

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ANHEUSER-BUSCH, INCORPORATED,)
)
Opposer,)
)
v.)
)
KELLY J. HOLT,)
)
Applicant.)

Opposition No. 91180119

77/090,584

**OPPOSER'S NOTICE OF FILING
TESTIMONY DEPOSITION TRANSCRIPT AND EXHIBITS**

Pursuant to TBMP § 703.01(I), Opposer hereby gives notice that it is filing this day the accompanying certified transcript of the testimony deposition of Gregory Ward, Ph.D., along with the related exhibits.

LOEB & LOEB LLP

Seth A. Rose

Date: February 2, 2009

By:

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02-03-2009

CERTIFICATE OF SERVICE

I, Seth A. Rose, an attorney for Opposer, Anheuser-Busch, Incorporated, hereby certify that a copy of the foregoing **OPPOSER'S NOTICE OF FILING TESTIMONY**

DEPOSITION TRANSCRIPT AND EXHIBITS

is being deposited via overnight courier in an envelope addressed to:

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
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and is being served by first class mail, postage prepaid, upon:

Melissa S. Hockersmith
RYAN KROMHOLZ & MANION, S.C.
P.O. Box 26618
Milwaukee, WI 53226-0618

on this 2nd day of February, 2009.

Seth A. Rose

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANHEUSER-BUSCH INCORPORATED,)
)
) Opposers,)
) Opposition No.
Vs.) 91180119
)
KELLY J. HOLT,)
)
) Applicant.)

The deposition of **GREGORY WARD**,
Ph.D., called for examination, taken pursuant to
the provisions of the Code of Civil Procedure and
the Rules of the Supreme Court of the State of
Illinois pertaining to the taking of depositions
for the purpose of discovery, taken before JANET L.
TSOKATOS, a Notary Public within and for the County
of Cook State of Illinois, and a Certified
Shorthand Reporter of said state, at **321 North
Clark Street, Chicago, Illinois, on the 28th day of
October, A.D. 2008, at 1:00 o'clock p.m.**

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PRESENT:

LOEB & LOEB, by

MR. SETH A. ROSE and

MR. DANIEL FROHLING

321 North Clark Suite 2300

Chicago, IL 60610-4746

on behalf of the Opposer;

RYAN KROMHOLZ & MANION, S.C., by

Ms. Melissa S. Hockersmith

3360 Gateway Road

Brookfield, WI 53045

on behalf of the Applicant.

REPORTED BY: JANET L. TSOKATOS, C.S.R.

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I N D E X

WITNESS	EXAMINATION
Gregory Ward, Ph.D.	
Examination by Mr. Rose:	4
Examination by Ms. Hockersmith:	43
Re-examination by Mr. Rose:	52

E X H I B I T S

NUMBER	MARKED FOR ID
OPPOSER'S EXHIBIT	
No. 1 Gregory Ward CV	8
No. 2 Gregory Ward Expert Opinion.....	14
No. 3 USPTO Trademark Electronic Search...	15

1 (WHEREUPON, the witness was duly
2 GREGORY WARD, Ph.D.,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. ROSE:

7 Q. Please state your name and address.

8 A. Gregory Ward. 3752 North Keeler Avenue,
9 Chicago, Illinois.

10 Q. Have you ever been deposed before?

11 A. Yes.

12 Q. And under what kind of circumstances?

13 A. Here, approximately several months ago.

14 Q. Was it in an administrative proceeding or
15 federal court action, or do you not recall?

16 A. It was not a federal court action.

17 Q. And have you had any other experiences
18 related to legal proceedings?

19 A. Yes. I've been an expert witness in other
20 cases.

21 Q. Let me just go over some ground rules for
22 the deposition.

23 The court reporter is going to be
24 taking down your answers so we always need to make

1 sure that we give oral answers instead of head bobs
2 or shakes.

3 If you don't understand a question,
4 just please feel free to ask me to clarify or to
5 rephrase it and I will. Of course if you ever want
6 to take a break at any time, that's fine.

7 A. Sure.

8 Q. Additionally, if there is any question
9 that you've given later on that you want to
10 correct something, please go ahead and do that.
11 And, finally, if there is a document that might
12 help refresh your memory of anything during the
13 deposition, go ahead and ask, we will try to
14 provide it for you.

15 A. Sure.

16 Q. Professor Ward, what is your occupation?

17 A. I'm a professor of linguistics at
18 Northwestern University.

19 Q. How long have you held that position?

20 A. Since 1986.

21 Q. And can you tell us generally what
22 linguistics is?

23 A. Linguistics is the scientific study of
24 language.

1 Q. How long have you been in the linguistics
2 field?

3 A. Since graduate school. Since 1980. 28
4 years.

5 Q. Now, you mentioned that you are a
6 Professor of Linguistics. What language or
7 languages are you a Professor of linguistics in?

8 A. My primary research language is English.
9 I've also done some research on Italian.

10 Q. And regarding your position at
11 Northwestern currently, Professor, what were your
12 previous positions?

13 A. I had a position at San Diego State
14 University for one year and before that I was in
15 graduate school for six years at the University of
16 Pennsylvania.

17 Q. And at Northwestern itself, what other
18 positions have you held?

19 A. I'm Affiliate Faculty in the Department of
20 Philosophy at Northwestern University, and while at
21 Northwestern, I've held a number of different
22 teaching positions, at different institutions,
23 universities throughout the world.

24 Q. And have you held any other professional

1 positions or appointments in the field of
2 linguistics that would include Northwestern or
3 other academic institutions and organizations?

4 A. Yes, I was Secretary-Treasurer for The
5 Linguistic Society of America, which is the main
6 professional organization for academic linguists,
7 for four years, and I've also been an instructor at
8 a number of Linguistic Society of America
9 Institutes that are held bi-annually in different
10 locations throughout the country.

11 Q. Can you give us some specifics as to what
12 those other positions or appointments were as
13 opposed to just generally speaking?

14 A. The professional appointment at the
15 Linguistic Society of America was in recognition of
16 my contributions to the discipline, and it was an
17 elected position. I've also been selected to teach
18 at linguistic institutes. Approximately 30
19 distinguished scholars around the world are chosen
20 for each of these institutes, and I have now taught
21 at five of them.

22 MR. ROSE: I would like to have this marked
23 as Exhibit 1.

24

1 (WHEREUPON, a certain document was
2 marked Deposition Exhibit
3 No. 1 for identification, as of
4 10-28-08.)

5 BY MR. ROSE:

6 Q. Professor Ward, do you recognize this
7 document?

8 A. I do.

9 Q. And could you tell us what it is?

10 A. It is my curriculum vitae.

11 Q. And does anything in the curriculum vitae
12 jump out at you that you might want to mention that
13 you haven't already in terms of appointments or
14 other professional positions?

15 A. I see that I didn't mention the
16 appointments abroad. So I was appointed as
17 distinguished visiting professor at University of
18 Santiago de Compostela Spain and at the University
19 Charles de Gaulle in France.

20 Q. And after high school what was your
21 educational background?

22 A. I attended University of California
23 Berkeley for five years where I received a B.A.
24 with Distinction in Linguistics and Comparative

1 Literature.

2 Q. I would like to turn to the various
3 aspects of your professional work as a professor,
4 and can you tell us what the various aspects of
5 your work are, you know, in terms of what areas are
6 you involved in in your practice as a professor?

7 A. As professor, my responsibilities involve
8 three distinct areas: research, teaching and
9 service.

10 Q. And can you expand upon each one?

11 A. Sure. My research commitments involve
12 conducting a research program, the training of
13 graduate students and the publication of the
14 results of my research in peer-reviewed
15 periodicals.

16 Q. Well, let's delve into the research a
17 little bit. What -- how have you conducted -- or
18 have you conducted research in the field of
19 linguistics as part of your professional work?

20 A. I have.

21 Q. And what have your primary research areas
22 been?

23 A. My primary research areas have been in the
24 areas of linguistic meaning, semantics and

1 pragmatics. I have also studied intonational
2 meaning.

3 Q. When you say, "meaning," what does the
4 study of meaning in linguistics cover?

5 A. In linguistics meaning encompasses two
6 distinct subfields: Semantics and pragmatics.
7 Semantics is the study of literal meaning.
8 Pragmatics is the study of contextual meaning. The
9 idea is that meaning comprises both what the
10 language itself contributes to interpretation and
11 what the context of utterance contributes to
12 interpretation. Those two sources combine to give
13 us the overall interpretation of an utterance.

14 Q. And that is semantics.

15 A. That is meaning. Semantics is the
16 contribution of the linguistic system itself.
17 Pragmatics is the contextual components and the
18 overall meaning is the ultimate interpretation.

19 Q. Have you authored any books or articles in
20 the field of linguistics?

21 A. I have. I have authored five books and 24
22 refereed journal articles.

23 Q. And have you lectured or given talks on
24 your research?

1 A. I have.

2 Q. At Northwestern?

3 A. And elsewhere.

4 Q. Where else?

5 A. The places where I have given invited
6 talks, presentation, plenaries or colloquia begin
7 on page 9 and extend through page 13. There are
8 several dozen there in that location.

9 Q. And that's of Exhibit 1?

10 A. Correct.

11 Q. Thank you.

12 In semantics, pragmatics and the
13 study of meaning, have you taught classes in that
14 area?

15 A. I have.

16 Q. Can you tell me a little bit more about
17 what the role of semantics plays in the
18 interpretation of language?

19 A. Yes. Semantics is the study of linguistic
20 meaning. Associated with each word is a
21 conventional meaning. Those words combine into
22 larger phrases with conventional meanings
23 associated with them. Those phrases in turn
24 combine into larger units still, which we call

1 sentences and, finally, those sentences combine
2 with other sentences to form what we call discourse
3 units. Those are the levels of analysis in
4 semantics.

5 Q. And semantics, in regard to semantics
6 specifically, have you studied and researched that?

7 A. Yes, I have.

8 Q. And have you published articles on
9 semantics specifically?

10 A. Yes. In fact, the title of my dissertation
11 was on the semantics and pragmatics of preposing.

12 Q. Have you lectured and given speeches on
13 semantics?

14 A. I have.

15 Q. Have you taught classes on semantics?

16 A. I have.

17 MR. ROSE: At this point we would offer Dr.
18 Ward as an expert on linguistics and move Exhibit 1
19 into evidence.

20 BY MR. ROSE:

21 Q. Okay. Now, I want to turn to your role
22 in this proceeding. Were you asked to give an
23 expert opinion regarding the two alleged word
24 marks, "BEER 1" and then "One beer, BEER 1" as well

1 as the design mark, or I'll refer to a design mark
2 or logo that contains "BEER 1" and some other
3 elements?

4 A. Yes, I was.

5 Q. And do you recall when and how that
6 happened?

7 A. It was in May of this year that Daniel
8 Frohling contacted me in regards to this particular
9 case.

10 Q. And what did Mr. Frohling ask you?

11 A. He asked me if I would be available to
12 review some documents and provide my expert
13 testimony with respect to them.

14 Q. And were you aware that this was in the
15 context of a legal proceeding?

16 A. Yes.

17 Q. Were you aware of the client that Mr.
18 Frohling represents?

19 A. No.

20 Q. Did you have any knowledge of the unknown
21 client position in the case?

22 A. No.

23 Q. Were you paid for your services?

24 A. Yes.

1 Q. And was that fee dependent upon the
2 outcome of your report?

3 A. No, it was not.

4 Q. Did the payment of a fee affect your
5 opinion?

6 A. It did not.

7 Q. Before you began your analysis, did you
8 know what the results would be?

9 A. I did not.

10 Q. You mentioned Mr. Frohling had given you
11 some documents. What information documents were
12 you given in conjunction with your engagement?

13 A. Mr. Frohling sent me a section from
14 McCarthy on Trademarks and Unfair Competition and
15 some sections from the TMEP.

16 MR. ROSE: Before we get into those
17 documents, I would like to introduce this document
18 as Exhibit 2.

19 (WHEREUPON, a certain document was
20 marked Deposition Exhibit
21 No. 2 for identification, as of
22 10-28-08.)

23 BY MR. ROSE:

24 Q. Professor Ward, do you recognize this

1 document?

2 A. Yes, I do.

3 Q. And can you tell us what it is?

4 A. This is the report I prepared in
5 conjunction with this issue.

6 Q. Page 14, is that your signature?

7 A. Yes, it is.

8 MR. ROSE: I now would like to mark this
9 as Exhibit 3.

10 (WHEREUPON, a certain document was
11 marked Deposition Exhibit
12 No. 3 for identification, as of
13 10-28-08.)

14 BY MR. ROSE:

15 Q. Do recognize Exhibit 3?

16 A. Yes, I do.

17 Q. Can you tell us what Exhibit 3 is?

18 A. Yes. Exhibit 3, the first few pages of
19 Exhibit 3 are the, appear to be the applicant's
20 application from the United States Patent and
21 Trademark Office, USPTO, with the two word marks
22 and the design mark in question. It also consists
23 of the section from McCarthy that I mentioned
24 earlier and a section on "merely descriptive" marks

1 that I mentioned earlier as well.

2 Q. The section on merely descriptive marks is
3 from what corpus? What body of work?

4 A. From the TMEP.

5 Q. And is the TMEP the Trademark Manual
6 Examining Procedure?

7 A. Yes, it is.

8 Q. Did you read these documents in
9 conjunction with the preparation of your report?

10 A. I did.

11 Q. And did these documents affect the
12 methodology you used in preparing your report?

13 A. They did.

14 Q. Can you explain how?

15 A. Yes. In order to address the question of
16 whether the marks in question were descriptive, I
17 needed to have an understanding of the term
18 "descriptive" as used in a legal context.

19 Q. And then knowing what "descriptive" meant
20 in a legal context, how did that affect the
21 methodology you chose?

22 A. It informed me as to how to conduct the
23 linguistic analysis in order to address the issue
24 of whether or not the marks in question were

1 descriptive.

2 Q. Now, did these documents affect your
3 conclusions any way?

4 A. To the extent that they informed my
5 understanding of the term in question.

6 Q. The term being?

7 A. "Descriptive."

8 Q. Let's turn to what you actually did in
9 addressing the inquiry that was posed to you.
10 Literally, you were presented with the inquiry and
11 what did you do?

12 A. Well, with respect to the two word marks,
13 I proceeded to conduct linguistic analyses on each
14 of them.

15 Q. And how did you go about analyzing the
16 inquiry in preparing your opinion?

17 A. Well, for -- I did different -- I
18 conducted different linguistic analyses for the two
19 word marks in question.

20 Q. And for the design mark?

21 A. For the design mark I used a linguistic
22 analysis combined with my interpretation of some of
23 the visual elements of the design mark.

24 Q. Let's now refer back to Exhibit 2, which

1 is your report. Does this -- take a moment and
2 look -- does this document accurately report the
3 purpose, methodology, findings and conclusion of
4 your analysis?

5 A. Yes, it does.

6 Q. We have made mention of two word marks and
7 a design mark. I would like to go through each
8 mark at this point. We will start with the first
9 one, the mark is "BEER 1." I would like you to
10 describe your basic approach or methodology for
11 your analysis of this mark's meaning?

12 A. For this mark "BEER 1," I conducted a
13 corpus-based study in order to determine the
14 conventional meaning associated with phrases of
15 this form.

16 Q. And can you give us some background or
17 explanatory information as to how a corpus-based
18 methodology is conducted?

19 A. A corpus-based methodology is conducted by
20 gathering numbers of instances of the construction
21 in question from a variety of sources. An analysis
22 is then performed on that body or corpus of tokens
23 of the construction, word or phrase under
24 investigation.

1 Q. In terms of the gathering of instances, or
2 you've used the word token, how many examples or
3 instances of tokens did you gather?

4 A. For this particular construction I
5 collected approximately 100 tokens of this form.

6 Q. And how did you determine that that was
7 sufficient?

8 A. I determined it was sufficient after
9 identifying a very rigorous pattern that emerged
10 from an analysis of the corpus. Once the pattern
11 is shown to be robust, adding additional tokens
12 into the corpus serves little purpose.

13 Q. I note that on page 7 of your report there
14 is a discussion of the corpus-based methodology and
15 within this discussion there is reference in the
16 middle paragraph to an initial hypothesis. What
17 was your initial hypothesis here?

18 A. I didn't have an initial hypothesis until
19 I collected the data.

20 Q. And why was that done?

21 A. Sorry?

22 Q. Why was having an initial hypothesis not
23 made until you had collected data?

24 A. First, we need to collect the data in

1 order to begin hypothesizing what patterns or
2 irregularities may emerge from the corpus under
3 investigation.

4 Q. And now also referring to page 7 of the
5 report, you indicate an initial hypothesis is
6 formed and then it's tested against the remaining
7 occurrences. What were the remaining occurrences?

8 A. So with this corpus of 100, I analyzed
9 several dozen of them. An initial hypothesis was
10 formed and then I tested that hypothesis against
11 the remaining 60 or so tokens in that corpus and
12 examining those later tokens corroborated the
13 hypothesis that I formed initially upon examination
14 of the initial 25 or 30 tokens.

15 Q. Now, I think you may have already hinted
16 at this, but can you tell us exactly how you test
17 your hypothesis against those remaining tokens?

18 A. Sure. I devise a hypothesis to account
19 for the distribution of forms to account for the
20 tokens in the corpus. Then I test that hypothesis
21 by considering additional data beyond the smaller
22 set that the initial hypothesis was formed to
23 account for.

24 Q. And would you mind putting that into some

1 simple English terms.

2 A. Sure. I looked at approximately 25 to 30
3 examples of this construction, the construction
4 being a nominal followed by a post-nominal numeral.
5 That was the type of construction I was interested
6 in. It didn't consist solely of the words "BEER 1"
7 but other expression of that same pattern. I was
8 able to construct a hypothesis about the meaning of
9 that construction, particularly a noun followed by
10 a numeral modifier. Based on that hypothesis, I
11 then looked at additional examples and found that
12 my hypothesis was confirmed by looking at the
13 additional examples in the corpus.

14 Q. And what was your hypothesis after the
15 initial review?

16 A. My initial hypothesis is that when numbers
17 follow nouns in English, they have a particular
18 status, a particular meaning not found when they
19 appear before the noun in what we call pre-nominal
20 position.

21 Q. You just mentioned pre-nominal. What is
22 it called when a noun follows -- a number follows a
23 noun?

24 A. The position is called post-nominal

1 position.

2 Q. And how do those two terms pre-nominal,
3 post-nominal, how do they relate to your analysis
4 of the alleged "BEER 1" mark?

5 A. In English, modifiers can appear either
6 before or after the nouns they modify. Typically,
7 in English, modifiers, adjectives appear
8 pre-nominally; for example, "the happy cat" or "the
9 tall boy," "tall" and "happy" in those examples
10 are pre-nominal modifiers. They appear before the
11 noun. In this construction we find the modifier,
12 in this case, the number "one" in post-nominal
13 position. It appears after the noun, and that's a
14 very restricted position in English grammar.

15 Q. What do you mean by "very restricted"?

16 A. Its occurrence is rare. By far the vast
17 majority of modifiers appear before the noun in
18 pre-nominal position. When modifiers appear
19 post-nominally, we say it's a marked construction.

20 Q. Marked construction is another way of --
21 is it fair to say that marked construction is
22 another way of saying post-nominal?

23 A. Marked construction means that its
24 occurrence is rare. It's not the normal state of

1 affairs. It is -- it deviates from the normal
2 pattern in the predictable, explicable ways.

3 Q. What do words with post-nominal modifier
4 characteristics communicate to natural English
5 speakers?

6 A. In English post-nominal modifiers are
7 restricted in that they convey that the modifier is
8 denoting some type of ranking or order with respect
9 to the nominal in question.

10 Q. The nominal being...

11 A. The head noun of the phrase in question.

12 Q. Can you give us some examples?

13 A. Sure. One example might be, for example,
14 in an airplane when you are referring to "seat
15 25B." "Seat 25B" is a noun phrase consisting of
16 the head noun "seat" and the modifier "25B." The
17 modifier "25B" modifies the noun. In particular it
18 specifies the location of the seat. So this is an
19 example of a modifier in post-nominal position.

20 The same noun "seat" with a
21 pre-nominal modifier could be exemplified by the
22 expression "the comfortable seat," with
23 "comfortable" being a pre-nominal modifier but
24 "25B" in the expression "seat 25B" is a

1 post-nominal modifier.

2 Q. And would that -- you had mentioned
3 ordering and ranking. Would that "seat 25B" be an
4 ordering or a ranking?

5 A. At "Seat 25B" also would be both, in fact.
6 The post-nominal modifiers I discovered through the
7 corpus analysis all designated that the noun in
8 question was ranked or ordered in some way. In the
9 case of the airline seat, the ordering is clear, it
10 is the row; that is, the 25th row in the airplane
11 beginning at some point. Interestingly, there
12 needn't be every order represented. Sometimes
13 airplanes don't start with Row 1 so it needn't be
14 that it is the 25th row. It need only be that that
15 row is rank-ordered in some way.

16 Q. Applying this to the phrase "BEER 1" in
17 question, what is your expert opinion as to what
18 the phrase "BEER 1" communicates to English
19 speaking people?

20 A. Consistent with the results of the
21 corpus-based analysis, it was my conclusion that in
22 the phrase "BEER 1," "one" is serving its
23 post-nominal function as denoting a rank or
24 ordering of some kind.

1 Q. And could you put that into simple English
2 as well? "BEER 1" conveys...

3 A. In this case "BEER 1," "beer" is the noun,
4 "one" is the post-nominal modifier; therefore, the
5 expression "BEER 1," the interpretation of the
6 expression "BEER 1" is that it refers to a ranking
7 or ordering of beer in some way with the ranking or
8 ordering being "1."

9 Q. And that's your expert opinion?

10 A. It is.

11 Q. And are you confident in this analysis?

12 A. I am. May I say why?

13 Q. Yes, you may.

14 A. By looking at other examples of
15 post-nominal modifiers that do not denote any type
16 of ranking or ordering, we find that the examples
17 are ill-formed in some way. So it is -- it
18 supports the analysis when you look at non-ranking
19 modifiers put in that position, we do not find any
20 examples in English. For example, in Chicago we
21 have a subway system with different subway lines
22 denoted by color: the green line, the brown line,
23 the pink line. A post-nominal example would be
24 "the line red" or "the line pink," which we don't

1 find. It doesn't exist in English because pink and
2 green colors do not denote rankings or orderings.
3 Only those modifiers that denote rankings or
4 orderings are permitted in that position. Other
5 modifiers must appear pre-nominally. That's the
6 sort of negative evidence that linguists use to
7 support the analysis. Since you'll never find an
8 example of something that doesn't exist, we use the
9 absence of examples to support the analysis of the
10 examples we do find.

11 Q. And is the beer referred to in "BEER 1"
12 ranked number 1?

13 A. It conveys, the meaning of "BEER 1"
14 conveys that there is a ranking or ordering of some
15 sort with respect to beer such that the product
16 denoted is being ranked or ordered number 1.

17 Q. I would like to turn now to the second
18 alleged word mark "One beer, BEER 1." Did you use
19 the same methodology as you did with the "BEER 1"
20 mark for this mark?

21 A. In part, yes.

22 Q. And can you explain what you mean in part,
23 yes?

24 A. Yes. The word mark "One beer, BEER 1"

1 consists of two phrases, the phrase "one beer" and
2 the phrase "BEER 1." So my analysis of the phrase
3 "BEER 1," that is part of the larger phrase "One
4 beer, BEER 1" is the same as my analysis for the
5 mark "BEER 1" standing on its own. And that would
6 be the corpus-based study where I looked at the
7 same set of tokens and came up with the analysis
8 that post-nominal modifies.

9 The analysis of the part "one
10 beer," however, was not based on a corpus-based
11 analysis. I used a different methodology for that
12 part of the phrase "One beer, BEER 1."

13 Q. So why is it appropriate that you
14 interpreted the phrases separately?

15 A. It's a complex phrase that consists of two
16 parts, and my analysis is that the overall
17 interpretation is a function of the interpretation
18 of the subparts of the phrase.

19 Q. So did you -- is it fair to say that you
20 interpreted them separately and put them together
21 to determine the overall meaning?

22 A. Yes, it is.

23 Q. Can you tell us about the methodology for
24 the "one beer" portion of the alleged mark?

1 A. Yes. My methodology for that did not
2 depend on a corpus of natural language. Instead, I
3 relied on my intuitions as a native speaker and an
4 expert in the field of linguistics.

5 Q. Page 10 of your report you indicate or you
6 use the phrase "pre-nominal numeric modifier
7 followed by a noun." Will you break that phrase
8 down for us and explain it?

9 A. Could you point out where you are on page
10 10, please?

11 Q. Pre-nominal numeric modifier followed by a
12 noun is, I believe it's in the middle of -- there
13 is a middle paragraph, second line, it says semi
14 colon "Rather, it is a pre-nominal numeric
15 modifier, followed by a noun." Can you break that
16 down and explain it for us?

17 A. Sure. So the phrase "one beer" has two
18 words. The word "one" and the word "beer." In
19 this phrase "beer" is the noun and "one" is a
20 modifier. It modifies the nominal expression
21 "beer." "Beer" is the noun. "One" is in
22 pre-nominal position, and, therefore, serves as a
23 pre-nominal modifier of the noun "beer."

24 Q. I would also like to follow up with the

1 second sentence there, that middle paragraph, "In
2 general, the function of a numeric modifier is to
3 denote cardinality." Can you explain what
4 cardinality means?

5 A. I would be happy to. The cardinality of
6 an expression is the number of elements contained
7 within the set denoted by that expression.

8 Q. Will you give us some examples of that?

9 A. Take, for example, the expression "three
10 cats." It's a noun phrase consisting of a numeral
11 modifier "three" and the noun "cats." The
12 cardinality of that expression is three in that it
13 denotes the number of elements that are contained
14 in the set denoted by the expression "three cats."
15 Any numeral modifier in pre-nominal position
16 denotes a set of objects. The number of elements
17 contained within that set is what is meant by the
18 cardinality of that set. "Four books" has a
19 cardinality of four. "Three cats" has a
20 cardinality of three. "One beer" would have a
21 cardinality of one.

22 Q. The set then would be the non-numeric noun
23 within the phrase?

24 A. Correct. The number of instances, right,

1 of that noun contained within the set denoted by
2 that expression.

3 Q. Also looking at page 10 of your report in
4 caps, in all caps in the last paragraph, I see
5 reference to "unit" and "category." Does -- I
6 would like you to explain what unit and category
7 are and tie it into cardinality because I see that
8 it flows from a discussion of cardinality?

9 A. Sure. The cardinality of an expression
10 such as "one car," for example, can be interpreted
11 in one of two ways: The cardinality of "one" can
12 either refer to a specific unit of the noun, in
13 this case a specific unit of car, which would be a
14 car, a single vehicle, or it can refer more
15 abstractly to a category of car, something like a
16 kind or a type or style. Perhaps an example would
17 make this clearer.

18 Q. Okay. Would you like to give us an
19 example?

20 A. Sure. In the expression "one car," the
21 unit interpretation would be exemplified by the
22 expression "I drove one car to work today" where
23 what's being intended by the speaker is that this
24 is a particular token or instance or example of a

1 car that was being driven to work that day.

2 Another possibility is "I like one
3 car" where what's being referred to is not a
4 particular vehicle but rather a make or model or
5 type or style of car. The difference being an
6 abstract kind and a particular physical instance of
7 that object.

8 Q. Okay. I want to flesh that out, too. If
9 you saw a billboard driving on the highway, you saw
10 a billboard and it said, "one car, Mercedes," what
11 interpretation would you put upon that phrase in
12 terms of cardinality?

13 A. In that context I would assign it the
14 category interpretation.

15 Q. And why is that?

16 A. It would be difficult to imagine a basis
17 for an advertisement making reference to a
18 particular vehicle, a particular token, a
19 particular car. Rather with the brand name
20 following Mercedes, what would come to me most
21 naturally is an interpretation where what's being
22 referenced is one category of car, namely,
23 Mercedes.

24 Q. And for the category portion, what could

1 stand for category? Would it be anything specific?

2 A. Interestingly, for the category
3 interpretation, all that's required, following the
4 rules of English grammar, that there be a
5 particular category. That category is unspecified
6 as to what its instantiation is; that is, what it
7 is that counts as the category; it could be a type,
8 a style, a flavor, a kind. It's left unspecified
9 from the grammar itself.

10 Q. So what kind of interpretation would you
11 expect in a marketing context?

12 A. In a marketing context I would expect a
13 category interpretation to be preferred. Marketers
14 aren't trying to sell this particular token of this
15 product, like this particular pen, rather they are
16 trying to convey the importance of that pen as
17 opposed to other kinds of pens or products on the
18 market.

19 Q. Okay. Well, taking my example of "One Car
20 Mercedes," if you found that phrase in the
21 classified ads, what kind of cardinal
22 interpretation would you get then?

23 A. In the classified section of the
24 newspaper, I would assign it the unit

1 interpretation. There someone is not trying to
2 sell a kind of an automobile but rather a specific
3 instance, a token, a unit, that particular car.
4 The unit interpretation would be preferred in that
5 context.

6 Q. So applying this analysis to the "one
7 beer" phrase, what is your expert opinion to the
8 cardinal interpretation to the phrase "one beer" to
9 a native speaker of English?

10 A. That what is being conveyed is that there
11 is one kind of beer, one particular kind, category
12 of beer with the type of category unspecified.

13 Q. So as it pertains to the "one beer"
14 phrase, in your opinion, what are the possible
15 categories?

16 A. It's open-ended. Some possibilities could
17 be kind, brands and types, flavors, sources,
18 countries of origin, colors. With respect to a
19 product like beer, the distinctions that one might
20 make are open-ended.

21 Q. So the specific category is not defined by
22 the phrase?

23 A. Correct.

24 Q. Would any of those possible categories, in

1 your opinion, be related to beer?

2 A. Yes, I think in the right context any of
3 them could be.

4 Q. And why is that?

5 A. Because the grammar is simply saying that
6 what's being conveyed is that there is a category
7 of beer, an abstract category of beer and what
8 defines that category could be any number of
9 characteristics that are related to beers.

10 Q. And you keep referring to beer. Why would
11 it be related to beer?

12 A. Because the conventional meaning of an
13 expression is constrained by the noun, the head
14 noun of that phrase "beer," restricts the range of
15 categories that can be referred to by its use.

16 Q. So there wouldn't be a category that would
17 make no sense in connection with beer; is that what
18 you are...

19 A. Correct. It would be very far-fetched to
20 imagine a category involving something like texture
21 when it comes to a beer in terms of something that
22 you can touch. It has to be something that has to
23 be associated with the product in question, in this
24 case beer.

1 Q. Is it fair to say that any of these
2 interpretations would be, in your expert opinion,
3 how you believe English speakers would interpret
4 the phrase?

5 A. Can you repeat the question?

6 Q. You talked about there are various
7 categories you defined in the "one beer" mark, and
8 they all relate to beer you've indicated. Would
9 you say that English speakers not just linguists,
10 but English speakers would interpret the phrase
11 that way?

12 A. Yes.

13 Q. Earlier when we were speaking about "the
14 three cats," you used the word "exactly." You
15 indicated that cardinal numbers receive an exactly
16 interpretation of what you said earlier?

17 A. Yes, it is.

18 Q. Can you explain this?

19 A. It is an interesting property of not only
20 English but all natural languages, that use of a
21 numeral modifier conveys what we call an exactly
22 interpretation. For example, when I say, "John has
23 three cats," one tends to interpret that as though
24 I had said, "John has exactly three cats." But, in

1 fact, that understanding is an inference that a
2 hearer draws. It isn't something that the speaker
3 says explicitly, since it's possible that John can
4 have four cats, in which case the sentence "John
5 has three cats" is still logically true because any
6 time somebody has four cats they have three so it's
7 logically possible that a speaker may have meant
8 more than what was said. But, in fact, speakers
9 infer that when a speaker uses a numeral, they mean
10 exactly that number and no more.

11 Q. So with this understanding in mind what
12 does "one beer" convey?

13 A. With this understanding in mind, use of
14 the expression "one beer" would convey that the
15 speaker intends to communicate "exactly one beer."

16 Q. And "exactly one beer," would that have a
17 unit or category interpretation?

18 A. In a marketing context it would most
19 certainly, in my opinion, have the category
20 interpretation.

21 Q. Now, considering the full phrase "One
22 beer, BEER 1" as a whole, what is your expert
23 interpretation of what that phrase conveys?

24 A. As a whole, that the category of beer

1 consists of exactly one member and that member is
2 ranked or ordered number one.

3 Q. And do you believe that native speakers of
4 English would have that interpretation?

5 A. Yes, I do.

6 Q. Are you confident in that opinion?

7 A. I am.

8 Q. How confident?

9 A. On a scale of one to five?

10 Q. Sure.

11 A. Four point five.

12 Q. And why not five?

13 A. There is always some doubt when we are in
14 the realm of interpretation. If you were to
15 randomly collect 25 people on the street and were
16 to ask them the meaning of a very simple
17 expression, you rarely get 100 percent agreement on
18 anything having to do with the meaning. It doesn't
19 mean that the language is vague or imprecise. It
20 means that people, sometimes based on the nature of
21 the task or question, don't always answer in the
22 way you might expect so we build in some room for
23 variance when you are dealing with the
24 interpretations that people have when you give them

1 bits of language to understand.

2 Q. But having your expert opinion as to what
3 the interpretation of what the full phrase would
4 mean, are you confident that the majority of people
5 would believe or have the same interpretation that
6 you had or would they have a different
7 interpretation?

8 A. I'm confident that the majority of people
9 would have the same interpretation. I'm especially
10 confident the linguists would have the same
11 interpretation that I do.

12 Q. Is that because -- why is that? Why would
13 the linguists?

14 A. Because linguists are trained to analyze
15 language in particular ways. They have expertise
16 in conventional forms. This, in my opinion, this
17 is a pretty straightforward linguistic analysis.
18 Most experts in the field, I believe, would come to
19 a similar conclusion.

20 Q. On the scale of one to five you indicated
21 you were 4.5 confident. You explained the reason
22 why there was a .5 of "not as confident" there.
23 Can you give us a reason why the 4.5, why you
24 are -- that level of confidence, not what's missing

1 but why, what supports of the 4.5?

2 A. The expression, the cardinality part of
3 the analysis is extremely straightforward and has
4 never been subject to any type of disagreement in
5 the linguistic literature as far as I am aware.
6 That is a very straightforward interpretation, the
7 cardinality with the pre-nominal modifier. The
8 post-nominal modifier is a more interesting case.
9 It did involve an analysis. I did do some
10 background research on this question and there
11 hadn't been any clear analysis of post-nominal
12 modification in English modifiers, that is, this
13 category of numbers in post-nominal position. So
14 it involved an analysis. I'm very confident of the
15 methodology. It's what linguists do. They analyze
16 data. Form hypotheses. Test it against additional
17 data. If the additional data can support it, they
18 can move forward with great confidence so I'm
19 confident to that level that my analysis would bear
20 further scrutiny.

21 Q. Let's now move to your analysis of the
22 alleged design or logo mark. Turning to page 12 of
23 your report, is that an accurate depiction of the
24 alleged designed mark that you analyzed?

1 A. Yes, it is.

2 Q. And why don't you take a look at that
3 alleged design mark and tell us what you see.

4 A. I see an oval-shaped frame situated atop
5 what appears to be two large grains of barley
6 inside the frame -- I happen to have a black and
7 white version of this -- so inside the frame I see
8 one of, I see the word "beer" situated atop the
9 numeral one. The numeral one is in the center of
10 the oval with the word "beer" centered atop of the
11 numeral, top of the oval. I see a slash consisting
12 of at least two colors that is situated diagonally
13 running from the upper left portion of the oval to
14 the lower right. The slash is depicted behind the
15 numeral one. To the left of the numeral one there
16 is a small stein of beer with suds emanating out
17 from it. The handle is to the right. Then to the
18 right -- that's in the lower left of the oval -- to
19 the upper right of the oval there is a hemispheric
20 sun with rays of sunlight emanating from the sun --
21 I take it to be the sun and under that are the
22 Roman numerals MMVII, which denotes the number
23 2007.

24 Q. What phrases are used in this logo?

1 A. In this logo there is the phrase -- well,
2 there is the word "beer" and the numeral "one"
3 which I took to be the phrase BEER 1.

4 Q. Why did you take it to be the phrase BEER
5 1?

6 A. Well, in English the convention for
7 reading words and numbers is top down left to
8 right. There is no left to right ordering. Things
9 are situated hierarchically from top to bottom. In
10 English we read top to bottom so reading down I get
11 BEER 1.

12 Q. What are your reactions to the logo?

13 A. To the logo? Could you be more specific
14 with your question?

15 Q. Yes. Maybe I'll ask a different question.

16 How does your linguistic
17 background contribute to your opinion on what this
18 alleged design mark conveys?

19 A. I took my interpretation that I conducted
20 before looking at the logo and used that to inform
21 my interpretation of the logo in general.

22 Q. And how does your background in
23 linguistics make you uniquely suited to interpret
24 this logo that contains words?

1 A. I wouldn't say I'm uniquely suited to
2 evaluate this, but my background in linguistics
3 informs my analysis in the following way: I took
4 the analysis that I had come up with for the mark
5 BEER 1 and then in conjunction with my
6 interpretation of the graphic came up with an
7 interpretation for the logo overall.

8 Q. Do you have an opinion as to what this
9 design mark conveys?

10 A. I do.

11 Q. And what is that?

12 A. After considering my linguistic analysis
13 in which I concluded that the expression BEER 1
14 with "one" in post-nominal position, given the
15 top-down ordering, the numeral "one" is
16 post-nominal, it is then consistent with my
17 analysis that the logo conveys some type of rank
18 ordering of beer, of the beer in question being
19 ranked or ordered as number one.

20 Q. Are there any elements that would either
21 detract or support that linguistic conclusion?

22 A. Yes, there are elements that I found in
23 the logo that support that conclusion.

24 Q. Can you explain what ones they are?

1 A. My impression is that the overall shape of
2 the logo, the oval to me suggests some type of
3 victory medal, suggests some type of event, honor
4 or award consistent with a type of ranking or
5 ordering. The shape to me conveyed a medallion,
6 which I associated with sports events or perhaps
7 some type of competition in which this medallion is
8 being awarded. Again, all of those competition- or
9 award-type contexts support an interpretation in
10 which the beer in question is being ranked or
11 ordered in some way.

12 I might also add that the sash
13 behind the numeral, I think, added to my overall
14 impression of this being a medal or award or some
15 type of ranked representation.

16 MR. ROSE: I would like to take a minute
17 break.

18 MR. ROSE: Nothing further at this moment.

19 MS. HOCKERSMITH: I just have a few
20 questions. Actually, can we take a minute? I just
21 have a few follow-up questions.

22 EXAMINATION

23 BY MS. HOCKERSMITH:

24 Q. You said that you had previously testified

1 as an expert witness. About how many times have
2 you done that?

3 A. One deposition and one criminal case which
4 is pending.

5 Q. Have you ever testified or have you ever
6 submitted an expert opinion as to trademark matters
7 before?

8 A. Yes.

9 Q. So you have experience analyzing
10 trademarks?

11 A. I do.

12 Q. Have you ever testified in court or -- no,
13 you said in terms of expert experience the expert
14 testimony, the one deposition and one criminal
15 case.

16 A. Correct.

17 Q. So was that deposition regarding
18 trademarks?

19 A. Yes.

20 Q. So you did have some knowledge of
21 trademarks prior to this case?

22 A. Yes.

23 Q. What is your understanding of the word
24 trademark -- or, sorry, the word "descriptive" as

1 it relates to trademarks?

2 A. May I refer to...

3 Q. Certainly.

4 A. My understanding of the term "descriptive"
5 as is used in trademark context comes from the
6 Trademark Manual of Examining Procedures, the TMEP,
7 specifically the section entitled merely
8 "Descriptive Marks 1209.01B."

9 Q. With regard to the first word mark, you
10 used the corpus-based methodology. What led you to
11 choose that particular methodology?

12 A. The methodologies available to linguists
13 consist primarily of intuition-based studies,
14 psycholinguist experiments and corpus-based
15 studies. I ruled out the first two for different
16 reasons and decided for that particular phenomenon
17 that a corpus-based analysis would provide the best
18 results.

19 Q. So with regard to the first mark "BEER 1,"
20 it's your expert opinion that the average consumer
21 would interpret that mark to mean there is a beer
22 that is ranked or ordered as one?

23 A. Correct.

24 Q. So basically as the consumer is in the

1 liquor store, the grocery store, and they are
2 looking at this, they are going to know that it's
3 somehow or ranked or ordered as number one and sort
4 of be trying to figure what it's ranked or ordered
5 as?

6 A. I'm not sure that a consumer would be
7 struggling with trying to specify what the ranking
8 is. I think the impression is this is a
9 ranked-number-one product with the specific ranking
10 just left unspecified.

11 Q. So the type of ranking would be
12 unspecified, whether it's taste, value?

13 A. Popularity, exactly.

14 Q. So simply tell the consumer that it was
15 ranked number one but not necessarily specifically
16 what it's ranked number one as?

17 A. Correct.

18 Q. Did you test your outcome or your opinion
19 against any other linguists, or did you ask a
20 colleague?

21 A. I did, as a matter of fact. As a
22 benchmark one can have great confidence in a
23 corpus-based study, but it's always possible that
24 the analysis of the results of that particular

1 collection that I came across as I was gathering
2 data. So once I came up with this analysis, I did
3 run it by some of my colleagues.

4 Q. And did you run this across any lay
5 people, any non-linguists?

6 A. I did, as a matter of fact. It passed the
7 partner test at home, yes. In fact, one of my
8 examples in the corpus is very similar to the word
9 mark in question. It was the example "Job One,"
10 and when you give that to people, they are pretty
11 quick on coming up with an interpretation: the most
12 important job, the biggest job, the most demanding
13 job. They give you different criteria, but they
14 will each supply a superlative, suggesting that
15 it's the most X, where the X depends on the
16 particulars, but the most part is consistent, and
17 that's the gist of the analysis.

18 Q. The word "one" has a lot of different
19 meanings, correct? It could mean a single unit, it
20 could mean, as you suggested, the best or most
21 important. So are there any other plausible
22 interpretations of "BEER 1," in your opinion?

23 A. I would disagree that "one" has lots of
24 different interpretations. "One" has, I would

1 argue, a single interpretation but its meaning is
2 underspecified. So we will still have the meaning
3 of cardinality. It will still have, depending on
4 its position, if it's pre-nominal cardinality, if
5 it's post-nominal, it would be ranking. So it will
6 have that meaning and then the particular will be a
7 function of the context. So the way linguists talk
8 about these inherently vague terms is that they do
9 have a core meaning but the full interpretation
10 cannot be identified until it's situated in a
11 particular context.

12 Q. So the context is important to the
13 determination of the interpretation or the meaning
14 is the same is what you are saying? I'm sorry.

15 A. No. No. Let me be clearer. The meaning
16 of "one" will be constant across all contexts.
17 What will vary is in the case of the post-nominal
18 "one," because there is "one" pre-nominal and
19 "one," post-nominal "one." In the case of
20 post-nominal "one," what is constant is the ranking
21 or the ordering. What will vary is the measure by
22 which that ranking is determined; that is, the
23 criterion or the metric for determining the
24 ordering or ranking, whether it's price or

1 popularity or taste, quality, importance, that will
2 vary by context, but the ranking part, that it is
3 ranked is invariant.

4 Q. With regard to the second word mark "One
5 beer, BEER 1," so you used the corpus method on the
6 second clause of that phrase, and you used the
7 intuition methodology on the first?

8 A. Correct.

9 Q. And this may sound like a silly question,
10 but what does the intuition methodology, as a
11 linguist when would use it, what does that involve?

12 A. A fine question. Intuitions are one of
13 the tools that linguists use to analyze the
14 language of investigation, whether it's their own
15 language or a language that they are very familiar
16 with. It involves an introspection, a reflection
17 on the meaning or structure of the language, the
18 target language. It is one of many methodologies
19 that linguists use, but it involves the reflection
20 upon language that is the result of intense
21 investigation of the particular language in
22 question with the knowledge of how the language
23 works, how the forms might be used, how they might
24 be interpreted. The structure of the language, how

1 it fits together, that's all part of one's mastery
2 of a language at the level of linguistic awareness.

3 Q. And using the intuition methodology, is
4 there any way of analyzing the results, for
5 example, standard error, or because this is an
6 intuitive process there is not -- is it correct
7 that there is not a way of -- how should I put
8 this -- that there is not a way of analyzing the
9 results of that methodology? You know, when we
10 test other things we can graph out the results and
11 we can see a standard deviation. Is there a
12 scientific methodology in order to analyze the
13 results --

14 MR. ROSE: Objection. This question is a
15 little vague.

16 BY MS. HOCKERSMITH:

17 Q. Still with regard to the "one beer"
18 portion of the mark, it is your opinion that that
19 mark would be, to an average English speaker or any
20 native English speaker, indicate that there is "one
21 beer" of category X?

22 A. No. It would convey that there is, that
23 the cardinality of beer is exactly one and there
24 are two possible interpretations of cardinality:

1 the unit interpretation and category
2 interpretation.

3 Q. It is your opinion that the more plausible
4 in a marketing sense would be the category as
5 opposed to a unit?

6 A. I'm reluctant to make a sweeping
7 generalization. There are many different marketing
8 contexts. It seems more plausible that an
9 advertiser would be more concerned with the kind
10 interpretation. They are selling a kind or a
11 product, not particular instances or tokens. So
12 all other things being equal, yes, I would say the
13 category interpretation is the more likely in a
14 marketing context.

15 Q. And the category interpretation may be
16 ambiguous here, but it may become clear from the
17 marketing of the product.

18 A. Other aspects of the marketing context
19 would instantiate that variable, what type of
20 category is being marketed, yes.

21 Q. And then finally with regard to the design
22 mark.

23 A. Yes.

24 Q. Do you have previous experience in

1 analyzing or interpreting design marks?

2 A. I do not.

3 Q. Do you have any educational background
4 that might assist you in analyzing design marks?

5 A. Design marks specifically, no.

6 MS. HOCKERSMITH: And I think that's all.

7 RE-EXAMINATION

8 BY MR. ROSE:

9 Q. Counsel asked you a question about testing
10 your conclusions against your colleagues. Was that
11 just for the "BEER 1" mark?

12 A. Yes.

13 Q. And what was the conclusion?

14 A. Correction. It was for the "BEER 1" mark
15 and the logo.

16 Q. And with the "BEER 1" mark, what was the
17 result of the test against the colleagues? Did
18 they agree or disagree?

19 A. They agreed with me.

20 Q. And with the logo, did they agree or
21 disagree with you?

22 A. They agreed that it could be interpreted
23 as supporting a competitive-type context; that it
24 could -- it did look like a medallion, but as

1 linguists, they were reluctant to venture too far
2 in the non-linguistic sphere.

3 Q. So they are linguists. Who were these
4 colleagues?

5 A. Colleagues of mine at the Department of
6 Linguistics at Northwestern.

7 Q. Can you name them?

8 A. Yes. Professor Brady Clark, Professor
9 Matthew Goldrick, graduate students at the
10 university in my department as well I asked.

11 Q. And to each one of these persons did you
12 ask about "BEER 1" and the logo both or were some
13 people just "BEER 1"?

14 A. I believe some people were just "BEER 1"
15 and other people the logo.

16 Q. About the logo, is there in linguistics,
17 is there any time that the study of designs or
18 elements, is there any study within linguistics
19 that looks at logos?

20 A. Yes. There is a field within
21 communication called semiotics that looks at
22 symbols and designs with respect to their
23 interpretations and meanings.

24 Q. So is it fair to say that linguists have

1 some introduction to the interpretation of a logo
2 or a design as the basis of one form of
3 communication?

4 A. I think that would be a fair statement.

5 Q. And have you had that kind of knowledge or
6 at least introduction?

7 A. I have studied semiotics, which is the
8 study of symbols, not these particulars symbols but
9 semiotics in general, yes.

10 Q. Not these particular symbols but symbols
11 as a whole and what they connote to people, what
12 they convey to people?

13 A. Yes.

14 Q. Can you give us an example of a symbol
15 that you've studied that conveys a message to a
16 person?

17 A. One example is the use of a red slash
18 through linguistic material, which conveys some
19 type of negation or contrary interpretation. So
20 putting a slash through a picture, for example,
21 requires the viewer to understand the symbols
22 involved and the linguistic message to come up with
23 the interpretation of a design sign, for example.

24 Q. And how would the work that you have done

1 in that area of semiotics relate to the work that
2 you did here?

3 A. By using the understanding of symbols with
4 their conventional meaning in conjunction with the
5 conventional meanings of words give rise to
6 interpretation that are predictable based on the
7 conventional meanings of symbols and words, and
8 linguists study the conventional meanings of words
9 and meanings.

10 Q. Is it fair to say that the symbols in
11 connection with the design logo aided your
12 interpretation of the logo as a whole?

13 A. Yes.

14 Q. And is it fair to say that it aided your
15 interpretation or your conclusion as to what the
16 words in the design meant?

17 A. They reinforced the confidence I had in my
18 analysis of the word marks.

19 Q. So what is your conclusion as to what the
20 logo conveys to English speakers or English
21 readers?

22 A. My conclusion as to the overall
23 interpretation? --

24 Q. Correct.

1 A. -- of the design mark is that with the
2 word mark "BEER 1" it's situated in a symbol that
3 evokes competition, victory, some type of event,
4 which is consistent with the ranking interpretation
5 of the word "mark." So it suggests that it's a
6 medal in recognition of the top ranking associated
7 with the product in question.

8 Q. Opposing counsel asked you about the "One
9 beer, BEER 1" mark and in particular in regard to
10 the first phrase of that mark that you used an
11 intuition-based method.

12 A. Yes.

13 Q. Within that there was a discussion of
14 category and unit as variables; is that correct?
15 Do you recall that discussion?

16 A. I do.

17 Q. And you indicated that the category
18 interpretation of "one beer" was more likely here
19 than the unit interpretation; is that correct?

20 A. That is correct.

21 Q. With the noun in this mark being "beer"
22 and category being undefined --

23 A. Type of category.

24 Q. The type of category is undefined. Would

1 this category have a relation to anything outside
2 the noun it's modifying, in your opinion?

3 A. Could you repeat the question?

4 Q. "One beer" you've indicated is a category
5 interpretation, but it's an undefined category,
6 ambiguous category. What gives it some context?

7 A. Are you asking what's, what would -- which
8 aspects of a context would disambiguate, would
9 supply the type of category in question?

10 Q. Yes.

11 A. If,

12 for example the context supported -- that's an
13 interesting question.

14 If the context were suggested
15 different, had different nationalities, for
16 example, it would suggest perhaps that it's the
17 number one, it could be rank-ordered number one
18 with respect to a country. If you had lots of
19 different people depicted in the context, it might
20 suggest that the category were a popularity. It
21 would depend what other features were depicted in
22 the context to guide the viewer as to what the
23 ranking might be.

24 Q. Just looking at the words, what there

1 provides you the context to fill in the blank of a
2 category?

3 A. Nothing.

4 Q. Looking at "one beer" there is nothing
5 that fills in the type of category?

6 A. Just, that once you've seized upon the
7 category interpretation as to the unit, there is
8 nothing in the words themselves that further
9 specify the category in question.

10 Q. Would the category be related to something
11 outside of beer?

12 A. It would be something related to beer. It
13 would be something that beer can be rank-ordered
14 with respect to. So in that sense it's something
15 that can be related to beer, but it's not beer per
16 se.

17 Q. And why would it be something that beer is
18 related to?

19 A. Otherwise, it would be difficult to
20 understand why the words were being put together.

21 Q. The words being?

22 A. "One beer."

23 Q. Then having said that, can you give us
24 another -- I don't think that I had a clear

1 understanding as to what your conclusion as to what
2 "One beer, BEER 1" would convey, the words, to a
3 reader of English?

4 A. It is my opinion that the word mark "One
5 beer, BEER 1" would convey that the cardinality of
6 the set of beer is exactly one and that the product
7 denoted by that expression is ranked or ordered
8 number one.

9 Q. You just said a few linguistic specific
10 terms. What would -- could you translate what an
11 English reader would think when they see "One beer,
12 BEER 1"?

13 A. I take your question to be an English
14 reader who is also not a linguist as we are also
15 English readers. Sure, I would be happy to. That
16 there is a set, a set of objects that consists of
17 exactly one member. That member is a beer,
18 something related to beer, a type of beer, a kind
19 of beer, a make of beer, as a set of beer types
20 consisting of just that one and that one is ranked
21 as number one with respect to some ordering
22 measure,
23 with respect to some criterion of evaluation, this
24 beer type is ranked number one.

1 Q. The category is somewhat of a blank so
2 could you fill in the blank as to what a consumer
3 might think in this context of "One beer, BEER 1"
4 with a category filled in?

5 A. Some examples of the category filled in,
6 absolutely. Some things that came to mind when I
7 was thinking of possible instantiations or filling
8 in of the category, that there is one style of beer
9 and that style is ranked number one; that there is
10 one brand of beer and that brand is ranked number
11 one; there is one source of beer and that source is
12 ranked number one; there is one flavor of beer and
13 that flavor is ranked number one. Those are some
14 examples that came to mind.

15 MR. ROSE: Nothing further.

16 MS. HOCKERSMITH: Nothing further.

17 FURTHER DEPONENT SAITH NOT.

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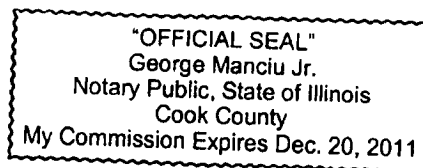
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANHEUSER-BUSCH INCORPORATED,)
)
Opposers,)
) Opposition No.
Vs.) 91180119
)
KELLY J. HOLT,)
)
Applicant.)

This is to certify that I have read the transcript of my deposition taken on 10-28-08, in the foregoing cause, and that the foregoing transcript accurately states the questions asked and answers given by me, with the changes or corrections, if any, made on the transcript attached hereto.

Gregory Ward

Subscribed and sworn to
before me this 16th day
of JANUARY 2008.



1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, JANET L. TSOKATOS, a Notary Public
5 within and for the County of Cook, State of
6 Illinois, and a Certified Shorthand Reporter of
7 said state, do hereby certify:

8 That previous to the commencement of the
9
10 examination of the witness, The witness was duly
11 sworn to testify the whole truth concerning the
12 matters herein;

13 That the foregoing deposition transcript
14 was reported stenographically by me, was thereafter
15 reduced to typewriting under my personal direction
16 and constitutes a true record of the testimony
17 given and the proceedings had;

18 That the said deposition was taken before
19 me at the time and place specified;

20 That the Opposers and Applicant were
21 present at said deposition;

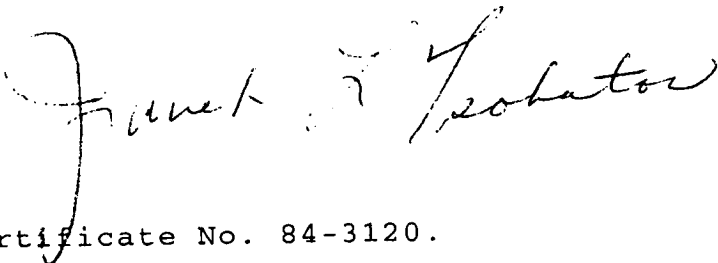
22 That the deposition took place at 321
23 North Clark Street at approximately 1:00 o'clock
24 p.m.;

1 That the court reporter was not
2 disqualified as specified in Rule 28 of the Federal
3 Rules of Civil Procedure;

4 That said deposition was adjourned as
5 stated herein;

6 That I am not a relative or employee or
7 attorney or counsel, nor a relative or employee of
8 such attorney or counsel for any of the parties
9 hereto, nor interested directly or indirectly in
10 the outcome of this action.

11 IN WITNESS WHEREOF, I do hereunto set my
12 hand at Chicago, Illinois, this 9th day of *January*
13 , 2009.

14 
15
16
17 C.S.R. Certificate No. 84-3120.

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Gregory Ward

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Education

- 1985 Ph.D. in Linguistics, University of Pennsylvania. Thesis: *The Semantics and Pragmatics of Preposing*. Advisor: Ellen F. Prince.
- 1978 B.A. in Linguistics (with Honors) and Comparative Literature, University of California, Berkeley. Graduated with Great Distinction in General Scholarship from the College of Letters & Sciences. Phi Beta Kappa.

Appointments

Current:

Professor, Department of Linguistics, Northwestern University, 1997—

Affiliated Faculty, Department of Philosophy, 2007—

Previous:

- 2009 Faculty, LSA Linguistic Institute, University of California, Berkeley.
- 2008 Distinguished Visiting Professor at the University of Santiago de Compostela, Santiago de Compostela, Spain. June.
- 2007 Faculty, LSA Linguistic Institute, Stanford University.
- 2003 Faculty, LSA Linguistic Institute, Michigan State University.
- 1999 – 04 Chair, Department of Linguistics, Northwestern University.
- 1997 Faculty, LSA Linguistic Institute, Cornell University.
- 1996 Visiting Professor, UFR Angellier (Department of English), Université Charles de Gaulle – Lille 3.
- 1993 Faculty, LSA Linguistic Institute, The Ohio State University.
- 1991 – 97 Associate Professor, Department of Linguistics, Northwestern University.

Opposition No. 91180119
Anheuser-Busch, Incorporated
v. Kelly J. Holt

Opposer's Dep. Ex. *f*

1986 – 97 Consultant, AT&T Labs – Research (formerly AT&T Bell Laboratories); Murray Hill, New Jersey.

1986 – 91 Assistant Professor, Department of Linguistics, Northwestern University.

1985 – 86 Lecturer, Department of Linguistics, San Diego State University.

Academic Awards

2004 – 05 Fellow, Center for Advanced Study in the Behavioral Sciences.

1986 Meritorious Performance and Professional Promise Award Recipient, College of Arts & Letters, San Diego State University.

Research Support

2008 Catherine O'Connor (PI) and Gregory Ward (Co-PI); "Workshop on Animacy and Information Status Annotation"; National Science Foundation; total direct costs: \$30,000; project period: 7/1/08-12/31/08.

2007 – 08 Gregory Ward (PI); "Distinguishing among Contextually-Determined Aspects of Utterance Meaning: An Empirical Investigation"; Northwestern University Research Grant; award amount: \$3532; project period: 5/10/07-5/10/08, extended to 5/10/09.

2003 – 06 Julia Hirschberg (PI) and Gregory Ward (Co-PI); "Dialog Prosody in Interactive Voice Response Systems"; National Science Foundation; total direct costs: \$1,380,710; original project period: 9/1/03-6/30/06, extended to 6/30/07.

2002 – 05 Doug Medin, Sandra Waxman and Gregory Ward (Co-PIs); "Interdisciplinary Approaches to the Study of Culture, Language and Cognition: A Proposal to Develop Externally-Supported Graduate and Postdoctoral Training"; Northwestern University; total award: \$100,000; project period: 9/1/02-8/31/05.

1991 – 96 Gail McKoon (PI), Gregory Ward and Roger Ratcliff (Co-PIs); "Intonation and Sentence Processing" (CMS 5 R01 DC01240-01); National Institute on Deafness and Other Communication Disorders, Department of Health and Human Services, Public Health Service; total direct costs approved: \$520,243; project period: 9/1/91-8/31/95 (extended to 8/31/96).

1991 – 93 Gregory Ward (PI); "A Computational Approach to Identifying Antecedents in Large Corpora"; Northwestern University Research Grant; award amount: \$4995; project period: 6/1/91-8/31/93.

1991 Northwestern University Grant for Educational Excellence; proposal for a new course in Cognitive Science; award amount: \$3000.

- 1990 National Science Foundation travel grant to attend the 9th World Congress of Applied Linguistics, Halkidiki, Greece.

Publications

Books:

- 2006 Birner, Betty J. and Gregory Ward, eds. *Drawing the Boundaries of Meaning: Neo-Gricean Studies in Pragmatics and Semantics in Honor of Laurence R. Horn*. [Studies in Language Companion Series, Volume 80.] Amsterdam/Philadelphia: John Benjamins. 354 pp.
- 2004 Horn, Laurence R. and Gregory Ward, eds. *The Handbook of Pragmatics*. Oxford: Basil Blackwell. 847 pp.
- 2002 Pullum, Geoffrey K., and Rodney Huddleston, in collaboration with L. Bauer, B. Birner, T. Briscoe, P. Collins, D. Denison, D. Lee, A. Mittwoch, G. Nunberg, F. Palmer, J. Payne, P. Peterson, L. Stirling, and G. Ward. *The Cambridge Grammar of the English Language*. Cambridge: Cambridge University Press. 1860 pp. [Winner of the Linguistic Society of America's Leonard Bloomfield Book Award for 2001-2003.]
- 1998 Birner, Betty J. and Gregory Ward. *Information Status and Noncanonical Word Order in English*. Amsterdam/Philadelphia: John Benjamins. 314 pp.
- 1988 Ward, Gregory. *The Semantics and Pragmatics of Preposing*. Outstanding Dissertations in Linguistics series. New York: Garland. 272 pp.

Refereed Journal Articles:

- 2009 Birner, Betty J. and Gregory Ward. "Information Structure and Syntactic Structure," to appear in *Language and Linguistics Compass*.
- 2007 Birner, Betty J., Jeffrey P. Kaplan, and Gregory Ward. "Functional Compositionality and the Interaction of Discourse Constraints," in *Language* 83:323-349.
- 2006 Horn, Laurence R. and Gregory Ward. "On the Other Hand: A Response to Some Reflections on a Recent Handbook," in *Intercultural Pragmatics* 3-1:107-110.
- 2004 Ward, Gregory. "Equatives and Deferred Reference," in *Language* 80:262-289.
- 1999 Ward, Gregory and Laurence R. Horn. "Phatic Communication and Relevance Theory: A Reply to Žegarac & Clark," in *Journal of Linguistics* 35:555-564.
- 1997 Ward, Gregory and Betty J. Birner. "Response to Abbott," in *Language* 73:109-112.

- 1996 Birner, Betty J. and Gregory Ward. "A Crosslinguistic Study of Postposing in Discourse," in *Language and Speech: Special Issue on Discourse, Syntax, and Information* 39:113-142.
- 1995 Ward, Gregory and Betty J. Birner. "Definiteness and the English Existential," in *Language* 71:722-742.
- 1995 Hirschberg, Julia and Gregory Ward. "The Interpretation of the High-Rise Question Contour in English," in *Journal of Pragmatics* 24:407-412.
- 1994 McKoon, Gail, Roger Ratcliff, and Gregory Ward. "Testing Theories of Language Processing: An Empirical Investigation of the On-Line Lexical Decision Task," in *Journal of Experimental Psychology: Learning, Memory, and Cognition* 20:1219-1228.
- 1993 McKoon, Gail, Roger Ratcliff, Gregory Ward, and Richard Sproat. "Syntactic Prominence Effects on Discourse Processes," in *Journal of Memory and Language* 32:593-607.
- 1993 McKoon, Gail, Gregory Ward, Roger Ratcliff, and Richard Sproat. "Morphosyntactic and Pragmatic Factors Affecting the Accessibility of Discourse Entities," in *Journal of Memory and Language* 32:56-75.
- 1993 Ward, Gregory and Betty J. Birner. "The Semantics and Pragmatics of *and everything*," in *Journal of Pragmatics* 19:205-214.
- 1992 Birner, Betty J. and Gregory Ward. "On the Interpretation of VP Inversion in American English," in *Journal of Linguistics* 28:1-12.
- 1992 Hirschberg, Julia and Gregory Ward. "The Influence of Pitch Range, Duration, Amplitude and Spectral Features on the Interpretation of the Rise-Fall-Rise Intonation Contour in English," in *Journal of Phonetics* 20:241-251.
- 1991 Ward, Gregory, Richard Sproat, and Gail McKoon. "A Pragmatic Analysis of So-Called Anaphoric Islands," in *Language* 67:439-474.
- 1991 Ward, Gregory and Ellen F. Prince. "On the Topicalization of Indefinite NPs," in *Journal of Pragmatics* 16:167-177.
- 1991 Hirschberg, Julia and Gregory Ward. "Accent and Bound Anaphora," in *Cognitive Linguistics* 2:101-121.
- 1991 Ward, Gregory and Julia Hirschberg. "A Pragmatic Analysis of Tautological Utterances," in *Journal of Pragmatics* 15:507-520.

- 1990 Ward, Gregory. "The Discourse Functions of VP Preposing," in *Language* 66:742-763.
- 1985 Ward, Gregory and Julia Hirschberg. "Implicating Uncertainty: The Pragmatics of Fall-Rise Intonation," in *Language* 61:747-776.
- 1983 Ward, Gregory. "A Pragmatic Analysis of Epitomization: Topicalization It's Not," in *Papers in Linguistics* 17:145-161.

Conference Proceedings:

- 2009 Larson, Meredith, Ryan Doran, Yaron McNabb, Rachel Baker, Matthew Berends, Alex Djalali, and Gregory Ward. "Distinguishing the SAID from the IMPLICATED Using a Novel Experimental Paradigm," to appear in Proceedings of the 2007 Experimental Pragmatics (XPRA) Conference, Berlin, Germany. To appear.
- 2009 Ward, Gregory. "Brave New *Would*," in *Proceedings of the 44th Annual Meeting of the Chicago Linguistic Society*. [Invited submission]. To appear.
- 2008 Kehler, Andrew and Gregory Ward. "Event Reference and Morphological Transparency," to appear in *Proceedings of the 2007 Western Conference on Linguistics (WECOL 2007)*, University of California – San Diego.
- 2007 Hirschberg, Julia, Agustín Gravano, Ani Nenkova, Elisa Sneed, and Gregory Ward. "Intonational Overload: Uses of the Downstepped (H* !H* L- L%) Contour in Read and Spontaneous Speech," in Jennifer Cole and José I. Hualde (eds.) *Laboratory Phonology 9*. Berlin: Mouton de Gruyter. Pp. 455-482.
- 1995 Bowdle, Brian and Gregory Ward. "Generic Demonstratives," in *Proceedings of the Twenty-First Annual Meeting of the Berkeley Linguistics Society*. Pp. 32-43.
- 1994 Birner, Betty J. and Gregory Ward. "Uniqueness, Familiarity, and the Definite Article in English," in *Proceedings of the Twentieth Annual Meeting of the Berkeley Linguistics Society*. Pp. 93-102.
- 1994 Ward, Gregory and Betty J. Birner. "English *There*-Sentences and Information Status," in *Proceedings of the Ninth Annual Conference and of the Workshop on Discourse*, The Israeli Association for Theoretical Linguistics. Pp.165-183.
- 1993 Birner, Betty J. and Gregory Ward. "*There*-Sentences and Inversion as Distinct Constructions: A Functional Account," in *Proceedings of the Nineteenth Annual Meeting of the Berkeley Linguistics Society*. Pp. 27-39.

- 1988 Ward, Gregory and Julia Hirschberg. "Intonation and Propositional Attitude: The Pragmatics of L*+H L H%," in *Proceedings of the Fifth Eastern States Conference on Linguistics*. Pp. 512-522.
- 1987 Sproat, Richard and Gregory Ward. "Pragmatic Considerations in Anaphoric Island Phenomena," in *Papers from the Twenty-Third Regional Meeting of the Chicago Linguistic Society*. Pp. 321-335.
- 1987 Hirschberg, Julia, Diane Litman, Janet Pierrehumbert, and Gregory Ward. "Intonation and the Intentional Structure of Discourse," in *Proceedings of the International Joint Congress on Artificial Intelligence*. Pp. 636-639.
- 1985 Hirschberg, Julia and Gregory Ward. "Fall-Rise Intonation and the Place of Intonational 'Meaning' in Linguistic Theory," in *Proceedings of the Eleventh Annual Meeting of the Berkeley Linguistics Society*. Pp. 447-458.
- 1984 Hirschberg, Julia and Gregory Ward. "A Semantico-Pragmatic Analysis of Fall-Rise Intonation," in *Papers from the Twentieth Regional Meeting of the Chicago Linguistic Society*. Pp. 173-180.

Book Chapters/Articles:

- Ward, Gregory and Betty J. Birner. "Discourse Effects of Word Order Variation," to appear in *Handbook of Semantics*, edited by Paul Portner, Claudia Maienborn and Klaus von Stechow. Berlin/New York: Mouton de Gruyter. In press.
- 2008 Ward, Gregory. "Equatives and Deferred Reference," in *Reference: Interdisciplinary Perspectives*, edited by Jeanette K. Gundel and Nancy Hedberg. *New Directions in Cognitive Science Series*. Oxford: Oxford University Press. Pp. 73-92.
- 2007 Ward, Gregory, Jeffrey P. Kaplan, and Betty J. Birner. "Epistemic *Would*, Open Propositions, and Truncated Clefts," in *The Grammar-Pragmatics Interface*, edited by Nancy Hedberg and Ron Zacharski. Amsterdam/Philadelphia: John Benjamins. Pp. 77-90.
- 2006 Kehler, Andrew and Gregory Ward. "Referring Expressions and Conversational Implicature," in *Drawing the Boundaries of Meaning: Neo-Gricean Studies in Pragmatics and Semantics in Honor of Laurence R. Horn*, edited by Birner, Betty J. and Gregory Ward. Amsterdam/Philadelphia: John Benjamins. Pp. 183-200.
- 2006 Ward, Gregory and Betty J. Birner. "Information Structure," in *The Handbook of English Linguistics*, edited by Bas Aarts and April McMahon. Oxford: Basil Blackwell. Pp. 291-317.

- 2005 Ward, Gregory and Andrew Kehler. "Syntactic Form and Discourse Accessibility," in *Anaphora Processing: Linguistic, Cognitive and Computational Modelling*, edited by António Branco, Tony McEnery and Ruslan Mitkov. Amsterdam/Philadelphia: John Benjamins. Current Issues in Linguistic Theory, vol. 263. Pp. 365-384.
- 2004 Ward, Gregory and Betty J. Birner. "Information Structure and Noncanonical Syntax," in *The Handbook of Pragmatics*, edited by Laurence R. Horn and Gregory Ward. Oxford: Basil Blackwell. Pp. 153-174.
- 2004 Kehler, Andrew and Gregory Ward. "Constraints on Ellipsis and Event Reference," in *The Handbook of Pragmatics*, edited by Laurence R. Horn and Gregory Ward. Oxford: Basil Blackwell. Pp. 383-403.
- 2003 Ward, Gregory, Betty J. Birner, and Jeffrey P. Kaplan. "A Pragmatic Analysis of the Epistemic *Would* Construction in English," in *Modality in Contemporary English*, edited by Roberta Facchinetti, Manfred Krug and Frank Palmer. [*Topics in English Linguistics* 44, General Editors: Bernd Kortmann and Elizabeth Closs Traugott.] Berlin/New York: Mouton de Gruyter. Pp. 71-79.
- 2001 Ward, Gregory and Betty J. Birner. "Discourse and Information Structure," in *The Handbook of Discourse Analysis*, edited by Deborah Schiffrin, Deborah Tannen, and Heidi E. Hamilton. Oxford: Blackwell Publishers. Pp. 119-137.
- 1999 Kehler, Andrew and Gregory Ward. "On the Semantics and Pragmatics of 'Identifier So'," in *The Semantics/Pragmatics Interface from Different Points of View* (Current Research in the Semantics/Pragmatics Interface Series, Volume I), edited by Ken Turner. Amsterdam: Elsevier. Pp. 233-256.
- 1999 Horn, Laurence R. and Gregory Ward. "Pragmatics," in *The MIT Encyclopedia of the Cognitive Sciences*, edited by Robert A. Wilson and Frank Keil. Cambridge: MIT Press. Pp. 661-664.
- 1999 Ward, Gregory. "A Comparison of Postposed Subjects in English and Italian," in *Function and Structure*, edited by Akio Kamio and Ken-ichi Takami. Amsterdam/Philadelphia: John Benjamins. Pp. 3-21.
- 1997 Ward, Gregory. "The Battle over Anaphoric 'Islands': Syntax vs. Pragmatics," in *Directions in Functional Linguistics*, edited by Akio Kamio. Amsterdam/Philadelphia: John Benjamins. Pp. 199-219.
- 1996 Ward, Gregory and Betty J. Birner. "On the Discourse Function of Rightward Movement in English," in *Conceptual Structure, Discourse and Language*, edited by Adele Goldberg. Stanford: Center for the Study of Language and Information. Pp. 463-479.

- 1992 Ward, Gregory and Betty J. Birner. "VP Inversion and Aspect in Written Texts," in *Cooperating with Written Texts: The Pragmatics and Comprehension of Written Texts*, edited by Dieter Stein. Berlin: Mouton de Gruyter. Pp. 575-588.

Working Papers:

- 1994 Ward, Gregory and Betty J. Birner. "A Unified Account of English Fronting Constructions," in *Penn Working Papers in Linguistics, Vol. 1*, Department of Linguistics, University of Pennsylvania. Pp. 159-165.
- 1993 Ward, Gregory and Betty J. Birner. "There-Sentences and Information Status," in *Working Papers in Linguistics, Vol. 5*, edited by Laurel Stvan, et al. Department of Linguistics, Northwestern University. Pp. 51-68.
- 1992 Birner, Betty J. and Gregory Ward. "On the Use and Interpretation of *and everything*," in *Working Papers in Linguistics, Vol. 4*, edited by Talke MacFarland, et al. Department of Linguistics, Northwestern University. Pp. 13-19.
- 1991 Birner, Betty J. and Gregory Ward. "A Pragmatic Analysis of VP Inversion," in *Working Papers in Linguistics, Vol. 3*, edited by Larin Adams, et al. Department of Linguistics, Northwestern University. Pp. 13-29.
- 1989 Hirschberg, Julia and Gregory Ward. "On the Role of Accent in the Interpretation of Bound Anaphora," in *Working Papers in Linguistics, Vol. 2*, edited by Betty J. Birner, et al. Department of Linguistics, Northwestern University. Pp. 13-30.
- 1988 Ward, Gregory and Julia Hirschberg. "The Pragmatics of Tautology," in *Working Papers in Linguistics, Vol. 1*, edited by Betty J. Birner, et al. Department of Linguistics, Northwestern University. Pp. 1-15.
- 1985 Ward, Gregory. "A Functional Analysis of VP Fronting," in *Penn Review of Linguistics*, edited by Christopher Cieri, et al. Department of Linguistics, University of Pennsylvania. Pp. 50-62.
- 1984 Ward, Gregory and Julia Hirschberg. "In from the Periphery: Fall-Rise Intonation and the Intonational Autonomy Hypothesis," in *Penn Review of Linguistics*, edited by Dana Boatman, et al. Department of Linguistics, University of Pennsylvania. Pp. 37-49.
- 1983 Ward, Gregory. "On Non-Reflexive Pronouns in Reflexive Environments," in *Penn Review of Linguistics*, edited by Sharon Ash, et al. Department of Linguistics, University of Pennsylvania. Pp. 12-19.

- 1981 Ward, Gregory. "Identifying Speech Acts on the Basis of Inferred Goals," in *Penn Review of Linguistics*, edited by Franz Seitz, et al. Department of Linguistics, University of Pennsylvania. Pp. 58-66.

Invited Book Reviews and Notices:

- 2007 *Language Matters: A Guide to Everyday Questions About Language (2003)* by Donna Jo Napoli; book review in *Language* 83:654-657.
- 1998 *Word's Out: Gay Men's English (1996)* by William L. Leap; book review in *Journal of the History of Sexuality* 8:693-695.
- 1995 *From Discourse Process to Grammatical Construction: On Left-Dislocation in English (1992)* by Ronald Geluykens; book review in *Language* 71:366-369.
- 1991 *Pragmatics and Natural Language Understanding (1989)* by Georgia Green; book review in *Language* 67:345-347.
- 1986 *On the Grammar and Semantics of Sentence Accents (1983)* by Carlos Gussenhoven; book notice in *Language* 62:707-708. [with Julia Hirschberg]

Oral Presentations

Invited Colloquia, Presentations, and Plenaries:

- 2008 Participant in the Trondheim Reference Festival, University of Trondheim, Trondheim, Norway. October.
- 2008 Participant in the Invitational Symposium on Variation in English, University of Bamberg, Bamberg, Germany. July.
- 2008 Participant in the Workshop on Noncanonical Word Order, University of Göttingen, Göttingen, Germany. June.
- 2008 Northwestern Philosophy and Linguistics Workgroup (PhLing), Northwestern University, May.
- 2008 Abraham Demoz Memorial Undergraduate Lecture, Department of Linguistics, Northwestern University, May.
2008. Plenary Speaker, 44th Annual Meeting of the Chicago Linguistic Society (CLS 44), University of Chicago. May.
- 2008 Plenary Speaker, 17th Annual Linguistics Symposium, California State University, Fullerton. April.

- 2007 Department of Linguistics, University of Illinois at Chicago. November.
- 2007 Language and Cognition Series, Northwestern University. May.
- 2006 Department of Linguistics, University of Chicago. November.
- 2006 Workshop on Presupposition Accommodation, The Ohio State University. October.
- 2006 Plenary Panel on the Future of the Profession, LSA Summer Meeting, Michigan State University. June.
- 2005 Chicago Syntax-Semantics Circle. November.
- 2005 Plenary Speaker, Connectives as Discourse Landmarks Conference, UFR d'Etudes Anglophones, Université Paris 7 Denis-Diderot, France. May.
- 2005 Department of English, University of Santiago de Compostela, Spain. May.
- 2005 Department of Linguistics, University of California – Santa Cruz. May.
- 2005 Cognitive Science Group, Stanford University. April.
- 2005 Workshop on the Syntax-Pragmatics Interface in Honor of Ellen F. Prince, University of Pennsylvania. April.
- 2005 Department of Linguistics, Stanford University. March.
- 2005 Department of Linguistics, University of California – Berkeley. February.
- 2004 Panelist, Current Approaches to Discourse Analysis, Society for Text and Discourse, Chicago. August.
- 2004 Department of Linguistics, University of Wisconsin – Milwaukee. April.
- 2004 Department of Linguistics and Germanic, Slavic, Asian and African Languages, Michigan State University. April.
- 2003 Commentator, Pragmatics and Foundations of Discourse Workshop, University of Michigan. November.
- 2003 Department of Linguistics, University of Rochester. October.
- 2003 Center for Cognitive Science, University at Buffalo. October.

- 2003 Department of Linguistics, Stanford University. May.
- 2003 Department of Linguistics, The Ohio State University. April.
- 2003 Annual Lecture on Linguistic Pedagogy, Department of Linguistics, The Ohio State University. April.
- 2003 Department of Psychology, Temple University. April.
- 2003 Participant, Vancouver Studies in Cognitive Science Workshop, Simon Fraser University Harbour Centre, Vancouver, British Columbia. February.
- 2002 Program in Cognitive Science, University of Arizona. April.
- 2000 Department of Cognitive and Linguistics Sciences, Brown University. December.
- 2000 Department of Applied Linguistics, Boston University. December.
- 2000 Plenary Speaker, Second International Conference on Contrastive Semantics and Pragmatics, Cambridge University, England. September.
- 1999 Speaker and panel member, The International Pragmatics Conference (Pragma99), Hebrew University. Jerusalem, Israel. June.
- 1999 Fourth Annual Linguistics Emeritus Lecture, Department of Linguistics, The Ohio State University. May.
- 1999 Participant, Special Session on Linguistics 2K, sponsored by the Linguistic Society of America, LSA Annual Meeting. Los Angeles. January.
- 1998 Participant, Symposium on the Linguistics Sciences in a Changing Context, sponsored by the Center for Advanced Study, University of Illinois at Urbana-Champaign. October.
- 1998 Plenary Speaker, Mid-American Linguistics Conference, Southern Illinois University. October.
- 1998 Participant, Third Discourse Resource Initiative/Discourse Tagging Workshop, sponsored by Chiba University and the Japanese Ministry of Education. Chiba, Japan. May.
- 1997 Plenary Speaker, First International Conference on Cognitive Science, Seoul National University. Seoul, Korea. August.

- 1997 Lecturer at the Kansai Linguistic Summer Seminar, Kobe University. Kobe, Japan. August.
- 1996 Department of Language and Linguistic Science, University of York. York, England. November.
- 1996 Department of Linguistics, University of Chicago. October.
- 1996 Discussant, Fifth International Pragmatics Conference, National Autonomous University of Mexico. Mexico City. July.
- 1996 Plenary Speaker, Seventh Annual Formal Linguistics Society of Midamerica Conference, The Ohio State University. May.
- 1996 Cognitive Science Group, University of Rochester. March.
- 1996 Plenary Speaker, Ninth Annual CUNY Conference on Sentence Processing, CUNY Graduate Center. New York. March.
- 1996 Lecture series on language, Department of English, University of Montevallo. February.
- 1995 Department of Linguistics, Southern Illinois University. December.
- 1995 Department of Linguistics, Thammasat University. Bangkok, Thailand. March.
- 1995 Department of Linguistics, Iowa State University. February.
- 1995 Annual Quentin Johnson Memorial Linguistics Lecture, Iowa State University. February.
- 1994 Program in Linguistics, University of Michigan. March.
- 1993 Discussant, Fourth International Pragmatics Conference, Kobe City University of Foreign Studies. Kobe, Japan. July.
- 1993 Participant, Workshop on Prosodically Transcribed Data and Transcription Tools for Linguistic Research, sponsored by the National Science Foundation, The Ohio State University. June.
- 1993 Participant, Workshop on Centering Theory in Naturally-Occurring Discourse, sponsored by the Institute for Research in Cognitive Science, University of Pennsylvania. May.

- 1991 Speaker, International Symposium on the Future of Functional Linguistics, sponsored by Dokkyo University. Tokyo, Japan. December.
- 1991 Department of Linguistics, Purdue University. October.
- 1991 Participant, Workshop on the Grammatical Foundations of Prosody and Discourse, sponsored by the National Science Foundation, University of California, Santa Cruz. June.
- 1991 Speaker, Workshop on the Pragmatics of Language, sponsored by the University of Chicago. April.
- 1989 Department of Linguistics, University of Illinois at Urbana-Champaign. February.
- 1988 Department of Linguistics, The Ohio State University. November. [with Julia Hirschberg]
- 1988 Department of Linguistics, University of Chicago. October.
- 1988 Department of Linguistics, San Diego State University. March.
- 1988 Department of Linguistics, University of Colorado at Boulder. February.
- 1988 Institute of Cognitive Science, University of Colorado at Boulder. February.
- 1987 Department of Linguistics, University of Wisconsin, Madison. October.
- 1987 Language and Cognition Series, Northwestern University. February.
- 1986 Department of Linguistics, University of Chicago. December.
- 1986 Department of Linguistic Research, AT&T Bell Laboratories. Murray Hill, New Jersey. January.
- 1985 Bolt Beranek and Newman, Inc. Boston. March
- 1985 Burroughs Corporation [Unisys]. Philadelphia. April.
- 1984 Sloan Cognitive Science Group, University of Pennsylvania. October. [with Julia Hirschberg]

Presentations at Conferences, Workshops, and Symposia:

- 2008 "The Effect of Prosody and Semantic Modality on the Assessment of Speaker Certainty," Fourth International Conference on Speech Prosody, Campinas, Brazil. May. [with Agustín Gravano, Stefan Benus, Julia Hirschberg, Elisa Sneed German]
- 2008 "The Effects of Scale Type and Salience on the Interpretation of Scalar Implicature," LSA Annual Meeting, Chicago, IL. January. [with Rachel Baker, Matthew Berends, Alex Djalali, Ryan Doran, Meredith Larson, and Yaron McNabb]
- 2008 "The Effect of Semantic Modality on the Assessment of Speaker Certainty," LSA Annual Meeting, Chicago, IL. January. [with Agustín Gravano, Elisa Sneed, Stefan Benus, and Julia Hirschberg]
- 2007 "Distinguishing the SAID from the IMPLICATED Using a Novel Experimental Paradigm," Experimental Pragmatics 2007, Centre for General Linguistics, Typology and Universals Research (ZAS), Berlin, Germany. December. [with Rachel Baker, Matthew Berends, Alex Djalali, Ryan Doran, Meredith Larson, and Yaron McNabb]
- 2007 "The Problem with *having sex*," Plenary Speaker at the Fourteenth Annual Lavender Languages and Linguistics Conference; American University, Washington, D.C. February.
- 2007 "Distinguishing among Contextually-Determined Aspects of Utterance Meaning: An Empirical Investigation," LSA Annual Meeting, Anaheim, CA. January. [with Rachel Baker, Matthew Berends, Alex Djalali, Ryan Doran, Meredith Larson, and Yaron McNabb]
- 2004 "A Compositional Analysis of Clefts and Epistemic-*would* Equatives," Second International Conference on Modality in English, Université de Pau et des Pays de l'Adour. September. [with Betty J. Birner and Jeffrey P. Kaplan]
- 2004 "Intonational Overload: Uses of the H* !H* L- L% Contour in Read and Spontaneous Speech," Ninth Conference on Laboratory Phonology, University of Illinois at Urbana-Champaign. June. [with Julia Hirschberg, Agustín Gravano, Ani Nenkova, and Elisa Sneed]
- 2004 "Epistemic *Would*, Clefts, and Functional Compositionality," Texas Linguistic Society 8: Issues at the Semantics-Pragmatics Interface, University of Texas at Austin. March. [with Betty J. Birner and Jeffrey P. Kaplan]
- 2003 "Epistemic *Would*, Open Propositions, and Truncated Clefts," ESSLLI Workshop on Conditional and Unconditional Modality, 15th European Summer School in Logic,

- Language, and Information (ESLLI 2003), Vienna University of Technology, Vienna, Austria. August. [with Betty J. Birner and Jeffrey P. Kaplan]
- 2003 "Epistemic Modals and Temporal Reference," LSA Annual Meeting, Atlanta. January. [with Betty J. Birner and Jeffrey P. Kaplan]
- 2002 "Syntactic Form and Discourse Accessibility," 4th International Conference on Discourse Anaphora and Anaphor Resolution (DAARC2002); University of Lisbon, Portugal. September. [with Andrew Kehler]
- 2002 "Deferred Equatives," LSA Annual Meeting, San Francisco. January. [with Samuel Tilsen]
- 2001 "Epistemic *Would* and Pragmatic Ambiguity," Midwest Conference on Film, Language, and Literature; Northern Illinois University, DeKalb, IL. March. [with Betty J. Birner and Jeffrey P. Kaplan]
- 2001 "Epistemic *Must* and *Would*: A Pragmatic Differentiation," San Diego State University Linguistics Student Association Spring Colloquium. March. [with Betty J. Birner and Jeffrey P. Kaplan]
- 2001 "Preposing and Relevance Theory," LSA Annual Meeting, Washington, D.C. January.
- 2001 "Open Propositions and Epistemic *Would*," LSA Annual Meeting, Washington, D.C. January. [with Betty J. Birner and Jeffrey P. Kaplan]
- 1999 "Identifier *So* and the Information Status of Discourse Referents," LSA Annual Meeting, Los Angeles. January. [with Andrew Kehler]
- 1998 "Teaching LGBT Language from a Linguistic Perspective," Sixth Annual Lavender Languages and Linguistics Conference; American University, Washington, D.C. September. [with Grant Goodall]
- 1998 "Word Order as a Pragmatic Cue for Sentence Processing," LSA Annual Meeting, New York. January. [with Jeffrey Loewenstein and Pablo Gomez]
- 1998 "On the Processing of Preposed Word Order in English," 11th Annual CUNY Conference on Human Sentence Processing; Rutgers University, New Brunswick. March. [with Jeffrey Loewenstein and Pablo Gomez]
- 1997 "Teaching LGBT Language from a Linguistic Perspective," Fifth Annual Lavender Languages and Linguistics Conference; American University, Washington, D.C. September.

- 1996 "A Comparison of Postposed Subjects in English and Italian," LSA Annual Meeting, San Diego. January.
- 1995 "Category Variability and the English Demonstrative System," Fourth International Cognitive Linguistics Conference, Albuquerque. July. [with Brian Bowdle]
- 1995 "English *There*-Sentences and Italian Subject Postposing," First International Conference in Contrastive Semantics and Pragmatics; University of Brighton, United Kingdom. April.
- 1995 "On the Anaphoric Status of *do so*," LSA Annual Meeting, New Orleans. January. [with Andrew Kehler]
- 1994 "Definites, Uniqueness, and Speaker Intent," LSA Annual Meeting, Boston. January. [with Betty J. Birner]
- 1994 "Constituents Out in Left Field: The Functions of Fronting in English," LSA Annual Meeting, Boston. January. [with Betty J. Birner]
- 1993 "Definiteness and *There*-Sentences," International Pragmatics Conference; Kobe City University of Foreign Studies, Japan. July. [with Betty J. Birner]
- 1993 "There Isn't the Definiteness Effect to Deal With Anymore," LSA Annual Meeting, Los Angeles. January. [with Betty J. Birner]
- 1992 "The Interpretation of the High-Rise Question Contour in English," LSA Annual Meeting, Philadelphia. January. [with Julia Hirschberg]
- 1992 "The Interpretation of *and everything* and *Everything*" LSA Annual Meeting, Philadelphia. January. [with Betty J. Birner]
- 1991 "How Morphosyntactic and Pragmatic Factors Affect the Accessibility of Discourse Entities," Symposium on Discourse Structure in Natural Language Understanding and Generation, sponsored by the American Association of Artificial Intelligence; Asilomar, California. November. [with Gail McKoon, Roger Ratcliff, and Richard Sproat]
- 1991 "A Pragmatic Analysis of Outbound Anaphora and *Vice Versa*," Conference on Grammatical Foundations of Prosody and Discourse, sponsored by NSF; University of California, Santa Cruz. July. [with Richard Sproat]
- 1991 "A Pragmatic Analysis of VP Inversion," LSA Annual Meeting, Chicago. January. [with Betty J. Birner]

- 1990 "On the Presuppositional Nature of Inversion Constructions," 9th World Conference of Applied Linguistics; Thessaloniki, Greece. April.
- 1990 "On the Processing of So-Called Anaphoric Islands," Third Annual CUNY Conference on Human Sentence Processing, CUNY Graduate Center, New York. March. [with Gail McKoon, Roger Ratcliff, and Richard Sproat]
- 1989 "A Functional Analysis of VP Preposing," LSA Annual Meeting, Washington, D.C. December.
- 1989 "A Semantico-Pragmatic Taxonomy of English Inversion," LSA Annual Meeting, Washington, D.C. December. [with Betty J. Birner]
- 1989 "VP Inversion and Aspectual Ambiguity in Written Texts," The Pragmatics and Comprehension of Written Texts; University of Giessen, Federal Republic of Germany. September. [with Betty J. Birner]
- 1988 "NP *does too* vs. *so does* NP: Distinguishing among Types of Ellipsis," LSA Annual Meeting, New Orleans. December. [with Julia Hirschberg]
- 1988 "On the Role of Accent in the Interpretation of Bound Anaphora," Midwest Modern Language Association, St. Louis. November. [with Julia Hirschberg]
- 1987 "On Pragmatic Wars and Tautological Battles," LSA Annual Meeting, San Francisco. December. [with Julia Hirschberg]
- 1987 "Accent and Bound Anaphora," LSA Annual Meeting, San Francisco. December. [with Julia Hirschberg]
- 1987 "Phonetic Determinants of Uncertainty and Incredulity," International Pragmatics Conference; University of Antwerp, Belgium. August. [with Julia Hirschberg]
- 1986 "Reconciling Uncertainty with Incredulity: A Unified Account of the L*+H L H% Intonational Contour," LSA Annual Meeting, New York. December. [with Julia Hirschberg]
- 1986 "On Topicalization and Indefinite NPs," LSA Annual Meeting, New York. December. [with Ellen F. Prince]
- 1986 "On the Non-Isomorphism of Form and Function: An Analysis of VP Preposing," San Diego State University Linguistics Colloquium. April.
- 1985 "A Pragmatic Analysis of Proposition Affirmation," LSA Annual Meeting, Seattle. December.

- 1984 "A Functional Analysis of VP Fronting in English," LSA Annual Meeting, Baltimore. December.
- 1982 "On Non-Reflexive Pronouns in Reflexive Environments," LSA Annual Meeting, San Diego. December.
- 1982 "A Pragmatic Analysis of Epitomization: Topicalization It's Not," LSA Summer Meeting, College Park. August.

Professional Organizations/Service and Peer Review

- 2002 – Advisory Editor for the book series *Surveys in Semantics and Pragmatics*, published by Oxford University Press.
- 1990 – Linguistic Society of America
- 2008 Consultant to the Program Committee
 - 2007 Consultant to the Program Committee
 - 2006 Consultant to the Program Committee
 - 2004-07 Secretary-Treasurer [elected position]
 - 2003-07 Chair, Committee on Membership Services & Technology
 - 2003 Consultant to the Program Committee
 - 2000 Chair, Resolutions Committee
 - 1999 Chair, Web Editorial Board
 - 1999 Member, Travel Grants Committee
 - 1998 Member, Resolutions Committee
 - 1998 Consultant to the Program Committee
 - 1997 – 99 Member, Executive Committee [elected position]
 - 1997 Session Chair, LSA Annual Meeting
 - 1996 – 97 Chair, Local Arrangements Committee
 - 1995 Consultant to the Program Committee
 - 1990 – 91 Member, Local Arrangements Committee
- 1997 – Advisory Editor for the book series *Current Research in the Semantics/Pragmatics Interface*, published by Elsevier Science Press.
- 2004 – 08 Editor for the book series *Language Alive!*, published by Oxford University Press.
- 2001 – 05 Member, Board of Directors of the Consortium of Social Science Associations (COSSA); initial term 2001-03, reappointed to second term.
- 2000 Invited participant at the Consortium of Social Science Associations (COSSA) Workshop on a Future NSF/SBE Research Initiative, Washington, D.C. October.
- 1995 – 97 Member of the Editorial Board of *Computational Linguistics*.

- 1993 International Pragmatics Association. Session Chair, International Pragmatics Conference.
- 1991 American Association of Artificial Intelligence, Symposium Chair, AAAI.
- 1989 – 93 Association for Computational Linguistics
 1993 Program Committee; Session Chair, 31st Annual Meeting
 1989 Session Chair, 27th Annual Meeting

Reviewed manuscripts for *Language, Psychological Review, Linguistics and Philosophy, Natural Language and Linguistic Theory, Journal of Memory and Language, Language and Speech, Journal of Linguistics, Journal of Pragmatics, Computational Linguistics, Language and Cognitive Processes, IEEE Transactions on Professional Communication, Word, International Journal of Humor Research, ACL-MIT Series in Natural Language Processing*, Sage Publications.

Reviewed proposals for National Institutes of Health, National Science Foundation, Social Sciences and Humanities Research Council of Canada, Japanese Society for Language Sciences.

Reviewed conference abstracts/papers for Association for Computational Linguistics XXXI; Conceptual Structure, Discourse, and Language Conference III; Eastern States Conference on Linguistics 1994, 1995; Formal Linguistics Society of Midamerica V, VI; International Conference on Computational Linguistics 1994; Penn Linguistics Colloquium 19, 20, 21; Semantics and Linguistic Theory (SALT) 13, 14, 17, 18; Student Conference in Linguistics 6; West Coast Conference on Formal Linguistics XI, XII, XIII, XIV, XV, XVI; Workshop on Focus in Grammar (UMass - Amherst).

Graduate Advising

Ph.D. Thesis Committees, Chair

- 2004 Moore, Julie. "Articles and Proper Names in L2 English". Current position: Director, English as a Second Language Program and the International Summer Institute, Northwestern University.
- 1992 Birner, Betty J. "The Discourse Function of Inversion in English". Current position: Full Professor, Northern Illinois University.

Ph.D. Thesis Committees, Member

- Will Thompson, Linguistics. In progress.
- Ryan Doran, Philosophy. In progress.
- 2005 Ralph Rose, Linguistics. "The Relative Contribution of Syntactic and Semantic Prominence to the Salience of Discourse Entities".

- 1998 Pilar Ron, Linguistics. "The Position of the Subject in Spanish and Clausal Structure: Evidence from Dialectal Variation".
- 1998 Laurel Stvan, Linguistics. "The Semantics and Pragmatics of Bare Singular Noun Phrases".
- 1998 Joe Ruggiero, Communication Sciences and Disorders - Learning Disabilities. "The Contribution of Strategic Flexibility and Lexical Access Fluency on Working Memory and Reading Comprehension: An Examination of Ninth-Grade Reader Performance".
- 1997 Brian Bowdle, Psychology. "Conventionality, Polysemy, and Metaphor Comprehension".
- 1997 Lyman Casey, Psychology. "Count/Mass Syntax and Superordinate Categories: Evidence of a Conceptual Distinction and its Cognitive Implications".
- 1993 Shelley Wiley, Garrett-Evangelical Theological Seminary. "A Linguistic-Critical Reading of Sin and Death in Contemporary Christology and Comparison to the Atonement Theory of Irenaeus of Lyons".

M.A. Thesis Committees, Chair

- 2002 Peter Tae Kyung Yoon. Linguistics. "Pragmatic Analysis of Translation: Representing the Information Status of Discourse Entities in the Bible".

B.A. Honors Thesis Committees, Member

- 2006 Stephanie Brody, Linguistics. "From Faithfulness to Factuality: Semantic Change in the English Vocabulary of Truth".

Courses Taught at Northwestern

Pragmatics

Reference

Fundamentals of Meaning

Language and the Brain

Language and Sexuality

Seminars:

Implicature

Empirical Pragmatics

Mutual Knowledge

Relevance Theory

Functions of Syntax

Service at Northwestern*Linguistics Department Service:*

- 2006 – 07 Member, Syntax Search Committee
- 2005 – 06 Member, Syntax/Semantics Search Committee (two positions)
- 2005 – 06 Member, Mellon Post-Doctoral Fellowship Search Committee
- 1999 – 04 Department Chair
- 2003 – 04 Chair, Mellon Post-Doctoral Fellowship Search Committee
- 2002 – 03 Chair, Mellon Post-Doctoral Fellowship Search Committee
- 2002 – 03 Member, Psycholinguistics/Computational Linguistics Search Committee
- 2002 Director of Graduate Studies (Acting)
- 2001 – 02 Chair, Mellon Post-Doctoral Fellowship Search Committee
- 2000 – 01 Chair, Mellon Post-Doctoral Fellowship Search Committee
- 1991 – 99 Graduate Admissions Officer
- 1996 – 97 Chair, Mellon Post-Doctoral Fellowship Search Committee
- 1996 – 97 Member, Syntax Search Committee
- 1995 – 96 Member, Mellon Post-Doctoral Fellowship Search Committee
- 1992 – 93 Member, Phonology Search Committee
- 1991 – 92 Member, Graduate Curriculum Committee
- 1990 – 91 Chair, Syntax Search Committee
- 1987 – 91 Coordinator, Colloquium and Speaker Series
- 1987 – 88 Chair, Semantics Search Committee

Other Department/Program Service:

- 2005 – 06 Member, Department of Philosophy Search Committee (Analytic)
- 2003 – 04 Member, Department of Psychology Search Committee
- 2002 – 03 Member, Department of Philosophy Search Committee (Senior Level)
- 2001 – 02 Member, Department of Philosophy Search Committee (Senior Level)
- 2001 – 02 Member, Department of Communication Sciences and Disorders Search Committee (Open Rank)
- 2000 – 01 Member, Department of Philosophy Search Committee (Junior Level)
- 1999 – 00 Member, Department of Communication Sciences and Disorders Search Committee
- 1998 – 99 Chair, Cognitive Science Continuing Fellowship Committee
- 1997 – 99 Chair, Cognitive Science Advanced Fellowship Committee
- 1996 – 99 Member, Committee for the Program in Cognitive Science

- 1987 – 96 Member, Computer and Information Studies Program Committee
 1990 – 94 Member, Cognitive Science Steering Committee

Weinberg College of Arts and Sciences Service:

- 2007 – 08 Member, Promotions Committee
 2006 – 07 Member, Ad Hoc Tenure Committee
 2005 – 06 Member, Promotions Committee
 2003 – 04 Member, Promotions Committee
 1998 – 99 Chair, Committee on Appeals
 1996 – 98 Member, Committee on Appeals
 1994 – 95 Chair, Curricular Policies Committee
 1995 Faculty Lecture, New Student Week; title: "What Do You Say to a Child Who Hurted Her Foots? A Look at How Children Acquire Language"
 1994 Faculty Lecture, New Student Week; title: "Great Expectations: Our Brains' Predisposition to Language"
 1992 – 94 Member, Curricular Policies Committee
 1990 – 91 Member, Committee on Academic Standing

University Service:

- 2005 – 06 Fellow, Shepard Residential College
 2003 – 04 Member, Fellowships Committee
 2001 – 02 Chair, Dean of School of Continuing Studies Search Committee
 2001 – 02 Member, Program Review Subcommittee on the Department of Anthropology
 2000 – 01 Member, Institute for the Learning Sciences Transition Task Force
 1999 – 01 Member, Cognitive Science Domain Dinner Faculty Planning Group
 1998 – 00 Member, Northwestern Community Council
 1997 – 99 Member, University Undergraduate Academic Conduct Committee
 1990 – 91 Chair, University Research Grants Committee
 1987 – 90 Member, University Research Grants Committee

Media Appearances

- 2008 Quoted in the *Daily Northwestern*, January 23.
 2007 Quoted in the *Chicago Sun Times*, June 24.

- 2007 Quoted in *Out on the Net*, <http://www.outonthenet.com/article.html?id=764>; February 21.
- 2004 Quoted in *The New York Times*; May 11.
- 2003 Quoted in Associated Press, <http://www.CNN.com>; November 4-5.
- 2002 Quoted in the *Chicago Tribune*; August 3.
- 2000 Quoted in the *Chicago Tribune*; May 16.
- 2000 Appeared on "New Year's Eve Special"; January 1. [NBC Television]
- 1999 Quoted in *The New York Times*; July 22.
- 1999 Appeared on "The Today Show"; May 26. [NBC Television]
- 1998 Quoted in *The Wall Street Journal*, *The Detroit News*, *The News Tribune*, *The San Francisco Examiner*, and *The Chicago Sun-Times*; August 23.
- 1998 Appeared on "The Milt Rosenberg Show"; April 16. [WGN Radio]

[August, 2008]

A Linguistic Analysis of the Marks "BEER 1" and "One beer, BEER 1"

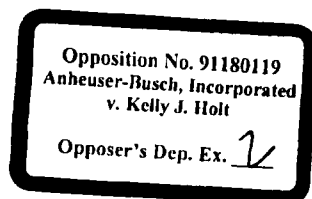
An Expert Opinion Submitted to Loeb & Loeb, LLP

Prepared by:

Gregory Ward, Ph.D.

**Professor of Linguistics
Northwestern University**

September 24th, 2008



Expert Report of Gregory Ward, Ph.D.**Table of Contents**

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I Qualifications

I have been a professional linguist since 1979. My current position is Professor of Linguistics at Northwestern University, where I have been continuously employed since 1986. I was tenured and promoted to the rank of Associate Professor in 1991 and was promoted to the rank of Full Professor in 1997. I served as Chair of the Linguistics Department at Northwestern from 1999-2004.

I received my BA in Comparative Literature and Linguistics (with Honors) from the University of California at Berkeley in 1978 and my PhD in Linguistics from the University of Pennsylvania in 1985. My primary research area is meaning (semantics and pragmatics), with specific interests in discourse analysis, information structure, psycholinguistics, intonation, and reference. In 2004-2005, I was selected to be a Fellow at the prestigious Center for Advanced Study in the Behavioral Sciences (Stanford, CA). My professional service to the Linguistic Society of America (LSA), the main professional society of academic linguists, includes being elected to serve on the LSA Executive Committee (1997-1999) and four years as Secretary-Treasurer (2004-2007). I have authored or co-authored three books and have co-edited two others. In addition, I have published over 60 articles and have given over 100 presentations and colloquia in my various areas of expertise. (A full description of my scholarly and professional activities can be found in my CV in Appendix A.)

My research on linguistic meaning employs a variety of empirical methodologies and approaches. In addition to collecting and analyzing large bodies of naturally-occurring linguistic data, I conduct psychological experiments on language processing. One of the areas that I have been investigating experimentally for over 15 years is the role that salience plays in the production and interpretation of language. I have published a number of papers that specifically

address the ways in which salience affects language processing.

For this report, I am being compensated at the rate of \$450/hour; this compensation does not depend upon the outcome of this case nor upon the opinions expressed herein.

II Assignment

On May 9, 2008, I was contacted by Daniel Frohling, of the law firm of Loeb & Loeb, LLP, counsel for Anheuser-Busch, Incorporated. At that time, Mr. Frohling assessed my availability and willingness to conduct a linguistic analysis of the two alleged word marks "BEER 1" and "One beer, BEER 1" (henceforth "word marks"), and an alleged design mark containing the first of the two word marks (henceforth "design mark") as depicted below.



Mr. Frohling asked me to conduct the analysis with an eye to offering my professional opinion as to whether the word marks in question are descriptive of the product in question (i.e. beer), and to make that assessment both in terms of the words alone and in the context of the design mark depicted above. To that end, he provided me with a portable document format (PDF) version of the status/summary page of the applicant's trademark applications from the USPTO website for the three word and design marks "One Beer, BEER 1", "BEER 1", and "BEER 1 MMVII and Design" (as depicted above). In addition, Mr. Frohling sent me a PDF file containing what I understand to be the section on the "Anti-dissection rule" from *McCarthy on Trademarks and*

Unfair Competition by J. Thomas McCarthy, and sections §1209.01(b) (“Merely Descriptive Marks”) and §1209.03(d) (“Combined Terms”), which I understand come from the *Trademark Manual of Examining Procedures* (TMEP).

III Methodology

To investigate this matter, I conducted an in-depth linguistic analysis using standard techniques in the field in conjunction with my 28 years of professional linguistic expertise. As regards the word mark “Beer 1”, I collected and analyzed a body, or corpus, of over 100 naturally-occurring examples of post-nominal modifiers in English (i.e., modifiers that appear following the noun they modify), along the lines of the post-nominal modifiers found in the applicant’s word marks (“BEER 1” and “One beer, BEER 1”).

A corpus-based methodology relies on the collection and analysis of examples, or ‘tokens’, of a particular linguistic form, as that form is produced naturally (i.e., in naturalistic settings as opposed to a laboratory setting) by native speakers of the language. After a sufficient number of examples is collected (with “sufficient” being determined by how systematic the discerned pattern turns out to be), the corpus is analyzed with the meaning of the form ultimately deduced from the observable patterns found within the corpus. An initial hypothesis is formed and then tested against the remaining occurrences of the form in question.

The word mark “One beer” (as found in the applicant’s “One beer, BEER 1”), on the other hand, did not require a corpus-based analysis. Its meaning can be captured quite straightforwardly without the need to collect and analyze a corpus of naturally-occurring examples. To analyze this word mark, I used my intuitions and judgments as a native speaker of English, coupled with my training as a professional linguist, to arrive at my conclusions about how the word marks in question would be interpreted by the average native speaker of the language.

IV Linguistic Analysis

My expert opinion is based upon a linguistic analysis of the word marks “BEER 1” and “One beer, BEER 1” and the design mark, discussed in turn below.

1) “BEER 1”

In linguistic terms, this word mark consists of a common noun (“BEER”) followed by a post-nominal modifier (the numeral “1”). In English, simple modifiers (including adjectives) generally appear before the noun, i.e. in pre-nominal position (e.g., *the best beer, red shoes, good food*). However, this generalization, as is the case with most linguistic generalizations, is not without exception. Among the class of simple modifiers, the most pervasive and systematic exception to this pattern of pre-nominal modification in contemporary English involves nouns that serve as modifiers and that appear following the noun, i.e. in post-nominal position. Appearing in this position, these nominal modifiers denote some kind of ordering or ranking. Consider the examples in (1):

- (1) a. We sat in row D.
- b. We bought grade A eggs.
- c. We’re in aisle 16.
- d. That passenger is in seat 24-B.
- e. I wear size 13 shoes.
- f. Job one for McCain or Obama is fixing the economy.
- g. Pat has Type II diabetes.
- h. Chapter 14 begins on page 327.
- i. We arrived in Norway on day 15 of our vacation.

- j. Our boat docks at Pier 39.
- k. Line 152 runs between Lake Shore Drive and Cumberland Avenue.
- l. Game 6 of the World Series has been delayed due to rain.
- m. My resume can be found in Appendix A.

What these examples of post-nominal modification have in common is that they all involve a ranked ordering of a set of objects, with each individual member of the set ordered with respect to all other members of that set. For example, "Job one" means that there is a ranked ordering of jobs (in this case ranked by importance), while "Game 6" means that there is an ordered set of games (in this case ranked temporally) of which the game in question is sixth. In sum, any numeral (or letter) appearing in post-nominal position would receive this ranked, or "ordinal", interpretation. It is my professional opinion that any conversant or fluent speaker of American English would readily interpret a construction of the form "Noun 1" as conveying some kind of ranked ordering within the set of whatever is denoted by that noun.

Applying this fact about English syntax to the applicant's word marks, I can state with great confidence that any conversant or fluent speaker of the language would, upon encountering the phrase "BEER 1", immediately infer some kind of ranking of beers and interpret the product in question to be ranked number 1, or first, in some way. While the basis for the ranking may not be known (it could be a ranking based on, e.g., quality, popularity, taste), the understanding that there is a ranking follows directly from the rules of English syntax and semantics.

2) "One beer, BEER 1"

This compound word mark consists of two nominal phrases: "One beer" and "BEER 1". My analysis of the phrase "BEER 1" as part of the compound phrase "One beer, BEER 1" is the same as my analysis of the simple phrase "BEER 1", in which the numeral "1" functions as a type of post-nominal modification (as discussed in the previous section).

The "one" that occurs in the expression "One beer", on the other hand, is not an instance of post-nominal modification; rather, it is a pre-nominal numeric modifier, followed by a noun ("beer"). In general, the function of a numeric modifier is to denote **cardinality**. The cardinality of an expression is the number of elements (e.g. 1, 3, 15, 752) contained within the set denoted by that expression. So, for example, an expression denoting a set containing three members (e.g., "three cats") has a cardinality of three, while an expression denoting a set consisting of a single member (e.g., "one beer") has a cardinality of one. In this way, such numeric modifiers are referred to as "cardinal numbers".

Given the cardinal interpretation of the phrase in question, the question arises: What is the set whose cardinality is being asserted to be one? Out of context, the word mark could refer to either a singleton set containing a specific UNIT (e.g., bottle, can, serving) of beer (as in, "I had one beer at dinner"), or to a singleton set containing a more general CATEGORY (e.g., a kind, type, brand, or style) of beer (as in, "I like one brand of beer more than any other").¹ I shall refer to the former interpretation as the "unit

¹ It is common practice in linguistics to use upper case font, e.g. UNIT, CATEGORY, to denote abstract concepts, in order to distinguish them from their ordinary use in everyday language.

interpretation” and to the latter as the “category interpretation”. Without additional information, one cannot assign one of these interpretations to this phrase with complete certainty; however, in a marketing context, it is my opinion that the category interpretation – and not the unit interpretation – is the one that the average consumer would in all likelihood assign to the phrase in question.

According to this analysis, the most plausible interpretation of the phrase “One beer” is the category interpretation, i.e. “one beer of CATEGORY X”, with the “X” standing as a variable, whose *instantiation*, or interpretation, is determined contextually. In other words, the most straightforward and natural interpretation by native speakers of this word mark is that it describes a particular feature of beer, namely its cardinality. Specifically, the word mark conveys that the cardinality of some CATEGORY of beer is one, i.e. that there is one kind, type, brand, style, etc. of beer.

Again, the CATEGORY in question could be either beer styles (lager, ale), beer sources (Belgium, Canada, Germany), beer brands (Budweiser, Heineken, Miller), etc.; without further context it cannot be determined conclusively. In addition, cardinal numbers typically receive an “exactly” interpretation. That is, use of a cardinal number generally implies that the cardinality set in question consists of exactly that number. For example, if one says “I bought three books”, the natural interpretation is that the cardinality of the set of books bought is *exactly* three, although here this is being conveyed only implicitly.

Given this analysis of the individual phrases of the word mark (“One beer”, “BEER 1”), one may now consider the word mark as a whole (“One beer, BEER 1”). The juxtaposition of “One beer” (with its cardinal interpretation) with “BEER 1” (with its

ordinal interpretation) leads to the following interpretation of the word mark: The CATEGORY of beer consists of exactly one set member, and that member is ranked #1. In my opinion, the average native speaker of American English would interpret the word mark in this way, i.e., that there is only one CATEGORY of beer, namely a beer that is ranked #1, with the variable of the CATEGORY left unspecified (e.g. one style, source, or brand of beer).

3) Design mark



The applicant's design mark (illustrated above) consists of an oval-shaped frame nestled above what appears to be two large grains of barley. Inside the frame can be seen one of the applicant's word marks ("BEER 1"), with the numeral 1 appearing in the center of the design directly under the word BEER. There is a sash running diagonally behind the numeral (from upper left to lower right). In addition, to the upper right of the numeral, there is a small picture of a sun (depicted as a hemisphere) with the Roman numerals for 2007 ("MMVII") appearing immediately below the sun. To the lower left of

the numeral, there is depicted a small stein of beer with beer suds overflowing and dripping down the side of the stein.

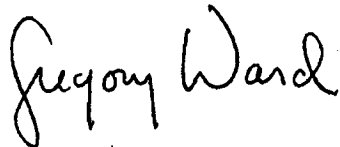
My initial reaction to this logo was that it appeared to depict some kind of victory medal, as one might observe in connection with a sports contest or competition of some sort. The sash suggests the kind of ribbon one sees attached to a medal bestowed upon a dignitary, or a victor in a sports meet or Olympic event. Moreover, the sash adds to the formal, official-looking appearance of the design. The large numeral "1" in the center of the design supports this interpretation of the product in question being top-ranked, or #1. The oval shape itself suggests some type of official designation, similar to the types of images associated with official medals as awarded in competitions. It strongly evokes a victory or ranked competition of some kind. This design, in connection with the linguistic interpretation of "BEER 1", contributes to the overall interpretation of the design mark as designating the product in question as being the top-ranked beer. Such an interpretation, in my opinion, would qualify as a description of the product in question.

V Conclusion

My linguistic analysis of the applicant's two alleged word marks ("BEER 1" and "One beer, BEER 1") has led me to conclude that these word marks would be understood by the average U.S. consumer as describing a quality, characteristic, or feature of the product in question (beer). This conclusion follows directly from an analysis of language based upon the rules of Standard English grammar.

Specifically, "Beer 1" would receive an ordinal interpretation under which the product in question is being ranked number 1 (with respect to some unspecified metric or criterion). The use of the applicant's logo – with its imagery of competition and victory – certainly enhances this interpretation. The other word mark, "One beer, BEER 1", consists of two parts: an ordinal part ("Beer 1"), as above, and a cardinal part ("One beer"), which conveys that the cardinality of the set in question is exactly one. Taken together, the two parts of this word mark would be interpreted by the average native speaker of American English as conveying that there exists a set consisting of exactly one member, i.e. beer (of some indeterminate CATEGORY), and that this set member is ranked #1. From a consumer's point of view, this interpretation is tantamount to a claim that there is only one CATEGORY of beer (e.g. one style, source, or brand of beer) and that this beer is ranked #1.

Respectfully submitted on this 24th day of September, 2008,



Gregory Ward
Professor

VII Appendix A: Curriculum Vitae of Gregory Ward, Ph.D.



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BEER 1

Word Mark	BEER 1
Goods and Services	IC 032. US 045 046 048. G & S: Beer
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77063889
Filing Date	December 13, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	August 28, 2007
Owner	(APPLICANT) Kelly J. Holt INDIVIDUAL UNITED STATES 6921 Reifs Mills Rd. Manitowoc WISCONSIN 54220
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BEER" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Opposition No. 91180119
 Anheuser-Busch, Incorporated
 v. Kelly J. Holt

Opposer's Dep. Ex. 3

AB 0015



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One beer, BEER 1

Word Mark	ONE BEER, BEER 1
Goods and Services	IC 032. US 045 046 048. G & S: Beer
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77065796
Filing Date	December 15, 2006
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	August 28, 2007
Owner	(APPLICANT) Kelly J. Holt INDIVIDUAL UNITED STATES 6921 Reifs Mills Rd. Manitowoc WISCONSIN 54220
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BEER" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Word Mark BEER 1 MMVII
Goods and Services IC 032. US 045 046 048. G & S: Beer
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 01.05.01 - Sun, rising or setting (partially exposed or partially obstructed); Sunrise
 05.13.25 - Bales of hay or straw; Hay in bales; Other plants including bales of hay or straw; Straw in bales
 11.03.02 - Beer steins or mugs; Cups, beer mugs; Mugs, beer; Tankards
 26.03.17 - Concentric ovals; Concentric ovals and ovals within ovals; Ovals within ovals; Ovals, concentric
 26.03.21 - Ovals that are completely or partially shaded
 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
 26.17.06 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal
Serial Number 77090584
Filing Date January 24, 2007
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition June 19, 2007
Owner (APPLICANT) Holt, Kelly J. INDIVIDUAL UNITED STATES 6921 Reifs Mills Rd. Manitowoc WISCONSIN 54220
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BEER" and "MMVII" APART FROM THE

MARK AS SHOWN

Description of Mark The mark consists of three concentric oval bands framing the word BEER above a large numeral 1. Three diagonal bands cut across and behind the numeral 1 from the upper left internal border of the oval to the lower right internal border of the oval. Pictorial representation of a mug of beer located to the lower left side of the numeral 1. Pictorial representation of a rising sun and the year 2007 in Roman numerals located to the upper right side of the numeral 1. Pictorial representation of two barley heads beginning at a point just below the bottom of the external border of the oval, curving upward to the left and right along the external area of the oval.

Type of Mark TRADEMARK

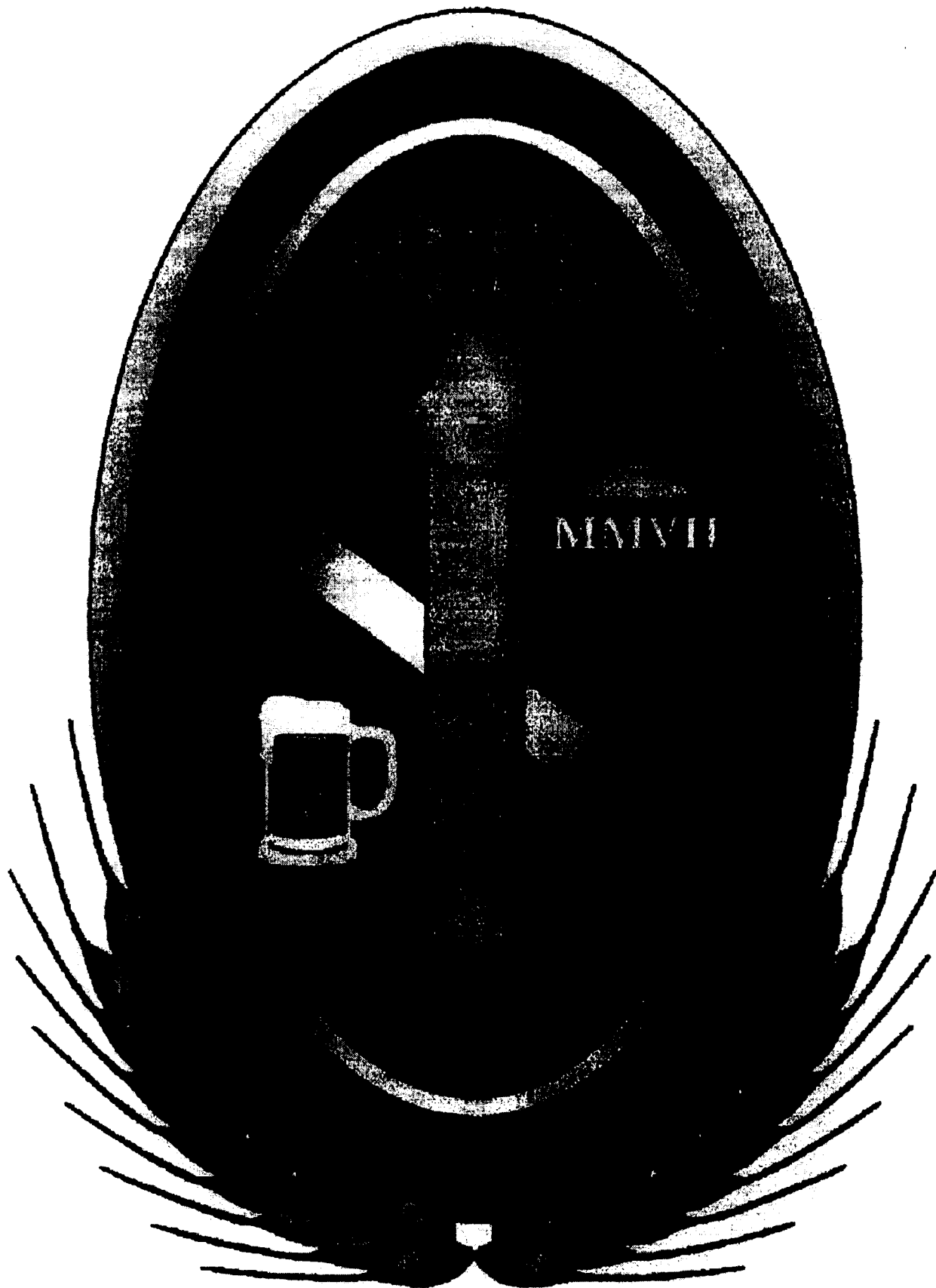
Register PRINCIPAL

Live/Dead Indicator LIVE

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AB 0018



AB 0019

tive portions of a composite mark.¹³ However, the disclaimer of a descriptive portion of a mark may have little effect upon subsequent enforcement of that mark.¹⁴

§ 11:27 Anti-dissection rule

Under the anti-dissection rule, a composite mark is tested for its validity and distinctiveness by looking at it as a whole, rather than dissecting it into its component parts. As the U.S. Supreme Court stated: "The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety."¹

However, it is not a violation of the anti-dissection rule to separately view the component parts as a preliminary step on the way to an ultimate determination of probable customer reaction to the composite as a whole. As the Trademark Board observed:

It is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof with respect to

¹³Lanham Act § 8, 15 U.S.C.A. § 1056. See §§ 11:50 to 11:53 and 19:62-19:70.

¹⁴See *C. R. Bard, Inc. v. Foley Bag Catheter, Inc.*, 394 F.2d 582, 157 U.S.P.Q. 579 (C.C.P.A. 1968).

[Section 11:27]

¹*Estate of P. D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920). See *California Cooler, Inc. v. Loretto Winery, Ltd.*, 774 F.2d 1451, 1455, 227 U.S.P.Q. 808, 810 (9th Cir. 1985) (The mark CALIFORNIA COOLER "is a composite term and its validity is not judged by an examination of its parts. Rather, the validity of a trademark is to be determined by viewing the trademark as a whole. . . . Thus, the composite may become a distinguishing mark even though its component parts individually cannot."); *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902, 35 U.S.P.Q.2d 1342, 1351 (9th Cir. 1995) (Applying the rule that the validity of a composite must be "determined by viewing the trademark as a whole, as it appears in the marketplace" and not by dissection. The court held that while "Self-Realization" is a generic name for a type of yoga spiritual organization and descriptive (without secondary meaning) of books and tapes sold by such an organization, the composites of "Self-Realization Fellowship" and "Self-Realization Fellowship Church" are not necessarily also invalid. The status of such composites must be separately determined by relevant evidence of usage.).

See application of the anti-dissection rule in the context of allegedly confusing composites at § 23:42 and allegedly generic composites at § 12:39.

the question of descriptiveness provided that the ultimate determination is made on the basis of the mark in its entirety. An Examining Attorney's discussion of each word separately in order to show that the term in its entirety is descriptive is not the same thing as dissecting a mark.²

Agreeing with this position, the Federal Circuit observed that it is appropriate to examine and weigh the parts of a composite on the way to examining the overall impression created by a mark:

In considering the mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.³

§ 11:28 "Super" and "mini" composites

Use of the laudatory prefix "Super" often will be taken by customers merely as a description of the alleged superior quality or strength of the product. For example, the composite term SUPERHOSE! for hydraulic hose was held merely descriptive as a whole, the Board noting that addition of an exclamation mark cannot elevate an otherwise descriptive term to the status of a distinctive trademark.¹ On the other hand, if the word "super" is used, not to describe size or a similar attribute, but is utilized as mere trade puffery, the word will not be descriptive.²

Reviewing the "super" cases, the Trademark Board found

²In re Hester Industries, Inc., 230 U.S.P.Q. 797, n.5 (T.T.A.B. 1986) (THIGHSTIX for boneless chicken parts was held not to be a descriptive composite).

³In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 U.S.P.Q.2d 1870 (Fed. Cir. 2004).

[Section 11:28]

¹In re Samuel Moore & Co., 195 U.S.P.Q. 237 (T.T.A.B. 1977). See, for discussion of "Super" marks, In re General Tire & Rubber Co., 194 U.S.P.Q. 491 (T.T.A.B. 1977); In re Carter-Wallace, Inc., 222 U.S.P.Q. 729 (T.T.A.B. 1984) (SUPER GEL for shaving gel is merely descriptive as a generic name modified by a merely laudatory term, Board discussing various SUPER cases); In re Consolidated Cigar Co., 35 U.S.P.Q.2d 1290, 1995 WL 424914 (T.T.A.B. 1995) (The term SUPER BUY low-priced tobacco products "is used in common, everyday parlance to describe something which is an excellent or unusually good purchase or bargain." ITU application was rejected.).

³In re Ralston Purina Co., 191 U.S.P.Q. 237 (T.T.A.B. 1976) (in the composite RALSTON SUPER SLUSH for a soft drink concentrate, "super"

1209.01(b) Merely Descriptive Marks

To be refused registration on the Principal Register under §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), a mark must be merely descriptive or deceptively misdescriptive of the goods or services to which it relates. A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE held merely descriptive of potpourri); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986) (BED & BREAKFAST REGISTRY held merely descriptive of lodging reservations services); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984) (MALE-P.A.P. TEST held merely descriptive of clinical pathological immunoassay testing services for detecting and monitoring prostatic cancer); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979) (COASTER-CARDS held merely descriptive of a coaster suitable for direct mailing).

The determination of whether or not a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods/services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. See *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The mark need not describe all the goods and services identified, as long as it merely describes one of them. See *In re Stereotaxis Inc.*, 429 F.3d 1039, 1041, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) ("[T]he Trademark Office may require a disclaimer as a condition of registration if the mark is merely descriptive for at least one of the products or services involved.")

It is not necessary that a term describe all of the purposes, functions, characteristics or features of a product to be considered merely descriptive; it is enough if the term describes one significant function, attribute or property. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) ("A mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services," citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); *In re Gyulay*, 820 F.2d at 1218, 3 USPQ2d at 1010; *In re Cox Enterprises Inc.*, 82 USPQ2d 1040 (TTAB 2007).

The great variation in facts from case to case prevents the formulation of specific rules for specific fact situations. Each case must be decided on its

own merits. See *In re Ampco Foods, Inc.*, 227 USPQ 331 (TTAB 1985); *In re Venturi, Inc.*, 197 USPQ 714 (TTAB 1977).

1209.03(d) Combined Terms

When two descriptive terms are combined, the determination of whether the composite mark also has a descriptive significance turns upon the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents and for tracking the status of the records by means of the Internet); *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-1112 (Fed. Cir. 1987) (SCREENWIPE held generic as applied to premoistened antistatic cloths for cleaning computer and television screens); *In re Cox Enterprises Inc.*, 82 USPQ2d 1040 (TTAB 2007) (THEATL – a compressed version of the term “THE ATL,” a recognized nickname for the city of Atlanta – held merely descriptive of printed matter of interest to residents of and tourists and visitors to Atlanta, Georgia); *In re King Koil Licensing Co. Inc.*, 79 USPQ2d 1048 (TTAB 2006) (THE BREATHABLE MATTRESS held merely descriptive of “beds, mattresses, box springs and pillows,” based on dictionary definitions of “breathable” and “mattress,” and excerpts of web pages that refer to “breathable mattresses” and “breathable bedding”); *In re Finisar Corp.*, 78 USPQ2d 1618 (TTAB 2006), *aff’d per curiam*, No. 2006-1463, 2007 U.S. App. LEXIS 11535 (Fed. Cir. May 3, 2007) (SMARTSFP held merely descriptive of optical transceivers); *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of “commercial and industrial cooling towers and accessories therefor, sold as a unit”); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer software for use in development and deployment of application programs on global computer network); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information service for the food processing industry); *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of “facsimile terminals employing electrophoretic displays”); *In re Entenmann’s Inc.*, 15 USPQ2d 1750 (TTAB 1990), *aff’d per curiam*, 928 F.2d 411 (Fed. Cir. 1991) (OATNUT be merely descriptive of bread containing oats and hazelnuts); *In re Serv-A-Portion Inc.*, 1 USPQ2d 1915 (TTAB 1986) (SQUEEZE N SERV merely descriptive of ketchup and thus subject to disclaimer); *In re Wells Fargo & Co.*, 231 USPQ 95 (TTAB 1986) (EXPRESSERVICE merely descriptive of banking and trust services); *In re Uniroyal, Inc.*, 215 USPQ 716 (TTAB 1982) (STEELGLAS

BELTED RADIAL merely descriptive of vehicle tires containing steel and glass belts); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979) (COASTER-CARDS merely descriptive of coasters suitable for direct mailing).

However, a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods. *See In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968) (SUGAR & SPICE held not merely descriptive of bakery products); *In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool).

When there is evidence that the composite mark itself has been used together to form a phrase that is descriptive of the goods or services, it is unnecessary to engage in an analysis of each individual component. *In re Shiva Corp.*, 48 USPQ2d 1957 (TTAB 1998) (TARIFF MANAGEMENT merely descriptive of computer hardware and computer programs to control, reduce and render more efficient wide area network usage).

The Trademark Trial and Appeal Board has held that the addition of the prefix "e" does not change the merely descriptive significance of a term in relation to goods or services sold or rendered electronically, where the record showed that the "e" prefix has become commonly recognized as a designation for goods or services sold or delivered electronically. *In re International Business Machines Corp.*, 81 USPQ2d 1677, 1679 (TTAB 2006) ("We see no difference in the meaning or connotation of 'e-server' and 'eserver,' and consider them both to be an abbreviated form of 'electronic server.'"); *In re SPX Corp.*, 63 USPQ2d 1592 (TTAB 2002) (E-AUTODIAGNOSTICS merely descriptive of an "electronic engine analysis system comprised of a hand-held computer and related computer software"); *In re Styleclick.com Inc.*, 57 USPQ2d 1445 (TTAB 2000) (E FASHION merely descriptive of software used to obtain beauty and fashion information, and for electronic retailing services); *Continental Airlines Inc. v. United Airlines Inc.*, 53 USPQ2d 1385 (TTAB 1999) (E-TICKET generic for computerized reservation and ticketing of transportation services). Similarly, with appropriate evidence, the prefix "i" or "I" was held to be understood by purchasers to signify Internet, when used in relation to Internet-related products or services. *See In re Zanova, Inc.*, 59 USPQ2d 1300 (TTAB 2000) (ITOOOL merely descriptive of computer software for use in creating web pages, and custom design of websites for others). In these situations, the examining attorney should provide evidence of use of the prefix "e" or "i" in relation to the goods or services.

The addition of an entity designator (e.g., Corporation, Corp., Co., Inc., Ltd., etc.) to a descriptive term does not alter the term's descriptive significance, because an entity designation has no source-indicating capacity. See *Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 602 (1888) ("The addition of the word 'Company' [to an otherwise generic mark] only indicates that parties have formed an association or partnership to deal in such goods" and does not render the generic mark registrable); *In re Cell Therapeutics Inc.*, 67 USPQ2d 1795 (TTAB 2003) (CELL THERAPEUTICS INC. generic for pharmaceutical preparations and laboratory research and development services); *In re Taylor & Francis [Publishers] Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) ("PRESS," as applied to a printing or publishing establishment, "is in the nature of a generic entity designation which is incapable of serving a source-indicating function"); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998) (PATENT & TRADEMARK SERVICES INC. is merely descriptive of legal services in the field of intellectual property; the term "INC." merely indicates the type of entity that performs the services, and has no significance as a mark); *In re The Paint Products Co.*, 8 USPQ2d 1863, 1866 (TTAB 1988) ("PAINT PRODUCTS CO." is no more registrable for goods emanating from a company that sells paint products than it would be as a service mark for the retail paint store services offered by such a company."); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 919 (TTAB 1984) (the element "INC." [in PACKAGING SPECIALISTS, INC.] has "no source indication or distinguishing capacity"). See TMEP §1213.03(d) regarding disclaimer of entity designators.

CH42361.1