



# Differentiating your Products

## Unleashing the Power of Branding through Trademarks and Industrial Designs

Cherine Rahmy  
SMEs Division - WIPO



# Concept of Branding



- Getting people to recognize your name
- A Brand is a company image as seen by the customer
- Good branding means getting people to recognize you..first
- A brand means you have an effective logo with which customers can identify
- A brand is what differentiates you from your competitors
- Good advertising and how it attracts customers
- A compelling customer experience
- A durable psychological bond between a company and its customers



## Branding is all that and more...



- vision
- mission
- message
- service package
- image
- differentiation
- understanding the customer
- advertising
- logo
- name recognition
- customer service
- internal training
- team work
- investment





# Branding Matters

“Consumers are starved for time and overwhelmed by the choices available to them. They want strong brands that simplify their decision making and reduce their risks”

Kevin Lane Keller, Tuck School of Business



# Purpose of Branding



- Gives a business/enterprise a significant edge over the competition
- Have the customer view a business/enterprise as the only solution to their problem
- A strong brand engenders feelings of trust, reliability, loyalty, empathy, responsiveness and recognition in the customer's mind.



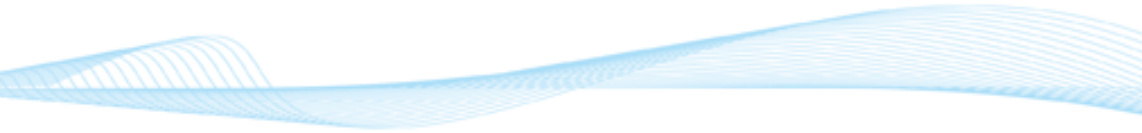


# Plan to Brand



- Developing a brand part and parcel of every strategic business plan
- Trademarks and Industrial Designs - Two Intellectual Property Rights that are crucial to successful branding





# Trademarks



## What is a Trademark?



- “A sign capable of distinguishing the goods or services produced or provided by one enterprise from those of other enterprises”





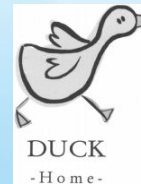
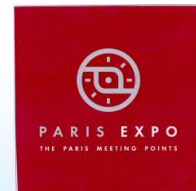


Any Distinctive Words, Letters, Numerals,  
Pictures, Shapes, Colors, Logotypes, Labels

• Examples:



**YAHOO!**



## Less traditional forms



- Single colors
- Three-dimensional signs (shapes of products or packaging)
- Audible signs (sounds)
- Olfactory signs (smells)





## Types of Trademarks?

- Trade marks: to distinguish goods
- Service marks: to distinguish services
- Collective marks: to distinguish goods or services by members of an association
- Certification marks
- Well-known marks: benefit from stronger protection
- Tradename vs Trademark







## The function of a Trademark

- Allows companies to differentiate their products
- Ensures consumers can distinguish between products and ultimately develop brand insistence







## The value of a Trademark?

- A marketing tool
- Source of revenue through licensing
- Crucial component of franchising agreements
- May be useful for obtaining finance
- A valuable business asset





## The Value of Trademarks

- **Global Brand Scoreboard**

- |     |           |                 |
|-----|-----------|-----------------|
| •1. | Coca-cola | 70.45\$ billion |
| •2. | Microsoft | 65.17\$ billion |
| •3. | IBM       | 51.77\$ billion |
| •4. | GE        | 42.34\$ billion |
| •5. | Intel     | 31.11\$ billion |

- *(Interbrand Business Week August 4, 2003)*



Trademark protection > Registration =



- Exclusive rights prevent others from marketing products under same or confusingly similar mark
- Secures investment in marketing effort
- Promotes customer loyalty/ reputation / image of company
- Provides coverage in relevant markets where business operates
- Registered marks may be licensed or basis franchising agreements





## Practical Aspects

- Selecting a trademark
- Protecting a trademark through registration
- Using and maintaining a trademark
- Enforcing a trademark





## What to avoid when selecting a Trademark

- Generic terms: CHAIR to sell chairs
- Descriptive terms: SWEET to sell chocolates
- Deceptive terms: “ORWOOLA” for 100% synthetic material
- Marks contrary to public order/morality
- Flags, armorial bearings, official hallmarks, emblems



## What to Remember when selecting Trademark?



- Inherently distinctive
  - Coined or fanciful words: “Kodak”
  - Arbitrary marks: “apple” for computers
  - Suggestive marks: SUNNY for heaters
- Easy to memorize and pronounce
- Fits product or image of the business
- Has no legal restrictions
  - Reasons for rejection
  - TM search > not identical or confusingly similar to existing TM
- Has a positive connotation
- Suitable for export markets
- Corresponding domain name available



## Protecting a TM through registration

- The applicant
  - Application form, contact details, graphic illustration of mark, description of goods, fees
- The trademark office
  - Formal examination
  - Substantive examination
  - Publication and opposition
  - Registration certificate valid for 10 years
  - Renewal





## Scope of Rights

- The exclusive right to use the mark
- The right to prevent others from using an identical or similar mark for identical or similar goods or services
- The right to prevent others from using an identical or similar mark for dissimilar goods or services





## Keep in Mind

- The time it takes to register a TM
- The costs associated with TM protection
- The need for a trademark search
- A trademark agent may be required
- Protecting at home and abroad
- Renewing your registration



## Protecting at Home and Abroad



- The national route
  - Each country where you seek protection
- The regional route
  - Countries members of a regional trademark system: African Regional Industrial Property Office; Benelux TM office; Office for Harmonization of the Internal Market of the EU; Organisation Africaine de la Propriété Intellectuelle
- The international route
  - The Madrid system administered by WIPO (over 70 member countries)







## Using a Trademark

- **Actively using a TM**
- **Using/maintaining a TM in marketing and advertising**
- **Using the mark on the internet**
- **Using the mark as a business asset**





## Actively using a Trademark

- Offering the goods or services
- Affixing the mark to the goods or their packaging
- Importing or exporting the goods under the mark
- Use on business papers or in advertising





## Using a Trademark in Advertising

- Use exactly as registered
- Protect TM from becoming generic
  - Set apart from surrounding text
  - Specify font, size, placement and colors
  - Use as an adjective not as noun or verb
  - Not plural, possessive or abbreviated form
  - Use a trademark notice in advertising and labeling ®
- Monitor authorized users of the mark
- Review portfolio of trademarks
- An evolving trademark





## Using a TM on the Internet

- Use of TM on internet may raise controversial legal problems
- Conflict between trademarks and domain names(internet addresses) - cybersquatting
- WIPO procedure for domain name dispute (<http://arbitrator.wipo.int/domains>)



## Using a Trademark as a business asset



- Licensing: owner retains ownership and agrees to the use of the TM by other company in exchange for royalties > *licensing agreement* (business expansion/diversification)
- Franchising: licensing of a TM central to franchising agreement. The franchiser allows franchisee to use his way of doing business (TM, know-how, customer service, s/w, shop decoration. Etc)
- Selling/assigning TM to another company (merger & acquisitions/raising of cash)





## Enforcing Trademarks

- Responsibility on TM owner to identify infringement and decide on measures
- “Cease and desist letter” to alleged infringer
- Search and seize order
- Cooperation with customs authorities to prevent counterfeit trademark goods
- Arbitration and mediation (preserve business relations)

