

What Can An Emoji Expert Do For You?



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Inquisition over emojis. It's coming. These digital icons people send to each other every day are a core part of how we communicate. Send your wife a text asking "What's for dinner?" and she sends a pizza slice emoji in response. Send your paralegal an email asking if she filed that motion for extension and she sends a yellow thumbs-up in reply. These images are, in effect, communicating. They mean something. And their use is rapidly growing, far and wide outside of the initially teenage-dominated exchange. Emojis and IM acronyms are now frequently finding their way into court as evidence and you may find yourself wondering someday: What can an emoji expert do for me?

Imagine: In a non-compete breach case, a text from the former employee's new director asking "Did you save copies before you left?" is answered with a thumbs-up. In an antitrust case, a text from the company's CFO to its CEO saying "It looks like our purchase of Zip-it-Rite will give us 72% of the zipper market" gets a fist bump emoji in reply. These emojis convey meaning. As do the many comparatively-new, but widely-used text acronyms. Just think, ten years ago, did you know what LOL, LMAO or BTW meant? How many others do you know? It is strange to think our methods and means of communication have changed so drastically and rapidly in just over ten years. It has and because sometimes what we say, whether in words or digital images, matters when litigating claims hinge on intent, state of mind, knowledge, or negligence, these word-free communications become critically important in the

courtroom.

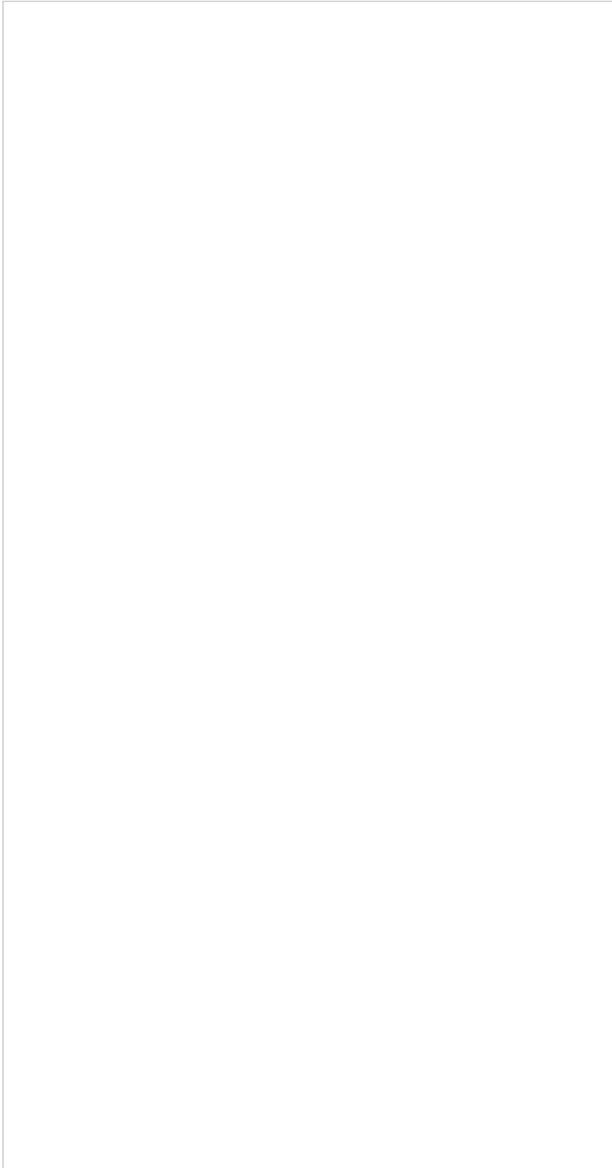
Let's look at a hypothetical example. Imagine that the text exchange below took place between two executives in the light of a security breach:

screenshot, text, messages

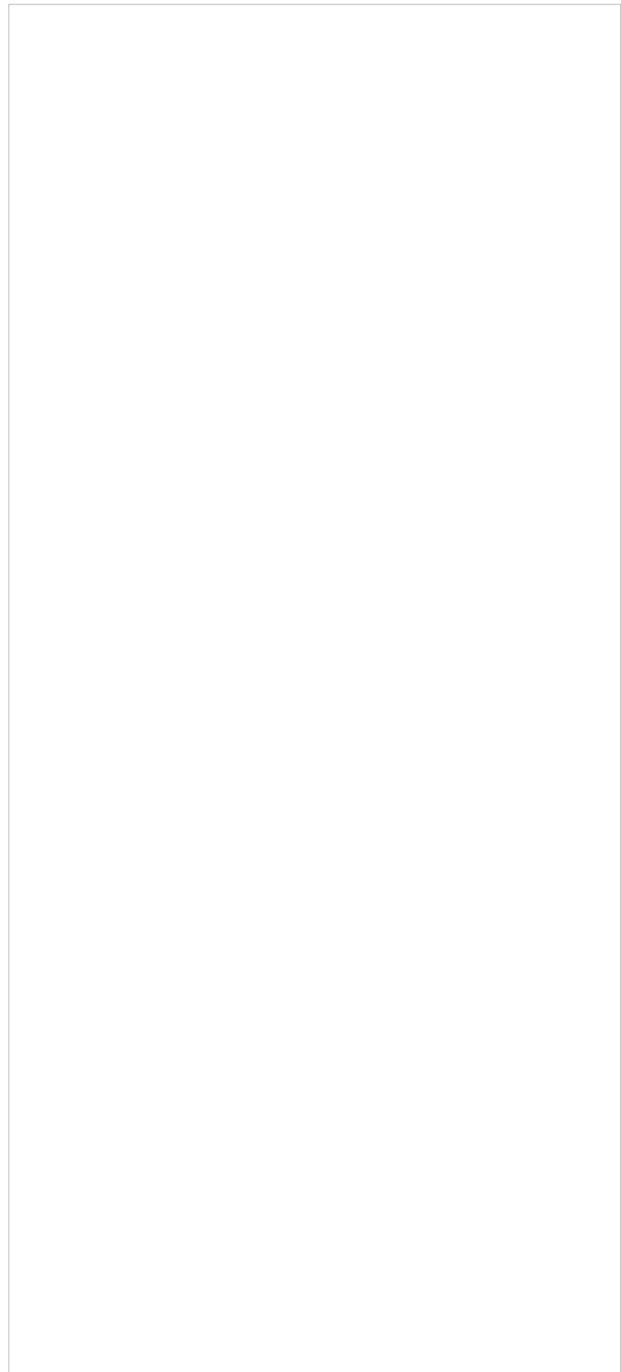


What does that exchange mean? What if Executives 1 and 2 have exercised their Fifth Amendment rights and are refusing to testify, so you can't ask them what they meant? It's strange to think high-stakes litigation like this may hinge on a thumbs-up or a winky face but when proof of a claim pivots on highly inflammatory or, on the flip-side, exonerating communications like this, emojis may someday make or break your case. Linguist, computer science, hieroglyphics, and social media experts are starting to study and opine on entirely new smartphone-created languages—emoji and IM shorthand—because the messages and intentions we convey via these trendy acronyms and icons may not always be clear. For example, here are two completely-rational, yet wildly-differing interpretations of that same conversation:

Possible Jury Interpretation:



Possible Expert Interpretation:



A communication that may have appeared sinister is now expertly explained as benign, exonerating even. This interpretation could also take precedence if the expert's analysis is based on internal company intel as well as the executive's typical use of shorthand and emojis. Resulting in the most likely intended meaning of their communication here.

Have you found that smartphone shorthand is infiltrating your evidence? What types of experts have you enlisted to assist with such cases?

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