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## The Aesthetics Of Trademarks

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## The Aesthetics Of Trademarks

*Peter H. Karlen*

### Abstract

Trademarks are not just property, they are aesthetic creations that pervade everyday experience. One estimate is that the average person encounters more than 1,000 trademarks per day, many of which influence purchases and product use.

As pervasive aesthetic creations having literary, pictorial, graphic, sculptural, and musical content, trademarks deserve aesthetic analysis. The article discusses the origins, strength, appeal, and effectiveness of trademarks within the context of aesthetic considerations such as meaning, intention, authorship, and mode of creation. Also reviewed are morphemic and phonemic analysis of trademarks, semantic positioning, the dichotomy between creation and discovery of trademarks, and the differences between trademarks and titles.

The discussion is confined to "word marks" consisting of alphanumeric characters, since discussing other kinds of marks (such as designs, configurations, sounds, colors, and scents) would raise issues well beyond the scope of a single article.

### Key Words

trademark aesthetics, trademark creation, trademark discovery, trademark authorship, trademark strength, trademarks and titles, trademark selection, trademarks and commercial success, trademark analysis, trademark resonance, semantic positioning of trademarks, trademark intentions, trademark meanings, trademark origins

### 1. Introduction

A trademark is a word, phrase, symbol, shape, configuration, or other device used to distinguish the products of one merchant or manufacturer from those of another.<sup>[1]</sup> Examples of trademarks are BASS<sup>[2]</sup> (word), WE ARE DRIVEN (phrase), the CBS "eye" logo (symbol), the NIKE swoosh (shape), the COCA-COLA hourglass-shaped bottle (configuration), the brown of UPS delivery vehicles (color), and unusual devices like the MGM roaring lion (moving image), the NBC chimes (sounds), and fragrances applied to fuels (scents).<sup>[3]</sup>

Unlike most forms of intellectual property,<sup>[4]</sup> if continuously used a trademark may enjoy indefinite protection. Because trademarks are often the most valuable assets of companies, they may be one of the most valuable forms of property after real property and may someday comprise the second most valuable property on Earth. As of 2007, the top four brands, COCA-COLA, MICROSOFT, IBM, and GE, together were valued over \$200 billion (USD).<sup>[5]</sup>

Yet trademarks are not just property; they are aesthetic creations that pervade everyday experience. One estimate is that the average person encounters more than 1,000 trademarks per day,<sup>[6]</sup> many of which influence purchases and product use. As aesthetic creations having literary,

pictorial, graphic, sculptural, and musical content, trademarks deserve aesthetic analysis, so the goal of this article is to discuss the origins, strength, appeal, and effectiveness of trademarks within the context of aesthetic considerations such as meaning, intention, authorship, and mode of creation.

The present discussion is confined to "word marks" consisting of alphanumeric characters, including Roman alphabet letters, numbers, and typographical symbols. Also, the marks analyzed are mostly British and American, for practical reasons and because they comprise a majority of the world's top 100 brands.<sup>[7]</sup> Discussion of non-alphanumeric marks, other alphabets and scripts,<sup>[8]</sup> and word mark stylization in terms of fonts, sizes, and colors would open new dimensions. However, the wealth of additional issues and illustrations would entail a much longer, less focused treatment that is far beyond the scope of a single article.

## 2. Kinds of Word Marks

To establish the legal and aesthetic framework, I will first focus on the basic categories of word marks. From weakest marks to strongest, these categories are *generic*, *descriptive*, *suggestive*, *arbitrary*, and *fanciful*.

The generic term—not technically a mark—is one that denotes the products themselves and often consists of a formerly distinctive mark that became the very name of the product because of uncontrolled use. Examples are ASPIRIN, CELLOPHANE, ESCALATOR, and ZIPPER. The generic term is unprotectable and brings no extra meaning to the product since it is the product's own name.

The descriptive word, sometimes a protectable mark but seldom strong, describes the products and their characteristics or functions; like the generic term, it adds little meaning to the product. Examples are SUDSY for ammonia, BETTER HOMES for real estate services, and SUPER BLEND for multi-viscosity oils. To protect a descriptive mark like CONSUMER REPORTS the owner must generally show "secondary meaning," attained after years of promotion and widespread exclusive use;<sup>[9]</sup> a descriptive mark infrequently succeeds without quickly gaining a secure market position via heavy advertising, patent protection, or unique products.

The suggestive mark hints what the product might be without describing it. To see the connection between suggestive mark and product requires a leap of imagination, as per WALKMAN for hand-held radios, GREYHOUND for bus services, ENGLISH LEATHER for toiletries, and CATERPILLAR for tractors and other motorized construction equipment. The suggestive mark begins to exhibit aesthetic qualities and adds metaphoric meaning to the product. CATERPILLAR is a prime example because it is similar to automotive marks like MUSTANG, JAGUAR, and BEETLE that evoke the vehicle's shape, movement, or sound.

The arbitrary mark is a real word whose meaning bears no apparent relationship to the product, such as KIWI for shoe polish, APPLE for computers, BUMBLE BEE for canned fish, and DUTCH BOY for paint. A number (e.g., 4711) or numeric component (e.g., CHANEL NO. 5) would be arbitrary unless it

somehow indicates a product feature, an effect enhanced by the penchant to use prime numbers or numbers seemingly prime, as in 7-ELEVEN, PRODUCT 19, 37 SIGNALS, and 501 (not prime). A test for arbitrariness is whether one could reasonably guess the product from hearing or seeing the mark. With KIWI, utterly remote from shoe polish, the guess would have negligible odds. Yet with many arbitrary marks there can be a bridge of meaning between mark and product that is not description or suggestion but, if anything, pure metaphor. APPLE for computers succeeds probably because the apple is a symbol of knowledge, health, or wholeness; a prize given to a goddess; a gift to a teacher; or, as imagined by company founders, almost suggestively, the perfect fruit: highly nutritious, nicely packaged, and not easily damaged.

Finally, the strongest mark is the fanciful, the coined word not found in any language, such as PEPSI for beverages, VELCRO for hook and loop fasteners, PROZAC for anti-depressants, and OXO for food products. The bridge of meaning between mark and product is not necessarily even metaphor but often subtle allusions arising from the semantic and aesthetic qualities of sound and appearance, sometimes only revealed upon analyzing the word, morpheme by morpheme, phoneme by phoneme. PROZAC thrived because PRO (in favor of) complements AC (activity), the medication restores life to "prosaic" normal, and the Z is stronger and more distinctive than an S would be.

### 3. Strength of Marks

The principal legal or commonsense reason why marks range in strength from descriptive to fanciful is that the descriptive mark is the most common and hence the least distinctive, while the fanciful mark is the rarest and thus most distinctive. A descriptive mark like NATURAL for food products is a zebra in a herd of zebras, while a fanciful mark like JABRA for telephone headsets is a unicorn in a band of horses. Or analogously, descriptive marks resemble cats and dogs, while fanciful marks are gryphons and dragons. Even marks starting with less frequently used letters (J, K, Q, X, Y, and Z, those with highest SCRABBLE values) are purportedly stronger. [\[10\]](#)

But there are deeper aesthetic reasons for strength. After all, if rarity alone dictated strength then fanciful but forgettable letter combinations like XDNTUYLK or MQZDEJIIB would prevail. Also, occasionally less uncommon marks can be stronger than more rarified cousins, as shown by the food product mark BEST FOODS and the retail store mark BEST BUY which, though descriptive, are stronger than a host of more distinctive competitors.

Strength comes from meaning, but in certain industries often the more subtle and deep-rooted the meaning, the stronger the mark, as reflected by the rainbow of strength from generic to fanciful. Sometimes the mark will be stronger when its semantic relation to the product is more oblique or even obscure. For example, the suggestive but obscure REEBOK (from "rhebok," a South African antelope) is stronger for athletic shoes than would be the more common words GAZELLE and ANTELOPE.

Even fast food marks may benefit from subtle, arcane

aesthetic connections, such as with fictional content. MCDONALD'S may be an ordinary surname mark but also evokes the children's song "Old MacDonald Had a Farm." (MCPHERSON'S would not have been as successful.) Similarly, JACK IN THE BOX may resonate "Jack and the Beanstalk" and "Jack and Jill." DAIRY QUEEN may also be subtly strengthened by its connection to the "fairy queens" of folklore, music, and literature (and by its connection to the dairy land beauty queen), and subtle associations with quasi-Medieval images of "burgher" and "king" arguably enhance BURGER KING. (Even WENDY'S, from the nickname of the founder's daughter, is remotely connected to the "Peter Pan" character.) These somewhat obscure connections do not necessarily beget core strength but inject vitality by adding extra dimensions.

Interestingly, such subtle allusions need not be obvious or known to most customers; sometimes the memetic<sup>[11]</sup> strength of fictional characters and scenarios to which the strong mark alludes may be minimal. For instance, STARBUCKS would probably thrive without a literary source, and only steadfast readers or film buffs would make the connection to Moby Dick's Starbuck character. Yet, the connection with Moby Dick, that treasure trove of nautical names, is bountiful. This notion somewhat applies to many mythological names like MIDAS, ATLAS, AJAX, JUNO, and JANUS which remain viable marks, though today most consumers probably could not accurately identify the original characters. Just as one's impression of a first name is colored by every friend and relative bearing that name, a name from folklore, mythology, or literature may permanently bear its original colors, even if faded over time.

The strong mark has great memetic endurance. It may draw strength from subtle associations with words and concepts having memetic persistence though not always manifest power. Specifically, it may have deep roots and relationships to words and concepts which themselves have a great presence in space-time even if only simmering below the level of public consciousness. The strength conferred by subtle, sometimes unknown connections is analogous to the claimed greater strength of more diluted homeopathic remedies: the more the original "proven" substance is shaken ("succused") in solution and repeatedly diluted, the stronger the remedy, even when the last dilution contains barely a molecule of the substance. Though the height of a concentric wave from a stone dropped in a lake decreases every moment, the wave's circumference grows as the energy is more widely dispersed, just as the obscure word's or concept's meaning and original connections, once obvious, continue to percolate in the collective unconscious. The lake here is space-time, and a related word or concept that has a large space-time presence, through long-term survival and sundry cultural connections, could have a penetrating semantic influence even if unfamiliar to consumers today.

Similarly, overtly clever marks are not typically famous. For example, compare marks comprising rebuses<sup>[12]</sup> (4N6 equals "forensics" and T42 is "tea for two"), chiasmi,<sup>[13]</sup> or palindromes (ROTOVATOR and ZOONOOZ) to more famous but less obvious clever marks comprising anagrams (CAMRY/mycar and SPANDEX/expands, now generic), reversals

(SERUTAN/natures and MENNON/on men), and obscure words and translations (LYCOS/lycosidae, Latin for wolf spiders, and AUDI/Latin equivalent of the founder's German surname Horsch, meaning "hark" or "listen").

1. The covertly clever mark can be powerful if its origin or meaning is generally unknown, for example GOOGLE ("googol," 10 to the hundredth power) and ATARI (a word from the Japanese board game "Go," analogous to "check" in chess). And where the clever device aesthetically relates to the product, cleverness may be rewarded, with extractions like ADIDAS, derived from Adolf "Adi" Dassler, the footwear developer, for example, and TEFLON, pulled from polyTetraFLuoroethyleNe. The same is true of marks, sometimes serendipitous, having obvious meaning to the originator but not necessarily to the public, such as MIRAMAX (connoting "great vision" in Latin), derived from the Weinstein brothers' parents' names Miriam and Max, and JORDACHE, reflecting the three founders, Joe, Avi, and Ralph NakASH; the three-person "Jordache" tennis game; and the clothing's panache. Compare SANKA for decaffeinated coffee, arising from the French "SANS" ("without") and KA standing for caffeine, and BOTOX, from "botulinum toxin" but also mimicking BEAU ("beautiful") plus TOX (reminiscent of "tucks," a plastic surgery term). Also note VASELINE emerging from the German "Wasser" for water and the Greek "elaion" for oil, and VIAGRA, rhyming with Niagara, the honeymoon haven, perhaps inspired by the Latin "via" for "the way to" and "gra" for "gratification."

Though subtlety and semantic distance between mark and product may succeed, semantic dissonance generally will not. Few famous marks are antonyms to their products, except by oversight, as exemplified by NOVA for cars sold in Latin America ("no va" meaning "it won't go" in Spanish). Nor do famous brands easily extend to incongruous products such as HARLEY-DAVIDSON cake decorating kits. But this principle applies not just to humorous contradictions but also to less obvious ones. For example, METZGER ("butcher" in German and registered for meat products) would probably not suit vegetarian restaurants, nor would BONNER (connoting "gentle" and "gracious" and registered for dried fruits) best complement steak houses. Thus, trademark strength fades at both extremes: where the word is generic and where it is antonymic.

#### **4. Other Characteristics of Strong Marks**

The best marks are typically deep-rooted, as noted above, but also often *short*, *integrated*, *resonant*, and *multifaceted*.

Short marks like GAP, JOY, HEAD, and PEZ (extracted from PffEfferminZe, German for "peppermint") are quicker and easier to recognize, pronounce, and memorize than tongue-twisters like ORVILLE REDENBACHER, LAURA BIAGIOTTI, SALVATORE FERRAGAMO, and MITSUBISHI. [14] Effective single-word marks are typically three syllables or fewer, yet brevity is measured not only in relation to number of letters and syllables but also in other dimensions. More generally, word marks reflect a rule of "parsimony": specifically, they flaunt the least content necessary to convey the desired impression. Unnecessary words, morphemes, and letters are

the flotsam of poor trademarks. Brevity is not only the soul of wit but also saves money on ink and signage and yields marks that comfortably fit onto articles like pens and book spines.

A mark is "integrated" when its components are compatible and even synergistic, particularly for marks with multiple morphemes. E.g., COMPILEX for computer database services for personal injury lawyers is quite integrated because it not only contains COMPILE but also COMP for computer, PI for personal injury, and LEX for law. Compare TRAVELOCITY for travel reservation services comprising the words TRAVEL, VELOCITY, and CITY. It's not so much that the word combinations are clever but rather that they possess an internal cohesion.

By "resonant" we refer to the mark's multiple connotations, usually complementing the product and sometimes each other. For example, CINGULAR for a wireless telephone network service resonates. It connotes "singular," referring to the service's uniqueness and integration. Moreover, in Latin, the language of origin, "cingula" means a belt or girdle, and "cingulum" is a zone on the Earth, each connoting the circular, terrestrial nature of the CINGULAR network service. GOOGLE epitomizes resonance in evoking the mathematical "googol," the "googly" cricket throw, the Barney Google character and song, "googly-eyed," the infantile "goo goo," and GO OGLE. Resonance may also result when part of the mark has multiple meanings, some of which metaphorically connect to the product. An example is the BAY part of eBay. BAY has numerous meanings, including a broad inlet from the sea; an indentation or recess in a range of mountains or hills; a kind of tree or shrub with edible leaves; a recessed or enclosed area like a bay window; a compartment or area in a ship, aircraft or motor vehicle; an area marked off for a particular purpose like a loading bay; a place on a computer for inserting a device like a drive bay; a horse's color; an animal's bark or howl; or "cornered" in the idiomatic expression "at bay." And eBay connotes the East Bay in the San Francisco Bay Area, close to the company's birthplace.

By "multifaceted" we refer to the mark's adaptability, including its ability to change and also serve multiple purposes, such as being internationally palatable and useable on a broad range of products. A mark that can change to match changing markets is typically one susceptible to abbreviation or alternative spellings. An internationally palatable mark like ACURA, CASIO, INTEL, and SONY is one which, in its original or transliterated form<sup>[15]</sup>, can easily cross national and cultural boundaries because everywhere its sound is readily articulated or its meaning understood. An adaptable mark is also one which may suit disparate products, such as NOKIA, which started with rubber boots but moved to telephone equipment; HASBRO, which changed from school supplies to toys; and TOYOTA, which shifted from textile equipment to cars.

For strength, marks need not only rely on hidden meanings, subtle semantic devices, or multiple connotations. Even the aesthetics of pure sound and appearance may contribute to strength, especially since trademarks are judged in relation to sound and appearance as well as meaning, e.g., to avoid

public confusion resulting from concurrent use of similar marks. For instance, in relation to sound, ordinary literary devices such as rhymes, alliterations, ricochet words, and tautonyms can be effective, as with MARS bars and UHU for glue (rhymes), BOB'S BIG BOY and REYNOLDS wrap (alliteration), KIT KAT and TIC TAC (ricochet words), and MIU MIU and TOMTOM (tautonyms). In relation to appearance, as mentioned above, beginning a mark with an unusual letter like J, K, Q, X or Z can add to distinctiveness as per XEROX, KODAK, ZANTAC, and Q-TIPS, as can doubling a letter, as with QUALCOMM vs. QUALCOM or EXXON vs. EXON. Yet even with these marks, the semantic elements add to strength, e.g., MARS having planetary and mythological associations, UHU evoking the attention-getting "yoohoo," and KIT KAT and MIU MIU both having feline associations.

To analyze the strength of fanciful marks which hover below the horizon of meaning, one must delve further by analyzing them, morpheme by morpheme, and where morphemes are absent, letter by letter. For example, VELCRO succeeds for hook-and-loop fastening materials because VEL connotes velvet, velour or vellum, a flat material, while CRO may evoke the hooking aspect of crochet. CRO itself breaks down into CR, which connotes gripping as in "crimp," "cramp," "crab," and "crunch," and O which provides a masculine ending (at least in Romance languages) appropriate for a high tech utilitarian product. (A feminine A, yielding VELCRA, would have connoted fabric, as in LYCRA.)

Phonemic analysis is not usually difficult given the energetic qualities of letter sounds. Consonants represent the constriction of energy caused by using the tongue, palette, teeth, and lips to occlude the flow of vibrating air from the throat. [\[16\]](#) Vowels represent the free flow of energy shaped by the configuration of the mouth as it affects the passage of air. Looking at only a few sample letters, we see how fanciful marks can be constructed. The letter P at a word's beginning typically represents a penetrating, focused force, particularly when followed by a short vowel sound, as in "pincer," "pencil," "pick," and "pang." At the end of a word P is a solid container of energy as in "clamp," "scalp," "cup," and "coop." To start a word with B expresses strong but unfocused energy as in "boom," "brag," "bungle," and "boisterous"; but at the end of a word B fails to contain as much energy as P, as exemplified by "lob," "drab," "bulb," and "nib." In stark contrast, the consonant W at a word's beginning expresses only a brief gust of energy, as in "whisper," "wispy," "wanton," and "worry." The complementary effect of W at word's end is virtually no energy containment since the W is typically silent and only a marker for the sound of the preceding vowel, as in "low," "raw," "new," and "cow." [\[17\]](#) So, as oversimplified examples, using a P or T as first letter might express focused energy; ending the mark with a sounded vowel or silent consonant might express openness. More often than not, the letters of a strong fanciful mark possess energetic qualities that match the mark's allusions.

Naming choices demonstrate how adding, omitting, or changing even a single letter can make a substantial semantic difference. The more folksy and "American" DENNY'S was formerly DANNY'S and incidentally comes from DENNIS, a



derivative of DIONYSUS, the Greek god of wine associated with food, drink, and merriment. Compare the following real marks (left) with less distinctive alternatives (right): humor and (k)nickers in SNICKERS trounces the descriptive SNACKERS; doubling the C in ECCO echoes a pair of shoes more than ECHO or ECCE ("behold" in Latin); REVLON is smoother and more feminine than the founder's surname REVSON; without the E, CUISINART is almost fanciful and boasts a stronger N than CUISINEART; CHARMIN is softer and better for bathroom tissue than CHARMING; ITANIUM for computer chips touts IT, whereas TITANIUM would be too obvious; and COLORA is more alluring for hair preparations than the descriptive COLOR.

## 5. Intention

The principle of "less obvious meaning, more apparent strength" relates to the aesthetic controversy regarding artistic intention. The more the mark's owner publicizes the intended semantic connection between mark and product, the weaker the mark may become, similar to the Marxian literary observation that when the political content of fiction is more obvious and polemical, the message may be weaker.<sup>[18]</sup> Also, the owner's intention regarding a trademark's meaning should usually be concealed because the little interest added by a publicized intention is usually outweighed by lost resonance. That is, once the single meaning or intention is revealed, the magic of multiple subtle associations between mark and product evaporates.

This is why, when registering a mark, trademark lawyers will often deliberately provide incomplete, imprecise, or unusual translations or characterizations of the mark to camouflage descriptiveness and otherwise avoid weakening it. Such motive also explains why companies typically do not trumpet their marks' meanings or origins, though that information can occasionally be found somewhere on the company web site. With family-related marks like MIRAMAX (Miriam and Max) and VICTORINOX (Victoria and INOX, the international symbol for stainless steel), the owners barely mention the connections. Similarly, the YAHOO! home page has no link to Gulliver's Travels; TESCO customers are not forcefully reminded of the homage to T.E. S(tockdale) and Jack Cohen; and relatively few customers know that MAYTAG is the founder's German surname, not MAY plus TAG. Correspondingly, with marks incorporating numbers, the owners do not want to quell their mystical, metaphoric, or other associations by widely publicizing mundane origins. For example, publicizing PRODUCT 19 breakfast cereal as the 19th product Kellogg's developed in 1965 would submerge the value of 19, a prime number connoting youthful vigor; and proclaiming that WD-40 spray lubricant embodies the 40th attempt at a "water displacement" formula would hide the connotations of 40, e.g., a viscosity indicator, an experienced adult (Gen. 25:20, 26:34) or a number associated with water (Gen. 7:12) or its lack (Exd. 34:28).

This practice of underplaying creative intentions and origins prevails even though revealed intentions and origins could be powerful mnemonic devices. For example, constantly reminding customers that KYOCERA, now primarily associated

with electronics, originated from KYOTO CERAmics would make the mark easier to remember; yet such reminder might forever tie KYOCERA to the company origins and weaken it by smothering subtler connotations. The same is true of any mark connected with the company founder or founding, such as NOKIA (the company's Finnish birthplace) or ADOBE (the creek outside a co-founder's home).

## 6. Authorship

Seldom are great works of art, music or literature aesthetic flukes from the hands of mediocrities. For instance, only a few great classical musical works come from obscure composers, and the same is true of great novels. Yet, with trademarks, many of which are *objets trouvés* or "readymades" (i.e., already extant words), amateurs have created—or shall we say, adopted—many profound, successful marks, though most famous marks result from artful, meticulous selection by professionals. That is, many successful marks were not pre-emergents<sup>[19]</sup> when selected but grown trees that only had to be decorated. MCDONALD'S was not a professional job; instead it just mirrored the surname of the brothers who founded the original business. Similarly, many resonant marks may have been created without awareness of all their undertones. Did the religious founders of AMWAY, which connotes "American way," ever consider that it also reverberates John 14:6, "I am the way, the truth, and the life..."? And did the owners of PETERBILT, named after founder T.A. Peterman, perceive that it also echoes Matthew 16:18, "[T]hou art Peter, and upon this rock I will build my church..."?

As with famous instances of anonymous artistic creation, like Greek sculpture and architecture, trademark authorship is scarcely known or publicized and has little aesthetic significance. Seldom can one attribute extra value or strength to the creator's identity or mode of creation, even though such facts may spark initial interest when the mark is launched. For instance, the winner of a consumer contest created Boeing's DREAMLINER aircraft mark, and a computer generating thousands of three- and four-letter words spawned TAB for soft drinks, interesting sidelights but soon forgotten.

Of course, there are reasons for disregarding the creator's identity. First, marks are often created by corporate entities, committees, or other collaborations, so there is no impetus to search for the individual creator's intentions, motivations, and circumstances. Second, even if one could discover all the marks developed by an individual creator, there is no *oeuvre* in the traditional artistic sense, since the marks created by a name developer are usually disparate and do not reflect any particular style. For example, an ad agency or naming company typically represents many kinds of clients and products and will develop a menagerie of unrelated trademarks, using various techniques. Furthermore, whether a mark is created via a contest, computer, or ad agency, or is the name of the founder's dog (like OAKLEY for sunglasses), generally has little continuing significance.

Because authorship and creation are arguably distractions in aesthetic analysis of trademarks, marks are best evaluated in connection with their products and markets, much as some

would argue that a work of art should be judged in relation to the historical context in which it is revealed to the world without substantially considering authorial intention.<sup>[20]</sup> Like works of art and their relationship to art history, the strong mark is related to other marks in the same field, so "semantic positioning" of the newly selected mark is important in order to optimize its meaning in relation to competing marks. In semantically positioning an automotive trademark, one might seek a word that connotes more power and road worthiness than rival marks, but not higher price, as exemplified by truck marks like RAM, SIERRA, F-350, and TITAN, which connote different measures of power, road presence, ruggedness, and outdoor adventure.

In semantically positioning new marks, trademark developers tend to place them in semantic categories familiar to consumers. Commercial fields tend to attract marks of limited types like magnets attracting iron filings. For example, insurance marks typically connote solidity and trustworthiness (PRUDENTIAL and RELIANCE), old cooperatives (FARMERS and STATE FARM), and place names or geography (WAUSAU and ALLSTATE), while journalism, allowing more variation, still stresses a limited number of dominant categories such as observant (MONITOR and OBSERVER), investigative (EXAMINER and ENQUIRER), protective (GUARDIAN and SENTINEL), postal (POST and MAIL), temporal (TIMES and CHRONICLE), communal (UNION and CONSTITUTION), celestial (SUN and STAR), terrestrial (GLOBE and WORLD), communicative (TELEGRAPH and DISPATCH), and, of course, journalistic (NEWS and JOURNAL).

## **7. Creation vs. Discovery**

Because of trademarks' relative simplicity compared to other aesthetic products, arcane aesthetic considerations may be more plausible and easier to discuss. For example, it is easier to debate whether someone created or discovered a trademark than whether Beethoven created or discovered the Archduke Trio.<sup>[21]</sup> Except for the greatest geniuses like Mozart ("I write as a sow piddles") or Michelangelo ("I saw the angel in the marble and carved until I set him free"), creating complex works of authorship is usually a laborious, meandering affair generally perceived in positive terms, as the efforts of a craftsman upon the materials. Seldom is creation seen negatively, the work being pre-formed in space-time and the "author" being only an agent of the process. With word marks, however, the notion of a pre-existing "discovered" entity becomes more plausible. Like Duchamp "readymades,"<sup>[22]</sup> most word marks are comprised of existing words such as ORACLE or GREEN GIANT whose meaning and aesthetic significance is already partially established in relation to the products they accompany and competitors' marks. Even letter combinations of fanciful marks like GARMIN and ROZEREM could be generated by a random word generator or by a proverbial single monkey typing for a week.

Addressing merely the quantitative aspects of creation vs. discovery, if a Haiku, palindrome, limited-length pangram,<sup>[23]</sup> or other restricted format only allowed for a handful of expressions that could be computer-generated, then anybody producing one such expression would arguably have

"discovered" that pre-determined example. That is, discovery would emanate from the finite and discrete, not from the infinitely continuous. So, if the creative format allowed infinite expressions, arguably no such expression would be pre-determined and "creation" might be assumed.[\[24\]](#)

Like chess games, selecting trademarks present limited practical and aesthetic choices. Though the number of possible 40-move chess games is about 36 orders of magnitude greater than the number of atoms in the universe, given the limited number of effective openings and the desire to avoid games with inept or nonsensical moves, the number of competent games is considerably fewer.[\[25\]](#) (Analogously, with Noughts and Crosses, aka Tic Tac Toe, which boasts  $2.7 \times 10^4$  possible games, by excluding inept games a much smaller number remain.) Similarly, in selecting a trademark for a product a galaxy of choices is conceivably available, but realistic, effective choices are comparatively few.

Assuming generously that (a) word marks might range from one to thirty characters; (b) the characters could consist of 26 letters, 10 numerals, and 32 typographical symbols; (c) any of the characters could be repeated (as in AAA); and (d) to separate "words," spaces could be inserted anywhere between the characters, the number of possible marks would be  $E (68^1 \times 2^0) + (68^2 \times 2^1) + (68^3 \times 2^2) \dots (68^{30} \times 2^{29})$ , a hefty number but not remotely approaching the abovementioned numbers of atoms or chess games. However, the number of commercially viable marks would probably not exceed three or four orders of magnitude greater than the number of words in the English language ( $10^6$ ) because virtually all permutations would be gibberish and violate the commercial, legal, and aesthetic norms of trademark selection. For instance, though seemingly random letters may populate three- and four-letter marks such as UBS, DHL, WGBH (which are initials), five-letter or longer jumbles are rare because they are meaningless and forgettable. The law may protect seeming order even arising from random processes but not necessarily seeming randomness even emerging from orderly processes.[\[26\]](#) Similarly, marks containing numerous typographical symbols (\*GH%&%#TI), letters repeated many times (YYYYYYYYYY), unusual alphanumeric combinations (Q7L B6WN I2Z), or long strings of all vowels or consonants (AIOUEUOOIAE) would be irksome and useless. Excluding these kinds of useless variations alone would eliminate most permutations. So, because possible word marks are finite, useable ones are commercially and legally limited, and job assignments for branding professionals are sharply constrained, selecting a mark may sometimes be more discovery among a small band of candidates than creation amidst a boundless universe of choices.

When a product owner's wishes as to sound, appearance, meaning, and other parameters are specified in detail, the choice of words is often quite limited, at least for a branding professional familiar with sound symbolism,[\[27\]](#) competing marks, and industry practices. Though a novice may spend days or weeks developing hopeless marks for a product, the professional, apprised of his client's wishes and aware of numerous constraints, soon follows almost a predetermined

path, as in certain crafts where the object's functional aspects may dictate a limited range of expression. Perhaps the branding professional's experience of discovery and limited choice is similar to the experience of a talented artist who envisions the finished work and to whom the next note or chisel stroke is an obvious choice.

Though virtually perfect names have been achieved with many products, particularly names for materials like VELCRO, PLEXIGLAS, TYVEK, and LINOLEUM (now generic) that express the product's essence, some may argue that only in hindsight does it seem that perfection was discovered, not laboriously created. However, to many trademark and branding professionals the perfect name is frequently one that the product would utter if it could speak, a name invisibly hovering over the product, waiting to be discovered. Often great marks are not cut-and-paste jobs arising from pencilwork but spontaneously arise in moments of exhilaration or quiet reflection. As the artist Grant Wood said, "All the good ideas I ever had came to me while milking a cow."

To illustrate finiteness and discovery/creation we might consider naming software. Various computer programs generate personal and commercial names. Using these programs to generate existing words may show the discovery but not creation of new words. For instance, as mentioned above, TAB was plucked from a computer-generated list and thus discovered, though various rationales supported the selection, including the notion that the low-calorie TAB beverage helps consumers keep tabs on what they consume. Selecting such an arbitrary mark is like rummaging through a toolbox for a tool, grabbing one, and saying "this will do."

Using such programs to develop fanciful marks also reveals finite choices but may sometimes mimic a pencil and paper process and thus seemingly reflect creativity. A common computerized technique of generating a fanciful word mark is to use a "random" word generator. In doing this the trademark developer specifies the number of letters and the structure of the word in terms of consonants (C) and vowels (V). A choice might be CVCCVC, which would generate numerous letter combinations like BUFGOT and JIDVUL. This initial choice helps determine qualities such as length, rhythm, and number of syllables. But the trademark developer has more parameters to specify than the consonant/vowel sequence, and this is where creativity gambols. The trademark developer using such a word generator will often prescribe some of the letters, especially the first and last, and sometimes a prefix, suffix, or morpheme. Assuming the developer is naming a new textile using the above consonant/vowel sequence, she or he might prescribe LON as the suffix, to indicate a soft, flat material as in NYLON or ORLON, and the first letter might be a V to indicate flexibility as in VELCRO, KEVLAR, and TYVEK; so the new word would start out as V\_\_LON. Once these creative selections are made, the rest of the process is somewhat constrained even though the computer would be used to spit out all remaining permutations. For example, the consonant before L would be constrained since many consonants would probably be less compatible, e.g., H, J, P, Q, and W, while some would be more suitable, e.g., N, R, S, and X. And most likely an E or O would be better as the first vowel, leaving one

with a candidate mark like VERLON.

## 8. Trademarks and Commercial Success

Another notion, not strange but still provocative, is that businesses usually do not star on a national or international stage without strong marks. Like the title selling the book, the mark typically makes the business, not the other way around. Also, no matter how good, products generally won't succeed without good marks. For products that do piggyback on weak marks, there is often an unusual explanation or confluence of fortunate conditions. For example, MICROSOFT's initial selection was arguably not auspicious, aesthetically or otherwise. Though SOFT helpfully suggests that ordinary consumers could use the products easily, MICRO and SOFT at time of selection were neither unusual nor distinctive, alone or combined. Each component was used by thousands of businesses, mostly computer-related, and juxtaposing the two words was not exceedingly imaginative,<sup>[28]</sup> so that the combined form MICROSOFT would not normally be notable. Yet MICROSOFT handsomely succeeded, though some might describe its promotion as MACRO and HARD. The explanation perhaps is that in a computer software market that begged for a common operating system and standard productivity software, the company achieved a dominant position through patent protection, early market penetration, good products, strong support, vigorous marketing, and quasi-monopolies.

It's little surprise that the best marks tend to populate intensely competitive markets for online services and consumer products, where the mark, so critical for sales, is the tail that wags the dog.

## 9. Trademark Selection

The motto for trademark selection is not "A rose by any other name would smell as sweet" but rather "A BOSE by any other name would not sound as sweet," or more profoundly, "In the beginning was the Word." That is, the trademarked word, once selected, almost teleologically unfolds its power and meaning over time via a branding process comprised of brand ideas, themes, values, and stories. The word becomes a driving force behind the products it adorns and markedly contributes to their success. It not only lures customers but also attracts and motivates company workers, managers, and salespeople who are drawn to the brand.

Anyone involved in trademark selection can vouch for the aesthetic content of trademarks. Selecting a mark is somewhat like writing a haiku.<sup>[29]</sup> But rather than having the luxury of expressing a feeling or concept in 17 syllables, the trademark specialist must often embody in a single word or even a single syllable the thoughts, feelings, and meanings that will connect a company and its products to millions (even billions) of consumers, motivate company personnel, and symbolize the good will acquired by the company.

Finding the right mark is typically a journey through trademark databases; English and foreign language dictionaries, including Latin and Greek dictionaries; lists of fictional characters; atlases; religious and classic literary texts; and a whirlwind of synonyms, antonyms, heteronyms, homonyms, acronyms,

acronyms,<sup>[30]</sup> and tautonyms, all in a quest for that magic word or phrase, that commercial mantra, which will embody the company's aspirations. Though some words are drawn from a bag like Dada poetry, the vast majority emerge after months of highbrow sweat. After all, trademark selection is an intense expression of aesthetic distillation, for unlike the literary author the trademark or branding professional is not creating a universe out of thousands of words but rather discovering a portal into a world of commerce, perhaps with only a single word.

### **10. Aesthetic and Non-Aesthetic Trademarks**

This article promotes the notion that trademarks and trademark selection have an aesthetic dimension, especially because of the semantics of trademarks by way of their constituent letters and morphemes and their literary, historical, folkloric, mythological, religious, and other associations. But can trademarks be analogized to traditional aesthetic objects which give pleasure in their apprehension, not just to their owners and to trademark professionals? On occasion the answer is yes. In some commercial fields trademarks have become more than symbols which guarantee product quality but rather iconic objects of desire, though trademarked designs and shapes attain this distinction more frequently than words. Sometimes people buy a garment displaying a dull mark just because the mark guarantees quality, but today many clothing purchases are instigated by the mark's qualities rather than by its promise of product quality. For instance, in buying a NIKE cap or shirt the customer typically does not scrutinize the product's quality in comparison to competing products but rather values the expression the NIKE symbol will convey. Often a word mark is virtually the sole reason for a purchase as with the successful clothing mark NO FEAR whose literary content alone sold millions of garments. As one commentator noted, in many instances the consumer is tasting the trademark more than experiencing the product.<sup>[31]</sup> Or as Mark Twain characterized a cigar smoker, "He goes by the brand, yet imagines he goes by the flavor."

Many of the marks mentioned here represent triumphs of trademark lore, including marks that hark back to ancient Rome or Greece (MIRAMAX, NIKE), are extracted from famous literary works (STARBUCKS, YAHOO!), or remotely echo folklore or children's songs and stories (MCDONALD'S, JACK IN THE BOX). With such marks aesthetic issues stand out even if the marks themselves do not rest on an aesthete's pedestal.

But what about the myriad word marks that are only the dust and fluff of commercial history? After all, not every word mark has the aesthetic richness of a foamy GILLETTE shaving cream; some marks, even successful ones, have an aesthetic dimension no thicker than GLAD wrap. JOHNSON'S, a strong mark for household and baby products, hardly resonates. Sometimes famous marks owe their success not to the word but rather to stylization or other qualities, for where the mark's literary aspects do not sparkle or inspire, the lifeless word can be resurrected with colored stylized letters or the magic incantations of brand themes and promises.

And, of course, marks boasting negligible aesthetic merit can

still inspire customer loyalty and motivate employees. The difference between the aesthetically rich mark and its equally successful humdrum cousin is simply that the aesthetically rich mark is like a catalyst or hot knife through butter: It takes a lot less effort and expense to achieve fame and fortune with such a mark because the mark does much of the work, like a title or cover helping sell a book.

### 11. Titles vs. Trademarks

Trademark selection bears similarities to titling a work of authorship, and occasionally a title may become a trademark, though trademark protection is not available for the title of a single work of authorship,<sup>[32]</sup> be it literary, musical, or artistic.<sup>[33]</sup> Similar to the title, a trademark identifies the products, although by source and origin; sometimes expresses the producer's intentions regarding the products; and occasionally reveals something about the products, if only providing hints, allusions, or metaphors.<sup>[34]</sup> Most importantly, by capturing the imagination and interest of consumers, the trademark, like the title, helps sell the product. ROLLS-ROYCE and BENTLEY sell luxury cars, while MUSTANG and CIVIC do not; similarly, had *War and Peace* been called *War*, *What is it Good For?*<sup>[35]</sup> or the "Pastoral" Symphony been known as the "Country Life"<sup>[36]</sup> Symphony, the glow of these works would have been dimmed. (Fortunately, great authors have the sense and sensibility to title their works appropriately.)

Another similarity is that, like Chinese boxes, both titles and trademarks can "contain" others of their kind: the titled work of authorship can contain other titles, and the brand name can subsume other brand names for products lower in the chain of production.<sup>[37]</sup> For instance, with titles, "Hamlet" contains the play "The Murder of Gonzago," and Poe's short story "The Fall of the House of Usher" mentions the "Mad Trist" book and includes "The Haunted Palace" poem; with trademarks, the PROCTOR & GAMBLE house mark<sup>[38]</sup> embraces the CREST product mark (for toothpaste), which in turn contains the FLUORISTAT ingredient mark (for its fluoride ingredient). Of course, the aesthetic relationship between subsumed trademarks is often more important than that between contained titles, since a literary author need not fret over naming an interior work, but a branding agent creating a "brand architecture"<sup>[39]</sup> must often ensure that subsidiary brand names meaningfully relate to the principal ones.

Formerly, trademarks were creatures of the real world, identifying real sources of real products, while literary titles could exist in nested universes of fiction, like the titles of works by Pierre Menard, Jorge Luis Borges' fictional character who recreates *Don Quixote* verbatim. But with the advent of online virtual universes, like the 3-D "Second Life" virtual world, trademarks like titles can permeate fictional realms. Real world trademarks can migrate to virtual worlds and vice versa, and virtual world trademarks can identify fictional sources of make-believe products.<sup>[40]</sup>

Nevertheless, numerous differences separate trademarks and titles. Trademarks like titles are adopted to affect consumer choices, but trademarks also provide continuing motivation and inspiration for the producer, its managers, workers, and sales force. As symbols designating products' source or origin,



trademarks can change over time to adjust to changing fashions, e.g., via nicknames (CHEVY for CHEVROLET) and other abbreviations (KFC for KENTUCKY FRIED CHICKEN), whereas titles, as signs that identify specific works, typically remain the same. Titles and nicknames given to works of authorship are typically bestowed by the author but may sometimes be conferred by publishers, publicists, reviewers, and the general public, as were most of the twenty-nine nicknames for Haydn symphonies such as "Hen," "Clock," and "Military." However, trademarks are more the creations of the producers, except in rare cases where the public coins a catchy nickname like HOG (for a HARLEY-DAVIDSON motorbike), BUG (for a VW car), or PG (in lieu of PRE-GEST-TEE for tea).

Titles are signposts for the aesthetic universes they identify, whereas trademarks are symbols for the sources of products they bedeck. Titles in their identifying function may very well be descriptive even if imaginative, such as *Crime and Punishment* and *"Eroica,"* but good trademarks in their symbolic function eschew descriptiveness to avoid losing power and protection.

Trademarks must remain viable tools for ongoing branding, including development of associations, feelings, values, histories, and themes that add meaning to a brand name. And because trademarks are the aesthetic gateway to an evolving commercial relationship between company and customers, they must be more resonant, adaptable, and deep-rooted than titles. In fact, a title need hardly have any such qualities to succeed and may often embody only the character name or subject matter, as exemplified by *"The Merchant of Venice,"* *"Romeo and Juliet,"* *Emma,* and *The Tenant of Wildfell Hall.* Whereas amusing titles often succeed, as with *Real Men Don't Eat Quiche* or *Men Are from Mars, Women Are from Venus,* trademarks containing amusing parodies, puns, or palindromes, as per CHEWY VUITON for dog products (mimicking LOUIS VUITTON) or VICTOR'S LITTLE SECRET for adult products (echoing VICTORIA'S SECRET), seldom prosper; rather the trademark usually succeeds by subtlety even with marks that seem banal.

Finally, one other distinction divides trademarks and titles. Some trademarks have an extra dimension to express consumers' aesthetics. Typically, reading is a private affair and average consumers are not "branded" by the books they read, but to carry a PRADA purse in public is a different experience from carrying a store brand one; the same is true of flourishing a VISCONTI pen rather than a BIC at a business meeting. With trademarks, particularly for luxury goods, clothing, and accessories, the word selected is often designed to brand the customer, something a literary author would seldom attempt in titling a book.

## **12. Conclusion**

For companies, trademarks generate revenue and commercial value, and for consumers they guide and often inspire every imaginable purchasing decision. Yet trademarks are not just catchwords of commerce. They may also be products of intellect, intuition, and artistry—in some cases emerging as the cultural icons of our day. Thus, they represent a fertile field for

aesthetic analysis and commentary, so that trademark selection and development should not merely be seen as a branch of advertising but also as an aesthetic process worthy of scholarly consideration.

This article has only considered alphanumeric Roman alphabet "word marks" without regard to stylization or transliteration. If such restricted subject matter can generate a meaningful discussion of aesthetic issues, then a foray into fonts, colors, capitalization, and other alphabets and scripts would further demonstrate how aesthetically rich word marks can become. And the issues would become more entrancing if we considered trademarks consisting of sounds, scents, live plants and animals, holograms, stitching patterns, building shapes, and a host of other unusual devices. Thus, perhaps this discussion will encourage others to explore the aesthetics of trademarks by applying some of the concepts advanced here to other alphabets and scripts and by expanding the discussion beyond this article's limited trademark subject matter.

Hopefully, this article will also reinforce the notion that aesthetic discourse can benefit from expanding beyond the fine arts to the seemingly mundane things that surround us in everyday life. Aesthetic discourse regarding trademarks and other commercial devices is particularly important because these ubiquitous devices influence how we appropriate, use, consume, and enjoy the abundance of the modern world, which in turn has profound economic, environmental, social, and political consequences. If we swim in an ocean of aesthetic objects, we may want to appreciate not only the ocean's most colorful flora and fauna but also the plenitude of other creatures which nourish them.

### Endnotes

[1] Compare definition at Title 15 *United States Code* § 1127.

[2] Registered in Britain in 1876, the BASS triangle design containing the BASS word was the world's first registered trademark.

[3] The first scent registered at the USPTO was a floral fragrance reminiscent of plumeria blossoms, used for thread and yarn, U.S. Registration No. 1,639,128, issued March 26, 1991.

[4] Since "property" represents a set of legal relationships between people as to the use, enjoyment, and disposition of a thing, "intellectual property" (IP) also represents a set of legal relationships, but the "thing" affected by IP is the entire material universe. See Karlen, Peter H., "Worldmaking: Property Rights in Aesthetic Creations," *Journal of Aesthetics & Art Criticism* 45 (1986), 183, which defines IP in aesthetic creations. IP in trademarks is also a set of legal relationships regarding management of the material universe, but with the purpose of controlling cognitive experiences of symbols, namely symbols of business good will. The dimensions of such cognitive experiences are a trademark's sound, appearance, and meaning. By "good will" we refer to the feelings, perceptions, and attitudes of all cognitive beings in relation to the trademark owner and its products and the potential for such feelings, etc. to generate interest in those products.

Copyrights and patents, other forms of IP, are granted to ensure progress in the arts and sciences (Article I, Section 8 of the U.S. Constitution). But IP in trademarks primarily assures consumers of the source, authenticity, and quality of trademarked products.

[5] See Interbrand's brand rankings and values under Best Global Brands at [www.interbrand.com](http://www.interbrand.com), which for 2007 showed COCA-COLA at \$65.3B; MICROSOFT, \$58.7B; IBM, \$57.1B; and GE, \$51.6B.

[6] Bouchoux, Deborah E., *Protecting Your Company's Intellectual Property: A Practical Guide to Trademarks, Copyrights, Patents & Trade Secrets* (New York: Amacom, 2002), p. 4. "The marks are found on the clothes they wear, on the packaging for the foods they eat, on the cars they drive, and in the ads they encounter in magazines and on the radio and television."

[7] According to Interbrand's listings at [www.interbrand.com](http://www.interbrand.com), American and British brands constituted 58 of the world's 100 most valuable brands in 2007.

[8] See note 15 *infra* and accompanying text regarding transliteration. Consider, for example, the implications of word marks appearing in the three kinds of Japanese scripts, Kanji characters of Chinese origin, the Hiragana syllabary, and the Katakana syllabary.

[9] See Title 15 *United States Code* §1052(f) on registration of descriptive marks having secondary meaning. "Secondary meaning" is the additional significance a word or other device achieves as an indication of source or origin, in contrast to its primary significance as descriptive or other non-distinctive subject matter.

[10] See, e.g., Gantner, F., Schweiger, Schlander, M., "Naming, Classification, and Trademark Selection: Implications for Market Success of Pharmaceutical Products," *Drug Information Journal* 36 (2002), 807, 819.

[11] "Memetic" is an adjectival form of "meme," a cultural item transmitted by repetition in a manner analogous to the biological transmission of genes, per Dawkins, Richard, *The Selfish Gene* (Cambridge: Oxford University, 1976).

[12] A "rebus" is a combination of pictures, symbols (e.g., letters and numerals), or both, which represents the sounds of a word or word combination. "I see you" could be represented by a rebus comprised of images of an eye, a sea (or the letter C), and a ewe (or the letter U).

[13] A "chiasmus" is a classic literary and rhetorical device exploiting reversal, epitomized in Samuel Johnson's review of a young man's work: "Your manuscript is both good and original; but the part that is good is not original, and the part that is original is not good." Compare Abe Lincoln's kinder review: "People who like this sort of thing will find this the sort of thing they like."

[14] See Tushnet, Rebecca, "Gone in 60 Milliseconds: Trademark Law and Cognitive Science," *Texas Law Review*, 86 (2008), 507, explaining the importance of quick recognition.

[15] "Transliteration" is a mark's conversion into another script or alphabet, usually with the converted mark mimicking the original in sound, meaning, or both. For example, SONY is transliterated into Chinese characters that sound like "suo ni," which mean "cable" ("suo") "nun" ("ni"), not snazzy but not ludicrous either. SHELL is conceptually transliterated into Chinese characters as "bei ke" which means "shell," while COCA-COLA is transliterated both phonetically and semantically into Chinese as "ke kou ke le," meaning "tasty and happiness producing."

[16] "In English articulation, [a consonant is] a speech sound produced by occluding with or without releasing (p, b; t, d; k, g), diverting (m, n, ng), or obstructing (f, v; s, z, etc.) the flow of air from the lungs." See definition at [www.dictionary.com](http://www.dictionary.com).

[17] The energetic qualities of a consonant in a word's middle may depend on the stress of the syllable that contains the consonant and on whether the consonant starts or ends a syllable. This notion is illustrated with marks like HEALTHYSELF and BLUESTONE which have two or more possible pronunciations. E.g., the T has different energetic qualities in BLUE/STONE, BLUES/TONE, and BLUEST/ONE.

[18] An example is the Marxian comparison of the stronger, more dialectical reflection of class society in Balzac than in Zola. See Marcuse, Herbert, *The Aesthetic Dimension* (Boston: Beacon Press, 1978), pp. x, 25.

[19] "Pre-emergents" are seedlings before they appear above ground.

[20] Karlen, Peter H., "Aesthetic Quality and Art Preservation," *Journal of Aesthetics & Art Criticism* 41 (1983), 309, 319-20.

[21] Sharpe, R.A., "Could Beethoven Have 'Discovered' the Archduke Trio," *British Journal of Aesthetics* 41 (2001), 325. Cf. Dodd, Julian, "Musical Works As Eternal Types," *British Journal of Aesthetics* 40 (2000), 424; Walhout, Donald, "Discovery and Creation in Music," *Journal of Aesthetics & Art Criticism* 45 (1986), 193.

[22] Marcel Duchamp (1887-1968) created the "readymade," the extant object (e.g., urinal or bicycle wheel) transformed into "art" by being exhibited as such.

[23] A "pangram" is a phrase, sentence, verse, etc. that includes all the alphabet's letters, such as "The quick brown fox jumps over the lazy dog."

[24] See Cox, Renée, "Are Musical Works Discovered," *Journal of Aesthetics & Art Criticism* 43 (1985), 367, 369-73, citing Bergson for the proposition that "only closed [i.e., finite] systems and their aspects exist before they enter the temporal world."

[25] There are approximately  $2.5 \times 10^{116}$  forty-move chess games, 36 orders of magnitude greater than the number of atoms in the universe,  $10^{80}$ . For chess magnitudes, see Humble, P.N., "Chess as an Art Form," *British Journal of Aesthetics* 33 (1993), 59, 62.

[26] See Karlen, Peter H., "Legal Aesthetics," *British Journal of Aesthetics* 19 (1979), 195, 198-99 for discussion of legal protection extended to works reflecting order or randomness.

[27] "Sound symbolism or phonosemantics is a method of linguistics analysis derived from the idea that individual vocal sounds in the form of phonemes have meaning in themselves.

[28] Moreover, the juxtaposition of MICRO and SOFT departs from the practice of combining words or morphemes from the same linguistic source. MICRO is derived from Greek, while SOFT comes from Old English. Unmatched socks like PIZZA HUT and RADIO SHACK have thrived but are anomalies; cousins like PIERRE CARDIN and JENNY CRAIG are preferred.

[29] As Hegel said, "Poetry, then, is the universal art of the spirit which attained inner freedom, and which does not depend for its realization upon external sensuous matter, but expatiates only in the inner space and inner time of the ideas and feelings." Hegel, G., *Introduction to the Philosophy of Art* in Lowenberg, J., *Hegel Selections* (New York: Charles Scribner's Sons, 1929), p. 336. If so, haiku and similar abbreviated literary forms would represent an even more laconic, purer form of expression. And the fanciful mark, like a meaningless mantra, more purely expatiates itself in the inner space and time of ideas and feelings.

[30] A "bacronym" is a phrase or other word combination constructed after the fact from an abbreviated expression. For example, "All Day I Dream About Sports" is a bacronym from ADIDAS.

[31] See Rebecca Tushnet, op. cit. note 14 supra where the author mentions COKE vs. PEPSI taste tests in which unblinded tasters preferred COKE over PEPSI while blinded tasters preferred PEPSI.

[32] A "work of authorship" in legal terms is a creative work in any medium of expression. See, e.g., Title 17 *United States Code* § 102(a).

[33] See U.S. Patent & Trademark Office, *Trademark Manual of Examining Procedure* § 1202.08, barring registration of a single work's title but allowing registration of a series title.

[34] See Symes, Colin, "You Can't Judge a Book by Its Cover: The Aesthetics of Titles and Other Epitextual Devices," *Journal of Aesthetic Education* 26, 3 (1992), 17. Cf. Levinson, Jerrold, "Titles," *Journal of Aesthetics & Art Criticism* 44 (1985), 29.

[35] Words from a Temptations pop song and from a "Seinfeld" television comedy routine.

[36] A plausible title that reflects how Beethoven described the work's segments, even using those words in his sketchbooks.

[37] See Livingston, Paisley, "Nested Art," *Journal of Aesthetics & Art Criticism* 61 (2003), 233.

[38] A "house" mark symbolizes an entire business or product line, a product mark is associated with a particular product, and an ingredient mark accompanies a product component.

[39] "Brand architecture" is the structure and interrelationships of brands owned by one person or entity.

[40] With real world and virtual world trademarks invading each other's universes, the multi-universe role of trademarks has emerged. See "IP and Business: Second Life—Brand Promotion and Unauthorized Trademark Use in Virtual Worlds," *WIPO Magazine* (November 2007) at [www.wipo.int/wipo\\_magazine/en](http://www.wipo.int/wipo_magazine/en).

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