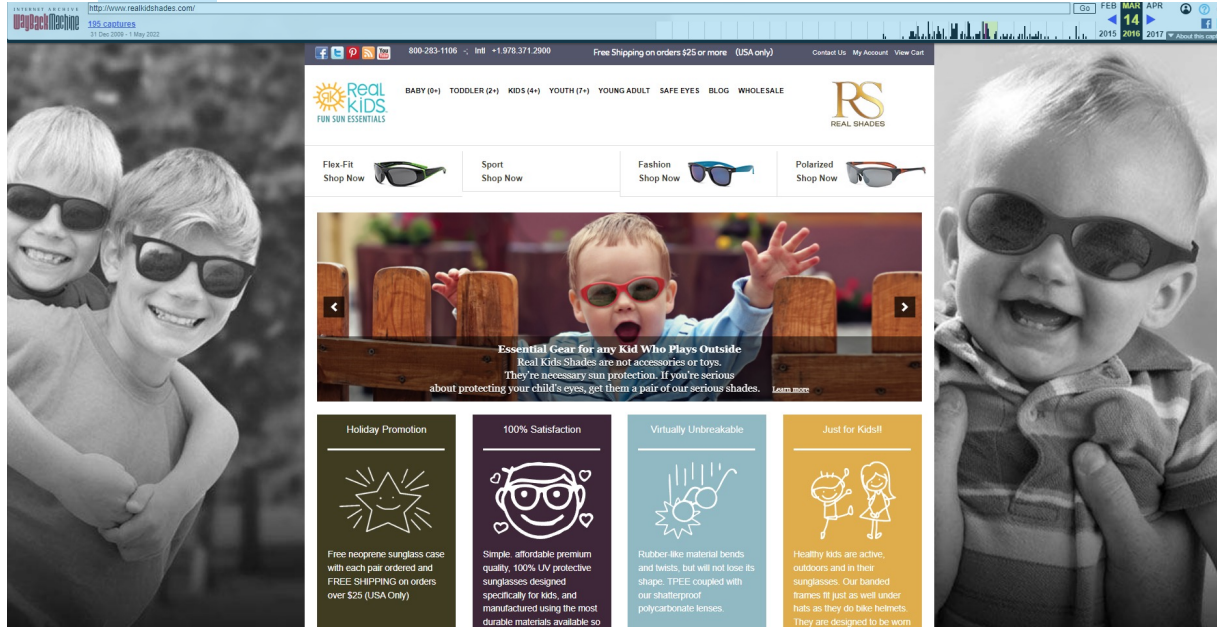
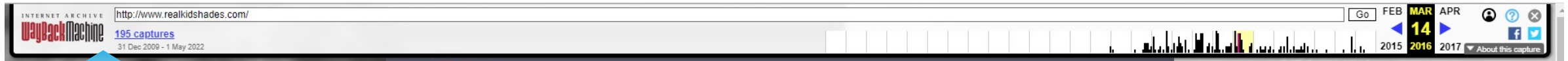
<https://www.eyebuydirect.com/> : Eyeglasses :
Titanium Glasses Frames - Durable Eyeglasses Online
Jun 4, 2015 — The most durable material offered at EyeBuyDirect, titanium is a high-end metal known for its toughness, durability and strength. Due to the low-density of ...



*39 different companies
appear before Plaintiff in
historical search results*

Wayback Machine Tool: Proved Plaintiff was not a Competitor

Plaintiff Claimed They Sold the Same Adult Sunglasses as Defendant



*Parties sell similar products,
but the target audience has
never overlapped*



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The Tool: Google Keyword Planner



Google Keyword
Planner

- Identify search volume for keywords
- Identify the Pay-Per-Click (“PPC”) price for specific keywords

Google's Keyword Planner Tool: Proving No Causation and \$0 Damages

Defendant Used Plaintiff's Trademark on a Line of Furniture

Summary of Average Monthly Searches in Store's Territory		
Store Name	Searches for Store Name	Searches for "Stone Creek"
Bon-Ton	60,500	10
Carson's	90,500	10
Younkers	135,000	10
Herberger's	135,000	10
Elder-Beerman	74,000	10
Boston Store	74,000	10
Bergner's	45,000	10
Google rounds nil results to the nearest 10		
"Stone Creek" in Arizona		1,000

Using the Google's Keyword Planner Tool, we convinced the Judge that the Stone Creek brand name was essentially unknown in the Bon-Ton trading territory

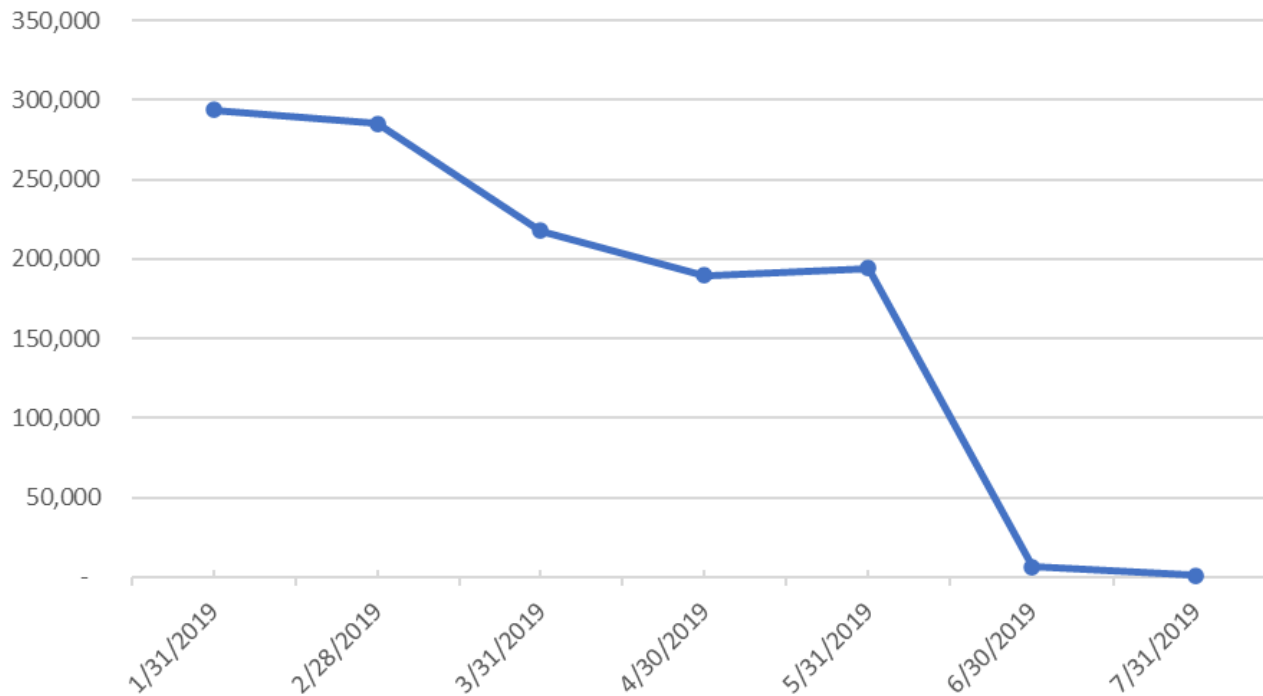


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Google's Keyword Planner Tool: Cost Avoided Using Relief from PPC

Defendant Cybersquatter Redirected Traffic to Their Own Website

Monthly Diverted Traffic to Defendant's Website



Using a weighted average PPC cost, we were able to Calculate Defendant's cost avoided PPC cost for diverting Plaintiff's website traffic



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The Tool: SEO & Google Analytics



SEO & Google Analytics

- Identify sources of website traffic
- Timing and volume of website traffic and user behavior

SEO Tool: Analyze Code To Prove Causation

Defendant Used Plaintiff's Company Name in SEO Strategy

Tactic	Use at Defendant.com	Purpose
Use key terms in Title Tag	<title> The Company , Sales and Structure Designs</title>	The title tag "The Company" alerts both the search engines and the user as to the topic of that particular page
Use key terms in the URL	http://www.sample.com/about- the-company	This URL contains the keywords "The Company" which provides users and search engines more information about the page
Use key terms in the Description	meta name="description" content="; The Company has been selling since 1972. Click here to find out more about sales, structure and The Company ." />	The description meta tag provides the search engines a summary of what the page is about
Use key terms in the Keywords	<meta name="keywords" content="sales, structure, the company , green supplies, The Company , Sample Company, samplecompany" />	If a search engine finds specific key terms throughout the content of the website and in the keyword meta tags, that website will likely be ranked higher in search results

Google Analytics Tool: Supporting Unjust Enrichment

Use of Plaintiff's Trademark to Generate Traffic to Defendant's E-Commerce Site

Monthly visits due to searches using TM	25,000
Ratio: Visitors who purchased	25%
TM search purchases	6,250
Average e-commerce purchase	\$250
Incremental revenue	1,562,500
Ratio: Incremental profit margin	15%
Incremental profit per month	234,375

Explain the mechanism, then quantify the impact



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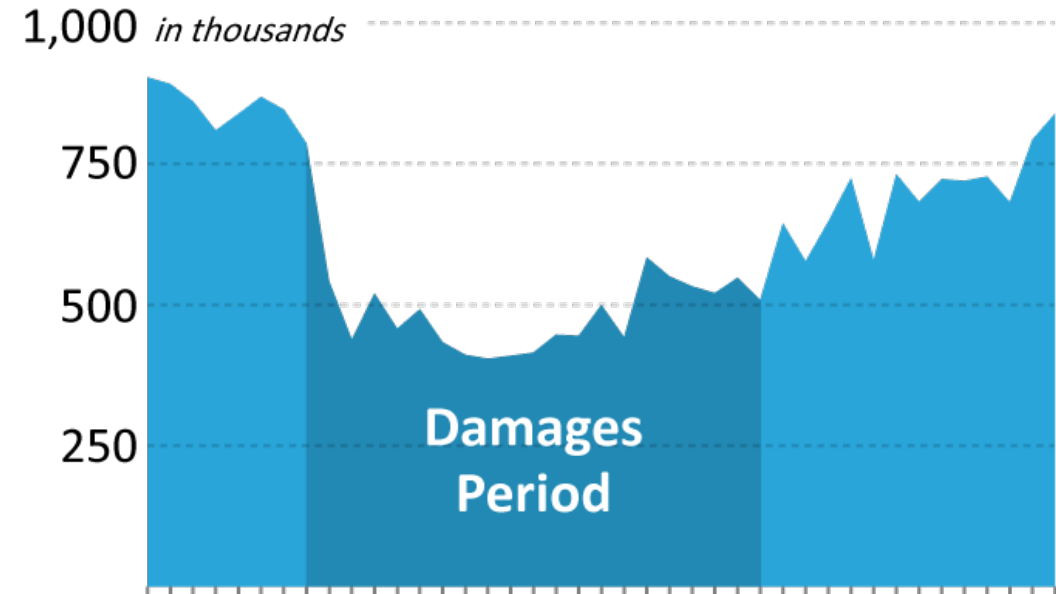
Google Analytics Tool: Rebut Damages Expert

False Endorsement: Defendant Used Celebrity's Name and Image Without Permission

Search Term Analysis

- Top 50 search terms do not include Celebrity's name
- Top 50 search terms yielded 49% of total site visits during the Damages Period
- Search terms using Celebrity's name resulted in a total of 45 visits during the Damages Period, less than (0.004%)

Monthly Pageviews at Defendant's Website



Website traffic declined during the Damages Period



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The Tool: Social Media Analytics

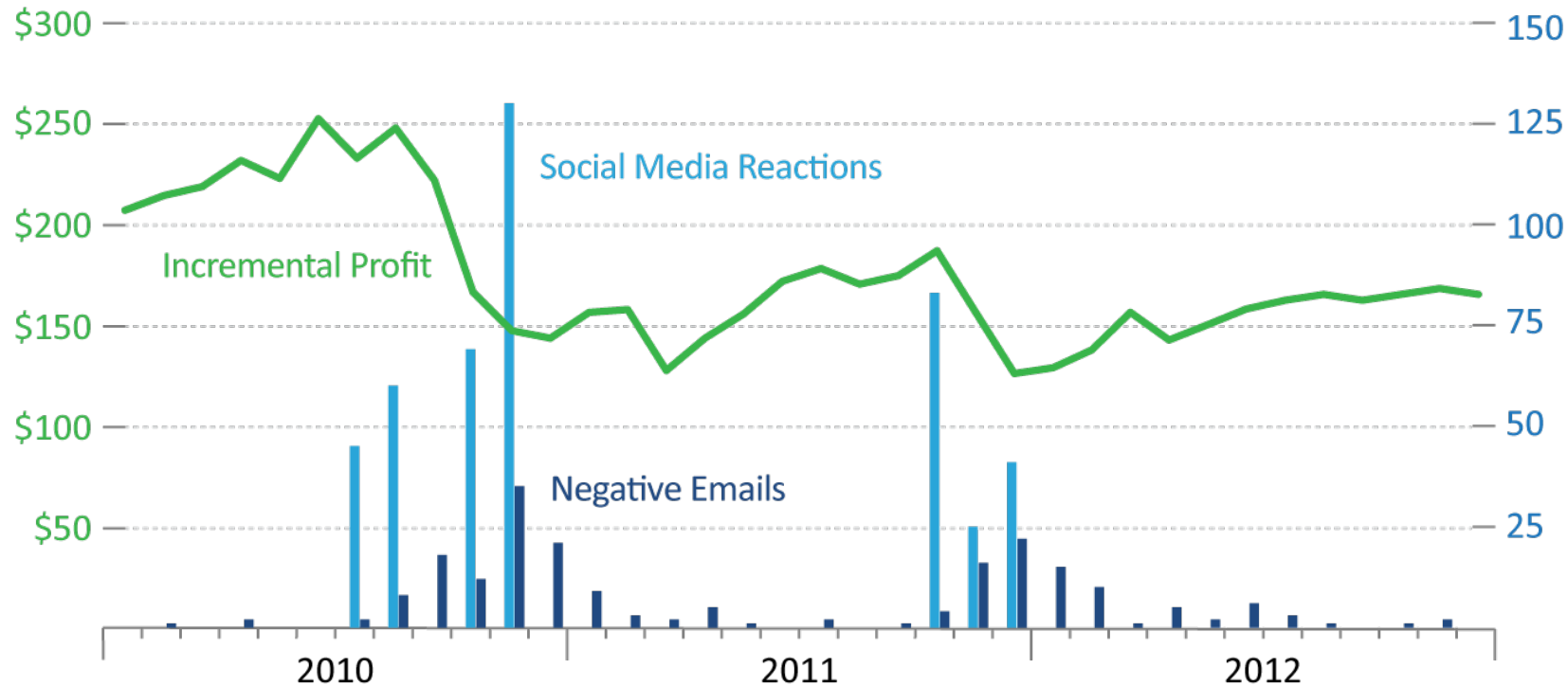


Social Media Analytics

- Identify and measure hashtag activity
- Timing and volume of a social media traffic and user behavior

Social Media Analytics Tool: Supporting Lost Profits

Defendant's Defamatory Statements on Social Media Caused Plaintiff's Profits to Decrease



*Social media analytics was used to prove causation,
paving the way for a damages award*



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What To Ask For

Additional Questions & Information Requests

The Internet & Social Media Request

- List of all Domain names and websites, and description of e-commerce sales and marketing activities
- Access to the company's website analytics
- Access to the company's social media analytics
- Access to online marketing and/or Customer Relationship Management (CRM) databases

Even getting the data may require some education of your client



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Concluding Comments

Our Top Takeaways

- As more business activity occurs online and through social media, valuation analysts unfamiliar with these tools may find themselves left behind
- As with any relatively new way of gathering facts and data, educating one's audience of its significance and usefulness is always a crucial first step
- It is important to remember that obtaining facts, data, and analytics from web sites and social media profiles is just one step of an assignment
- Savvy analysts need to understand the limits of their calculations, make appropriate judgments, and consider other factors that may be influencing the data

Internet and social media data analysis provides additional tools for the Art & Science of Valuation



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Thank You

Doug Bania
&
Edgar Bustillos

Yes, we are hiring! info@nevium.com



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