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“Intellectual Property lies at the centre of the modern company's economic success or failure”

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

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What is in a name and design?

by Elizabeth Ward
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Quite a lot, actually. Many companies spend considerable amounts of money making sure their product is decoratively presented with packaging and imagery, equipping it with a certain "value" and distinctiveness. However, while many businesses consider their brand and its presentation in some detail, the protection of that brand and how it looks can be something of an afterthought.

A growing problem for many designer labels is the proliferation of so-called "lookalikes". Even when cheaper versions are not exact copies, what they often achieve is the ability to evoke the same style trends, names or packaging concepts as their expensively-designed, authentic counterparts. Some brands manage to turn over new concepts so quickly that the follow-on trend in lookalikes does little harm. Others suffer, however, when they spend a fortune getting a new product and design to market, only to find that six months down the line, cheaper lookalike copies are available everywhere. Of course, only the designer brand has made the original investment in the names and designs.

One way round this is to use a well-known trade mark as part of a badging system. A trade mark identifies the origin of an item. Trade marks were created to protect and register intellectual property in the 19th century, after makers of fine bone china sought badges of origin to stop cheap copies coming in from overseas. Sound familiar? Hence, the pottery makers of England started to put their own small discrete marks on the bottom of china to denote the maker. These marks then become distinctive of the manufacturers, and the names Wedgwood and Royal Doulton became household names. In fact, even the use of blue in china became distinctive of Josiah Wedgwood's process.

Today's clever designers use their names prominently on their items for good reason. This is because their trade marks are extensively registered on a worldwide basis, and the use of a registered trade mark by someone without permission can be a criminal offence. Take for example the use of a Gucci logo on a handbag. Only Gucci or its permitted licensees can use that mark. Use of the logo on other handbags

creates counterfeit goods, and is strictly prohibited by the Trade Marks Act. That means of course that all the other potential lookalikes have to design around the use of the mark. Not impossible, of course, but it makes life more difficult and protects the look.

There are other good reasons for registering your trade mark, but one of the most compelling is that increasingly trade marks are seen as valuable company assets, and are stated as such on the company balance sheets. Look at the goodwill that attracts customers to purchase when they see a name they trust, and you can soon see why names are so valuable. A registered trade mark is easier to protect, easier to license out for revenue streams, and can be used to help finance the company with lenders. The cost of international trade mark filing has been considerably reduced by the Madrid Protocol, which allows one trade mark filing to be applied to numerous different designated countries for one application fee. So can you afford to trade mark your brand? Can you afford not to?