

# THE ROLE OF TRADEMARKS IN MARKETING

IP AND BUSINESS

Peter Drucker, a well-known management guru, said that a “business enterprise has two basic functions: marketing and innovation. Marketing and innovation produce results; all the rest are costs.” These two basic functions guide the underlying desire of a business to make a monetary profit in the process of providing quality products and services to customers. Intellectual property plays a role in both of these functions, and specifically trademarks are of primary importance in the marketing process.

Every product in the market faces competing products that are often almost identical, similar or good substitutes. Meeting or exceeding customers’ expectations is a challenging task, especially when tastes and preferences continuously evolve in a competitive marketplace, with many similar products catering for the same need. Only businesses that can meet these challenges can expect to develop and retain a loyal clientele.

## Distinguishing Products from Others

To develop trust, confidence and loyalty in its products, every business has to develop and maintain a distinct identity, image or reputation. Only then is it able to distinguish itself and its products from those of its competitors. It must also, at the same time, provide a mechanism for linking the provider

of a product to the valuable business assets of trust and goodwill. Businesses achieve this mostly through a distinctive trade name and one or more trademarks.

These play a pivotal role in the marketing strategy of differentiating products from those of rivals and in developing longer-term positive – and often emotional – relationships with customers by communicating an assiduously nurtured image or reputation. Every business must woo customers to move them quickly from brand awareness, via brand recognition, to brand preference and finally to brand insistence, a point at which the consumer refuses to accept alternatives and is willing to pay an even higher premium for the desired branded product.

The popular terms used in marketing jargon, “brand” or “brand name” are interchangeable with “trademark,” the term used in intellectual property legal circles. Of course, a product brand or a corporate brand is a much larger concept than a mere trademark, as building a strong brand and establishing the brand equity of a business is a bigger challenge than choosing, registering, or maintaining one or more trademarks. Strong brands and successful branding

generally refers to successes in terms of contribution to market share, sales, profit margins, loyalty and market awareness. However, the ultimate success of a brand is also judged in terms of the total value derived by the customer from the product to which it relates.

## Designing a Trademark

Businesses often use a portfolio of trademarks for diversifying their market strategy to meet the expectations of different target groups in the same or different countries. Building a strong brand image is no easy task. Use of trademarks for effective marketing of products requires an excellent knowledge of trademark law and practice at the national and international levels – seeking professional guidance becomes necessary, as this is a specialized task. However, a few basic elements must be kept in mind for the design of a good trademark. Trademarks should

- be inherently distinctive,
- be easy to memorize and pronounce,
- fit the product or image of the business,
- have no legal restrictions, and
- have a positive connotation.

A brand/trademark may be a word, letter, symbol (logo), number, color, shape or, where the legislation of the country so allows, sound or smell, or a combination of one or more of these elements.



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## Interbrand 2001 Annual Survey of the world's most valuable global brands

(top three brands in US\$, based on estimated market value of the brands themselves)



Coca Cola \$68.9 billion

**Microsoft**

Microsoft \$65.1 billion

**IBM**

IBM \$52.7 billion

© Coca-Cola Company  
Registered trademark of Microsoft Corporation in the USA and/or other countries  
Courtesy: IBM Deutschland GmbH

### Brand Value

The value of brands varies across sectors of the economy and within the same sector as well. According to a recent survey of businesses in some developed economies, it represents just over 10 percent of the total value of the firm in the industrial sector, around 40 percent in the financial services and the automotive sectors and as much as 70 to 90 percent in the food or luxury goods sector.

In absolute terms the value of a brand, excluding the value of its other intellectual property and intangible assets, may be a phenomenal sum. Results from the Interbrand 2001 annual survey of the world's most valuable global brands in the box above clearly demonstrate this point. As such, trademarks/brands are extremely valuable assets, which need care-

ful handling, care, nurturing and protection; otherwise they may lose value, be stolen or simply be destroyed or lost.

### Protect your Trademarks

A major step in eliminating wasteful expense and reducing risk is to register the trademark early so that it is legally secure and others cannot free-ride on it. This is often done well before test marketing the new product to avoid incurring expense on advertising and other promotional activities, only to discover the brand name is not available.

Some countries do provide a degree of protection to unregistered trademarks, but in most countries protection is contingent upon successful registration. Many countries allow registration without prior use, but the trademark may be cancelled if it is not used in the marketplace in relation to the product for a certain period of time. It is easier to deal with the willful free-riding, known as counterfeiting of a trademark and with gray market products (so-called parallel imports) if the trademark is validly registered.

Informed businesses take active steps to educate employees, dealers, distributors, newspaper editors, publishers of encyclopedias and the public that their trademark identifies their specific products alone and therefore should be used in a proper manner.

Another major step that must be taken by every business is to annually review its portfolio of trademarks to check whether timely action has been taken to (1) register all trademarks in use or proposed to be used in the domestic or export markets, (2) record licensing of a trademark if required under the trademark law; (3) adequately control the quality of the product provided by a trademark licensee or franchisee; and (4) renew trademark registrations.



The next article in IP and Business will discuss the role of industrial designs in marketing.