

INTERPLAY BETWEEN BRAND AND TRADEMARK

Many people think that brands are trademarks, or vice versa. But when consumers see the iconic Apple logo, how do they feel? Does it merely distinguish Apple's laptop from other products? Or does it also significantly influence Apple's fans to make a swift decision to buy a MacBook?

In fact, it plays two roles simultaneously: as a trademark, it lets the consumer know it is an Apple laptop; as a brand, it influences the consumer's decision to make a purchase.

A brand is a promise in the consumer's mind about who a brand owner is and what benefits a brand owner delivers. It is the result of the process of branding, in which a brand owner continually and consistently builds and maintains a positive collection of perceptions in the minds of its consumers through its integrated marketing communications (IMC).

IMC includes advertising, public relations, direct marketing, sales promotion, and identity and packaging. Based on such perceptions, consumers will create a brand. Nevertheless, IMC is just an inside-out device of communications. In reality, the brand may be adversely affected by uncontrollable external factors, such as any type of negative perception, even if it only stems from rumours.

Therefore, a brand owner has to exploit outside-in communications devices, such as market surveys, to evaluate the consumer perceptions of the brand to appropriately revise its brand communications strategy as part of a brand management plan.

A trademark is any word, phrase, name, logo, symbol, device, or marking (or any combination of these elements). In the process of branding, a brand owner establishes a trademark to visually present or identify its brand. A trademark is therefore a tangible asset of a brand.

A brand has value because, it can



influence the decision to buy; survive pricing wars; defeat the me-too strategy from competitors with similar products; and can be worth thousands, millions, or even billions of dollars. However, there is still no specific legal protection for the value of a brand.

A trademark, in contrast, can obtain legal protection through registration both locally and internationally.

Within the process of branding, trademark registration is necessary to ensure that first, the visual presentation or identity of a brand will belong exclusively to a brand owner as long as it lives in the marketplace. Second, that it will not be abused to cause significant damage to the value of a brand. A registrable trademark can be said to expand its legal protection to embrace an unregistrable brand.

To ensure the chances of successful trademark registration, a brand owner should be aware that, among the most popular types of names to be selected as a trademark, descriptive names (for example, the trademark CELLULAR for use with the business of selling cellular phones) and geographical names (such as the trademark BOSTON BEER for use with beer products) are normally considered not to be registrable or legally protectable. Meanwhile, arbitrary or fanciful trademarks are legally the strongest trademarks. One of many classic examples is George Eastman's randomly selected camera trademark KODAK.

A brand owner should not apply to register a selected trademark without some initial research. Conducting a

clearance search in the database of registered and pending trademarks is necessary to check whether the trademark is available for use and registration, which means that it will not be identical or confusingly similar to registered or pending trademarks. A brand owner should review and revise the list of goods and services protected by the trademark appropriately so that they will be acceptable for registration.

Once trademark registration is successful, the brand owner should clearly outline its corporate standards and policies of trademark usage, probably in the form of manuals or booklets for marketing and public relations departments, employees, and retailers in order to prevent a loss of trademark protection so the value of the brand will not be diluted.

A few examples of the types of appropriate guidelines include: never use a trademark as a noun, verb, or plural; always use a trademark as an adjective and distinctively in a particular letter style, colour, and size; use the encircled ® for registered trademarks and the superscript ™ for unregistered trademarks.

A brand owner should also keep records of the use of the trademark, especially the date of first use.

Failure to protect a trademark is the main factor negatively affecting brand value. Therefore, all of these important aspects must be included in a brand management plan.

Furthermore, during the process of branding, a brand owner must balance marketing priorities with knowledge of the current local and international rules and practices of trademark registration and usage.

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