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WTF®: a trade mark perspective on millennial gibberish

by Samera Naidoo

ICYMI, Proctor & Gamble ("**P&G**") recently applied to register a whole lot of text/SMS talk abbreviations as trade marks. It caused a real storm and the mainstream press absolutely loved it!

FOMO alert!

DWAI, I'll bring you up to speed...what happened here was that P&G applied to register some really unlikely trade marks including WTF, LOL, FML, NBD. Now, when the company that brings you well-known brands such as Vicks, Oral-B, Gillette and Head & Shoulders applies to register such trade marks, the first thing that comes to mind is – *WTH?!!*

LMAO!

IKR! You do have to wonder about this, it's a pretty radical change of branding strategy, and a lot of people have been throwing shade. In my view, it's really *NBD*.

WDYM?

BC ...well, we've seen stuff like this before, we've seen trade marks go from plain old brand names and logos to logos that move, smells, tastes, sounds, colours, shapes, store get-ups, and the world hasn't come to an end. So, why can't millennial gibberish be a trade mark, a designator of commercial origin?

FYI: section 9 of the Trade Marks Act, 1993 states that, in order to be registrable, a trade mark must be capable of distinguishing the goods and services of a person in respect of which it is registered or proposed to be registered from the goods or services of another person.

OFC.

In considering whether P&G's trade mark applications will proceed to registration, we need to consider whether the trade marks are distinctive. As long as the trade marks are not descriptive of the product, nor laudatory, nor a surname or geographical indication, they should be registrable. If WTF or LOL do in fact describe any of the products, then trade mark registration is the least of P&G's problems! The consumer talk regarding these products will DEF be interesting. Maybe it will go something like this: "OMG, there's no WTF in this store!"

NP then?

IRL, the Trade Marks Registry will consider what the abbreviations stand for and this is where P&G may run into complications on issues of offensiveness and morality, certainly when it comes to abbreviations like WTF and FML.

Not so much in the USA, because in the recent case of *Matal v Tam*, the US Supreme Court held

that the disparagement clause in the Lanham Act (US trade mark legislation) that prohibits the registration of immoral or scandalous marks is unconstitutional as it violates the Free Speech Clause of the First Amendment. As a result, the band name and trade mark THE SLANTS, a name that clearly might offend people of Asian origin, was registrable.

RLY.

The capability of a trade mark to distinguish is a factual issue and must be determined on a case-by-case basis having regard to all the relevant circumstances. *TBH*, in more socially conservative places like some countries in Africa, there's a very real risk of getting objections on grounds of offensiveness or immorality. One exception to that might be South Africa, where the approach is more liberal.

My advice to P&G would be to give it a shot because *YOLO!*

Glossary (for the older readers)

WTF – Google it... yes, on a computer!

LOL – Laugh out loud.

FML– Google it.

NBD – No big deal.

ICMYI – In case you missed it.

FOMO – Fear of missing out.

DWAI – Don't worry about it.

WTH – What the hell.

LMAO – Laughing my arse off.

IKR – I know right.

WDYM – What do you mean?

BC – Because.

FYI – For your information.

OMG – Oh my God.

OFC – Of course.

DEF – Definitely.

TBH – To be honest.

NP - No problem.

IRL – In real life.

RLY – Really.

YOLO – You only live once.

Reviewed by Gaelyn Scott, head of ENSafrica's IP department.



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