BRAND-COLOUR ASSOCIATIONS: A COMPARISON OF SURVEY METHODS

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ABSTRACT

Registration of colour as a trademark in Qualitex v Jacobsen 1995 paved the way for other companies to register colours they believe have a distinctive association with their brand. Consumer survey evidence is often used to demonstrate distinctiveness, but frequently receives little weight due to criticisms of the methodology. In particular, the questions used and their ability to provide insights into the legal question of interest are heavily criticised. In terms of colour trademark applications, multiple methods have been employed to provide evidence of colour brand associations, however, to date there are no standard measures.

The overall objective of this study was to test various methods of estimating colour-brand associations with the focus of assessing the similarity in the estimates and developing a robust methodology. This study tested four methods of estimating brand-colour distinctiveness in the chocolate product category, where Cadbury has recently sought to register the colour purple, and the rice category where Effem Foods had unsuccessfully applied to register orange in relation to Uncle Ben's rice. The research in this thesis replicated and extended a study conducted in the chocolate category in 2003. The first method explored associations with brands, while the second used a sequence of increasingly specific questions to explore the same associations. The third method required respondents to match a range of shades with brands and the fourth method employed a choice modelling experiment designed to examine respondents' choice behaviour and the interaction between brands and colours.

Overall, it was found that all methods revealed a strong association between Cadbury and purple, although Cadbury was also associated with other colours. The findings also suggested that orange was not inherently associated with Uncle Ben's. The key implication that arises from these findings is that where a high level of association is detected the methods had strong convergent validity. However, the choice modelling method is recommended as the more robust methodology as it focused on the effect of colour-brand interactions on behaviour rather than cognitive constructs.

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CHAPTER ONE: INTRODUCTION

1.1 Trademarks: A means of protecting distinctiveness

Trademarks are unique product identifiers that may include words, logos, colours, sounds, smells or any combination of these (IPONZ, 1999; Cohen, 1991; Loken, Ross & Hinkle, 1986). They originated as a symbol to help consumers identify a product or service. According to Cohen (1991), the basic theoretical construct of trademark law is to protect consumers from confusion between brands; that is, to prevent consumers from becoming confused about the source or origin of a product or service. Trademarks therefore help producers differentiate their products or services from those of other producers.

Trademarks have evolved to have a considerable influence on the value of a brand, mainly through the associations they possess and the distinctiveness they allow (Taylor & Walsh; 2002 Cohen, 1991). As consumers become familiar with particular marks and the goods or services these represent, marks can acquire secondary meaning as indicators of quality and source.

A successful trademark depends on the distinctiveness that it holds. If a trademark is distinctive, a brand will be easily recognised and identified within a product category (Hoek, Gendall, Brennan, Bednall, & Noble, 2003). Cohen (1986) noted a continuum of trademarks with generic marks at one end and fanciful marks at the other. Generic marks describe a product category therefore are not eligible for registration. Fanciful marks may loose protection if they become generic rather than being associated with a particular brand (cited in Hoek, Gendall, Brennan, Bednall, & Noble, 2003).

The development of trademarks has raised issues about how trademark owners are established, the right to use marks, and the implications of using a trademark whether the user is authorised to use the mark or not. In New Zealand, trademark registration involves providing evidence to demonstrate that the mark is associated with the product or service of the applicant. More recently,

applications have expanded and now include not only the registration of words and symbols but also colours and smells, thus moving into unprecedented areas.

1.2 Current Situation

As the number of trademark applications increase, businesses are taking a more aggressive stance to safeguard their intellectual property (Cohen, 1991; Hoek & Gendall, 2003). The benefits of trademarks for a business are also being realised as successful trademarks arguably build brand equity and goodwill over time (Cohen, 1991; Jacoby & Morrin, 1998). Thus, well-known marks of reputable companies are valuable business assets, worth nurturing and protection. Increased recognition of trademarks' importance, in the past decade, has led to a substantial increase in trademark registration applications and disputes. As a result, the need to provide admissible evidence to support such cases has become important (Cohen, 1991; Howard, Kerin & Gengler, 2000).

Evidence provided to prove that a colour had become inherently associated with a brand often takes the form of survey evidence. Different survey methodologies have previously been presented as evidence in the courts however, there are no generally accepted measures. In addition, criticisms are often levelled at survey evidence based on validity, reliability, and methodological flaws of the survey. Therefore, there is a need for the development of robust survey methodologies.

The registration of colours as trademarks is now allowed in New Zealand. Cadbury have recently put forward an application to register purple as a trademark of Cadbury in New Zealand. To be eligible to register purple, as a trademark, evidence must be provided to prove that purple is inherently associated with Cadbury. In addition to this, Effem Foods have recently been unsuccessful in registering orange as a trademark of Uncle Ben's rice. These cases provide a timely focus for research into, survey evidence, colour trademarks, and the use of survey evidence to support colour trademark applications.

The research outlined and discussed in this thesis replicates and extends Hoek, Gendall, Brennan, Bednall, and Nobel's (2003) research into colour brand associations in the chocolate category, predicting colour brand associations in different product categories and developing a robust survey methodology. Hoek et al. found that where a distinctive association existed any of the methods tested revealed an association. They also concluded that each of the methods tested were likely to receive different weight in court.

Chapter two of this thesis examines current trademark legislation and discusses the issues relating to the entitlement of a trademark with particular attention to colour trademarks. Chapter three examines the use of evidence in trademark cases, with specific attention to the problems with survey evidence; finally, it explores the new and expanding area of colour trademarks. Chapter four outlines and explains the study's methodology whilst chapter five presents the results of the study and relates them back to chapters two, three, and four. Finally, chapter six summarises the key findings and the implications and directions for future research that arise from these.

CHAPTER TWO: TRADEMARKS

2.1 Legislation developed to govern the use of trademarks

The use of symbols to identify producers and products dates back to 4000 BC, and trademark legislation was initially codified in common law (Peterson, Smith & Zerillo, 1999). Although legislation is in place to protect trademarks, there are no legal requirements to register a trademark (IPONZ, 1999). However, registration is proof of ownership and indicates the owner has sole rights to the trademark for the goods and service to which it applies. Therefore, there is a strong commercial incentive to register a trademark.

The United States Patent & Trademark Office governs trademarks in the United States. The US Federal Law defines a trademark, under section 43 of the Lanham Act 1946, as "any word name or symbol device or any combination thereof used by a manufacturer to identify and distinguish his or her goods, including a unique product from those manufactured or sold by other" (cited in Peterson et. al 1999, p. 255). While trademarks can be registered within each state, this will be of little value to businesses operating across states (United States Patent and Trademark Office, 2004). US decisions often influence or pave the way for decisions in other jurisdictions.

In New Zealand, the Intellectual Property Office of New Zealand (IPONZ), a government entity, governs the protection of intellectual property. IPONZ's main functions involve granting patents under the Patents Act and registering trademarks and designs under the Trademarks Act and Designs Act. The New Zealand definition of a trademark is similar to that of the US. A trademark is any sign capable of being represented graphically and distinguishing the goods or services of one person from those of another (Trade Marks Act 2002, 5, 1, 40). The Act defines a sign as a brand, colour, device, heading, label, letter, name, numeral, shape, signature, smell, sound, taste, ticket, or word; and any combination of signs (Trade Marks Act, 2002, 5, 1, 37).

2.2 Registering a trademark

Previous trademark cases provide guidance for trademark applicants to ensure they meet the conditions for entitlement to the registration of a particular mark. For example, in Effem Foods Limited v Unilever PLC and Bluebird Foods Limited the judge repeated the well-know passage from the speech of Lord Parker in Registrar of Trade Marks v W & D du Cros Ltd (1913) (AC at pp 634-635) that "the applicant for registration in effect says, 'I intend to use this mark as a trademark, i.e., for the purpose of distinguishing my goods from the goods of other persons', and the registrar or the Court has to determine before the mark be admitted to registration whether it is of such a kind that the applicant, quite apart from the effects of registration, is likely or unlikely to attain the object he has in view. The applicant's chance of success in this respect must, I think, largely depend upon whether other traders are likely, in the ordinary course of their business and without any improper motive, to desire to use the same mark, or some mark nearly resembling it, or in connection with their own goods. It is apparent form the history of trade marks in this country that both the Legislature and the Courts have always shown a natural disinclination to allow any person to obtain registration under The Trademarks Act a monopoly in what other may legitimately desire to use".

Thus, entitlement to the registration and consequent use of a trademark must comply with several conditions:

- The use of a mark already registered to another producer is illegal, and cannot result in trademark rights;
- Evidence must be provided to show that the mark is in use;
- The mark must be distinctive, non-generic and non-functional;
- There must be no likelihood of confusion between the mark in question and the trademarks of other goods and services (Cohen, 1991; Morrin & Jacoby, 2000).

However, as there are no standard measurement methods, providing valid proof that these conditions have been met remains contentious and different measures may result in varied outcomes (Cohen, 1991; Morrin & Jacoby, 2000). Each of these conditions will be examined further below.

2.2.1 A mark in use

A trademark needs to be in use in trade at the time of registration in most jurisdictions (Libertel Groep v Benelux-Merkenbureau, 2003). In addition, actual registration of the mark will not take place until the mark has been used. However, registration of intent to use a mark has been allowed in previous cases. Some critics suggest intent to use may limit the availability of trademarks and stifle competition. Thus, they question registration of intent to use (Cohen, 1991). In addition, "there must be actual and continuing 'intent to use' the mark" to allow renewal of a registration (Cohen, 1991, p.48). For example, in 1947 Unilever had successfully registered the mark RADIANT, with intent to use; however, Cussons entered the New Zealand market in 1996 with a RADIANT branded product. Unilever, aware of Cussons impending product, lodged a further application in 1995 when it became aware that its registration was vulnerable to attack. Thus, Unilever reaffirmed its registration for the intent to use the RADIANT mark, preventing Cussons' use of the mark (McDonald, 2002). Unilever could be criticised for engaging in anticompetitive behaviour, as they did not have a RADIANT branded product in the market at the time; however, based on their actual and continuing intent to use the mark, the courts allowed the registration to be renewed.

2.2.2 Distinctiveness, genericism and secondary meaning

To be eligible for registration, a trademark must be distinctive and not considered a generic term. Distinctiveness requires proof of secondary meaning: there must be proof the mark is inherently associated with the product and is not the generic term, feature, or attribute of the product category. According to Palladino (2002), genericness and secondary meaning are opposite sides of the same coin: "a word is generic if it has no secondary meaning; conversely if the primary significance

of the term in the minds of the consuming public is not the product but the producer then the word is not generic" (p.864). There is, therefore, no such concept as a generic term with secondary meaning.

To assess whether a trademark has become generic requires examining whether it has lost secondary meaning or whether a non-trademark has become a generic term (Palladino, 2002). To discount genericism, proof is necessary that the primary meaning of a term to consumers is not the product but rather the producer; this requires evidence that consumers associate the mark with the product's origin (Simonson, 1994). Simonson (1994) also claimed that genericness "remains an elusive concept, largely because of the vagueness of the 'primary' (or 'principal') significance, and consequently, the lack of generally accepted genericness measures" (p.185). Indeed, consumers may, in theory, understand a specific term is a brand name (trademark), they may use it as a common (generic) term, this limitation of the genericness concept contributes to its vagueness (Simonson, 1994). For example, aspirin, cellophane, nylon, thermos, and escalator are specific brand names that have become generic terms due to their common usage. Xerox and Sellotape undertook advertising to ensure that consumers use their brand name only in respect to their specific brands in an attempt to prevent their brand names from becoming generic terms.

The fact that a term may have more than one meaning to a consumer complicates the process of assessing its genericness. More specifically, a term may function as both a generic term and a trademark; consumers may use a term generically, even if they understand that the term was initially a trademark e.g., using the brand name Electrolux rather than the product name vacuum cleaner. A term could therefore, be categorised based on actual usage rather than theoretical knowledge. This implies that many terms may be generic if actual usage of a term is relied on, consequently jeopardising the registration of many existing trademarks. A trademark is likely to lose protection if the courts accept that consumers use the brand name to describe a generic category. Zipper, linoleum and pogo stick are further examples of genericised trademarks that highlight the need for successful trademark owners to ensure the correct usage of their brand names.

2.2.3 Functional marks

A mark that all manufacturers use as a feature of the product or service is a functional mark (Qualitex v Jacobson, 1995). A single user may not monopolise a trademark if the mark is proved functional, as this would lead to unfair competition. Words that describe features or characteristics of a good or service, and words that are generic names are ineligible for trademark registration or protection (Morrin & Jacoby, 2000; Qualitex v. Jacobson, 1995). For example, names such as 'baked beans' and 'fruit salad' are not entitled to registration as they are specific names for a type of product and describe a product category. A further example of functionality is where a "particular configuration of a product may be less expensive to manufacture than other product configurations" and therefore would not be eligible to be registered as a trademark as this would hinder competition (Keating, 1989, p. 9). Functionality would also extend to colour trademarks. Colours that are inherently associated with a product would not be eligible for registration, for example, red in relation to 'red hot chilli' or yellow for the butter or margarine categories.

2.2.4 Likelihood of confusion

Likelihood of confusion is the potential for a trademark to deceive or confuse consumers (Cohen, 1991). According to Jacoby and Morrin (1998), various factors determine the likelihood of confusion. These include;

- the strength of the first user's mark;
- the similarity of appearance, sound or meaning between the two marks;
- the degree to which the two products use the same channels of distribution;
- the degree of competition of the two products;
- the level of consumer involvement in the decision making process;
- infringer intent;
- and evidence of actual confusion.

Each of these factors influences trademark registration and infringement. For example, under the Lanham Act (the US Trademark Act), proof of likelihood of confusion requires evidence that a product competes in the same market through the same channels of distribution as another product (Peterson, Smith and Zerillo, 1999).

Survey evidence may demonstrate likelihood of confusion. For example, yellow is a trademark of Telecom in the telecommunication industry in New Zealand. If survey evidence indicated low levels of association between Telecom and yellow but indicated that Telecom was associated with another colour, this incorrect association may also indicate consumer confusion in relation to the colour associated with Telecom. Consequently, Telecom's yellow trademark may be jeopardised. In Vaseline Intensive Care Lotion (VICL) v Venture, where the products had a similar formula, bottle shape and label, VICL introduced survey evidence to establish secondary meaning and consumer associations with the VICL brand. The courts held that this evidence was insufficient and required that likelihood of confusion also be proved (Jacoby & Morrin, 1998). Specifically, they required evidence that a reasonable consumer would confuse the two brands, and that cause for trademark infringement action existed. As there are no benchmarks to gauge confusion, it is difficult to prove whether confusion exists (Simonson, 1994; Kearney & Mitchell, 2001).

2.3 Identifying trademark infringement

Registration of a trademark entitles the owner of the mark to exclusive rights to the use of the trademark. Once registered, use of the mark or one deceptively similar to it, infringes the owner's rights and the infringer can be prosecuted under the Trademarks Act (2002). The basic issue concerning trademark infringement is consumer confusion, which may lead to unfair competition (Miaoulis & D'Amato, 1978; Caughey, 1956). Trademark infringement reduces the usefulness of trademarks for consumers, as well as the mark's value for the owner by diminishing the source-identifying capability of the trademark (Jacoby & Morrin, 2000; Peterson et. al., 1999; Jacoby & Morrin, 1998). Unauthorised

use of a trademark, or a similar mark that is likely to deceive or confuse, is trademark infringement.

Trademark owners must take steps to discover, and prosecute, adverse users. Failure to prosecute known infringers of a mark may result in owners finding they have abandoned their trademark rights. Anhauser Busch, the owners of Budweiser, an internationally recognised beer brand, prosecuted Budweiser Budvar, the producers of Budjovecky Budvar, throughout the world for the use of the term Budweiser. Even though the sales of Budweiser are small in New Zealand, their action was intended to prevent the use of a similar mark that is likely to mislead or confuse consumers, or lead to a finding of abandonment of trademark rights (Hoek & Gendall, 2003).

Initially, unauthorised use of a trademark may not appear to cause harm to the trademark's owner. However, trademark dilution in the form of blurring or tarnishment is a serious infringement issue. Dilution occurs when the use of a trademark by an entity other than the owner weakens the associations of the trademark with its original source (Morrin & Jacoby, 2000; Cohen, 1991). Blurring (also referred to as typicality dilution by Peterson et al., 1999) occurs in situations where two brands have the same or similar name, but there is no likelihood of confusion. In this case, the second user could be accused of passing off the products as originating from the first user to take advantage of associations with the first user's trademark/brand.

One of the first cases to deal with trademark infringement and trademark genericism, in New Zealand, was the 1992 Champagne Case (McDonald, 2002). Since 1845, wines produced in the Champagne region of France have been marketed and promoted as Champagne. There have been incidents when Australian and New Zealand manufacturers used the name Champagne on locally produced wine. French Champagne producers were quick to challenge the use of the term. In 1958, the courts established that the use of the term 'Champagne' in the New Zealand market was only allowed as an identification of origin (NZLR, 327, 1992, 2). In this case, the New Zealand and Australian producers were accused of passing off their wine as originating from the Champagne region of

France. The case involved the use of the word 'Champagne' by the Australian manufacturer, Seaview. French wine growers had vigorously protected the use of the word in New Zealand. This enabled the court to decide that the word had not become generic despite the evidence that New Zealand consumers were relatively ignorant of the word as a term to designate wine of a particular region in France.

Tarnishment (also referred to as evaluation dilution by Peterson et al., 1999) occurs through negative associations, such as derogatory connotations, which are likely to influence future decisions about the product. Tarnishment allegedly reduces brand equity (Morrin & Jacoby, 2000). For example, in Grey v. Campbell Soup Co. (1986) a dog snack was introduced under the name Dogiva dog biscuits, which is an anagram of Godiva chocolates. The plaintiff claimed "Dogiva" created unpleasant associations with the "Godiva" chocolate brand (Grey v. Campbell Soup co. 1986, cited in Morrin & Jacoby, 2000). In this case, the court found dilution of the mark "Godiva" for chocolate by the defendant's use of the mark "Dogiva" for dog biscuits. The court stated that "Godiva" was wholly arbitrary and fanciful, and inherently distinctive, and therefore a strong mark entitled to protection against dilution. The court went on to use tarnishment as a basis for granting relief, stating that defendant's use of "Dogiva" injured the plaintiff's reputation because the plaintiff's product was premium quality chocolate whereas defendant's product was dog biscuits (Grey v Campbell Soup Co. 1986). Damage may also occur through the loss of sales due to mistaken purchases, where consumers purchase one brand thinking it is another (Kearney & Mitchell, 2001). Proof of dilution can be difficult to establish in litigation, as it is likely to be a gradual lessening of the uniqueness or distinctiveness of a brand in consumers' minds. This is more difficult to measure than absolute trademark infringement (Peterson et al., 1999). Trademark owners and parties considering the registration of a trademark must be aware of these issues to ensure correct trademark use and to prevent trademark infringement.

2.4 Distinctiveness in abstract: Colour trademarks

Colours have become an important tool to represent and identify products. This has led to increased interest in trademarking colours to protect a business's investment in a colour. While there has been much past debate over colour registration, especially by opposing parties, recent cases have allowed the registration of colour as a trademark. Samuels and Samuels (1996) state, "prior to 1985, few principles of the US trademark law were as firmly established as the prohibition against the protection for colour alone" (p. 303). Thus, the ability to register colour trademarks shows a large change in judicial attitudes towards trademarking colour.

Two arguments form the basis of the prohibition of colour as a trademark:

- Exclusive rights to a colour would deplete colour choice and encourage anti-competitiveness.
- Shade confusion would occur, as there are difficulties in drawing distinctions between colour shades (Samuels and Samuels, 1996).

As such, colour trademarking is generating unprecedented lawsuits. For example, Telecom and yellow, BP Oil and green, and fibreglass insulation and pink (Pink Batts) are brands with distinct colour associations where the registration of colour as a trademark has been accepted in New Zealand.

2.4.1 Registration of a colour

To win entitlement to a colour trademark, the applicant must establish that the colour under application meets the underlying principles of trademark law outlined in the previous sections. This implies the colour must be distinctive, must identify the source of the product, and must be capable of distinguishing the goods of one producer from those of another. The colour must also hold secondary meaning and must not be a functional feature of the product (Keating, 1989). For example, in Effem Foods Limited v Unilever PLC and Bluebird

Foods Limited (2003), the judge commented, "although the applicant has established that a certain percentage of those consumers associate the colour orange with the applicant's Uncle Ben's rice, this does not necessarily equate with establishing that the colour orange is perceived as a badge of origin by those consumers".

An accurate description of the colour must be included with an application. This is often a difficult requirement, as reproducing an exact colour match is difficult due to the art of printing and colour replication (Playle and Hodson, 2003). The representation of the colour must enable the examiner to determine whether the colour is distinctive and enable those processing the registration to determine exactly what the mark consists of. Describing a colour by name, for example, 'blue', is not an accurate description as it would allow an excessively wide monopoly for the owner of the colour. Typically, applicants use a colour standard system or a specimen indicating the exact colour as an accurate description of a colour they wish to register.

Various aspects of the underlying principles of trademark law may not apply to colour trademarks. For example, including intent to use in colour trademark applications would not meet the distinctiveness requirement. Without prior use, it would be inconceivable to use a colour as a means of identification without first establishing colour-brand associations and distinctiveness (Playle & Hodson, 2003).

Opposing parties' arguments against colour trademarks are generally based on the colour depletion and shade confusion arguments. The colour depletion argument is the idea that there are a limited number of colours available to a producer and the registration of colour as a trademark unfairly limits the colour choices of those who may wish to enter a particular market. Playle and Hodson (2003) comment, given that colour registration confers a monopoly over a particular colour, "the greater the number of goods and services for which the registration is sought, the more compelling the argument to leave the colour available for all to use" (p. 78). This implies that an application that covers a

small number of classes of goods and services is more likely to receive registration.

Shade confusion is the idea that registration of a colour would lead to confusion as to which shades of a colour are registered and which are available for use by other parties (Samuels and Samuels, 1996). In Effem Food v Unilever PLC and Bluebird Foods Limited (2003), there was evidence of the use of various shades of orange by other traders in the rice and rice product category, some of which were very similar to the orange colour of the applicant's colour mark. This case provides an example of both the colour depletion and shade confusion arguments as other traders used orange on their packaging and, furthermore, the shades of orange used by other traders were considered similar enough to create confusion.

However, there are flaws in the logic of these arguments. Generally, numerous colours are available for the production of a product, and to reduce confusion specific shades could be registered, based on an established colour system such as the Pantone system. However, using an established colour system is not without flaws. In Effem Foods Limited v Unilever PLC and Bluebird Foods Limited no colour in the Pantone system exactly matched the orange Effem was attempting to register (IPONZ, 2003). Effem Foods, the applicant, reluctantly accepted the Pantone colour that was the closest match to the representation of its colour mark as shown on the trademark application. In addition, even when there is an exact colour match, establishing how close a rival can get to a specific shade before there is an infringement of trademark rights is a grey area.

2.4.2 A pioneering colour trademark case

The US Lanham Act allows the registration of a trademark that consists of a single colour. The recent case of Qualitex Company v. Jacobson Products Company (1995) clarified the US position on colour trademarks (Samuels & Samuels, 1996). Qualitex Company manufactures dry-cleaning press pads coloured a green-gold shade. Jacobson products began to manufacture press pads in a similar colour. Qualitex successfully registered the colour as a trademark and

filed a trademark infringement against Jacobson Products challenging their use of green-gold.

In Qualitex v Jacobson it was held that the green-gold colour had acquired secondary meaning, and it identified Qualitex as the manufacturer of the dry-cleaning press pads. The green-gold colour did not serve any function other than as a symbol of Qualitex Company. Jacobson argued that Qualitex should not be able to register the green–gold colour because this would create confusion over the green-gold shades competitors could use. They argued this was an important issue because of the limited supply of colours available to marketers. In addition, they claimed the registration contradicted other cases, and that trademarking a single colour was unnecessary, as trade dress protection was reliable. Trade dress protection involves "protection of the total image or appearance of a product that serves to identify the product with its manufacturer or source" (Olazabal, Cava, & Sacasas, 2001, p. 424).

The US Supreme Court dismissed each of Jacobson's arguments as invalid. First, the court held that shade confusion was not a valid argument, and that the conditions under which a manufacturer sells a product could be replicated to prove this argument invalid. For example, store lighting conditions could be replicated and the two products compared under the replicated lighting conditions, to determine likelihood of confusion between the products. The courts have previously concluded that deciding likelihood of confusion among colour shades was no more difficult than deciding the likelihood of confusion between word marks (Samuels & Samuels, 1996). In addition, the Supreme Court held that colour numbers, such as the Pantone system, could specify the exact shades of registered colour trademarks in a particular market. However, as shades often merge, confusion may still occur. Registration of shades either side of the specific shade in question may be a possible solution to reduce shade ambiguity. This may require an application of intent to use these shades. However, this may be unacceptable without actual proof of secondary meaning or use of the adjacent colour shades.

The courts also dismissed the colour depletion theory, as many colours are normally available for use, as was the situation for Jacobson. The argument that the registration of colour contradicted previous cases was also held to be invalid as an amendment to the Lanham Act prior to the Qualitex (1995) case allowed for the registration of colour as a trademark. In 1985, for example, the US Court of Appeal found the use of the colour pink for fibreglass was arbitrary and fanciful, as other colours were available for the product, and the pink colour designated the source of the goods. Pink was considered a proper trademark in this category and received registration (In Owens-Corning Fiberglas Corp., cited in Samuels & Samuels, 1996).

Finally, the court dismissed the argument that because colours receive protection under trade dress legislation, colour trademark registration was not required. Trademark law protects holders of a trademark in different ways from trade dress protection (Samuels & Samuels, 1996). Advantages of trademark registration over tradedress protection include the ability to prevent the importation of confusingly similar goods, notice of ownership of a colour, and prima facie evidence of validity and ownership (United States Patent and Trademark Office, 2004). The issues outlined in this case and ability to register colour trademarks in the US has paved the way for further colour registrations both in the US and internationally.

CHAPTER THREE: SURVEY EVIDENCE

3.1 Evidence in trademark registration and disputes

As businesses have become more concerned with protecting their intellectual property, the number of trademark cases has substantially increased (Kearney & Mitchell, 2001; Cohen, 1991; Crespi, 1987). In turn, providing evidence to support a case or argument has become necessary in the majority of trademark cases. Initially, the courts relied on their own judgement and the context of a case to reach a decision. However, there has been criticism of this practice because of the lack of reliance on empirical evidence and because it did not incorporate consumers' viewpoints. This criticism resulted in moves towards the use of survey evidence (Brandt & Preston, 1977).

Various forms of evidence may be necessary to support a trademark case. The applicant may need to provide evidence of length of use of the trademark, use of the mark by other traders, proof that the mark has been used in advertising, and evidence (such as survey evidence) that the mark is distinctive and thus capable of distinguishing the goods from those of other producers. Evidence may take the form of witness statements from experts, the public, independent traders, evidence of advertising spending, and/or survey evidence (Playle & Hodson, 2003; Brandt & Preston, 1977). Consumer survey evidence is becoming increasingly important as the courts accept it as admissible and often expect it to be provided. The seminal New Zealand case, Customglass Boats Ltd v Salthouse Brothers 1976, resulted in the admissibility of a market research survey to prove public state of mind (Customglass Boats Ltd v Salthouse Brothers NZLR 36). In this case, both parties believed they had the right to use the name 'Cavalier' on similar goods. Customglass Boats Ltd alleged Salthouse Brothers Ltd engaged in passing off in relation to the name. Customglass Boats commissioned a survey to determine what persons interested in yachting associated with the name, 'Cavalier'. That no one challenged the survey methodology settled the admissibility of survey evidence in courts. The survey evidence was considered legitimate proof of opinions that were held whether held rightly or not. However,

the weight the survey should receive in court was challenged and remains contentious (Skinnon & McDermott, 1998). Survey results do not constitute ultimate proof but are simply evidence to support the legal situation of a case (Skinnon & McDermott, 1998; Rappeport, 2002).

In Effem Foods Limited v Unilever PLC and Bluebird Foods Limited (2003), the judge commented that the two essential requirements of an admissible survey are that the interviewees selected represent a cross-section of the relevant public and that the precise instructions to the interviewers as to how to carry out the survey are disclosed. It is important that a relevant cross section of the public are selected otherwise the sample may not represent the population of interest and the survey findings would be invalid. Interviewer instructions must also be disclosed to ensure that interviewers have been appropriately briefed and that the interviewers are not likely to introduce unnecessary sources of error. The following section examines the use of survey evidence in the courts.

3.1.1 Survey evidence

The courts initially dismissed survey evidence as hearsay based on arguments that surveys did not provide legal truth and were simply secondary to anecdotal evidence (Crespi, 1987). In addition, Cooke (1985) points out, it was not acceptable for a witness to report on a third party's behaviour; therefore, survey data, by its very nature, was inadmissible. However, survey data have become standard evidence used in many legal cases despite the initial scepticism (Skinnon & McDermott, 1998; Sudman, 1995; Cooke, 1985). The courts look more favourably on surveys as they may provide a broad representation of consumer perception (Cohen, 1991). A further advantage is that surveys save time, avoiding an "interminable parade of witnesses" that would otherwise have to give evidence (Skinnon & McDermott, 1998, p. 435). In addition, a properly designed questionnaire has often been the most effective means of obtaining evidence from traders (Morcom, 1984 cited in Cooke, 1985). In Gimix Inc v JS & A Group Inc, the judge complained, "neither side in this case has produced consumer surveys or other similar evidence. Both sides are at fault for such laxness" (Skinnon & McDermott, 1998, p. 436). This highlights the importance

of providing survey evidence, especially in situations where the evidence required is not directly observable.

3.1.2 Validity and Reliability

The weight given to survey evidence largely depends on the validity and reliability of the survey, as well as on the survey expert (Ross, 1983; Morgan, 1990). The survey expert will assist in formulating survey questions, as well as determining which information to elicit in the research process. It is therefore important to consider the expert's skills, credibility, expertise, and availability. The courts have reprimanded litigants for providing substandard evidence, due to limited validity and reliability, or for not providing evidence to support their claims at all (Jacoby & Morrin, 1998).

Validity refers to the concept that the survey must measure what it is intended to measure (De Vaus, 2002). The issue with validity is that evidence is based on a measure that may not directly reflect reality. Any differences in responses must reflect true differences between respondents not systematic or random errors. However, without knowing what 'true' responses are it is difficult to determine whether there are any errors (Kent, 1999). Therefore, survey measures must be compared and tested for validity to ensure the measures are capable of measuring the intended concept.

Several areas of measuring validity require separate discussion. These include the internal and external validity of the survey as well as the validity of the survey measure. Content validity and convergent (construct) validity are commonly considered to determine the validity of the survey measure.

The internal validity of a survey is the ability of the survey measure to test the hypothesis it was designed to test. Internal validity is threatened by other factors that may provide alternative explanations for the research findings. For example, not controlling for variables such as price and package size in a survey comparing different brands may reduce the validity of the research findings. In A&H Sportswear Co. v. Victoria's Secret Stores 1996, the court concluded that a

plaintiff seeking to show trademark infringement under the Lanham Act must prove there is likelihood of confusion between the marks at issue. A&H challenged Victoria's Secrets Stores' use of the trademark THE MIRACLE BRA on lingerie and swimwear. However, A&H provided no evidence to suggest likelihood of confusion between THE MIRACLE BRA used on swimwear and MIRACLESUIT (Jacoby & Morrin, 1998). The evidence provided in this case did not allow the hypothesis to be confirmed or rejected and did not relate to the central issue in the case, thus the evidence had low internal validity.

In Mainland Products Ltd v Bonlac Foods (NZ) Ltd (1998), Mainland's evidence was criticised as not addressing the right legal issue. This implies that the evidence was not valid. The survey questions in this case were said to have failed to illuminate the central legal issue through wording. The central issue in the case was whether the word 'Vintage' was, in consumer's minds, a descriptive term of a particular kind of cheese, or whether it was connected to a specific brand and therefore recognised as a trademark. The courts found the central issue to be the trademark infringement rather than the Fair Trading Act allegations. Consequently, the alleged breaches of the Fair Trading Act were dismissed

External validity is the extent to which research findings can be extended or generalised beyond their specific research setting. For example, if children were administered a survey to gain insights into their recognition of cartoon characters the results could probably not be generalised to the adult population. Often, tradeoffs are necessary between internal and external validity in survey research.

Furthermore, regardless of how carefully survey data are collected and analysed the validity of the data depends on the truthfulness of respondents' answers. Whether researchers can accept survey responses as reflecting true opinions, feelings or behaviour has been widely debated (Zechmeister, Zechmeister & Shaughnessy, 2001). Survey research involves reactive measurements because respondents know that their responses are being recorded. Respondents may therefore respond as they think they should, rather than responding with what they actually believe. To ensure survey validity researchers must be aware of the existence of reactive measurement and control for it as best as possible. Assuring

respondents that their responses are confidential and will be treated only in aggregate, so that individuals cannot be identified, is a practical step to assist in ensuring the truthfulness of responses.

If the content of a survey matches the actual research context, then the survey measure has content validity. For example, when measuring consumer associations, survey content should relate directly to the subject area of interest. Exploring associations that do not relate to the subject area would result in an inappropriate or invalid measure. Construct validity is the extent to which a survey measure assesses the theoretical construct it is designed to assess. Construct validity is important when the construct being measured is not directly observable, for example consumer associations. Construct validity is determined by assessing convergent and discriminant validity (Zechmeister, Zechmeister & Shaughnessy, p. 141, 2001). Convergent validity derives from the relationship between different measures that measure the same construct. For example, two survey methods developed to measure consumer associations would have convergent validity if the level of association achieved by each of the measures were similar. In contrast to convergent validity, discriminant validity reveals what constructs a measure does not assess (De Vaus, 2002; Beins, 2004).

Evidence is reliable when similar results are achieved on different occasions (De Vaus, 2002). Reliability is a property of the measuring instrument. If, unexpectedly, inconsistent results are achieved on different occasions a major concern may be the measure used rather than the results achieved. The validity of a survey often relies on its reliability. However, reliability is no proof of validity. Even reliable surveys may be invalid if they are administered in situations they were not designed for, or if they measure something other than the construct in question.

3.1.3 Survey Methodology

Although the courts increasingly accept survey evidence, a continuing barrier to its effective use is the 'lack of meticulousness' with survey methodology. This implies those who carry out surveys need to take greater care to adhere to general

survey guidelines, for example identifying the correct universe, avoiding leading questions, and ensuring sufficient controls are in place to ensure the survey evidence presented is valid and reliable. Skinnon and McDermott (1998) comment that survey evidence in most of the New Zealand cases discussed in their article was either rejected outright or accepted by the courts but given little weight "due to a lack of meticulousness over preparation or procedure" (p. 436). This is so, despite the New Zealand courts' acceptance of the Imerpial Group principles that provide a useful set of guidelines on methodology and disclosure of survey evidence. Whitford J set out these principles in the United Kingdom Case, Imperial Group plc v Philip Morris (1984). These principles are summarised by Skinnon and McDermott (1998):

- The interviewees must be selected so as to represent a relevant cross-section of the public (more recently known as selecting the proper universe);
- The size of the survey must be statistically significant;
- The surveys must be conducted fairly;
- All the surveys carried out must be disclosed including the number carried out and how they were conducted, and the totality of persons involved;
- The totality of the answers given must be disclosed and made available to the defendant;
- The questions must not be leading nor should they lead the person answering into a field of speculation he would never have embarked upon had the question not been put;
- The exact answers and not some abbreviated form must be recorded;
- The instructions to the interviewers as to how to carry out the survey must be disclosed;
- Where the answers are coded for computer input, the coding instructions must be disclosed (p. 436- 437).

Although the courts may not consider that all of these conditions must be met to consider a survey admissible, where they are not all met, there is a risk that the

survey will be rejected and viewed as inadmissible or may have little weight attached to it.

There is a need to design surveys in a professional manner to develop stronger survey methodology. Badly designed surveys, or those unfairly conducted, are likely to result in a defective survey that will overshadow the real case issues (Morgan, 1990). Surveys will receive substantial scrutiny by the courts and any methodological flaws will be magnified on cross-examination (Cooke, 1985; Smith et. al., 1983). As Preston (1992) commented, "expert witnesses and exhibits such as consumer surveys are tested harshly for their credibility and probative weight" (p. 58). In addition, opposing parties will attempt to discredit a survey and find flaws in the methodology used in an attempt to reduce the weight given to the opposition's evidence.

Skinnon and McDermott (1998) point out that the main reason why survey evidence has had poor results in New Zealand is due to counsel underestimating how susceptible the evidence is to criticism from opposing counsel and the judiciary. The criticisms levelled at survey evidence must be addressed to ensure that methodological flaws do not overshadow the results of a survey. The following section examines some common criticisms of survey evidence.

3.2 Criticisms of survey evidence

Kearney and Mitchell (2001) criticised the use of surveys as viable evidence in court and questioned their reliability and their validity, both internal and external, due to the survey methodology used. According to Morgan (1990) "the cautious researcher therefore should carefully evaluate all survey research for face validity from the perspective of judge and jury" (p. 68). This implies ensuring the survey measures what it is intended to measure.

To date there are no definite standards for the use of surveys for litigation purposes. There is therefore little consistency in the evidence provided in court as litigants choose methods that best suit their purpose and provide the most convincing evidence to support their case (Morgan, 1990). However, Rappeport

(2002) proposed another view, claiming that consistent methods do not exist because the development of a litigation survey is very case specific. In addition, specific methodologies may limit what a survey could explore in individual cases. Rappeport (2002), also proposed that although strict models or survey rules do not exist, general survey principles do. Preston (1992) noted that the lack of guidelines is only partly to blame for the provision of inadequate survey evidence and that much survey evidence has been "avoidably erroneous" (p. 57). However, the "courts have become much more understanding of research and survey protocols" (Kent, 1997, cited in Jacoby & Morrin, 1998, p. 100). As a result, there is now a greater awareness of the use of erroneous evidence and a greater ability for the courts to make justifiable criticisms. This implies the courts are increasingly aware of invalid and unreliable evidence, and judges have the knowledge to criticise the survey methodology used and any erroneous evidence provided.

An important point to consider is that research designed to support marketing strategy or decision-making differs from research designed for litigation purposes (Peterson, et al., 1999). Peterson et al. (1999) stated "in many instances judicial doctrine and the adversarial nature of litigation require that more stringent methodologies be used in litigation research than would be required for research conducted solely for marketing decision making" (p.265). Common legal criticisms of market research often include the following points:

- the questions invite speculation;
- questions manage to elicit irrelevant answers;
- erroneous coding is often exposed during trial or noticed before hand and the survey is recommissioned;
- and all surveys must be disclosed including undesirable results (Kearney & Mitchell, 2001).

In addition, Sudman (1995) comments that legal surveys should be shorter and more focussed than market research surveys. Market research surveys are often designed for the purpose of decision making or strategic planning, thus the focus of a market research survey may be quite different to a legal survey. Generally, greater convergence is required between market research and law, in the

development of surveys, to allow survey researchers to obtain evidence that will receive substantial weight in court.

The case between the Federal Trade Commission (FTC) and Kraft (1991) not only provides a clear example of issues that may arise in the use of surveys as evidence but also raises questions about survey methodologies employed. The courts criticised the evidence of both parties, claiming they argued on poorly designed and implemented surveys. The FTC accused Kraft of misrepresenting the amount of calcium in its Kraft single cheese slices. While Kraft claimed each slice contained the same amount of calcium as in five ounces of milk, the FTC claimed 30% of the calcium was lost in production. The issue was not whether calcium was important to consumer decision-making but whether the 30% discrepancy in the amount of calcium was material and, thus, likely to influence consumers' purchasing decisions. A discussion of each party's evidence follows.

The FTC survey addressed the issue of whether Kraft's representations were likely to mislead. The survey involved 500 people, assigned to five different experimental groups. Respondents were shown either a Kraft television or print advertisement among other advertisements. For each of the experimental groups, the Kraft advertisements differed in terms of the calcium claim. Each experiment followed the same procedure and all respondents were asked the same questions (Jacoby & Szybillo, 1995). The FTC surveys were criticised for not identifying the proper consumer universe, as many respondents did not qualify for the survey because they did not buy or intend to buy the product (Stewart, 1995). The courts questioned the representativeness of the sample because the survey used a non-probability mall intercept design, even though mall intercepts are an appropriate method of surveying a large number of the general public and allow responses from a wide cross-section of the general public (Bottomley, 2001; Sudman & Blair, 1998). Furthermore, the courts declared the questioning was neither fair nor correct, and claimed that the questions were leading or predisposed responses, a significant problem with surveys in which responses may be suggested to respondents (Morgan, 1990). Leading questions will limit the validity of surveys results, as the responses given may not reflect reality of respondents' experiences. Theses issues are discussed in more detail below.

Question one of the FTC survey was considered leading and set the tone for the entire survey. Respondents were asked, "Do you remember seeing an advertisement for cheese slices?" (Jacoby and Szybillo, 1995, p. 5). The question unfairly led towards the response option yes, as not all plausible response options were offered. Stewart (1995) argues that although there is no doubt that survey questions can be designed to produce specific responses acquiescence bias is not a large problem. A more balanced question would reduce this bias, for example offering response options 'yes', 'no' and 'don't know'. Simply asking a question such as "what advertisements do you remember?" may eliminate the charge that researchers put thoughts into respondents' heads. An investigation of the data analysis of the FTC survey also identified problems with the coding of some responses (Stewart, 1995; Jacoby & Szybillo, 1995). For example, insufficient codes were used for question 14 of the FTC survey that asked respondents, "Based on this ad, do you think Kraft singles have more calcium, the same amount of calcium or less calcium that those cheese slices they are being compared to?" Although the question was open ended no codes were evident for 'Has same amount of calcium as in five ounces of milk or Has more calcium than imitation cheese slices' (Jacoby & Szybillo, 1995, p. 7). In addition, the survey provided no 'don't know' options; not providing sufficient response options, such as the 'don't know' option, encourages guessing. Although respondents could still offer a 'don't know' response, if it is not an explicit option they are less likely to nominate this answer.

Kraft's survey addressed the issue of whether the representation of the amount of calcium in the cheese slices was material. The Kraft survey involved 200 telephone interviews. Kraft's surveys fared better in terms of the universe identified, as it focused on people who had bought Kraft singles in the last year. In addition, the Kraft survey employed a probability sampling method (Sudman, 1995). However, questions of representativeness can still be raised, as with any survey by chance there will be differences between the sample and the actual population (sampling error). Kraft's survey was also questioned with regard to question response options, and whether the questioning method was fair and correct. If sufficient response options are not offered, respondents may not be given the opportunity to offer their most accurate response. For example, when

respondents were asked how the discrepancy in the amount of calcium in each cheese slice would influence their purchase decision the responses options were, stop buying, continue buying, and don't know. The option to continue buying was criticised as it did not indicate the rate of purchases; respondents may continue buying at a lesser rate, the same rate, or a greater rate (Jacoby and Szybillo, 1995). The omission of these valid response options implies that the results achieved may not have accurately elicited respondents' likely behaviour in relation to the implied calcium claims. They may also imply that if respondents continue buying, the calcium claim did not influence their behaviour; however, if the rate at which buying continued had been explored different conclusions may have been drawn. In addition, the respondents were not shown the advertisement in question; as telephone interviews were used. Kraft's counter argument was that respondents did not need to see the advertisement to state whether a fact is material. Although the main issue in the case related to the calcium claim, therefore, the advertisement was central to the claim being made. Sudman (1995) claimed the problems with the Kraft survey were not what was asked but rather what was not asked. By not asking important questions, the validity of the evidence is low and the survey is likely to carry little weight. The following section outlines sources of error in survey research, many of which were evident in the Kraft case.

3.3 Sources of error in survey research

Sources of error in survey research may be due to the survey methodology employed, interviewer error, and/or incorrect interpretation and analysis of survey data (Sudman & Blair, 1998; Preston, 1992). Generally, it is in the survey methodology that biases and errors can occur (Ross, 1983). Dillman's (2000) research identified four sources of error in survey methodology: coverage, measurement, sampling and non-response error.

3.3.1 Coverage error

Coverage error refers to the representativeness of the sample of the population of interest. A failure to include all units of the target population will result in

coverage error (Biemer & Lyberg, 2003). For example, in the Kraft case many respondents did not qualify for the FTC survey. Jacoby and Szybillo (1995) argued that the appropriate universe should have been people who had bought or intended to buy individually wrapped cheese slices, however, the survey included people who had purchased cheese or cheese products, not specifically those who had bought or purchased processed cheese slices, therefore coverage error existed. This implies that the survey included respondents who could not address the issues of interest. According to Morgan (1990), respondents must be capable of understanding the topics and questions raised. Including a screening question to ensure respondents understand or know about the issue of interest is a possible solution to this problem. Screening questions also enable examination of sub-groups of the sample, which may provide useful comparisons (Sudman, 1995). Defining the population of interest (the survey universe) clearly may also reduce coverage error. If the survey universe is considered inappropriate, the survey results may be dismissed as irrelevant as a survey of the wrong universe is of little probative weight (Jacoby & Szybillo, 1995; Morgan, 1990).

In situations where survey evidence is offered opposing counsel are entitled to access details of the sample and selection procedures. In ARA v Mutual Rental Cars (Auckland Airport) Ltd (1987), the research company refused to provide these details claiming that it would breach respondents' confidentiality and the survey was ruled inadmissible (cited in Hoek and Gendall, 2004). In Anhauser Busch v Budejovicky Budwar National Corporation (2001), which concerned confusion over the name "Budweiser" the sample frame was defined as individuals who had recently purchased or consumed packaged beer. However, market research separated the beer market into three partitions and the relevant partition should have been consumers of premium priced imported packaged beers. In this case, the judge considered coverage error to be a technical issue and claimed that coverage error "undermined rather than destroyed what little relevance the survey had" (NZLR 666, 2001).

3.3.2 Measurement error

Four primary sources of measurement error include the questionnaire, the data collection method, the interviewer, and the respondent. Each of these sources could introduce error and they may interact with each other to introduce further error. For example, in Anheuser Busch v Budejovicky Budvar National Corporation (2001) surveys were used to determine whether consumers had confused two beer brands, Budejovicky Budvar and Budweiser. However, measurement error occurred because the questions were leading, there was no pre-testing, and some interviewers were overly zealous when questioning respondents (Hoek & Gendall, 2003). These four sources of measurement error will be discussed below.

The questionnaire design, layout, the topics it covers and the wording of questions may all contribute to measurement error (Biemer, Groves, Lyberg, Mathiowetz, & Sudman, 1991). The questionnaire must reflect accurately the concepts required to meet the research objectives. Wording must be clear and precise if the respondent is to interpret the question as intended. Measurement error, which occurs when a survey includes poorly designed questions, may be the result of inaccurate, imprecise responses or the inability to compare responses (Dillman, 2000). However, it is difficult to determine whether a response is inaccurate or imprecise. This highlights the need for pre-testing to show that a robust survey design was used and that measurement error was minimised.

Questions must be worded so they do not lead respondents towards a particular response. Surveys that assess the legal issue of interest may be dismissed if the questions used appear to lead respondents (Morgan, 1990, Maronick, 1991). Hoek and Gendall (2004) comment, "ensuring questions do not lead respondents, but still examine the legal issue of interest, requires careful balance" (p. 4). For example, questions that predispose respondents' responses such as "Do you think that X manufacturer makes this?" should be avoided. Questions such as "Who do you think makes this?" are more acceptable as they are less leading in terms of asking the respondents to speculate on something of which they may be unaware (Kearney & Mitchell, 2001).

Questions must also be worded so that a particular response does not appear more appropriate than other response options. Open-ended questions could be administered, as they appear less likely to lead respondents. Therefore, open-ended questions may be less vulnerable to criticism. However, if questions lack context and are too widely framed, they may not elicit any relevant responses. For example, Effem's attempt to register the colour orange used a survey with a sequence of open-ended questions. Respondents were first shown an unbranded piece of packaging and asked if they associated it with anything. The questions became increasingly specific with the final question asking respondents if they associated the piece of unbranded packaging with any rice brands. Although this method of questioning did not lead respondents, opposing counsel used the low levels of association in response to the first widely framed question to argue that no associations existed. Even if the results supported the applicant's case, opposing counsel may raise questions about the coding frame used and the validity and reliability of the coding process. In Payton and Co v Snelling, Lampard and Co. (1901) AC 308 at 311, the judge commented that "a great deal of the evidence is absolutely irrelevant, and I do not myself altogether approve of the way in which the questions were put to the witnesses. They were put in the form of leading questions....". De Vaus (2002) commented that researchers may misinterpret answers and thus misclassify responses. It is important that when using open-ended questions researchers ensure they incorporate tests of the coding frame and coding allocations so these can be defended if necessary. Open-ended questions may be more appropriate when the range of answers respondents may potentially give is unknown (Sudman and Blair, 1998).

In contrast to open-ended questions, closed questions, where response categories are provided, may be administered. Some advantages of closed questions are that they do not require respondents to articulate a response, as they only need to pick a category. Closed questions reduce the amount of probing required, however, they may encourage people to give responses they otherwise might not think of. Closed questions may lead respondents by suggesting normal responses and they may encourage respondents to answer without thinking. In addition, closed questions require more pre-testing to ensure all possible answers are included in the response categories (Sudman and Blair, 1998).

Sufficient response categories must be offered when administering closed questions. A major disadvantage of closed questions is that they may create false opinions by giving respondents an insufficient range of responses or allowing respondents to give responses they would not normally think of (De Vaus, 2002). Objective questions require the inclusion of complete sets of response scales, and ambiguous terms such as 'agree' or 'disagree' should be avoided to ensure objective interpretation (Morgan, 1990). A lack of response options does not allow respondents to express their response or attitude and thus limits the richness of responses (Stewart, 1995). For example, in FTC v Kraft "don't know" responses were not included, which forced respondents to indicate an opinion even if they did not have one (Stewart, 1995).

The order of response categories may also influence a response. For example, in a self-administered survey earlier options may be more likely to be recalled as there is more time for the respondents to process them. If an interviewer administers the questionnaire, respondents may be more likely to recall the latter categories, which are fresher in their mind. The richness of the data is limited with closed questions in comparison to open-ended questions. The choice of open or closed questions depends on many factors such as the question content, method of administration, type of respondents, access to skilled coders to code open-ended responses, and the amount of time available. There is no right or wrong approach and judges' opinions on the appropriateness of questions will vary. In Commerce Commission v Griffins Foods Ltd (1997) one of the survey experts thought that the survey questions used incorporated a sequence of open-ended questions, ensuring respondents were not influenced or led in a biased way. However, the other expert dismissed the surveys' value on the grounds that a more direct line of questioning, closed questioning, should have been used (cited in Skinnon and McDermott, 1998).

The order of questions is also an important concern in questionnaire design. In Levi Strauss Co. v Kimbyr Investments Ltd (1994), the judge accepted that surveys involve a sequence of questions beginning with general introductory questions and moving to specific questions that examine the issue of interest. The questions must be ordered in a way that does not bias responses.

Respondents may use information from a previous question to help answer subsequent questions (Morgan, 1990). In addition, the initial question may set the tone for the survey and predispose subsequent responses (Biemer et al, 1991).

The timing of a survey in relation to the central issue is an important consideration. In Mainland Products Ltd v Bonlac (NZ) Ltd (1998), Mainland Foods claimed they had the right to use the term 'Vintage' and that Bonlac's use of the term was trademark infringement. In addition to the problems with the survey evidence in this case, outlined earlier, the timing of the survey was also questioned. A telephone survey was carried out in 1996 but the court questioned whether views elicited in the 1996 represented views held in 1992.

The length of the questions and the questionnaire is an important consideration. Although longer questions may provide more information, short and simple questions are easier to interpret and reduce respondent fatigue. In the same way, the length of the questionnaire must also be considered. Although a researcher wants to draw as much information from a survey as possible, error may be introduced if the survey is too long (Sudman & Blair, 1998). Surveys that allow respondents time to rationalise their response are also unacceptable. In an actual purchase situation, consumers may pay less attention to their decision to buy a product. In Interlego AG & Anor v Croner Trading Pty Ltd (1991), the judge noted that weight could not be placed on a survey in which "the hypothetical situation which was created was so artificial as to make it a quite dangerous guide as to what the reactions of actual shoppers purchasing Lego or Tyco products from the shelf of the supermarket or a toy shop might have been" (102 ALR 317 at 416).

Pre-testing a questionnaire is an important step to minimise error. Pre-testing should be conducted with people who resemble those who will be used in the main study. Pre-testing should highlight whether any questions do not mean what the research intended or whether any questions have been missed out completely. Pre-testing is also necessary to ensure respondents' understand the questions, to assess whether questions are leading and ensure sufficient response options are available. Kent (1999) commented that questionnaire pre-testing is often short-

changed by researchers. However, pre-testing is critical for successful research. Once a questionnaire has been taken forward to the main data collection phase, it is too late to make any changes.

The data collection method is an important consideration and the sample method chosen must be considered appropriate for the research requirements. The data collection method affects how the survey is administered (De Vaus, 2003). Respondents may answer questions differently in the presence of an interviewer. It is important to determine the most appropriate method of administering a survey for a research situation. Even when the appropriate method has been chosen, measurement error may still occur. For example, it may not be appropriate to carry out phone interviewing when visual cues are included in a survey, however, visual cues or showcards may be posted to the respondent in advance. If a face-to-face survey method is chosen, error may be introduced due to personality and behavioural traits of both interviewer and respondent. Social desirability may also influence responses; where respondents want to appear 'good' and answer questions in a socially acceptable manner (Brace, 2004).

The interviewer can influence the response to a question. Although interviewer error may be a significant problem, it cannot be totally avoided as at some point in a survey the interviewer must intervene. Mail surveys may eliminate interviewer bias as the respondent remains anonymous and a personalised method of administration is not involved (De Vaus, 2002). However, it is more difficult to use visual stimuli with mail surveys and it is impossible to control the order in which respondents answer the questions. While total elimination of interviewer bias is likely to be impossible, considerable measures can be taken to reduce the degree of any bias by ensuring high validity and reliability of the survey. The interviewer may introduce error in survey responses, for example, by not reading questions as intended, by probing inappropriately, or by adding other information that may confuse or mislead a respondent (Beimer et al, 1991; De Vaus, 2003). Ensuring that interviewers are appropriately briefed and trained is an important step in reducing interviewer bias or error. Interviewer error can also be reduced by ensuring that the questionnaire is appropriately designed with clear and unambiguous instructions (Biemer et al. 1991). Hoek and Gendall

(2004) comment, "interviewers' behaviour may reduce the weight given to well-designed surveys if they have not followed instructions, or been overly zealous in administering the survey" (p. 5). For example, in Anhauser Busch v Budjevicky Budvar (2001), "some respondents were virtually harassed by an interviewer who engaged in a level of probing that could hardly be considered normal practice" (Hoek and Gendall, 2003).

In Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd (No2) (1985) three surveys were deemed inadmissible. The interviewers employed and interviewer error contributed to the surveys being considered inadmissible. The first survey was an "armchair" survey and was criticised because it was not carried out by experts who would be able to express conclusions based on the interviewee's responses. There were also other problems with the survey. Firstly, the fact that the interviewer revealed that he/she was representing the plaintiff, led the court to question the validity of the survey. Secondly, the survey failed to meet the minimum criteria for any survey to be admitted into court (Skinnon and McDermott, 1998). The two professionally conducted surveys were rendered inadmissible on the basis of "unfairness". The fairness issue corresponds to one of the Imperial Group case criteria outlined earlier.

The respondents themselves may contribute to measurement error because of their different experiences, knowledge, attitudes, and comprehension and interpretation of the survey questions (De Vaus, 2003). Error may occur when respondents fail to provide accurate responses. De Vaus (2003) commented, studies of the same respondents over time showed that respondents gave different answers to different questions on different occasions, even though there should have been no change. However, it can be difficult to determine when a respondent has provided an inaccurate or imprecise response. To limit these problems survey questions should be designed so that there is little ambiguity in the interpretation of question meaning. Respondents must be assured that all of their responses are confidential to reduce the occurrence of demand effects. In addition, limiting the length of a survey will also assist in limiting respondent fatigue and the tendency to provide "straight-line responses". Incentives could

also be offered in an attempt to motivate people to comply with survey research, although the use of incentives may also be criticised as influencing respondents.
In addition to the above sources of measurement error, the coding and interpretation of results may introduce error (FTC v Kraft, 1991; Skinnon & McDermott, 1998). Kearney and Mitchell (2001) stated, "erroneous coding of answers to questions has frequently been exposed during a trial or noticed prior to a trial" (p. 88). Much of this erroneous evidence should be avoidable but is often not realised until the evidence has been presented. Preston (1992) claimed erroneous evidence should be avoidable as those creating the survey "know or ought to know it will be rejected" (p. 64). However, no piece of research is perfect; as Richards and Preston (1992) noted, all studies have weaknesses because social science requires tradeoffs in research design.

Researchers need to consider whether internal or external validity is more important when designing research. The tradeoffs between internal and external validity will have a significant impact on how a survey is developed, as it is often difficult to account fully for both factors. It would be impossible to approach a consumer with a survey (internal validity) while observing them in their natural environment (external validity). Internal validity is important when researchers want to identify a causal relationship. The greater the internal validity, the greater the level of confidence researchers can have in the conclusions that are drawn (Beins, 2004). In contrast, external validity is important when the results need to be generalised to a larger population. In Levi Strauss & Co v Kimbyr Investments Ltd (1994), a case involving allegations of passing off and trademark infringement, Levi Strauss conducted a survey of 500 people in seven cities around the country. Opposing counsel argued that the survey was inadmissible as it was not a nationwide survey. However, the judge was satisfied that the survey was sufficiently comprehensive. It is necessary to analyse each piece of research on a case-by-case basis to determine the necessary tradeoffs and the weight the evidence should receive.

3.3.3 Sampling error

Sampling error occurs because researchers can normally only survey a sample rather than the entire population (Biemer & Lyberg, 2003). Sampling error is the degree to which a sample might differ from the population as a whole and is due to random variation in the sample (Sudman, 1995). Sampling error depends on the procedure employed and the size of the sample analysed and may occur even if the sample procedure is unbiased. The sampling procedure employed must be likely to produce a sample reflective of the population. Quota sampling, for example, has been criticised for failing to produce samples reflective of the entire population. If a sample includes more of one subgroup of a population than another, the sample will not be representative of the population in question. In Anhauser Bush v Budejovicky Budvar National Corporation (2001) the survey involved a 50:50 gender quota. The judge commented that this gender mix was not likely to reflect the gender mix of those who were likely to purchase Anhauser Busch or Budejovicky Budvar products.

Sample weighting may be used in an attempt to correct a biased sample. Non-response, over-sampling of a small but important category of people, and inadequate sampling frames can result in samples that do not represent the population, even if probability techniques are used. Weighting involves statistically increasing or decreasing the number of cases for a particular characteristic so that the proportion of cases in the sample is adjusted to reflect the population (De Vaus, 2002). Weighting may be beneficial if the weighting factors are relatively small and are related to the variable of interest. However, weighting increases error margins. Hoek and Gendall (2004) comment "although weighting has not been specifically discussed in New Zealand decisions, researchers should ensure that the weighting variables have a clear and logical relationship to the behaviour of interest, as standard demographic weighting procedures may also be challenged" (p. 3).

In addition, there must be no bias toward any viewpoint and sampling methods such as convenience or non-probability must be justifiable (Morgan, 1990).

However, the courts have regularly accepted non-probability samples such as mall intercept samples.

Survey research may be rejected if the sample size is not considered adequate. As the sample size increases the distribution of possible sample outcomes becomes tighter and tighter around that of the true population therefore, there is less chance of producing results that are uncharacteristic of the population as a whole (Sudman & Blair,1998). For example, in Pitstop Exhaust Ltd v Alan Jones Pit Stop International Ltd (1987) the evidence was criticised as only "a survey of 300 people" and some results were considered meaningless because they were based on small cell sizes.

3.3.4 Non-response error

Non-response error relates to the difference in likely responses between those who responded to the survey and those who did not. Researchers must attempt to gain responses from as high a proportion of the sample universe as possible. According to Dillman (2000), failure to ensure a high proportion of the target universe is surveyed reduces the response rate and raises the possibility that those who completed the survey differed in some relevant way from those who did not respond or who could not be contacted.

If the response rate is low, the likelihood of not including important responses increases, which may result in biased estimates. However, even if the response rate is low researchers cannot be sure that important responses have not been included. The problem is that researchers cannot determine whether the estimates are due to non-response. In practice, determining a sufficient response rate is often case specific as response rates vary greatly and accepted levels differ in each case (Morgan, 1990). For example, a survey that achieves a high response rate but has low reliability may not be accepted if the sample size was insufficient. However, a survey with a low response rate may be considered acceptable in some cases. "The Federal Judicial Centre reference Manual on Scientific Evidence (1994) cautions: "If the response rate drops below 50% the survey should be regarded with significant caution as a basis for precise

quantitative statements about the population from which the sample was drawn (cited in Hoek and Gendall, 2004, p. 4). In addition, the survey methodology used may influence the response rate. According to De Vaus (2003), face-to-face interviews have traditionally been seen as the most effective in terms of response rate while telephone and some mail and internet surveys have developed the reputation for low response rates. The response rate obtained in a study is likely to be the combined effect of factors such as the topic, the nature of the sample, the length of the questionnaire, and the care taken in implementing the survey.

Survey results are often very method dependent (Simonson, 1994). Each party is usually likely to find flaws in the others' surveys. The use of different methods also complicates the comparability of surveys. Different survey methods require analysis to understand the accompanying advantages and disadvantages before defining the appropriateness of the method chosen and the weight the survey should receive. Independent expert witnesses may advise the court and both parties on their findings of the validity of survey evidence. Crespi (1987) commented, the use of expert witnesses developed out of allegations of "unprofessional practice and venality on the part of some experts" (p. 88). However, expert opinion is simply opinion, and ultimately the court will decide which evidence, whether survey or expert opinion, it will accept or dismiss based on survey guidelines, and the validity and reliability of the evidence (Morgan, 1990). In addition, a disagreement between experts is likely to decrease the persuasive value of a survey (Skinnon & McDermott, 1998; Sudman, 1995).

In the Commerce Commission v Griffins Foods Ltd, where the labelling of a brand of potato chips as "slims" was in dispute due to fat/weight benefits, experts disagreed over the survey evidence provided. The variance in expert opinions impaired the acceptability of the survey, as one expert claimed the evidence was satisfactory while the other did not (Skinnon & McDermott, 1998). The survey was admitted although it was given little weight, as other issues almost rendered the survey inadmissable. The original surveys were destroyed so the accuracy of the recording of interviewee statements could not be checked. Important groups of the target population were not included in the sample. A random mall intercept of 600 main household shoppers was carried out but petrol stations, pubs,

grocery shops, and children were not included in the sample. In addition, some questions were considered leading. The judge commented that the interviewees were not just probed but rather prompted to think of characteristics they might not have previously thought of, even if they had bought the product. The survey was also criticised for being carried out 12 months after the alleged offence. Had the survey been carried out at the time of the alleged offence, it may have been considered more credible.

Due to the complexity of questionnaire design and differing opinions on the best survey methods it is not surprising that experts disagree. However, Sudman (1995) claimed that disagreement between experts should not reduce confidence in a discipline. Variance in opinions does not necessarily mean a lack in the validity of results but rather may exemplify the difference in the training and experience of experts. By gaining agreement between parties on the survey questions and methodology prior to trial any discrepancies or differences in opinion over the methodology employed may be limited and allow the trial to focus on the survey results.

A further issue concerns the minimum percentage of associations or confusion surveys must achieve or establish for results to be conclusive. For example, one court may consider 15% confusion as conclusive evidence that two marks are confusingly similar while others may consider this too low. Leighton (2002) noted that evidence must demonstrate that a substantial proportion of the sample must be shown to have been deceived or confused. Leighton further stated, depending on the case "the criterion could be satisfied by a percentage as low as 10 or 12 percent, and perhaps lower where concerns over health, safety, or other factors might be persuasive" (Leighton, 1996, p. 788). In Sara Lee Corp. v. Kayser-Roth, both parties sold pantyhose. The dispute took place when Kayser-Roth began selling a product under the LEG LOOKS brand, while Sara Lee Corp. sold a product under the L'EGGS brand. The plaintiff survey showed 30-40% confusion between the two brands. The court claimed that even if the confusion level had been half that indicated by the survey actual confusion would exist to a significant degree (Sara Lee Corp. v. Kayser-Roth cited in Thurmon,

1996). Generally, 20 percent or more confusion is acceptable as substantial proportion.

Even when a survey has not been criticised on the basis of survey error, validity or reliability, it may still be rejected. In Noel Leeming Television v Noel's appliances Centre Ltd (1985), the plaintiff conducted a telephone survey of 500 people, but the survey was not given any weight. The survey was not rejected on the basis of not meeting the criteria from the Imperial group case, rather the survey was considered to be unnecessary due to adequate proof of confusion from other sources.

3.4 Survey evidence and trademark cases

As businesses become more concerned with protecting their intellectual property, the number of trademark cases in the courts has substantially increased (Kearney & Mitchell, 2001; Cohen, 1991; Crespi, 1987). The commissioning of market surveys by lawyers provides the basis of expert evidence in the courts. Survey evidence, in trademark cases, is generally provided to prove that a trademark has obtained secondary meaning or that there is likelihood of confusion between two trademarks (Cohen, 1991; Crespi, 1987; Smith, Synder, Swire, Donegan, & Ross, 1983).

To date various survey approaches have been used in trademark cases: two traditional approaches - the purchase encounter and the classification approaches, which both focus on assessing genericness, a method involving a sequence of increasingly specific questions and a less developed methodology that focuses on choice modelling. These approaches will be examined in the following section before discussing their application to colour trademarks.

3.4.1 The purchase encounter approach

The purchase encounter approach requires respondents to state how familiar they are with a product type and what they would call the product if they were to ask for it from a shop assistant. This approach, also known as the thermos approach,

was first used in American Thermos Products Co. v Aladdin Industries Inc. (1962), where consumers were asked what they would call a type of container used to keep hot liquids hot and cold liquids cold. If a high proportion responded that they would ask for a thermos, the conclusion could be made that thermos was a generic term and thus not eligible for trademark registration and protection. A limitation of this approach is that for strong trademarks respondents may answer with the trademark and not with a generic name, as they consider it obvious. Simonson (1994) claimed this is an often cited drawback of the purchase encounter approach. In addition, this approach may elicit the generic meaning but not the trademark meaning, for example, "a majority of respondents indicate that they would ask for the disputed term Jell-O, yet an even greater majority understands and uses that term as a brand name" (Simonson, 1994, p. 186). Despite its limitations, the purchase encounter approach requires respondents to picture themselves in an actual purchase situation, and so attempts to simulate a realistic purchase scenario.

3.4.2 The classification approach

The classification approach requires respondents to decide whether a particular term is the name of a product or a brand name, thus the main focus of this approach is to determine secondary meaning. The classification approach, used in E.I. du Pont de Nemours & Co., Inc v Yoshida International Inc. (1975), gives respondents a definition of the difference between common (generic) names and brand names and then requires respondents to classify terms, including a disputed term, as either a common name or brand name (Simonson, 1994). This approach has been criticised as having demand characteristics, where respondents will answer in a way they believe is expected of them. Simonson stated "respondents who know that a particular name is a trademark, though they use it only as a generic name, are likely to answer that the name is a brand name" (Simonson, 1994, p. 186). Thus, this approach may simply measure respondents' ability to classify terms based on definitions rather than their actual usage of terms. Respondents may also have no previous knowledge of a term so may not have the ability to offer an informed response. Simonson stated that offering a 'don't know' response option may help; however, it "is unlikely to resolve the problem,

because respondents will often believe they know the answer even if they have not seen the names before" as they may not want to appear unknowledgeable (Simonson, 1994, p. 187).

The purchase encounter and classification approaches have both been criticised for implying that associations exist as respondents may claim that an association exists even when they do not make any association between a brand or product and a trademark. In addition, according to Simonson (1994), both approaches are likely to generate different estimates. Specifically, Simonson claimed that the purchase encounter approach focused on the generic use of the term while the classification approach focuses on the dictionary definitions of brand and common names. Due to the different survey methodologies, it may be difficult to compare the survey results as each survey measured a different concept.

3.4.3 Funnel Sequence Method

The funnel sequence method of questioning involves asking respondents a sequence of questions that elicit associations in an increasingly specific context. This approach was used in Effem Foods Ltd v Unilever Plc and Bluebird Foods Ltd (2003). The survey involved a sequence of four questions. Respondents were shown a piece of unbranded packaging cut form a Uncle Ben's rice packet and they were then asked the following questions, Does this bring anything to mind for you, or do you associate it with anything?, Do you associate this colour with anything?, Do you associate this colour with any food or grocery items? and finally, Can you think of any (other) brands of rice that you would associate with this colour. Although this approach may reduce the problem of leading questions, it has been criticised because responses to the more widely framed questions may not elicit many associations relating to the specific research context. Opposing counsel may use this evidence to claim that respondents are unable to make associations with a specific trademark or brand. In addition, opposing counsel may use the evidence to undermine any associations that are detected.

3.4.4 Choice modelling

Choice modelling, the fourth approach, focuses on the interaction between different brands and various attributes, for example, a brand and its colour. As choice modelling simulates a purchase situation, it is a useful method of estimating consumer choice behaviour. Choice modelling can arguably provide a more robust approach than the other approaches outlined as it does not assume associations exist, or suggest how respondents should respond. In addition, it has a more explicitly behavioural orientation and avoids the problems of validity that affect cognitive measures. A significant problem with cognitive measures is that they only consider consumers' thoughts and attitudes and may not relate to actual behaviour.

Hoek, Gendall and Hedderley (2000) used choice modelling to measure the materiality of a deceptive claim, the effect of a term on behaviour. In trademark cases, choice modelling may be used to assess the secondary meaning of a trademark by assessing the importance of product attributes. For example, if a specific colour can be established as an important attribute for a brand this may be suitable evidence to support a colour trademark application. Hoek et al.'s research focused on the case of Ocean Spray v Frucor, where the two manufacturers had introduced products into the market with similar names, 'Cranberry Classic' and 'classic Cranberry' respectively. Ocean Spray claimed that Frucor's use of the mark 'classic Cranberry' so nearly resembled their own label that it was deceptive or likely to mislead consumers. Frucor opposed Ocean Spray's application to prevent Frucor from marketing, distributing and selling the cranberry fruit drink with the label 'classic Cranberry' and denied that its product was likely to deceive, mislead or cause confusion in trade. Choice modelling was used to determine how the similarities in these brand names/trademarks affected consumers' choice behaviour. The results of Hoek et al's study revealed that there were high levels of confusion between the two products, even between consumers who were familiar with the product category. However, the results of the choice modelling surveys revealed that the brand name of the products had only a small influence on consumers' choice decisions. This implies that research

that does not assess what consumers think as well as what they do is likely to result in misleading conclusions.

An argument for the development of a choice modelling approach is that it may be more effective to measure the behavioural effects of a trademark than to measure consumers' understanding of trademarks. If consumers perceive a trademark to be generic but this does not actually alter their behaviour, it may not be an important issue. If there is no effect on behaviour, it could be argued that researchers do not need to understand consumers' perceptions. However, choice modelling only measures simulated behaviour, not actual behaviour.

3.5 Conclusions for Surveys as Evidence

"The judiciary in Australia and New Zealand are supportive of the use of market surveys in principle but continue to find fault with them in practice" (Skinnon and McDermott, 1998, p.449). Legal practitioners and market research professional have judicial guidelines, such as Whitford J's criteria in Imperial group, available to them. However, the number of robust surveys being admitted as evidence in the New Zealand courts has been low.

When commissioning a survey, council must be meticulous about the methodology and the availability of the results to opposing council (Skinnon and McDermott, 1998). Therefore, both parties must be involved in survey design and there must be an agreement between parties in reference to question wording. Researchers should attempt to ensure that the questions address the legal issue or issue of concern to the court. In addition, researchers must be aware of the problem of the leading question. Although some degree of leading in market survey questions, in order to persuade a court, may be unavoidable. Overall, market surveys have an inherent vulnerability, there are many ways in which surveys, and evidence can be criticised.

CHAPTER FOUR: OBJECTIVES AND METHODOLOGY

4.1 A Research Agenda

Successful registration of colour seems likely to increase the number of applications for colour trademarks and the volume of survey evidence relating to these. In colour trademark cases, survey evidence would primarily prove a colour had acquired secondary meaning in the minds of consumers (Keating, 1989).

The recent increase in trademark cases, the new territory of colour trademark cases, and the problems of survey evidence discussed, highlight the need for research in this area. In the light of general survey criticism, the major challenge is to ensure the survey instrument measures what it is intended to, and accounts sufficiently for all sources of error. To establish colour associations with a particular brand, evidence must be provided about the applicant's colour, including the length of time the colour has been used, the extent of advertising taken, and the use of the colour by rivals. Survey evidence demonstrating a colour-brand association can also assist to establish the distinctiveness of a colour. However, there are two major problems in attempting to use survey evidence in support of colour trademark applications. First, there is no specific methodology for establishing brand-colour associations and, second because there is no accepted methodology, the survey evidence presented in such cases is often criticised on methodological grounds. This research examines the use of surveys to measure secondary meaning of colours and test different survey methodologies to address some of the limitations of survey research. This research focuses on the development of robust measures for estimating colour distinctiveness.

Cadbury confectionary had recently put forward an application to register specific shades of purple used on the packaging and promotional material of their products in the chocolate and confectionary categories. Effem foods had also recently, although unsuccessfully, applied to register orange for Uncle Ben's rice. These applications provided a timely focus for this research and enabled

comparisons of colour-brand associations between product categories and survey methodologies.

4.2 Objectives

The overall objective of this research was to address the problems that are often incurred in survey research, particularly colour trademark surveys, and to compare different methods of estimating brand-colour associations. This research was a replication and expansion of prior work that examined colour brand associations in the chocolate product category (Hoek, Gendall, Brennan, Bednall & Noble, 2003). More specifically the objectives were:

1. To adapt trademark survey methods for use in colour trademark cases, and focus on the development of a robust survey methodology in light of the criticisms often levelled at survey methodologies.

2. To assess the extent to which colours signify specific brands.

3. To review the colour-brand associations elicited and assess the factors that may reduce the weight given to the associations and survey evidence for each of the measures.

4.3 Methodology

4.3.1 Procedure

In order to increase the effectiveness of the study and enable useful comparisons colour brand associations were tested for two different product categories. The chocolate block and rice categories were chosen for this research. The chocolate block category was chosen as it had been used in previous research, therefore there was opportunity for replication and extension of this previous work. In addition, Cadbury had recently put forward an application to register purple as a trademark. The rice category was chosen, as Effem Food's application to register orange in the rice category had recently been unsuccessful; rice is a basic product

with which most consumers should be familiar. Different survey methodologies were administered to enable a comparison between the methods and to assess the potential advantages and disadvantages of the various methods. The surveys were administered in the form of mall intercept interviews.

The research comprised four separate experiments, each assessing the level of brand-colour association with four colours. Four survey methods were administered to assess the criticisms levelled at various survey methodologies and to establish the degree of convergent validity between methodologies in estimating colour distinctiveness. The first method was the coloured card method, the second used a funnel sequence questioning method, the third employed a colour wheel method, and the fourth used choice modelling. As well as examining colour-brand associations, the surveys explored respondents' brand repertoires and demographic characteristics. The following sub-sections describe each of the survey methodologies employed.

4.3.2 Coloured Card Method (Modified Classification Approach)

This approach adapted what has been described as "the classification" or "Teflon" approach, because of its use in an earlier trademark case. Respondents are required to classify whether a particular term is the name of a product or a brand name. The approach was adapted and used a series of unbranded coloured cards. For the chocolate surveys purple, gold, red and lime green cards were used as an unbranded representation of a chocolate block. For the rice category, orange, blue, red, green and brown cards were used as unbranded representations of rice packages. Two different versions of the rice survey were developed to test similar shades of orange. The first version included Uncle Ben's orange shade and the second version used a shade of orange that features on SunRice packages. A graphic designer produced the colour cards to ensure a close match to the colours on the packaging of each of the test brands. Appendix A contains the Colour Card Method surveys and showcards for the chocolate category. Appendix B contains the surveys and showcards for the rice category.

Rather than asking respondents to classify a term as a product or brand name, as in the classification approach, respondents were required to state the brand they believed each of the colours were associated with. Respondents were shown one card at a time and asked which brands, if any, they associated with each colour. The lime green card was the control for the chocolate survey and the brown card the control for the rice survey. Interviewers probed until no further brand associations were elicited and the order of presentation was rotated.

For the chocolate version, a random sample of 201 Palmerston North shoppers was achieved with a response rate of 54%. The sample comprised of 62% females and the average age of respondents was 38 years. Appendix C contains a full demographic profile of respondents. For version 1, Uncle Ben's orange, of the rice survey, 185 individuals were surveyed and 163 individuals were surveyed for version 2, SunRice orange. The response rates for the colour card surveys in the rice category were 47% and 44% respectively. Appendix D contains a full demographic profile of these respondents.

4.3.3 Funnel Sequence Questioning Method

The question sequence for this experiment was designed in an attempt to avoid problems created by leading questions. The sequence begins with a very general question and the questions become more and more focussed until the final question directs respondents to the product category of interest. Different versions of the survey were used for each of the product categories to reduce respondent fatigue and avoid the problem of responses to one colour influencing the responses to subsequent questions or colour.

For the chocolate category, three versions of this approach were used. Respondents were shown either a purple, red, or gold card and asked the following sequence of questions to elicit associations with the colours at different levels. Respondents were first asked if they associated the colour with anything. The following question explored associations with food or grocery items, and the third question examined associations with chocolate brands. Interviewers probed until no further associations were elicited. The same procedure was then carried

out for the green control card. Appendix E contains examples of the surveys and showcards for the funnel sequence method.

A random sample of Palmerston North shoppers was achieved. Sample sizes were 201, 180, and 188 for the purple, gold and red versions respectively. The response rates were 59%, 58%, and 60% respectively. Appendix C contains a full demographic profile of respondents.

For the rice category, three versions of this approach were used, for the reasons outlined above. Respondents were shown either an orange or a blue coloured card, and asked a sequence of questions to elicit associations with the colour at different levels. Two different oranges were used, as similar shades of orange are dominant on the Uncle Ben's and SunRice Basmati rice packaging. Respondents were first asked if they associated the colour with anything. The following question explored associations with food or grocery items, and the third question examined associations with rice brands. The same procedure was then completed with a brown control card. Interviewers probed until no further associations were elicited. Appendix F contains the surveys and showcards for the rice category.

A random sample of Palmerston North shoppers was achieved. Sample sizes were 179, 177, and 185 for the orange (Uncle Ben's), orange (Sun Rice) and blue versions respectively. The response rates were 44%, 47%, and 46% respectively. Appendix D contains a full demographic profile of respondents.

4.3.4 Colour Wheel Method

The colour wheel method reverses the previous approaches. Instead of providing respondents with colours and exploring which brands they associate with these, respondents were shown various brand names and a colour wheel featuring a range of colours. Respondents were then asked to indicate which colours they would associate with each brand. A previously used approach for colour trademark surveys requires respondents to indicate what colour, if any, they associate with a particular brand. A problem with this approach is that respondents report a range of colours that may or may not be considered

evidence of a particular colour-brand association. Respondents may associate various shades of a colour for example, blue, royal blue, navy blue, and dark blue with a brand name. Although respondents may all have the same colour in mind, it could also be argued that the range of responses given is evidence that a specific brand-colour association is not present. Providing respondents with a colour wheel assumes that there is a range of colours that respondents will associate with a particular brand and eliminates the problem of respondents providing descriptions of a range of colours.

A graphic artist carefully designed the colour wheels for these experiments. The colour wheels featured Pantone colours covering the spectrum of shades corresponding with the test brands. The colour wheels were developed to include the 'true' colour of each of the test brands, along with similar shades either side of the 'true colour'. The colour wheel method, therefore, tested not only respondents' ability to associate colours and brands, but also the accuracy of their associations.

In the chocolate category, respondents were shown four brand logos, Cadbury, Whittaker's, Nestle, and Nova, a fictitious a control brand, along with a colour wheel featuring 19 colours. Appendix G contains the colour wheel surveys, brand name and colour wheel showcards that were shown to respondents. Respondents were asked to indicate which of the colours, if any, they associated with each of the brand names. Respondents were given time to look at each of the brand names and the colour wheel before they indicated any colour associations. Interviewers probed until no further colour associations were elicited. The sample for the chocolate surveys comprised 206 Palmerston North shoppers. Appendix C contains a full demographic profile of respondents. The response rate for the chocolate category was 53%.

In the rice category, two versions of the colour wheel method were used. For the first version, respondents were shown four brand names, Sun Rice, Uncle Ben's, Just Rice, and Success Rice, a control brand, along with a colour wheel featuring 19 colours. For the second version, respondents viewed the same four brand names but each appeared with the corresponding logo, along with the colour

wheel used in the first version. Appendix H contains the brand name logos and colour wheel showcards that were shown to respondents. Again, respondents were asked to indicate which of the colours, if any, they associated with each of the logos. Respondents were given time to look at each of the logos and the colour wheel before they indicated any colour associations. Interviewers probed until no further colour associations were elicited.

The sample comprised 200 Palmerston North shoppers for each version of the rice colour wheel surveys. The response rates were 54% for the brand only version and 56% for the brand name and logo version of the survey. Appendix D contains a full demographic profile of these respondents.

4.3.5 Choice Modelling

This method used a choice modelling methodology to test whether any brand colour interactions exist rather than simply eliciting colour brand associations. For each of the product categories four brands were included in the choice experiments. Balanced combinations of the brands and their corresponding colours were developed to ensure the choice sets were realistic and that they enabled an analysis of the relevant colour brand associations and interactions. A fractional factorial design of sixteen showcards, four choice sets each containing eight showcards, was created for each product category. This number was large enough to provide a balanced design, yet small enough for respondents to process in an interview.

For the chocolate category, respondents were shown eight showcards each of which featured images of four blocks of chocolate. Each card contained different combinations of the four chocolate brands, Cadbury, Nestle, Whittaker's, and the control brand Nova, and their respective colours (purple, red, gold, and lime green). Appendix I contains the surveys and showcards for the choice modelling method. Respondents were asked to indicate which one of the four options they would buy if they were in a store to purchase a block of chocolate. Thus, this method simulated an actual purchase decision.

A random sample of 783 Palmerston North shoppers was achieved. The response rate was 55%. Appendix C contains a full demographic profile of these respondents.

For the rice category, respondents were shown showcards each of which featured images of four rice packages. Each card contained different combinations of the four rice brands, Sun Rice, Uncle Ben's, Just Rice, and the control brand Success Rice, and their respective colours. Appendix J contains the showcards for this survey. Respondents were asked to indicate which one of the four options they would buy if they were in a store to purchase rice. Thus, this method simulated an actual purchase decision. A sample of 499 Palmerston North shoppers was achieved. The response rate was 41%.

4.4 Data Collection

Data were collected for this research using face-to-face mall intercepts. The interviews took place in the Plaza Palmerston North over the periods 19th – 22nd of August, 16th - 21st of November 2004 and 11th – 12th of February 2005. Fully trained and briefed interviewers carried out the interviews and approached every third person who walked past them. Appendix K contains an outline of the instructions given to the interviewers. Interviewers were positioned in two places in the Plaza.

Mall intercepts were used for a number of reasons. First, respondents needed to see the showcards to answer the questionnaire. Second, mall intercepts are an appropriate method of surveying a large number of the public and, finally, they allow responses from a wide cross-section of the public. The US courts, which often lead the way for other jurisdictions, have accepted mall intercepts as relevant and appropriate (Jacoby and Szybillo, 1995).

4.5 Analytical Tools

For the colour card, funnel sequence and colour wheel methodologies the percentage of respondents who associated each of the colours and brands was used to determine the level of the colour-brand associations. For the colour wheel and colour card methodologies respondents were probed to offer as many associations as possible, therefore, associations were based on the number of responses rather than the number of respondents. Cross-tabulations were also used to determine whether associations differed by respondents' main brand. For the purpose of providing evidence to support a colour trademark registration, if buyers of a particular brand distinctively associate the brand and its corresponding colour, this evidence would support the assertion that the colour has acquired secondary meaning.

For the choice modelling methodology, a multinomial logit regression model was fitted to respondents' choices. Where the initial main effect for an attribute was insignificant it was not included in the interaction effects model. The parameter estimates were added to calculate utilities, which revealed the relative attractiveness of the different colour-brand combinations. For the purpose of providing evidence to support colour registration, the important information is the relative utilities for each of the colour-brand combinations.

In summary, the objectives of this research were to test four different methodologies of estimating colour-brand associations and to recommend a specific approach or approaches that could assist marketers, legal counsel, and the judiciary with developing or evaluating colour trademark applications. Two different product categories, chocolate and rice, were used in the study. Face to face mall intercept surveys were carried out for each of the methodologies, each questioning between 177 and 783 respondents.

CHAPTER FIVE: RESULTS AND DISCUSSION

This chapter has been divided into two sections. The first section examines the results for the chocolate category, by survey method, and the second section examines the results for rice category.

5.1 Chocolate Category

5.1.1 Chocolate Surveys Coloured Card Method

This approach used four cards (purple, gold, red and lime green). Respondents were shown one card at a time and asked which chocolate brands, if any, they associated with each colour. Respondents generally associated the colours and chocolate brands correctly. Respondents' brand associations with each of the colours are shown in Table 1.

Table 1: Respondents' Chocolate Brand Associations with Colours: Coloured Card Method

	% Association with Each Colour				
Brand	**Purple[1]**	**Gold[2]**	**Red [3]**	**Green [4]**	**Main Brand**
Cadbury	72	16	30	8	70
Whittaker's	4	40	8	5	14
Nestle	5	9	32	10	8
Hershey's	0	6	3	1	1
Richfield's	0	2	1	3	1
None	7	9	9	39	2
Not sure	7	14	14	31	2
Other	5	4	3	3	2
TOTAL	**100**	**100**	**100**	**100**	**100**

[1] = 206 responses from 201 individuals [2] = 216 responses from 201 individuals
[3] = 216 responses from 201 individuals [4] = 206 responses from 201 individuals

Purple was correctly associated with Cadbury by 72% of respondents and this result indicates an inherent Cadbury-purple association is present. There were no other substantial associations with Cadbury. Purple was also associated with Nestle and Whittaker's by 5% and 4% of respondents respectively. These

associations may be due to a small number of respondents guessing an association when they were unsure of the chocolate brand that should be associated with purple and they suggest that purple is a strong colour within the chocolate category. The courts have often accepted 20% as an acceptable level to indicate a substantial association, however, the acceptable level of association varies between cases.

Gold was associated with Whittaker's by 40% of respondents, although 16% of respondents associated gold with Cadbury. Gold was not substantially associated with the other test brands. Almost one quarter of respondents were not sure which brand to associate gold with or did not associate the gold stimulus with a particular brand of chocolate. Although the results indicate an inherent Whittaker's-gold association, opposing counsel may highlight the 16% Cadbury-gold association to reduce the weight of the Whittaker's-gold association. The Cadbury-gold association may be due to Cadbury's use of gold on the packaging of some of their product variants, for example, Cadbury Energy chocolate and the 'Old Gold' range.

Red was correctly associated with Nestle by 32% of respondents. However, a similar percentage of respondents also associated red with Cadbury. This may also be due to the use of red on the packaging of some of Cadbury's product variants. The Cadbury-red association is likely to reduce the weight of any Nestle-red association. The association of gold and red with Cadbury may also indicate Cadbury's dominance in the product category. However, this pattern was expected to be reflected in the responses to the green stimulus, which should have shown a clear double jeopardy effect if brand size was an important influence on the colour associations observed. The term double jeopardy relates to the commonly found situation in which smaller brands are less liked by their customers than buyers of big brands and smaller brands are purchased less frequently (Ehrenberg, Goodhardt & Barwise, 1990). In terms of colour associations, because big brands are purchased more often, stronger associations may be expected with big brands as the brand is continually reinforced in consumers' minds. If a double jeopardy pattern was present, a dominant brand

effect may have influenced responses rather than respondents' offering associations based on specific brand-colour interactions.

As shown in Table 1, the green control was not associated with any one brand in particular. Seventy percent of respondents did not associate the lime green stimulus with a chocolate brand, or were not sure what brand green was associated with. This random association, and the overall lack of association, indicates that respondents were not simply guessing their responses. The fact that there is not a clear double jeopardy effect suggests that respondents have not simply made associations based on the size of the brand. If a double jeopardy effect did exist, a much stronger association would have been expected with Cadbury, with fewer responses in the 'none' and 'don't know' categories. The lime green control was selected, as this colour is not associated with the packaging of any brands in the chocolate block category, however, it was impossible to account for the large range of colours and their consequent associations within the novelty bar category. The existence of a stronger green association with Nestle than Cadbury may be due to the use of a similar green on the packaging of Nestlé's Milo bar, in the novelty bar category.

Coloured Card Chocolate Brand Associations and Respondents' Main Brands

By comparing respondents' main brands and the colour they associate with a particular brand we can determine whether the colour associations (and ultimately secondary meaning) differ by main brand. Respondents should be more familiar with the packaging of their main brand and indicate a greater colour-brand association than respondents who consider another brand to be their main brand. In colour trademark cases, if users of a particular brand inherently associate a brand and a specific corresponding colour, this will support the assertion that a brand-colour association is present.

Firstly, brand-colour associations of respondents who considered Cadbury to be their main brand were compared with the associations provided by respondents

who considered another brand to be their main brand. Table 2 contains these results.

Table 2: Distribution of Association within Main Brand (Cadbury)

Brand Associated with Purple	Main Brand	
	Cadbury (%) n = 141	Other (%) n = 60
Cadbury	76	60
Whittaker's	4	5
Nestle	4	5
Hershey's	0	0
Richfield's	0	0
None	7	8
Not Sure	7	10
Other	2	12
TOTAL	**100**	**100**
		X^2= 13.0 (p=0.02)

Table 2 shows that there was a significant relationship between respondents' main brand and the associations they made (p=0.02). Over three quarters of respondents who considered Cadbury to be their main brand associated Cadbury with purple. However, almost two thirds of respondents who considered a brand other than Cadbury to be their main brand also associated Cadbury with purple. Regardless of whether respondents considered Cadbury to be their main brand or whether respondents considered a brand other than Cadbury to be their main brand, both strongly associated Cadbury with purple. This supports an inherent brand-colour association. The large number of respondents who considered their main brand to be Cadbury also indicates the dominance of Cadbury in this product category. No more than 5% of respondents associated purple with a brand other than Cadbury, regardless of their main brand. This supports the conclusion that Cadbury and purple have a distinctive association.

Next, the responses of respondents who considered Whittaker's to be their main brand were examined. These results are presented in Table 3.

Table 3: Distribution of Association within Main Brand (Whittaker's)

Brand Associated With Gold	Main Brand	
	Whittaker's (%) n = 29	Other (%) n = 172
Whittaker's	59	38
Cadbury	14	15
Nestle	3	9
Hershey's	7	5
Richfield's	0	2
None	3	11
Not Sure	11	17
Other	3	3
TOTAL	**100**	**100**

X^2= 6.1 (p=0.524)

Although a significant relationship was not present between respondents' main brand and their associations with gold (p=0.524) the general trends of the results can be considered. Respondents who considered Whittaker's to be their main brand associated Gold with Whittaker's more than any other brand and showed a stronger association with Gold than respondents who considered another brand to be their main brand. Hence, the results indicate an inherent Whittaker's-gold association exists, although the results are limited by a small cell size for the Whittaker's main brand buyers.

Of note is that gold was also associated with Cadbury regardless of a respondent's main brand. Again, these results may reflect Cadbury's use of gold on some of its packaging variants. However, a similar percentage of respondents were not sure what brand they associated with gold. This comparison may reduce the significance of the Cadbury-gold association as respondents were just as likely to be unsure of the association as they were to state an association with Cadbury. Therefore, there is no conclusive evidence of a distinctive Cadbury-gold association.

The brand-colour associations of Nestle main buyers were also examined. These results and the comparison to other main brand purchasers are shown in Table 4.

Table 4: Distribution of Association within Main Brand (Nestle)

Brand Associated With Red	Main Brand	
	Nestle (%) n = 17	Other (%) n = 184
Nestle	59	30
Cadbury	11	29
Whittaker's	0	8
Hershey's	6	2
Richfield's	6	1
None	6	10
Not Sure	6	17
Other	6	3
TOTAL	**100**	**100**
		X^2= 11.8 (p=0.11)

The cell size of the Nestle main brand buyers was very small in this analysis. Again, there was not a significant relationship between respondents' main brand and their associations with red (p=0.11), therefore, robust associations cannot be drawn from these results. The trends in the results do however, indicate that Nestle 'main brand' buyers associated red with Nestle. Respondents who nominated a brand other than Nestle as their main brand indicated a less inherent Nestle-red association. Thirty percent of 'other' main brand buyers associated red with Nestle, 29% associated red with Cadbury and 27% were not sure or did not associate red with a chocolate brand. Respondents who were not Nestle 'main brand' buyers were less familiar with Nestle branding, and therefore did not associate Nestle with red. For the purpose of evidence to support colour trademark applications, the fact that non-main brand buyers did not strongly associate a colour and brand may be used by opposing counsel to undermine any associations that were elicited. The 'Other' category included Cadbury main brand buyers and this may explain why 29% associated red with Cadbury, as red is a dominant colour on the packaging of some Cadbury chocolate block variants.

These results indicated that colours have acquired secondary meaning within the chocolate product category. They also confirm that there is a stronger colour-brand association within purchasers of a brand. Nestle has the highest association with red, and a higher percentage of purchasers of Nestle associated red with Nestle than respondents who considered another brand to be their main brand. The small cell size must be taken into consideration with these results as a small change in the cell size or distribution of the responses would have a large effect on the results.

Overall, the general trends indicate that a respondent's main brand does have an effect on the colour they associate with a particular brand of chocolate. However, even when other 'main brand users' views are considered, more respondents associated purple with Cadbury than with any other brand. This suggests there is a case for the registration of purple as a Cadbury trademark, as the survey results indicated evidence of secondary meaning. In terms of colour trademark cases, the results indicate a stronger case for Cadbury than the other brands examined. The judiciary may criticise this level of association with the charge that Cadbury is a dominant brand in the category; however, the dominance of Cadbury was not evident in responses to the control stimulus. In addition, the weight attached to results based on the colour card method may be limited due to criticisms that this method implies that associations are present.

5.1.2 Chocolate Category Funnel Sequence Question Method

The funnel sequence method was developed to avoid the problem of the leading question and address the charge that associations are implied. The funnel sequence method involved a sequence of questions where respondents were asked increasingly specific questions to elicit their associations, at different levels, with each of the colours presented. Respondents were shown a colour card (purple, gold, or red) and asked the following questions: "do you associate this colour with anything?", "do you associate this colour with any food or confectionary items?", and finally, do you associate this colour with any (other) brands of chocolate? This sequence of questions was also repeated for the lime

green control card within each colour treatment. The sum of the associations with each colour for the three questions in the funnel sequence is presented in Table 5.

Table 5: Respondents' Associations with Each Colour

Brand	Total % Brand Association with Each Colour				
	Purple [1]	Gold [2]	Red [3]	Green [4]	Main Brand
Cadbury	28	11	7	2	69
Whittaker's	*	7	*	*	12
Nestle	*	2	9	2	9
Hershey's	0	2	*	*	1
Richfield's	*	*	*	*	*
None	39	31	37	48	5
Not sure	1	2	*	2	3
Other	31	45	46	46	1
TOTAL	**100**	**100**	**100**	**100**	**100**

[1]= 628 responses from 201 respondents [2]= 582 responses from 180 respondents
[3]= 599 responses from 188 respondents [4]= 1794 responses from 569 respondents
*= Less than 1

Purple was associated with Cadbury by 28% of respondents. This level of association has been accepted by the courts as conclusive evidence of an inherent association (Leighton, 2002). Purple was not inherently associated with any other brand. Forty percent of respondents did not associate purple with anything, or were not sure with which chocolate brand purple was associated, and 31% associated purple with something other than a brand of chocolate.

Gold was correctly associated with Whittaker's by 7% of respondents although, 11% of respondents associated gold with Cadbury and almost half of the respondents associated gold with something other than a chocolate brand. These results do not support an inherent gold-chocolate association with any brand and conflict the inherent Whittaker's-gold association elicited in the colour card method.

Nine percent of respondents correctly associated red with Nestle, however, 7% also associated red with Cadbury and over 80% of respondents associated red

with something other than a chocolate brand or did not associate red with anything at all. Again, this does not indicate an inherent colour-brand association. Only 4 % of respondents associated green with a chocolate brand, while 96% associated green either with no brand or with something other than chocolate. The lack of green-chocolate brand associations indicates that respondents were not guessing their responses and that their associations were in fact valid.

The Cadbury associations with gold and red are likely to be a result of Cadbury's use of these colours on their packaging, rather than the dominance of Cadbury in the product category. If these associations were due to Cadbury's dominance in the category, a clearer double jeopardy pattern would be evident in the responses to the green associations.

The funnel sequence method addressed the issue of the leading question, although, these results do not indicate such strong colour-brand associations as the colour card method. Although the results show similar patterns, there is more ambiguity in the colour-brand associations for the funnel sequence questioning method. This is exemplified by the fact that a large number of respondents associated each colour with something other than a chocolate brand, or could not offer any association at all.

In an attempt to reduce the ambiguity noted above and to eliminate inapplicable responses, a further analysis was carried out. This analysis excluded the 'None' and 'Not Sure' responses. These results are presented in Table 6.

Table 6: Respondents' Substantive Chocolate Brand Associations with Each Colour

	Total % Brand Association with Each Colour			
Brand	**Purple n = 378**	**Gold n = 395**	**Red n = 373**	**Green n = 908**
Cadbury	47	17	10	4
Whittaker's	*	10	1	1
Nestle	1	3	14	4
Hershey's	0	3	1	*
Richfield's	*	1	*	1
None	-	-	-	-
Not sure	-	-	-	-
Other	52	66	74	90
TOTAL	**100**	**100**	**100**	**100**

* = Less than 1.

With the 'None' and 'Not sure' responses excluded, the results indicate stronger colour- brand associations. Almost half of the respondents associated purple with Cadbury. Cadbury was most strongly associated with gold, and Nestle was most strongly associated with red. For each of the colours more than 50% of respondents associated the colour with something other than a chocolate brand. This indicates that even with these responses excluded, this method still elicits many non-chocolate brand related responses. Responses other than a chocolate brand were expected due to the nature of the questioning, as specific brand responses were not asked until the last question of the survey. The green associations clearly indicate that there was no inherent colour-brand association between the control green colour, a colour not used predominantly on the packaging of chocolate blocks, and any particular brand of chocolate.

Funnel Sequence Responses to Individual Questions: Chocolate Surveys

The following discussion is a breakdown of all responses to the individual questions for each of the versions (purple, gold, and red) of the funnel questioning survey. The initial question was a widely framed question: respondents were shown a coloured card and asked "do you associate this colour

with anything?" These results are indicated in the first column of each of the tables. The results for the second question, "do you associate this colour with any food or confectionary items?" are presented in the Food or Confectionary column of each of the tables. The results for the third question, "do you associate this colour with any (other) chocolate brands?" are presented in the Chocolate Brand column of each of the tables. Table 7 contains the results for the purple version of the funnel sequence method.

Table 7: Associations with Purple

	% Association with Purple			Brand Usage
Brand	**Purple [1]**	**Food or Confectionary [2]**	**Chocolate Brand [3]**	**Main Brand**
Cadbury	4	18	64	64
Whittaker's	0	0	1	14
Nestle	0	0	1	9
Hershey's	0	1	0	1
Richfield's	0	1	1	0
None	41	44	30	7
Not Sure	0	0	3	3
Other	55	38	0	2
TOTAL	**100**	**100**	**100**	**100**

[1] = 208 responses from 201 individuals [2] = 211 responses from 201 individuals
[3] = 209 responses from 201 individuals

Responses to the first question, which explored initial associations with the colour, ranged from homosexuality to eggplants and only 4% of these responses included a particular brand of chocolate; these results are shown in the purple column of Table 7. Appendix L contains full details of these responses. When asked about food or confectionary items, 18% of respondents associated Cadbury with purple, while 1% suggested an association with either Hershey's or Richfield's. Again, respondents provided a wide range of 'other' responses. When specific chocolate brand associations were examined, just over two thirds of respondents associated purple with Cadbury. When asked specifically about chocolate brands, the majority of respondents associated purple with Cadbury and the remainder did not associate purple with any one chocolate brand in particular. This implies that an inherent Cadbury-purple association exists and

these results support Cadbury's trademarking the colour purple within the chocolate product category.

Next, respondents' associations with gold were examined. Table 8 contains the results of this analysis.

Table 8: Associations with Gold

	% Association with Gold			Brand Usage
Brand	**Gold [1]**	**Food or Confectionary [2]**	**Chocolate Brand [3]**	**Main Brand**
Cadbury	0	2	31	71
Whittaker's	0	2	17	10
Nestle	0	0	5	8
Hershey's	0	0	6	2
Richfield's	0	0	1	1
None	22	35	34	4
Not Sure	0	0	4	3
Other	78	61	2	1
TOTAL	**100**	**100**	**100**	**100**

[1] = 187 responses from 180 individuals [2] = 189 responses from 180 individuals
[3] = 206 responses from 180 individuals

The widely framed question did not elicit any chocolate brand associations; responses ranged from sand to curtains. Appendix L contains full details of these responses. Almost one quarter of respondents did not associate gold with anything in response to the widely framed question. When asked to consider food and confectionary items, Cadbury and Whittaker's were each associated with gold by only 2% of respondents. When asked specifically about chocolate brands, 31% associated gold with Cadbury, while only 17% associated gold with Whittaker's. This may be due to the use of gold on some of Cadbury's packaging and does not necessarily indicate that Whittaker's and gold are not inherently associated. Rather, these results may indicate that respondents also associated gold with Cadbury. The fact that over two thirds of respondents nominated Cadbury as their main brand may indicate a dominant brand effect. Only 10% of respondents nominated Whittaker's as their main brand, implying that a smaller percentage of respondents were familiar with Whittaker's packaging. This may

explain the low Whittaker's-gold association compared with the Cadbury-gold association. In a trademark situation, the fact that Cadbury and Whittaker's are both associated with gold could result in neither brand being able to register gold as a trademark in this product category.

The third version of the funnel sequence survey examined associations with red. These results are shown in Table 9.

Table 9: Associations with Red

	% Association with Purple			Brand Usage
Brand	**Red** [1]	**Food or Confectionary** [2]	**Chocolate Brand** [3]	**Main Brand (%)**
Cadbury	0	1	20	70
Whittaker's	0	0	1	10
Nestle	1	2	24	8
Hershey's	0	0	1	1
Richfield's	0	0	1	1
None	25	35	49	5
Not Sure	0	0	1	4
Other	74	62	3	1
TOTAL	**100**	**100**	**100**	**100**

[1] = 198 responses from 188 individuals [2] = 202 responses from 188 individuals
[3] = 199 responses from 188 individuals

Again, responses to the first question varied; respondents' associations with red ranged from danger to the Labour Party. Red was associated with Nestle by 1% of respondents, however, no other brands of chocolate were mentioned for the widely framed question. When asked to consider food and confectionary items almost two thirds of respondents associated red with something other than a brand of chocolate (Appendix L contains full details of these responses). However, 2% of respondents associated red with Nestle and 1% of respondents associated red with Cadbury. Without prompting respondents toward a particular product category, they were unable to offer substantial associations between red and a particular brand of chocolate.

When specifically asked to consider chocolate brands, 24% associated red with Nestle, 20% associated red with Cadbury, and almost half of the respondents did not associate red with a chocolate brand. Again, the existence of Nestle-red and Cadbury-red associations may result in neither side gaining rights to the sole use of red in relation to this product category. In addition, the fact that 50% of respondents did not make any association, or were not sure which chocolate brand red should be associated with, may overshadow any associations that were elicited. In a trademark case, opposing counsel may emphasise the existence of the 'none' and 'not sure' responses to reduce the weight placed on any colour-brand associations.

An additional point to note is that as the questions became increasingly specific, the percentage of respondents who did not associate red with anything increased. This implies that no inherent association with red was present in the category. This result confirms the finding of the colour card method that red is associated with chocolate brands although not at an inherent level. Seventy percent of respondents considered Cadbury to be their main brand, compared with 8% who nominated Nestle as their main brand; however, the Nestle-red association was slightly larger than the Cadbury-red association. This may indicate that a strong main brand effect is not present and respondents correctly associated the colours and brands regardless of their main brand.

Respondents for each of the three versions of the survey (purple, gold, and red) were also administered the same questions in relation to a lime green control card. Table 10 contains the responses to the green card for the three versions of the survey.

Table 10: Associations with Green

	% Association with Green		
Brand	**Green** [1]	**Food or Confectionary** [2]	**Chocolate Brand** [3]
Cadbury	0	0	6
Whittaker's	1	0	1
Nestle	0	2	6
Hershey's	0	0	1
Richfield's	0	0	1
None	29	34	79
Not Sure	0	0	4
Other	70	64	2
TOTAL	**100**	**100**	**100**

[1] = 570 responses from 569 individuals [2] = 627 responses from 569 individuals
[3] = 583 responses from 569 individuals

In response to the first question, for all three versions of the funnel sequence method, only 1% of respondents associated green with Whittaker's and no other chocolate brands were mentioned. Green was not associated with anything by 29% of respondents and the remainder of responses ranged from apples to frogs. Appendix L contains full details of these responses. In relation to food and confectionary items 2% of respondents associated green with Nestle. However, over one third of respondents did not associate the lime green stimulus with food or confectionary items.

When asked specifically about chocolate brands, 79% of respondents did not associate the colour with a brand of chocolate. This suggests that respondents were not simply guessing their responses and were willing to acknowledge when they could not offer substantive associations. The results also suggest that a double jeopardy pattern does not exist; Nestle and Cadbury were equally associated with green. Had a double jeopardy pattern existed a stronger association with Cadbury would have been present, as Cadbury is a bigger brand with higher penetration. Overall, as the context of the questions became more specific the level of association between a colour and a brand became more evident. These findings concur with the findings for the colour card method. Despite the apparent weaknesses in the funnel sequence method, the similar levels of association elicited by each of the methods validate the level of

association respondents were able to offer and indicate convergent validity between the methods.

Chocolate Survey Funnel Sequence Method: Colour-Brand Associations and Respondents' Main Brand.

The following tables show the results in relation to the third question, which specifically asked respondents about chocolate brands. The responses have been broken down into main brands to determine whether associations differ by main brand. For the purpose of colour trademark cases, if users of a brand are able to offer substantial associations between the correct colour and the brand evidence of an inherent association may be present.

Table 11 shows the associations with purple and indicates strong Cadbury-purple associations.

Table 11: Purple Associations within Main Brand

Brand Associated with Purple	Main Brand (%)		
	Cadbury n = 128	Nestle n = 18	Whittaker's n = 31
Cadbury	41	50	45
Whittaker's	0	0	3
Nestle	1	0	0
Richfield's	0	6	0
Hershey's	0	0	0
None	23	33	49
Not Sure	2	11	3
Other	0	0	0
TOTAL	100	100	100

X^2= 10.89 (p=0.05)

Table 11 shows that there was a significant relationship between respondents' associations with purple and their main brand (p=0.05). The strongest association with purple was by respondents who considered Cadbury to be their main brand, which was expected. Fifty percent of respondents who considered Nestle to be their main brand associated purple with Cadbury and 45% of Whittaker's main

brand buyers associated purple with Cadbury. Further associations were small; only 3% of Whittaker's purchasers associated purple with Whittaker's and 1% of Cadbury purchasers associated purple with Nestle. Only 18 respondents considered Nestle to be their main brand. This may be an insufficient number of respondents to be able to offer meaningful results or to draw robust conclusions. Generally, respondents associated purple with Cadbury regardless of their main brand. When respondents did not associate purple with Cadbury, the majority of respondents were either not sure or did not make any associations. Therefore, there were not substantial associations offered between purple and other chocolate brands.

Respondents' chocolate brand associations with gold in relation to their main brand are shown in Table 12.

Table 12: Gold Associations within Main Brand

Brand Associated with Gold	Main Brand (%)	
	Cadbury n = 128	Whittaker's n = 19
Cadbury	36	21
Whittaker's	15	26
Nestle	5	0
Richfield's	0	0
Hershey's	2	0
None	35	42
Not Sure	5	6
Other	2	5
TOTAL	100	100

X^2= 5.5 (p=0.59)

The relationship between respondents' associations with gold and their main brand was not statistically significant (p=0.59), however, the general trends in the associations can be considered. The majority of respondents considered Cadbury to be their main brand; only 15 and 19 respondents respectively considered Nestle or Whittaker's to be their main brand. As the number of respondents who considered Nestle to be their main brand was small, it was not included in the analysis. The number of respondents who considered Whittaker's to be their

main brand was also small, however, as gold is the dominant colour on Whittaker's packaging this group was retained in the analysis as a comparison. Respondents who considered Cadbury to be their main brand strongly associated gold with Cadbury. Again, this may reflect the use of gold on Cadbury packaging and explains the association with gold by Cadbury main brand buyers.

Respondents who considered Whittaker's to be their main brand also associated gold with Cadbury. However, 15% of Cadbury purchasers associated gold with Whittaker's. Respondents who considered Whittaker's to be their main brand associated gold with Whittaker's more than any other brand. However, this association was only slightly larger than the gold-Cadbury association and almost half of respondents who considered Whittaker's to be their main brand did not associate gold with any brand of chocolate. These results do not clearly establish secondary meaning between gold and any one particular chocolate brand.

Next, respondents' main brand and their associations with red were examined. These results are shown in Table 13.

Table 13: Red Associations within Main Brand

Brand Associated with Red	Main Brand (%)	
	Cadbury n= 132	Nestle n=15
Nestle	24	40
Cadbury	23	13
Whittaker's	0	0
Richfield's	0	0
Hershey's	0	0
None	48	47
Not Sure	0	0
Other	4	0
TOTAL	**100**	**100**
		X^2= 2.93 (p=0.82)

Although the number of respondents who nominated Nestle as their main brand was small, the analysis was carried out to enable a comparison between main brands. However, as the size of the Nestle main brand buyers cell is small and

the relationship was insignificant robust conclusions cannot be drawn. Respondents who considered Whittaker's to be their main brand were not included in the analysis as the cell size was not large enough to offer meaningful results or comparisons. Red was associated with Cadbury by almost one quarter of Cadbury main brand buyers and a similar percentage of Cadbury main brand buyers associated red with Nestle. Cadbury main brand buyers did not associate red with any other brand. Forty percent of Nestle main brand buyers associated red with Nestle and only 13% associated red with Cadbury. The trends in the results indicate that there is a stronger association with red by respondents who consider Nestle to be their main brand than by respondents who consider Cadbury to be their main brand. As almost 50% of respondents who considered Nestle to be their main brand did not associate red with a chocolate brand, the weight given to the 40% Nestle-red association is likely to be small and may be questioned by opposing counsel.

Overall, the nature of the funnel sequence method resulted in many associations that were not relevant to the product category. Clear brand associations only emerged in response to the final question, which directed respondents directly to chocolate brands. Even when respondents were asked specifically about chocolate brands, the brand-colour associations elicited were weaker than for the colour card method. The funnel sequence method has been previously applied to provide evidence of colour-brand associations. In practice, the third question is the only question that elicited relevant information. The judiciary would criticise this method for eliciting irrelevant information and not focussing on the issue of interest. If the initial questions were disregarded the questions would be the same as the colour card method.

5.1.3 Colour Wheel Method

For this method, respondents were shown a brand name along with a colour wheel containing a range of 19 colours. The four chocolate brand logos were Cadbury, Whittaker's, Nestle, and Nova, the fictitious control brand. Respondents were asked to indicate which colour or colours on the wheel they

associated with each of the brand names presented to them. Appendix G contains the colour wheel and brand name showcards presented to respondents.

This method was developed to address the criticism of an approach previously applied to colour trademark cases where respondents were asked what colour they associated with a particular brand. Respondents nominated various descriptions of a colour (e.g. blue, royal blue, dark blue) and may have all had the same colour in mind. The use of the colour wheel assists in the coding of responses and provides respondents with a range of shades which represent the dominant colours in the product category. Results of the colour wheel method are presented in Table 14.

Table 14: Chocolate Brand and Colour Wheel Associations

	% Association with Each Brand			
Colour	**Cadbury[1]**	**Whittakers[2]**	**Nestle[3]**	**Nova[4]**
1 Gold (Whittaker's)	7	21	4	1
2 Gold/Cream	1	7	3	1
3 Cream (Nestle)	*	1	6	1
4 Pale Yellow	2	*	6	1
5 Yellow/Green	1	*	0	1
6 Apple Green	*	0	0	1
7 Lime Green	*	1	1	3
8 Green	0	1	2	2
9 Sea Green	*	0	2	2
10 Turquoise	1	1	*	1
11 Blue/Purple	22	3	2	3
12 Purple (Cadbury)	27	1	1	0
13 Violet	17	1	0	1
14 Crimson	1	2	2	1
15 Red (Nestle)	2	1	32	1
16 Dark Red	2	3	11	1
17 Dark Brown	8	28	9	3
18 Brown	4	13	5	2
19 Light Brown/Tan	3	15	3	1
Don't Know	2	1	10	74
TOTAL	100	100	100	100

[1] = 313 Responses by 206 people
[2] = 360 Responses by 206 people
[3] = 276 Responses by 206 people
[4] = 225 Responses by 206 people

* Less than 1

The three brands tested (Cadbury, Whittaker's and Nestle) were strongly associated with the colours that dominate their packaging. Over two thirds of respondents associated Cadbury with a shade of purple (22% + 27% + 17%) and just over one quarter of respondents associated Cadbury with the correct shade of purple. Only a small percentage of respondents associated Cadbury with red or gold. The results suggest that while respondents know the point on the colour spectrum that Cadbury belongs to, they are less certain of the specific shade with which Cadbury is associated.

Respondents associated several gold and brown shades with Whittaker's. Fifty-six percent of respondents associated Whittaker's with a shade of brown and 28% associated Whittaker's with a shade of Gold. This reflects the use of brown on Whittaker's packaging and was not detected by the other survey methods as brown was not a test colour shown to respondents.

Just under half (32% + 11% + 2%) of the respondents associated Nestle with red and almost one third (32%) of respondents associated Nestle with the correct shade of red. Respondents were better able to identify the correct Nestle shade than the correct shade associated with the other brands, though this may be due to a stronger contrast between this colour and adjacent shades.

For each of the brands, there was little association with colours other than those that are dominant on each brands' packaging. However, of the three brands tested, respondents' associations with Nestle were the most varied. This may reflect the wider range of shades used on Nestle packaging for example, milk chocolate and cream packaging, and green packaging of the Nestle Milo bar in the novelty bar category, in addition to Nestle's dominant use of red. Thirteen percent of respondents associated Nestle with a shade of cream and 5% associated Nestle with green.

Nova, the control brand, was not associated with any colour by 74% of respondents. The colour associations with Nova varied, with no more than 3% of respondents associating Nova with any one colour in particular. Almost all of the colours on the colour wheel were associated with Nova. This suggests that only a

small percentage of respondents based their associations on guesses, and respondents who did guess did not show a bias towards a particular colour.

Respondents' colour wheel associations have been analysed further to determine whether their main brand influenced their colour-brand associations and to assess whether respondents who are more familiar with are particular brand were able to offer associations that are more accurate. Due to the limitations of the cell sizes of the data, only the Cadbury and Whittaker's main brand buyers have been analysed. Table 15 shows respondents' associations with Cadbury based on their main brands.

Table 15: Colour Wheel Associations for Cadbury within Main Brand

Colour Associated with Cadbury	Main Brand (%)	
	Cadbury n = 136	Whittaker's n = 25
1 Gold (Whittaker's)	2	0
2 Gold/Cream	0	0
3 Cream (Nestle)	0	0
4 Pale Yellow	0	0
5 Yellow/Green	0	0
6 Apple Green	0	0
7 Lime Green	0	0
8 Green	0	0
9 Forest Green	0	0
10 Turquoise	2	0
11 Purple/Blue	25	24
12 Purple (Cadbury)	34	36
13 Violet	24	24
14 Crimson	*	0
15 Red (Nestle)	0	0
16 Dark Red	2	0
17 Dark Brown	9	16
18 Brown	2	0
19 Light Brown/Tan	0	0
TOTAL	**100**	**100**

* Greater than 0 but less than 1 **X^2= 4.23 (p=0.04)**

The relationship between respondents' main brand and their associations was significant. Cadbury was most strongly associated with purple regardless of respondents' main brand. Cadbury main brand buyers also indicated small

associations with red, brown, and cream. This suggests respondents have identified the use of red on the packaging of some of Cadbury's variants and also suggests that some respondents may have nominated associations with the colour of the product itself rather than the brands. Respondents who considered Whittaker's to be their main brand strongly associated Cadbury with purple and the only other colour they nominated was brown. Cadbury and Whittaker's main brand buyers were equally able to associate the correct shade of purple with Cadbury. These results indicate an inherent Cadbury-purple association is present regardless of respondents' main brand. These results also support the case for purple to be registered as a trademark of Cadbury.

Respondents' associations with Whittaker's based on their main brand were also examined. These results are presented in Table 16.

Table 16: Colour Wheel Associations for Whittaker's within Main Brand

Colour Associated with Whittaker's	Main Brand (%) Cadbury n = 131	Whittaker's n = 26
1 Gold (Whittaker's)	26	23
2 Gold/Cream	5	7
3 Cream (Nestle)	0	0
4 Pale Yellow	0	0
5 Yellow/Green	0	0
6 Apple Green	0	0
7 Lime Green	1	0
8 Green	1	0
9 Forest Green	0	0
10 Turquoise	1	0
11 Purple/Blue	1	11
12 Purple (Cadbury)	1	0
13 Violet	1	0
14 Crimson	0	4
15 Red (Nestle)	4	0
16 Dark Red	3	2
17 Dark Brown	32	36
18 Brown	12	11
19 Light Brown/Tan	12	12
TOTAL	**100**	**100**

X^2= 5.07 (p=0.03)

Regardless of their main brand, respondents generally associated Whittaker's with the gold and brown shades. There was a significant relationship between respondents' associations with Whitaker and their main brand. However, only 14 respondents considered Nestle to be their main brand therefore this group of respondents was not included in the analysis. As expected, respondents who considered Whittaker's to be their main brand associated Whittaker's with the gold and brown shades on the colour wheel. Eleven percent of Whittaker's main brand buyers also associated Whittaker's with a shade of purple. This suggests that purple is a strong colour within the chocolate category. The presence of this Whittaker's-purple association could be used by opposing counsel to reduce the weight given to any Cadbury-purple associations, as it indicates that there is confusion over brand-colour associations. Respondents' main brands do not appear to influence the accuracy of their associations.

Overall, the associations elicited through the colour wheel method were slightly smaller than the colour card associations. However, the accuracy of associations was also able to be considered with the colour wheel method. The colour wheel method did not produce the irrelevant associations that were elicited in the funnel sequence method. In a trademark case, the provision of these results is likely to raise the shade confusion argument as the results suggest respondents' ability to discriminate between similar shades may be limited. This limitation is an issue that is not likely to be raised in relation to the colour card or funnel sequence methods.

5.1.4 Chocolate Choice Modelling

The choice modelling methodology involved respondents viewing a set of eight showcards, from a total of 16 showcards. Each card contained four options and respondents were asked to indicate which option they would choose if there were in a store to purchase a block of chocolate. This method was developed to address the criticism that colour-association surveys lack behavioural evidence. Appendix I contains the 16 showcards used in this experiment. The showcards were presented to respondents in sets of eight to reduce respondent fatigue and to allow respondents time to reflect on the images presented to them. Appendix I

also contains the choice modelling surveys. Question 1 of each of the surveys indicates the showcards contained in each set.

The data from this experiment were entered into a multinomial logit model to assess the main effects of the colours and brands tested. Nova and lime were set to zero in the analysis, therefore, each of the estimates is relative to these controls. The results from the main effects model are presented in Table 17.

Table 17: Chocolate Choice Modelling Main Effects

Variable N = 783	Parameter Estimate	Chi-square	P-Value
Cadbury	2.08	1231.87	<.0001
Whittaker's	2.01	1143.29	<.0001
Nestle	0.88	176.34	<.0001
Nova	0	0	0
Gold	1.61	1282.42	<.0001
Purple	1.56	1173.86	<.0001
Red	0.58	105.96	<.0001
Lime	0	0	0

The main effect for each of the colours and brands tested were highly significant. In addition, the co-efficients were all positive. This implies that each of the colours and brands were more attractive than the control. Cadbury was slightly more attractive than Whittaker's. However, Nestle seemed to be the much less preferred brand. The attractiveness of each of the brands indicates similar patterns to respondents' main brand in the other methodologies. The range in the estimates for the colours indicates that the colours were similarly attractive, although red was the least attractive of the colours in relation to the lime control.

All colours and brands with significant co-efficients in the main effects model were entered into a second model that estimated interaction effects between the colours and brands tested. The interaction effects for each of the colours and brands tested in the chocolate category are presented in Table 18. The main effects for each of the colours and brands are also included in this model. The co-efficients are slightly different to those presented in Table 17 because the model also considered the interactions between the colours and the brands.

Table 18: Chocolate Category Colour - Brand Main and Interaction Effects

Variable N = 783	Parameter Estimate	Chi-Square	P - Value
Whittaker's	1.63	106.19	<.0001
Cadbury	1.56	96.41	<.0001
Nestle	0.63	12.54	0.0004
Nova	0	0	0
Purple	1.04	35.99	<.0001
Gold	0.93	27.48	<.0001
Red	0.82	18.77	<.0001
Lime	0	0	0
Cadbury - Purple	0.83	19.65	<.0001
Whittaker's - Gold	0.79	17.09	<.0001
Cadbury - Gold	0.78	16.71	<.0001
Nestle - Red	0.56	6.11	0.0135
Whittaker's - Purple	0.40	4.61	0.0318
Nestle - Gold	0.40	3.58	0.0586
Nestle - Purple	-0.07	0.11	0.7418
Whitaker's - Red	-0.36	2.95	0.0856
Cadbury - Red	-0.81	13.91	0.0002

Again, Nova and lime were set at zero in the analysis to provide a base against which the relative attractiveness of the other colours and brands was assessed. This enabled estimation of whether each of the colours, brands and colour-brand combinations were more or less attractive than the control. The main effects for each of the brands and colours were all significant. The positive co-efficient for each of the main effects indicated that each of the colours and brands were more attractive than the control brand or colour. Whittaker's had the largest brand co-efficient, followed closely by Cadbury. This indicates that without considering the interactions with colours, Cadbury and Whittaker's were the most preferred brands. The fact that Whittaker's was the most preferred brand is an interesting point to note. The majority of respondents considered Cadbury to be their main brand for each of the methodologies, however, the Whittaker's co-efficient was not significantly larger than the Cadbury co-efficient in relation to the control.

For the colours, purple had the largest co-efficient followed by gold, then red. The attractiveness of the colours follows a similar pattern to the attractiveness of the corresponding brands. The range in the co-efficients for the colours is smaller than the range for the brands. This implies that the brands may have had a larger

effect on respondents' choices, or the attractiveness of each of the colour-brand combinations, than the colours.

The interaction between Cadbury and purple was the most attractive combination in relation to the control. This implies that the choice modelling method elicited the presence of a Cadbury-purple association. The Whittaker's-gold interaction was the second most attractive combination, however, the Cadbury-gold combination was similarly attractive. Again, this suggests that respondents have identified that gold is present on the packaging of some Cadbury variants. In addition, this result may also signify the strength of the Cadbury brand in the chocolate product category. The fourth most attractive interaction was between Nestle and red. The results indicate that aside from the Cadbury-gold interaction each of the correct colour-brand combinations were the most attractive combinations in relation to the control. In terms of colour trademarks, these results indicate that respondents were able to identify the relationship between the brands and their corresponding colours. The Whittaker's-purple and Nestle-gold interactions were also more attractive than the control, however, these interactions were not significant at the 0.01 level. Thus, when the two most attractive brands were combined with the least attractive colours the effect was insignificant. This indicates that, the effect of these strong brands has not been dominant over the less preferred colours.

The co-efficients for the three smallest brand-colour interactions were all negative, therefore, these combinations were less preferred than the control. The fact that the Cadbury-red interaction was negative is surprising as the results of the colour card and funnel sequence methodologies linked Cadbury and red, although not distinctively. Again, this suggests that even though Cadbury had the strongest brand effect when combined with the least attractive colour the brand effect has not dominated respondents' choices.

Utilities for each of the colour-brand combinations were calculated to determine the attractiveness of each of the colour brand combinations. For the purposes of colour trademark applications, the important information is the relative utilities of the different colour-brand combinations. The utilities were calculated by

adding the main effects and interaction effect for each of the colours, brands, and colour-brand combinations. The utilities for each of the interactions are in relation to the control. A positive utility indicates that the combination was more attractive than the control, Nova-lime combination. The utilities for each of the colour-brand combinations are presented in Table 19.

Table 19: Chocolate Choice Modelling Utilities

Variable N = 783	Brand – Colour Utilities			
	Cadbury	Whittaker's	Nestle	Nova
Brand - Purple Interaction	3.43	3.07	1.60	1.04
Brand - Gold Interaction	3.27	3.35	1.96	0.93
Brand - Red Interaction	1.57	2.09	2.01	0.82
Brand- Lime Interaction	1.56	1.63	0.63	0

Each of the colour-brand combinations in the chocolate category were more attractive than the control. This is indicated by the fact that the utilities are all positive. As expected, purple's utility was the highest when combined with Cadbury. This supports Cadbury's application to trademark purple in the chocolate category. However, purple was also highly attractive, relative to the control, when combined with Whittaker's, although there was little association with the other brands. The attractiveness of the Whittaker's-purple combination is likely to be a combined effect of purple being a strong colour and Whittaker's being a strong brand in the category, even though purple is not present on the packaging of Whittaker's chocolate.

Gold was most preferred when combined with Whittaker's. Respondents correctly associated Whittaker's with gold however, the Cadbury-gold combination was also attractive. This indicates that respondents have identified that gold is also present on the packaging of some Cadbury variants. The attractiveness of the Whittaker's-gold combination may also signify the strength of Whittaker's in the category. The fact that the Whittaker's-gold utility is larger than the Cadbury-gold utility indicates that there may not be a dominant brand effect present in respondents' choices. If a dominant brand effect were present the gold-Cadbury utility was expected to be larger.

Red was most attractive when combined with Whittaker's. Although red is not present on the packaging of Whittaker's chocolate the attractiveness of this combination may simply reflect that Whittaker's is preferred over Nestle. However, the utility for the red-Nestle combination indicates that this combination was almost equally attractive. The small range in the utilities for red-brand combinations compared with the other real colours indicates that the attractiveness of combinations with red were relatively similar. It is difficult to determine from these results whether red is inherently associated with one brand in particular.

The attractiveness of the lime-brand combinations appeared to be random. Lime was most attractive when combined with Whittaker's. The attractiveness of the lime-Cadbury was only slightly smaller than the lime-Whittaker's combination. The fact that the utilities for the lime-brand combinations were smaller than the utilities for the other colour-brand combinations indicates that respondents did not offer significant associations with the control colour. In addition, the results suggest a dominant brand effect is not present. If a dominant brand effect had been present, lime-Cadbury utility would have indicated that this combination was the most attractive.

Overall, the results suggest that there are strong brands and colours within the chocolate category and respondents were able to link the colours and brands. The results also indicated that the correct colour-brand combinations were more attractive than incorrect colour-brand combinations. In a trademark case, these results would support colour-brand associations. The results also suggest that more than one brand is associated with each colour. This parallels the findings of the other methodologies. In addition, the attractiveness of incorrect colours with each of the brands may be raised by opposing counsel to argue that a distinctive association is not present.

5.2 Rice Category

5.2.1 Rice Colour Card Method

This approach used five cards (blue, orange, green, brown and red). Respondents were shown one card at a time and asked which rice brands, if any, they associated with each colour. Two versions of the survey were developed. Version one of the survey included the Uncle Ben's orange and version two included the Sun Rice Basmati orange. The Uncle Ben's packaging and the Sun Rice Basmati variant both use a similar shade of orange. The brown card was a control card as it is not a dominant colour on rice packaging. Showcards for this method are presented in Appendix B. Respondents' brand associations with each of the colours are shown in Table 20.

Table 20: Respondents' Brand Associations with Colours: Coloured Card Method

	% Association with Each Colour						
	Orange[1] Uncle Ben's	Orange[2] SunRice	Blue[3]	Red[4]	Green[5]	Brown[6]	Main Brand
Uncle Ben's	36	36	8	2	2	7	32
SunRice	14	19	17	8	8	6	32
Just rice	2	1	1	1	2	2	1
King Rice	0	2	0	2	1	0	1
Diamond Rice Risotto	2	1	3	2	1	3	6
Kings Choice	1	0	1	1	2	1	1
None	30	21	41	59	54	57	7
Not sure	13	19	24	22	27	21	8
Other	2	1	5	3	3	3	12
TOTAL	**100**	**100**	**100**	**100**	**100**	**100**	**100**

[1] = 191 responses from 185 individuals [2] =179 responses from 163 individuals
[3] = 350 responses from 348 individuals [4] = 352 responses from 348 individuals
[5] = 351 responses from 348 individuals [6] = 351 responses from 348 individuals

The Uncle Ben's orange shade was correctly associated with Uncle Ben's by 36% of respondents. Fourteen percent of respondents also associated the Uncle Ben's orange shade with SunRice and this shade was also associated with the other brands. The percentage of respondents who were not sure or did not

associate the Uncle Ben's orange shade with a brand of rice was larger than the percentage who associated it with Uncle Ben's. Again, in a trademark case this result could be employed by opposing counsel to reduce the weight of any associations or to argue that an inherent association is not present.

The SunRice orange shade was correctly associated with SunRice by 19% of respondents, however, 36% of respondents associated the SunRice orange shade with Uncle Ben's. This indicates that a distinctive SunRice orange association is not present. Uncle Ben's may use this evidence to highlight an orange-Uncle Ben's association although these associations were not with the correct shade of orange. The difference between the SunRice and Uncle Ben's orange shades is very slight and these results indicate that respondents were more likely to associate orange with Uncle Ben's than with SunRice even though a specific orange-Uncle Ben's association was not evident. In a trademark case, these results are likely to raise the shade confusion argument, outlined in Chapter 2, as respondents made incorrect associations with the confusingly similar shades of orange. The SunRice orange shade was also associated with the other brands and 40% of respondents did not associate the shade with rice, or were not sure with which brand to associate it.

The blue colour presented to respondents is the dominant colour on the packaging of SunRice long grain white rice. Almost one fifth of respondents correctly identified this association and the SunRice brand received the strongest association with blue. Blue was also associated with the other rice brands and this indicates that there is some confusion over which rice brand blue is associated with. In a trademark case, these other associations may reduce the weight given to the blue-SunRice association. In addition, over half of the respondents did not associate blue with a brand of rice or were not sure with which brand blue should be associated. These results do not indicate a distinctive association between blue and SunRice.

Similar shades of red are dominant on the packaging of the SunRice Wild Blend Entertainer Rice and Medium Grain White rice variants. The green shade presented to respondents is dominant on the SunRice Arborio Mediterranean

Rice package and a similar shade is used on the SunRice Brown Long Grain rice package. Only 8% of respondents correctly associated red or green with SunRice. Red and green were both associated with the other brands, although these other associations were no greater than 2%. Over 75% of respondents did not associate red or green with a brand of rice, or were not sure with which brand each of the colours was associated. The results do not show any distinctive associations between these colours and brands of rice.

As expected, the brown control colour was not associated with any one brand in particular. Over 75% of respondents did not associate brown with a brand of rice, or were not sure which brand brown was associated with. This random association, and the overall lack of association, indicates that respondents were not guessing their responses. Of note is that brown was associated with each of the rice brands more than red and green. This suggests respondents may have associated brown with the colour of the product, rather than focusing on colour-brand associations. It may also highlight the lack of an inherent association with red or green in the rice category. Although the associations with Uncle Ben's and SunRice are slightly higher for each of the colours, there does not appear to evidence of a strong double jeopardy effect. This suggests that respondents did not make their associations based on the size of the brand.

Coloured Card Rice Brand Associations and Respondents' Main Brands

Next, respondents' associations with each colour were considered based on their main brand. As with the analysis in the chocolate category, respondents were expected to be more familiar with the packaging of their main brand. Respondents should be more able to correctly associate their main brand with the brand specific colours. Table 21 contains the results of the associations with the Uncle Ben's shade of orange based on main brands.

Table 21: Distribution of Uncle Ben's Orange Association within Main Brand

Brand Associated with Uncle Ben's Orange	Main Brand Uncle Ben's (%) n = 52	SunRice (%) n = 54
Uncle Ben's	42	40
SunRice	15	19
Just Rice	4	0
King Rice	0	0
Diamond Rice Risotto	2	4
Kings Choice	2	0
None	21	26
Not Sure	12	9
Other	2	2
TOTAL	**100**	**100**

X^2= 11.452 (p=0.12)

The associations with the Uncle Ben's orange shade were similar for both Uncle Ben's and SunRice main brand buyers. In addition, there was not a significant relationship between respondents' main brand and their associations with the Uncle Ben's orange shade. Regardless of respondents' main brand the Uncle Ben's orange shade was associated with Uncle Ben's by at least 40% of respondents. Fifteen percent of Uncle Ben's main brand buyers associated orange with SunRice. Although not highly significant this result may be used by opposing counsel to indicate that even respondents who considered a brand as their main brand are unable to associate the brand with its corresponding colour. The fact that 42% of Uncle Ben's main brand buyers did not make an association, or were not sure, could also be used to argue that an inherent association is not present. Almost 40% of SunRice main brand buyers associated the Uncle Ben's orange shade with Uncle Ben's; these results may indicate that there is an inherent association between Uncle Ben's and orange. Overall, respondents' main brand did not influence their associations with the Uncle Ben's shade of orange. In a trademark case, opposing counsel may exemplify this finding to support their argument that a distinctive association is not present.

The next analysis examined associations with the SunRice orange shade according to respondents' main brand. These results are presented in Table 22

Table 22: Distribution of SunRice Orange Associations within Main Brand

Brand Associated with SunRice Orange	Main Brand Uncle Ben's (%) n = 62	SunRice (%) n = 59
Uncle Ben's	50	37
SunRice	10	20
Just Rice	0	0
King Rice	0	2
Diamond Rice Risotto	0	3
Kings Choice	0	2
None	16	22
Not Sure	24	12
Other	0	2
TOTAL	**100**	**100**

X^2= 7.47 (p=0.48)

Regardless of respondents' main brand, the SunRice orange shade was associated with Uncle Ben's. Again, there was not a significant relationship between respondents associations and their main brand; however, the trends may offer interesting insights. Regardless of the shade of orange presented to respondents, orange was associated with Uncle Ben's more than any other brand. Although 50% of Uncle Ben's main brand buyers associated the colour with Uncle Ben's, 40% were unsure or did not know with which brand the SunRice orange shade should be associated. This result may reduce the weight of any inherent orange-Uncle Ben's association.

The SunRice-SunRice orange associations made by SunRice main brand buyers may reflect the use of orange on the package of the SunRice Basmati rice variant; however, this association would be likely to receive little weight as more respondents associated the shade with Uncle Ben's. Although these results indicate that an Uncle Ben's-orange association exists, there is not conclusive evidence of this association as 40% of respondents were not sure or did not make any association at all. Overall, SunRice main brand buyers were more familiar with SunRice orange than respondents who considered Uncle Ben's to be their main brand.

In terms of a trademark application, the evidence that both Uncle Ben's and SunRice main brand buyers were able to link orange with their main brand may prevent either party from gaining trademark rights to orange.

Table 23 contains the results of associations with blue based on main brands. This analysis only includes Uncle Ben's and SunRice main brand buyers as the cell sizes for the other brands were too small to produce meaningful results.

Table 23: Distribution of Blue Associations within Main Brand

Brand Associated with Blue	Main Brand	
	Uncle Ben's (%) n = 114	Sun Rice (%) n = 113
Uncle Ben's	10	5
SunRice	11	31
Just Rice	0	1
King Rice	0	1
Diamond Rice Risotto	3	1
Kings Choice	1	0
None	31	39
Not Sure	39	19
Other	5	3
TOTAL	**100**	**100**

X^2= 25.78 (p=0.001)

Table 23 shows a significant relationship between respondents' main brand and their associations with the blue stimulus. Blue was associated with Uncle Ben's by 10% of the respondents who considered Uncle Ben's to be their main brand and a similar percentage of these respondents associated blue with SunRice. Three percent of respondents who considered Uncle Ben's to be their main brand associated blue with Diamond Rice Risotto. Although blue is present on the packaging of Diamond Rice Risotto, it is not a dominant colour and the blue stimulus presented to respondents was a much lighter shade. The majority of respondents who considered Uncle Ben's to be their main rice brand (70%) did not know which rice brand blue was associated with or did not associate blue with a particular brand of rice.

Only 5% of respondents who considered SunRice to be their main brand of rice associated blue with Uncle Ben's and 31% of these respondents correctly associated blue with SunRice. Almost 60% of SunRice main brand buyers were not sure or did not associate blue with a brand of rice, even though it is a dominant colour on one of the SunRice regular rice variants.

Although a large percentage of both Uncle Ben's and SunRice main brand buyers did not know which brand blue was associated with, overall SunRice main brand buyers were better able to associate blue with SunRice. This was expected, as SunRice main brand buyers should be more familiar with SunRice packaging. In terms of colour trademarks, these results would support the assertion that consumers who use a particular brand are familiar with the colours with which it is associated. However, the percentage of SunRice main brand buyers who associated blue with SunRice was still smaller than the large percentage of respondents who gave 'none' or 'not sure' responses. Overall, these results suggest that an inherent association is not present.

Table 24 contains the results of associations with red in relation to respondents' main brand.

Table 24: Distribution of Red Associations within Main Brand

Brand Associated with Red	Main Brand	
	Uncle Ben's (%) n = 114	SunRice (%) n = 113
Uncle Ben's	2	4
SunRice	5	12
Just Rice	3	1
King Rice	2	1
Diamond Rice Risotto	3	0
Kings Choice	1	0
None	51	59
Not Sure	31	22
Other	2	1
TOTAL	**100**	**100**
		X^2= 19.45 (p=0.013)

Eighty-two percent of Uncle Ben's main brand buyers and 81% of SunRice main brand buyers were not sure or did not associate red with a particular brand of rice. Uncle Ben's main brand buyers who could offer an association associated red with a range of rice brands. Twelve percent of respondents who nominated SunRice as their main brand associated red with SunRice although this is not evidence of an inherent association. Overall, SunRice main brand buyers indicated a stronger SunRice-red association than Uncle Ben's main brand buyers. However, regardless of a respondent's main brand, there were no inherent associations between red and a particular brand of rice.

The final analysis for the colour card method was respondents' associations with green in relation to their main brand. Table 25 contains these results.

Table 25: Distribution of Green Associations within Main Brand

Brand Associated with Green	Main Brand	
	Uncle Ben's (%) n = 114	Sun Rice (%) n = 113
Uncle Ben's	2	0
SunRice	5	16
Just Rice	4	2
King Rice	0	1
Diamond Rice Risotto	2	1
Kings Choice	3	3
None	47	49
Not Sure	36	26
Other	1	2
TOTAL	**100**	**100**

X^2= 14.72 (p=0.065)

The associations with green indicate similar trends to the associations with red. Over 80% of Uncle Ben's main brand buyers were not sure which rice brand green was associated with or did not make any association at all. Respondents who considered Uncle Ben's to be their main brand were expected to be less familiar with SunRice packaging, thus, they were not expected to offer many associations with green. Of those who did make associations, the associations varied and there was no indication that Uncle Ben's main brand buyers

inherently associated green with any particular brand of rice. Sixteen percent of SunRice main brand buyers correctly associated green with SunRice, although 75% of SunRice main brand buyers were not sure or did not associate green with a brand of rice. These results indicate that regardless of respondents' main brand green was not inherently associated with a particular brand of rice. If SunRice were to consider trademarking green for the rice category, these results would not support their case. Even respondents who considered SunRice to be their main brand were unable to clearly associate green with SunRice.

In summary, the colour card method did not elicit inherent rice-brand associations with each of the colours, as a large percentage of respondents gave 'none' or 'not sure' responses. In addition, respondents' main brands did not influence the associations made to such a degree that the associations could be said to be reasonably distinctive.

5.2.2 Rice Funnel Sequence Method

For the funnel sequence method, respondents were asked an increasingly specific sequence of questions, similar to the questions for the chocolate surveys, to elicit their associations with each of the colours. Respondents were shown either the Uncle Ben's orange shade, SunRice orange shade, or a blue shade followed by the brown control card. The sum of the associations with each of the colours is presented in Table 26.

Table 26: Respondents' Rice Brand Associations with Each Colour

	Total % Brand Association with Each Colour				
Brand	**Orange [1] Uncle Ben's**	**Orange [2] SunRice**	**Blue[3]**	**Brown[4]**	**Main Brand**
Uncle Ben's	10	12	*	2	29
SunRice	2	2	2	*	27
Just Rice	0	*	0	0	2
King Rice	0	0	0	*	*
Diamond Rice Risotto	*	0	*	*	5
King's Choice	0	0	0	0	*
None	26	31	44	35	12
Not sure	4	1	1	4	15
Other	58	54	53	59	10
TOTAL	**100**	**100**	**100**	**100**	**100**

[1]= 423 responses from 179 respondents [2]= 384 responses from 177 respondents
[3]= 366 responses from 185 respondents [4]= 1261 responses from 541 respondents
*= Greater that 0 but less than 1

The Uncle Ben's orange shade was associated with Uncle Ben's by 10% of respondents. Two percent of respondents associated the Uncle Ben's orange with SunRice and the colour was not associated with any other brand. Thirty percent of respondents did not associate the Uncle Ben's orange shade with a brand of rice or were not sure which brand it was associated with. The Uncle Ben's orange shade was associated with something other than a brand of rice by 58% of respondents, which suggests there were no inherent rice brand associations with this colour.

The SunRice orange shade was correctly associated with SunRice by only 2% of respondents and 12% of respondents associated the SunRice orange shade with Uncle Ben's. This suggests that respondents were more likely to associate orange with Uncle Ben's than with SunRice. The SunRice orange shade was not substantially associated with any other rice brands. In addition, over 30% of respondents did not associate SunRice orange with anything at all and over 50% of respondents associated the colour with something other than a rice brand. A distinctive association between a specific rice brand and the SunRice orange shade was not evident in these results.

Only 2% of respondents correctly associated blue or brown with a brand of rice. Over 40% of respondents did not associate blue with anything at all, or were not sure with which brand blue or brown was associated. Over 50% of respondents associated each of these colours with something other than a brand of rice. Again, these results clearly indicate that blue is not inherently associated with a particular brand of rice. The lack of any distinctive brown rice brand associations indicated that respondents were not simply guessing their responses. Although Uncle Ben's consistently received the strongest association, there does not appear to be evidence of a double jeopardy effect as the associations were trivial. In addition to this, similar percentages of respondents considered Uncle Ben's and SunRice to be their main brand of rice.

The funnel sequence method results, for the rice category, indicated weaker colour-brand associations than the colour card method. This pattern was also present in the results for the chocolate category. There is more ambiguity in the funnel sequence results, due to the large percentage of other or none responses, than the colour card method, although similar patterns exist. Thus, this method is likely to be criticised for eliciting irrelevant responses and not focussing on the issue of interest. Table 27 contains the rice funnel sequence questioning results with the 'None' and 'Not Sure' responses removed in an attempt to reduce this ambiguity.

Table 27: Respondents' Substantive Associations with Each Colour

	Total % Brand Association with Each Colour			
Brand	**Orange Uncle Ben's n = 297**	**Orange SunRice n = 261**	**Blue n = 201**	**Brown n = 759**
Uncle Ben's	14	17	*	3
SunRice	3	3	4	1
Just Rice	0	*	0	0
King Rice	0	0	0	*
Diamond Rice Risotto	*	0	*	1
King's Choice	0	0	0	0
None	-	-	-	-
Not sure	-	-	-	-
Other	83	80	96	95
TOTAL	**100**	**100**	**100**	**100**

* Less than 1

With the 'none' and 'not sure' responses removed, the colour brand associations are slightly stronger. However, this analysis highlights the fact that the majority of respondents associated something other than a rice brand with each of the colours. Even with the 'none' and 'not sure' responses excluded the funnel sequence method elicits many irrelevant responses and distinctive colour brand associations were not evident.

Funnel Sequence Responses to Individual Questions: Rice Category

This section presents an analysis of the responses to each question in the funnel sequence methodology. The initial question was a widely framed question in which respondents were asked, "do you associate this colour with anything?" The second question directed respondents to associations with food or grocery items, and the final question required respondents to indicate whether they associated the colour with a specific brand of rice. Table 28 shows the results for the Uncle Ben's orange version.

Table 28: Associations with Uncle Ben's Orange

Brand	% Association with Uncle Ben's Orange			
	Orange [1] (Uncle Ben's)	Food or Grocery [2]	Rice Brand [3]	Main Brand
Uncle Ben's	0	0	24	30
SunRice	0	0	6	27
Just Rice	0	0	0	1
King Rice	0	0	0	0
Diamond Rice Risotto	0	0	1	6
King's Choice	0	0	0	0
None	40	36	60	5
Not Sure	0	0	8	18
Other	60	64	1	12
TOTAL	**100**	**100**	**100**	**100**

[1] = 184 responses from 179 individuals [2] = 205 responses from 179 individuals
[3] = 186 responses from 179 individuals

Responses to the first question ranged from oranges to office products and did not elicit any associations with rice brands. Forty percent of respondents did not associate the Uncle Ben's orange shade with anything when asked the widely framed question. Appendix M contains full details of these responses. When asked about food and grocery items, the percentage of respondents who did not make any associations decreased slightly to 36%. However, of those who did make an association responses ranged from pumpkin to burger rings and did not include any associations with brands of rice. When asked specifically about rice brands, 24% of respondents associated the Uncle Ben's orange shade with Uncle Ben's and 6% associated the shade with SunRice. The fact that 60% of respondents did not associate the colour with a particular brand of rice may reduce the weight that an inherent Uncle Ben's-orange association exists; however, there were few associations with any other brands of rice.

Next, respondents' associations with the SunRice orange shade were examined. Table 29 contains the results of this analysis.

Table 29: Associations with SunRice Orange

Brand	% Association with Sun Rice Orange			
	Orange [1] (SunRice)	Food or Grocery [2]	Rice Brand [3]	Main Brand
Uncle Ben's	0	0	25	24
SunRice	0	0	4	28
Just Rice	0	0	1	2
King Rice	0	0	0	0
Diamond Rice Risotto	0	0	0	3
King's Choice	0	0	0	0
None	47	43	67	24
Not Sure	0	0	2	10
Other	53	57	1	9
TOTAL	**100**	**100**	**100**	**100**

[1] = 180 responses from 177 individuals [2] = 195 responses from 177 individuals
[3] = 177 responses from 177 individuals

Again, the widely framed question did not elicit any rice brand associations; responses ranged from oranges to furnishings. The results for the SunRice orange shade parallel the findings in Table 23. The fact that the SunRice orange shade was associated with Uncle Ben's and not with SunRice, suggests that respondents have associated orange with Uncle Ben's more than with SunRice or any other rice brand. This may reduce SunRice's claim to this colour. However, the results may also reflect the fact that SunRice use a range of colours on the packaging of the different SunRice product variants while Uncle Ben's predominately use orange.

The next version of the funnel sequence method examined associations with blue. These results are shown in Table 30.

Table 30: Associations with Blue

	% Association with Blue			
Brand	**Blue** [1]	**Food or Grocery** [2]	**Rice Brand** [3]	**Main Brand**
Uncle Ben's	0	0	1	30
SunRice	0	0	4	25
Just Rice	0	0	0	2
King Rice	0	0	0	1
Diamond Rice Risotto	0	0	1	7
King's Choice	0	0	0	1
None	28	79	87	8
Not Sure	0	0	2	16
Other	72	21	5	10
TOTAL	**100**	**100**	**100**	**100**

[1] = 198 responses from 185 individuals [2] = 187 responses from 185 individuals
[3] = 185 responses from 185 individuals

Blue is the dominant colour on the package of SunRice long grain white rice. Again, responses to the widely framed question varied; respondents' associations with blue ranged from laundry powder to politics and did not include any rice brands. Appendix M contains full details of these responses. As the questions became increasingly specific, the percentage of respondents who did not associate blue with anything also increased. Overall, an inherent blue-rice brand association was not present. There is, therefore, no evidence to support a case for the registration of blue as a trademark in relation to the rice category.

Respondents to each of the three versions of the survey (Uncle Ben's orange, SunRice orange, and blue) were also shown a brown control stimulus. Table 31 contains the responses to this stimulus.

Table 31: Associations with Brown

	% Association with Brown		
Brand	**Brown** [1]	**Food or Grocery** [2]	**Rice Brand** [3]
Uncle Ben's	0	0	3
SunRice	0	0	2
Just Rice	0	0	0
King Rice	0	0	1
Diamond Rice Risotto	0	0	2
King's Choice	0	0	0
None	36	41	81
Not Sure	0	0	10
Other	64	59	1
TOTAL	**100**	**100**	**100**

[1] = 562 responses from 541 individuals [2] = 606 responses from 541 individuals
[3] = 543 responses from 541 individuals

Responses to the widely framed question ranged from chocolate to mud. Respondents did not associate the brown stimulus with a particular brand of rice and 36% of respondents did not associate brown with anything. Appendix M contains full details of these responses. In relation to food and grocery items, 41% of respondents did not make any association with the brown stimulus and respondents did not offer any associations with brands of rice. When asked specifically about brands of rice, 81% of respondents did not make any association. The associations with brown varied and no particular rice brand was associated with brown by more than 3% of respondents. The percentage of respondents who nominated a 'none' response increased as the questions became more specific. This implies that no inherent rice brand associations were present. The overall lack of rice brand associations with the brown control also indicates that respondents did not guess their responses and were willing to indicate when they were unable to make an association. In addition, these results parallel the findings of the colour card method.

Overall, the funnel sequence method elicited very few associations between the colours presented to respondents and a specific rice brand. As the questions became increasingly specific the percentage of 'None' responses increased.

These results suggest that the colours presented to respondents have not acquired secondary meaning in the rice category.

Funnel Sequence Method: Rice Colour Brand Associations and Respondents' Main Brands

Respondents' associations with each of the colours in relation to specific brands of rice (i.e., question three of the funnel sequence) were analysed to determine whether respondents' main brand influenced the associations they made. Uncle Ben's and SunRice main brand buyers were the only brands included in this analysis. The cell sizes for the other brands were not large enough to offer meaningful results. Table 32 contains the results of respondents' associations with the Uncle Ben's orange shade according to their main brands.

Table 32: Distribution of Association within Main Brand (Uncle Ben's Orange)

	Main Brand	
Brand Associated with Uncle Ben's Orange	**Uncle Ben's (%) n = 55**	**Sun Rice (%) n = 49**
Uncle Ben's	42	16
SunRice	4	11
Just Rice	0	0
King Rice	0	0
Diamond Rice Risotto	0	0
Kings Choice	0	0
None	47	63
Not Sure	7	8
Other	0	2
TOTAL	**100**	**100**

X^2= 17.29 (p=0.04)

Table 32 shows a significant relationship between respondents' associations with the Uncle Ben's orange shade and their main brand. Forty two percent of respondents who considered Uncle Ben's to be their main brand correctly associated the Uncle Ben's orange shade with Uncle Ben's. Only 4 % of Uncle Ben's main brand buyers associated SunRice with the Uncle Ben's orange shade.

The remainder of respondents who considered Uncle Ben's to be their main brand were not sure which brand to associate the shade with, or did not associate the colour with a particular brand of rice. Due to the fact that a large percentage of these respondents answered 'none' or 'not sure' there is no conclusive evidence of an inherent association, however, there is evidence that those who consider Uncle Ben's to be their main brand are able to associate the brand with the correct colour. As the cell sizes were not large robust conclusions cannot be drawn even, however, the results do indicate the general trends.

Respondents who considered SunRice to be their main brand were less able to associate the Uncle Ben's orange shade with Uncle Ben's. Over 70% of SunRice main brand buyers were not sure or did not associate the colour with any particular rice brand. The association with SunRice by SunRice main brand buyers was greater than the association made by Uncle Ben's main brand buyers. This may indicate that respondents were able to indicate that a similar shade of orange is used on the packaging of the Basmati SunRice variant. As expected, Uncle Ben's main brand buyers were better able to associate the colour with the correct brand. Although 47% of Uncle Ben's main brand buyers associated the shade with Uncle Ben's an inherent association may not be present because over 50% of respondents did not associate the shade with a brand of rice or were not sure which brand to associate it with. Regardless of respondents' main brand, respondents were unable to offer inherent colour brand associations.

Table 33 contains the results of respondents' associations with the SunRice orange shade based on their main brand. A significant relationship was evident in respondents' associations with the SunRice orange shade and respondents main brand.

Table 33: Distribution of Association within Main Brand (SunRice Orange)

Brand Associated with SunRice Orange	Main Brand Uncle Ben's (%) n = 43	SunRice (%) n = 51
Uncle Ben's	37	19
SunRice	3	8
Just Rice	0	2
King Rice	0	0
Diamond Rice Risotto	0	0
Kings Choice	0	0
None	60	65
Not Sure	0	4
Other	0	2
TOTAL	**100**	**100**

X^2= 10.83 (p=0.05)

The results in Table 33 show a similar pattern to the results in Table 32 for the Uncle Bens orange. Uncle Ben's main brand buyers associated orange with Uncle Ben's and were unable to differentiate between similar shades of orange. This is highlighted further by the fact that only 3% of Uncle Ben's main brand buyers associated the SunRice orange shade with SunRice. Nineteen percent of SunRice main brand buyers associated the SunRice orange shade with Uncle Ben's and only 8% associated the SunRice orange shade with SunRice. Again, this indicates that regardless of respondents' main brand Uncle Ben's is most strongly associated with orange. However, there is no indication of any inherent colour-brand associations as a large percentage of respondents did not make any associations between the colour and a particular brand of rice, or were not sure which association to make.

The final analysis for the rice funnel sequence method was respondents' associations with blue based on their main brand. These results are presented in Table 34.

Table 34: Distribution of Association within Main Brand (Blue)

Brand Associated with Blue	Main Brand Uncle Ben's (%) n = 58	 Sun Rice (%) n = 48
Uncle Ben's	2	0
SunRice	7	6
Just Rice	0	0
King Rice	0	0
Diamond Rice Risotto	2	0
Kings Choice	0	0
None	82	88
Not Sure	2	2
Other	5	4
TOTAL	**100**	**100**

X^2= 6.86 (p=0.24)

The rice brand associations with blue by respondents who considered their main brand to be Uncle Ben's varied and 82% of these respondents did not associate blue with any particular brand of rice. A similar pattern was present for the respondents who considered SunRice to be their main brand. Of the respondents who considered SunRice to be their main brand, 88% did not make any association between blue and a particular brand of rice and only 6% correctly associated SunRice with blue. However, SunRice main brand buyers did not associate blue with any other brand. These results clearly indicate that regardless of respondents' main brands there is no inherent association between a particular rice brand and blue. In addition, few respondents who considered SunRice to be their main brand correctly associated this colour with SunRice and there was not a significant difference between respondents, main brand and their associations with blue.

Overall, the respondents who were administered the funnel sequence survey did not make inherent associations between the rice brands and their corresponding colours. In addition, respondents' main brand was not a strong factor in the associations elicited. The results elicited in the funnel sequence method are similar to the colour card method; however, the levels of association are slightly lower for the funnel sequence method. This trend was also evident is the chocolate category.

5.2.3 Rice Colour Wheel Method

Two versions of the colour wheel method were developed for the rice category. For the first version, respondents were shown a card with only the rice brand name along with the colour wheel. Respondents were asked to indicate which colour or colours on the colour wheel they associated with each of the four brands presented to them. The four brands included SunRice, Uncle Ben's, Just Rice, and Success Rice the control brand. The results of the brand name only version of the rice colour wheel survey are presented in Table 35.

Table 35: Rice Brand and Colour Wheel Associations (Brand Name)

Colour	% Association with Each Brand			
	Uncle Ben's[1]	SunRice[2]	Just Rice[3]	Success Rice[4]
1 Orange (Uncle Ben's)	17	9	3	2
2 Orange/Brown	5	3	3	2
3 Brown	6	3	2	1
4 Brown/Black	1	1	1	0
5 Charcoal	2	*	1	*
6 Forest Green	1	1	0	0
7 Green (SunRice)	2	4	1	1
8 Light Green	3	3	6	*
9 Sea Green	0	1	1	2
10 Pale Blue	3	7	3	*
11 Blue (SunRice)	7	4	3	1
12 Blue/Purple	1	*	1	*
13 Mauve	0	*	*	2
14 Burgundy	*	1	1	1
15 Crimson	0	1	2	2
16 Light Red	1	1	1	2
17 Red (SunRice)	8	16	5	4
18 Red/Orange	4	1	1	0
19 Orange	24	16	1	2
Yellow	2	10	1	1
White	1	*	0	0
Clear	*	0	0	0
Don't Know	12	18	63	77
TOTAL	100	100	100	100

[1] = 281 Responses from 200 individuals [2] = 290 Responses from 200 individuals
[3] = 222 Responses from 200 individuals [4] = 213 Responses from 200 individuals
* Greater than 0 but less than 1

Almost 50% of respondents associated the Uncle Ben's brand name with a shade of orange. However, respondents were not able to identify the correct shade so

well. In a colour trademark case, these results may raise the shade confusion argument. Only 12% of respondents did not know which colour to associate with the Uncle Ben's brand and most other colours associated with Uncle Ben's were nominated by fewer than 8 % of respondents. Although 50% of respondents associated Uncle Ben's with an orange shade, the fact that most other shades were also nominated suggests that an inherent association is not present.

A range of colours is used on the packaging of the different variants of SunRice rice. The results indicated that respondents associated the SunRice brand with all of the colours on the colour wheel and respondents also nominated colours that were not on the wheel. Ten percent of respondents associated SunRice with yellow, a colour not included on the colour wheel. Although yellow is not a dominant colour on the packaging of any of the SunRice variants it is present on the SunRice logo. Respondents were not able to clearly identify the specific shades associated with SunRice. However, 16% of respondents associated the correct shade of red with SunRice. Although orange is not present on the packaging of any of the SunRice regular rices, but is dominant on the packaging of SunRice Basmati rice, the various shades of orange on the colour wheel were associated with SunRice by 39% of respondents. The results may indicate that respondents identified that SunRice was associated with a range of colours. However, the fact that these colours were not distinctively associated with SunRice suggests that respondents' associations were random.

Just Rice, the less known rice brand, was not associated with any colour by 63% of respondents and the colour associations with Just Rice varied in an apparently random manner. Respondents did not appear to be much more familiar with the colours associated with Just Rice than Success Rice, the control brand. Seventy-seven percent of respondents did not associate Success Rice, the control brand, with any colour at all. The colour associations with Success Rice varied, with no more than 4% of respondents associating Success Rice with one shade in particular. Almost all of the colours were associated with Success Rice, again, in an apparently random manner. As with the other methodologies this suggests that, most respondents were willing to indicate when they were unable to make an association. Each of the test brands was associated with colours that are not

dominant on their packaging. For the three brands tested respondents were most able to associate the correct range of colours with Uncle Ben's. In summary, the orange shades were associated with rice brands, although respondents were less able to discriminate between the shades of orange used.

Table 36 contains the results of the second version of the rice colour wheel surveys. For this version, respondents were shown a card that included the rice brand name and its corresponding logo (in black and white), along with the colour wheel presented for version 1.

Table 36: Rice Brand and Colour Wheel Associations (Version 2)

	% Association with Each Brand			
	Uncle Ben's[1]	**SunRice[2]**	**Just Rice[3]**	**Success Rice[4]**
1 Orange (Uncle Ben's)	10	6	2	2
2 Orange/Brown	5	2	1	2
3 Brown	4	2	4	*
4 Brown/Black	1	*	0	*
5 Charcoal	7	2	2	0
6 Forest Green	1	0	0	*
7 Green (SunRice)	1	2	2	3
8 Light Green	2	4	5	6
9 Sea Green	*	*	1	1
10 Pale Blue	1	4	2	*
11 Blue (SunRice)	7	3	5	1
12 Blue/Purple	2	*	2	1
13 Mauve	1	2	1	1
14 Burgundy	0	2	0	1
15 Crimson	*	2	2	2
16 Light Red	1	0	1	1
17 Red (SunRice)	9	17	3	4
18 Red/Orange	2	2	1	0
19 Orange	31	24	3	1
Yellow	3	13	2	2
White	*	*	0	*
Clear	0	0	*	*
Don't Know	12	13	61	72
TOTAL	100	100	100	100

[1] = 264 Responses from 200 individuals [2] = 283 Responses from 200 individuals
[3] = 217 Responses from 200 individuals [4] = 214 Responses from 200 individuals
* Greater than 0 but less than 1

The results for the brand name and logo version indicate similar patterns to the brand name only version of the colour wheel survey. This suggests that including

the brand logo as well as the brand name does not assist respondents in making associations anymore than simply presenting them with the brand name.

Almost 50% of respondents associated Uncle Ben's with a shade of orange, a similar result to the brand name only version. However, only 10% of respondents associated the correct shade of orange with Uncle Ben's. Respondents' associations with the other colours varied and only 12% of respondents indicated they did not know with which colour Uncle Ben's was associated.

Over one third of respondents associated SunRice with an orange shade. The correct shade of red was associated with SunRice by 17% of respondents and the remaining associations varied. Thirteen percent of respondents associated SunRice with yellow, a colour not on the wheel. This implies that the colour wheel may have not accounted for all feasible colour associations and is a limitation of this method and highlights the fact that more extensive pre-testing of the colour wheel was required. An interesting point to consider is that respondents may have associated yellow with SunRice because the brand includes the name 'sun' rather than the use of yellow on the SunRice logo.

Again, a large percentage of respondents, 61%, did not know which colour was associated with the less known Just Rice brand. Respondents' associations varied with no particular shade being associated with Just Rice. Seventy two percent of respondents did not know which colour was associated with Success Rice, the control brand. Associations with Success Rice varied and almost all of the colours were associated with Success Rice. Again, this suggests that only a small percentage of respondents based their associations on guesses and respondents who did guess did not show bias towards any particular colour.

Overall, the results for both versions of the colour wheel method indicated that inherent colour brand associations are not present in the rice category. These results parallel the results produced by the other methodologies tested. However, respondents were less likely to indicate that they did not know what colour was associated with each brand when presented with a range of colours, compared with the other methods.

5.2.4 Rice Choice Modelling

As in the chocolate choice modelling methodology, respondents viewed a set of eight showcards. Each card contained four options. Respondents were asked to indicate which option they would choose if there were in a store to purchase a packet of rice. Each of the four options depicted a different rice brand and colour combination. Appendix J contains the 16 showcards. The showcards were presented to respondents in sets of eight to reduce respondent fatigue and to allow respondents time to reflect on the images presented to them. Appendix J also contains the choice modelling surveys. Question 1 of each of the surveys indicates the showcards contained in each set.

The data from this experiment were entered into a multinomial logit model to assess the main effects of the colours and brands tested. Success Rice and brown were set to zero in the analysis. Therefore, each of the estimates is relative to these controls. The results of the main effects model are presented in Table 37.

Table 37: Rice Choice Modelling Main Effects

Variable N = 499	Parameter Estimate	Chi-Square	P-Value
Uncle Ben's	1.24	557.65	<.0001
SunRice	1.10	420.29	<.0001
Just Rice	-0.04	0.42	0.5157
Success Rice	0	0	0
Red	0.92	376.92	<.0001
Blue	0.83	294.62	<.0001
Orange	0.58	114.69	<.0001
Brown	0	0	<.0001

The main effects for Uncle Ben's and SunRice were significant. In addition, Uncle Ben's and SunRice were both more attractive than Success Rice, the control. The co-efficient for Just Rice was negative. This implies that Just Rice was less attractive than the control. In addition, the main effect for Just Rice is insignificant in this model. This finding parallels the findings for the other methodologies, which suggested that respondents were unfamiliar with the Just Rice brand. The results of the other methodologies indicated that the associations

with Just Rice were in an apparently random manner and the few associations elicited were no greater than the associations with Success Rice.

The co-efficients for each of the colours were positive. This indicates that the colours tested were all more attractive than the control. As the orange co-efficient was the smallest, this result would be of concern in a trademark mark case. Orange is expected to be associated with Uncle Ben's, the most attractive brand, however, orange was the least attractive test colour. The range in the co-efficients for the colours is small. Although red and blue are more attractive than orange, there may not be a large difference in the attractiveness of each of the colours relative to the control. This suggests that none of the colours tested were substantially strong in the rice category.

A second model was developed to establish the interaction effects between the colours and brands tested. As Just Rice was insignificant in the main effects model it was not included in the interaction effects model. The interaction effects for each of the colours and brands tested in the rice category are presented in Table 38. Again, the results indicate the attractiveness of each of the brands and colours in relation to the control brand and colour.

Table 38: Rice Colour – Brand Main and Interaction Effects

Variable N = 499	Parameter Estimate	Chi-Square	P - Value
Uncle Ben's	1.23	156.85	<.0001
Sun Rice	0.97	87.14	<.0001
Success Rice	0	0	0
Red	0.90	86.67	<.0001
Blue	0.89	84.99	<.0001
Orange	0.09	0.56	0.4530
Brown	0	0	0
Uncle Ben's - Orange	0.70	23.10	<.0001
SunRice - Orange	0.45	8.47	0.0036
SunRice - Blue	0.15	1.36	0.2433
SunRice - Red	0.10	0.63	0.4259
Uncle Ben's - Red	-0.01	0.01	0.9254
Uncle Ben's - Blue	-0.29	5.49	0.0191

Success Rice and brown, the control colour and brand for the rice category, were set to zero in the analysis to provide a base against which the relative attractiveness of the other colours and brands was assessed. This enabled an estimation of whether each of the colours, brands and colour-brand interactions was more or less attractive than the control. The positive co-efficients for each of the main effects indicated that each of the brands and colours were more attractive than the control. The main effects for Uncle Ben's and SunRice were highly significant. Uncle Ben's was the most preferred brand, however, the co-efficients for each of the brands were small. This indicates that there may not be a dominant brand in the rice category.

For the colours, the main effects for red and blue indicated that these two colours were similarly attractive. The co-efficient for orange was very small. This implies that orange was not much more attractive than the brown control. In addition, the main effect for orange was insignificant in this model.

Although orange had a small insignificant main effect, when combined with Uncle Ben's this combination had the largest interaction effect. This indicates that orange is more attractive when combined with an attractive brand. In addition, the second largest interaction effect was for the SunRice-orange combination. Although orange is not an attractive colour alone it is linked with brands within the rice category. Blue and red were the most attractive colours alone when but when combined with SunRice the interactions were insignificant. In addition, the Uncle Ben's-red interaction was highly insignificant. This indicates that an inherent red-Uncle Ben's association is not present. This is an important point to note, considering that both red and Uncle Ben's had the largest main effects. The Uncle Ben's-blue interaction was less attractive than the control and was also insignificant at the 0.01 level. As the co-efficients for the significant brand-colour interactions are small, in relation to the control, inherent colour-brand associations are not evident in the rice category. Overall, these results suggest that there are attractive brands and colours within the rice category but respondents were not able to identify distinctive associations between the colours and rice brands.

The estimates from the model presented in Table 38 were used to calculate utilities for each of the colour-brand interactions. For the purpose of evidence to support colour trademark applications, the important information is the relative utilities of the various colour-brand combinations. The utilities were calculated by adding the main effects and interaction effect for each of the combinations. The utilities for each of the colour-brand combinations indicate the attractiveness of the combination in relation to the control, Success Rice-brown. Table 39 contains the utilities for each of the rice brand-colour combinations.

Table 39: Rice Choice Modelling Utilities

Variable N = 499	Brand – Colour Utilities		
	Uncle Ben's	SunRice	Success Rice
Brand – Orange Interaction	**2.02**	**1.51**	**0.09**
Brand – Blue Interaction	**1.83**	**2.01**	**0.89**
Brand – Red Interaction	**1.31**	**1.97**	**0.90**
Brand – Brown Interaction	**1.23**	**0.97**	**0**

Each of the brand-colour combinations were more attractive than the control; this is indicated by the fact that all of the utilities are positive. Orange's utility was highest when combined with Uncle Ben's. Although, orange was not an attractive colour alone, this results indicates that an association is present between orange and Uncle Ben's. However, the association is likely to be a result of the brand effect rather than the colour effect. Orange was also attractive when combined with SunRice. The fact that more than one brand is associated with orange may limit the usefulness of this evidence in establishing a distinctive Uncle Ben's-orange association. In addition, the sizes of the orange-brand utilities are similar when compared to the control; this implies that the Uncle Ben's and SunRice combinations with orange may be similarly attractive. The results also indicate that respondents may have correctly indicated that orange is present on the packages of both Uncle Ben's and SunRice. Overall, orange is not inherently associated with one brand in particular.

Blue was most attractive when combined with SunRice. Blue is the dominant colour on the package of the SunRice long grain white rice variant and these

results suggest that respondents may have identified this. However, the presence of a distinctive blue-SunRice association is less evident. The blue-Uncle Ben's utility indicates that this combination was only slightly less attractive than the blue-SunRice combination. Although blue is present on the Uncle Ben's logo it is a much less dominant colour than orange. The results suggest the blue-Uncle Ben's and blue-SunRice combinations are similarly attractive, therefore the weight the judiciary would place on a blue-SunRice association in a trademark case may be limited.

Red was also most attractive when combined with SunRice. The difference in the utilities between the red-SunRice and the red-Uncle Ben's combinations compared with the blue-SunRice and blue-Uncle Ben's combinations indicates that the red-SunRice association is more distinctive that the blue-SunRice combination. The fact that more than one colour is linked with SunRice may also indicate that respondents have correctly identified that different colours are used on the packaging of the different SunRice variants.

The brown-brand combinations were all less attractive than the combinations for the real colours. Brown was almost equally attractive when combined with SunRice and the utilities for the brown combinations were smaller than for the other colours indicating that distinctive associations were not present. Although the brown-Uncle Ben's combination was the most attractive brown combination a dominant brand effect is not evident.

Overall, the results of the choice modelling methodology for the rice brands indicate similar patterns to the results for the other methodologies. However, there is less range in the utilities for the rice category compared with the chocolate category. This suggests that the level of colour-brand associations in the rice category were less distinctive than in the chocolate category.

General Discussion

In summary, the fact that so few respondents were able to make colour associations with rice brands indicated that inherent colour brand associations

were not present. The results also indicated that respondents' level of knowledge of colour associations differed between the product categories tested. Such differences in colour-brand associations for different product categories could be attributed to various causes. For instance, purchase frequency and in-store visibility are factors that may influence consumers' ability to associate specific colours and brands.

If a product has a low purchase frequency consumers may be less likely to be aware of colour-brand associations with the product. In contrast, if the product were purchased frequently consumers would be more likely to be familiar with the products packaging, branding, and associated colours as it is continually reinforced in their minds. In-store visibility is an important factor in recognition of a brand. In terms of the chocolate and rice categories, chocolate is more likely to be placed on end of isle displays or at service desks, therefore, it would have greater visibility than rice. The level of involvement in a purchase decision may also influence the degree of information that is processed and consequently influence the associations consumers make. For example, consumers' involvement in a chocolate purchase decision may be higher than the level of involvement when purchasing rice and this may explain why respondents were able to make stronger associations between chocolate brands and colours than rice brands and their corresponding colours. In addition, the level of advertising for a brand or product may also influence product awareness. Thus, consumers' ability to associate colours with particular brands in a product category is also likely to be influenced by advertising.

CHAPTER SIX: CONCLUSIONS AND IMPLICATIONS

6.1 Conclusions

This research examined a number of objectives and set out to assess the level of association between colours and brands in an effort to explore and develop robust measures for estimating colour-brand associations. The use of survey evidence to support trademark applications, particularly colour trademarks, has been debated. This study examined how survey research could be used to establish whether a colour has developed secondary meaning. Four different approaches were tested to determine whether such associations were present in two different product categories, the chocolate block category and the rice category. This section outlines the main conclusions drawn from the research.

The first objective was to adapt trademark survey methods for use in colour trademark cases, and focus on the development of a robust survey methodology in light of the criticisms often levelled at survey methodologies. Different survey methods were successfully developed and tested to account for the various criticisms. The funnel sequence method addressed the issue of leading questions by employing a sequence of increasingly specific questions. The problem of coding multiple responses, which may or may not be similar, was addressed with the colour wheel in the colour wheel method. Finally, the choice modelling method addressed the criticism of a lack of behavioural evidence and allowed for the effects of colours and brands to be assessed separately.

In terms of the robustness of each of the methodologies, the research findings suggest that the methods have strong convergent validity where the level of association detected is high. Therefore, if a strong colour-brand association is present it does not matter which method is employed to detect the association. This pattern was evident in the chocolate block category. In the rice category where the level of association was lower, there was more variation in the results between each of the methodologies. Where a lower level of distinctiveness exists, the funnel sequence method generally produced lower levels of

association and higher levels of uncertainty than the other methods. Of the remaining methods, the colour card method generally produced higher levels of association, but it also introduced more noise in the form of associations with other brands. The effectiveness of the colour wheel method clearly depends on the colours used in the wheel and the similarity of surrounding shades. The colour wheel experiment required respondents to differentiate between similar shades, and the level of differentiation required could be a point of dispute between opposing sides. In addition, respondents were less likely to indicate they did not know what colour was associated with a particular brand when presented with the colour wheel, and the range of colours provided may be more likely to promote guessing behaviour.

For the choice modelling methodology, where the level of distinctive association is low, the range in the utilities is small; therefore, the relative attractiveness of each of the colour-brand combinations seemed similar. Although there may be strong brands or colours within the category, if the range of utilities is small, inherent colour-brand associations were less evident. As the choice modelling methodology has a behavioural focus, in that examined the effect of colour and brand on purchase choice, and the estimates elicited were comparable to the other methodologies, it could be concluded that it is a more robust measure, as it is less prone to guessing and closer to a real purchase situation. In addition, the choice modelling method is a practical approach of providing behavioural evidence and addresses the criticisms about the lack of behavioural evidence adduced in trademark cases.

The second objective was to assess the extent to which colours signify specific brands and the third objective involved determining whether specific factors might reduce the weight given to the associations and survey evidence for each of the measures.

The results of each of the survey methods indicated that the colour purple is strongly associated with Cadbury. However, none of the tests produced entirely unambiguous results. For the rice category, each of the methods indicated that both Uncle Ben's and SunRice were associated with orange, however, the

predicted associations with the rice brands were not as strong as for the chocolate category and did not indicate inherent colour-brand associations were present.

The funnel sequence method resulted in the highest level of undecided responses, which may be used to undermine the strength of the brand-colour associations that were detected. The widely framed and food/grocery level questions elicited very few specific brand-colour associations for each of the chocolate and rice categories. The third question, which directed respondents to consider a specific product category, revealed slightly lower levels of association than for the colour card method. If the results of this method were presented in a colour trademark case, due to the nature of the questioning, many irrelevant responses were elicited and these could be used by opposing counsel to indicate the lack of a distinctive brand-colour relationship or reduce the weight placed on any colour-brand associations.

Predictably, the use of the coloured cards and a specific question reduced the proportion of undecided responses, but increased the level of association with other brands. For the chocolate category, the associations with other brands were not at levels that would undermine the association between Cadbury and purple. However, where the colour-brand association was less distinctive, the higher level of noise that resulted from this method could be used by opposing counsel to undermine the proposed link. This was evident in the rice category although the level of association between brands and colours was not strong enough to indicate inherent associations.

The colour wheel was deliberately designed to provide a strong test of respondents' ability to associate a brand not simply with a colour, but a specific shade. While the level of colour association with each of the chocolate brands was around the same as that detected in the other experiments, respondents were not as skilled at selecting the specific shade that should be associated with each brand, and this also may be used by opposing counsel to resurrect the shade confusion argument. For the rice experiments, a similar trend was evident; again, associations with rice brands did not indicate inherent colour-brand associations. The associations with the rice brand name and corresponding logo suggested that

respondents' ability to make associations did not depend on the presence of the brand logo, an argument raised in the Uncle Ben's hearing. Clearly, the colours used in the colour wheel are critical. For the rice surveys, a small percentage of respondents associated colours not on the colour wheel with the test brands. Therefore, more extensive pre-testing of the colour wheel was required. However, the use of the colour wheel approach would allow colours to be determined in advance, and could reduce methodological disputes over the shades used. In a trademark case, associations with more than one shade may undermine any colour-brand associations elicited by this method.

The choice modelling methodology focused on respondents' behaviour and could be considered to approximate a real purchase situation more closely than the other methods, although it still only simulated behaviour. The attractiveness of each of the colour-brand combinations was similar to the level of association detected by the other methodologies. The correct chocolate colour-brand combinations were the most attractive, however, the results also revealed that other combinations were attractive, for example the Cadbury-gold combination.

Again, the fact that incorrect colour-brand combinations in the choice modelling method were nearly as attractive as the allegedly distinctive association could be used as evidence that inherent associations were not present. The range in the utilities was much smaller in the rice category. This indicated that the rice brand-colour associations were less distinctive. The Just Rice brand was less well known in the other methodologies and the results of the choice modelling method indicated that the effect of Just Rice was insignificant. These findings also suggest that there is strong convergent validity between the methods tested.

Responses to the control colours and brands indicated that respondents were not simply guessing their responses. Few respondents made associations with the control colour or brand for both the chocolate and rice categories and where respondents did make associations with the controls there was no evidence of bias towards a particular brand or colour.

Generally, the strength of the colour-brand associations did not differ in relation to respondents' main brand. However, particularly in relation to the chocolate category, respondents who considered a brand to be their main brand indicated slightly stronger associations with the colour corresponding to their main brand. For example, respondents who considered Cadbury to be their main brand indicated slightly stronger associations with purple than other main brand buyers. The fact that respondents who considered another brand to be their main brand also distinctively associated Cadbury and purple indicated that the slightly lower associations by non-Cadbury main band buyers do not undermine the results.

Finally, there was some evidence that colour-brand associations varied by product category; colours may be used in a functional sense to denote brand variants or in a trademark sense to denote the source of a brand. In the chocolate category, purple denotes the Cadbury brand in contrast to the rice category where orange denotes Uncle Ben's and the various colours tested denote different variants of SunRice. Respondents' associations were stronger in the chocolate category where a single colour was dominant than in the rice category where a range of colours denote different variants of the same brand. Overall, the results of this study indicated that colour-brand associations with chocolate brands were stronger than the colour-brand associations detected in the rice category. This may indicate that factors such as purchase frequency, in-store visibility, level of advertising and the level of involvement in a purchase decision influence colour-brand associations. However, further research is necessary to explore the role played by these other variables, and the extent to which they interact with respondents' brand-colour associations.

6.2 Implications

There are a number of implications that arise from the findings of this research.

Survey Research

From a general point of view, the study showed that survey research could be used to measure secondary meaning (colour-brand associations). The surveys focused on both brand-colour and colour-brand associations which verified the presence or lack of any colour-brand associations. Although the results of each of the surveys assisted in the conformation or rejection of a colour-brand association, each of the methodologies resulted in slightly different levels of colour-brand association. This variation in results may influence the weight given to survey evidence, thus it is important to employ a survey methodology that does not provide irrelevant and ambiguous results.

Aside from the funnel sequence method, which has been adduced and accepted in court, the real test of the other methods is the weight the court attaches to them. The choice modelling method is likely to have the most weight attached to it, as it does not imply colour-brand associations exist, it simulates actual purchase behaviour and the relative utility of the colour-brand combinations is quantifiable. Although survey research is capable of identifying colour-brand associations, as the number of colour trademark applications increase, the acceptability of alternative survey methodologies will become more apparent and will be able to guide further research in this field.

Registration of Colours

The first area relates to Cadbury's application to trademark purple in relation to the chocolate/confectionary product category. The results of this study suggest that purple has acquired secondary meaning in relation to Cadbury in the chocolate block product category. No other association was stronger than the Cadbury-purple association and the results indicated that respondents were also aware of Cadbury's use of red and gold on their packaging. These results indicate

a strong case for purple to be accepted as a registered trademark of Cadbury. In mid-November 2004, the courts accepted Cadbury's application to register the colour purple as a trademark in New Zealand. The results of the surveys from which this study was replicated and extended (Hoek et. al, 2003) were presented as evidence of a strong purple-Cadbury association. In addition, the surveys were considered central to the applicant's case in establishing the substantial factual distinctiveness of the applicant's mark.

In contrast, the results for the rice category indicated that Uncle Ben's is not inherently associated with orange and hence, there is not a strong case for orange to be eligible as a trademark of Uncle Ben's in the rice category; this also supports the finding of the Uncle Ben's case. Although there was no evidence of inherent colour-brand associations in the rice category, the results of this study imply that there are strong brands and colours in the rice category, but that these function in a generic rather than distinctive manner.

This research evidence supports the case for the registration of colours as trademarks, (in that it supports the case that associations exist). However, it also raises issues in terms of the regulation and use of a trademarked colour. Guidelines are required in terms of how close a shade a competitor could use before trademark infringement occurred. For example, respondents associated shades of purple either side of the true Cadbury purple with Cadbury. Further to this, allowing the registration of colours as trademarks may increase the occurrence of trademark infringement cases.

6.3 Limitations

This section outlines limitations with the survey methods employed as well as some general limitations with the study.

This colour wheel method was limited by the range of colours presented on the colour wheel. This was especially a problem in the rice category experiment. Respondents indicated that they associated colours not on the colour wheel with some of the rice brands. This implies that not all feasible colours were presented

to respondents. The 19 shades included on the rice colour wheel were considered to represent all the colours that respondents might nominate. Once this problem was realised the interviewers were instructed to record the colours nominated which were not on the colour wheel. This limitation is an excellent example of one of the issues that can occur in survey design and implies that more extensive pre-testing was required.

The choice modelling method is recommended as a more robust methodology; however, there are limitations with this method. Although utilities can be calculated to determine the relative attractiveness of each of the colour-brand combinations the choice modelling method does not quantify the level of the colour-brand associations in the same was as the other methodologies. Another limitation of the methodology is that a large number of colour-brand combinations are required to assess the main effects and interaction effect for each of the colours and brands. However, a fractional factorial design can be used to reduce the number of combinations each respondent is required to view. A further limitation of this method is that the development of the choice experiments and showcards involved considerable time and cost. In terms of the usefulness of evidence in court, the choice modelling method is complex to use and interpret. Thus, this limitation may reduce the acceptability of evidence based on choice modelling methodologies.

The art of colour replication is also a limitation of this research. Although the graphic designer matched the colours with the product packaging as closely as possible, it is difficult to get an exact colour match. For example, replicating the metallic gold of the Whittaker's packaging was a major challenge. Hence, the gold tested may not have accurately represented the gold associated with Whittaker's. The packaging material for the products also differed to the card on which the colours were printed.

Although the showcards used in this study were carefully designed to approximate normal packaging within the test categories, a further limitation is that the testing conditions for each of the methodologies were artificial. In addition, the choice modelling methodology simulated a real purchase situation.

It is possible that respondents may have given more attention to the stimulus material then they would in a normal purchase situation and this may have led to overestimation of their colour-brand associations.

Another concern was that although sufficient sample sizes were achieved the cell sizes for some of the sub-groups of the samples were too small to carry out meaningful analysis. When analysis was carried out on respondents' main brands this was evident and a few of the smaller brands had to be omitted from the analysis. This implies that larger sample sizes are required to enable analysis to be carried out at this level, or that quotas are applied to ensure sub-groups are sufficiently represented in the broader sample.

6.4 Directions for Future Research

Several important directions for future research have emerged from this study's findings, implications, and limitations. First, as mentioned in section 6.2, the findings from alternative survey methodologies need to be presented as evidence in colour trademark cases to determine the acceptability of these methodologies. Specifically, the use of other methodologies in colour trademark cases will provide practical guidance for the accepted methods of determining colour associations.

Future study could investigate colour associations for a range of product categories; this would help determine whether respondents do not inherently associate colours and brands for some product categories or whether other factors influence respondents' colour-brand associations. For example, colour-brand associations could be estimated for different product categories where there is a known difference in the amount of advertising or level of involvement in the purchase decision. The results could then be compared to assess the difference in colour-brand associations between the different product categories. Determining the factors that influence colour-brand associations in different product categories would assist brand owners to ensure that they account for all factors that may influence associations with their brand

The colour wheel methodology for the rice category tested colour associations with a brand as well as associations with a brand and it corresponding logo. The presence of the logo did not influence associations; however, to gain further insights into the presence of a brand logo this methodology could also be applied to a category where a stronger colour brand association is evident. For example, testing whether the 'glass and a half' device has an influence on associations with Cadbury.

Overall, further research in this field, which replicates and extends previous findings, will assist brand owners and the judiciary in ensuring that appropriate measures are developed and applied for assessing the level of association between brands and colours.

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APPENDICES

Appendix A Chocolate Category Colour Card Method Surveys and Showcards

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire -4 – Colour Blocks
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R). IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ
Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. Now, please think about the brands of chocolate that you buy, eat or see for sale. Please look at this Showcard.

   Present showcard A. If this was a block of chocolate, which brand or brands, *if any*, do you think it would be?

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Nestle	1	1
Whittaker's	2	1
Cadbury	3	1
Richfield's	4	1
Hershey's	5	1
None	6	1
Not sure	7	1
Other	8	1

2. **Present showcard B. If this was a block of chocolate, which brand or brands, *if any,* do you think it would be?**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Nestle	1	1
Whittaker's	2	1
Cadbury	3	1
Richfield's	4	1
Hershey's	5	1
None	6	1
Not sure	7	1
Other	8	1

3. **Present showcard C. If this was a block of chocolate, which brand or brands, *if any,* do you think it would be?**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Nestle	1	1
Whittaker's	2	1
Cadbury	3	1
Richfield's	4	1
Hershey's	5	1
None	6	1
Not sure	7	1
Other	8	1

4. **Present showcard D. If this was a block of chocolate, which brand or brands, *if any,* do you think it would be?**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Nestle	1	1
Whittaker's	2	1
Cadbury	3	1
Richfield's	4	1
Hershey's	5	1
None	6	1
Not sure	7	1
Other	8	1

5. **Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought or eaten... READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

6. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

7. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

8. **In which year were you born?** Year born: 19 _____

9. **Record respondent's gender**
Male 1
Female.....2

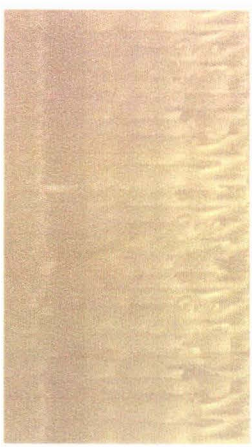
Thank you very much for your help

Chocolate Colour Card Showcards

A

B

C



D

Appendix B Rice Category Colour Card Method Surveys and Showcards

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire -1 – Colour Blocks SET A
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R). IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ
Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. Now, please think about the brands of Rice that you buy, eat or see for sale. Please look at this Showcard.

   Present showcard A. If this was a packet of rice, which brand or brands, *if any*, do you think it would be? PROBE FOR OTHERS

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

2. **Present showcard B. If this was a packet of rice, which brand or brands, *if any,* do you think it would be? PROBE FOR OTHERS**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

3. **Present showcard C. If this was a packet of rice, which brand or brands, *if any,* do you think it would be? PROBE FOR OTHERS**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

4. **Present showcard D. If this was a packet of rice, which brand or brands, *if any,* do you think it would be? PROBE FOR OTHERS**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

5. **Present showcard E. If this was a packet of rice, which brand or brands, *if any,* do you think it would be? PROBE FOR OTHERS**

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

5. **Now, please tell me if you have ever bought or eaten any of the following brands of Rice. Have you ever bought or eaten... READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

6. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

7. **And which brand of rice do you most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

8. **In which year were you born?** Year born: 19 _____

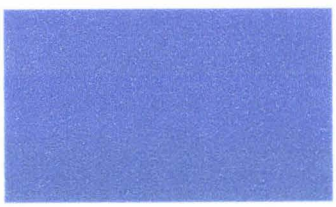
9. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

Rice Colour Card Showcards

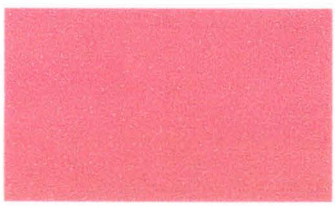
Blue

A



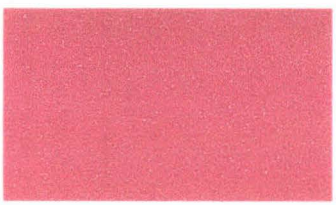
Uncle Ben's Orange

B



SunRice Orange

B1



Green

C

Brown (Control)

D

Red

E

Appendix C Chocolate Survey Demographics

C 1) Age of Respondents in years

Survey Version	Average	Maximum	Minimum
Coloured Card	38	84	16
Funnel Sequence Purple	40	82	16
Funnel Sequence Gold	36	97	16
Funnel Sequence Red	31	80	16
Colour Wheel	40	92	17
Choice Modelling	36	95	13

C 2) Gender of Respondents (%)

Survey Version	Female	Male	Total
Coloured Card	62	38	100
Funnel Sequence Purple	66	34	100
Funnel Sequence Gold	66	34	100
Funnel Sequence Red	58	42	100
Colour Wheel	74	26	100
Choice Modelling	60	41	100

Appendix D Rice Survey Demographics

D 1) Age of Respondents in years

Survey Version	Average	Maximum	Minimum
Coloured Card	41	97	16
Funnel Sequence Orange (Uncle Ben's)	40	80	15
Funnel Sequence Orange (SunRice)	41	84	18
Funnel Sequence Blue	42	16	84
Colour Wheel	39	85	15
Choice Modelling	35	84	15

D 2) Gender of Respondents (%)

Survey Version	Female	Male	Total
Coloured Card	74	26	100
Funnel Sequence Orange (Uncle Ben's)	76	24	100
Funnel Sequence Orange (SunRice)	65	35	100
Funnel Sequence Blue	70	30	100
Colour Wheel	70	30	100
Choice Modelling	73	27	100

Appendix E Chocolate Category Funnel Sequence Surveys and Showcards

E 1) Chocolate Survey

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire -2 – Colour Swatch Version 1 Purple
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

I'm going to show you a card. I'd like you to look at this card **(SHOW THE PURPLE COLOUR SWATCH)**.

2. Do you associate this colour with anything?

YES.....1 **IF YES** what in particular?
.....
NO.....2
.....

3. Do you associate this colour with any food or confectionary items?

YES.....1 **IF YES** what in particular?
.....
NO.....2
.....

4. Can you think of any (other) brands of chocolate that you would associate with this colour?

CODE FIRST MENTIONED IN COLUMN A

Any others? **CODE IN COLUMN B**

PROBE UNTIL NO FURTHER BRANDS ARE MENTIONED

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Nestle	1	1
Whittaker's	2	1
Cadbury	3	1
Richfield's	4	1
Hershey's	5	1
None	6	1
Not sure	7	1
Other	8	1

Now I'd like to show you another card. Please look at this (SHOW THE GREEN COLOUR SWATCH).

5. Do you associate this colour with anything?

YES.....1 **IF YES** what in particular? .....
NO.....2

6. Do you associate this colour with any food or confectionary items?

YES.....1 **IF YES** what in particular?.....
NO.....2

7. Can you think of any (other) brands of chocolate that you would associate with this colour?
CODE FIRST MENTIONED IN COLUMN A

Any others? **CODE IN COLUMN B**
PROBE UNTIL NO FURTHER BRANDS ARE MENTIONED

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Nestle	1	1
Whittaker's	2	1
Cadbury	3	1
Richfield's	4	1
Hershey's	5	1
None	6	1
Not sure	7	1
Other	8	1

8. Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought or eaten... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

9. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

10. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

11. **In which year were you born?** Year born: 19 _____

12. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

E 2) Chocolate Showcards

A

B

C

D

Appendix F Rice Category Funnel Sequence Method Survey and Showcards

Funnel Sequence Rice Survey

CONFIDENTIAL

ID:_____

Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire -2 – Funnel Sequence Set 1 ORANGE
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ
Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

I'm going to show you a card. I'd like you to look at this card **(SHOW THE ORANGE COLOUR SWATCH)**.

1. Do you associate this colour with anything?

YES.....1 **IF YES** what in particular?.....
NO.....2
.....

2. Do you associate this colour with any food or grocery items?

YES.....1 **IF YES** what in particular?
.....
NO.....2

5. Can you think of any (other) brands of rice that you would associate with this colour?

CODE FIRST MENTIONED IN COLUMN A

Any others? **CODE IN COLUMN B**

PROBE UNTIL NO FURTHER BRANDS ARE MENTIONED

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

Now I'd like to show you another card. Please look at this (SHOW THE BROWN COLOUR SWATCH).

4. Do you associate this colour with anything?

YES.....1 **IF YES** what in particular?.....
NO.....2

5. Do you associate this colour with any food or grocery items?

YES.....1 **IF YES** what in particular?.....
NO.....2

6. Can you think of any (other) brands of rice that you would associate with this colour?
CODE FIRST MENTIONED IN COLUMN A

Any others? **CODE IN COLUMN B**
PROBE UNTIL NO FURTHER BRANDS ARE MENTIONED

BRAND	COLUMN A FIRST MENTIONED	COLUMN B OTHER MENTIONS
Uncle Ben's	1	1
Sun Rice	2	1
Just Rice	3	1
King Rice	4	1
Diamond Rice Risotto	5	1
King's Choice	6	1
None	7	1
Not Sure	8	1
Other	9	1

7. Now, please tell me if you have ever bought or eaten any of the following brands of rice. Have you ever bought or eaten... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

8. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

9. **And which brand of rice do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

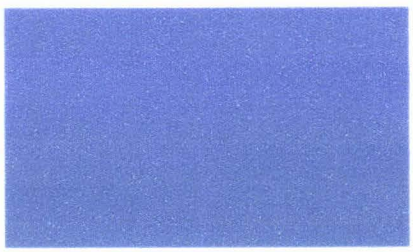
10. In which year were you born? Year born: 19 _____

11. Record respondent's gender
Male 1
Female.....2

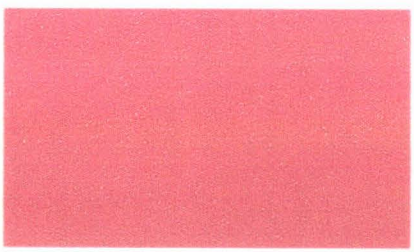
Thank you very much for your help

Rice Funnel Sequence Showcards

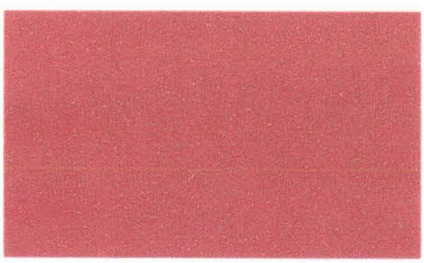
A



B



B1



Appendix G Chocolate Category Colour Wheel Surveys and Showcards

G1) Colour Wheel Chocolate Survey

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire -3 – Colour Wheel
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ
Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. **First I'd like you to think about chocolate. Please think about the brands of chocolate that you buy, eat or see for sale. Now please look at this card.**

PRESENT COLOUR WHEEL, THEN THE WHITTAKERS LOGO

If you saw a block of Whittaker's chocolate, what colour or colours, if any, do you think the package would be?

Could you tell me what number that is? Are there any other colours you would associate with Whittaker's? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

2. **And if you saw a block of Cadbury chocolate, what colour or colours, if any, do you think the package would be? PRESENT THE CADBURY LOGO**

Could you tell me what number that is? Are there any other colours you would associate with Cadbury? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

3. **And if you saw a block of Nestle chocolate, what colour or colours, if any, do you think the package would be? PRESENT THE NESTLE LOGO**

Could you tell me what number that is? Are there any other colours you would associate with Nestle? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

4. **And if you saw a block of Nova chocolate, what colour or colours, if any, do you think the package would be? PRESENT THE NOVA LOGO**

Could you tell me what number that is? Are there any other colours you would associate with Nova? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

5. **Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought or eaten... READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

6. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

7. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

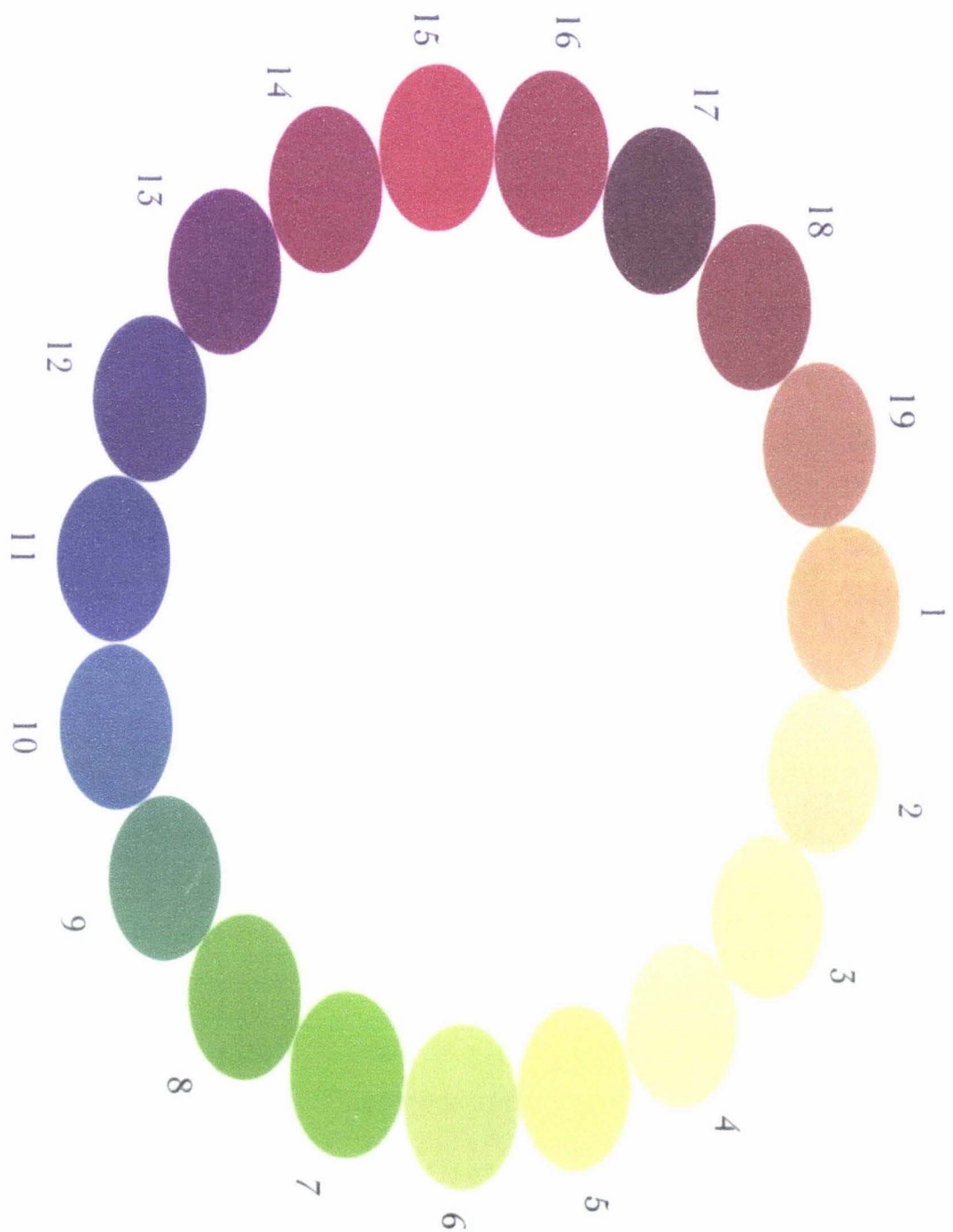
Now I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

8. **In which year were you born?** Year born: 19 _____

9. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

G2) Colour Wheel Chocolate Showcards




Cadbury


Whittaker's
SINCE 1896


Nestlé


NOVA

Appendix H Rice Category Colour Wheel Survey and Showcards

H 1) Colour Wheel Rice Survey

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire -3 – Colour Wheel Set 1 **BRAND NAME & LOGO**
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ
Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

2. **First I'd like you to think about rice. Please think about the brands of rice that you buy, eat or see for sale. Now please look at this card.**

PRESENT COLOUR WHEEL, THEN THE SUN RICE BRAND NAME & LOGO

If you saw a packet of Sun Rice rice, what colour or colours, if any, do you think the package would be?

Could you tell me what number that is? Are there any other colours you would associate with Uncle Ben's? PROBE UNTIL NO FURTHER COLOURS MENTIONED

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

2. **And if you saw a packet of Uncle Ben's rice, what colour or colours, if any, do you think the package would be? PRESENT THE UNCLE BEN'S BRAND NAME & LOGO**

Could you tell me what number that is? Are there any other colours you would associate with Uncle Ben's? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

3. **And if you saw a packet of JUST rice, what colour or colours, if any, do you think the package would be? PRESENT THE JUST RICE BRAND NAME & LOGO**

Could you tell me what number that is? Are there any other colours you would associate with Just Rice? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

4. And if you saw a packet of Success Rice, what colour or colours, if any, do you think the package would be**? PRESENT THE SUCCESS RICE BRAND NAME & LOGO**

Could you tell me what number that is? Are there any other colours you would associate with Success Rice? **PROBE UNTIL NO FURTHER COLOURS MENTIONED**

Colour 1 _____ Don't Know 99
Colour 2 _____
Colour 3 _____
Others _____

5. **Now, please tell me if you have ever bought or eaten any of the following brands of rice. Have you ever bought or eaten... READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

6. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

7. **And which brand of rice do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

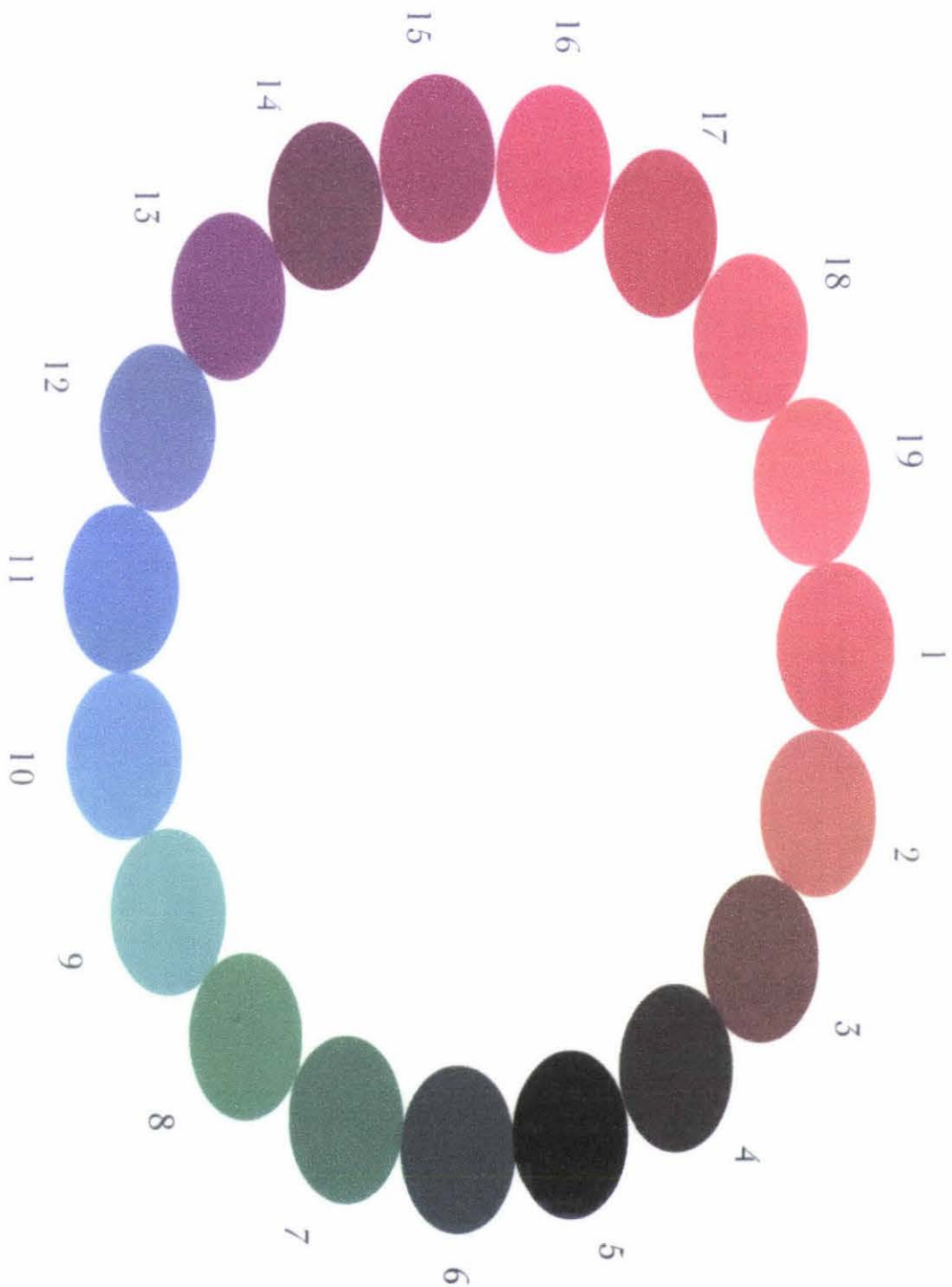
Now I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

8. **In which year were you born?** Year born: 19 _____

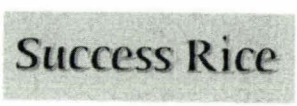
9. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

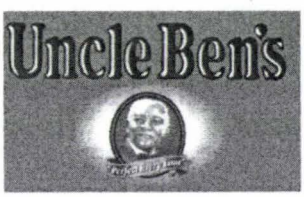
H2) Colour Wheel Rice Showcards Survey

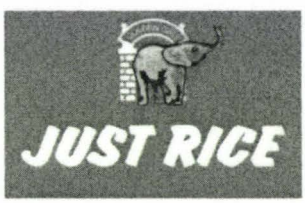


Rice Brand Names



Rice Brand Names and Logos





Appendix I Chocolate Category Choice Modelling Surveys and Showcards.

I 1) Chocolate Choice Modelling Survey

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire – Choice Modelling Set A
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about chocolate.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a block of chocolate and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT SHOWCARD AND SAY…

If you were buying a block of chocolate, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
2	A	B	C	D	
4	A	B	C	D	
6	A	B	C	D	
8	A	B	C	D	
9	A	B	C	D	
11	A	B	C	D	
13	A	B	C	D	
15	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire – Choice Modelling Set B
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about chocolate.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a block of chocolate and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT SHOWCARD AND SAY...

If you were buying a block of chocolate, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
9	A	B	C	D	
10	A	B	C	D	
11	A	B	C	D	
12	A	B	C	D	
13	A	B	C	D	
14	A	B	C	D	
15	A	B	C	D	
16	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire – Choice Modelling Set C
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about chocolate.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a block of chocolate and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT SHOWCARD AND SAY...

If you were buying a block of chocolate, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
1	A	B	C	D	
2	A	B	C	D	
3	A	B	C	D	
4	A	B	C	D	
9	A	B	C	D	
10	A	B	C	D	
11	A	B	C	D	
12	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Chocolate Questionnaire – Choice Modelling Set D
2004

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help us now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about chocolate.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a block of chocolate and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT SHOWCARD AND SAY...

If you were buying a block of chocolate, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
5	A	B	C	D	
6	A	B	C	D	
7	A	B	C	D	
8	A	B	C	D	
13	A	B	C	D	
14	A	B	C	D	
15	A	B	C	D	
16	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of chocolate. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT*.

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Nestle	1	1	1
Whittaker's	1	1	2
Cadbury	1	1	3
Richfield's	1	1	4
Hershey's	1	1	5
None	1	1	6
Not sure	1	1	7
Other	1	1	8

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of chocolate do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
Male 1
Female.....2

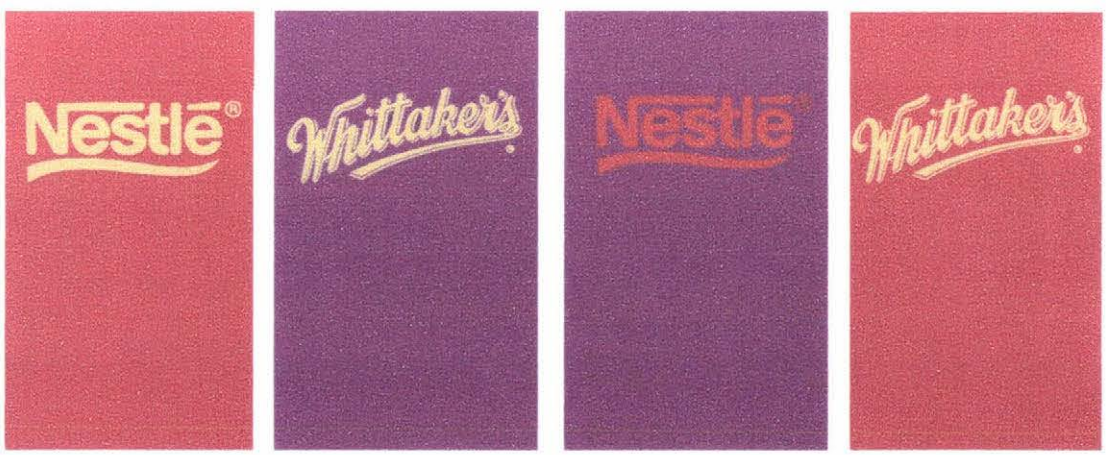
Thank you very much for your help

I2) Chocolate Choice Modelling Showcards

SHOWCARD 1

A B C D

SHOWCARD 2

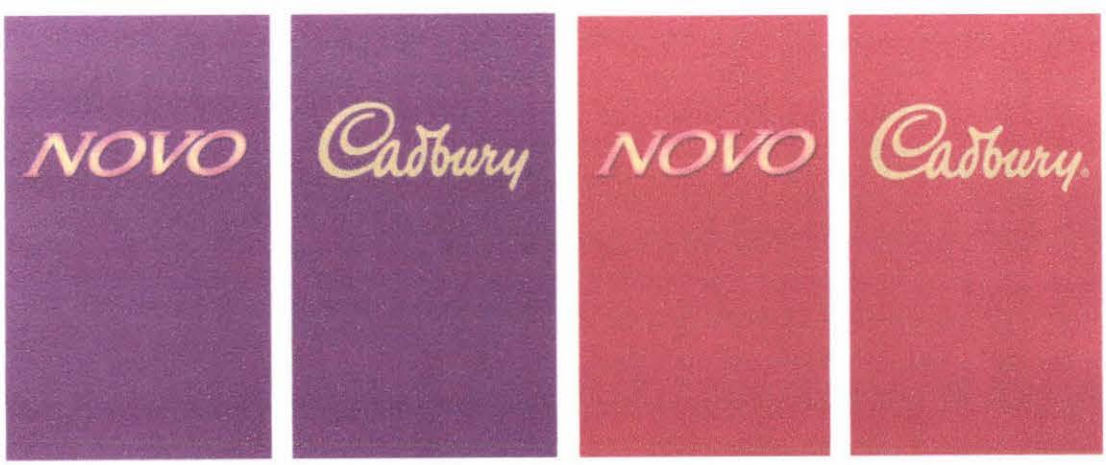


A B C D

SHOWCARD 3

A B C D

SHOWCARD 4



A B C D

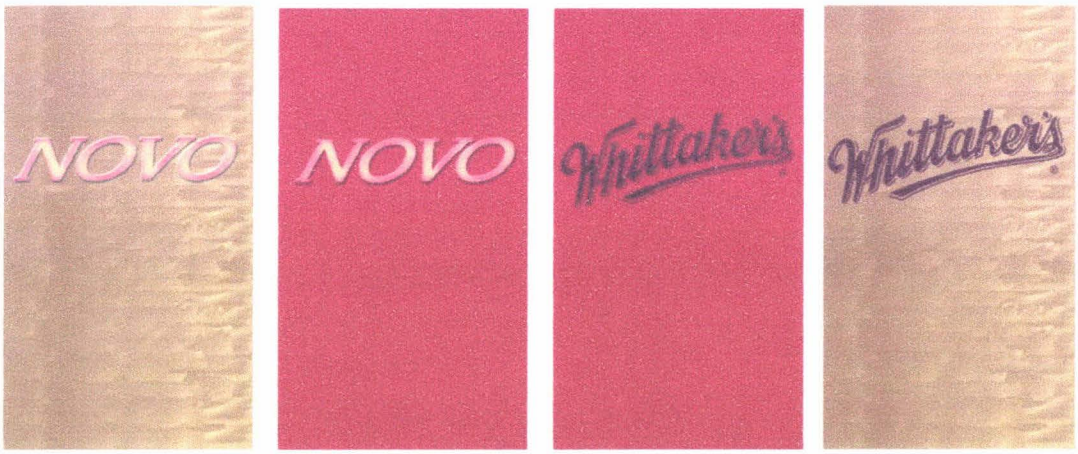
SHOWCARD 5

A B C D

SHOWCARD 6

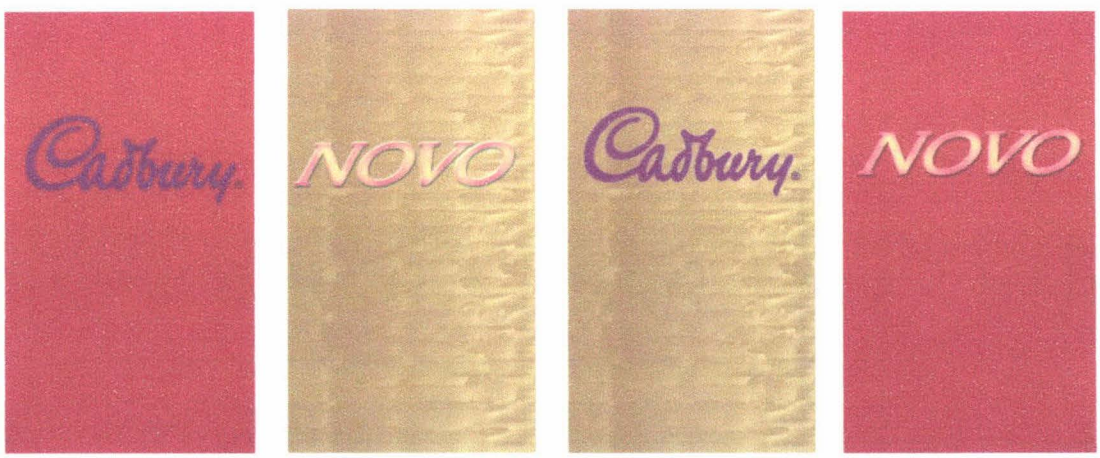
A B C D

SHOWCARD 7



A B C D

SHOWCARD 8

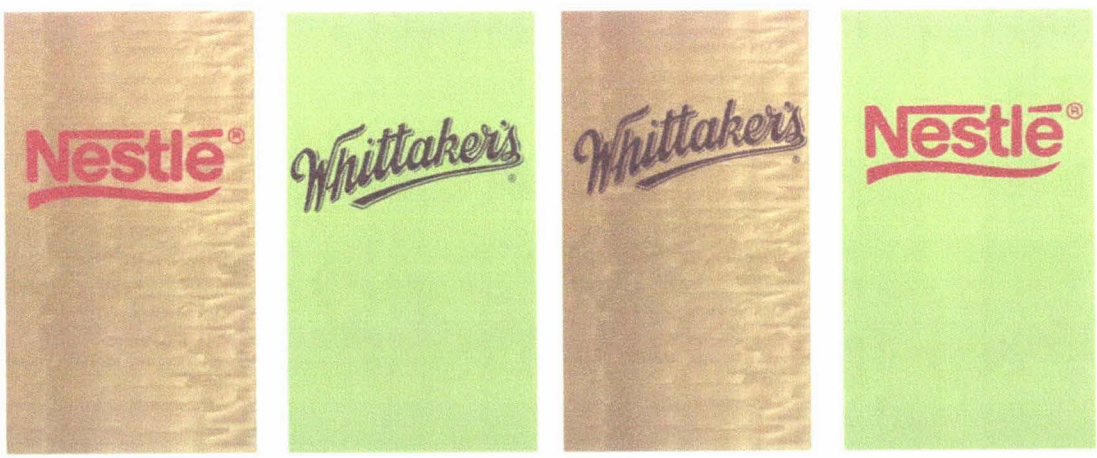


A B C D

SHOWCARD 9

A B C D

SHOWCARD 10

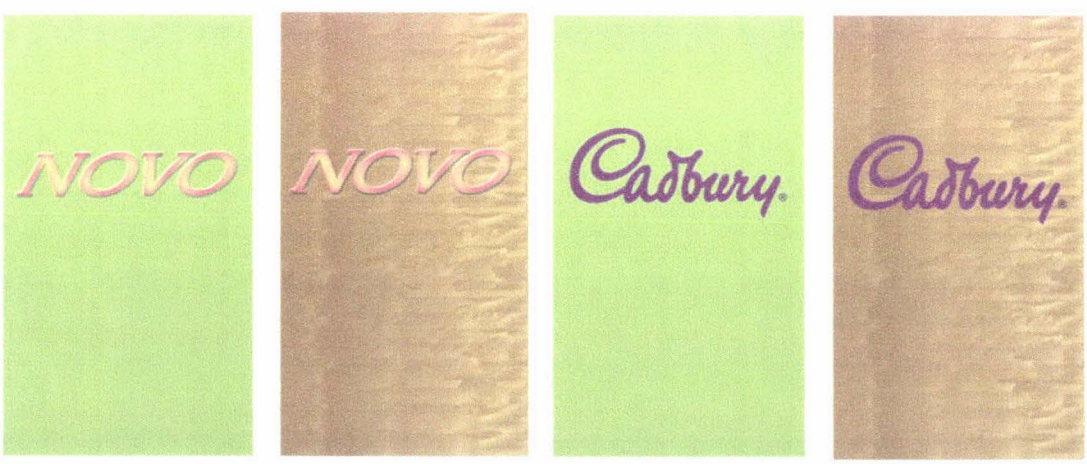


A B C D

SHOWCARD 11

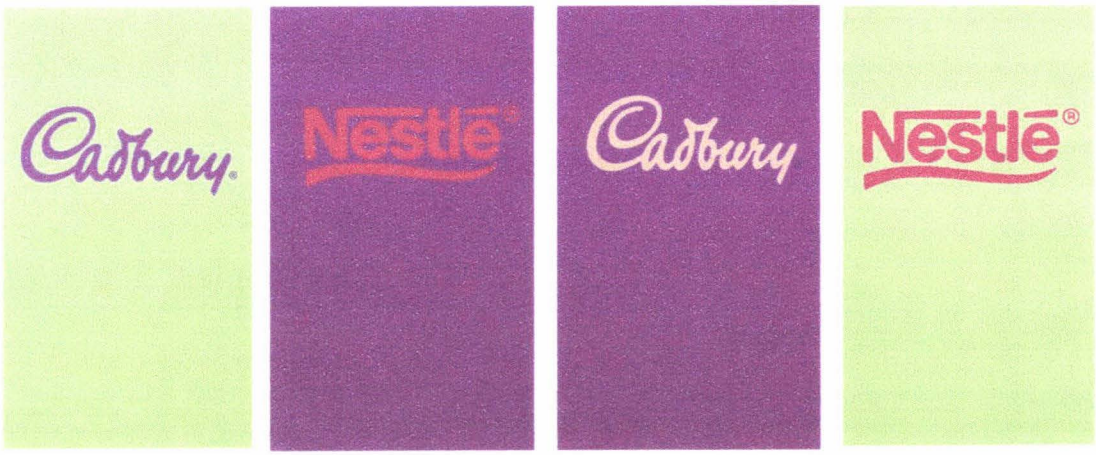
A B C D

SHOWCARD 12



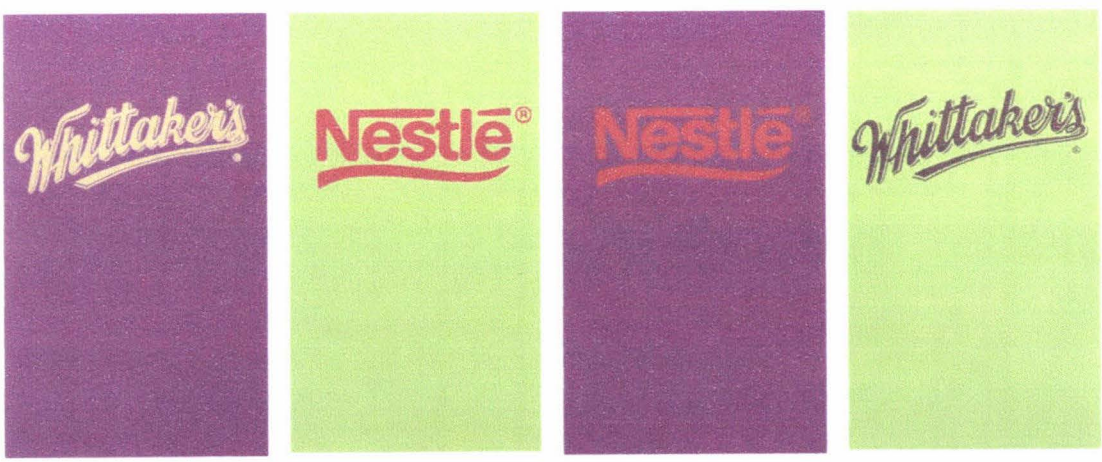
A B C D

SHOWCARD 13



A B C D

SHOWCARD 14

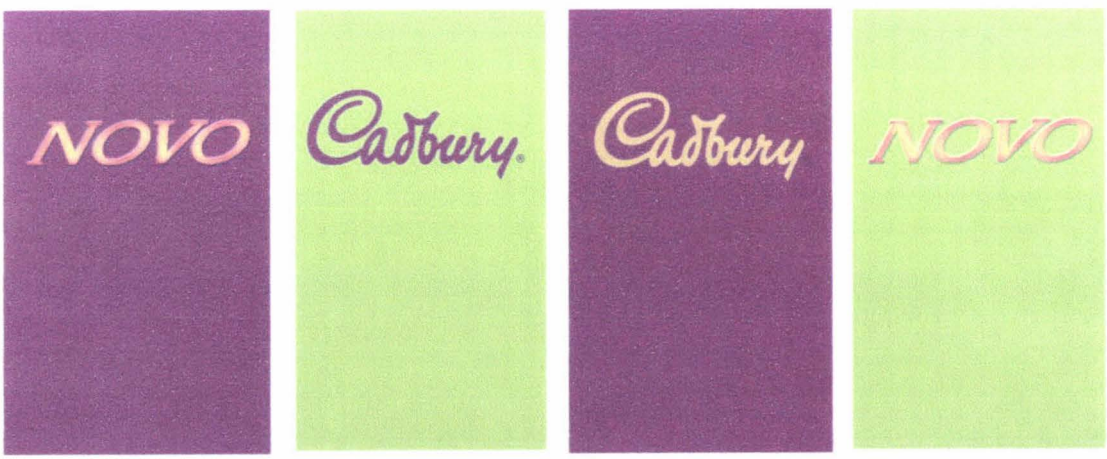


A B C D

SHOWCARD 15

A B C D

SHOWCARD 16



A B C D

Appendix J Rice Category Choice Modelling Surveys and Showcards

J1) Rice Choice Modelling Survey

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire – Choice Modelling Set A
2005

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help me now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about rice.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a packet of rice and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT FIRST SHOWCARD AND SAY…

If you were buying a packet of rice, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
2	A	B	C	D	
4	A	B	C	D	
6	A	B	C	D	
8	A	B	C	D	
9	A	B	C	D	
11	A	B	C	D	
13	A	B	C	D	
15	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of rice. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of rice do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
   Male 1
   Female.....2

Thank you very much for your help

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire – Choice Modelling Set B
2005

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help me now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about rice.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a packet of rice and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT FIRST SHOWCARD AND SAY...

If you were buying a packet of rice, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
9	A	B	C	D	
10	A	B	C	D	
11	A	B	C	D	
12	A	B	C	D	
13	A	B	C	D	
14	A	B	C	D	
15	A	B	C	D	
16	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of rice. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of rice do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire – Choice Modelling Set C
2005

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help me now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about rice.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a packet of rice and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT FIRST SHOWCARD AND SAY...

If you were buying a packet of rice, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
1	A	B	C	D	
2	A	B	C	D	
3	A	B	C	D	
4	A	B	C	D	
9	A	B	C	D	
10	A	B	C	D	
11	A	B	C	D	
12	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of rice. Have you ever bought... **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten... CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of rice do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
Male 1
Female.....2

Thank you very much for your help

CONFIDENTIAL.
ID:_____
Interviewer Initial:_____

MASSEY UNIVERSITY
DEPARTMENT OF MARKETING

Rice Questionnaire – Choice Modelling Set D
2005

Hello, my name is _____. I'm a researcher from Massey University and I'm conducting a short survey as part of an important project. Could you please help me by answering a few questions? It'll only take about five minutes of your time. Do you have time to help me now?

IF NO, RECORD ON CONTACT RECORD SHEET AS REFUSAL (R)

IF YES, BEGIN

STATEMENT OF CONFIDENTIALITY MUST BE READ

Before we start, I want to assure you that this interview is confidential and voluntary. If I should come to a question you don't want to answer, please let me know and I will go on to the next question.

1. I'd like you to think about rice.

   Now, I'd like to show you a series of cards. I want you to assume that you've
   just entered a store to buy a packet of rice and the only choices you have are the ones on these showcards. The products are all sold in the same size pack and they have a similar price.

USE CHOICE MODELING SET OF CARDS. YOU *MUST* PRESENT ALL SHOWCARDS. PRESENT FIRST SHOWCARD AND SAY...

If you were buying a packet of rice, which of these would you choose?

CIRCLE ONE OPTION FOR EACH SHOWCARD. YOU MUST ADMINISTER ALL SHOWCARDS AND RECORD AN ANSWER FOR EACH SHOWCARD

Set #	OPTION A	OPTION B	OPTION C	OPTION D	NONE
5	A	B	C	D	
6	A	B	C	D	
7	A	B	C	D	
8	A	B	C	D	
13	A	B	C	D	
14	A	B	C	D	
15	A	B	C	D	
16	A	B	C	D	

2. Now, please tell me if you have ever bought or eaten any of the following brands of rice. Have you ever bought… **READ BRAND NAMES**

CIRCLE ALL BRANDS MENTIONED IN COLUMN HEADED *BRANDS EVER BOUGHT.*

BRAND	BRANDS EVER BOUGHT	BOUGHT LAST 2 MONTHS	MAIN BRAND
Uncle Ben's	1	1	1
Sun Rice	1	1	2
Just Rice	1	1	3
King Rice	1	1	4
Diamond Rice Risotto	1	1	5
King's Choice	1	1	6
None	1	1	7
Not Sure	1	1	8
Other	1	1	9

3. **Now, please tell me which brands you have purchased in the last two months. Have you bought or eaten… CODE ALL MENTIONED IN *MIDDLE* COLUMN.**

4. **And which brand of rice do you buy most often? CODE ONE BRAND ONLY IN *MAIN BRAND* COLUMN.**

Now, I'd like to ask you a demographic question to make sure I have a good cross section of the public. Please remember that all your responses are completely confidential.

5. **In which year were you born?** Year born: 19 _____

6. **Record respondent's gender**
   Male 1
   Female.....2

Thank you very much for your help

J2) Rice Choice Modelling Showcards

SHOWCARD 1

Option A

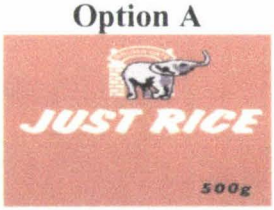
Option B

Option C

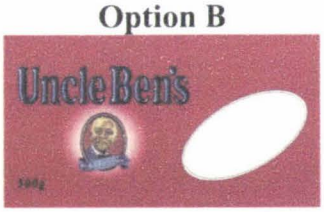
Option D

SHOWCARD 2

Option A



Option B



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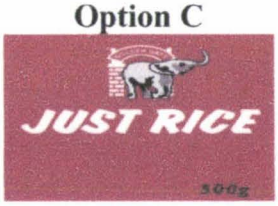
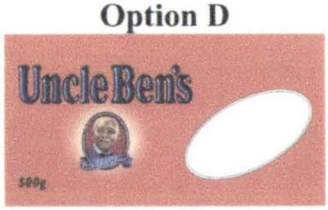


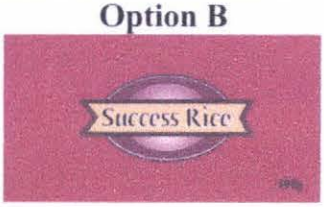
Option D



SHOWCARD 3

Option A

Option B

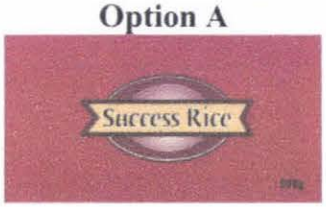


Option C

Option D

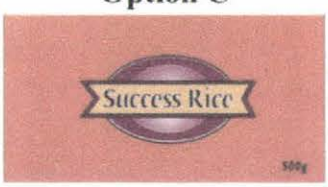
SHOWCARD 4

Option A



Option B

Option C



Option D

SHOWCARD 5

Option A

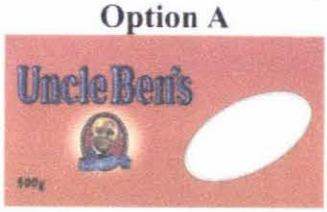
Option B

Option C

Option D

SHOWCARD 6

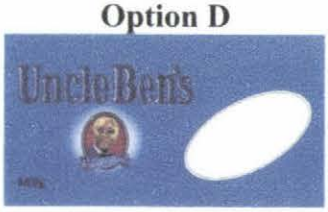
Option A



Option B

Option C

Option D

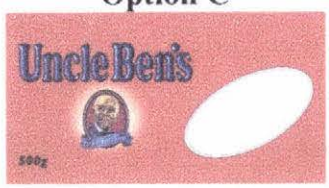


SHOWCARD 7

Option A

Option B

Option C



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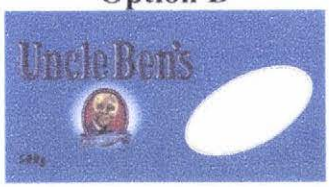
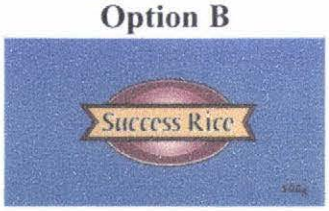


SHOWCARD 8

Option A

Option B



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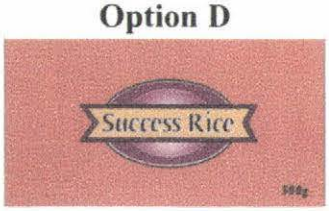


SHOWCARD 9

Option A

Option B

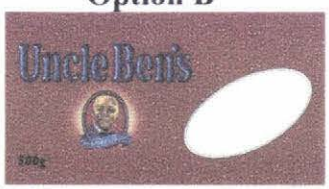
Option C

Option D

SHOWCARD 10

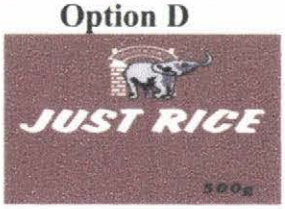
Option A

Option B



Option C

Option D



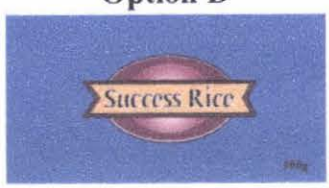
SHOWCARD 11

Option A

Option B

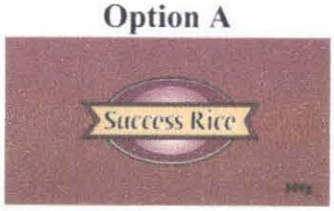
Option C

Option D



SHOWCARD 12

Option A



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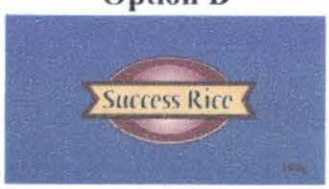


Option C

Option D

SHOWCARD 13

Option A

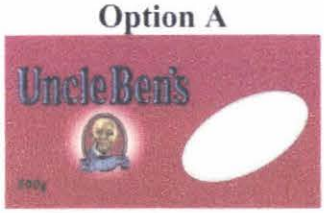
Option B

Option C

Option D

SHOWCARD 14

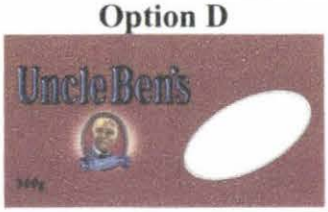
Option A



Option B

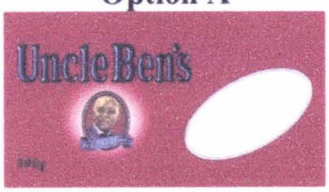
Option C

Option D



SHOWCARD 15

Option A



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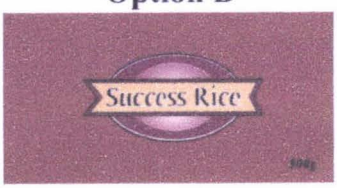
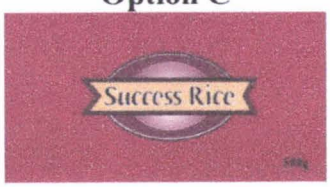


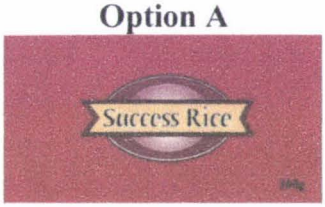
Option C



Option D

SHOWCARD 16

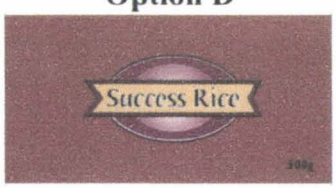
Option A



Option B

Option C

Option D



Appendix K Interviewer Notes

Massey University
Department of Marketing

Interviewer Notes: August 2004
Chocolate Surveys

BACKGROUND

This project is being conducted as part of a larger research programme into brand identification.

DON'T PROVIDE THIS INFORMATION TO RESPONDENTS BEFORE THEY HAVE ANSWERED THE QUESTIONNAIRE. IF THEY ASK WHAT THE SURVEY IS ABOUT TELL THEM IT IS A SURVEY ABOUT CHOCOLATE AND PROVIDE THE FULL INFORMATION AFTER THE SURVEY IS COMPLETED.

WHERE TO INTERVIEW

Interviewing will be conducted in the Plaza. It is important that you don't prevent people from accessing the Plaza stores – they do us a favour allowing us to interview there we need to respect this!

Use the contact sheets to record all contacts. This is explained below. Make sure you read the introduction and the statement of confidentiality. In addition, you have a letter from Professor Gendall that verifies your status as an interviewer.

RESPONDENT SELECTION

Approach every third person who looks over the age of twenty who walks past when you are not already interviewing a respondent.

CONTACT SHEET

Every contact you make must be recorded on the CONTACT RECORD SHEET. This is important as this is how we work out the response rate. Each time you approach a respondent, record the time and complete as follows:

REFUSAL. The person may rush past you, not listen when you try to speak or just ignores you. A refusal can also occur when a person stops to listen to you but declines to participate in the survey. Circle the appropriate number in the refusal column.

INTERVIEW. The respondent agrees to be interviewed and the interview is successfully completed. Circle the appropriate number in the Interview Column.

INELIGIBLE. The respondent has agreed to be interviewed, but is not able to be included in the sample s/he is ineligible for some reason (deaf, language problem etc).

OTHER. If there are any other reasons why a person does not participate in the survey (already done it) circle the appropriate number in the OTHER column and record the reason.

QUESTIONNAIRES

Before commencing the interview, it is important to read the statement of confidentiality to respondents. There is also a more detailed information sheet you can provide to respondents if they have any questions about the survey

There are four different surveys; two of these have different versions of the questionnaire.

All questionnaires include a question about respondents' brand repertoires. Read the question as it is written and then read the brands listed in the table. Circle all brands mentioned in the column headed **Brands Ever Bought.** If respondents mention a brand not listed, code **"Other"** and write the name of the brand mentioned next to the column.

If respondents have never bought any brands of chocolate, move on to the demographic questions.

Next read the question about brands bought in the last two months. Again read the brands and circle the brands mentioned. If respondents have not bought chocolate in the last two months circle "**None",** in the middle column. If they are not sure what brands they have bought in the last two months circle **"Not Sure"** in the middle column. If the mention a brand not listed circle **"Other"** and write the brand mentioned.

The final question in this table asks respondents about the brand they buy most often. If respondents don't have a main brand, code **"5"** none. If they are not sure code **"6"** and if they mention a brand not listed code **"7"** and write the name.

Choice Modelling

This method uses a choice modelling methodology to test whether any brand colour interactions exist. There are four versions of this questionnaire in order to reduce the number of showcards respondents are asked to view. It is **VITAL** that the questionnaires and the showcards match!

Show respondents the first showcard and read the question as written. Circle the option nominated, then present the second showcard, and so on. The column on the right is blank, so if someone has no idea which option s/he would choose, you can tick the blank box. However, try to get people to give a firm choice. If they say they don't eat or buy chocolate ask them to imagine that a friend has asked them to buy chocolate but hasn't told them exactly what to buy. If they had

the choices on the cards which brand would they buy? Please be careful to make sure you circle the number for each showcard and that you match the showcard with the questionnaire.

Colour Swatch
There are three versions of this questionnaire. If respondents ask **DO NOT** mention that the questionnaire has anything to do with chocolate just tell them that it is about colour brand associations – what people associate colours with. The first question relates to initial associations with a colour. The following questions are increasingly specific questions in relation to colour-brand associations. Depending on the version first show either the purple, red or gold card and read the questions as written. Then repeat using the green showcard.

Colour Wheel
This questionnaire uses the opposite approach to the Colour Blocks. – Here we show respondents logos and ask what colour or colours, if any, they would associate with the brand name. You will have a colour wheel that you will need to give to respondents. Give them a little time to look at the colours on the wheel before presenting the first logo. Present the logos in the order listed and ask what colours or colour they think the package would be. It is **VERY IMPORTANT** that respondents provide as many or as few answers as they wish. If respondents don't know circle the don't know option provided. Repeat this for all four showcards.

Colour Blocks
This questionnaire uses a series of showcards that have blocks of colour depicted on them. This questionnaire tests to see if people associate the colours presented with any brand or brands. Again, it is **VERY IMPORTANT** that the respondents provide as many or as few answers as they wish and that you **DO NOT** prompt their responses in any way. Present the showcards in the order listed and read the question as written repeat this four all four showcards.

Demographics
Age
Read the question as written and record year born in the space provided. If people refuse make a quick judgement and write guess or a question mark next to it so I know it's not the year in which they were born.

Gender
Don't ask for gender, code by observation (unless you are really puzzled!).

Finally, thank respondents for their help and answer any questions they have about the study. You can give an information sheet to respondents to respondents who have questions about the study.

Massey University
Department of Marketing

Interviewer Notes: November 2004
Rice Surveys

BACKGROUND

This project is being conducted as part of a larger research programme into brand identification.

DON'T PROVIDE THIS INFORMATION TO RESPONDENTS BEFORE THEY HAVE ANSWERED THE QUESTIONNAIRE. IF THEY ASK WHAT THE SURVEY IS ABOUT TELL THEM IT IS A SURVEY ABOUT RICE AND PROVIDE THE FULL INFORMATION AFTER THE SURVEY IS COMPLETED.

WHERE TO INTERVIEW

Interviewing will be conducted in the Plaza. It is important that you don't prevent people from accessing the Plaza stores – they do us a favour allowing us to interview there we need to respect this!

Use the contact sheets to record all contacts. This is explained below. Make sure you read the introduction and the statement of confidentiality. In addition, you have a letter from Professor Gendall that verifies your status as an interviewer.

RESPONDENT SELECTION

Approach every third person who looks over the age of twenty who walks past when you are not already interviewing a respondent.

CONTACT SHEET

Every contact you make must be recorded on the CONTACT RECORD SHEET. This is important as this is how we work out the response rate. Each time you approach a respondent, record the time and complete as follows:

REFUSAL. The person may rush past you, not listen when you try to speak or just ignores you. A refusal can also occur when a person stops to listen to you but declines to participate in the survey. Circle the appropriate number in the refusal column.

INTERVIEW. The respondent agrees to be interviewed and the interview is successfully completed. Circle the appropriate number in the Interview Column.

INELIGIBLE. The respondent has agreed to be interviewed, but is not able to be included in the sample s/he is ineligible for some reason (deaf, language problem etc).

OTHER. If there are any other reasons why a person does not participate in the survey (already done it) circle the appropriate number in the OTHER column and record the reason.

QUESTIONNAIRES

Before commencing the interview, it is important to read the statement of confidentiality to respondents. There is also a more detailed information sheet you can provide to respondents if they have any questions about the survey

There are three different surveys; three of these have different versions of the questionnaire.

All questionnaires include a question about respondents' brand repertoires. Read the question as it is written and then read the brands listed in the table. Circle all brands mentioned in the column headed **Brands Ever Bought.** If respondents mention a brand not listed, code **"Other"** and write the name of the brand mentioned next to the column.

If respondents have never bought any brands of rice, move on to the demographic questions.

Next read the question about brands bought in the last two months. Again, read the brands and circle the brands mentioned. If respondents have not bought rice in the last two months, circle "**None",** in the middle column. If they are not sure what brands they have bought in the last two months circle **"Not Sure"** in the middle column. If the mention a brand not listed circle **"Other"** and write the brand mentioned.

The final question in this table asks respondents about the brand they buy most often. If respondents don't have a main brand, code **"7"** none. If they are not sure code **"8"** and if they mention a brand not listed code **"9"** and write the name.

Choice Modelling

Colour Swatch

There are three versions of this questionnaire. If respondents ask **DO NOT** mention that the questionnaire has anything to do with rice just tell them that it is about colour brand associations – what people associate colours with. The first question relates to initial associations with a colour. The following questions are increasingly specific questions in relation to colour-brand associations. Depending on the version first show either the orange, orange[1] or blue card and read the questions as written. Then repeat using the brown showcard.

Colour Wheel

This questionnaire uses the opposite approach to the Colour Blocks. – Here we show respondents logos and ask what colour or colours, if any, they would associate with the brand name. You will have a colour wheel that you will need to give to respondents. Give them a little time to look at the colours on the wheel before presenting the first logo. Present the logos in the order listed and ask what colours or colour they think the package would be. It is **VERY IMPORTANT** that respondents provide as many or as few answers as they wish. If respondents don't know circle the don't know option provided. Repeat this for all four

showcards. There are two versions of this survey, the first contains only the brand name and the seconde version contains the brand name as well as the corresponding logo.

Colour Blocks

This questionnaire uses a series of showcards that have blocks of colour depicted on them. This questionnaire tests to see if people associate the colours presented with any brand or brands. Again, it is **VERY IMPORTANT** that the respondents provide as many or as few answers as they wish and that you **DO NOT** prompt their responses in any way. Present the showcards in the order listed and read the question as written repeat this four all five showcards (blue, orange, green, brown and red). There are two versions of this survey to enable testing different shades of orange

Demographics

Age

Read the question as written and record year born in the space provided. If people refuse make a quick judgement and write guess or a question mark next to it so I know it's not the year in which they were born.

Gender

Don't ask for gender, code by observation (unless you are really puzzled!).

Finally, thank respondents for their help and answer any questions they have about the study. You can give an information sheet to respondents to respondents who have questions about the study.

Massey University
Department of Marketing

Interviewer Notes: February 2005
Rice Surveys

BACKGROUND

This project is being conducted as part of a larger research programme into brand identification.

DON'T PROVIDE THIS INFORMATION TO RESPONDENTS BEFORE THEY HAVE ANSWERED THE QUESTIONNAIRE. IF THEY ASK WHAT THE SURVEY IS ABOUT TELL THEM IT IS A SURVEY ABOUT RICE AND PROVIDE THE FULL INFORMATION AFTER THE SURVEY IS COMPLETED.

WHERE TO INTERVIEW

Interviewing will be conducted in the Plaza. It is important that you don't prevent people from accessing the Plaza stores – they do us a favour allowing us to interview there we need to respect this!

Use the contact sheets to record all contacts. This is explained below. Make sure you read the introduction and the statement of confidentiality. In addition, you have a letter from Professor Gendall that verifies your status as an interviewer.

RESPONDENT SELECTION

Approach every third person who looks over the age of twenty who walks past when you are not already interviewing a respondent.

CONTACT SHEET

Every contact you make must be recorded on the CONTACT RECORD SHEET. This is important as this is how we work out the response rate. Each time you approach a respondent, record the time and complete as follows:

REFUSAL. The person may rush past you, not listen when you try to speak or just ignores you. A refusal can also occur when a person stops to listen to you but declines to participate in the survey. Circle the appropriate number in the refusal column.

INTERVIEW. The respondent agrees to be interviewed and the interview is successfully completed. Circle the appropriate number in the Interview Column.

INELIGIBLE. The respondent has agreed to be interviewed, but is not able to be included in the sample s/he is ineligible for some reason (deaf, language problem etc).

OTHER. If there are any other reasons why a person does not participate in the survey (already done it) circle the appropriate number in the OTHER column and record the reason.

QUESTIONNAIRES

Before commencing the interview, it is important to read the statement of confidentiality to respondents. There is also a more detailed information sheet you can provide to respondents if they have any questions about the survey

All questionnaires include a question about respondents' brand repertoires. Read the question as it is written and then read the brands listed in the table. Circle all brands mentioned in the column headed **Brands Ever Bought.** If respondents mention a brand not listed, code **"Other"** and write the name of the brand mentioned next to the column.

If respondents have never bought any brands of rice, move on to the demographic questions.

Next read the question about brands bought in the last two months. Again, read the brands and circle the brands mentioned. If respondents have not bought rice in the last two months circle "**None",** in the middle column. If they are not sure what brands they have bought in the last two months circle **"Not Sure"** in the middle column. If the mention a brand not listed circle **"Other"** and write the brand mentioned.

The final question in this table asks respondents about the brand they buy most often. If respondents don't have a main brand, code **"7"** none. If they are not sure code **"8"** and if they mention a brand not listed code **"9"** and write the name.

Choice Modelling

These surveys use a choice modelling methodology to test whether any brand colour interactions exist. There are four versions of this questionnaire in order to reduce the number of showcards respondents are asked to view. It is **VITAL** that the questionnaires and the showcards match!

Show respondents the first showcard and read the question as written. Circle the option nominated, then present the second showcard, and so on. The column on the right is blank, so if someone has no idea which option s/he would choose, you can tick the blank box. However, try to get people to give a firm choice. If they say they don't eat or buy rice ask them to imagine that a friend has asked them to buy rice but hasn't told them exactly what to buy. If they had the choices on the cards which brand would they buy? Please be careful to make sure you circle the number for each showcard and that you match the showcard with the questionnaire.

Demographics

Age

Read the question as written and record year born in the space provided. If people refuse, make a quick judgement and write guess or a question mark next to it so I know it's not the year in which they were born.

Gender

Don't ask for gender, code by observation (unless you are really puzzled!).

Finally, thank respondents for their help and answer any questions they have about the study. You can give an information sheet to respondents who have questions about the study.

Appendix L Chocolate Survey Funnel Sequence Questioning Associations

Appendix L1) % Associations with Purple

	Purple	Food or Confectionary	Chocolate Brand
Apples	0.5	-	-
Bad taste/ Sixties	1	-	-
Bedroom	3	-	-
Blackcurrant	-	1	-
Blueberries	-	0.5	-
Cadbury	4	17	63.5
Cars	1	-	-
Cat food	-	0.5	-
Chocolate	-	10.5	-
Clothes/Fashion	8	-	-
Egg Plant	0.5	1.5	-
Experiments	0.5	-	-
Favourite Colour	2	-	-
Fish	-	0.5	-
Flowers	8	0.5	-
Fruit	-	1	-
Grand/daughter/mother	5	-	-
Grapes	4.5	8.5	-
Harry Potter	0.5	-	-
Health/Healthy/ Healing	0.5	0.5	-
Homosexuality	2	-	-
Houses	0.5	-	-
Jam	-	0.5	-
Just Juice	-	0.5	-
Icing	-	0.5	-
Ice Cream	-	1	-
Jelly	-	0.5	-
K-Bars	-	1	-
Kumara	-	0.5	-
Licorice	-	0.5	-
Lipstick	0.5	-	-
Lively/Bright/Excitement	0.5	-	-
Lollies/lollipops/sweets	1	8	-
Love/warmth	1	-	-
Musicians	0.5	-	-
Nestle	-	-	1
Noel Leeming	0.5	-	-
Paint/charts	0.5	-	-
Passion fruit	-	0.5	-
Pleasant	1	-	-
Richfield's	-	-	0.5
Royalty	3	-	-

Sky	0.5	-	-
Soft Drink	-	1.5	-
Summer/sunshine	0.5	-	-
Windows/doors	1	-	-
Wine	0.5	0.5	-
Women's liberation/ Feminism	1	-	-
Work	0.5	-	-
Religion	1	-	-
Presents	0.5	-	-
Richness	0.5	-	-
Towel/ Face cloth	0.5	-	-
Funerals	1	-	-
Rainbow	0.5	-	-
Whittaker's	-	-	0.5
None	40	42.5	31.5
Not Sure	-	-	3.5
TOTAL	100	100	100

Appendix L2) % Associations with Gold

	Gold	Food or Confectionary	Chocolate Brand
Alcohol	0.5	0.5	-
Apples	-	0.5	-
Banana	-	0.5	-
Biscuits	-	1	-
Bread	-	0.5	-
Butter	-	0.5	-
Bathroom/ toilet/toiletries	0.5	-	-
Beach/Sand	13	-	
Caramel	0.5	12	-
Cadbury	-	1.5	31
Cars	2	-	-
Chocolate	0.5	16	-
Chocolate Wrapper	2	1.5	-
Clothes Fashion	0.5	-	-
Coffee	-	3	-
Curry	-	1.5	-
Curtains	0.5	-	-
Diahorea	0.5	-	-
Dirt/Mud/Earth	4	-	-
Fatty Food/ Unhealthy	-	0.5	-
Fields	1	-	-
Fries	-	0.5	-
Fruit	-	1	-
Fudge	-	1.5	-
Furnishings	0.5	-	-
Furniture	0.5	-	-
Gold	12.5	-	-
Grass/Garden/Landscape/ Nature/Environment	0.5	-	-
Hair	0.5	-	-
Harmony/Calm	0.5	-	-
Hersheys	-	-	6
Hokey Pokey	-	4	-
Honey	-	1	-
Ice Blocks	-	0.5	-
Ice Cream	-	1	-
Jewelery	9	-	-
Kiwifruit	-	1	-
Latte'	0.5	-	-
Lollies/lollipops/sweets	-	2.5	-
Material/Fabric	2.5	-	-
Milky Bar	-	0.5	-
Money	4	-	-

Muffins/Cake	-	1	-
Mustard	0.5	1	-
Nestle	-	-	5
Paint/charts	1.5	-	-
Paper Bag	1.5	-	-
Peanut Butter	-	0.5	-
Popcorn	-	0.5	-
Rain	0.5	-	-
Richfield's	-	-	1
Soft Drink	-	0.5	-
Summer/Sunshine	0.5	-	-
Tomato/Soup/Sauce	-	0.5	-
Toffee	-	5.5	-
Vegetables	-	0.5	-
Wallpaper	3	-	-
Weddings	1.5	-	-
Wheat/Hay	3	-	-
Whittaker's	-	1.5	17
Winning	0.5	-	-
Wood	4.5	-	-
Work	0.5	-	-
Egypt	0.5	-	-
Deer	0.5	-	-
Wrapping Paper	0.5	-	-
Dull/Boring	0.5	-	-
South Africa	0.5	-	-
Cigarettes	1	-	-
Thailand	0.5	-	-
Water	0.5	-	-
None	21.5	35.5	34
Not Sure	-	-	4
Other Chocolate Brand	-	-	2
TOTAL	100	100	100

Appendix L3) % Associations with Red

	Red	Food or Confectionary	Chocolate Brand
Advertising	0.5	-	-
Anger	3	-	-
Apples	1.5	10	-
Blood	7	-	-
Books	0.5	-	-
Bulls	0.5	-	-
Bucket	0.5	-	-
Cadbury	-	0.5	20
Cars	7.5	-	-
Chillis	-	0.5	-
Chocolate	-	4	-
Christmas	-	0.5	-
Clothes Fashion	3	-	-
Cricket Ball	0.5	-	-
Curry	-	1	-
Danger	3.5	-	-
Fire (engine)	6	-	-
Fish	0.5	-	-
Flags	0.5	-	-
Flowers	2	-	-
Fries	-	0.5	-
Fruit	1	8	-
Furniture	0.5	-	-
Harmony/Calm	0.5	-	-
Hersheys	-	-	1
Ice Blocks	-	0.5	-
Ice Cream	-	0.5	-
Jelly	-	0.5	-
K-Bars		0.5	-
KFC	0.5	1	-
Kit Kat		1.5	-
Labour Party	0.5	-	-
Licorice	0.5	2	-
Lion Red Beer	0.5	1	-
Lipstick	1	-	-
Lively/bright/excitement	1.5	-	-
Liverpool	0.5	-	-
Lollies/lollipops/sweets	0.5	6	-
Love/warmth	7	-	-
Malteasers	-	0.5	-
M&M's	-	1	-
McDonalds	1.5	2	--
Meat	-	3	-
Mongrel Mob	1	-	-

Nail Polish	0.5	-	-
Nestle	0.5	1.5	24
New Year	0.5	-	-
Offal	-	0.5	-
Pizza	-	0.5	-
Post Box	0.5	-	-
Power	0.5	-	-
Red Cross	1.5	-	-
Richfield's	-	-	0.5
Roses Chocolates	-	1	-
Sexy/Passion	1	-	-
Soccer	0.5	-	-
Soft Drink	-	1	-
Speed	2	-	-
Spicy Food	-	1	-
Summer/Sunshine	0.5	-	-
The Warehouse	2	-	-
Toffee	-	0.5	-
Tomato/Soup/Sauce	1	9	-
Traffic lights/signs	8	-	-
Treadmill	0.5	-	-
Vegetables	0.5	4	-
Vodafone	0.5	-	-
Westpac	0.5	-	-
Whittaker's	-		1
None	25	36	49
Not Sure	-	-	1.5
Other Chocolate Brand	-	-	3
TOTAL	100	100	100

Appendix L4) % Associations with Green

	Green	Food or Confectionary	Chocolate Brand
Advertising/Posters	0.2	-	
Alcohol	0.2	0.5	
Apples	5.5	10	
Bad Taste/Sixties	0.3	-	
Banana	-	0.2	
Bathroom/Toilet/Toiletries	1	-	
Bedroom	1	-	
Biscuits	-	0.2	
Bugs	0.2		
Cars	0.6		
Cadbury	-	-	6.0
Cereal Package	-	0.2	
Chicken	0.2	0.2	
Chips	-	0.3	
Chocolate	-	0.6	
Cleaning Products	0.6		
Clothes/Fashion	4		
Curry	-	0.2	
Dairy Products	-	0.2	
Eggs	-	0.2	
Favourite Colour	0.2		
Flowers	0.2		
Food Colouring		0.2	
Fries	0.2		
Fruit	3	3.0	
Furnishings	0.6		
Furniture	0.3		
Grand/daughter/mother	0.3		
Grapes	0.2	0.5	
Grass/Garden/Nature/Landscape	20		
Green Tea	0.2	0.3	
Guitar	0.2		
Harmony/Calm	0.6		
Health/Healing	0.2	0.2	
Hospital/Operating Theatre	0.3		
House	0.2		
Ice Blocks	-	0.2	
Ice Cream	2	4	
Jealousy	0.2		
Jelly	-	0.6	
Kitchen	0.6		
Kiwifruit	0.3	1.5	
Licorice	0.3	0.3	
Limes	4	6.0	

Lipstick	0.2		
Lively/Bright/Excitement	0.6		
Lollies/Lollipops/Sweets/Candy	0.6	8.1	
M&M's	-	0.3	
Manawatu	0.6		
Marijuana	0.3		
Material/Fabric	0.3		
Milk Shakes	-	1.5	
Milo Bar	0.3	1.0	
Mint Chocolate	-	0.8	
Muffins/Cake	-	0.3	
Nestle	-	-	6.0
Offal	0.2	-	
Paint/Charts	8.0	-	
Pak 'n' Save	0.2	-	
Pistachio Nuts	-	0.6	
Restaurants	0.2	-	
Richfields	-	-	2.0
Sea	0.2	-	
Shops	0.6	-	
Shrek	0.2	-	
Soft Drink	0.6	2.2	
Spirulina		0.2	
Sport	0.3	-	
Spring	1.0	-	
Summer/Sunshine	0.5	-	
Teddy Bear	0.2	-	
Traffic Lights/Signs	0.5	-	
Vases	0.3	-	
Vegetables	2.5	33	
Wallpaper	1.0		
Work	0.6	0.2	
Mints/Peppermints	0.6	2.7	
New Zealand	0.2		
Frogs	1.0		
Dull/Boring	0.2		
Perfume	0.2		
BP	0.3		
Sickly	0.3		
Fresh	1.0		
Army	0.3		
Animals	0.5		
Shopping Bags	0.2		
Bile/Vomit	0.5	0.2	
Recycled Bicycles	0.2		
TV Programmes	0.2		
Fresh Up	0.2		
Kiwi Bank	0.2		

Telecom	0.2		
Watties	-	0.2	
Whittakers	-	-	1.0
None	30	36	79
Not Sure			4
Other Chocolate Brand			2
TOTAL	100	100	100

Appendix M Rice Survey Funnel Sequence Questioning Associations

Appendix M1) % Associations with Uncle Ben's Orange

	Orange (Uncle Ben's)	Food or Grocery Items	Rice Brand
Oranges	20	26	-
Chocolate	1	-	-
Fruit	2	6	-
Bright/Happy/Summer/Warmth	7	-	-
Paint	2	-	-
Bread	-	0.5	-
Burger Rings	-	0.5	-
Carrots	1	10	-
Capsicum/Pumpkin	-	5	-
Cheese	-	0.5	-
Chippies/Chips	-	0.5	-
Juice/Fanta/Cordial	1	7	-
Office Products/Stationary	4	-	-
Hunger	1	-	-
Clothing/Fashion/Shoes	2	0.5	-
Fire/Engine	2	-	-
Flowers	-	0.5	-
Mitre 10 Mega Store	1	-	-
1970's/60's	2	-	-
Beach/Sand	1	-	-
Car	2	-	-
Traffic Lights	1	-	-
House/Furniture/Furnishings	4	-	-
Road Cones/Workers	1	-	-
Tui	1	0.5	-
Autumn	1	-	-
Crayons	1	-	-
Pizza	1	-	-
Halloween	1	-	-
Hire Equipment	1	-	-
Red	1	-	-
Feelings	1	-	-
Terracotta/Bricks	1	-	-
Lentils	-	0.5	-
Lollies/Confectionary	-	0.5	-
Muesli Bars	-	0.5	-
Pasta	-	1.5	-
Pollen	1	-	-
Safety	1	-	-
Tomato Soup	-	1.5	-
Mexico/Mexican	1	-	-

Favourite Colour	1	-	-
Vitamin C	-	0.5	-
Watties	-	0.5	-
Uncle Ben's	-	-	24
Sun Rice	-	-	6
Diamond Rice Risotto	-	-	1
None	40	36	60
Not Sure	-	-	8
Other Rice Brand	-	-	1
TOTAL	100	100	100

Appendix M2) % Associations with Sun Rice Orange

	Orange (Sun Rice)	Food or Grocery Items	Rice Brand
Oranges	7	20	-
Fruit	0.5	3.5	-
Bright/Happy/Summer/Warmth	3	-	-
Paint	2	-	-
Biscuits/Cakes/Muffins		0.5	
Carrots		11	-
Capsicum/Pumpkin	0.5	5.5	-
Chippies/Chips		0.5	-
City Council	0.5	-	-
Coca Cola	-	0.5	-
Coffee/Tea		0.5	-
Curry	-	0.5	-
Danger	3	-	-
Juice/Fanta/Cordial	1	3	-
Clothing/Fashion/Shoes	6	-	-
Fire/Engine	2	-	-
Flowers	1.5	0.5	-
Mud/Dirt/Earth	0.5	-	-
1970's/60's	1	-	-
Beach/Sand	0.5	-	-
Car	1	-	-
Traffic Lights	3	-	-
House/Furniture/Furnishings	5	-	-
Tui	2	-	-
Feelings	0.5	-	-
Terracotta/Bricks	5.5	-	-
Lollies/Confectionary	0.5	0.5	-
McDonalds	-	0.5	-
Pasta	-	0.5	-
Red Cross	0.5	-	-
Sauce/Gravy	-	0.5	-
Salmon	-	0.5	-
Spaghetti/Baked Beans	0.5	3.5	-
Spices	-	0.5	-
Tomato Soup	2	3	-
Mexico/Mexican	1	-	-
Trees/Wood/Garden	0.5	-	-
Vegetables	-	1	-
Uncle Ben's	-	-	25
Sun Rice	-	-	4
Just Rice	-	-	1
None	47	42	67
Not Sure	-	-	2
Other Rice Brand	-	-	1
TOTAL	100	100	100

Appendix M3) % Associations with Blue

	Blue	Food or Grocery Items	Rice Brand
Oranges	0.5	-	-
Fruit	-	0.5	-
Bright/Happy/Summer/Warmth	3.5	-	-
Paint	1	-	-
Blueberries	-	1	-
Chippies/Chips	-	2	-
Chocolate	-	1	-
Cheese	-	2	-
Curry	0.5	-	-
Ice-cream	-	1	-
Juice/Fanta/Cordial	-	0.5	-
Clothing/Fashion/Shoes	5	-	-
Fish	-	0.5	-
Flowers	0.5	-	-
Car	2	-	-
House/Furniture/Furnishings	3.5	-	-
KFC	-	0.5	-
Feelings	1.5	-	-
Laundry Powder	1	6	-
Lollies/Confectionary	-	0.5	-
Milk	-	3	-
People	1	-	-
Politics/Business	1	-	-
Sad/Cold	1	-	-
Sky	31	-	-
Sea/Ocean	10	-	-
Skiing	0.5	-	-
Trees/Wood/Garden	1	-	-
Uniform	1	-	-
Water	5	2	-
Weather	1.5	-	-
Work	1	-	-
Uncle Ben's			0.5
Sun Rice			4.0
Diamond Rice Risotto			0.5
None	28	79.5	87
Not Sure			2
Other Rice Brand		-	6
TOTAL	100	100	100

Appendix M4) % Associations with Brown

	Brown	Food or Grocery Items	Rice Brand
Aubergine	0.5	-	-
Oranges	0.5	-	-
Biscuits/Cake/Muffins	1.5	4.0	-
Paint	1.5	-	-
Baby Food	0.5	-	-
Bananas	-	0.5	-
Beach/Sand	0.5	-	-
Beer	-	0.5	-
Bread	0.5	4.5	-
Brown	0.5	-	-
Brown Sugar	0.5	1	-
Brown Rice	1	0.5	-
Cat Food/Dog Roll	-	0.5	-
Chocolate	18	18	-
Cheese	0.5	-	-
Cocoa	1.5	1.5	-
Coconut	-	0.5	--
Coffee/Tea/Milo	2	5.0	-
Coca Cola	-	0.5	-
Cereal/Cocoa Pops/Weetbix	1	2.5	-
Curry	-	0.5	-
Dairy Products	-	0.5	-
Dried Fruit	-	0.5	-
Eggs	-	0.5	-
Ice-cream	0.5	2.0	-
Instant Pudding	-	0.5	-
Juice/Fanta/Cordial	-	0.5	-
Clothing/Fashion/Shoes	4.5	0.5	-
Dog	0.5	-	-
Excretion	1	-	-
Car	0.5	-	-
House/Furniture/Furnishings	3	-	-
Kiwifruit	0.5	-	-
Fudge/Caramel	0.5	-	-
Flowers	-	0.5	-
Lollies/Confectionary	0.5	-	-
Make-Up	0.5	-	-
Meat	0.5	2	-
Milo	-	1	-
Mud/Dirt/Earth	10	-	-
Nutella/Marmite	-	0.5	-
Pasta	-	0.5	-
Patchwork	0.5	-	-
Picture Frame	0.5	-	-
Pizza	-	0.5	-

People	0.5	-	-
Potato/Kumara	0.5	6.5	-
Rust	0.5	-	-
Sad/Cold	0.5	-	-
Sauce/Gravy	0.5	1.5	-
Spices	0.5	-	-
Sun Tan	0.5	-	-
Terracotta/Bricks	0.5	-	-
Traffic Lights	0.5	-	-
Tramping	0.5	-	-
Trees/Wood/Garden	6.5	-	-
Vegetables	-	0.5	-
1970's/1960's	0.5	-	-
Uncle Ben's	-	-	3
Sun Rice	-	-	1.0
King Rice	-	-	0.5
Diamond Rice Risotto	-	-	1.0
None	34	40	82.5
Not Sure	-	-	10
Other Rice Brand	-	-	1
TOTAL	100	100	100