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the service so denoted, though it presumably would convey a culturally positive connotation).⁷

Within the law, the likelihood of linguistic confusion of two trademarks is considered from the perspective of the three criteria of (1) sight, (2) sound, and (3) meaning. The testimony of linguistic experts has generally been restricted to the core issue of likelihood of confusion of two marks based on spelling (with respect to “sight”), phonology (with respect to “sound”), and lexis, morphology, syntax, and (sometimes) discourse context (with respect to “meaning”); pragmatic aspects of lexis such as hyponymic/hypernymic relationships are sometimes considered as well; sociolinguistic variation in lexis and pronunciation are sometimes also relevant. However, semiotic issues that bear upon the similarities and differences of competing trademarks have only relatively rarely been the subject of expert linguistic testimony. For example, in the pharmaceutical firm case involving the trademarks *Aventis* and *Advancis*, I testified with respect to the effects on speakers of American English of pronunciation, spelling, and denotative and connotative meaning (Butters 2008b), but the attorneys with whom I was working cautiously asked me to confine my discussion to those aspects of “sight” involving the traditional linguistic category of orthography, omitting from discussion whatever contribution the logos of the two firms might make to the likelihood of confusion of the two marks.⁸ In only a few cases have I touched on semiotic issues—for example, as noted above, I discussed how the use of distinguishing colors and shapes bearing resemblance to US Interstate Highway System markers differentiated the public representation of the trademarks of in *CarMax v. AutoNation USA*.

With respect to strength of mark, again, the linguist’s work in this area falls well within the traditional linguistic areas of lexicography, lexicology, semantics, and pragmatics, and I have consulted in a number of cases concerning, for example, the strength of such terms as *steakburger*, *kettle chips*, and *zinger*. However, the use of semiotic material (involving, e.g., packaging images and logos) has rarely been a concern in my reports (but see Butters [2007b, 35] which uses semiotic material in establishing the genericness of with *kettle chips*).

⁷A special kind of arbitrary mark is known as fanciful; this is the category of made-up words (coined with no previous meaning in the language), for example, *Advanton* as the name for a delivery service. For detailed discussion of strength of mark issues, see Shuy (2002), Butters (2007a, b, 2008a, b, 2010), Butters and Westerhaus (2004), and Butters and Nichols (2009).

⁸If they wish to place such semiotic evidence before the court, attorneys sometimes consult “marketing experts,” who are often associated with university schools of business and rely on a methodology that, at least ultimately, may be grounded in empirical psychological principles. Again, this traditional division of labor reflects the general conservatism of the legal system, which divides up areas of expertise in large part based on precedent. I take the position here, in this discussion, that the theoretical framework and methodology of linguistic/semiotic analysis is as rigorous as that of “marketing”; indeed, the judgments that marketing experts make are in fact semiotic judgments, though such experts generally do not reference semiotic (or, for that matter, linguistic) methodologies.

Fig. 13.2 McDonald's "golden arches" logo and word trademarks



Fig. 13.3 Apple's "apple-with-a-bite-out" logo trademarks



In trademark law, however, businesses may assert a proprietary interest in nonlinguistic signs as well as linguistic ones. For example, McDonald's, the fast-food chain, owns not only the name *McDonald's* but also (and with an equal force of law) the well-known "golden arches" symbol (a distinctively colored and curved rendition of the letter *M*) that is displayed on their restaurant signage, in advertisements, and on product packaging (see Fig. 13.2). Similarly, Apple Computers have proprietary rights not only to the word *Apple* (as it applies to computers and related goods and services) but also to the company's familiar apple-with-a-bite-out-of-it symbol (see Fig. 13.3).

Such logo trademarks—semiotic names for the products and services that they identify—are subject to the same kinds of constraints and rules as their

purely linguistic counterparts. For example, one cannot have basic trademark rights to a symbol that is associated with the product that it is being used to market. Thus, a fruit seller could not per se prevent others from using an image of an apple on a fruit box. Moreover, McDonald's (arguably) could not prevent another hamburger company—one named, say, Mom's—from also using a distinctive letter "M" as a commercial mark, so long as Mom's "M" and McDonald's "M" were different enough that consumers would not be likely to confuse the two marks.⁹ Even semiotic symbols that are figuratively related to the trademark are not necessarily proprietary. For example, *Michael Jordan Nissan* is the name of an automobile dealership owned by the famous former professional basketball player, Michael Jordan; the dealership currently makes use of the image of a basketball as a part of the visual display of the name *Michael Jordan Nissan* in television advertising, reminding purchasers that this "Michael Jordan" is the well-known and admired basketball-playing athlete. The dealership, however, could find it difficult to use trademark law to prevent other basketball-player-owned automobile dealerships from merely using a basketball to similar ends in their television advertising, so long as the intent did not seem to be to confuse the public as to ownership or play on Michael Jordan's good name and the business reputation of his dealerships. Arguably, a simple image of a basketball could not very likely be considered the exclusive property of Michael Jordan or Michael Jordan Nissan.

Moreover, certain signs have particular meanings that are not associated with any particular commercial source, but are generically related to a type of industry, service, or product—for example, the red, white, and blue striped barber pole (see Fig. 13.4). Signs such as the barber pole are the semiotic equivalent of common nouns rather than names—no one can own the rights to such semiotic common nouns any more than one can own the rights to words like *automobile* or *barber shop*.

At the end of my research for my report in the checkerboard case that is the focus of this chapter, I concluded that the checkered pattern is much the same sort of semiotic generic noun that the barber pole is, having identifiable meanings that invoke specific types of businesses—associations that are, in effect, the pattern's generic meanings.

Moreover, because the meaning is generic with respect to the industries in which it was employed by the defendant and the plaintiff, there can be little likelihood of confusion between two products bearing the image—at least not based upon the use of the checkered pattern alone.

⁹Of course, Apple's particular rendition of an apple as well as McDonald's distinctive golden-arches image (or, for that matter, Mickey Mouse's ears) may be distinctive enough and famous enough that Apple, McDonald's, and Disney could prevent, say, marketers of fruit, bridge-construction services, or hearing aids from using that particular version of an apple, an "M," or stylized ears (if only because such usages could be prevented on the grounds that they "diluted" the famous mark; see Butters 2008a).

Fig. 13.4 Generic image of barber pole



13.4 Forensic Linguistic Semiotic Analysis: The Checkerboard Case

In the case discussed here, one party claimed trademark rights to the checkered pattern itself,¹⁰ which it had incorporated into its advertising and product packaging for various kinds of cleaning products, as indicated in an image taken from the Hillyard website (see Fig. 13.5).¹¹

The defendant, Warren Oil, at that time also incorporated the checkerboard pattern in its advertising and product packaging (see Fig. 13.6). Warren at the time of litigation had (and today maintains) a long-standing (hence incontestable) trademark registration that specifically incorporated the checkerboard pattern (even as it did not lay claim to the checkered pattern in and of itself).¹²

¹⁰ *Hillyard Enterprises, Inc., v. Warren Oil Company, Inc.*, No. 5:02-CV-329H(4) (E. D. of No. Car., W. Div. 2002).

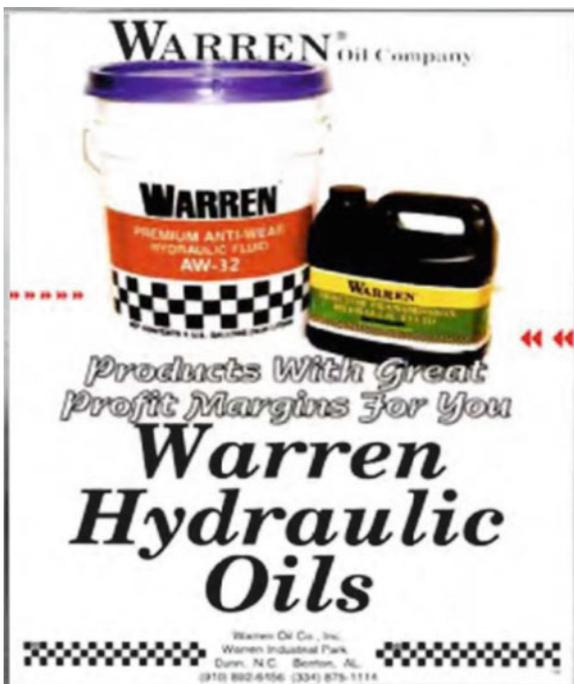
¹¹ See <http://www.hillyard.com/HillyardHome?asp?catind=1>, downloaded March 27, 2010.

¹² See <http://tess2.uspto.gov/bin/showfield?f=doc&state=4009:p6bn8n.6.1>. Accessed 25 Feb2011 (italics added to original): **Word Mark WARREN Goods and Services** IC 001. US 006. G & S: PRODUCTS NAMELY, BRAKE FLUID. FIRST USE: 19711107. FIRST USE IN COMMERCE: 19711107 **Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS **Design Search Code** 25.03.01 – *Checker board pattern; Checkerboard patterns* 26.11.11 – *Rectangles divided twice into three sections* 26.11.21 – *Rectangles that are completely or partially shaded* **Serial Number 73096117 Filing Date** August 9, 1976 **Current Filing Basis** 1A **Original**

Fig. 13.5 Hillyard’s use of checkerboard pattern (from website)



Fig. 13.6 Warren’s use of checkerboard pattern



Filing Basis 1A **Registration Number** 1117972 **Registration Date** May 15, 1979 **Owner** (REGISTRANT) WARREN OIL CO., INC. CORPORATION NORTH CAROLINA U.S. HIGHWAY 301 DUNN NORTH CAROLINA 28334 **Attorney of Record** Larry L. Coats **Description of Mark** THE DRAWING IS LINED FOR THE COLORS SILVER AND ORANGE, BUT NO CLAIM IS MADE TO COLOR. **Type of Mark** TRADEMARK **Register** PRINCIPAL **Affidavit Text** SECT 15. SECTION 8(10-YR) 20080624. **Renewal** 2ND RENEWAL 20080624 **Live/Dead Indicator** LIVE.

The legal issue, framed in semiotic terms, is this:

Can the checkered pattern function as a name in commerce—i.e., as a trademark? That is, can a simple checkered pattern be a semiotic proper noun having the special meaning of a particular company offering goods and services to the public?

That is to say,

Does the checkered pattern have general meanings that are well known to the public at large, meanings that would in the minds of relevant members of the public make basic checkered patterns semiotic generic common nouns (which therefore by definition cannot be trademarks)?

The case report that I prepared for Warren’s attorneys concluded on the basis of considerable empirical evidence that the checkerboard pattern has generic meaning relating the pattern specifically to¹³

Cleaning products
Automobile products and enterprises
Food products and services

Hence, I concluded, the checkerboard pattern in itself could not be a likely source of confusion between Hillyard’s products and Warren’s (in that they would denote to consumers the distinctive types of products rather than the product sources themselves). Moreover, even if Warren began producing cleaning products for the use of persons servicing and repairing automobiles—a new development at the center of Hillyard’s lawsuit against Warren—if the checkerboard pattern generically signaled “cleaning services,” it could not be argued that Hillyard had viable trademark rights to the pattern, since the meaning with respect to “cleaning products” is also generic.

13.5 Methodology

Checkered patterns come in various sizes and shapes and colors, and for millennia they have been an ornamental design feature of various artifacts having no apparent other semiotic meaning that I have identified. Dictionaries also define *checker* as a term without meaning apart from a description of what the checkerboard pattern looks like, that is, “a pattern of squares, typically alternately colored” (*New Oxford English Dictionary* (NOAD 2001), hereafter *NOAD*). The pattern is so commonplace that one can even create a checkered pattern using a computer, as I did in typing the title of this chapter onto the manuscript. Mere ornamental application, however, is far from the only use of checkered patterns in contemporary life.

¹³ This study is, however, limited to uses within the commercial culture of the United States. Other cultures, even among English-speaking nations, assign different meanings to the pattern. For example, in Australia, black-and-white strings of squares are found on the hats of police officers and on the sides of police cars. Cross-cultural confusion can result from these different meanings—if, for example, an Australian visiting New York tried to enlist a taxi driver to help with a mugger or an American in Sydney attempted to hail a taxi by stepping into the street and waiving at a police car (as nearly happened to this author).

The first step that the lexicographer takes in studying meaning is to examine the results of previous research, in dictionaries of record. This may not always be very revealing in pursuing semiotic interpretation, but certain generic meanings of the checkerboard pattern are so common that dictionaries do in fact offer indications of what it means. According to *NOAD*, a chessboard is a square board divided into 64 alternating dark and light squares, used for playing chess or checkers. *NOAD* also notes an additional generic meaning in its entry for “checkered flag: 1 n. *Auto Racing* a flag with a black and white checkered pattern, displayed to drivers as they finish a race. 2 victory in a race.”

Thus, on the basis of dictionary definitions alone, it is clear that (1) the checkerboard pattern is culturally significant and (2) it is associated with automobiles through automobile racing (as well as the board games, checkers, and chess).

But dictionary definitions alone are not sufficient for trademark analysis. One reason for looking beyond dictionaries is simply that dictionary definitions give only minimal information about the cultural meaning of the words that they define; moreover, the information that they do give generally treats all meanings, including even surviving etymological meanings, as of relatively equal importance.¹⁴ The next step is to employ the same methodology that lexicographers use in studying names and common nouns: gathering together a corpus of examples of actual use of the form in question and then looking for patterns in the data.¹⁵ As noted above, my corpus of advertising and product labeling identified three primary semantic fields into which the vast majority of the examples in my data set fell.

13.5.1 Meanings Related to Automobiles

The first semantic category, that of automotive products, especially automobile racing, is suggested by the checkered flag entry in *NOAD*. At the beginning of my research, as a sort of informal pilot study, I asked one of my classes (a small seminar) what the checkered pattern means to them. (I did this by simply showing them the black- and-white pattern shown in my title.) Very few of the students had any immediate response at all (unlike what I assume would have been their response to the barber-pole image, the Apple logo, or a stylized drawing of Mickey Mouse’s ears). But among those students who did respond, the most frequent answer was “NASCAR” (an acronym for “National Association for Stock Car Auto Racing”).¹⁶ The checkered flag is commonly employed by NASCAR in their advertising, as is depicted in the image shown in Fig. 13.7.

¹⁴For example, the generic “game” meaning of *checkerboard* is at best a minor aspect of the meaning represented in commercial use.

¹⁵Lexicographical methodology in large part involves the surveying of large samples of printed material from which definitions are inductively constructed. In the empirical science of dictionary making, lexicographers amass data drawn from the ordinary speakers’ and writers’ actual use of the language. See Butters (2007a, 2008a, 2010) and Butters and Nichols (2009) for a further discussion of the use of dictionaries in forensic linguistic trademark analysis.

¹⁶<http://www.trinityrentals.com/images/checkered%20nascar2.gif>

Fig. 13.7 A NASCAR use of the checkerboard pattern



Fig. 13.8 Automobile dealer’s generic use of the checkerboard pattern

Space does not permit me to show here any others of the numerous uses that NASCAR makes of the black-and-white checkered pattern—all of which apparently stem from the use of the black-and-white checkered flag as a symbol of victory in auto racing. However, the range of the use extends beyond NASCAR and into advertising and product packaging for automobile-related products in general. Note, for instance, the business card shown in Fig. 13.8.

While the usage undoubtedly has an ornamental purpose, its incorporation into the logo of an automobile dealership is just one instance among a multitude in which the pattern is used in connection with automobiles, both referencing and reinforcing the meaning of the pattern in everyday American life.

The “victory” meaning assigned to the checkered flag entails “superiority”—a meaning that is used quite frequently in the association of the checkered pattern with various automotive products and services as well as the Warren Oil image shown earlier in this chapter (see Figs. 13.9, 13.10 and 13.11). Similarly, the Checker Motors Corporation of Kalamazoo, Michigan, manufactured “the Checker Taxi,” and “Checker Taxi” was a taxicab business in Chicago early in the twentieth century. Taxicabs in various cities make use of the checkered symbol—New York City, for example

Fig. 13.9 Sheetz premium motor oil use of checkerboard “victory flag” pattern



Fig. 13.10 Advance AutoParts use of checkerboard “victory flag” pattern



(see image below). This related association of the checker pattern is as a symbol for taxicabs, while very likely a historical accident is nonetheless one that certainly reinforces the “automotive superiority” meaning of checkers (see Fig. 13.12).¹⁷

¹⁷ Current New York City yellow cabs make use of a stylized version of the traditional checkered pattern; the image begins as full checks and thins to round-edged dots. A similar stylized “disappearing” version of the classic taxicab pattern is seen in the logo of the Chapel Hill automotive dealership shown in Fig. 13.8.

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Not valid with other offers. One Coupon Per Customer. Percent of One of six. EXPIRES 12/31/03

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Fig. 13.11 Cottman Transmission use of checkerboard “victory flag” pattern



Fig. 13.12 Classic yellow taxi displaying checkerboard pattern

My research has generated an enormous corpus of data featuring the automotive uses of checkerboard patterns in commercial advertising, labeling, and packaging. Clearly, the appearance of the pattern in connection with automotive products and services cannot signal to American customers any particular company. As a sign, it is semiotically generic. Warren Oil’s use of the pattern in identifying its automotive-related products was simply a reference to this generic meaning.

Fig. 13.13 Hillyard soap dispenser displaying checkerboard pattern



13.5.2 Meanings Related to Cleaning Products

The plaintiff, Hillyard, makes use of the checkered pattern not only in packaging and advertising but also even on the soap dispensers that it places in public restrooms, as in the image shown in Fig. 13.13. An examination of product advertising, however, indicates that there are numerous cleaning products that make use of the pattern as well. For example, Pro brand paint thinner and spill cleaner has the package label shown in Fig. 13.14.

This use of the pattern seems to have its origins as a representation of, and reference to, wall and bathroom tile, as suggested by Fig. 13.15.

The checkerboard pattern is even frequently incorporated as an ornamental design feature into such cleaning products as towels (as shown in the packaging of the kitchen towels shown in Fig. 13.16).¹⁸

As was the case with the automotive use of tile patterns, the images depicted here are but a very few of a genuine multitude that I found in my research. The conclusion is clear: the checkered pattern is polysemous: it means not only “automobiles” but also “cleaning products.” Just as Warren’s use of the pattern is generic for the automotive products that it offers for sale, so, too, is Hillyard’s use of the pattern generic for the cleaning products that it markets. Furthermore, given the association

¹⁸ See <http://www.etsy.com/listing/54726702/black-and-white-checkered-dish-towels>. Accessed 25 Feb 2011.



Fig. 13.14 PRO paint thinner displaying checkerboard pattern

Fig. 13.15 Tilex Mildew Remover cleaning product displaying checkerboard pattern



of checkers with the commercial category to which the products belong, there is little likelihood of consumer confusion based on the repetition of the checkered pattern as to the source of the products of two companies.

Fig. 13.16 Packaging for Terry Kitchen Towels displaying checkerboard pattern



13.5.3 Meanings Related to Food and Eating

Although the final meaning of the checkerboard pattern had no relevance to the legal proceedings for which my services were engaged, my research determined a third generic meaning for the pattern: “food and restaurants.” Again, space does not permit even a small portion of the examples that my research revealed, but the examples in Figs. 13.17, 13.18 and 13.19 suggest the range of material available.

Why a checkered pattern should be associated in general with the food industry is an open question, though the fact that many of the occurrences that I found in my data formed red and white patterns suggests that the use stems from the culturally prominent association of red-and-white checkered tablecloths with informal restaurants and home-kitchen dining in the earlier part of the twentieth century (and perhaps earlier).

13.6 Conclusion

It is important to stress that virtually every example that I found of checkered patterns in commercial use falls into one of the three categories discussed in this chapter. In a few other uses found in my data, it seems clear that the pattern is used simply



Fig. 13.17 Café advertisement (mailed flier) displaying checkerboard pattern

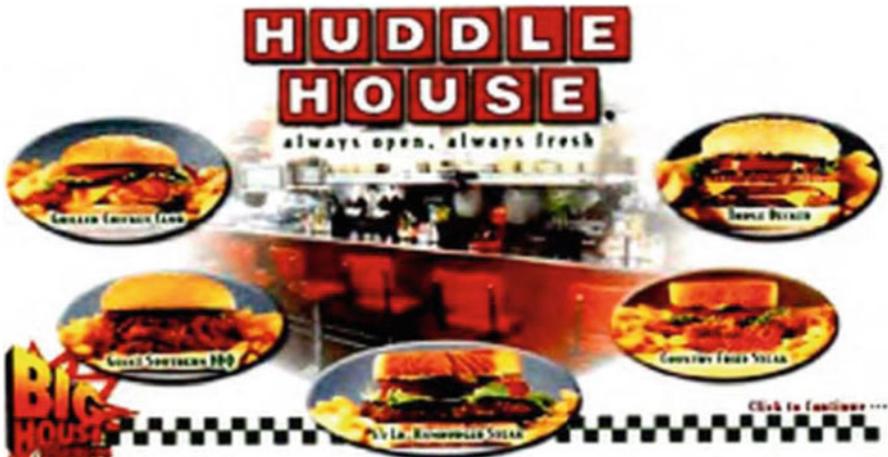


Fig. 13.18 Newspaper restaurant advertisement displaying checkerboard pattern

as ornament, with little semiotic lexical-like meaning or with a transferred meaning (as in the frame surrounding a furniture-store advertisement, wherein the pattern might conceivably be taken to suggest the parquet ornament found in expensive furniture and flooring). Banks do not use checkered patterns. Office supply stores do not use checkered patterns.

Given the widespread use of the checkered design and its limitation to just a few semiotic environments, it seems clear that checkerboard signs per se are “generic” in their reference. This is not to say that specific, unique renditions of checkerboard motifs might not be proprietary, protectable semiotic proper nouns, particularly in semiotic environments where they are unusual. Nor should the conclusion that the pattern has semiotically definable generic meaning be taken to imply that checkers could not be incorporated into a trademarkable logo that could in itself be



Fig. 13.19 Packaging for frozen foods displaying checkerboard pattern

proprietary—as in the logo shown in the Warren Oil trademark application duplicated above (Fig. 13.6). But for such things as automobiles, fast food, and cleaning products, simple checkered patterns are semiotically generic, having the effect of common nouns that name the thing itself, not a particular brand of thing.

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Chapter 14

A Multimodal Social Semiotic Approach to *Shape* in the Forensic Analysis of Trademarks

Christian Mosbæk Johannessen

Abstract This chapter addresses the lack in explicative power of the forensic analysis of trademarks in the *assessment of likelihood of confusion* between colliding trademarks faced with cases in which the stylistic rendition of the marks is the decisive factor. The chapter analyses the assessment of likelihood of confusion and concludes that legal doctrine regards the event of trademark perception as mainly psychological. The chapter proceeds to examine the productivity of regarding the event as social as well and proposes a grammatical approach to describing the stylistic rendition of trademarks.

14.1 Introduction

This chapter seeks to discuss possible applications of a multimodal social semiotic approach in the forensic analysis of trademarks in trademark collision cases. Trademark doctrine is a highly evolved and extremely well-established legal discipline. But, as the chapter will point out, the *assessment of likelihood of confusion*, as trademark professionals call the forensic comparison of marks, currently lacks explicative power towards a particular kind of cases in which the stylistic rendition of the marks is the decisive factor. The chapter will point out the nature of the problem and suggest a tentative descriptive framework for graphic form, which can hopefully aid in amending it.

Most of what has been written on the subject of trademarks in literature on marketing, branding, graphic design and trademark doctrine leads us to think about trademarks as *symbols* or *signs* in the sense that they *stand for* a company or product

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Fig. 14.1 The opposer (*left*) and applicant's (*right*) marks in *Apple Inc. v. NYC & Company Inc.*



or organisational entity in some way. This chapter acknowledges the status of the trademark as a sign in its own right, but seeks to understand trademarks as *comprised of signs* in order to gain a firmer grasp on the aspects of meaning, which are difficult to grasp analytically for people without training in graphic design. Further, the chapter proposes to regard graphic form in a way that rather resembles the linguistic principle of *double articulation* (Martinet 1967) or *duality of patterning* (Hockett 1958) and to use this insight – where applicable – to gain a stricter and more detailed understanding of how meaning is made in trademarks.

As a rule, trademark collision cases revolve around some shared aspect of meaning in the involved marks. The names of the company may sound similar or have similar meaning, or the marks may depict the same things or generally look similar. However, not all aspects of their meaning are understood equally well. It can be argued that this is because the actual event of perception of the trademark is regarded as psychological rather than social and because no suitable metalanguage has hitherto been developed to grasp stylistic aspects of meaning analytically.

In order to understand cases where graphic style is an important factor, the chapter must ask what counts as meaningful and how meaning comes about. Hence, the overall aims of this chapter is (1) to show that it can be productive to regard the event of trademark perception as a social event as well as psychological event and (2) to discuss the possibilities for establishing a metalanguage that can capture graphic style analytically. To aid in this undertaking, the chapter refers to two different trademark cases from different parts of the world.

The first case (Fig. 14.1) is *Apple Inc. v. NYC & Company* from the US Trademark Trial and Appeal Board. In this case, the consumer electronics manufacturer Apple Computers Inc. opposed against the registration of the GreenNYC logo as a trademark for an environmental campaign from the city of New York's mayor's office.

The second case (Fig. 14.2, next page) is *Dansk Supermarked A/S v. Net2Maleren* from the Danish Commercial and Maritime Court. In this case, Dansk Supermarked A/S, who owns a Danish chain of discount supermarkets called *Netto*, opposed against the registration and use of an infringing mark by a master painter from the town of Esbjerg. However different they may be, the two cases share one trait. They both revolve around device marks that have strikingly similar outlines. The two apples in *Apple Inc. v. NYC & Company* have outlines, which are close to exact matches except the leaves, stems and bite. The same can be said about the basket-holding terrier and collection of painting utensils in *Dansk Supermarked A/S v. Net2Maleren*. Casual observation reveals that both marks in the first case denote the same object, an apple.

Fig. 14.2 The opposer (*top*) and applicant's (*bottom*) marks in Dansk Supermarked A/S v. Net2Maleren



In the second case, however, they denote different objects: a terrier and painting utensils, respectively. One might be led to believe that the authorities would find the two apples similar and likely to cause confusion and the terrier and painting utensils dissimilar. But the outcome of the cases is in fact the reverse.

The chapter will inquire into these two cases and ask how it can be that one set of marks with almost identical outlines, which denote the same object, can be judged to be dissimilar when a different set of marks, also with almost identical outlines but which denote different objects, are judged to be confusingly similar?¹

One school of semiotics called *multimodal social semiotics* provides a theoretical framework for close analysis of visual texts that can account for the meaning potential of stylistic qualities of graphic form in great detail.

Accordingly, the overall point of view of the chapter is that of semiotics in general and multimodal social semiotics in particular rather than that of legal sciences, let alone the legal practice of any given country. The chapter fully acknowledges that the practical application of the suggestions presented here are likely to pose different challenges in legal contexts of different countries, but such matters of comparative law will not be addressed.

The following three sections prepare the ground for the chapter's discussion of a multimodal social semiotic approach to forensic analysis of trademarks: Sect. 14.2 gives a brief overview of the different ways in which semiotics have been brought to bear on trademarks in order to understand the very specific nature of trademark doctrine. Section 14.3 introduces the assessment of likelihood of confusion, which is the technical term for the way in which trademarks are compared in legal practice. Section 14.4 offers an analysis of the way trademark doctrine regards one of the cases of this chapter, *Apple Inc. v. NYC & Company Inc.* The following five sections discuss the problems outlined above and present a possible solution: Sect. 14.5 addresses some of the potential issues arising from close analysis in a forensic setting. They have to do with the distinction between synthesis and analysis as modes of inquiry. A solution to the problems is presented in Sect. 14.6, which proposes to

¹ Needless to say, from the point of view of legal doctrine, the above question makes no sense because different courts in different countries made the two rulings. However, the principles of semiosis do not conform to jurisdiction.

regard stylistic features of graphic form as doubly articulated. Section 14.7 presents multimodal social semiotics, which is the overall theoretical framework for the tentative descriptive scheme. The last two sections, Sects. 14.8 and 14.9, outline a distinctive feature approach to graphic form and apply it to our two cases.

14.2 The State of the Art of Trademarks in Semiotics

Many different professions have a keen interest in trademarks. Their function as signs has been the object of study for graphic designers, semioticians, marketing professionals and lawyers alike. Examples abound. From the realm of graphic design comes Mollerup's *Marks of Excellence* (1997), which has received great accolade. Also, a plethora of works on branding such as those of Heilbrunn (1997, 2001) and Floch (1995) present a management perspective on the semiotics of trademarks. As a final example, Beebe (2004) has written a very insightful semiotic account of American legal trademark doctrine.

These works all have a common cynosure based on the communicative function of the trademark – the triadic relation between the representamen (signifier) and interpretant (signified) of the sign on the one hand and its object (referent) on the other. Also, the works mutually refer to each other in order to better illuminate different aspects of their object of study. Terms like trademark, brand and logo are used interchangeably in the literature to describe the complex of intrasign relations, and this causes some confusion. The crux of the matter is that different professions have different motivations for studying trademarks. This causes them to study slightly different functional aspects of trademarks and ultimately to stress intersign and intrasign relations differently.

Beebe (2004, 638) offers a semiotic analysis of American legal trademark doctrine in terms of intersign versus intrasign relations based on Saussurean and post-Saussurean principles of signification and value (see generally Beebe 2004, specifically 638–645).

To be sure, signification involves a relation of equivalence, but this relation occurs *within* the sign and is incomplete. Intersign relations of value are necessary to perfect signification by delimiting it, by placing it within everything that is outside of and different from it (2004, 642).

He proceeds to demonstrate that trademark doctrine is primarily concerned with a trademark's value over its signification. The reason for this is that '[...] the law is trying to promote economic efficiency' (2004, 623) in society in general by:

[...] lessen[ing] consumer search costs by making products and consumers easier to identify in the marketplace and [...] encourage producers to invest in quality by ensuring that they, and not their competitors, reap the reputation-related rewards of that investment. (ibid.)

Thus, the comparison of trademark doctrine is designed to test a trademark's ability to differentiate the goods and services of one producer from those of all others.

Conversely, although branding theory is also interested in a brand's ability to differentiate itself from others, the theory is trying to promote the interests of producers (as opposed to society's in general) by enabling them to build brands that encourage consumers to choose their products. Thus, branding theory is primarily concerned with 'the positive meaning of the sign' (id: 239) and only as a means to this end with its 'negative difference or distinctiveness of the sign as against all other signs' (ibid.). These differences in the scope of trademark doctrine and branding theory result in differences in subject matter. On one hand, the *trademark* of legal doctrine encompasses any one sign in any substrate that can differentiate a commercial entity's products or services from those of its competitors. On the other hand, the *brands* of branding theory consist of a complex of signs and stress signification over value. In the words of Per Mollerup:

A brand is a product (or a class of products) including its trademark, its brand name, its reputation and the atmosphere built up around it [...] A brand is fuelled 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. (Mollerup 1997, my italics)

Although, each in its own way, *trademarks* and *brands* are broader yet more precise terms than the vernacular, in many ways the popular *logo* term, which seems to be the preferred term in the graphic industry, occupies the terminological intersection between them.

This chapter focuses on the kind of trademarks popularly referred to as *logos*. That is to say, the object of study is the two-dimensional graphic mark. Furthermore, the chapter focuses on the particular aspect of the meaning of the marks, which is conveyed visually, rather than those that are conveyed verbally.

14.3 Assessment of Likelihood of Confusion and the Principle of Globality

The Danish Trademark Act² (§1, 2) defines trademarks as 'special tokens for goods or services, which are used or are intended to be used in a commercial enterprise' (Wallberg 2008, 18). In other words, the Trademark Act recognises the trademark as a *sign* in a very semiotic sense: as something that stands for something else for someone. Trademark law regulates proprietary rights to these signs in order for those to whom the sign stands for something else, that is, the consumers, never to be confused about the origin of goods or services. At the heart of this principle lies the trademark's *distinctiveness* or ability to differentiate the owner's goods and services

² Along with *copyrights*, *design rights*, *patent and utility model rights* and *domain name rights*, *trademark rights* are regulated by the overarching legal field of 'intellectual property law' (see Ryberg et al. (2004) for an introduction to intellectual property law in Denmark). Each individual type of rights is governed by its own set of laws known as *the Danish Patent Act*.

from those of his competitors. As we shall see, legal doctrine has established a method for determining whether confusion is likely to occur, the nature of which is unmistakably semiotic.

The legal term for comparing two colliding trademarks is *assessment of likelihood of confusion*. According to the preamble to the European Union's directive on trademarks, the assessment of likelihood of confusion 'depends on numerous elements and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the trade mark and the sign and between the goods and services identified'.³ In other words, the comparison must include an assessment of two main elements: (1) the similarity of the marks and (2) the similarity of the goods or services. Furthermore, a number of ancillary contextual factors must be assessed as well, as stated in case C251/95, Sabel/Puma, from the European Court of Justice: 'The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of the case' (22). The same judgement continues to specify that:

[...] the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global appreciation of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. (23)

As we can see, in European as well as Danish judicial practice, this kind of comparison rests upon a principle of *globality*. Furthermore, as the Sabel/Puma case illustrates, the assessment seems to consist of two distinct levels. Paragraph 22 of the Sabel/Puma judgement appears to have a contingency point of view on the assessment, which includes 'all factors relevant to the circumstances of the case', whereas paragraph 23 distinctly addresses the *marks* as opposed to *the goods* and *the consumers* and assigns a *decisive role* to this particular aspect of the assessment.

Naturally, the appreciation must be based on information of a kind. Yet the legal discourse mostly avoids specifying the nature of the processes by which this information comes about. A few mentions of the process can be found. In his doctoral thesis from 1948, Danish intellectual property solicitor Hardy Andreasen is quite explicit on what he considers the most appropriate mode of inquiry in the assessment of likelihood of confusion:

As the distinctive ability of a trademark usually rests upon the co-operation of several elements, a synthetic judgement of the elements of the mark is the more correct way of assessing it. The distinctive ability of a mark should be sought in the global appreciation rather than in the pregnancy of the individual elements. (1948, 284, my italics)

³The 11th recital of the preamble to Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the member states relating to trademarks.

In the 4th edition of *Varemærkeret – Varemærkeloven og Fællesmærkeloven med kommentarer*, Knud Wallberg states that ‘The global assessment of the likelihood of confusion in a situation of conflict necessarily has a certain approximate and thus subjective quality’ (2008, 30, my translation). It seems safe to assume, then, that the heuristic is characterised by *synthesis* and *subjectivity*. One can only guess why it remains unspecified beyond this point, but the question is probably considered of less relevance. However, as we shall see in the following, in this context the question is in fact critical.

14.4 The Apple Case as Conventional Trademark Doctrine Sees It

In order to illustrate how the two illustrative cases of this chapter would be treated by conventional trademark doctrine, let us look at the argumentation presented by the opponent in *Apple Inc. v. NYC & Company Inc.*, the marks of which are represented as Fig. 14.1.

The background for the case is a trademark registration application, which was filed at the Trademark Trial and Appeal Board of the United States Patent and Trademark Office in May of 2007. The applicant was the official marketing, tourism and partnership organisation for the City of New York, NYC & Company Inc. The mark was to be part of the identity for *GreNYC*, which the mayor’s office has called:

[...] an integrated marketing and advertising campaign that is the consumer education component of PlaNYC, [...] which] is designed to educate, engage and mobilize all New Yorkers on the simple steps they can take to reduce pollution and greenhouse gases.⁴

The application was published on 18 September 2007. Four months later, Kilpatrick Stockton LLP, legal representatives of Apple Inc., filed a consolidated notice of opposition against the application. Among the 18 grounds for the opposition alleged by Apple Inc. the following copy states 3 (12–14), which are of particular interest in this discussion:

12. Applicant’s marks are very similar to Opposer’s APPLE Marks in appearance and commercial impression. Applicant’s Marks consist of an apple with a stylized detached and convex leaf element angled upwards. Similarly, Opposer’s APPLE Marks famously evoke an apple and Opposer’s Logo consists of an apple shaped logo with a stylized detached and convex leaf element angled upwards.

⁴According to a press release issued by the office of the mayor of New York City on 25 June 2007 (<http://nycvisit.com/content/index.cfm?pagePkey=1958>).

13. Certain of the goods and services cited by Applicant under Applicant's Marks are identical, or highly related, to goods and services Opposer has long offered in connection with its APPLE Marks.

14. Accordingly, Applicant's Marks so closely resemble Opposer's APPLE Marks that Applicant's use of Applicant's Marks is likely to cause confusion, mistake or deception in the minds of consumers as to the origin or source of Applicant's goods and services in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), with consequent injury to Opposer and the public. (Consolidated notice of opposition in the matter of Application Serial Nos. 77/179,942 and 77/179,968, United States Patent and Trademark Office, Trademark Trial and Appeal Board, 16 January 2008.)

We can now begin to see how the grounds for opposition alleged by Apple Inc. in paragraphs 12 and 13 of the consolidated notice of opposition are in fact a comparative analysis of the two marks based on a triadic semiotic conception of trademarks. Paragraph 12 analyses the representamen/interpretant equivalence of the marks and generally states that the marks are 'very similar [...] in appearance (representamen) and commercial impression⁵ (interpretant)'. Further, the following specific qualities of the equivalence are mentioned: Applicant's mark (1a) consists of an apple with a stylised, detached and convex leaf element angled upwards. Similarly, opposer's mark (1b) consists of an apple-shaped logo with a stylised detached and convex leaf element angled upwards. In other words, the account stresses the coinciding denotation of *apple* and *detached convex leaf angled upwards*. For obvious reasons Apple's representative chooses to mention the factors that support Apple's claim of likeness at the expense of the differences of the marks. Thus, the following features of the marks remain without comment in this particular account. The fact that NYC & Company's mark apart from an apple and a leaf also denotes a stalk on the apple and an infinity symbol. The fact that the Apple mark apart from the apple and leaf also denotes a missing bit (bite).

Paragraph 14 analyses the objects of the respective marks and claims that they are *identical or highly related*. Hence, it is argued that the two tenets of confusability doctrine, *likeness of marks* and *likeness of goods*, are met in the case in question.

As far as the possible connotative meanings of the two marks are concerned, the argumentation is of very few words. The argumentation explicitly states that the leaf elements of both marks are *stylised* and seems to imply that this shared characteristic adds to the similarity of the marks. Further, the argument restricts itself to explicitly ascribe the *stylistic* quality to the leaves in both marks, although it seems evident that the marks in their entirety are characterised by stylisation. The dictionaries⁶ tell

⁵ In American trademark doctrine, the technical term *commercial impression* covers 'the meaning or idea it [the trademark] conveys, or the mental reaction it invokes' (Mark and Jacoby 2005: 2).

⁶ The online Oxford English Dictionary gives this definition of *stylise*: *trans.* To conform (an artistic representation) to the rules of a conventional style; to conventionalise. Chiefly in *pa. pple.* Hence *stylised ppl. a.*; also *stylisation*.

us that *to stylise* means to *conform to the rules of a conventional style*, and that stylisation generally implies a sort of degeneration of particulars to a generic convention. However, there are many such conventions. Circuit diagrams, cubist art and comic books all apply *stylisation* in their representation but conform to very different conventions. By omitting a specification of the precise nature of the *style(s)* in question and ascribing the *stylistic* quality only to the leaves, the argument presupposes that the leaves and indeed the marks in their entirety are stylised in a similar fashion and thus connote the same meanings.

The case of *Apple Inc. v. NYC & Company Inc.* has since been dismissed. The case took this turn after NYC & Company Inc. obtained Apple's consent to an amended mark, in which the leaf element had been deleted from the design. In order to cater for the overall graphic harmony of the new mark, the slant of the stem on the new mark was also altered slightly to make it fill the open space left by the deletion of the leaf. Other than these changes, the new mark is unaltered. The fact that this matter could be settled by deleting the leaf element in NYC & Company's mark illustrates the significance ascribed to the denotative meaning by contemporary trademark practice.

However, the nature of the graphic *stylisation* of apples in the two marks is radically different. Although it can be argued that Apple Inc.'s representative has abstained from going into this precisely because it could weaken Apple's case, the tendency to treat graphic *style* in a general manner is quite typical in trademark practice. It is possible that this abstinence from comment on style can be ascribed a weak metalanguage with which to capture the nature of these qualities. As stated in the introduction, the discussion of the possibilities for establishing such a metalanguage is the overall aim of this chapter. The discussion will be unfolded from Sect. 14.5 and throughout.

14.5 Problems Arising from the Global Assessment Principle

As stated above, the way trademark doctrine conceptualises the *whole* of the trademark seems to be of a fundamentally communications theoretical and semiotic nature. From such a point of view, it is hard to disagree with the notion that all factors in a communicative context have bearing on meaning making. Therefore, the global assessment principle seems sensible from a semiotic as well as a legal point of view and poses no problem to the particular aim of this chapter. However, Andreasen's (1948) account instructs us that, as a mode of inquiry, the global assessment should be based on *synthesis*. As a term, synthesis can be said to refer to a great many different concepts, and Andreasen's exact understanding of the term is not specified. If by synthesis he merely understands *combination* of parts, the individual nature of which could very well be *analytical* (i.e. analysis of the nature of the goods, of the consumers, of the trade, etc.), an analytical scrutiny of the marks

as signs – as part of an overall assessment of the likelihood of confusion – would be perfectly in line with a synthetic approach.

Unfortunately for the unimpeded application of multimodal social semiotic close analysis, however, this does not seem to be the case. Various sources in both literature and case law addresses the question more in terms of the marks as *gestalts* (see, generally, Koffka 1935) and suggest that any analytical scrutiny of any one part at the expense of other parts would fundamentally bias the assessment. This view is verified in abundance in contemporary literature and case law, for instance, in the Sabel/Puma case:

That global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components. The wording of the Article 4(1) (b) of the Directive – [...] – shows that the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global appreciation of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. (European Court of Justice, C-251/95(23))

The above citation is a testimony to yet another tenet of the assessment of likelihood of confusion, which entails the fact that the ultimate purpose of trademark law is to protect the consumers' ability to determine the origin of a given commodity. Therefore, any person who engages in a forensic assessment of the likelihood of one mark being confused with another should act as an agent for the consumer. As a result, the comparison is contingent with the legal profession's conception of *consumers* in general and the *perception of marks in the minds of the consumers* in particular. It follows that the development of a metalanguage, which can grasp the stylistic rendition of marks, might be regarded from such a perspective, as counterintuitive. This is because the only mode of inquiry, which is truly loyal to trademark doctrine, would be the empirical survey. However, such an objection presupposes that the event of confusion is singularly psychological, and that the only way of observing it from the outside is to make consumers put their phenomenological experience of the marks into words in some way. This chapter, however, is based on the assumption that social aspects such as semiotic code and discourse weigh heavily in the event of confusion, and that a study of the grammar of trademarks will have great explicatory power in forensic analysis of conflicting marks.

In national Danish trademark literature, the origin of the conception of *mind* and *perception*, which prevails in trademark doctrine, can be traced to the gestalt theory of the 1930s (e.g. Koffka 1935). The current Danish authoritative work (Wallberg 2008, 105) has, in essence, adopted the view put forth by Kocktvedgaard (2005[1988], 394), who writes:

[...] Whether one stresses one aspect or the other, the judgement should in principle be based upon the likely use – and experience thereof – of the marks in the day-to-day trade of commodities: How will the *consumers* perceive the marks? [...] The principle of the *overall appreciation* is due to the fact that in general the market does not scrutinize the individual marks' specific details. They are perceived as entireties, and so should the judges. (2005[1988], 394, my translation)

This appears to be perfectly in line with the thoughts, which Koktvedgaard had on the subject in his 1965 thesis. Then, he observed that:

Within psychology, the processes of comparison are sometimes understood as a subordinate feature of the main problem known as ‘structuring’. The problem of structuring deals with *the experience of entirety*. (1965, 20, my translation)

Koktvedgaard refrains from elaborating further on what he calls the *common aspects* (ibid.) of the structuring problem, but instead refers to Jørgen Jørgensen’s *Psykologi paa et Biologisk Grundlag* (1941). Jørgensen states that:

[...] the gestalt psychologists have drawn attention to a number of facts that show that there is no unequivocal correspondence between certain isolated stimuli and the resulting “phenomena of the consciousness”, but rather that the characteristics of the latter depend on the entire constellation of stimuli to which the organism is exposed – a fact which suggests that the brain is not a mere relay for the neurological impulses originating from the receptors, but rather that they somehow undergo so-called processing in the higher faculties. (1941, 136, my translation)

In summary, it seems that, in Danish trademark law at least, whether or not explicitly apparent to contemporary trademark professionals, the concept of the global appreciation follows the tradition of gestalt theory. It would probably also be reasonable to argue that when trademark professionals speak of the way in which *consumers perceive trademarks as entirety*, the underlying event is conceived of as psychological. Yet, one of the key proponents of gestalt theory, Kurt Koffka, has this to say about the study of such processes:

[...] And an ultimate explanation of the problems of thought and imagination will not be possible without a theory of language and the other symbolic functions. But we shall exclude the study of language from our treatise. This restriction is necessary, because it would be impossible to give more than an utterly superficial treatment to this problem, so rich in psychological interest. (Koffka 1935, 422)

The gestalt theoreticians themselves, it seems, were well aware that it is necessary to include the study of signs in order to adequately account for cognition. Further, it seems that, in principle, the perception of trademarks is regarded as having only a single layer of articulation, the one at which trademarks are lexically coupled with their meaning. This chapter, however, suggests that there are compelling reasons why the event of recognition or confusion of trademarks could also be illuminated in terms of a social (social semiotic) event rather than solely psychological. This entails the assumption that trademarks have a socially constructed *grammar* and that meaning is also ascribed to them through a process of double articulation. The following section will elaborate on these points of view.

14.6 Single Articulation or Double Articulation?

The idea that many semiotic systems are organised grammatically is quite common in semiotics (see for instance Groupe μ 1992). It is possible to conceive of many different modalities as made up of an inventory of meaningful units, a *morphology*, and a set of rules, a *syntax*, by which the units can be combined. This is as far as

Fig. 14.3 A simple line, the segmentation of which is difficult



most semioticians are willing to go in the quest for a grammatical approach to visual semiotics. Some attempts (e.g. Lévi-Strauss 1968) have been made to describe visual semiosis in terms of units that can distinguish one meaning from another but are not meaningful in themselves and which can be combined into an infinite number of meanings by a process known in linguistics as *double articulation* (Martinet 1967) or the *duality of patterning* (Hockett 1958).

Double articulation is said to be a characteristic of language, which defines it and is exclusive to it. The question of whether any other semiotic mode than language entails double articulation is much debated (see, e.g., Eco 1968). The crux of the criticism of, for example, Levi-Strauss' approach is that when attempting to analyse a visual text in terms of distinctive units, one cannot delimit the individual distinguishing features. For example, it could be argued that the line in Fig. 14.3 consists of a number of segments that are curved or straight. However, it would not be possible to determine exactly where one segment ends and another begins the way it can be done with phonemes in phonology.

This rationale makes good sense, provided you are looking for the distinctive features in the *segments* of a visual text based on the premise that its primary principle of organisation of meaning is syntactic structure. The concept of syntax is difficult to handle analytically in visual texts, if you can even argue that they properly have this property. As an analytical concept, syntax is at its most powerful surroundings that are sequentially or at least linearly structured. Many visual texts, however, albeit structured, have no inherent sequence. Their parts relate to the whole in a simultaneous fashion rather than a sequential one. It seems, then, that previous attempts at formulating a principle of double articulation in other semiotic systems than language as well as the criticism of them have had a linguistically based syntactic bias, which is alien to visual communication because it does not correspond to an inherent quality of it.

14.7 What Is Multimodal Social Semiotics?

Regardless of their differences, most – if not all – semiotic accounts of trademarks have hitherto conceptualised the relation between the *signifier* and *signified* as singly articulated. Yet, in order to fully appreciate how a set of marks as those of *Apple Inc. v. NYC & Company Inc.* and *Dansk Supermarked A/S v. Net2Maleren* are alike and different, it is useful to do so in terms of the way in which socially constructed possibilities for semiotic choice are put to use in the particular marks, or as social semioticians would put it: How *semiotic resources* are *instantiated*? This entails a systemic view on graphic form, which outlines the semiotic choices available to the designer of a trademark – or indeed any instance of graphic design.

As a semiotic methodology, multimodal social semiotics (see generally Baldry and Thibault 2005; Kress and van Leeuwen 2006[1996], 2001, 2002; Van Leeuwen 2005a) originates from systemic functional linguistics (SFL), which has as its central figure Michael Halliday (see generally Halliday and Matthiessen 2004). Although the theoretical tenets of SFL have been adapted by multimodal social semioticians to reflect the multimodal (as opposed to monomodal linguistics) object of their observation, they are fundamentally similar. The following introduction will serve as a presentation of the tenets of both SFL and multimodal social semiotics.

Many linguistic traditions regard syntax as the primary principle of integration in language and the paradigmatic dimension as secondary to it. Unlike such theories, SFL emphasises the paradigmatic dimension of language through its description of semiotic resources in paradigmatic *system networks* and regards syntactic structure as derived from paradigmatic choice through *realisation*. The system networks and corresponding realisation statements combine into an ambitious attempt at charting the meaning potential of a given language. Halliday expresses the overall outlook like this:

In the history of western linguistics, from its beginnings in ancient Greece, this was the direction that was taken: first the form of words were studied (morphology); then, in order to explain the forms of words, grammarians explored the forms of sentences (syntax); and once the forms had been established, the question was posed: “what do these forms mean?”. In a functional grammar, on the other hand, the direction is reversed. A language is interpreted as a system of meanings, accompanied by forms through which the meanings can be realized. The question is rather: How are these meanings expressed? (Halliday 1994, xiv)

SFL describes the different aspects of language within three global dimensions called *stratification*, *instantiation* and *metafunction*. Here is a short overview:

14.7.1 *Stratification*

In SFL, which is a functional theory, the first global dimension of language is called *stratification*. It conceives of language as a stratified system embedded in context. The linguistic system and the context are mutually contingent. There are four linguistic strata: *semantics*, *lexicogrammar*, *phonology* and *phonetics*. The function of the lexicogrammatical and phonological strata is to organise language, whereas the semantic and phonetic strata have *interfacing functions* (Halliday and Matthiessen 2004: 25): Semantics is the interface between context and language, and phonetics is the interface between language and the body of the language user. The four strata are interconnected through a process known as *realisation*, which means that a given semantic meaning is realised by lexicogrammar through *wording*, which is in turn realised by phonology through *composing*, which is again realised by phonetics through *sounding* (Halliday and Matthiessen 2004, 26).

14.7.2 *Instantiation*

The second global dimension is *instantiation*. It captures the linguistic relation between the particular text (what is uttered) and the system (what could have been uttered). The stance towards language in SFL is social semiotic: Language is regarded as a resource (the system), which is put to use by individuals according to their contextually dependent communicative intent (the instance).

14.7.3 *Metafunction*

The third global dimension in SFL is an expression of the idea that meaning and the means to expressing them can be divided into three functional categories. SFL refers to this aspect of language as *metafunction*. Any instance of language simultaneously performs three semiotic functions.

In this conception communication always performs three general semiotic functions simultaneously. Thus, when an individual communicates (linguistically), simultaneous meaning is always created within these different areas with different consequences. The three basic types of meaning are called *ideational meaning*, *interpersonal meaning* and *textual meaning* (Boeriis 2009, 37).

Very generally speaking, the *ideational meaning* in SFL refers to *construing experience* (Halliday and Matthiessen 2004, 29–30). This means that the *ideational metafunction* serves to represent elements of our experience and their relations. Very simply put, SFL provides the means to analytically label the functional elements of a text as *participants*, *processes* and *circumstances*. A *process* is a representation of *something happening*, a *participant* represents an entity involved in what is happening, and a *circumstance* somehow represents the setting.

The *interpersonal metafunction* serves to *enact interpersonal relations* (2004: 30) by supplying us with the communicative means to constitute and express the relations between the communicating parties. Any meaning in the text, which somehow strikes an intersubjective note in the relationship between the communicating parties, is interpersonal. This includes the text as a negotiation of the exchanged meaning, of offering or requesting and of intersubjectively expressing one's subjective stance towards the exchanged meaning through polarity and modality (see generally Halliday and Matthiessen 2004; Kress and van Leeuwen 2006[1996]; Boeriis 2009).

Finally, the textual metafunction supplies us with the structural means to construct a text as a cohesive combination of *ideational* and *interpersonal* meaning (Boeriis 2009, 38).

The failure of trademark doctrine to capture the differences in *style* of the apple marks of *Apple Inc.* and *NYC & Company Inc.* can thus be seen as a failure to acknowledge other kinds of meaning in the marks than the *ideational*. The apples, leaves, bites, stems and infinity symbols are all representations of elements of our experience with the world. They are the represented *participants* of the mere existence or *being there* that is happening, so to speak, in the marks.

Yet, the two representations of apples in the two marks are testimony to the fact that representational *style* can be very different. As stated in Sect. 14.4 of this chapter, to assign a *style* to a representation typically means that it conforms to some socially constructed convention. The term has also acquired a certain meaning of *degeneration* from the particular to the generic.

In the literature on multimodal social semiotics, the term *modality* has been adopted from linguistics and refers to ‘the truth value or credibility of (linguistically realized) statements about the world’ (Kress and van Leeuwen 2006[1996]). The multimodal social semiotics applies a modality scale, which compared with its linguistic predecessor is inverted. Here, the highest degree of *truth* or naturalism is assigned the highest degree of modality, whereas, in linguistics, modality increases as certainty decreases. In multimodal social semiotic modality is analysed in terms of *modality markers* by which the naturalism of a message can be increased or decreased. For the naturalism of colour, for instance, such markers could include *colour saturation*, *colour differentiation* and *colour modulation*. However, it is crucial to note that the social semiotic conception of *naturalism* is relative:

Reality is in the eye of the beholder; or rather, what is real depends on how reality is defined by a particular social group [...] Each realism has its naturalism – that is, a realism is a definition of what counts as real – a set of criteria for the real, and it will find its expression in the ‘right’, the best, the most ‘natural’ form of representing that kind of reality, be it a photograph, digital or otherwise, or a diagram. (Kress and van Leeuwen 2006[1996], 158)

In other words, high modality or naturalism is not singular. Conversely, there are probably as many ways to represent *unnaturalism* as there are social groups. The images in comic books, instruction manuals and pictograms are all examples of degeneration of the particular to a generic convention. But they are different conventions that base their representations on different qualities of the represented. Kress and Van Leeuwen might say that they have different *coding orientations* (2006[1996], 163). Neither apple in *Apple Inc. v. NYC & Company Inc.* can be said to be a high modality, photorealistic representation of apples, but of that fact does not necessarily follow that the individual nature of their respective low degrees of modality is the same.

14.8 What Is Missing in Multimodal Social Semiotics?

So, how can the differences in coding orientation of the two apple marks actually be discussed in a consistent way? Literature on multimodal social semiotics tends to focus on the way in which units of meaning are combined lexicogrammatically (Baldry and Thibault 2005; Kress and van Leeuwen 2006[1996]) but is less informative about the way the units of meaning themselves are constituted. The nature of the aforementioned *modality markers*, however, might reveal a path.

The general idea of the modality marker, which Kress and Van Leeuwen first presented in 1996, has since been further explored in relation to, for example, colour (Kress and Van Leeuwen 2002) and typography (Van Leeuwen 2005b) adopting Jakobson and Halle's (1956) *distinctive feature* approach:

These distinctive features indicate, as in Jakobson and Halle's (1956) distinctive feature phonology, a quality which is visual rather than acoustic, and is not systematized, as in phonology, as structural oppositions but as values on a range of scales. One such is the scale that runs from light to dark, another the scale that runs from saturated to desaturated, from high energy to low energy, and so on. Again, in ways that provide echoes of Jakobson and Halle, we see these features not as merely distinctive, as merely serving to distinguish different colours from each other, but also as meaning potentials. (Kress and Van Leeuwen 2002, 355)

In other words, studies such as those of Kress and Van Leeuwen are beginning to reveal a possible methodology for describing what corresponds in a multimodal perspective on communication to Halliday's phonology stratum or *the expression side of the organisation of semiotic systems*. It is important to understand, however, that the pivotal point of this approach to distinctive features is *paradigmatic choice* rather than *syntactic structure*.

However promising this development may be, no studies of the distinctive features of *shape* have so far been undertaken. The final section of this chapter is an attempt at doing just that as such a descriptive scheme would have great explicatory power in cases such as *Apple Inc. v. NYC & Company Inc.* and *Dansk Supermarked A/S v. Net2Maleren*.

14.9 A Distinctive Feature Approach to Graphic Shape

Is shape doubly articulated? Does it make sense to regard *shape* as *made up of* units that are in themselves meaningless, but which can distinguish between meanings? In order to discuss the differences and similarities of the two cases in greater detail than trademark doctrine tends to, we need to better understand the meaning potential of *shape*. But what is *shape* anyway? Francis Ching states one definition of shape, which seems representative of most people's conception of the phenomenon:

Shape refers to the characteristic outline of a plane figure or the surface configuration of a volumetric form. It is the primary means by which we recognize, identify, and categorize particular figures and forms (1996, 36).

Approaching *shape* analytically is extremely complex because any ascription of meaning to shape raises all sorts of perceptive, cognitive and semiotic issues. The example in Fig. 14.4 illustrates the point. What is the shape of this figure?

You could argue that it is a representation of trapezoid with no straight angles and no opposite parallels. Or you could argue that it is a representation of a rectangle, tilted in three-dimensional space or a black sheet of cardboard lying on a surface. All statements would be equally true. There are two aspects of *shape* at play in every message represented by shape: the shape that *is* and the shape that is

Fig. 14.4 A two-dimensional trapezoid or a rectangular sheet suspended at an oblique angle in three-dimensional space



Fig. 14.5 Two polygons or a cut-out pictographic man suspended in three-dimensional space

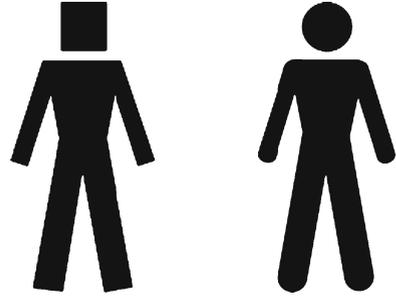


represented. In many cases these two aspects of shape converge, but, as in Fig. 14.5, not always. The shape of Fig. 14.4 is a trapezoid if regarded from a point of view of plane geometry, but we can just as easily (or maybe even more easily) perceive it as a rectangle, when we apply our experience with linear perspective. Different schools of psychology (e.g. Koffka 1935; Arnheim 1974[1954]; Gibson 1986[1979]) have pondered over the ambiguity of shape in order to discover the psychological truth of shape perception. Unfortunately, for our purposes, the controlled environments of experimental psychology have not allowed for the kind of complexity of shape, which is displayed in most trademarks.

For the next example, we shall raise the complexity level of shape, both in terms of *structural complexity* and *complexity of meaning*. Figure 14.5 illustrates a very common phenomenon: that of the ubiquitous pictographic man, represented in an uncommon way, as if it were suspended in space. Strictly speaking, the figure illustrates two polygonal shapes, one of which is a tetragon, the other a dodecagon, that combine into a functional *cluster* (Baldry and Thibault 2005, 21–34) of shapes. The point is that – regardless of what someone may take a given shape to stand for – it is also *just* an area in two dimensions or a volume in three dimensions. A transmutation (right) of the two elements, which makes it difficult to uphold an illusion of depth, helps us to appreciate the shapes for what they also are.

Further complexity is introduced when two different shapes refer to the exact same object. Figure 14.6 illustrates two different pictographic humanoids. One (left) is angular; one (right) is curved.

Fig. 14.6 Two pictographic humanoids that may or may not convey the same meaning



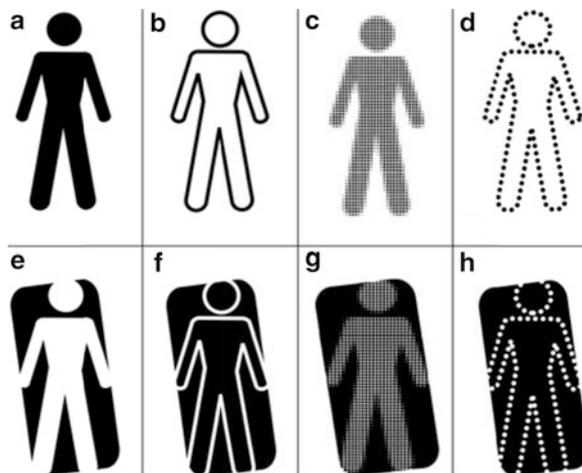
Functionally speaking, both would suffice to denote *men's room* in public places – especially when their value in a system of signs denoting different rooms (men's room, ladies' room, disabled's and so on) is evident in context – but of that observation does not necessarily follow that the differences between the two are meaningless. Someone, who had the two to choose from in decorating the rest rooms of a restaurant, would probably prefer one to the other. In other words, the differences would be distinctly meaningful to that person, even if putting words to their respective meaning would be difficult.

This raises the question of the nature of the difference in meaning of the two graphic instances in Fig. 14.6. Surely, it is not an ideational distinction. The difference does not refer to a quality of the object referred to, that is, the man denoted by (left) does not have a square head. Of course, one could think of possible contexts where such a distinction in meaning might be intended, for instance, if the producers of a science fiction show made a joke about rest rooms dedicated to humans and robots. But that is not the case made here. This means that, from a social semiotic point of view, only the first part of Ching's definition of shape applies. A necessary condition of shape is indeed that it is 'the characteristic outline of a plane figure or the surface configuration of a volumetric form'. However, to say 'it is the primary means by which we recognize, identify, and categorize particular figures and forms' does not seem to be an adequate condition because it only captures ideational categories of meaning.

Rather than distinguishing between ideational meanings, the differences between the two pictographic men are distinctions between interpersonal meanings in terms of modality. None of the representations are naturalistic, but their respective *unnaturalness* is subtly yet distinctly different. In *Reading Images* (2006[1996]), Kress and Van Leeuwen draw on Habermas, Bourdieu and Bernstein for their distinction between different *coding orientations*. By a coding orientation, they understand: '[...] sets of abstract principles which inform the way in which texts are coded by different social groups, or within different institutional contexts' (2006[1996]: 165). They proceed to enumerate *technological*, *sensory*, *abstract* and *naturalistic coding orientations*. These are very broad categories, and both pictographic men tend to fall into the *abstract coding orientation*, on which Kress and Van Leeuwen note:

[...] are used by sociocultural elites – in 'high' art, in academic and scientific contexts, and so on. In such contexts modality is higher the more an image reduces the individual to the general, and the concrete to its essential qualities. (ibid.)

Fig. 14.7 Pictographic man-shape in eight permutations after positive/negative, stroke/fill and compounded/conjoined variables



This reveals that, although useful categories, Kress and Van Leeuwens *coding orientations* only have explicatory power faced with the pictograms in relation to other kinds of representations of humans. The differences between the two instances are too subtle for these categories to register.

A final example will reveal, for the time being, the last layer of complexity in the meaning potential of shape. If a shape, in Ching's words, is 'the characteristic outline of a plane figure or the surface configuration of a volumetric form', then any shape can be *realised* in a number of different ways, as illustrated in Fig. 14.7.

Figure 14.7 illustrates a tentative permutation chart with eight instances of the same pictographic man-shape, which was illustrated in Fig. 14.6. The permutations are based on three discrete variables: positive/negative, stroke/fill and compounded/conjoined. By no means is this an exhaustive inventory of the distinctive features of graphic form. It merely serves to exemplify the potential of such an approach in the forensic analysis of the visual gestalt of trademarks. The three distinctive features in Fig. 14.7 are as follows.

14.9.1 Positive/Negative

Usually, when we think of *shape*, we think of a *figure* as opposed to a *ground*. But, as Edgar Rubin demonstrated with his famous vase (Rubin 1915), positive shapes and negative shapes are equally meaningful. This is expressed in Fig. 14.7 by the fact that any of the positive realisations of the pictographic man (Fig. 14.7a–d) can also be realised as negative shape (Fig. 14.7e–h). Figure 14.8 further illustrates how Fig. 14.7e is comprised of four individual positives.

Fig. 14.8 Transmutation of the four positive shapes from 8e



14.9.2 *Stroke/Fill*

Any shape can be realised as a positive mass or merely as a representation of the spatial demarcation between positive and negative. Although others have reflected upon this relation in terms such as *character/stroke* (Stötzner 2003: 289), here the terms *stroke* for outline and *fill* for mass have been adopted from graphic software applications, as those are the terms actually used by graphic designers. Figure 14.7b, d, f and h are instances of the pictographic man as a stroked shape, whereas Fig. 14.7a, c, e and g are all filled.

14.9.3 *Compounded/Conjoined*

The final distinctive difference in the permutation chart is the compounded/conjoined distinction. The terminology is adapted from Kress and Van Leeuwen (2006[1996]: 97). Any shape, which can be realised as a compounded solid (e.g. the polygon of Fig. 14.5), can also be realised as a conjoined functional cluster of smaller, individual shapes. Figure 14.7a, b, e and f are examples of shapes realised as conjoined shapes, whereas Fig. 14.7c, d, g and h are all realised as compounded shapes. Worthy of note is the fact that any stroked outline of a shape can be realised in conjoined states. Any dashed or dotted line is an example of this.

Based on this *phonological* distinctive feature approach to graphic shape within a multimodal social semiotic framework, we now have a tentative descriptive scheme, which allows us to discuss in greater detail the similarities and differences between the marks in *Apple Inc. v. NYC & Company Inc.* and *Dansk Supermarked A/S v. Net2Maleren*.

As stated above, Apple's opposition against NYC & Company's apple logo is based on the fact that both designs incorporate similar ideational elements: an apple and a *stylized, detached and convex leaf element angled upwards*. Conversely, the marks of Dansk Supermarked A/S and Net2Maleren are quite dissimilar in terms of their ideational meaning. Dansk Supermarked's logo represents a sitting terrier, which holds in its mouth a basket by the handle. Net2malerens mark, on the other

hand, represents a selection of the tools of the painting trade: a ladder, a paintbrush, a tapestry brush and a bucket.⁷

The interesting aspect of these cases is not that trademark doctrine has found the marks of one case to be similar and the marks of the other to be dissimilar. Rather, it is the fact that the two marks with similar ideational content have been found to be dissimilar and the marks with dissimilar content to be similar. It seems, then, that in the sum total of meaning that is conveyed by the marks, the ideational meaning is secondary to the interpersonal modality of the marks. The two apples are distinctly different in the way they realise shape. There are certain similarities. Both shapes are positive shapes as opposed to negative shapes. And both are compounded shapes in that the fruit and leaf elements are structurally separated but functionally clustered. Most importantly, however, Apple Inc.'s mark is an example of a *filled* shape, whereas NYC & Company's apple is stroked in a way that is reminiscent of calligraphy. This distinctively differently realised feature gives an overall impression of the marks, which is unlikely to confuse consumers about the origin of goods or services referred to by the marks.

The opposite is true of *Dansk Supermarked A/S v. Net2maleren*. In this case, the shapes of both marks are realised as positive, conjoined and filled shapes. This convergence in the use of the modality resources gives an overall impression that is quite likely to confuse consumers.

14.10 Conclusion

Faced with the fact that there are aspects of the stylistic rendition of trademarks, which current doctrine cannot systematically account for, this chapter set out to inquire into the possible application of multimodal social semiotics in the forensic analysis of colliding marks.

In relation to trademarks, the explicative power of multimodal social semiotics largely rests on the detailed close analysis provided by the approach. This is due to the fact that multimodal social semiotics has inherited key theoretical tenets from its origin in Michael Halliday's systemic functional linguistics:

- The idea that a description of the systemic potential of a given semiotic system is best obtained from a perspective, which has as its focus the paradigmatic relations of the system, rather than a syntagmatic perspective.
- The idea that semiotic systems are stratified into *semantic*, *lexicogrammatical* and *phonological* strata that are embedded in a context stratum.

⁷This observation is supported by information in the Danish Patent and Trademark Office's database, which states that the figurative element in Dansk Supermarked's mark complies with Vienna class '03.01.08: Dogs, Wolves, Foxes'. In the case of Net2Maleren's mark, however, the database lists these elements: '14.11.01: Ladders, 19.01.04: Tins and cans, pails, watering cans Note: Not including hermetically sealed tins (19.3.1 or 19.3.3), 20.01.05: Paint brushes'. The 'Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks' was conceived in 1973 and amended in 1985.

- The idea that any instance of communication is the realisation of a systemic communicative potential. This idea is known in social semiotics as *instantiation*. Conversely, any instance of a semiotic system affects the underlying potential.
- The idea that meaning is functionally grouped into metafunctions known as the *interpersonal*, *ideational* and *textual* metafunctions.

However, the level of detail in the analysis provided by multimodal social semiotics may be in conflict with *the principle of global appreciation*, which is prevalent in trademark doctrine. The principle stipulates that any appreciation of trademarks in an assessment of likelihood of confusion should favour the whole at the expense of the detail. In order to determine whether this principle does in fact stand in the way of the aim of the chapter, the principle of global appreciation has been subject to inquiry. It turns out that trademark doctrine seems to

- Be based on a fundamentally semiotic conception of the trademark as a sign.
- Regard the perception of trademarks as having only one layer of articulation, the one at which the trademark is lexically coupled with its meaning.
- Only take ideational aspects of meaning in trademarks explicitly into consideration in forensic analysis. Other kinds of meaning tend to be treated in a far less systematic way.
- Generally disregard any social aspect of the event of confusion and rather regard it as singularly psychological. In Danish trademark doctrine, at least, this understanding has been handed down through two generations of trademark theoreticians and can be traced to the gestalt theory of, for example, Kurt Koffka. This raises the concern that Danish trademark doctrine has based its conception of the event of confusion on an incomplete application of gestalt theory, as the gestalt theoreticians themselves were acutely aware of social aspects, for example, symbols and language, of cognition.

In other words, this chapter finds strong indications that, provided that trademark doctrine can cater for a view of trademarks as instances of a systemic semiotic potential, a multimodal social semiotic approach to the forensic analysis of conflicting marks would have great explicatory power.

In order to exploit the full potential of a multimodal social semiotic approach to trademark analysis, the theory needs to be fully elaborated in areas that have hitherto not been paid much attention to, for example, the stratum, which corresponds to *phonology* in language. This chapter proposes to resuscitate attempts at regarding graphic form as doubly articulated, an idea which has been encouraged by the social semiotic paradigm's focus on the paradigmatic relations in the system rather than the syntagmatic. A tentative descriptive scheme for three distinctive features of graphic form is proposed and subsequently applied to the two cases in question. The approach reveals that convergence of visually conveyed ideational meaning is not necessarily decisive in the assessment of likelihood of confusion: In the two cases, the ideational meaning of apples, dogs and painting utensils is less salient than the respective coding orientations of the marks.

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Chapter 15

French Commemorative Postage Stamps as a Means of Legal Culture and Memory

Anne Wagner and Malik Bozzo-Rey

Science may, without absurdity, be called a monster, being gazed at and admired by the ignorant and unskillful. Her figure and forme is various, by reason of the vast variety of subjects that science considers; her voice and countenance are represented female, by reason of her gay appearance and volubility of speech: wings are added because the sciences and their interventions run and fly about in a moment, for knowledge like light communicated from one torch to another, is presently caught and copiously diffused; sharp and hooked talons are elegantly attributed to her, because the axioms and arguments of science enter the mind, lay hold of it, fix it from, and keep it from moving or slipping always... Sphynx has no more than two kinds of riddles, one relating to the nature of things, the other to the fable: when Sphynx was conquered, her carcass was laid upon an ass; for there is nothing so subtle and abstruse but after being once made plain, intelligible, and common, it may be received by the slowest capacity.

(Sir Francis Bacon 1922, 138)

Abstract This chapter will explore the way that French stamps (intermedial texts) over the last two centuries reflect the problems of constructing national identity in a small country with rich and heterogeneous cultural, legal backgrounds. Taking the Peircean principle of the triadic structure of semiosis as a theoretical frame, this chapter focuses in particular on the role of historical, cultural and linguistic interpretants

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in the reading process of stamps. The classification and interpretation of 'intermedial texts' (i.e. texts combining words and images) depend on the point of view taken in the context of communication, which implies either the production or the reception of such texts. Production is in some cases simultaneous (posters, comic strips, advertisements) and in others consecutive (art criticism, ekphrasis, illustrations). The reception of an intermedial text is mostly simultaneous (illustrations, posters, advertisements) and in some particular cases (art criticism, ekphrasis) consecutive. Based on these criteria – simultaneity and consecutiveness – a distinction can be made between different degrees of interweaving word and image in intermedial discourse. A third criterion, that of distinctiveness (i.e. the physical possibility of separating word and image), can be applied. The commemorative stamps, almost always an intermedial discourse, demonstrate perfectly the descriptive power of the theory proposed here, at the same time as it illustrates the specific artistic creativity evident in each stamp. An analysis of word and image relations in a corpus of contemporary French stamps supports the validity of the categories of intermedial discourse suggested and the possibility of combining them in a single commemorative stamp.

15.1 Introduction

This chapter will explore the way in which French stamps over the last two centuries reflect the problems of constructing national identity in a small country with richly heterogeneous cultural and legal backgrounds as intermedial texts. Taking the Peircean principle of the triadic structure of semiosis as a theoretical framework (Peirce 1931–1958), the chapter focuses in particular on the role of historical, cultural and linguistic interpretants in the reading process of stamps. The classification and interpretation of 'intermedial texts' (i.e. texts combining words and images) depend on the point of view taken in the context of communication, which implies either the production or the reception of such texts. Production is in some cases simultaneous (posters, comic strips, advertisements) and in others consecutive (art criticism, ekphrasis, illustrations). The reception of an intermedial text is mostly simultaneous (illustrations, posters, advertisements) and in some particular cases consecutive (art criticism, ekphrasis). Based on these criteria – simultaneity and consecutiveness – a distinction can be made between different degrees of interweaving word and image in intermedial discourse. As a result, a third criterion, distinctiveness (i.e. the physical possibility of separating word and image), can be applied. The commemorative stamps, almost always an intermedial discourse, demonstrate the descriptive power of the theory proposed here while at the same time illustrating the specific artistic creativity evident in each stamp. An analysis of word and image relations in a corpus of contemporary French stamps supports the validity of the categories of intermedial discourse and the possibility of combining them in a single commemorative stamp.

15.2 Semiotics and Hermeneutics: Concepts and Methodology

15.2.1 A Semiotic Approach

Law is a system of signs that enables the lawyer, the linguist, the reader and even the viewer to analyse the public space in a semiotic sense. Signs pertain to the verbal and nonverbal sign systems with the visual aspects of signs resembling a web (Eco 1976), an open texture (Hart 1976) and/or a prism (Wagner 2004). They have plurality in meaning (Bhatia et al. 2005) and are situated in flux spaces (Wagner 2011). Rich in terms of connotation, the sign systems of law bear hidden messages and have no direct connections to legal reality. These visual signs form part of what we could consider an abbreviated sign system, which needs to be decoded and repositioned within a specific context. Because nonverbal communication is dynamic and multi-dimensional, the construction of a visual medium is designed to yield meaning through hermeneutic and historical deciphering. Consequently, substantial analyses that uncover the multiplicity of layers in meanings as well as their variability in terms of cognition, recognition and interpretation from a specific community are a must. Such a dynamic is parallel to that of society, in terms of popular knowledge, background and understanding. Therefore, a synergy of the conceptual imports and the discovery of shared values and properties compels exposure. This synergy between identity, function and representation draws attention to the visual dimension on the one hand and to the conveyed ideological convergence on the other hand. This move seeks to formulate inclusive, interdisciplinary and even permeable perspectives:

The real, then, is that which, sooner or later, information and reasoning would finally result in, and which is therefore independent of the vagaries of 'me' and 'you'. Thus, the very origin of the conception of reality shows that this conception essentially involves the notion of a community, without definite limits, and capable of a definite increase of knowledge (Peirce – Note 10, vol.2, 228).

Peirce relates to the sign as a *representamen*:

A sign, or representamen, is something, which stands to somebody for something in some respect or capacity. It addresses somebody, that is, creates in the mind of that person an equivalent sign, or perhaps a more developed sign. That sign which it creates I call the interpreter of the first sign. The sign stands for something, its object. It stands for that object, not in all respects, but in reference to a sort of idea, which I have sometimes called the ground of the representamen. (Peirce: note 10, vol. 2, 228)

One innovative aspect of our present study is to reveal the connections and consequential relations inherent to the notion of a visual sign system and its role as a 'shaper' of identities. Three foci include (1) the meaning, sense and resource of nonverbal communication; (2) the criteria featuring the forms of symbolic representations; and (3) the various pictorial representations used for that specific purpose. The cultural aspect of identity is promoted with a strong visual image of the community. As such, notions of community and of belonging are enshrined and protected through the use of such sign systems. As exposed by Danesi (2004), 'a community is essential because it demonstrates semiotic relevance through its

unity of interpretation and experience'. Kevelson (1988, 22) gives another dimension when she states that:

All human societies have developed complex systems of both verbal and nonverbal sign systems which are not static but which evolve continuously to correspond with and to represent changing social norms and the evolving, growing social consciousness of any given community.

The community is composed of people having variable knowledge. So the nonverbal sign system needs to strive to communicate and encapsulate this variability through several visual layers. Visual structures are often mythic and archetypal and work at historical and ideological levels with variations in forms of symbolism (pictures, colours, designs, texts, etc.):

Every myth is still a kind of configuration of reality. As the expressivity of the world, it necessarily involves its metamorphosis, its transformation into an image. (Coskun 2007, 141)

The semiotic *modus operandi* appreciates surface and underlying levels of communication (Barthes 1970; Danesi and Sbrocchi 1995). Nonverbal sign systems lead us to consider the trichotomy of visual communication:

When we think, then, we ourselves, as we are at that moment, appear as a sign. Now a sign has, as such, three references: first, it is a sign to some thought which interprets it; second, it is a sign for some object to which in that thought it is equivalent; third, it is a sign, in some respect or quality, which brings it into connection with its object. (Peirce, vol. 5, 238)

In our present study, stamps create a web of plural meanings and lead to an encapsulated visual sign system – codification. The symbolic forms deriving from stamps reveal icons, indices and symbols and subsequently relate to three types of structures (Greimas and Rastier 1968; Wagner 2011) or three levels of language: the *ideational*, *textual* and *interpersonal* levels (Halliday 2003). Stamps convey processes of communication, of exchanges and of affects where the intellect, the mind and the culture of the interpreter (the receiver if we refer to the Saussurian terminology) are being stimulated. They cohere thematically in order to weave and project the message as in our present study, the commemoration of historical French events. These stamps can be analysed and interpreted according to the nature of shape (ref. to superficial structure), aesthetics (ref. to structure of manifestation) and ideology (ref. to the deep structure) if we apply the concepts developed by Greimas and Rastier (1968). Visual signs have potential significations. They are fragments of the 'living reality' (Gény 1922). The role of the interpretant is to read the dynamics in order to transpose a potential meaning into a manifest reality; consequently, he is a manager of meanings who serves to fill the gap between the observable and the understandable, between the visible and the invisible, between the said and the unsaid.

15.2.2 *Hermeneutic Approach's Contribution*

Following the method taken by David Scott (Scott 2002a, 5–8), we think it could be worthwhile to develop a semiotic approach with hermeneutic flair. Context

and interpretation will then be at the core of our analysis. Hermeneutics, from 'hermeneutikè' (Greek word meaning art of interpretation) and from the name of Greek God 'Hermès', who was messenger and interpreter of God orders, can be understood as a theory trying to disclose what is lecture, explanation and/or interpretation of texts. There are two kinds of hermeneutics. Philological hermeneutics considers ancient texts as having a specific meaning that could be found in studying the circumstances in which they appear. Philosophical hermeneutics, on the other hand, investigates the transcendental conditions of every interpretation. For example, Michel Foucault considers hermeneutics as '[the] whole body of knowledge and techniques which enables us to make signs visible and discover their meaning' (Foucault 1966). Philosophical hermeneutics and semiotics are then deeply and clearly linked. They develop a specific methodology that supports an analysis of commemorative postage stamps.

Paul Ricœur's account of hermeneutics insists on the idea that to define clearly what is hermeneutics, we have to keep in mind that understanding uses signs, symbols and texts as media; hermeneutics is then the 'doctrine of comprehension and interpretation of written and spoken speeches which have a meaning or make up a system of meanings' (Ineichen 1995). Therefore, the science of interpretation could be summarized as 'the working thought which consists in deciphering hidden meaning in visible meaning, developing the levels of meaning implied in literal meaning' (Ricœur 1969, 16). It aims to unveil and decode indirect references and multiple levels of interpretation: 'The body of double-entendres really makes up the hermeneutic field' (Ricœur 1969, 16).

What is at stake is then to interpret hidden meanings at work within texts and symbols, supposing there is some sort of pre-understanding fused with interpretation. Ricœur's earlier statement has three consequences: (1) Plurality of meanings belonging to a symbol can only be unveiled through interpretation, so hermeneutics and symbols are deeply linked; they are necessarily co-dependent. (2) Hermeneutics goes beyond symbol because symbol extends beyond meaning. A text then reveals a fundamental specificity of historicity belonging to human experience (Ricœur 1986, 137–138). Every word has a referent and a peculiar manner to deal with the world. Interpretation is also a means to understand oneself. (3) The interpretative process consists in constructing meaning, which is at the same time a way to construct the self (Ricœur 1986, 83). Interpretation is actualized through an appropriation of meaning in conjunction with this last process. Therefore, understanding the self and appropriating of meaning are contemporaneous with subjectivity and objectivity linked within interpretation (Aguirre 1998). The interpretant becomes part of an interpretative tradition that preconstructs his universe of meaning. Ricœur can then present hermeneutics as a 'chain of interpretations built by the interpreting community and included in the rhythm of the text as the work of meaning on itself. Within this chain, the first interpretants represent tradition for the last interpretants who embody interpretation itself' (Ricœur 1986, 158). Hermeneutics allows us to reactivate 'the meaning of the text from the angle of a series of interpretants' appropriations' (Avonyo 2009).

This chapter focuses on commemorative stamps as a new object for hermeneutic study. Potentialities of such an approach can be summarized as follows. Hermeneutics insists on the symbolic dimension of commemorative stamps even if it also sheds light on the understanding process needed by an interpretation. What is new is the possibility of unveiling meaning in the several levels of signs contained in the delimited space of a commemorative stamp. We already noted how a dynamic constitution of meaning is correlative to a construction of the self requiring an appropriation, but we should also notice how such an appropriation implies the reference to a common cultural space, which in turn is reactivated by the interpretant. Consequently, the main characteristics of commemorative stamps are identified. One of the points is indeed to understand the context in which stamps are issued. Another is to identify the multiple levels of meaning linked to a heterogeneity of signs within stamps and to analyse their message. This point can only be clearly understood if it is contextualized through an interpretant. Lastly, we will focus on the way by which the constitution of meaning develops the construction of an individual or collective/common/shared identity. Such an identity refers to a shared significant space, which could be historical, cultural or symbolic.

15.2.3 *Stamps as Bearers of Memory and Identity*

French commemorative postage stamps support both voluntary and discreet actions from the state in highlighting some historical key events involving the constitution of the French Republic (Stamp 5) and the creation of the French Civil Code (Stamp 1). They are ‘windows of the State that illustrate how [they] wish to be seen by [their] own citizens and those beyond [their] boundaries’ (Brunn 2000, 316). They are valuable instruments and also strong visual statements where they discreetly celebrate the French advances in the multicultural composition of the French Republic on national, European and international settings.

Stamps are the ‘paper ambassadors’ (Altman 1991) or ‘refuges’ (Nora 1984) of the French national identity, whereas others considered them as ‘ideal propaganda’ (McQueen 1988, 1). Visual communication is conditioned by the cognition and recognition of the interpretants of such supporting *media*. These interpretants need to construct a relation between past historical events and the conveyed visual means in order to ‘overcome a quite modern kind of fragmentation and loss of identity’ (Fishman 1972, 9). Indeed, the perception of French history is incomplete ‘as the essence of a nation is that all individual members have many things in common and all have also forgotten many things’ (Renan 1947, 891). Consequently, the social and cultural equilibrium has to be re-established between the sender and receiver of the message under the visual mode of communication. Nora (1984, xxv) proposes that the poorer the individual memory, the more external signs are needed to revive it. As a result, there is an interplay for interpretants between the visual and interpretative perspectives of commemorative postage stamps. The tangible point of articulation remains ‘vagueness’ (Williamson 1994), ‘a set of

different legal landscapes' (Vanderlinden 1987) and 'a multilevel law' (Tierney 2006) where multiplicity and fragmentation may affect the signification of the intended meaning:

The meaning of a representation can be nothing but a representation. In fact, it is nothing but the representation itself conceived as stripped of irrelevant clothing. But this clothing never can be completely stripped out, it is only changed for something more diaphanous. So there is an infinite regression here. Finally, the interpretant is nothing but another representation to which the torch of truth is handed along; and as a representation, it has its interpretant again. (Fish 1980, 492)

The 'ongoing discursive negotiation of what it imaginatively means to be a member of a Nation' as 'a national identity is not simply a narrative or set of narratives' (Bruner 2002, 7). The role of the artist commissioned by the state will then be to bring to the forefront a multiplicity of visual elements rooted in French history. Nora (1984, xxxv) notes that there is a need to encapsulate the maximum of meanings in a minimum of visual signs. The artist will focus on the 'ethnocultural characterization and on the authenticity, purity, and mobility of the beliefs, values and behaviours that typify the community of reference' (Fishman 1972, 8). These exchange processes operate at different levels where the key visual elements representing the French nation cooperate to negotiate and find transitional spaces:

We live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassings. Our legal life is constituted by an intersection of different legal orders, that is, by *interlegality*. Interlegality is the phenomenological counterpart of legal pluralism, and a key concept in a postmodern conception of law. (Santos 1995, 473)

15.3 French Commemorative Stamps and Their Specificities

Stamps resemble a theatre scene where, when the curtains open, the viewer can see many semiotic representations on the stage. Stamps convey a triadic dimension, that is, index, icon and symbol. The index points to the country of reference, the icon depicts the graphic historical reference (i.e. national characters, emblems, an important event, a historical place, etc.), and the symbol provides the element of useful information (i.e. name of the country, commemoration day or name, artist's name, name of the postal service and year of issue). If we apply the structures of representation given by Greimas and Rastier, we can give complementary information under three perspectives: (1) aesthetics (commemorative stamps show the artist's work of art and reflect one 'material fragment of this reality' (Mikhaïl 1987, 27). This element is extracted from its context and is exposed to give prestige to the French Republic), (2) symbolism (the means of representation are chosen to federate 'the historical sentiment of a people' (Snyder 1976, 43)), and (3) ideology (commemorative stamps show 'the nobility of the beliefs, values and behaviours' (Fishman 1972, 8). The means employed in this third perspective stress the ethnocultural characterization of a people).

Decoding this trichotomy requires sensitivity to the cultural and legal environments; subsequently, the connotations of value and belief systems and symbolism ensure conformity to French history in the applied icons, index and symbols. The coding and even decoding govern the selection of forms as contents consisting in multiple layers within the stamp. The communicative strategy facilitates the differentiations in terms of historical evocations, manners and modes of presentations and considers this form of transmission as an intermedial discourse, the ‘icono-textual discourse’ (Hoek 2002, 35), in which both verbal and visual elements are combined and even overlapped. This strategy includes two layers of analyses. The first layer involves the verbal communication of the stamp in which different means avail different approaches in the form of elements and styles setting the commemorative event under the past space and time framework. The second layer synthesizes the various approaches tackled in the first layer under a visual perspective and thus creates optimum impact and awareness by the interpretant about the actual space and time framework.

15.3.1 *Stamp Specificities*

The stamp is an object of everyday life. We can find it everywhere in the world either for internal or external sending within a country or to a foreign country. It is essentially double in meaning as one of its specificities is to be at the meeting of several – complementary or opposite – requirements. This relationship of internality/externality is constitutive of the semantic object known as the ‘stamp’. One of the most striking things in the material form of a stamp is its narrowed and limited space, as its perforations along its borders reveal both its use and the possibility of an unfinished space in perpetual junction. Ironically, the limited boundaries of its graphical space correspond to potential unlimited multiplicity of its meaning(s).

As an everyday life object, a stamp can be used in two ways. First, it is commonly sent as part of millions of objects used by people. However, it can be turned into a collector’s item for its value and status change radically. This change comes from the fact that a stamp is essentially dualistic in aim, as both expressive and poetic. It is on the one hand a simple – but necessary – tool used to send mails, cards or parcels and, on the other, an aesthetic and meaningful object. It has an intrinsic value (price for sending) and an extrinsic one (providing meaning and being a piece of art).

Let us go back to this point later, but we can already assert its meaning as a key to understanding the history of a specific country. This is why the stamp is closely studied by historians, ethnologists, sociologists and aesthetes. This tension between meaning, art and usefulness is also what justifies stamps as collector’s items. Nevertheless, stamps attempt to express values from issuers while aspiring to propose an artistic representation. In this way, the stamp is part of a specific time and reflects values of the society in which it is issued, even if they are not effectively uniform or representative (Scott 1997, 305). Value is a very important question here since stamps are a

nodal point between values and norms. Let us be more specific to say that stamps aim to promote some values and, through this promotion, attempt to impose a peculiar image or discourse. The stamp is at the same time axiological and normative as we can find here an expression of the relation between norm and value (Debray 2001, 28).

Whoever issuing stamps is interested in such a representation insofar as such objects used express it as legitimate. A stamp is legitimate because it is an iconic rhematic legisign, that is, a sign that is a law, a sort of ideogram, issued by an official authority ('La Poste'), commonly shared and used by a wide range of people. Once again, we can observe that the stamp has a dual nature, which is also one of its specificities: It is characterized by its source and its addressee(s). There is a kind of evidence attached to the stamp, a sort of instant recognition concerning its source and its function. These are unquestionable facts. What should stimulate our inquiry is the relationship between issuer and receiver. What kind of information does the stamp convey? What kind of tools could it use to convey such a message?

In considering the tension between expressive and poetic aims, let us take the example of Stamp 6, designed by Jean-Michel Folon. This stamp marked the beginning of Bicentenary of the French Revolution celebrations. It is a commemorative stamp that allows Folon to make use of collective memory or symbols rather than real and precise elements. It is indeed a true piece of artwork. Jean-Michel Folon is a Belgian artist renowned for his penchant to paint wide watercolour gradations and characters with schematic outlines and a lost expression. They seem to be wandering, to be sort of weightless within large bare landscape. His work expresses deep questioning from occidental society. He is also a strong defender of human rights. The choice to use his design for such a commemorative stamp is definitely not a coincidence.

We can find in this stamp the whole elements characterizing French Revolution values, that is, the double trinity, blue-white-red and Freedom-Equality-Fraternity, enshrined in the French Constitution, article 2. They are cleverly represented: a daring gradation from blue to red with a light white as a transition. Characters conveying information are in white letters. There are three famous birds – official emblem for bicentenary communication – symbolizing the three values quoted above and the joining of the three colours of the French Revolution. A closer look reveals these three birds to be actually one bird symbolizing Fraternity but also the indissociable nature of the three fundamental values of the French Revolution. Their identical size expresses Equality as they seem to fly towards the outside of the stamp, a move symbolizing Freedom. Expressive and aesthetic aims are not in opposition, but they rather are in symbiotic appeal to the spectator's (the interpreter's) intellect and feelings. The resultant heterogeneity of signs, peace, calmness and simplicity emanates from these images reinforcing the strength of the ideological message conveyed by this stamp. To commemorate the Bicentenary of the French Revolution, Folon uses a bird motif with a white outline on a blue and red sky; he then turns it into a symbol of the French Republic and sign of democratic freedom (Scott 2002b, p. 58).

Beyond its apparent simplicity, there is a deep complexity corresponding to numerous functions of the postage stamp. Firstly, it uses symbols (words and numbers), which indicate the issuing country and its monetary value. Secondly, it is an icon

because of the symbolic image within its narrowed space. By adding an additional icon (character, site or event), a stamp becomes an object of commemoration, that is, a commemorative stamp. It is then the site of several functions as the postage stamp is structured in semiotic levels reflecting these same functions. Official function cannot be separated from underlying ideological messages expressed by the heterogeneity of signs found on a stamp. The language specific to philatelic symbolism is infinitely flexible and can propose some new and complex articulations, such as elements organized in several layers, encroaching images and the mixing of heterogeneous signs. The material frame of stamps is also very flexible in accommodating the message desired by the issuer (Stamps 2, 3 and 5).

15.3.2 *Representation and Communication*

The artist uses different ways of presenting commemorative events as a way to affect the interpreter. The main goal is to lure the viewer's attention, therefore leading to the adoption and recognition of such presentations. Intermedial discourse brings together the properties of the scenic art and accompanying linguistic layers. The scenic art primarily depends on the artist's imagery to show as many visual layers as possible, while the linguistic aspects lead to a repetition of the visual layers (Scott 1995). Every single space is pervaded with signs. Nothing is neutral as even the smallest and least visible sign gives cohesion to the commemorated events.

Stamps move between abstraction and concreteness. The projected idealization is extracted from its context and leads to assimilation by a broad spectrum of interpretants. Techniques applied in the conception of commemorative stamps package macro and micro sign systems. These techniques are dynamic processes in the sense that they can be interpreted differently pertaining to the elements the interpretant considers. It then facilitates the differentiations in the evocation of the event, manner and mode used for that purpose. These techniques can be categorized into three aspects: play on colours, verbal elements and pictures. They involve the design and meaning in the narration of an event and form the basic common denominator. They facilitate capture through the interpretation of French identity. The artist not only plays on the background but also on the forefront of the stamps.

Stamp 1 evokes the preparation of the Civil Code in 1800–1804 where the artist – Decaris – uses the three historical colours in more or less visible layers. The first layer, which is the most striking, uses blue. Its interpretation can be twofold as the simplest interpretation reveals a clear blue sky where the two main characters – Napoleon representing the French State and Félix Julien Jean Bigot de Préameneu representing the law (the book in his hands letting us understand he is one of the writers) – peacefully collaborate to draft the Civil Code. The deepest meaning is linked to the way it expresses French identity, as we can find the three French colours (blue, white and red) but very lightly and subtly painted. The second colour is red and appears in a less visible way. One of the strategies is to use *light* red in order to make sure it appears second – in terms of a layering effect – within the