TRADEMARK HYBRIDITY AND BRAND PROTECTION

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What’s in a word? As it turns out, quite a bit. The vast majority of words in our language, including trademarked terms, signify a variety of conceptual meanings and senses. This idea of splintered definition—described in the psycholinguistics literature as “homonymity” (divergent meanings) and “polysemousness” (divergent senses)—is underrepresented in trademark law. As a result, there has been a proliferation of legal doctrines that fail to accurately describe our linguistic lives including, most notably, dilution and genericness. This article draws on the psycholinguistics literature to highlight these doctrinal failures and proposes several ways in which the law might account for polysemousness and homonymity. In addition to bringing the law into line with the lived experience of language, these changes have the added benefit of promoting the communicative and competition interests at the heart of trademark law.