



Measuring Likelihood of Confusion: The Squirt Survey Format

By Kimberly White, Senior Director of Research Operations

There are two commonly accepted survey formats used to measure likelihood of confusion: the Squirt format and the Eveready format. This article addresses the Squirt survey format, which is also known as a “lineup” survey. Explore the Eveready format [here](#).

Origin of the Squirt Survey Format

The name *Squirt* comes from the survey at issue in *SquirtCo. v. The Seven-Up Company*, a 1980 trademark dispute. SQUIRT was a trademark of SquirtCo. When The Seven-Up Company introduced QUIRST, SquirtCo argued that the similarity between the two names was confusing to customers.

To evaluate that claim, a survey measured whether consumers believed the two products came from the same company or from different companies. In the *SquirtCo v. The Seven-Up Company* likelihood of confusion survey, respondents were exposed to radio advertisements for both SQUIRT and QUIRST and then asked whether they believed the products were made or put out by the same company or by different companies. In other words, respondents were exposed to the trademarks of both the senior (SQUIRT) and junior (QUIRST) users.

Although elements of Squirt surveys have evolved over time, the core idea remains the same: respondents are shown marks or products from both parties so the survey can test whether consumers are likely to confuse source, affiliation, or sponsorship.

How the Squirt Format Measures Likelihood of Confusion

The Squirt survey format presents marks or products from both parties, either simultaneously or sequentially, and is designed to reflect situations in which consumers may encounter

allegedly similar products in a real marketplace situation. It differs from the Eveready survey format, in which respondents are shown only one mark or product, usually the user accused of infringement, and asked what company or brand it comes from, is affiliated with, or endorsed by.

When to Use the Squirt Format

Squirt surveys may be conducted in a variety of ways, depending on the specific nature of the market context. In one common Squirt survey, respondents first see a single product or trademark and then view a lineup or array that includes the other party's product or trademark alongside other similar products or trademarks. Because this method uses an array, the Squirt format is sometimes called "lineup."



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By showing both parties' trademarks or products, the Squirt or lineup format for likelihood of confusion surveys replicates conditions under which marks have marketplace proximity. As one author has stated, this format is used when marks "...are simultaneously or sequentially accessible in the marketplace for comparison. It relies on the 'proximity' factors (e.g., overlapping customers, channels of trade and advertising) in a likelihood of confusion analysis, rather than on the strength factor, as its market replication rationale."¹

A Squirt Survey Format Example: Crystal Head Vodka

In the matter of *Globefill Incorporated v. Elements Spirits, Inc.*, Globefill Incorporated, the maker of Crystal Head Vodka, backed in part by former Saturday Night Live and actor Dan Aykroyd, alleged that consumers would be confused into believing that Elements Spirits, Inc.'s KAH Tequila was made or authorized by Crystal Head Vodka. The dispute centered on the products' skull-shaped bottles.

Squirt Survey Evidence in the Case

IMS Senior Managing Director of Litigation Surveys and Consumer Science, Dr. Bruce Isaacson, DBA, conducted a Squirt survey to measure the likelihood of confusion between KAH Tequila and Crystal Head vodka.

His survey focused on the junior user's (KAH Tequila) universe by measuring confusion among tequila drinkers. It was conducted in person, and respondents were shown actual bottles of tequila. This design helped replicate a plausible scenario in which a consumer in a retail location, such as a liquor store, sees Crystal Head and then sees KAH amongst other tequila bottles.

Respondents were asked several questions commonly used in Squirt format surveys. For example, respondents were asked questions to measure confusion as to source and as

to sponsorship or approval. These distinctions matter because confusion can arise when consumers believe one product is affiliated with, endorsed by, or authorized by another brand.

The survey results indicated there was a likelihood of confusion between the accused bottle of KAH tequila and Crystal Head vodka. Dr. Isaacson testified about the survey at trial, and the jury found in favor of Crystal Head in March 2017.

Likelihood of Confusion Survey Expertise

IMS Legal Strategies provides likelihood of confusion surveys that reflect marketplace conditions, address the appropriate consumer universe, and withstand scrutiny under accepted legal and social science standards. Our experts apply the Squirt or Eveready formats based on the facts of the dispute and support clients with credible survey evidence, trial-ready reporting, and expert testimony in complex intellectual property matters.

References

¹ Swann, Jerre B., "Likelihood of Confusion Studies and the Straitened Scope of Squirt". The Trademark Reporter, May-June 2008, p 755-756.

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