



Measuring Trade Dress Confusion Through Expert Consumer Surveys

Globefill Incorporated introduced Crystal Head Vodka, a premium spirit sold in a glass bottle shaped like a skull, in 2008. The company alleged that its trade dress is evocative of Meso-American imagery, Day of the Dead, and the ethos of rebirth. The trade dress is expensive to produce, intentionally nonfunctional, and was long the only spirit on the market with this shape. Actor Dan Aykroyd co-founded the brand and helped promote it with Globefill, leveraging national appearances at retail locations, tradeshows, and House of Blues events. The campaign generated significant consumer interest.

Elements Spirits Company later released KAH Tequila in packaging closely resembling that of Crystal Head, featuring a similarly shaped skull bottle which Globefill alleged was inspired by the same “Meso-American marketing themes.” KAH’s COO publicly noted the product would look “right at home in a House of Blues or a Mexican grandmother’s kitchen,” which Globefill interpreted as an attempt to occupy the same brand space without affiliation, approval, or license from Globefill.

The Case Challenge

Globefill brought a trade dress infringement action in the United States District Court for the Central District of California, under the Lanham Act, for false designation of origin and unfair competition. Globefill claimed its skull bottle was a protectable trade dress, distinctive, nonfunctional, and widely recognized, and that KAH’s similar packaging created a likelihood of consumer confusion. The plaintiff also alleged that Elements Spirits’ public remarks alluding to the House of Blues exacerbated the confusion and falsely suggested an association with the Crystal Head brand.

To support its approach in this case, the defense needed expert input on whether KAH’s packaging infringed on the trade dress of Crystal Head Vodka.

The Expert Solution

Defense counsel at Baker & Hostetler LLP retained survey expert Bruce Isaacson, DBA, to design and conduct consumer surveys testing for brand awareness and likelihood of confusion.

Dr. Isaacson first conducted a brand awareness survey to determine whether Crystal Head Vodka had high public awareness. The survey targeted premium vodka drinkers over age 21 who were likely to purchase a bottle of vodka for \$30 or more in the next six months. Respondents were shown blurred images of various spirits bottles—including Crystal Head, Grey Goose, and Absolut—and asked whether they had seen them before and could identify the brand. While 93% identified Absolut and 85% recognized Grey Goose, only 46% of respondents reported having seen Crystal Head's skull bottle, and fewer than 5% correctly identified it by name.

Next, Dr. Isaacson fielded a likelihood of confusion survey using a mall-intercept method. Consumers were shown lineups of spirits, including both the Crystal Head and KAH bottles, as well as neutral control bottles. They were asked about brand association and product origin. Survey participants were qualified based on their intent to purchase a bottle of vodka or tequila for \$30 or more within the next six months. and screened to exclude those with professional knowledge of alcohol branding or packaging.

The survey used controls to isolate the effects of the skull-shaped design. Interviews were conducted in person, and responses were recorded digitally. The survey found that 56% to 59% of respondents were confused about the association between KAH and Crystal Head, compared to only 12% confusion between KAH and other tequila brands.

The Outcome

Dr. Isaacson concluded that the visual similarity between KAH and Crystal Head packaging created a significant likelihood of consumer confusion. The skull shape, references to House of Blues, and Meso-American iconography and symbolism were likely to mislead consumers about the source, sponsorship, or affiliation of the product.

Survey research is frequently used to support strategies in complex trade dress litigation. In this case, utilizing multiple survey methodologies helped the client determine how to test whether a reasonable consumer would be confused by similar packaging, and ultimately inform their legal strategy.

Expert Consumer Surveys for Trade Dress and IP Disputes

At the time of this engagement, Dr. Isaacson was the president of MMR Strategy Group, which joined IMS Legal Strategies in May 2025. Dr. Isaacson now oversees the Litigation Surveys & Consumer Science division at IMS, providing decades of expertise in survey design for litigation involving trademarks, trade dress, false or deceptive advertising, and patent or copyright infringement. This expert team adheres to accepted legal standards and rigorous research methodology to ensure admissibility and reliability.

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