

The Place of Forensic Linguistics in the Resolution of Trademark Conflicts: Case of DOUBLEMINT & DOUBIEMLNT

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ABSTRACT

Forensic linguistics focusing on word choice and spelling, it can be useful while resolving language crime, trademark infringement, and so forth. In our days, trademarks are one of the most infringed intellectual properties in the world in terms of values. Trademark could be a single word, a combination of words and symbols, design, or logo that distinguishes a company or products from others in the industry. When someone acquires a registered trademark, he is granted an exclusive right to its usage and it strongly prohibits other organizations from using it. This paper shows the way an expert in Forensic Linguistics should use his skill and knowledge to handle the conflict among similar trademarks. From brand name (how it is written, upper-cases or lower-cases, how many letters make this brand name, how it sounds, how it looks like, and so forth) to logo (design, usage of colors, sharp and so forth). The expert in Forensic Linguistics will try to find out scientific evidence that may help judges in decision-making. The present study scrutinized the place of forensic linguistics in the resolution of trademark conflicts, the scientific techniques, and methodologies utilized to analyze the similarities and differences between the trademarks in conflict. This research showed the importance of associating an expert in Forensic Linguistics in the Community Trademark conflicts in order to come up with a conclusion based on scientific evidence; the place of forensic linguistics and other related disciplines in revolving the issues of trademark infringement.

Key words: DOUBLEMINT, DOUBIEMLNT, Community trademark, Brand name

INTRODUCTION

The World Intellectual Property Organization training manual (1993, p. 9) defines the trademark as any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors.

Trademark being a name or design belonging to a particular company, used on its products or something that you wear, do, or say that is typical of you, so a brand name or product name can belong only to one person or one company. An artist, writer, musician, and others always have the legal right to have control over the work or their intellectual property, and other people must pay you to broadcast, publish, or perform them.

According to the Trademark Law of the People's Republic of China (2013, p. 3) in chapter 1 article 8 is written that "Any signs, including words, graphs, letters, numbers, three-dimensional symbols, color combinations, sound or any combination thereof, that are capable of distinguishing the goods of a natural person, legal person or other organization from those of others may be applied for registration as trademarks".

The expert linguists are perfectly within ethical boundaries in working with an attorney to make the best possible case for the client. Without distorting, being selective, or ignoring important linguistic facts, linguists should use their knowledge to show where marks are similar or different, where they mean or do not mean the same thing, and where the linguistic evidence shows signs of the mark being generic, descriptive, suggestive, or arbitrary. Lawyers expect their experts to be objective team players, not advocates. But, as in sports, team players also want to win and this is where scientific objectivity and advocacy can become blurred (R. Shuy, 2002, p. 171).

What's in a name? When it comes to a brand, it means enormous value. The brand name is a fundamentally important choice of brand elements as it often captures the central theme or key associations of a product. Naming can be crucial to businesses. A good brand name can bring about unexpected advantages just like Apple, Pampers and Lux do, while a bad one can jeopardize the business just like Nova and Incubus do (H. Chuansheng & X. Yunnan, 2006, p. 131).

A brand is simply an idea you own in the minds of your customers. A brand does not exist in the real world. It exists

in the mind. If you do not own an idea in the minds of your customers, you do not have a brand. At best, you have a very weak brand. Weak brands will have to compensate by having a low price. While it is still possible to build a successful business – and even a strong brand – based on a low price, you will need to be sure you can sustain that price advantage in the long run. However, in this day and age of hypercompetition, you can never be sure when some competitor will show up with a lower price (J. Tai, 2009, p. 316).

According to V. Guillén-Nieto (2011, p. 65), forensic linguistics, a relative newcomer in the field of forensic sciences, is still an unknown discipline for many law practitioners, especially in civil law countries.

Dealing with trademark conflict may require a knowledge of trademark law, therefore for R. Stim (2018, p. 353), trademark law consists of the legal rules by which businesses protect the names, logos, and other commercial signifiers used to identify their products and services. One of the principal goals of trademark law is to prevent consumers from being confused in the marketplace. Another goal is to prevent a business from trading off another business's goodwill.

Concerning the copyright, J. Meese (2018, p. 161) regards it as incredibly complicated, a byzantine and complex legal framework that is often unable to clearly regulate the creation, distribution, consumption, and borrowing or provide a logical conceptual foundation for its central subjects.

A linguist as expert can make a substantive contribution to the justices' organization of their own linguistic intuitive abilities and linguistic argumentation (Solán, 1990; quoted in V. Guillén-Nieto, 2011, p. 80).

Two experts (employed by plaintiffs and defendants) can give a judge the opportunity to cherry-pick the testimony to find 'evidence' that bolsters an argument that he has already decided on other grounds. For example, in a case (which created considerable negative comments among American linguists), a professor of English testified that the trademarks Lexus and Lexis are not likely to be confused because they are very different in pronunciation. On a matter as subtle as this, the expert witnesses should not be working for the disputing parties; they should be hired by the judge to work for the court. It's too easy, otherwise, for the experts to tell only the side of the phonetic story that backs up the people who are paying them, and that's what often happens in cases where expert witnesses are employed by plaintiffs' or defendants' counsel (R. R. Busterters, 2009, p. 241).

V. Guillén-Nieto (2011, p. 79-80) in her research on *Respicort v. Respicur*, concludes that linguists as expert witness can provide relevant evidence in CTM disputes based on standard analytic linguistic method and tools, and illustrated the type of linguistic evidence that may be provided in cases involving CMT litigation, she adds that this may be of two main kinds, namely qualitative or quantitative data. Whereas the former involves the application of descriptive linguistics, the latter entails the use of descriptive statistics, and the results of this study proved that it is possible to determine and measure the strength of mark and the likelihood of confusion between two trademarks in dispute and she

demonstrates how her study may hopefully contribute to a better understanding of the role of linguists as experts in CTM disputes and the way they can smooth the process of legal decision-making in such cases, and hence the linguistic analysis of brand names.

V. Guillén-Nieto (2011, p. 66-67) said that the *Respicort v. Respicur* case attracted my attention for two main reasons. In the first place, on reviewing the relevant documentation of the case, I found no reference to the expert testimony of any linguist during the period the legal dispute lasted-eight years. Secondly, court decisions were highly divergent as to the degree of similarity between the two trademarks in dispute. *Altana Pharma AG*, the Opposition Division and the Second Board of Appeal of the OHIM considered that the similarity between *Respicort* and *Respicur* was low and consequently there was no likelihood of confusion. On the other hand, *Mundipharma AG* argued that the similarity between the two trademarks was very high and hence, there was a likelihood of confusion. Finally, the Court of First Instance held that the similarity between the two trademarks was reasonable and concluded that there was a likelihood of confusion. The dramatic discrepancy of views about the likelihood of confusion in the *Respicort v. Respicur* case shows that court decisions could not possibly have been based on empirical results obtained by way of standard analytic linguistic methods but rather on personal opinions, linguistic intuition and common sense.

J. T. Berger & R. M. Halligan, (2012, p. 87) go with the case of a maker of *Hoggin' Das* canned vegetables which may be sued for infringement by the maker of *Häagen Dazs* ice cream because of a likelihood of confusion. While it's unlikely that a consumer would be confused into purchasing the junior user's canned vegetables when that consumer wants to buy ice cream, that consumer may very well have the mistaken impression that the maker of the ice cream has extended its business into other food products.

In the business world, there are brand names that could bring confusion in the mind of consumers because of their similarities, and the most important thing is a junior brand could use this likelihood of confusion in their profits when a consumer does not have enough time to figure out that he is not buying the products that he was supposed to buy. In some cases, customers paid more for something that he could pay less as the price of senior brands' products are usually higher compared to the junior brands' products because of their high quality, high rate of demand, and so forth (P. Sadi-Makangila & Y. Sabira, 2020, p. 130).

AIM OF THE RESEARCH

This study on "The Place of Forensic Linguistics in the Resolution of Trademark Conflicts: Case of *DOUBLEMINT & DOUBIEMLNT*" aims to provide solutions in the community trademark conflicts, more precisely to demonstrate how similar or different are *DOUBLEMINT & DOUBIEMLNT*, and find out the importance of forensic linguistics experts in trademark conflicts.

CASE STUDY: DOUBLEMINT V. DOUBIEMLNT

In order to find out answers to questions raised in this research, the authors pored over the DOUBLEMINT v. DOUBIEMLNT case.

Preliminary Study on the Specific Nature of the Brand Names-DOUBLEMINT v. DOUBIEMLNT

DOUBLEMINT and DOUBIEMLNT are both chewing gum brands.

Searching about the Two Brands

DOUBLEMINT it all started back in 1891 when William Wrigley Jr. moved to Chicago, he started selling soap and baking soda and decided one day to throw in a free pack of chewing gum with customers’ orders. Just a few months before Wrigley’s Spearmint was introduced in 1893, Juicy Fruit was released. To this day, over 100 years later, it remains the number one fruit brand in the U.S. and the most popular choice among kids. Doublemint didn’t come along until 1914 (R. O. BELLOMO, 2016).

Doublemint® was launched in the U.S. in 1914 and has since become one of the world’s best-selling chewing gums, enjoyed by generations of consumers worldwide. Today, the classic Doublemint flavor lasts longer than ever. Doublemint® is one of the largest-selling gum brands in the world, available in more than 140 countries.

Trademark Law

Trademark law consists of the legal rules that govern how businesses may: identify their products or services in the marketplace to prevent consumer confusion, and protect the means they’ve chosen to identify their products or services against use by competitors.

The Classification of Marks

The two brands involved in the Community Trademark. The name DOUBLEMINT could be morphologically classified as a compound name made of two words “DOUBLE” and “MINT”. DOUBLEMINT is a normative, complex, and descriptive name as the word “Mint” is a plant with aromatic leaves, and one of the ingredients of DOUBLEMINT is the aromatic leave of “Mint”.

Likelihood of Confusion

J. Thomas McCarthy (2009; quoted in J. T. Berger & R. M. Halligan, 2012, p. 135) insists on distinctiveness by defining the term “Distinctive” as a term familiar to most. Its legal connotation, however, is different from its everyday use. In trademark law, “distinctive” is a key term; a designation must be distinctive to be a mark. “Without achieving distinctiveness, either inherently or through the acquisition of secondary meaning, then a designation does not have the legal status of a ‘trademark’ or ‘service mark.’ No distinctiveness—no mark.”

For this reason, this section is going to focus on finding out the linguistic evidence in order to determine whether or not there is any likelihood of confusion between the marks DOUBLEMINT and DOUBIEMLNT in terms of two categories that are thought to be relevant from a legal standpoint, namely the category of sight (visual similarity) and the category of meaning (conceptual similarity).

The category of sight (visual similarity)

The category of sight involves all aspects of the visual appearance of a trademark, namely spelling, semiotic features such as color, typeface, and design, and linguistic principles of recognition and memory. These aspects will be considered for examining the likelihood of confusion between DOUBLEMINT and DOUBIEMLNT. The qualitative analysis was finally completed with the quantification of the graphemes shared between the senior mark and the junior mark. The brand names DOUBLEMINT and DOUBIEMLNT were found to share two graphemes aligned in the same order:

D-O-U-B-L-E-M-I-N-T
D-O-U-B-I-E-M-L-N-T



Picture of DOUBLEMINT and DOUBIEMLNT

Grapheme 1 provides a visual illustration of the number of graphemes shared by DOUBLEMINT and DOUBIEMLNT.

Graphemes shared by DOUBLEMINT and DOUBIEMLNT (1)

	Senior brand	Junior brand
10	DOUBLEMINT	DOUBIEMLNT
9	DOUBLEMINT	DOUBIEMLNT
8	DOUBLEMINT	DOUBIEMLNT
7	DOUBLEMINT	DOUBIEMLNT
6	DOUBLEMINT	DOUBIEMLNT
5	DOUBLEMINT	DOUBIEMLNT
4	DOUBLEMINT	DOUBIEMLNT
3	DOUBLEMINT	DOUBIEMLNT
2	DOUBLEMINT	DOUBIEMLNT
1	DOUBLEMINT	DOUBIEMLNT
	Shared graphemes	8/10

Graphemes shared by DOUBLEMINT and DOUBIEMLNT

Graphemes shared by DOUBIEMLNT and DOUBLEMINT (2)

	Junior brand	Senior brand
10	DOUBIEMLNT	DOUBLEMINT
9	DOUBIEMLNT	DOUBLEMINT
8	DOUBIEMLNT	DOUBLEMINT
7	DOUBIEMLNT	DOUBLEMINT
6	DOUBIEMLNT	DOUBLEMINT
5	DOUBIEMLNT	DOUBLEMINT
4	DOUBIEMLNT	DOUBLEMINT
3	DOUBIEMLNT	DOUBLEMINT
2	DOUBIEMLNT	DOUBLEMINT
1	DOUBIEMLNT	DOUBLEMINT
Shared graphemes		8/10

Graphemes shared by DOUBIEMLNT and DOUBLEMINT

Concerning linguistic principles of recognition and memory, it was observed that the customers who are supposed to be already familiarized with the earlier trademark DOUBLEMINT, are likely to mistake DOUBIEMLNT for DOUBLEMINT as the two brand names have 8 letters appearing in the same order over 10 letters that both of them have in total and the two other letters are also the same although they do not appear at the same position.

While reading the brand name DOUBIEMLNT, these ten letters may create expectations in readers' minds and make them think, though rather unconsciously, that what they are reading is the already familiar brand name. In particular, DOUBLEMINT and DOUBIEMLNT share eight graphemes of the ten graphemes found in DOUBLEMINT and eight graphemes of the ten found in DOUBIEMLNT.

Thus 80% (8/10) are identical:

D-O-U-B-L-E-M-I-N-T 8/10

D-O-U-B-I-E-M-L-N-T 8/10

$16/20=80\%$

Drawing on the inductive probability scale recommended by the IAFL already referred to, the results of the morphological analysis showed a high graphic similarity of 80% between DOUBLEMINT and DOUBIEMLNT.

The category of meaning (conceptual similarity)

The meanings of these two brand names could be in relationship with the exploitation sector which is a chewing gum chain. Brand name DOUBLEMINT is made of two words "DOUBLE" and "MINT", and "Mint" it is just because in this chewing gum the aromatic leaves of the plant mint could be smelled, while the meaning of DOUBIEMLNT could not be found. But as they are two different chewing gum chains, so the meaning of their brand names could probably be different.

CONCLUDING REMARKS

This study on "The Place of Forensic Linguistics in the Resolution of Trademark Conflicts: Case of DOUBLEMINT & DOUBIEMLNT" demonstrated the use of scientific techniques and methods that can help to come up with scientific evidence showing black and white if there was trademark

infringement, and as it can be observed, the category of sight which involves all aspects of the visual appearance of a trademark, namely spelling, semiotic features such as color, typeface, and design, and linguistic principles of recognition and memory, aspects which were considered, the likelihood of confusion between DOUBLEMINT and DOUBIEMLNT is that the qualitative analysis was completed with the quantification of the graphemes shared between the senior mark DOUBLEMINT and the junior mark DOUBIEMLNT as follows: the brand names DOUBLEMINT and DOUBIEMLNT were found to share eight over ten graphemes aligned in the same order. From the inductive probability scale recommended by the IAFL, the results of the morphological analysis showed a high graphic similarity of 80% between DOUBLEMINT and DOUBIEMLNT. Regarding the logo used by the two brands, it can be observed that the two brands use the uppercase, and bold-faced-letters, and also the green, white and red colors and the drawing of "mint". These could easily mislead customers.

Therefore, inviting a forensic linguistics expert when a junior brand tries to find a brand name for its new brand and design its brand name's logo, could help to make customers confident on what they buy, and to avoid a possible conflict with the senior brand, because being junior brand does not necessarily mean that products should not be highly good, while senior brands are almost synonym of excellence, greatness, high quality and so forth.

Regarding the category of meaning, it was observed that the meaning of the senior brand name DOUBLEMINT is related to its exploitation sector as it is a chewing gum chain. DOUBLEMINT a combination of two English words descriptive name as it has a mint-based composition and mint flavor, therefore this chewing gum smells the aromatic leaves of the plant mint (cfr. Appendix 1), while on the other side DOUBIEMLNT is a fanciful name without meaning.

This study showed that the participation of forensic linguistics experts in the court trial on the community trademark conflicts is a good alternative for the judges to pronounce a verdict based upon scientific evidence. Therefore, a multidisciplinary approach is one of the best approaches in redressing issues of infringement of intellectual property. In this study on The Place of Forensic Linguistics in the Resolution of Trademark Conflicts: Case of DOUBLEMINT & DOUBIEMLNT, to provide solutions in the community trademark conflicts, more precisely to demonstrate how similar or different are DOUBLEMINT & DOUBIEMLNT. This study answered the research questions and showed the importance of Forensic Linguistics experts in such cases.

FURTHER RESEARCH AND OUTLOOK

The authors further recommend more aspects to take into consideration in the case of brand names analysis such as the category of sound or sound similarity and also a survey to the consumers, sellers, responsible of other fast chewing gum chains, and so forth for more scientific evidence in the case of infringement among trademarks.

There are many factors to take into consideration. The experts will need to see when the two brands were registered in

the country where the so-called junior brand could be accused to justice for infringing the trademark rights because in the trademark policies a brand could be considered early and senior brand, even with the highest notoriety in the world, but if it has been registered after the junior brand in the country where they open a trial, the senior brand has a great chance to lose its battle over trademark infringement and this makes total sense because it was registered after the junior brand.

Therefore it could be for the general interest to make a deep introspection about the international law related to the infringement of trademark, intellectual property, and copyright because it takes years, decades, even centuries to build a good reputation as a brand.

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APPENDIX

Appendix 1

11. **Things You Need to Know Before Chewing Wrigley's Gum Time to really unwrap your favorite gum. by RHE-ANNA O'NEIL BELLOMO**
 1. **It all started back in 1891.**
When William Wrigley Jr. moved to Chicago, he started selling soap and baking soda and decided one day to throw in a free pack of chewing gum with customers' orders.
 2. **Juicy Fruit is the original label.**
Just a few months before Wrigley's Spearmint was introduced in 1893, Juicy Fruit was released. To this day, over 100 years later, it remains the number one fruit brand in the U.S. and the most popular choice among kids. Doublemint didn't come along until 1914.
 3. **Doublemint is double everything.**
When it debuted, Doublemint was advertised as having "double value," "double strength peppermint flavor," and being "double wrapped."
 4. **Wrigley invented a new marketing technique.**
Way back in 1915, founder William Wrigley Jr. made a bold move by doing something totally unprecedented for that time: He sent free samples to every address listed in the U.S. phone books. It was the first-ever direct-marketing campaign at home.
 5. **There are three Wrigley factories in the U.S.**
Outside of Chicago, there are production facilities in Santa Cruz, CA that opened in 1954 and Gainesville, GA that opened in 1971. Plus, there are even more abroad in Australia and Great Britain.
 6. **The first Doublemint Twins appeared in 1960.**
Joan and Jane Boyd were the first pair to become Wrigley Double mint Twins, starring in commercials for four years straight. Since then, various other twins—including Tia and Tamera Mowry—have starred in the brand's commercials.
 7. **It also owns Life Savers.**
In 2005, Wrigley purchased the Life Savers mint company—which was created in 1912 as a summer candy that could take the heat better than chocolate—plus the Altoids, Creme Savers, and Sugus brands.
 8. **Big Red arrived in 1976.**
It came onto the scene with the slogan "kiss a little longer." It's only available in the United States, Germany, and Canada.
 9. **Wrigley gum is dentist-approved.**
Orbit, Extra, and Eclipse sugargree gums were the first in the U.S. to receive the American Dental Association's Seal of Acceptance.
 10. **There's a story behind the Hubba Bubba name.**
It comes from the phrase "Hubba Hubba" which was used by soldiers during World War II to express approval.
 11. **Extra Sugar-Free Gum was created in 1984.**
Following the '80s wave of low-cal, sugar-free gums on the market, Extra came around and quickly became consumers' go-to. Winterfresh and its "icy cool" flavor followed in 1994.