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How Morphosyntactic Markedness Can Contribute to the Prevention of
Trademark Genericide

A thesis submitted in partial satisfaction
of the requirements for the degree Master of Arts
in Applied Linguistics

by

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2012

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TABLE OF CONTENTS

1. Introduction	1
1.1 What is a trademark?	3
1.2 Genericide and improper trademark use	5
1.3 Basic morphosyntax of proper trademark use	7
2. Current Literature.....	10
2.1 The semiotic and social functions of trademark law	11
2.1.1 The influence of Peirce and the triadic model	12
2.1.2 The Saussurean approach.....	14
2.1.3 The discourse ‘setting’	15
2.2 How linguistics has served in trademark disputes	17
2.3 Genericide from a historical linguistic perspective	20
3. Introducing Structural Linguistics to Trademark Theory	23
3.1 Current methods of preventing trademark misuse and genericide.....	24
3.1.1 Genericide: the effects of trademark misuse.....	26
3.2 The trademark as a component of a product’s brand identity.....	28
3.3 Some exceptions: when the rules of use are not enough	29
3.4 A fundamental disconnect: trademarks from a marketing perspective.....	33
4. Using Psycholinguistics to Bridge the Disconnect.....	35
4.1 Psychological principles of trademarks and brand identity: antagonistic forces everywhere!.....	35
4.2 The psycholinguistics of marketing communications: cues from Whorf	37
4.3 The conflicting psycholinguistic research on advertisements	40
4.3.1 The case for syntactic simplicity.....	42
4.3.2 Further neurological considerations and speculations for simplicity.....	44
4.3.3 The case for (some) syntactic complexity	46
4.4 The final hypothesis for trademark advertisements	48

5. Applying Markedness Principles to Trademark Advertisements	50
5.1 Markedness and syntactic complexity: a disclaimer/clarification	51
5.2 Marked and Unmarked	53
5.3 Examples of proper trademark morphosyntax	56
5.3.1 The BAND-AID brand jingle: a success story	60
5.4 Other processing constraints in trademark morphosyntax	63
6. Concluding Remarks	65
7. References	70

ABSTRACT OF THE THESIS

How Morphosyntactic Markedness Can Contribute to the Prevention of Trademark Genericide

by

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Master of Arts in Applied Linguistics

University of California, Los Angeles, 2012

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In trademark law, genericide (the process in which a proper trademark has transformed through public usage to a common noun) is a costly and dreaded occurrence. Trademark owners already take active measures in eliminating the risk of genericide of their marks, and these practices currently include-- among others-- encouraging the use of a trademark as an adjective rather than a noun or a verb. However, many contemporary trademarks still lose distinctiveness because of consumers who misuse the marks. The widespread misuse of trademarks usually manifests morphosyntactically as ‘adj > noun’ conversion (e.g., *I need a band-aid versus I need a BAND-AID adhesive*) or ‘adj > verb’ conversion (e.g., *I photoshopped the image versus I edited the image using PHOTOSHOP software*). While these ideas pertaining to improper trademark use are viewed as problematic from legal and corporate perspectives, they are merely neutral and virtually unavoidable linguistic phenomena-- as compulsory language change tends towards efficiency and

trademark misuse is inherently a process of promoting efficiency. But based on previous studies of psycholinguistic phenomena in marketing communications and of the neurobiology of language processing, it may be possible to evade these processes. This study seeks to offer additional strategies for trademark owners by applying morphosyntactic markedness principles to trademark advertising, with varying degrees of complexity being applied to broadcast ads, print stimuli, and slogans. The idea is that by appealing to notions of frequency, conventionalization, and processing costs, consumers can be led to avoid improper trademark use in everyday discourse and to better internalize “trademark grammar.” The study hypothesizes that these strategies could help the maintenance of trademark distinctiveness and the avoidance of genericide; and the strategies should improve the marketing tactics of trademark owners and thus increase the protectability of their brands.

1. Introduction

One of the most dreaded occurrences in the realm of trademark law is the historical linguistic process known to lawyers as *genericide*. Common words such as *aspirin*, *thermos*, and *escalator* were once trademarks-- but once they underwent genericide, the companies that originally owned them lost their exclusive and proprietary rights to the marks. In the United States, the trademark laws seek to protect trademark owners by prohibiting activities such as dilution, infringement, and false advertising (*see*, The Lanham Act, 15 U.S.C.A.). However, the legislative protection is limited, and there exists a responsibility of the trademark owners to exert sufficient efforts in dissuading the consuming public from using their marks generically. Some of the methods that trademark owners implement in evading loss of distinctiveness and in eliminating the risk of its most extreme form (genericide) include encouraging the use of the trademark as an adjective rather than a noun or a verb, and capitalizing trademarks in lexicography to increase their visibility, among others. However, despite the many advances in trademark law, there still exist a number of modern trademarks that are in danger of genericide due to everyday misuse, and such misuse can be a costly problem for owners who seek enforcement of their proprietary rights.

While the notions of trademark misuse, loss of distinctiveness, and genericide are often considered costly issues that plague businesses and certain domains of intellectual property law, they do coincide greatly with multiple aspects of linguistics. For instance, the very act of trademark misuse invokes the semantic concept of *metonymy*. It is also reminiscent of morphosyntactic *conversion*, and the gradual process of genericide can be explained by the sociolinguistic factors that propagate language evolution and change. In fact, it can be said that the various degrees of trademark degradation are simply manifestations of functional and

structural linguistic principles-- with the crucial distinction that the manifestations are regarded as problematic in trademark law and are simply regarded as neutral observations in linguistics. Furthermore, this linguistic phenomenon is not only neutral-- it is virtually unavoidable-- and if language change tends towards efficiency and if trademark misuse is inherently a process of promoting efficiency, how can it be avoided?

The varying dimensions of trademark misuse may not be completely avoidable, but we can attempt to mitigate the problem by supplementing the current methods of trademark protection, using morphosyntactic principles in trademark marketing. This study examines how current language use dictates the distinctiveness of a trademark and how the compulsory nature of language change can have injurious consequences to trademark owners. Additionally, the common methods implemented by trademark owners to elude genericide will be examined along with trademark theory from the marketing perspective-- and the inherent weaknesses in these methods will be explained. But most importantly, this study seeks to offer potential solutions to this legal problem by applying morphosyntactic markedness principles to the marketing of trademarks, with the idea that constructions with higher markedness values also have higher processing costs and occur less frequently in grammar, which in turn make them more susceptible to change over time. It is this change that is detrimental to trademark distinctiveness, as it is hereby predicted that trademark owners should adopt the strategy of ensuring that advertisements are as cognitively “uncostly” as possible for their consumers so ‘adjective > noun’ and ‘adjective > verb’ conversions occur less frequently.

The reasons for appealing to principles of markedness and complexity for this study are based on existing psycholinguistic and neurolinguistic studies in marketing, which should apply to the domain of trademarks. We believe that given the inherent difficulty of entirely avoiding

morphological efficiency-based innovations in speakers, we must appeal to the notions of frequency and conventionalization to avoid improper trademark use among consumers. This should ultimately help strengthen the existing methods of maintaining trademark distinctiveness and of the avoidance of genericide; and hopefully, the hypotheses proposed by this study will lead to an increase of the effectiveness of trademark owners' marketing tactics and thus the increase of the protectability of their brands.

1.1 What is a trademark?

A *trademark* (or '*mark*' for short) is a word, name, symbol, phrase, logo, color, sound, smell, or other marking that identifies a service or product to consumers. Unlike copyrights, in which their creators have protectable rights from the inception of the copyrighted work, trademark rights only accrue by use of the trademark in commerce and then belong to the company that applies the mark to its products, as opposed to the sole inventor of the mark. Similar to copyrights, registration enhances trademark rights but does not create them; but trademark rights last indefinitely, for as long as a mark is used in commerce, its owners have protectable rights in it (Wilson 2004, x-xi). The main goal of trademark law is to deter unfair trade practices, such as trademark infringement. These laws protect not only the trademark owners but also the consumers, who must know that a brand is exclusive to a certain company when they see it. Otherwise, a consumer cannot associate the brand with a consistent set of expectations and experiences (Franklin 2003, 14); for instance, if you were to buy a computer with the APPLE® name, you would want some sort of guarantee that the computer is of the high quality you have come to expect in APPLE products because they are, truthfully, manufactured by APPLE and not some imitator.

Trademarks can have varying degrees of strength too, which is usually qualified by the degree to which it can be protected. “The protection of [trademarks] is the law’s recognition of the psychological function of symbols” (Bowen 1961, 6). Essentially, consumers view trademarks as a cognitive shortcut for goods they purchase, and marks eventually acquire a degree of fame through their use over time. Trademarks can be divided into certain categories, with some categories being easier to enforce than others. The stronger the mark, the more protection it will be given against other marks¹. *Fanciful marks*, which are coined terms that bear no relation to the goods being described (e.g. KODAK, a made-up term used for cameras), are the strongest. Next on the gradient of enforceability are *arbitrary marks*, which are usually common words used in an unrelated context (e.g. APPLE for computers). Slightly less enforceable are *suggestive marks*, which are loosely related to the goods being described and usually invokes the consumer’s perceptive imagination (e.g. JAGUAR for cars or COPPERTONE for suntan lotion). The weakest trademarks are *descriptive marks*, which directly describe either the goods or a feature of the goods (e.g. WATCHLAND, for a store that sells watches). Because of the inherent weakness of descriptive marks, such marks are usually denied protection and are not able to be registered unless “secondary meaning” can be shown (i.e., that the trademark has become recognized as a brand via public recognition). For instance, Kentucky Fried Chicken and Baskin-Robbins are trademarks that were initially deemed as merely descriptive, but they have since acquired fame as designations of origin and therefore earned the entitlement to substantial trademark protection (Finkelstein & Sims 2005, 6).

However, trademarks are not to be confused with *generic terms*, which are not enforceable at all because they are recognized and accepted as a description for an entire class of

¹ See the International Trademark Association’s (INTA) website for more general information (<http://www.inta.org/TrademarkBasics/FactSheets/Pages/TrademarksvsGenericTermsFactSheet.aspx>).

goods or services. For instance, ‘computer’ and ‘watch’, which are both words in the dictionary, cannot function as trademarks. Unfortunately, even fanciful and distinctive marks can become generic terms over time, as trademark history is full of examples (e.g. ‘aspirin,’ ‘cellophane,’ ‘escalator’) of generic terms that once existed as trademarks. This is known as *genericide*-- and while this occurrence is one of the worst nightmares for a trademark owner, trademark owners themselves often unknowingly facilitate the process of genericide by failing to exercise proper trademark protocol, which serves to maintain trademark distinctiveness.

1.2 Genericide and improper trademark use

Trademarks become generic terms if the public comes to understand the trademark to be the name of the product itself as opposed to identifying an exclusive source of the product. If this occurs, then everyone-- including the original trademark owner’s competitors-- is free to use the term as the name of the applicable product². In the United States, proof that a term is generic must be established by “clear evidence,”³ and the evidence considered in determining a term’s genericness includes dictionaries, catalogs, consumer surveys, media reports, or websites that demonstrate generic usage of the term. Since trademark owners are largely responsible for protecting their marks against genericide, the courts will especially consider the trademark owner’s own use of the term, for instance, on the owner’s website and how the mark is presented in the owner’s marketing materials. Improper advertising and labeling is often what causes the public to use a trademark as the common name of the product or service, regardless of the source, and this loss of distinctiveness is what leads to genericide.

² See INTA’s presentation on genericide
(<http://www.inta.org/TrademarkBasics/Documents/INTAGenericidePresentationMar2012.pptx>)

³ *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567 (Fed. Cir. 1987).

Loss of distinctiveness and genericide are not to be confused with a similarly detrimental trademark phenomenon known as *trademark dilution*, which is defined as “the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of competition between the owner of the famous mark and other parties or of likelihood of confusion. This typically occurs as the result of blurring or tarnishment of the famous mark.”⁴ *Blurring* traditionally encompasses the use of an identical or virtually identical mark on goods or services that may be completely unrelated to the original product, and *tarnishment* weakens the distinctiveness of a famous mark usually through inappropriate or unflattering associations. Trademark dilution does not typically lead to genericide, and a mark can be “distinctive” without being “famous” (which is a necessary attribute, for a mark to receive protection from dilution)⁵. Genericide is when a mark’s distinctiveness has been destroyed and the mark becomes the common word to indicate an entire class of goods (e.g., if NIKE were to become the common term for basketball sneakers), while dilution occurs if a famous mark is used for many different types of goods (e.g., if NIKE were not only used to signify basketball sneakers but also cars, breakfast cereals, legal services, etc.)

However, this study mostly maintains a linguistic fascination with the loss of distinctiveness associated with genericide and the processes involved in its prevention. To prevent a trademark from undergoing genericide, trademark owners are often advised to use their terms properly-- to always use the trademark in a way that makes elucidates the term as a trademark and not the common name of the product. Rules of proper use include not using the trademark as a noun or a verb, capitalizing all of the letters of the trademark, utilizing the trademark as an adjective rather than a noun, and alerting competitors that misuse the trademark

⁴ See INTA’s presentation of facts on dilution (<http://www.inta.org/TrademarkBasics/FactSheets/Pages/TrademarkDilution.aspx>)

⁵ The test for whether a trademark is “famous” is outlined in the Lanham Act [15 U.S.C. § 1125 (c)].

with letters of protest, among others. Many of the rules of proper use, which largely pertain to how trademark owners choose to present their marks to the public, are morphosyntactic in essence. This study aims to elaborate upon the morphosyntactic aspects of proper trademark use, with the hopes that the elaborations can contribute to the prevention of genericide and loss of trademark distinctiveness.

1.3 Basic morphosyntax of proper trademark use

Some of the most famous instances of genericide can be clearly traced back to not adhering to the trademark guidelines. One of the most prominent suggestions is to use the trademark as an adjective⁶ rather than as a noun or a verb (e.g., ‘PHOTOSHOP software’ or ‘LEGO block toys’). More precisely, trademark owners want to ensure that their marks are used in the trademark source-identifying sense (as they generally would be in adjectival position) and not as a generic term (as they is likely to denote if utilized as a noun or a verb)⁷. However, despite widespread encouragement to properly place trademarks in adjectival position, this guideline is one that is frequently flouted in everyday discourse (i.e., “The image was Photoshopped” or “I like to play with Legos”)-- and trademark owners must take active measures to prevent this. Strategies

⁶ Some people contend that the legal community’s use of the term ‘adjective’ as it pertains to trademarks is incorrect and that ‘attributive modifier’ should be used instead. For instance, the phrase *whole new breed* contains two adjectives, modifying the noun *breed*, while *machine tools* contains what looks like a noun (*machine*) modifying another noun (*tools*). In this case, *machine* is a prenominal attributive modifier in that it “functions as an adjective” but has not necessarily become an adjective (Payne 2010, 235). We see similar behavior with trademark grammar (e.g., LONDON FOG raincoat, where LONDON FOG is a proper noun attributive modifier). However, for the sake of simplicity and consistency, we will adhere to the legal community’s use of the term ‘adjective.’

(See, <http://itre.cis.upenn.edu/~myl/language/og/archives/000943.html>)

⁷ While the trademark-as-an-adjective rule of thumb generally holds true, there are certain instances where it fails. If consumers were to make a statement such as, “That’s a very APPLE computer” (meaning a computer with certain qualities, as opposed to a computer made by Apple Inc.), there would also be a danger of genericide-- even if the trademark is in adjectival position. For the most part, the use of a trademark as an adjective will be in its source-identifying use, while its use as a noun or verb will be a generic use. However, the key is whether the trademark is used as a source-identifier or a generic word.

towards protecting trademark distinctiveness often manifest as public relations campaigns launched by companies who own the marks; and from a linguistic perspective, encouraging proper trademark morphosyntax should have a positive impact on whether consumers infuse proper trademark usage into their grammar.

The historical background for trademark grammar is unclear, and there is no conspicuous source that demonstrates the logic or research used to derive the ultimate rule that trademarks are to be used as adjectives rather than nouns or verbs. But as early as the 1950's, trademark professionals have encouraged the advertising of trademarks as adjectives rather than as common nouns⁸, so the legal community's preoccupation with a trademark's linguistic features is really nothing new. To further elucidate the morphosyntactic aspects of trademark use and misuse, it is helpful to consider linguistic phenomena such as *conversion*. Conversion, as a morphosyntactic process, is "the use of a form which is regarded as being basically of one form class as though it were a member of a different form class, without any concomitant change of form" (Bauer 1983, 227). The major kinds of conversion are 'noun > verb' (e.g., *to badger, to vacation*), 'verb > noun' (e.g., *a guess, a command, a guess*), 'adjective > noun' (e.g., *the poor, a regular*), and 'adjective > verb' (e.g., *to better, to empty, to dirty*) (229-230).

Assuming that trademark owners adhere to the rules of proper trademark use, adjective > noun and adjective > verb conversion are the most pertinent to trademark grammar misuse, since trademark owners would be introducing their marks to the public as adjectives. For instance, consider this 1981 advertisement for the JEEP Honcho pickup truck:

⁸ For instance, see Robert Hays' (1956) publication in *The Trademark Reporter* ("Use a trademark only as a trademark; that is, use a trademark as a proper adjective, preferably to precede the generic term, rather than as a common noun standing alone. Thus, a writer uses the phrases VASELINE petroleum jelly and LISTERINE antiseptic." 162)



[Fig. 1a] 1981 advertisement for the Jeep Honcho 4x4 Pickup

The JEEP brand, which was owned by the company American Motors until 1987, is still a protected trademark and is not considered a generic term. It has not fallen victim to genericide--perhaps due to the diligence of the companies that have owned the mark (JEEP is now owned by Chrysler Group LLC), as evinced by the tagline “*Jeep Pickup. The Performance Truck.*” in [Fig. 1a]. This tagline prominently features the JEEP trademark in adjectival position and the generic term it describes (‘pickup’) in nominal position. In fact, in 2008, Chrysler launched a “trademark awareness” advertising campaign to specifically dissuade consumers from using JEEP as a generic noun or verb⁹. However, despite the efforts of the trademark’s owners, many

⁹The advertisements can be accessed online (http://www.uslaw.com/library/Intellectual_Property_Law/Chryslers_Ad_Tells_Consumers_JEEP_SUVs_Special_Generic.php?item=220831)

people still use the JEEP trademark as a generic term to refer to all compact sports utility vehicles. That is, even with the trademark owner's concerted efforts in dissuading consumers from utilizing JEEP as a noun, we still observe many instances of the mark's 'adjective > noun' conversion in everyday discourse.

Thus, while this problematic phenomenon cannot be entirely or reasonably eradicated, there may be room for improvement. This study seeks to supplement the current morphosyntactic methods of proper trademark use through the application of markedness principles and psycholinguistic marketing research. The hypotheses presented are speculative and warrant further examination-- but given the complete unavailability of sources that explicitly link formal linguistics, trademark genericide, and marketing principles, these hypotheses are a reasonable start. It is rather surprising that more literature does not exist on the topic, given the extremely natural connection between trademarks and formal linguistics. But to understand how this study seeks to use formal linguistics to prevent genericide and general trademark misuse, it is helpful to consider the literature and research that *does* exist, regarding the link between trademark law and linguistics.

2. Current Literature

There exists an abundance of literature regarding the topics of trademarks and trademark law; and with our society's ever-increasing preoccupation with the notion of intellectual property, the amount of research and literature is only growing. Nonetheless, while the intersection between linguistics and trademark law is not a new concept and is not by any means scant in its literature, it still remains a highly specialized facet of trademark law and has an immense potential for future growth. The greatest deficiency in the literature on linguistics and trademark law is the

scarcity of the structural linguistic perspective, which would have been the most helpful for the purposes of this study.

Despite the utter lack of trademark literature on structural linguistics as a means of combating trademark genericide and misuse, there is a considerable amount of literature on trademarks from functional and sociolinguistic perspectives that contribute greatly to our understanding of trademark grammar. More than a handful of scholars have already commented on the semiotic and social objectives of trademark law. Additionally, there is literature describing the influences of all forms of linguistics in actual trademark cases (notably published in the works of Roger Shuy). However, the sociolinguistic perspective is undeniably the most instrumental to our interest in the phenomenon of trademark genericide and its prevention, as it describes the process from a historical linguistic perspective. In the end, the current literature on the subject at hand is relatively scarce, but it is nonetheless informative and useful as a starting point in our development of linguistic mechanisms against trademark misuse.

2.1 The semiotic and social functions of trademark law

Trademarks are typically considered from a legal standpoint as entities that must be protected under a litany of rules and regulations. Additionally, trademarks are also commonly considered from a business or economic perspective, being the intellectual property-- and therefore assets-- of their owners. However, there is a remarkable amount of literature that accounts for other non-legal perspectives on the topic-- including the analyses of trademarks from a semiotic or social lens. These functional linguistic accounts of trademarks seek to explain the fundamental concepts of trademark law that cannot be explained through economic analyses, and they heavily rely on the ideologies of scholars such as Peirce, Saussure, and Bourdieu. While these literary

sources often evoke the overall ‘trade dress’ aspects of trademark law (which extends beyond the trademark on the basic word or phrasal level)¹⁰, they are immensely insightful to the comprehension of a trademark’s distinctiveness and its potential loss.

2.1.1 The influence of Peirce and the triadic model

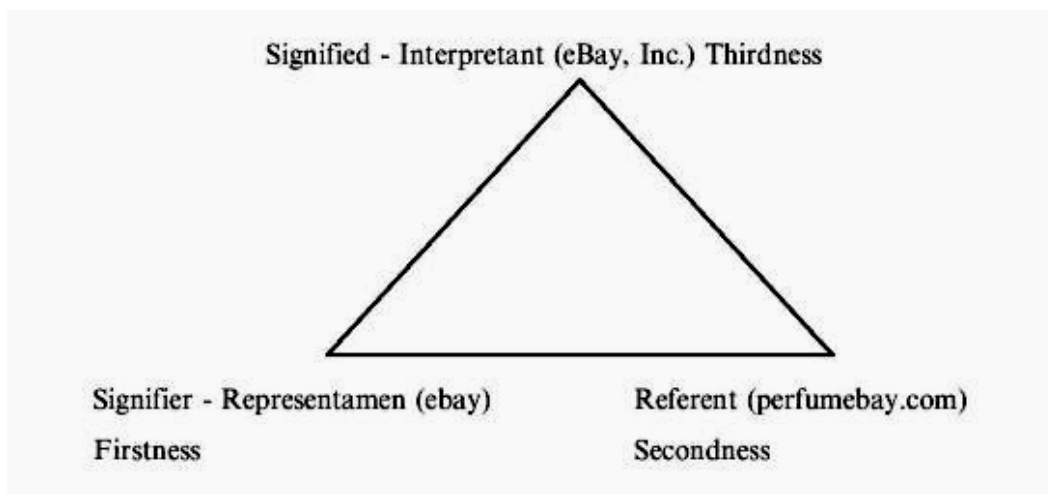
Alan Durant’s (2008) semiotic perspectives of trademark law have provided legal scholars with a greater understanding of how linguists may have a different interpretation of trademark law and its associated concepts. Additionally, he provides a vital description of the various social functions that word marks might serve. He proposes that trademarks should be seen as a form of ‘language in use,’ and he argues that notions such as “use in context” and correspondingly “comprehension in a context” are as relevant in analyzing trademark problems as an abstract, semiotic scale (109). He discusses the differences between what it means to be ‘distinctive’ versus ‘descriptive’-- of which we have been familiarized from a legal context (that is, the greater the ‘distinctiveness’ of a trademark, the greater its protectability). However, Durant conceptualizes the trademark as a function of signs and signifiers, which gives the ‘distinctive’ and ‘descriptive’ modifiers a slightly different meaning from the legal sense:

What makes a sign “distinctive” for the purpose of trade mark law, from the language point of view, is essentially that it operates as a name conventionally does: it attempts to make unique, unambiguous reference, without elaboration or description, in a manner that will be successfully recognized in a given context by

¹⁰ “Trade dress is the overall appearance of a product... A common type of trade dress is called product configuration. If the shape or appearance of a product has no function other than identifying the source of the product, it’s protectable as trade dress. [Examples include] the ReaLemon lemon juice container that looks like a plastic lemon, and the bottle for Mrs. Butterworth’s syrup, which looks like a plump woman in an apron. The popular For Dummies book series with its distinctive yellow cover and standardized format is another example of trade dress” (Gilbert & Welytok, 2004).

the sign's addressee (for trade mark law, the average consumer)... As a sign, therefore, a trade mark is a combination of (or specified relation between) at least two elements: a signifier (the word or phrase, in its particular design get-up: the tangible symbol) plus a specified context in which it will be used: the designated market field in which the sign will be construed as a name-- hence the common name-field registration formula: {protected name X} for {trade category Y}. (Durant 2008, 114-115)

This semiotic account of trademark distinctiveness is congruent with the traditions of Peirce and his triadic model, since it takes into account the market field of the sign (and hence, its cultural context). In fact, much of trademark law has developed in light of the triadic framework, and it can be applied and observed in cases such as *eBay, Inc. v. Perfumebay.com*¹¹, where the court determined that the domain name Perfumebay.com created confusion to the public. In other words, consumers would associate Perfumebay.com with eBay.com because it uses eBay's mark within the domain name-- and in this case, the mark ('eBay.com') is the signifier and the referent is the domain name ('perfumebay.com'):



[Fig. 2a] *The triadic framework of eBay v. Perfumebay* (Garrett 2011, 227)

¹¹ 2007, 506 F.3d 1165

The signifier-referent relation here signifies eBay, Inc. rather than Perfume Bay. “This is ‘confusion’ within trademark law, as the signifier does not signify the correct signified” (Garrett 2011, 226-227). This is essentially a semiotic approach to the Lanham Act’s stance on generic terms: if the signifier does not distinguish the signified (if there is no source distinctiveness), then it is generic.

2.1.2 The Saussurean approach

A related perspective to Peirce’s semiotic approach is that of Saussure’s didactic sign model, which focuses on the linguistic aspect of the signified as opposed to Peirce’s focus on how the representamen and referent interact to become the interpretant within the consumer’s mind. Beebe (2004a) is one scholar who emphasizes the works of Saussure to describe the function of the sign in society. He proposes that trademark distinctiveness consists of *source distinctiveness* and *differential distinctiveness*-- the former being “the extent to which a trademark’s signifier is distinctive *of* its signified,” and the latter being “the extent to which a trademark’s signifier is distinctive *from* other signifiers in the trademark system” (625). The idea of the extent to which a product or trademark is distinct from another is an important one in the analysis of trademark misuse, and Beebe utilizes Saussurean principles to describe value: “Signs function... not through their intrinsic value but through their relative position” and “the value of any given word is determined by what other words there are in that particular area of the vocabulary... No word has a value that can be identified independently of what else there is in the vicinity” (Saussure 1966, 117; and 1983, 114).

Beebe’s notion of differential distinctiveness plays a significant role in his view of trademark dilution, which he describes as “the dilution of differential distinctiveness, of a

trademark signifier's set of relations of difference with all other signifiers in the trademark system." Trademark dilution occurs "when, because two signifiers are similar, they lessen each other's differential distinctiveness" (Beebe 2004b, 58). He introduces the "blurring theory of dilution," which conceives of the trademark as simply the union of a certain signifier with a certain source. While blurring is not dilution itself, it is a symptom of dilution, and "to prevent blurring, the law must preserve the differential distinctiveness of the mark as against all other marks" (59). For example, blurring occurs when consumers are aware that similar or identical marks refer to different sources, such as BASS for ale and BASS for leather goods. In such a case, the link between the signifier BASS and the particular signified to which it refers "is blurred by the existence of an alternative link to an alternative signified" (58-59).

2.1.3 The discourse 'setting'

By observing trademarks and trademark law from the semiotic lens, we are able to recognize that "the meaning of a trademark as a sign comes from its use in a discourse. Through the study of signs, symbols, and their meanings, we recognize that everything can become a sign" (Karnezos 2011, 213). Scholars such as Karnezos and Durant recognize the notion that a sign can only be a sign if and when it is interpreted as such, and interpretation requires another human being to interpret the sign. Pragmatically, signs have different meanings in different contexts because the communicative process entails other factors besides a word or phrase's inherent meaning:

[T]he discourse "setting" in which interpretations are constructed involves more than just the topic area to which the sign is related at registration... That "more" includes dimensions of communication that have received some attention in trade mark law but are arguably less clearly articulated than the sign's semiotic

properties. These communicative dimensions include: what genre the trade mark is embedded in (e.g. conventional editorial, such as a news story; name or slogan of an advert; text used in labeling, etc.); the level and type of cultural knowledge assumed on the part of the average consumer, as addressee (assumptions about commerce and communication, as well as general-knowledge assumptions that sponsor interpretive inferences); and the adopted mode of address (how the addressee is invited to view the discourse, including the presumed identify of its author or speaker-persona). How signs work in a given context of use also depends on intention and attribution of intention, as well as on the receiver's interpretive strategy. Enforcement must accordingly be similarly concerned with such aspects of use, if use considerations are not to be some sort of return of the repressed in relation to the semiotic framework that underpins trademark law. (Durant 2008, 132-133)

The discourse-analytic account of trademarks, like Beebe's Saussurean derivation of a sign's value, is one of relativity, as a trademark as a sign "can only be interpreted by consumers in relation to other trademarks and in doing so, finally to the law in its entirety" (Karnezos 2011, 214). For instance, a logo that indicates a product as being "Coca-Cola" is only meaningful to the extent that it is able to distinguish itself from other products that are "not Coca-Cola."

Of course, the discourse-analytic and semiotic approaches to trademark law can quickly overwhelm the scope of the trademarks themselves¹². After all, a trademark is essentially just a word-- an item stored in our mental lexicon-- and the very basis of semiotics thrives upon the transcendence of language from the structural plane. Nonetheless, trademark doctrine cannot be truly understood from a rigid set of rules, and the semiotic accounts of trademark law are

¹² We want to focus mainly on the lexical aspects of trademarks, but semiotics has been useful in the 'trade dress' aspects in trademark disputes. For example, in an expert report by Ronald Butters for *AutoNation, Inc. v. Acme Commercial Corporation et al.* (S.D. Fla., Dec. 9, 1999), it was pointed out that the use of color, type case, and size indicate important semiotic differences in advertisements, and the plaintiff's did indeed differ from the defendant's (Shuy 2002, 134-135).

valuable to our understanding of the trademark as a system of signs and of the perception and process of trademark dilution and misuse.

2.2 How linguistics has served in trademark disputes

A typical trademark battle in a court of law begins with two parties claiming the right to use certain words or expressions, with the objective of one party gaining the legal right to utilize the words or expressions and the other party being prohibited from its use. Sometimes, in these disputes, trademark owners will be given the unfortunate verdict that their trademark has undergone complete genericide and is no longer legally protectable, but the usual scenario typically concludes with a much less extreme variation of such a verdict. These trademark battles commonly summon the expert testimony of linguists, to account for the ambiguous inquiries that cannot be plainly answered by the legal experience.

This form of literature is mostly factual recount and focuses largely on fields of linguistics that are mostly irrelevant to the purposes of this study's interest in morphosyntactic markedness as a deterrent to genericide. Roger Shuy's (2002) volume of trademark disputes that relied on linguistic expert analysis concentrates mostly on phonetic and semantic issues. For instance, Shuy discusses the case of *ConAgra, Inc. v. Geo. A. Hormell & Company*¹³, wherein ConAgra claimed that Hormell's use of "Health Selections" as the name of one of its new food products was a conscious imitation of its own "Healthy Choice" trademark (69). The linguistic experts on the case performed a distinctive feature analysis of the sounds "Healthy Choice" and "Health Selections," and they found that "the two names produced 228 phonological features, of which 89 per cent were different" (75). Shuy's semantic analysis of the case concluded that "Choice" and "Selections" have different meanings, with "Selections" prompting the idea of

¹³ 990 F.2d 368

somebody else doing the picking for the consumer while for “Choice,” the consumer has to do the picking (79). In the end, the judge ruled in favor of Hormell, finding that the marks do sound significantly different but disagreeing with Shuy’s semantic analysis, stating that the two marks convey the same meaning (80).

Similarly in *Pyewacket Enterprises, Inc. v. Mattel Inc.*¹⁴, which is the 1994 complaint brought by Pyewacket against Mattel alleging trademark infringement and dilution arising from Mattel’s sale of a novelty item called GAK, which was similar to Pyewacket’s own “gooey, tactile substance” which they marketed as GUK (Shuy 2002, 116). Shuy argued that even though GUK and GAK only differ 33%, phonetically, the difference is significant because the vowels, which act as the nucleus of syllables, are different and that even word pairs that differ minimally, such as ‘big/pig’ or ‘top/tap’ are not commonly confused (118). For his semantic analysis, Shuy opined that GUK and GAK would not be susceptible to consumer confusion, since the dictionary contains “guk’s” phonetic equivalent, “guck,” that had a “robust ability to extend beyond its noun form” such as “gucky” or “guck bucket” (119). However, the dictionary had no definitions for “gak” or “gack.” Ultimately, the conclusion of the case is unverified, since the two parties settled the matter out of court-- and Shuy’s linguistic testimony on the matter went unused.

But the pertinence of Shuy’s work to this study is exemplified in the case of *Woodroast Systems, Inc. v. Restaurants Unlimited, Inc.*¹⁵, when a company providing restaurant services, Woodroast Systems, Inc. (also known as Shelly’s Woodroast) filed a complaint against Restaurants Unlimited, Inc. claiming service mark infringement. In particular, Shelly’s Woodroast objected to Restaurant Unlimited’s use of “Wood Roasted” on its menu and

¹⁴ Civil Action No. C94-434D (U.S.D. Court for the Western District of Washington at Seattle)

¹⁵ 793 F.Supp. 906 (1992)

advertising. Unlike the previous cases, the *Woodroast* case utilized morphology, syntax, and markedness principles in its linguistic analysis-- which sheds light upon the possible structural applications of formal linguistics in trademark law. Firstly, upon examining the morphology of the competing marks, Shuy found that Shelly's used "Woodroast" as a proper noun while every other competitor used "wood roasted" (sometimes with a hyphen between the morphemes) (Shuy 2002, 162). Secondly, through the investigation of the competing menus' syntactic formulas, Shuy concluded that Shelly's use of "Woodroast" as a proper noun contrasts with the adjectival "wood roasted" employed by all of those whom Shelly's claimed were infringing its mark (93). The judge had initially questioned whether "Woodroast" was a generic term, but the syntax revealed that it is the marked adjectival "wood roasted" that is generic.

Finally, Shuy heralds the significance of "marking theory" in linguistic analysis, stating that "[linguistic] features that are statistically dominant are often referred to as 'unmarked.' Areas of language that differ from the commonly used and accepted forms are considered 'marked forms' because of such variation. For example, in 99 per cent of the languages whose word order has been studied, grammatical subjects precede their objects, causing language typologists to consider syntax with the object appearing first to be the 'marked' form" (Shuy 2002, 91). So in the case of *Woodroast*, Shuy determined that the unmarked form of roasting is over an open fire (according to the dictionary), which does not include roasting with wood as a defining characteristic. Thus, Shuy concludes that while "wood roasting" is previously unmarked, it is now marked because there are alternative methods to roasting food.

The literary accounts of how linguistic expertise has served in trademark battles make it apparent that linguists and lawyers have different attitudes over who can 'own' language and how such a matter can be resolved. Shuy's anthology of linguistic testimony does not provide

much insight into the linguistic aspects of the genericide *process*, but it does provide cues as to how markedness principles can affect a consumer's perception of trademarks (even if Shuy's example focuses largely on semantic markedness, not morphosyntactic). For the actual process of genericide and trademark misuse, however, it is crucial to understand that it is also contingent upon human perception, and the gradual process in which it occurs is propagated through simple language use.

2.3 Genericide from a historical linguistic perspective

From a linguistic perspective, trademark laws are highly paradoxical and even counterintuitive. Shuy summarizes this paradox, stating that "[law] is, by definition, prescriptive and autocratically final, asserting that once a law is decided, everyone is subject to it. In contrast, linguistics is, by definition, descriptive and democratic, asserting that acceptable language behavior is determined by the way it is used by the people who use it." He further elaborates his point using one of Labov's (1970) principle ideologies, that "in the process, to define those who varied from such a standard as deviant, stupid, ignorant, or immoral [linguistic research] continues to show that those who vary from the norms of such ideology are indeed not deviant, stupid, ignorant, or immoral" (Shuy 2002, 6). It is indisputable that language is constantly evolving and that imposing language policies on the general population can be highly problematic. But it is also indisputable that people will find it unjust if their ideas and innovations are not protected by the law-- and the law must be amenable to the ubiquitous nature of language change.

Butters and Westerhaus (2004) provide a straightforward and highly informative description of the issue, in their pertinently specific chapter about how linguistic change

contributes to trademarks becoming generic. They say that the process of genericide is similar to that of *broadening* in historical linguistics-- such as when *dog* at one time referred to a specific kind of *canis familiaris* rather than dogs in general. "Broadening, however, does not affect the genericness of ordinary words: *dog* is still generic, whether it refers only to long-haired canines that are used to herd sheep or to all canines. A trademark thus is really a kind of proper noun, but one that still refers to a class of things (e.g. Mercedes automobiles) rather than to a unique entity (e.g., Mercedes Norton, the first author's third-grade music teacher) or place (e.g., Mercedes, Texas)" (112). They also mention that the sociolinguistic processes that bring about genericide are "atypical" of lexicosemantic change. When *hound* and *dog* changed places in modern English, that was unrelated to forces of the legal system or to the marketing and advertising influences of the modern world. But traditional linguistic processes still seem to be at work, "particularly the tendency of ordinary speakers to make metaphorical and synecdochical... utterances."

It is clear that trademark misuse is a form of synecdoche, as it describes a semantic change that shifts the meaning of a word because of a metonymic association. "Both the linguists and the literary scholars here define a highly productive synchronic and diachronic process in language, sometimes used for its striking effect as a figure of speech... sometimes as a kind of linguistic shorthand: rather than uttering an entire generic term, speakers and writers may use a briefer, nongeneric synecdochical term that is associated with the generic term. Thus speakers will sometimes say *Kleenex* to refer to a paper tissue and *Xerox* to refer to a photocopying machine, even though the speakers know full well that the terms they have employed are in fact brand names which are technically inexact labels for the items to which the speakers are referring. Such a speaker is not truly mistaking the part (*Kleenex*, *Xerox*) for the whole (paper

tissues, photocopying machines), any more than the speaker who says *threads* to refer to *clothes* seriously believes that *threads* refers by definition to the entire universe of garments...” (118). After all, the communicative efficiency of metonymies is quite obvious, as they “show a clear-cut cognitive background” and are “very efficient tools for resolving different tasks in communication” among speakers who share “the same conceptual relations, common world knowledge about how life is typically organized and how the ‘things of life’ are interrelated” (Blank 1999, 174-175).

Despite the overtly natural procession of trademark misuse, Butters and Westerhaus believe that genericide in itself appears to be a dying historical linguistic process (2004, 119). They acknowledge that many trademarks have become so famous that they are often used in ways that might seem generic (e.g. JELLO, KLEENEX, JEEP, etc.). However, such terms are rarely defended in court against genericness claims because of the expensive nature of lawsuits-- and it is far more practical for businesses to use undisputed generic terms such as ‘gelatin dessert’ or ‘tissue paper’ (120). In their view, “there is nothing less natural about the historical linguistic influence of modern advertising and the courts than there is about any other contemporary sociolinguistic process... If genericide is a dying process, it is precisely because the courts in general-- and most often these are juries, not judges-- are persuaded (often on the basis of market surveys...) that the public at large is in fact highly aware that brand names are indeed brand names... If there has been a change in the rate of genericide since the middle of the twentieth century, it indeed may well be because of increased vigilance on the part of trademark owners, who continue to strive to inform the public, especially through advertising, that their lexical property is in fact not generic” (120-121).

The authors' intuitions are most likely correct-- complete genericide is a dying phenomenon, thanks to the increased efforts of the legal community and to the monetary disincentive of lawsuits. Butters himself comes up with a more suitable term for today's nearly-generic marks: *pseudogenerics*, which includes "extraordinarily famous brands as *Band-Aid*, *Kleenex*, and *Xerox*, which (as the dictionaries report) sometimes exhibit in print overt features of genericness [that] have not in fact undergone genericide-- assuming that the relevant public still recognizes them as brand names" (2008, 514). Nonetheless, even if modern trademark owners are unlikely to face the extreme prospect of trademark genericide, the process of trademark misuse can still have injurious consequences for their brands-- and further research on the occurrence would be beneficial.

3. Introducing Structural Linguistics to Trademark Theory

A review of the current literature regarding the subject amalgamation of linguistics and trademark theory demonstrates that it is largely functional. Virtually none of the literature discusses the structural aspects of trademark grammar and use-- which gives trademark advertisers very little in terms of strategy. However, the strategies are recommendations from a legal perspective and have not undergone rigorous analysis from formal linguists, despite their "structural" nature. The current, encouraged methods of thwarting trademark misuse are not even ineffective-- but the goal of this study is to contribute to and improve upon the current methods using psycholinguistic research.

Applying structural linguistics to trademark theory is a multi-step process that involves tying together existing research on trademarks, marketing, and linguistics. We have reviewed the literature regarding linguistics + trademarks, but there is also research regarding trademarks

+ marketing and linguistics + marketing. This study will integrate the three to use findings from one discipline as a possible solution to the problems of another.

3.1 Current methods of preventing trademark misuse and genericide

In the most extreme case, trademark misuse leads to genericide; and determining whether a term has become generic is depends upon the language usage of relevant consumers. Legal representatives will advise trademark owners to protect their marks, emphasizing the importance of a trademark owner's role in shaping public perception. These are the parameters under which trademarks are longer enforceable, since one does not need to register a mark for it to be a protectable trademark and the act of registering a mark with the Federal Trademark Office has no direct effect upon protecting a trademark from genericide. Entry on the Principal Register merely shifts the burden of persuasion to the party that challenges a registered mark on grounds of genericism, and the challenger must establish that the mark is generic by a preponderance of evidence¹⁶. Under the Lanham Act, it is the primary significance of the registered mark to the relevant public that determines whether the registered mark has become the generic name of the goods or services on which a trademark is used¹⁷. When this issue comes into dispute and a determination must be made of whether a mark is generic, a court may take into consideration various factors, including the duration and extent to which the mark was advertised and publicized. However, in considering this evidence, the main concern is not the extent of the

¹⁶ 15 U.S.C. § 1057 (b). While “[a] certificate of registration of a mark upon the principal register provided by [the Lanham Act] shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate,” this creates an effect of ‘presumption of validity,’ wherein a party can challenge a registered mark by establishing it to be generic ‘by a preponderance of evidence.’ See *Retail Services Inc. v. Freebie, Incorporated*, 364 F.3d 535, 542 (2004)

¹⁷ 15 U.S.C. § 1064 (3)

promotional efforts, but their “effectiveness in altering the meaning... to the consuming public.”¹⁸

Essentially, trademark owners must be diligent in how they present their marks to the public, as poor marketing tactics can be detrimental to their brand and be held against them in court, should a trademark dispute arise. The case of *American Thermos Products Co. v. Aladdin Industries* illustrates how poor advertising practices can greatly contribute to widespread trademark misuse-- and the court found that the genericide of the former trademark ‘thermos’ was propagated by American Thermos Products Co.’s insufficient efforts in dissuading the public from using the word generically¹⁹. There has since been the development of strategies to prevent another ‘thermos’ incident, and the current set of standards set against “poor marketing tactics” for trademark owners are well known and widely enforced.

Some of the tactics—which include using trademark notices such as ™ and ® or having trademarks stand out from surrounding text so consumers can easily distinguish the mark from generic terms—are highly stylistic and rely on visual stimuli. But other recommended tactics are structurally linguistic in nature and could have a bearing on whether consumers will infuse proper trademark usage into their grammar. Encouraging the use of a trademark as an adjective rather than a noun or a verb (i.e. “I need a KLEENEX tissue” as opposed to “I need a KLEENEX”), utilizing the product’s generic name with the trademark (APPLE computers or EXXON gasoline), and avoiding trademark variations such as spelling changes, abbreviations, or

¹⁸ See, *Aloe Cream Labs v. Milsan, Inc.* 423 F.2d 845, 850 (5th Cir. 1870)

¹⁹ 207 F. Supp. 9, 13 (1962) (“Through these years the plaintiff was concerned lest the rapidly growing generic use of ‘thermos’ cause it to fall into the public domain; but, at the same time, it was reluctant to object to non-trade generic uses of the word for fear of creating ill-will and for fear of losing the economic advantage which accrued to it through the widespread free advertising which resulted from such use.”)

plurals are some of the most well-known practices in trademark protection²⁰. These strategies often manifest as public relations campaigns launched by companies who own the marks, as evinced by the previously discussed JEEP campaign. But other notable examples include Xerox Corporation's advising their consumers to 'photocopy' instead of 'xerox' documents and Adobe's set of trademark guidelines for their consumers to follow on their company website²¹, which includes the following advisory on one of their most prominent marks, PHOTOSHOP:

“The Photoshop trademark must never be used as a common verb or as a noun. The Photoshop trademark should always be capitalized and should never be used in possessive form or as a slang term. It should be used as an adjective to describe the product and should never be used in abbreviated form.”

“Correct: The image was enhanced using Adobe® Photoshop® software.”

“Incorrect: The image was photoshopped.”

The idea is that the more distinctive the mark is, the greater the impression it will have on the consciousness of the consumer. Another “golden rule” that trademark owners are told to follow include not using trademarks as plurals or possessives (i.e., not “Toyota’s safety features”)-- which is a significant morphological distinction. Ultimately, trademark owners should always adhere to these basic guidelines, but this study proposes that these guidelines can be supplemented using marketing and psycholinguistic research.

3.1.1 Genericide: the effects of trademark misuse

Some of the most well known instances of genericide can be clearly traced back to not adhering to the trademark guidelines. One of the most prominent protocols-- using the trademark as an

²⁰ See INTA's guidelines for proper use (<http://www.inta.org/TrademarkBasics/Documents/INTAProperUsePresentation.ppt>)

²¹ Adobe's trademark guidelines (<http://www.adobe.com/misc/trade.html>)

adjective rather than as a noun or a verb-- is one that is frequently flouted in everyday discourse (i.e., “The image was photoshopped”), and trademark owners must take active measures to prevent this. An illustrative case of the detriments of ‘adjective > verb’ trademark conversion is that of *America Online Inc. v. At&T Corp.*²², in which AOL sued AT&T for trademark infringement, claiming that “IM” (short for ‘instant messaging’) was an AOL trademark. AT&T, which had started using “IM” for their instant messaging service after AOL, countered that “IM” was a generic initialism that simply described the service. The court sided with AT&T, and the decision relied in part on the AOL employees’ use of the term “IM” as a verb rather than an adjective:

[T]he Court has little trouble determining that IM is generic and not protected by [trademark law]. The record indicates that AOL and AOL employees frequently use IM in a manner that indicates that it is a noun, not an adjective (an AOL employee stating “...the letters IM... blinked to let them know that they had an IM pending”; in an article, an AOL spokesperson said: “We’ll say, ‘I IM’ed him, but he never called back’; or, ‘Stop IM’ing me, I’m trying to work’ ... [IM] has become part of the vocabulary”...) (*AOL v. AT&T*; Franklin 2003, 49-50)

As for the equally unfavorable process of ‘adjective > noun’ conversion, *Donald F. Duncan, Inc. v. Royal Tops Manufacturing*²³ is an exemplary case of its devastating consequences.

‘Yo-Yo,’ which had previously been a trademark belonging to the Duncan company, had been ruled generic, after the court discovered Duncan’s repeated use of the term as though it was the toy’s name:

There is much documentary proof... that plaintiff for more than twenty years employed the term “Yo-Yo” in its descriptive and generic sense. Its most

²² 64 F. Supp. 2d 549 (E.D. Va. 1999), *aff’d in part and re’v in part*, 243 F.3d 812 (4th Cir. 2001)

²³ 343 F.2d 655 (7th Cir. 1965)

publicized slogan used in trade magazines, on the radio, television and otherwise, was “If It Isn’t a Duncan, It Isn’t a Yo-Yo.” “Yo-Yo” as thus used was generic and descriptive of plaintiff’s toy. A similar use of “Yo-Yo” in its generic sense in communicating with large numbers of the consumer public was the recording of a song exhorting children to “Spin a Yo-Yo.” This recording was plaintiff’s theme song, used by plaintiff on a television program which was carried weekly. (*Duncan v. Royal Tops Mfg.*; Franklin 2003, 33)

By placing a trademark in nominal rather than prenominal position, the mark ceases to become a trademark and becomes the name of the product. “Yo-Yo” passed into the public domain when Duncan treated the mark as though it were the name of the toy rather than a mark indicating the toy’s origins. As these cases demonstrate, the linguistic strategies for trademark use are not to be taken lightly, even though they are often overlooked. The linguistic context of trademark use has demonstrably high implications for whether it remains a trademark or whether it undergoes genericide.

3.2 The trademark as a component of a product’s brand identity

Maintaining the integrity of a trademark relies largely on its owner’s advertising techniques. Advertising (a component of the marketing process) increases the visibility of a trademark and its value. However, a trademark’s value not only depends on its level of recognition but also on its ability to distinguish itself from other marks. “A trademark that remains exclusive... grows in value because the public increasingly associates it with a single company. This exclusivity is at the heart of what marketing experts call ‘brand identity’-- the consumer’s immediate reaction to viewing the company’s trademark” (Franklin 2003, 14). The brand itself is more than the visual trademark. It is a product’s trademark, its brand name, its reputation and the atmosphere built up

around it. This is why the prospect of genericide is so undesirable to trademark owners. If a trademark falls into the public domain so that it is no longer associated with a certain provider of goods and services, then it has lost all value. A consumer who sees a brand must recognize that it is exclusive to its company. “A brand is fueled by whatever is associated with the product: always by a trademark and by product quality, sometimes by packaging, and often, to a great extent, by advertising” (Holger 2002, 56).

Rather than solely focusing on increasing the market value of a brand’s identity, advertisers should also consider the legal aspects of their brands and remember to maintain the trademark’s distinctiveness so as to avoid genericide. They should keep in mind that a generic term answers the question ‘What are you?’ and does not answer the question ‘Where did you come from?’ If the trademark ends up being subject to litigation and “the court discovers advertisements, correspondence, or even internal communications where the plaintiff breaks the trademark use rules, then the court will often have little regret in taking the mark away. If the court discovers that the plaintiff went to great lengths to protect the mark, then the court will often be inclined to show leniency on the plaintiff” (Franklin 2003, 25). The rules of use, as previously discussed, includes strategies such as not pluralizing the trademark and using the trademark as an adjective in conjunction with its generic product name.

3.3 Some exceptions: when the rules of use are not enough

Generally, it is prudent to always follow the trademark rule-of-use guidelines and to err on the side of caution, but certain instances in trademark history have suggested that even the most diligent of efforts put forth by trademark owners could not have saved their marks from genericide. Franklin (2003), in his expansive list of guidelines on how owners can protect their

brands and trademarks, states one of the cardinal rules as: don't contribute the mark to the English language (29). That is, once a trademark ends up in the dictionary, it has become generic. However, this is especially difficult if the trademark is attached to a product that did not previously exist; and courts "will not give a trademark owner a monopoly over a word that the public commonly uses to refer to a product. Otherwise, no competitor could market the product without infringing the trademark" (30). Akmajian et al. describes such innovative trademarks as a source for enlarging the lexicon:

The new words *Kleenex* and *Xerox* represent another technique of creating new words, namely using specific brand names of products as names for the products in general (*generification*)... *Xerox* is the name of the corporation that produces a well-known photocopying machine, and much to the dismay of the company, the term *Xerox* has lost its specific brand-name connotation and has come to be used to describe the process of photocopying in general (*I Xeroxed a letter*). Hence, in casual speech we can commit the grave sin of talking about buying an IBM *Xerox* machine. (Akmajian et al. 1997, 24).

The introduction of fanciful trademarks brings words into the lexicon that did not previously exist, and from a semantic point of view, the careless linguistic use of the mark (such as its use as a common noun rather than a proper noun in an adjectival syntactic position) can result in a semantic shift, wherein the "trademark feature" of the distinctive "word mark component" is removed from the mark's original reference, thus rendering it generic (Ephratt 2003,396)

The case of *Illinois High School Association v. GTE Vantage*²⁴ is an instance of such a plight. Since the 1940's, the Illinois High School Association (IHSA) used the 'March Madness' mark to refer to its high school basketball tournament. In 1982, a public broadcaster

²⁴ 99 F.3d 244 (7th Cir. 1996)

used the mark to describe the NCAA basketball championship games, and the description caught on with the general public to describe the NCAA basketball tournament. In 1993, the NCAA began licensing ‘March Madness’ to producers of goods and services related to their tournament, including to one licensee GTE Vantage, who began producing a game called NCAA Championship Basketball that contained the ‘March Madness’ designation on the box (Franklin 2003, 30). Despite the fact that the ‘March Madness’ trademark originally belonged to IHSA, the court noted that IHSA had the responsibility to prevent the media from damaging its mark-- even if the preventative measures are unusually demanding. The court stated that: “It is true that IHSA could not have sued [the original broadcaster] or CBS for referring to ‘March Madness’ in a news program (including a program of sports news), or even in advertising if the term were used merely for identification. But it could have sued them for using its trademark to promote CBS’s broadcast of the NCAA championship.”

Even if IHSA had adhered to the trademark guidelines in their advertisements, they were unable to hold a monopoly over the phrase “March Madness” (unless they had resorted to litigation early on) because the court ruled that too many people associated the phrase with the NCAA tournament. “A trademark owner is not allowed to withdraw from the public domain a name that the public is using to denote someone else’s good or service, leaving that someone and his customers speechless” (Franklin 2003, 31-32). This is similar to what happened to ‘cellophane’ (*DuPont Cellophane Co. v. Waxed Products Co.*²⁵), which was once the Dupont Cellophane Company’s brand name for transparent sheets of regenerated cellulose. Unfortunately, nobody referred to these transparent sheets as anything other than ‘cellophane,’ so in 1920, a court ruled that the term had become generic because “Customers knew no other name than ‘cellophane’ which they could use if they wished to buy a particular article” (Butters &

²⁵ 85 F.2d 75 (2d Cir. 1936)

Westerhaus 2004, 114). The term ‘raisin bran’ met a similar fate: in 1925, Skinner Manufacturing Company created a cereal made of bran and raisins, marketing the product under the mark ‘Raisin Bran’ (Franklin 2003, 61-62). No other company marketed a similar product until 1942, nearly twenty years later, when Kellogg Sales Company and General Foods Sales Company entered the market with the same product, also calling it “Raisin Bran.” Skinner sued, but the court did not side with Skinner because they claimed that “Whatever the trade name ‘Raisin-BRAN’ may have meant prior to the advent of [the] competing products, it is a reasonable conclusion that the words ‘raisin bran’ have at all times meant bran with raisins in it” (*Skinner Manufacturing Co. v. Kellogg Sales Co.*²⁶)

In the cases of ‘March Madness’ and ‘raisin bran’, the original owners of the trademarks lost their rights (mostly) due to cannibalization by a much larger entity with greater publishing power, and in the ‘cellophane’ and ‘raisin bran’ cases, the owners of the marks lost their rights because the courts decided that the public would have no other alternative to the words (after all, “sheets of regenerated cellulose” is a rather unwieldy term). This seems unfair, because it is possible-- given these outcomes-- that even if these trademark owners adhered to the trademark rules-of-use to a reasonable degree, the courts still would not have ruled in their favor. In fact, in the case of ‘raisin bran,’ Skinner did “‘all that could be done to appropriate ‘Raisin-BRAN’ as the trade-mark of its product,’ including obtaining federal registration for ‘Raisin Bran’ as a trademark and clearly associating the term ‘Raisin Bran’ in the consumer’s mind as a symbol for Skinner’s product” (Franklin 2003, 61).

These cases highlight the fact that new trademarks that refer to recent innovations (the “first of their kinds”) are *especially* susceptible to genericide (or at least pseudogenericide) because they set the precedence for how the product is to be referred. But this just means that

²⁶ 143 F.2d 895 (8th Cir. 1944)

owners of such innovations have to be particularly aggressive with their methods of trademark protection. Even if it seemed that Skinner's 'Raisin Bran' mark was doomed from the start, this perhaps would not have been the case in today's society, where the legal industry has become more powerful. The extra diligence demanded from innovative trademark owners may seem burdensome-- but it could very well be what has saved contemporary trademarks such as PHOTOSHOP, JEEP, or GOOGLE from the same fates as 'aspirin' or 'cellophane.'

3.4 A fundamental disconnect: trademarks from a marketing perspective

Trademarks such as PHOTOSHOP, JEEP, and GOOGLE are highly recognizable and arguably better known than their competitors; and ironically, their sustained fame is what contributed to their loss of distinction (and hence, why they are now 'pseudogenerics'). But there was a time, during their nascent stages before their prolonged exposure to trademark misuse, when a lack of distinction was not a problem. "The distinctive features of one brand must be different from the features of a competitor's brand. This differentiation may be achieved through a well-known brand name, color, shape, particular look and feel, as well as the distinctive design of the package or product. Brand differentiation does not come without initial cost to the manufacturer [however]. But after the initial costs, the manufacturer is entitled to reap certain benefits, [and brand] imitators want to enjoy the benefits without the associated costs" (Zaichkowsky 1995, 91).

The high costs associated with initial differentiation would be another reason why owners of reputable trademarks are displeased with the prospect of an inferior competitor's product being associated with theirs: it detracts from the money and effort they have already invested to acquire their fame, and it is unfair that their competitors are able to reap the benefits

of their efforts while only expending a fraction of their own. For instance, Owens-Corning, which manufactures Fiberglass Pink insulation (which is dyed pink) spent \$42,421,000 on advertising between 1972 and 1981 on advertising to build a unique brand identification by associating its pink insulation with pink flamingos and the Pink Panther cartoon character. The results were a 50% consumer association of pink insulation with Owens-Corning (Armstrong 1992, 604), and other companies that produce pink insulation would have no reason to do so other than to benefit from the public's association of quality insulation with pink insulation. Brand imitators of Owens-Corning insulation would be acting unfairly, and Owens-Corning would be well within its rights to bring legal action against its imitators.

According to some scholars, however, there is a glaring disconnect between the objectives of marketers and trademark lawyers. For instance, Franklin (2003) argues that from the *marketing* standpoint, “a brand serves no purpose if consumers associate with another company or with the industry generally. Likewise, spending money promoting a brand that a competitor can start using forfeits any competitive advantage obtained by promoting the brand.” But contrastingly, Franklin argues that from a *legal* standpoint, “a brand must associate a product with its source or the brand is no longer enforceable. Furthermore, enforceability of a brand's exclusivity in court depends upon its trademark status. If your brand is not a trademark, then anyone can use it, it would be pretty stupid to pour millions of dollars into promoting a ‘brand’ that a competitor can use, but companies have done it over and over again” (60).

This study will attempt to reconcile the contradiction, as presented by Franklin, by proposing the hypothesis that based on the current psycholinguistic research in marketing theory, the concept that ‘*a trademark is not a generic noun*’ can be conveyed as one of the salient points

of an advertisement morphosyntactically-- and this would deter loss of distinctiveness and ultimately, genericide.

4. Using Psycholinguistics to Bridge the Disconnect

Language does not exist in a vacuum and is constantly and continually evolving—which can be problematic if the determination of whether a term has undergone genericide is contingent upon the language use of relevant consumers. In effect, trademark owners want to protect their marks by attempting to halt the natural procession of linguistic evolution, and companies spend immeasurable amounts of time and resources in building brand strength through marketing and advertising in an attempt to manipulate consumer psychology. “Both social psychology and marketing are also founded on the expectation that changes in behavior are likely to follow changes in attitudes and that strategies of persuasive communication (advertising or sales promotion) can be built upon this” (Foxall et al. 1998, 108).

4.1 Psychological principles of trademarks and brand identity: antagonistic forces everywhere!

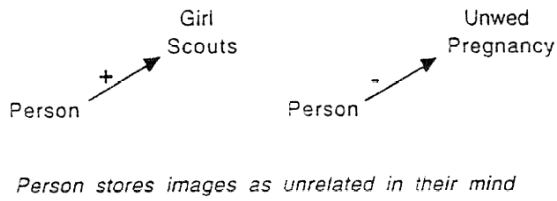
Besides the unwelcoming prospect of genericide, trademark owners-- especially ones who own brands that are well known-- want to avoid loss of distinction and the likelihood of confusion of their brand with one that is inferior. Failure of avoidance could lead to a decline in their reputation and goodwill. But it is not just the consumers themselves that contribute to this problem, but also their competitors. *Brand imitation* occurs when a company copies aspects of a successful brand, and from a psychological perspective, this action makes perfect sense. “Social psychology, specifically attitude theory, is important to the understanding of why others would want to associate with owners of successful trademarks. The premise is that positive attitudes

can be developed through simple association with well-liked objects, and these positive attitudes can lead to purchase behavior of the associated product, as well as the original product” (Zaichkowsky 1995, 34). The idea of imitation as a strategy may be partly explained by the notion of *stimulus generalization* (34), which is rooted in the theory of Pavlovian classical conditioning and leads an individual to generalize from one incident or stimulus object to another similar incident or stimulus object.

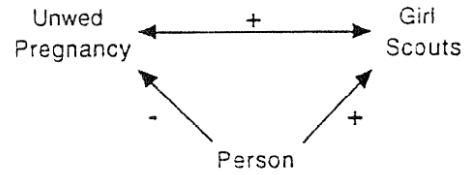
Social psychology also offers a glimpse from the other side of the coin to explain why successful companies bring lawsuits against other companies that make unauthorized associations with their brands. *Balance theory* postulates that individuals seek information that is consistent with their needs, interests, and attitudes, and avoid information that is not--and while it “has little to do with perception or attention per se... [it is] important to understanding the motives for unauthorized association” (Zaichkowsky 1995, 45-50). The unauthorized use of a trademark to associate with an inferior product or a negatively perceived object can be harmful to the original through a decrease in the consumers’ attitudes toward the original, as the negative perception “rubs off” on the original’s image. In *Girl Scouts of the United States v. Personality Posters Mfg. Co.*²⁷, the Girl Scouts of America tried to truncate a poster company’s efforts in manufacturing and selling posters of visibly pregnant girls in Girl Scout uniforms, with the headline “Be Prepared.” This association of ‘pure Girl Scouts’ (+) with unwed mothers (-) would lead to an unbalance (-) state, and perhaps harm the reputation of the Girl Scouts:

²⁷ 304 F. Supp. 1228 (S.D.N.Y.) (1969)

Prior Attitude

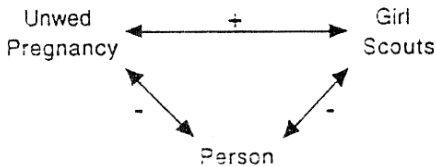


Pairing



Result

Person is an unbalanced state and strives for balance



[Fig 4.a] *Balance Theory in Girl Scouts v. Personality Posters (Zaichkowsky 1995, 47)*

The idea that trademark owners not only have to protect themselves from their own advertising practices, from their consumers, but *also* from their competitors is highly daunting, to say the least. But this illustrates the abundance of psychological cues and principles that guide the actions of all parties involved in the realm of trademark use; and by understanding these psychological components of attention and perception, trademark owners will gain a greater understanding of the types of cues that consumers use to identify and interpret their goods and services.

4.2 The psycholinguistics of marketing communications: cues from Whorf

The current research on the psycholinguistics of trademarks, specifically, is scarce. However, it is apparent that the relationship between branding theory and trademark theory is quite strong--and fortunately, there is influential research regarding psycholinguistic phenomena in marketing communications that could lead to great insight about the cognitive linguistic functions of

trademarks. The concept is Whorfian in nature, as we ponder whether language influences perception and thought. This perspective has been controversial and has been subject to varying degrees of criticism, as many scholars question whether people actually “dissect nature and break up the flux of experience into objects and entities to construct propositions about” (Whorf 1956, 239).

Declaring the Whorfian perspective as being unequivocally ‘correct’ would be boldly presumptuous. However, for the purposes of this study, it is helpful to believe that it is *plausible* that humans do actually perceive a world that is at least *to some degree* organized by their respective linguistic systems. Lucy (1992), one of the most prominent Whorfian scholars, frames the debate as one with categorical influences, in that “some aspects of language are more susceptible to conscious awareness than are others” and that speakers do not respond to all aspects of their language in an unbiased way because of a “differential salience for thought of some aspects of linguistic form and meaning relative to other aspects [also known as intuitive awareness]” (38). Whorf’s “linguistic relativity principle” addresses these aspects as language classifications that influence thought-- and the diversity of those classifications ensures a certain diversity of thought among speakers of different languages (Whorf 1956, 221).

The Whorfian perspective, while controversial, has been extremely enriching to linguistic philosophy and has spawned ideas that extend beyond the academic community, into the “real world.” Pinker (2008) is a leading authority on the effects of human language on thought-- and he seems to exemplify a ‘moderate’ form of the Linguistic Determinism touted by Whorf. Pinker acknowledges that “a strong Whorfian theory of how we learn to distinguish kinds of objects is unlikely, [as evinced by] deaf people who grow up without a signed or spoken language certainly don’t act as if they fail to distinguish bicycles, bananas, and beer cans when

keeping track of the things around them” (137), but he offers numerous examples that indicate the transformative powers of language upon human cognition.

His “corporate linguistic” examples are the most relevant to this study, and he conjures the example of how Google makes its fortune off of actually “*selling noun phrases*” (165). As a means of making money, Google displays a number of commercial sponsored sites at the edge of the screen that are relevant to the search term used by a consumer during a web search.

Companies that purchase this ad space do so by bidding in a continuous auction for the terms most likely to garner attention to their site. Curiously, plurals cost more than singulars. “*Digital camera* can be bought for seventy-five cents a click, whereas *digital cameras* fetches a dollar and eight cents. The advertisers know that the plural is more likely to be typed by people who are planning to *buy* a camera, though they don’t know why. The reason is that a bare noun like *digital camera* is generic, and is likely to be typed by someone who wants to know how they work. A plural like *digital cameras* is more likely to be referential, and typed by someone who wants to know about the kinds that are out there and how to get one.”

Pinker’s ‘Google’ example may not be a clear-cut example of how language transforms thought, but it does evince language as an indicator of cognition as well as linguistic tendencies that are not entirely conscious. But Pinker does have a Whorfian explanation for the process of genericide and how an aversion to hearing “a cherished referent identified with a common noun” (166) is not just limited to trademark owners. He argues that people in general “take even greater umbrage when they hear *themselves* labeled with a common noun. The reason is that a noun predicate appears to pigeonhole them with the stereotype of a category rather than referring to them as an individual who happens to possess a trait. Logicians would be hard-pressed to specify the difference, but psychologically it matters a great deal. You can innocuously describe

someone's hair as *blond*, *brunette*, or *red* (adjectives), but it's a trickier business to refer to the whole person, particularly a woman, as *a blonde*, *a brunette*, or *a redhead* (nouns).” This could be construed as Pinker's mere, casual observation with little academic credence, but he further points out that there is in fact a movement in psychiatry to avoid using nouns when referring to patients. So a *schizophrenic* is now *a person with schizophrenia*, and an *alcoholic* is now *a person with alcoholism*. For whatever reason, there is a demonstrated “sensitivity to the typecasting power of nouns” (167) that is not only applicable to trademark genericide but also in the grander scheme of events-- and it makes it difficult to dismiss the Whorfian notion that language does have some profound influence on perception and thought.

4.3 The conflicting psycholinguistic research on advertisements

The traditional intuition on how to construct the language of advertisements is to keep it as simple as possible. “Typical recommendations are to avoid complex syntax such as long headlines (e.g., ‘Sooner or later you'll break down and join AAA’), negations (e.g., ‘Orange juice is not just for breakfast anymore’), and passive constructions (e.g., ‘Advil is recommended by more doctors’).²⁸ As these examples make clear, however, advertisements often violate these guidelines, and the advertising may be considered quite successful” (Lowrey 1998, 186). Thus, there appears to be an incongruity between the accepted methodology and the empirical evidence-- but how can both approaches be simultaneously correct? The truth is, the psycholinguistic research regarding the link between the syntactic complexity of advertisements and their levels of persuasion is not straightforward at all and produces conflicting evidence.

However, despite the lack of a definitive answer as to whether “simpler is better,” the existing research is insightful and suggests that the complexity should vary according to the

²⁸ See Section 5.1 of this study for a discussion about what is considered “complex.”

setting. For *broadcast ads*, Lowrey (1998) found that syntactic complexity adversely affected memory measures but did not affect attitudinal measures²⁹. Lowrey's findings indicate that while simple syntax yields higher levels of recall and recognition than their complex syntactic versions, the attitudes toward a broadcast advertisement did not differ as a function of syntactic complexity (192)-- but the scope of this experiment was limited to broadcast ads. Bradley and Meeds (2002) performed a study involving low, medium, and high syntactic complexity in *ad slogans* and found no differences for recognition memory-- however, they encountered higher recall and attitudes for *moderately* complex slogans³⁰. They acknowledge the inconsistency of their findings with studies performed by those such as Britton et al. (1982), whose series of experiments (wherein the overall semantic meaning of the text was held constant while the syntactic surface structure was varied) found that "more cognitive capacity is required to parse complex syntax than simple syntax" (Britton et al. 1982, 59).

But in the end, they concede with the unfortunate fact that the effects of cognitive burden "on message processing remain to be fully understood" (Bradley & Meeds 2002, 600); and we are still left with the puzzling question of how to best manipulate the syntactic constructions of trademark advertisements. The solution is therefore not straightforward and must encompass the research supporting *both* sides of the argument.

²⁹Lowrey justifies her bases for complexity as such: "Particular syntactic structures that have been shown to reduce the comprehensibility of text include negation, passive construction, and left-branching sentences-- for example, 'Because it's high in fiber, BrandX is a healthy choice for breakfast' (left-branching) versus 'BrandX is a healthy choice for breakfast' (right-branching). Latencies are slower and more errors are made when processing negative or passive sentences than when processing affirmative or active sentences." (1998,188).

³⁰ For instance, their experiments tested the effects of particle movement on syntactic and semantic recognition-- and while they found that the recall of morphemes from the simpler active slogans was significantly higher than recall of morphemes from the more complex passive slogans, recall was highest for the moderate-complexity version in which active slogans contained adverbs that had been moved. "Additionally, when the two moderate complexity conditions (active/particle moved and passive/particle not moved) were contrasted against the other conditions, moderate complexity overall led to improved morphemic recall" (Bradley and Meeds 2002, 611-612).

4.3.1 The case for syntactic simplicity

Lowrey's experiments indicate that despite a lack of attitudinal effects, even moderate levels of syntactic complexity in broadcast ads inhibited recall and recognition levels (1998, 202). But there are other psychological considerations to take into account as well. In terms of persuasion, Lowrey supports her hypothesis with Petty and Cacioppo's (1986) Elaboration Likelihood Model (ELM) as having specific implications for predicting the influence of syntactic complexity. "In ELM terms, syntactic complexity might be viewed as an ability variable (i.e., message complexity)... [and] syntactic complexity might impair processing of the information presented in an ad. Thus, somewhat complex (yet comprehensible) messages may be less comprehensible than simple messages because of reduced processing abilities" (Lowrey 1998, 189). In fact, Lowrey's hypothesis fits the pattern of data from one of her experiments, wherein participants differentiated between strong and weak claims for simple syntax versions but failed to do so for complex syntax versions. The results shown in this experiment are consistent with one of the basic assumptions of the ELM-- that "when ability to process is hindered... syntactic complexity [operates] as a motivational rather than an ability variable... One interpretation of the results obtained in [the experiment] is that motivation to process the ad is reduced when extra effort is required (i.e., when syntax is complex)" (196).

Lowrey also cites other studies that have demonstrated the adverse effects of syntactic complexity, particularly on processing and response times. "For example, response latencies are slower and more errors are made when processing negative or passive sentences than when processing affirmative or active sentences (Clark & Chase, 1972; Gough, 1965; Mehler, 1963; Miller, 1962; Wason, 1959)... [and] several studies have found that left-branching structures can

overload working memory... [which can] cause processing difficulties when combined with other factors that place demands on short-term memory (Anderson & Davison, 1988)” (188).

The advantages of active versus passive voice in advertisements has also been strongly supported by Motes et al. (1992), whose examination of the effects of active and passive sentence structure on the perceived believability, clarity, and attractiveness of print advertisements found that readers evaluated the active voice advertisements more favorably.

A more expansive study by Jae (2011) examining complex print advertisements including left-branching, negative, and passive structures (as opposed to simple right-branching, affirmative, and active structures) discovered that consumers were able to engage in cognitive elaboration much more effectively when they encounter advertisements that have no complex syntax and no added cognitive load. However, the imposition of a cognitive load in the form of the addition of a secondary memorization task (156) “resulted in an interesting and significant interaction effect between syntactic complexity and cognitive load. When [the researchers] did not impose cognitive load, research participants favored the simple advertisements over the complex advertisements. When [they] imposed cognitive load, however, this effect disappeared. This suggests that imposed cognitive load taxed research participants’ working memory capacity and thus prevented [the subjects] from fostering the proper attitude formation toward even simple-syntax advertisements” (157)³¹. Ultimately, the study recommended that advertisers should avoid using complex syntax “so that consumers will be willing to read and will be capable of cognitive elaboration... too much unrelated information could distract readers and increase their cognitive load. The results of the study demonstrate that even simply written

³¹ Jae’s (2011) experiment was procedurally similar to that of Lowrey’s, except for the addition of the cognitive load wherein participants were asked to memorize ten words for two minutes before viewing the advertisements and then asked to recall the memorized words after viewing the advertisements (156).

advertisements are less effective when participants are distracted by tasks that demand their cognitive capacity” (158).

4.3.2 Further neurological considerations and speculations for simplicity

The case for syntactic simplicity in advertising media is strong and supported by a number of studies, mostly in the form of observable results derived from experimental data. A review of the current neurobiological research, however, also leads to a speculative case towards simplicity. Gontijo & Zhang (2007) performed a study on the mental representation of brand names and found that “brand names may also be processed by distinctive brain regions.” They were able to demonstrate a larger right hemisphere (RH) involvement in the processing of brand names than of common words. “Language has proven to be a highly lateralized function and one that is predominantly located in the LH [left hemisphere]. However, evidence suggests that proper names are represented in the lexical system of both hemispheres (Safran et al., 1980)... [and] Gontijo et al. (2002) have found that the lateralization pattern of brand names is closer to that of the normal nonwords as compared to the common words” (28-29).

Thus, it appears that brand names (and by extension, trademarks) have a special place in the mental lexicon. How this pertains to syntactic simplicity, however, is a matter of speculation over the brain’s hemispheric involvement. The majority of neurolinguistic research focuses on the LH, which strongly dominates semantic processing of verbal material and processing syntactic complexity, while the RH is specialized for conventional meaning (Cronin-Golomb 1995; and Friederich 2004). Syntactic complexity is particularly demanding upon the LH, as studies have indicated that syntactic transformations “were found to be correlated with activation in the left IFG (Broca’s region) and in the posterior superior temporal sulcus bilaterally... [and

that the] left posterior temporal sulcus was affected specifically by verb complexity... A recent fMRI study... compared the processing of sentences containing syntactic violations with the processing of syntactically complex sentences... [and the] authors reported greater activation in the left operculum for syntactic violations and greater activation of BA 44/45 for syntactic complexity” (Friederich 2004, 793).

However, the processing of brand names involves both the RH and the LH, and the *complementary* processing roles of the RH and the LH should not be overlooked. Beeman and Chiarello (1998) have found strong evidence for complementary hemispheric processing of more complex input, such as discourse-- and “in complementary fashion, the right hemisphere may activate predictive inferences whereas the left hemisphere selects and incorporates connective inferences” (5-6). As for syntax, researchers have not focused their attention upon the RH as much as they have the LH, but it has been demonstrated that “...patients with right-hemisphere damage are somewhat impaired (although less so than patients with left-hemisphere damage) at determining sentence meaning if that meaning depends in part on complex syntactic structure (Capan, Hildebrandt, & Marks 1996). They can also have difficulty manipulating the syntactic structure of sentences (Schneiderman & Saddy, 1998)” (6-7). Therefore, the RH and the LH seem to jointly process language at all levels, and future investigations could verify that the RH does process syntactic information and contributes to complete grammatical processing.

The aggregate of these neurobiological insights thereby lead to the speculation that reduced syntactic complexity in trademark advertisements are less burdensome upon the LH and thus more likely to allow the RH to process the trademark as a brand name rather than a common noun. It could very well be the case that the RH and the LH operate independently in this regard and that reduced syntactic complexity will not increase RH involvement. However, it has been

demonstrated that the RH and the LH operate in complementary fashion and that the RH plays a greater role in the processing of brand names (and trademarks) than it does in the processing of common (generic) words. It is not unreasonable to surmise that complex syntax behaves similarly to Jae's (2011) concept of the 'cognitive load' as an imposition upon other psycholinguistic processes. Either way, this study maintains the hypothesis that the previous studies endorsing syntactic simplicity in advertisements can be bolstered by neurobiological considerations, in the context of using trademark advertisements to combat trademark misuse and genericide.

4.3.3 The case for (some) syntactic complexity

As Bradley & Meeds (2002) discovered, moderate syntactic complexity had a positive effect on recall and attitudinal measures in ad slogans. "Specifically, recall was highest for the moderate-complexity version in which active slogans contained adverbs that had been moved ($M = .73, t [94] = 1.93, p < .05$). Recall was lowest for the most drastically transformed condition--passive slogans in which the adverbs had been moved ($M = .45, t [93] = -2.59, p < .01$). Additionally, when the two moderate complexity conditions (active/particle moved and passive/particle not moved) were contrasted against the other conditions, moderate complexity overall led to improved morphemic recall ($t [94] = 1.94, p < .05$)" (611-612)³². They postulate that the boosted morpheme recall and attitude could be attributed to the more effortful processing

³² Some examples of the stimulus materials they used in their study include ad copy manipulations (of voice and particle movement) for slogans that might be used for a fictitious camcorder brand: (a) *VISADEL digitally safekeeps your memories* (Active, particle in place); (b) *VISADEL safekeeps your memories digitally* (Active, particle moved); (c) *Your memories are digitally safekept by VISADEL* (Passive, particle in place); and (d) *Your memories are safekept by VISADEL digitally* (Passive, particle moved). The study also included slogans for fictitious brands of a water filter, an inkjet printer, and a mountain bike (Bradley & Meeds 2002, 616).

required by the syntactic transformation (613)-- and this is a popular perspective that has been supported by other research.

Another study by Abraham (1995) states that deviancy (i.e., *markedness*) engages attention and is thus more memorable. Abraham's analysis of discourse processing is unique in its approach to the psycholinguistic model of cognitive limitations and describes discourse as "the consequence of the communicator's strategic management of information during discourse processing... Rhetorical usage is based on an awareness of these [cognitive] limitations, and it is designed to manipulate communications variables, towards the objective of overcoming the limitations and creating a maximally communicatively effective message... This is all directed towards the primary goal of facilitating comprehension, which is integral, of course, in the effective communication of the speaker's message" (22-23). Abraham's description of communicative complexity is portrayed as a subconscious tendency towards simplicity and easy comprehension that is more or less predictable.

However, a deviation from this predictability could serve as a device to hold the attention of the hearer by increasing the hearer's involvement. Abraham presents "constituent shift (*hyperbaton*)" as one such device-- which "represents an intended departure from the usual word order, usually by displacing a constituent either to the beginning of a clause [such as '*That movie, I think you will enjoy*'] or to the end of a clause ['*The children were taken in, starving and weary*']" (1995, 24). The syntactic variation created by hyperbatic devices seem to engage a hearer's attention "because the syntax is marked, and therefore unexpected" (25). Abraham discusses additional deviations that function as rhetorical devices, but she makes a case for syntactic complexity and marked linguistic forms, which "increase the saliency of the

information that they encode, thereby drawing attention to it, and since what is better attended to is also better remembered, their characteristic salience results in better comprehension” (28).

The notion of a constituent being “better attended to” is consistent with elaborative processing models which suggest that “within limits, complexity could help with encoding because more time is spend during the encoding process” (Bradley & Meeds 2002, 614). In the end, there is a considerable amount of evidence against those who say that advertising should be as simple as possible. Of course, there is an abundance of evidence that claims simplicity is optimal, but this is countered by the evidence of complexity’s neutral effects (“In ads for products and services where the overriding goal is to convey information, then a limited degree of syntactic complexity does not appear to decrease the comprehension of that information or the attitudes toward those advertisements,” 615) and of complexity’s positive effects.

Ultimately, for the purposes of the study, it appears that an overall tendency towards simplicity would yield the most positive results. However, the case for *moderate* syntactic complexity cannot be ignored, and it would be beneficial to allow for *some* markedness and complexity for trademark advertisements in the context of ad slogans.

4.4 The final hypothesis for trademark advertisements

The stance on complexity utilized for this study is ambiguous and this study attempts to encompass the perspectives of all the conflicting research. Thus far, it appears that the best approach is to always tend towards simplicity but to allow for moderate complexity in ad slogans. It is simply too difficult to pinpoint the impact of syntactic complexity alone. Chebat et al. (2003) attempted to find a straightforward answer by manipulating syntactic complexity and semantics in advertising text, but their study suggested that it could have been lexical complexity

rather than syntactic complexity that affected their texts' levels of readability. While their study still suggests that complex advertisements inhibit information processing and positive attitude information, it is not clear whether it was syntactic complexity alone that yielded these results.

Ultimately, the sentence is an important variable in the context of advertising, and the future of a trademark could depend on it. Much of the work of communicating ideas occurs at the sentence level, and salient points are communicated-- or fail to be-- at the sentence level. “[Rarely] do readers devote the time or effort to give marketing communications a second reading. Yet, evidence is beginning to emerge that even though word meanings are not always fully processed, especially on a first reading, the degree and locus of readers’ semantic processing can be readily influenced by directing readers to focus on specific types of words or parts of speech” (Lowrey 1998, 115). Thus, during the strategy process, marketers will identify specific ideas to be conveyed in the ad, which they accomplish at the sentence level. Concepts alone are insufficient, and if the meaningful relations between the concepts are insufficiently encoded, then the reader walks away with an incomplete and inadequate message.

The goal of this study is to provide businesses and trademark owners with the psycholinguistic marketing mechanisms that would enable them to convey to consumers the crucial *concept* that *a trademark is a trademark!* This can be accomplished at the sentence level-- and the current psycholinguistic research suggests that minimal to moderate complexity/markedness would be ideal for trademark advertisements. The standing hypothesis is: the best strategy for trademark marketing is to make broadcast ads and print stimuli as low as possible in markedness and complexity, whereas for slogans, moderate complexity is welcome-- but always adhere to the traditional rules of trademark use and make clear that the trademark is a trademark, not a generic noun!

5. Applying Markedness Principles to Trademark Advertisements

As discussed in previous sections, the marketing approach to trademarks is far less restricting than the legal approach. The legal community adheres to the formal trademark rules-of-use to avoid losing exclusive rights to the use of the marks, even if that means forcefully limiting the contexts in which the marks appear. Advertisers, on the other hand, perceive trademarks as “convenient” advertising aids, wherein the “Success in trademark advertising is in the establishing of a large market for a branded product by eliminating or minimizing sales expenses.” Marketers tend to perceive trademarks as tools for publicity-- “factors which readily attract the eye, for they are small and can be easily placed within a larger advertisement” (Wilson 1921, 43)-- and the goodwill associated with the trademark that the legal community works so hard to protect is something that marketers tend to capitalize upon. Of course, advertising professionals do care about establishing and maintaining distinctiveness. They do harbor the view that “the use of the trademark must extend beyond mere advertising, so as to embrace an affixation on the article itself or its packages; otherwise, the consumer would be hampered in tracing the origin and identity of the product” (Hess 1915, 167). However, there is a difference between using a trademark in advertisements to increase the visibility of a brand and protecting a trademark’s power by scrupulously adhering to trademark usage guidelines when the mark appears in an advertisement.

This study is concerned with *how* a trademark is presented in advertisements and what syntactic patterns are more or less conducive to trademark misuse and loss of distinction. Previous studies have demonstrated the effects of syntactic complexity on the perception of brands and advertisements, but the interests of those studies align largely with the marketing perspective rather than from the legal perspective of trademarks. This study proposes that

similar studies should be performed on trademarks and that high degrees of morphosyntactic markedness in advertisement grammar (in which the trademarks are embedded) could lead to the loss of trademark distinction and genericide.

5.1 Markedness and syntactic complexity: a disclaimer/clarification

The concept of markedness has transformed over the years, under the interpretation of different linguistic frameworks. Essentially, it is a theory of hierarchy within language structure that describes certain aspects of language being *marked* while others are *unmarked*; but the theory's tradition has both functional and structural roots, championed mainly by Jakobson and Chomsky, respectively. The Jakobsonian view “dealt with not only grammar, meaning, and sound structure but also with aesthetic and social categories... within generative linguistics, markedness has been treated at various times as an economy metric, as a set of defaults, and as a classificatory scheme for data” (Battistella 1996, 3). Abraham (1995) equates ‘markedness’ with ‘deviancy’ (22), while a number of other scholars simply assume the criteria for markedness as a linguistic feature’s frequency across its language³³. But in regards to complexity, it may be an overstatement to assume that markedness *is* complexity, given that ‘markedness’ is so conceptually elaborate and that the word ‘complex’ is so open to different interpretations.

Admittedly, this study has been somewhat reductionist and has essentially equated markedness with syntactic complexity. However, the intended meaning is that markedness should *correlate* with the relative complexity, and for the sake of simplicity, this study assumes a direct correlation between the two. This is not an uncommon assumption, but it is not a universal one. For instance, Lapointe’s “Fundamental Markedness Principle Relating Forms

³³ See Eckman et al. 1986 (6) for a list of authors and their assumed criteria/ arguments for markedness.

and Notions... differs in its logic from the others proposed in that it makes markedness dependent on the simultaneous truth of a more than one condition. It says that a grammar is less marked if both simple meanings are expressed by simple forms and also complex meanings are expressed by complex forms. This markedness criterion therefore does not simply resolve into a single parameter such as syntactic or paradigmatic complexity or distribution” (Eckman et al. 1986, 8). These views do not reduce the theory to ‘more complex equals more marked’ and as a whole, are less generalizable.

Nonetheless, while this study acknowledges the different perspectives of markedness, it will continue to assume a direct correlation between markedness and complexity. Our justification for this linking is based on an evolution of the Chomskyan tradition of markedness-- which is highly relevant to our previous discussion of the psycholinguistic aversion to syntactic complexity in advertising as a result of greater processing costs. Chomsky’s (1965) evaluation metric is theory-internal and considers what generalizations would be more highly valued by a hypothetical language learner (37-38). Later, in a phonological study with Halle (1968), he further proposes a set of thirty-nine universal marking conventions that link ‘naturalness’ to evaluation, wherein the “unmarked value of a feature was cost-free with respect to the evaluation metric, while the marked values were counted by the metric” with “more natural inventories evaluated as less costly” (Battistella 1996, 75; Chomsky & Halle 1968). Chomsky’s later account of markedness pertained specifically to generative phonology, but this description of markedness as an economic hierarchy of features opened up new avenues for the theory-- and at some point, “markedness came to be understood as synonymous with *costly in terms of the evaluation metric* and unmarked with *cheap in terms of the evaluation metric*” (Battistella 1996, 76).

Thus, this study hypothesizes that the processing costs of markedness will have similar effects on the syntax of trademark advertisements as mere complexity, in accordance with the ELM. Even though Chomsky himself never meant for markedness to be completely synonymous with complexity³⁴, Anderson's (1997) sentiments on the matter are demonstrative of the justified linking of the two:

The nature of the particular combinations of features also provides us with a straightforward measure of relative complexity, a measure that reflects markedness... The markedness of particular linguistic properties is established by empirical phenomena that show them to be less accessible than corresponding unmarked properties. I assume that markedness should correlate with the relative complexity of the independently motivated linguistic characterization of the properties concerned... (Anderson 1997, 61)

It should hereafter be understood that this study's apparent equating of 'markedness' and 'complexity' is hypothetical in nature and is largely a matter of convenience.

5.2 Marked and Unmarked

This study postulates that a marked construction of an advertisement would have the same effects as those of the 'complex' constructions we observed in previous psycholinguistic marketing studies. Thus, it could very well be the case that advertisements with unmarked features are beneficial for trademarks, in that they are more likely to convey the information needed to infer that the trademark is not a generic noun. Unfortunately, there is no

³⁴ Chomsky remarks that the value of rules in his hierarchy depends on "the factual question of expressibility of linguistically significant generalizations in terms of one or the other theory, not on any presumed absolute sense of 'simplicity'" (1965, 40).

comprehensive list of what entities can be marked or unmarked that is universally accepted in every domain of linguistics. At its core, the concept of markedness is binary, but it is better understood from a broader perspective. In terms of morphosyntax, a structure is more marked when it deviates from the norm, is less frequent, and has explicit cues that deviate from the norm. It has been observed that there is late acquisition of marked constructions and that language learners will produce unmarked constructions in spite of actual exposure to them, giving unmarked constructions a greater “learnability” component. The compelling ‘poverty-of-stimulus’ arguments for markedness are particularly helpful in our understanding of the concept. For instance, Lasnik’s (1981) application of markedness values to Case marking provides that verbs like *try* must be unmarked while verbs such as *want--* with optional S’ deletion-- must be marked. This is gleaned from the unavailability of negative data in learning:

If the child’s initial assumption is that there is never [S’] deletion, he will have guessed right for *try*, and will quickly receive disconfirming evidence for *want* in the form of grammatical sentences such as [*They wanted the men to win*]. On the other hand, if *want* is ever taken as the unmarked case, the only evidence that *try* is different is the ungrammaticality of such instances as [*They tried Bill to win* and *They tried each other to win*]. But, as has been widely discussed, ‘negative data’ of the required sort does not seem available to the child. (Lasnik 1981, 165)

Basically, marked constructions will only enter a language learner’s grammar if there is positive evidence of such constructions outside of the core grammar. Additionally, more marked constructions are more likely to be subject to speech errors, are what is usually lost first in

aphasia, and are generally more difficult to perceive³⁵. While it is true that marked structures are easier for the speaker in certain contexts, the unmarked structures are easier for the hearer in all contexts (Gundel et al. 1988).

Having this understanding of markedness will contribute to a better understanding of how unmarked constructions in marketing communications are potentially more effective in fighting trademark misuse and genericide. With that being said-- while the following list from Givón (1990, Ch. 21) may be met with contention, it should suffice in its application to trademark advertisements:

unmarked / marked categories in discourse³⁶

oral / written

informal / formal

+ conjoined / embedded

+ morphologically sparse / morphologically abundant

flexible word order / rigid order

high context-dependence / low context-dependence

human affairs subject matter / academic subject matter

conversational / narrative

+ main clause / subordinate

declarative / manipulative

+ affirmative / negative

+ active / passive

³⁵ See Balhorn 1993 and Dressler et al. 1987

³⁶ Also see Battistella 1996 (16)

+ continuative / disruptive
agent semantic role / other roles
+ subject grammatical role / other roles
continuity of reference / definite reference

The categories marked with a plus sign (+) are the most pertinent to morphosyntax and to the incipient structural manipulation of trademark advertisements. Givón's list is by no means exhaustive and pertains mostly to discourse, but given the lack of a systematic and consistent theory of markedness in the tradition of generative grammar, it will have to suffice for now.

5.3 Examples of proper trademark morphosyntax

As we had previously discussed in (Section 3) of this study, there are linguistic strategies that are rigorously followed by responsible trademark owners-- and the level of diligence displayed by trademark owners in how they present their marks to the public is often taken into consideration during trademark disputes. As it has been demonstrated in cases such as *Duncan v. Royal Tops Mfg.* (the 'Yo-Yo' case) and *AOL v. AT&T* (the 'IM' instant messaging dispute), deviating from the suggested morphosyntax in trademark advertisements can have dire consequences for the trademark owner, as the courts can decree that a trademark has become a generic noun. In the aforementioned cases of 'Yo-Yo' and 'IM,' the trademark owners imprudently went against the rule, which insists upon utilizing a trademark as an adjective rather than as a noun or a verb. However, despite the abundance of cautionary tales of trademark misuse, some modern companies still do not learn from the unfortunate fates of their predecessors and continue to risk dilution through ill-advised marketing slogans.

For instance, one of Ford Motor Company's advertising slogans evinces the discouraged structural adjective-to-noun conversion:

(5.1.a) * Have you driven a Ford lately?

(5.1.b) Have you driven a FORD truck lately?

The company's current slogan (5.1.a) is erroneous (as marked by the conventional linguistic error marker “ * ”) because it places the trademark in nominal rather than prenominal position. The company should be applying the correct form (5.1.b) so as to avoid a similar predicament as the Duncan Company, whose most publicized slogan was “If It Isn't a Duncan, It Isn't a Yo-Yo” (placing their mark in nominal position indicated that the mark was the name of the toy itself rather than a trademark). Equally detrimental is executing the discouraged structural adjective-to-noun conversion:

(5.2.a) * Stop Cleaning. Start Swiffering.

(5.2.b) Stop Cleaning. Start using the SWIFFER sweeper.

The SWIFFER trademark denotes a line of cleaning products by the company Proctor and Gamble (P&G). The products, which were introduced in 1999, were highly innovative; and as the ‘cellophane’ and ‘raisin bran’ cases illustrated, owners of trademarks of innovative products need to be *especially* diligent about guarding their marks and preventing them from passing into the public domain. However, (5.2.a) is one of the products' most prominently advertised slogans, and this type of ‘adjective > verb’ conversion is what cost the AOL company a more

fortuitous ruling from the court (the AOL employees should have refrained from publicly making statements such as “I *IM-ed* her yesterday”). P&G should follow proper trademark use protocol and exercise the form in (5.2.b).

However, the erroneous slogans from (5.1) and (5.2) are improper for reasons *other* than complexity-- they simply flout rules that are already known. This study’s standing hypothesis is that informative broadcast ads and print stimuli should be as unmarked as possible and that slogans can display a moderate level of markedness. For instance, another one of Ford Motor Company’s most prominent slogans has the characteristic of a moderately complex slogan:

(5.3) The best trucks are built FORD tough.

The slogan is complex because it is a passive structure, with the subject implied. But the complexity is tolerated because (5.3) is a slogan-- which is usually brief and usually stands alone contextually-- and thus conforms to Bradley & Meeds’ (2002) findings that moderately complex slogans are conducive to higher recall and favorable attitude formation. The ‘passive’ construction also renders the structure to be marked rather than unmarked.

On the other hand, informative broadcast ads and print stimuli differ from slogans in that they typically seek to convey more information and are more conceptually dense. Thus, as suggested by Lowrey (1998), syntactic complexity should be avoided, as it can adversely impact the audiences’ motivation to process the information, as predicted by the ELM. This complexity can be avoided by employing unmarked constructions over marked constructions such as active voice over passive voice:

(5.4.a) * TRIDENT sugarless gum is recommended by 4 out of 5 dentists for their patients who chew gum.

(5.4.b) 4 out of 5 dentists recommend TRIDENT sugarless gum for their patients who chew gum.

The form in (5.4.a) is complex because it is a passive construction with an embedded clause. Conversely, the active form (5.4.b)-- which is unmarked-- would be preferable because the decrease in complexity is more likely to avoid the adverse processing and memory measures associated with complex morphosyntax.

Accordingly, the ‘active/passive’ markedness dichotomy is only one of many on Givón’s list of categories. Another one would be the ‘*affirmative/negative*’ dichotomy, with the greater structural complexity being characterized by the negative clause, which tends to have at least one extra morpheme as compared to the affirmative:

(5.5.a) * If it isn’t a Duncan, It isn’t a Yo-Yo.

(5.5.b) If it isn’t a Duncan, It isn’t a YO-YO toy. [*moderately complex slogan*]

(5.5.c) * If it isn’t a Duncan, It isn’t a genuine Yo-Yo. [*marked negative construction*]

(5.5.d) The Duncan YO-YO: the only genuine spinning toy of its kind. [*unmarked affirmative construction*]

The Duncan company’s widely used slogan, (5.5.a), was determined by the courts to be a contributing factor to the genericide of the ‘Yo-Yo’ mark because it conveyed the concept of a

‘Yo-Yo’ as the generic name of the toy and not the brand name of the toy. No level of unmarkedness could have prevented the Duncan Company from losing their ‘Yo-Yo’ trademark if they had advertised it as a noun and not an adjective-- but if the company had exercised the maximum amount of diligence, then it may have beneficial to accompany its slogan with information that is affirmatively rather than negatively constructed. The higher cognitive complexity of negative clauses has been documented at length, with its tendency to be acquired later by children and to be higher in terms of processing difficulties (Givón 1995, 43). The slogan (5.5.b) would have been acceptable in its moderately complex form because it is a slogan. However, a sentence such as (5.5.c)-- which is a fictitious example of the type of informative text that would have appeared in broadcast ads and print stimuli-- should be unmarked.

5.3.1 The BAND-AID brand jingle: a success story

The unfortunate instances of genericized trademarks are well known at this point, but there have also been exemplary cases of trademarks-- such as that of BAND-AID brand adhesives-- that avoided genericide with cognitively efficient advertisements. The primary meaning of BAND-AID is undoubtedly well known to native speakers of American English as a small adhesive strip used for covering minor wounds-- and it is surely the case that ‘BAND-AID’ registers as a common, generic noun in the minds of many Americans, despite the fact that Johnson & Johnson owns the trademark and is the only manufacturer that advertises their products as ‘BAND-AIDS’ (Butters & Westerhaus 2004, 116). Some scholars assert that ‘BAND-AID’ has undergone genericide, including Landau (2001, 408-409), who supports this claim by citing actual sentences collected from various media where BAND-AID is used generically (e.g., *Bush apparently intends to use the money freed up by defense spending cuts as*

an election-year Band-Aid for the health-care crisis or I see this as a Band-Aid, not a long-term program, says Mr. Pratt). However, these types of examples do not in themselves demonstrate that BAND-AID has become a generic term in the minds of the greater public. Instead, Landau's data only prove that the term is sometimes used metaphorically, and "the fact that the term is sometimes used metaphorically does not tell us whether the public knows that the term is a trademark upon which consumers presumably can rely when making purchases of small plastic self-adhesive bandages" (Butters & Westerhaus 2004, 117).

Arguably, the BAND-AID trademark has undergone 'pseudogenericide'-- but not complete genericide. Johnson & Johnson, upon realizing that their mark was undergoing loss of distinction and possible genericide, launched an aggressive marketing campaign to rectify the situation. The company decided to change the words of their infectious advertisement jingle to ensure that their trademark would not slip into public domain status through common use:

(5.6.a) *Original Jingle:* I'm stuck on Band-Aid, 'cause Band-Aid's stuck on me.

(5.6.b) *Revised Jingle:* I'm stuck on BAND-AID brand, 'cause Band-Aid's stuck on me.

Originally, the Johnson & Johnson legal department wanted to jingle to be changed to "I'm stuck on BAND-AID brand adhesive bandages..." but they were eventually convinced that singing "I'm stuck on BAND-AID Brand..." just once in the jingle would be sufficient (Webber 1998, 39). The fact that BAND-AID still maintains active trademark status today could be evidence of the corrective marketing measures' efficacy-- and its effectiveness is certainly bolstered by the fact that the trademark's slogan is in the form of a jingle. One common strategy that appeals to the consumers' cognitions is the use of memorable jingles, which act as mnemonic devices for

those who hear it. Studies have shown that with a single exposure to a given ad, the addition of a jingle leads to a significant improvement in aided recall of the product name compared to when no jingle was used (Bullerjahn 2006, 221). However, from a morphosyntactic perspective, the constituent conveying the information that ‘the trademark is a trademark’ was placed in the optimal location:

(5.7.a) I’m stuck on BAND-AID brand, ‘cause Band-Aid’s stuck on me.

(5.7.b) * I’m stuck on Band-Aid, ‘cause BAND-AID brand’s stuck on me.

In (5.7.a), the ‘BAND-AID brand’ constituent is in the main clause, while in (5.7.b) the same constituent is in the subordinate clause. According to Givón’s markedness categories, subordinate clauses are marked while main clauses are unmarked. The placement of the conceptual kernel ‘BAND-AID brand’ in the unmarked position could have been a contributing factor to the trademark’s success in avoiding genericide. After all, main clauses “carry more important information, namely, asserted or new information, than subordinate clauses, and the meaning of a main clause does not depend on a subordinate clause... Thus, the content of a main clause can be processed to a higher, more semantic level without delay, whereas the content of a subordinate clause has to be kept in a relatively superficial, verbatim form for awhile...” (Mazuka 1998, 58)³⁷.

Therefore, while BAND-AID brand’s slogan’s status as a memorable jingle has obviously facilitated its ease of processing, it is totally plausible that the placement of the important constituent in unmarked, main-clausal position also contributed to ease of processing and the mark’s continued avoidance of genericide.

³⁷ Based on the findings of Kornfeld (1973); and Bever & Townsend (1979)

5.4 Other processing constraints in trademark morphosyntax

In addition to the established markedness constraints, there are other principles to consider that may affect the processing of trademark morphosyntax-- one being the phenomenon of *Heavy-NP Shift (HNPS)*. Unlike constructions such as those with stranded prepositions, there is no unequivocal answer as to whether an HNPS construction is marked or unmarked in English.

Hawkins' (1994) account of Heavy-NP Shift is based on the idea that constituents occur in a way such that immediate constituents (ICs) can be recognized and produced as rapidly and efficiently as possible in language performance. This reasoning can be applied to the following examples:

(5.8.a) I_{VP}[gave_{NP}[a KLEENEX brand tissue] PP[to Mary]].

(5.8.b) I_{VP}[gave PP[to Mary] NP[a KLEENEX brand tissue]].

By Hawkins' account, (5.8.b) can be processed more rapidly because the listener can predict the constituent structure earlier, as soon as the direct object occurs. Contrastively, Wasow (1997) claims that constituent weight effects cannot be explained in terms of parsing facilitation alone. His account of Heavy-NP Shift is more production-based and speaker-oriented, in that delaying heavier constituents is beneficial to the speaker's planning process. Wasow's work motivated Staub et al. (2006) to suspect that Heavy-NP Shift may actually induce processing difficulty if a transitive verb is involved, which would increase its markedness value. Their experiments entailed sentences like the following:

(5.9.a) She_{VP}[sold PP[with sadness] NP[her favorite LEGO block toys]].

(5.9.b) She_{VP}[left PP[with sadness] NP[her favorite LEGO block toys]].

In (5.9.a), the main verb ‘sold’ requires a direct object, and in (5.9.b) the main verb ‘left’ is optionally transitive. The evidence suggests that the shifted noun phrase induces relative processing difficulty when the verb is optionally transitive, making the HNPS form the unfavorable construction for our purposes, when this type of verb is used. The complexity and processing efficiency of HNPS fluctuate by context, and further studies could show how principles such as HNPS can be used advantageously, to increase awareness and usage of slogans/advertisements and their embedded trademarks in proper form.

Ultimately, it is clear that there are many possibilities for the manipulation of trademark morphosyntax in advertisements, in addition to markedness constraints. Phenomena such as HNPS seek to explain the effects of constituent weight and overall sentence structure on the relative ease of linguistic processing-- and marketing scholars have actually incorporated similar phenomena in their research on persuasion. The marketing research does not refer to HNPS specifically, but it does draw upon the same basic principles from social psychology. Since Asch (1946) introduced the importance of information order on people’s perception judgments (more specifically, he found that people tend to weigh most heavily the information presented at the beginning of a sequence when they were attempting to form impressions of others), there has been ubiquitous interest in the topic-- including marketing scholars who are interested in primacy and recency effects in consumer motivation and overall persuasion.

Research has indicated that *chunking*, which is defined as the extent to which information is grouped into explicitly labeled categories of distinct valence, actually modulates the impact of motivation to think on order effects in persuasion:

[C]hunking has the potential either to facilitate or to disrupt the natural, default sort of processing in which individuals highly and not-so-highly motivated to think engage. Specifically, chunking might facilitate high thinkers' ability to stop and process early information, resulting in attitude formation and biased processing of later information. Furthermore, chunking might interfere with nonthinkers' tendency to ignore later information and instead cause them to consider it. Thus, under chunked conditions, high motivation to think should be associated with more primacy (or less recency) than low motivation to think, but under nonchunked conditions, high motivation to think should be associated with less primacy (or ore recency) than is low motivation to think. (Petty, Tormala, and Hawkins 2001, 335)

Advertisers may apply such findings to situations such as what optimal information to present first in a commercial; and while it may not be overtly acknowledged, the similarities between 'chunking' and 'HNPS' are substantial. The fact is, those who study behavioral marketing do consider the impact of constituent structure on persuasion and (in accordance with the ELM) on motivation to process. Given the subtle nature of trademark morphosyntax and the pervasive effects of public perception on loss of trademark distinctiveness and genericide, it would be highly opportune to apply such psycholinguistic investigations to the domain of trademark theory.

6. Concluding Remarks

There have been a decent number of linguists who have incorporated trademark theory into the study of language, but there is a lack of a linguistic perspective that encompasses trademarks *and* the marketing perspective. The current methods of maintaining trademark distinctiveness and evading genericide do appear to be working, since total genericide seems to be a dying

phenomenon (with its partial form-- pseudogenericide-- being much more pervasive). The basis of these methods is to actively dissuade the morphosyntactic processes of 'adjective > noun' and 'adjective > verb' conversions, mainly by establishing widespread industry advertising practices- - which should set a precedent to consumers for proper trademark use. However, even pseudogenericide can be a costly issue to trademark owners, and even though genericide is a dying phenomenon, it is not extinct. Despite the diligent efforts of trademark owners to deter consumers from the wrongful usage of their marks, the inescapable nature of language change and the human propensity towards linguistic efficiency makes trademark misuse virtually unavoidable, much to the dismay of trademark owners. Even if the widespread misuse does not lead to genericide, the loss of a trademark's distinctiveness can still lead to varying degrees of economic harm for the owner. Thus, there is always a demand for methods of improvement.

Psycholinguistic research on marketing communications have demonstrated the importance of the sentence as an important variable in the context of advertising, as it is the sentence level that determines whether salient ideas are successfully communicated to the audience. In the long run, the sentential structure of an advertisement could be highly consequential to a trademark's status and its profitability, and marketers should incorporate in their strategies a means of conveying the kernel of information that '*a trademark is a trademark- - not a generic word.*' This study proposes that this can be accomplished at the sentence level, by applying different markedness criteria to varying types of advertisements. The standing hypothesis is: the best strategy for trademark advertisements is to make broadcast ads and print stimuli as low as possible in markedness and complexity (in accordance with the findings of Lowrey 1998) and to allow for moderate complexity in slogans (as demonstrated in Bradley & Meeds 2002). The strategies appeal to the neurobiology of language, with the postulation that

advertisements with unmarked features have a greater “learnability” component and that under the basic assumptions of the ELM, consumers will be more likely to attune their cognitive efforts to simpler advertisement constructions. Slogans, on the other hand, are inherently terse and therefore less demanding of one’s attention-- and some markedness is welcome in these circumstances, as a deviation from the predictable has been known to increase a hearer’s involvement (Abraham 1995).

This study utilized Givón’s (1990) list of unmarked/marked categories in discourse as a guide to the types of constructions to use or avoid (e.g., *active vs. passive*, *main clause vs. subordinate clause*, etc.). However, it is undeniable-- particularly when we consider the surfeit of conflicting psycholinguistic research that exists on the topic-- that the linguistic mechanisms of marketing communications is not at all straightforward and thus, the total prevention of genericide cannot possibly be as simple as applying binary markedness criteria to all advertisements. Givón’s list serves as an advantageous start, but it is by no means comprehensive-- and other processing mechanisms such as those related to HNPS or ‘chunking’ could also be valuable in our manipulation of advertisement morphosyntax in the prevention of trademark genericide. After all, consumers often do not flout the rules of proper trademark use deliberately; and it would be a worthwhile effort to try instituting advertising methods that could compel members of the public to unknowingly adopt proper trademark use into everyday discourse.

The proposed hypotheses may be speculative and based on previous studies that do not consider legal perspectives, but it is not unreasonable to believe that various psycholinguistic advertisement tactics can deter consumers from executing trademark conversions that lead to a loss of distinctiveness and genericide. In essence, trademarks have their own grammar, and

ideally, advertisers could find a way to lead consumers into unconsciously acquiring the language of trademarks. In theory, this is akin to the role of affect in Second Language Acquisition, wherein cognition is an expression of value and value is an expression of stimulus appraisals. We want the morphosyntax of advertisements to be conducive to the motivation of consumers to sustaining proper trademark grammar-- to truly learn it-- and “as in all sustained deep learning, our perception, attention, memory, and behavior are based on value as expressed in our stimulus appraisals... The biological appraisal system starts out with some innate tendencies (homeostats and sociostats) that enhance survival, but very quickly the individual begins to accrue a system of somatic value based on his experience in the world. This value system consists of individual preferences and aversions that cause learners to react uniquely to various language learning situations and to achieve varying degrees of proficiency in the second language” (Schumann 1997, 188-189).

The abstraction of applying various markedness constraints on the morphosyntax of advertisements to deter trademark genericide is one that needs to be formally tested-- and of course, performing such tests does not come without difficulties. For one, actual advertising situations fall under the domain of Consumer Information Processing (CIP), which is problematic in its research. CIP research relates to consumer information processing if the situation is the same as the situation in the processing, and there is thus a discrepancy between a real-life advertising setting (wherein involvement is low and attention difficult to achieve) and a CIP research setting (wherein involvement is high and attention is forced in virtually all cases). Therefore, it would be difficult to observe the effects of advertisement morphosyntax on long-term trademark distinctiveness in an academic setting because advertisements that perform one way in a laboratory situation may perform differently in the field. In a real-world advertising

situation, “there is minimal motivation or opportunity to develop cognitive responses or use attitude structures. But in [CIP] or persuasion research, the situation is engineered to produce cognitive responses and use of attitude structures” (Ray 1977, 372-375). In addition to the inherent flaws in marketing research in formal academic settings, genericide is a gradual process - and the effects of manipulating advertisement morphosyntax on the proper acquisition of trademark grammar could require prolonged observation.

Nonetheless, there must be many yet undisclosed possibilities to the enhancement of a trademark’s value and longevity, as well as a many undiscovered methods to the prevention of genericide. Legal professionals have been touting proper trademark use for decades, especially after observing the downfalls of former trademarks such as ‘aspirin’ or ‘escalator’. However, people still misuse trademarks in everyday discourse, and it is not at all uncommon to observe widespread ‘adjective > noun’ and ‘adjective > verb’ trademark conversions. It is true that from a historically linguistic perspective, language change is virtually unstoppable and that discourse is not meant to be a contrived phenomenon. But in the spirit of discourse analysis, we are all agents of the ‘real world’, and the ways in which we communicate and interact are not independent of the authentic world in which we are immersed. What we pick up or don’t pick up from our contextual environments can ultimately be traced back to neurobiology and its associated linguistic processes and its subtleties. Further research on the topic of psycholinguistic marketing phenomena and how it relates to trademark distinctiveness can not only assist in eluding costly phenomena such as genericide, but it can also lead to the mitigation of other problematic issues (corporate or otherwise) that are so pervasive in real life.

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