



Selecting and Launching a Brand

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Setting precedent.



ROADMAP

- Initial Branding Considerations
- Scope Challenges
- Weighing Risks
- Timing Woes
- The Launch Begins

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ROADMAP

- **Initial Branding Considerations**
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Challenge

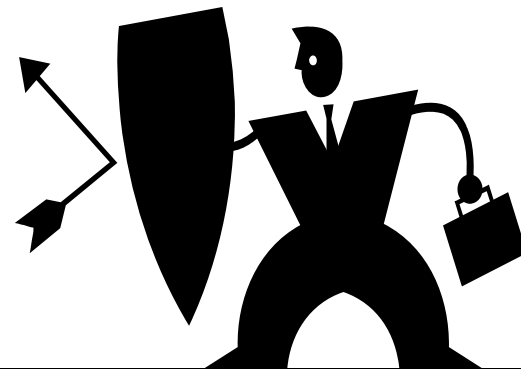
Should we even brand the new offering?

INITIAL BRANDING CONSIDERATIONS

Challenge

Should we even brand the new offering?

- Initial questions to ask
 - Weigh potential value vs. risks and liabilities
 - Are the brands assets or insurance?
 - What's the client's risk tolerance and budget?



INITIAL BRANDING CONSIDERATIONS

Challenge

Should we even brand the new offering?

- Do the math on value
 - Potential revenue v. \$ to advertise?
 - Breakthrough or flagship product?
 - Breadth of offerings under brand?
 - Lifespan?
 - Will it serve to exclude others?
 - Important for industry?

Challenge

Should we even brand the new offering?

- Risk considerations
 - Costs of rebranding, if necessary
 - Risks of not branding
 - Inability to compete effectively
 - Difficulties expanding

Challenge

Should we even brand the new offering?

- Alternatives to trademarks

- Descriptive term

the label-maker software

- House mark + descriptive term

ACME Soda

- Model number

8XB-4

Challenge

How can we protect a brand comprised of descriptive or generic wording?

INITIAL BRANDING CONSIDERATIONS

Challenge

How can we protect a brand comprised of descriptive or generic wording?

- Encourage more unique term
- Give creative twist **...if new connotation created**
- File for registration with design elements
- File for ancillary offerings
- Use it *like* a trademark to discourage copycats
 - ™ symbol
 - stylized font
 - the word “brand”
- Sue in 2d Cir.

Challenge

What should be registered?

INITIAL BRANDING CONSIDERATIONS

Challenge

What should be registered?

- Domain names
 - Should have: company or brand name +
 - .com, .net, or .org
 - country code extensions for *your* key regions
 - Nice to have
 - likely misspellings (www.seo-chat.com), brandonline.com, wwwbrand.com, sucks (and worse)
- Pages on social media sites



Challenge

What should be registered?

- Trademark registrations
 - When not to register – maybe if
 - Low budget
 - Use in just U.S.
 - Use in small geographic region in U.S.
 - Short term launch
 - Want to avoid drawing attention
 - Will not enforce

Challenge

Where should we seek registration of the trademark?

Challenge

Where should we seek registration of the trademark?

- Options: USPTO, state, and foreign trademark offices
- Consider
 - Where client sells, markets, distributes or source
 - More industrialized countries with more filings
 - Countries known for piracy and counterfeiting
 - Civil (first-to-file) countries
 - Expansion plans



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Challenge

How deep should we search?

SCOPE CHALLENGES

Challenge

How deep should we search?

- Initial questions
 - Budget
 - Client's risk tolerance
 - Whether industry is litigious
 - Importance and life shelf of brand
 - Whether brand is for goods
 - Client's investment in brand
 - License, sale, or deal

SCOPE CHALLENGES

Challenge

How deep should we search?

- If you do dig deep, consider
 - Full search...**in common law countries**
 - Additional web searches and investigations
 - Industry searches



SCOPE CHALLENGES

Challenge

How deep should we search?

- If you don't search too deep, consider
 - USPTO.gov
 - Whois databases / NameDroppers.com
 - KnowEm.com
 - Google / Bing
 - Google Images / Like.com for designs

Challenge

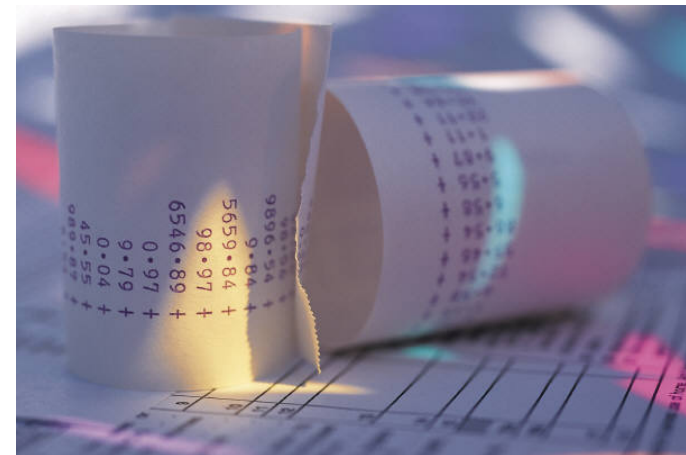
What steps should we take on a tight budget?

SCOPE CHALLENGES

Challenge

What steps should we take on a tight budget?

- Focus on core marks and regions
- A simple search usually beats none
- Target civil (first-to-file) countries
- Delay or stagger filings





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Challenge

Your client is very risk-averse.

WEIGHING RISKS

Challenge

Your client is very risk-averse.

- Conduct full searches
 - Keep in mind their limitations
- Use marking and advertising techniques that can be changed without great cost



Challenge

Your client has a much higher risk tolerance than you do.

Challenge

Your client has a much higher risk tolerance than you do.

- Make sure the client is informed
 - Emphasize risks
 - Injunctions, damages, destruction of products and materials
- Consider *whether* and *how* to issue an opinion advising of high risks

Challenge

The selected brand is a high-risk one.

Challenge

The selected brand is a high-risk one.

- Just say no. Select another brand
- Or, tweak it
 - Add house mark or family brand
 - Change spelling
 - Use heavy stylization
 - Use a logo
 - Use a thesaurus

Challenge

The selected brand is a high-risk one.

- Or, figure out *how* to use it
 - Finesse the product or packaging marking
 - Use on marketing only
 - Mark sticker on packaging just before shipping
 - Manufacture and mark on demand
 - Use in descriptive or inconspicuous manner
 - Avoid TM symbol
 - License, consent, or purchase
 - Investigate and attack



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Challenge

How do we prevent someone
from stealing the brand?

Challenge

How do we prevent someone from stealing the brand?

- Well, brands cannot be stolen, per se.....
- But there are ways to protect against this



Challenge

How do we prevent someone from stealing the brand?

- File trademark applications ...**EARLY**
- Register domains and user names ...**EARLY**
- Record with Customs
- Monitor
- Nondisclosure agreements
- Don't blabber



Challenge

The launch is happening...

NOW!

Challenge

The launch is happening, now!

- Can still
 - Search and consider rebrand
 - Review collateral for trademark use, or copyright or false advertising concerns
 - Correct online mistakes
- Huge, successful launch can trigger rights



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Challenge

How can we address improper brand use in collateral?

THE LAUNCH BEGINS

Challenge

How can we address improper brand use in collateral?

- Adjust (at least online) collateral
- Encourage basic rules of brand usage
 - Use as adjective
 - Before generic noun or term “brand”
 - Be consistent
 - Distinguish brand from other text
 - Use TM and ® symbols appropriately

TAKEAWAYS

- Determine whether a new brand makes sense
- Match search, opinion, selection, advertising and marketing strategies with client's risk tolerance and perceived brand value
- Use care when selecting a brand
 - Is it distinctive and available in relevant regions?
- Acquire domain and social media real estate
 - Consider trademark filings
- Use trademarks appropriately



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