



## THE TOP 10 MARKETING TIPS OF ALL TIME

With more than a decade of experience in marketing, ranking from pay-per-click to direct mail, I've seen a lot of failures and far more successes when it comes to marketing.

Today, the art of marketing is far more complex than it once was. However, many of the same basic principles still apply. Too often, professional marketers and small business owners overlook the basic techniques that have separated successful campaigns from those that never turn a profit. Here is my all time list of effective marketing tips.

**Know your audience.** Successful campaigns get that way because marketers know their audience. They fully understand their needs, how to help meet those needs and how to create demand. Knowing and understanding your audience through proper market segmentation means a well targeted campaign that generates a profitable return.

**Focus on the offer.** A marketing offer is the driving force of marketing promotions that drive results. In fact, market testing has proven that the offer is the most significant criterion for conversion. Focus on your offer if you want to be successful.

**Split test.** Never ever run a campaign without testing something. One of the most common is a split test which allows you to simultaneously test two versions of something. It can be a web page, post card, or email. Split testing is essential for improving performance.

**Never work alone.** The most creative ideas come from working with other creative people. Don't feel like you need to have all the answers or great ideas. You may start with an idea, but an open dialog with creative individuals will make it better.

**Don't sell on price.** I've seen so many marketers fail because they sell on price along. This leads to a discounting war, lower profitability, and often bankruptcy. Rather, focus on creating so much value that the perception of price becomes insignificant.

**Consistent messaging.** Consider the entire user experience before you launch a campaign. From email to website to offer, is the prospect having a consistent user experience? If they are, your campaigns stand above 98% of others.

**Create value after the sale.** As marketers, it's our job to understand our market segment and build relationships, not dump people off at the front door of our store and walk away. Focus as much of your energy on building relationships with customers as you do prospects.

**Test. Test. Test.** In addition to split testing, you should consider multiple forms of testing in each marketing discipline. For direct mail, test headlines, offers, copy, time of direct mail drop, etc. Consider testing a life long mission.

**Integrated Marketing Works Best.** You can't rely on one form of marketing to carry you to success. It's okay to generate most of your leads or sales through PPC marketing if you will but what happens when that dries us? Use multiple media sources to meet your goals.

**Nothing can replace experience.** You can run out and hire all of the best consultants in the world, but you still have to do the work. Nothing can replace actual experience. It will make you a stronger marketer and more successful in the long term.

Apply these helpful marketing tips if you want to be truly successful. These techniques and tips are applied by successful marketers on a daily basis. The result is an ever growing success rate of marketing success.



*Courtesy: Mr, Michael Fleischner, Marketing Experts, United States*

# "An Intersection of Branding and the Consumer Responsiveness: An Overview"

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*Continued from last issue.....*

## **Small business brands**

Branding a small or medium sized business (SME) follows essentially the same principle a branding larger corporation. The main differences being that small businesses usually have a smaller market and have less reach than larger brands. Some people argue that it is not possible to brand a small business; however there are many examples of small businesses that became very successful due to branding.

## **Own brands and generics**

With the emergence of strong retailers the "own brand", a retailer's own branded product (or service), also emerged as a major factor in the marketplace. Where the retailer has a particularly strong identity (such as Marks & Spencer in the UK clothing sector) this "own brand" may be able to compete against even the strongest brand leaders, and may outperform those products that are not otherwise strongly branded.

Concerns were raised that such "own brands" might displace all other brands (as they have done in Marks & Spencer outlets), but the evidence is that — at least in supermarkets and department stores — consumers generally expect to see on display something over 50 per cent (and preferably over 60 per cent) of brands other than those of the retailer. Indeed, even the strongest own brands in the UK rarely achieve better than third place in the overall market.

This means that strong independent brands (such as Kellogg's and Heinz), which have maintained their marketing investments, are likely to continue their strong performance. More than 50 per cent of UK FMCG brand leaders have held their position for more than two decades, although it is arguable that those which have switched their budgets to "buy space" in the retailers may be more exposed.

The strength of the retailers has, perhaps, been seen more in the pressure they have

been able to exert on the owners of even the strongest brands (and in particular on the owners of the weaker third and fourth brands). Relationship marketing has been applied most often to meet the wishes of such large customers (and indeed has been demanded by them as recognition of their buying power). Some of the more active marketers have now also switched to 'category marketing' - in which they take into account all the needs of a retailer in a product category rather than more narrowly focusing on their own brand.

At the same time, probably as an outgrowth of consumerism, "generic" (that is, effectively unbranded goods) have also emerged. These made a positive virtue of saving the cost of almost all marketing activities; emphasizing the lack of advertising and, especially, the plain packaging (which was, however, often simply a vehicle for a different kind of image). It would appear that the penetration of such generic products peaked in the early 1980s, and most consumers still appear to be looking for the qualities that the conventional brand provides.

## **BRAND-EQUITY**

Brand equity refers to the marketing effects or outcomes that accrue to a product with its brand name compared with those that would accrue if the same product did not have the brand name. And, at the root of these marketing effects is consumers' knowledge. In other words, consumers' knowledge about a brand makes consumers respond differently to the marketing of the brand. There are many ways to measure a brand. Some measurements approaches are at the firm level, some at the product level and still others are at the consumer level.

A more complete understanding of the brand can occur if multiple measures are used.

## **Positive Equity Only?**

An interesting question is raised- can brands have negative brand equity? From one perspective, brand equity cannot be negative. Positive brand equity is created by effective marketing including via advertising,

PR and promotion. A second perspective is that negative equity can exist. Looking at a political "brand" example, the "Democrat" brand may be negative to a Republican, and vice versa.

The greater a company's brand equity, the greater the probability that the company will use a family branding strategy rather than an individual branding strategy. This is because family branding allows them to leverage the equity accumulated in the core brand. Aspects of brand equity include: brand loyalty, awareness, association, and perception of quality.

### **Oldest trademarks**

Zildjian, the cymbal and gong company owns the oldest continuously used U.S. trademark -- it should be noted, however, that the first two hundred years of the use of the Zildjian trademark were in Turkey as the family moved to the United States. Venetian glass blowers are thought of as using the longest continuously used trademarks. Wieliczka, a salt mine in Poland, is reported to be the source of the oldest known trademark (circa 1241 A.D.) - even though this trademark is really an appellation of origin. Finally, in trademark treatises, it is usually reported that blacksmiths who made swords in the Roman Empire are thought of as being the first users of trademarks.

### **Terminology**

Terms such as "mark", "brand" and "logo" are sometimes used interchangeably with "trademark". "Trademark", however, also includes any device, brand, label, name, signature, word, letter, numerical, shape of goods, packaging, combination of colours, or any combination thereof which is capable of distinguishing goods and services of one person from those of others. It must be capable of graphical representation and must be applied to goods or services for which it is registered.

Specialized types of trademark include certification marks, collective trademarks and defensive trademarks. A trademark which is popularly used to describe a product or service (rather than to distinguish the product or services from those of third parties) is sometimes known as a genericized trademark. If such a mark becomes synonymous with that product or service to the extent that the trademark

owner can no longer enforce its proprietary rights, the mark becomes generic.

### **Establishing trademark rights**

The law considers a trademark to be a form of property. Proprietary rights in relation to a trademark may be established through actual use in the marketplace, or through registration of the mark with the trademarks office (or "trademarks registry") of a particular jurisdiction. In many jurisdictions, trademark rights can be established through either or both means. Certain jurisdictions generally do not recognize trademark rights arising through use. If trademark owners do not hold registrations for their marks in such jurisdictions, the extent to which they will be able to enforce their rights through trademark infringement proceedings will therefore be limited. In cases of dispute, this disparity of rights is often referred to as "first to file" as opposed to "first to use". Other countries such as Germany offer a limited amount of common law rights for unregistered marks where to gain protection, the goods or services must occupy a highly significant position in the marketplace - where this could be 40% or more market share for sales in the particular class of goods or services.

A registered trademark confers a bundle of exclusive rights upon the registered owner, including the right to exclusive use of the mark in relation to the products or services for which it is registered. The law in most jurisdictions also allows the owner of a registered trademark to prevent unauthorized use of the mark in relation to products or services which are identical or "colourfully" similar to the "registered" products or services, and in certain cases, prevent use in relation to entirely dissimilar products or services. The test is always whether a consumer of the goods or services will be confused as to the identity of the source or origin. An example maybe a very large multinational brand such as "Sony" where a non-electronic product such as a pair of sunglasses might be assumed to have come from Sony Corporation of Japan despite not being a class of goods that Sony has rights in.

Once trademark rights are established in a particular jurisdiction, these rights are generally only enforceable in that jurisdiction, a quality which is sometimes known as territoriality.

## Trademark search

To avoid conflicts with earlier trademark rights, it is highly recommended to conduct trademark searches before the trademarks office (or "trademarks registry") of a particular jurisdiction—e.g. US Patent and Trademark Office. It may also be advisable to conduct a broader search as well, including databases that contain names of registered companies and also an Internet search to determine if the desired trademark is either already registered as a domain name or otherwise being used. The reason for this is because trademark offices typically only search issued trademarks and pending applications in order to determine whether a trademark should issue. For business reasons, however, an applicant may want to consider a different trademark even if it could be registered if the domain name is taken or other businesses are using the trademark as an unregistered name or slogan.

## Registrability

In most systems, a trademark will be registrable if it is able to distinguish the goods or services of a party, will not confuse consumers about the relationship between one party and another, and will not otherwise deceive consumers with respect to the qualities of the product.

## Distinctive character

- Trademark distinctiveness
- Maintaining trademark rights

Trademark rights must be maintained through actual lawful use of the trademark. These rights will cease if a mark is not actively used for a period of time, normally 5 years in most jurisdictions. In the case of a trademark registration, failure to actively use the mark in the lawful course of trade, or to enforce the registration in the event of infringement, may also expose the registration itself to become liable for an application for the removal from the register after a certain period of time on the grounds of "non-use". It is not necessary for a trademark owner to take enforcement action against all infringement if it can be shown that the owner perceived the infringement to be minor and inconsequential. This is designed to prevent owners from continually being tied up in litigation for fear of cancellation. An

owner can at any time commence action for infringement against a third party as long as it had not previously notified the third party of its discontent following third party use and then failed to take action within a reasonable period of time (called acquiescence). The owner can always reserve the right to take legal action until a court decides that the third party had gained notoriety which the owner 'must' have been aware of. It will be for the third party to prove their use of the mark is substantial as it is the onus of a company using a mark to check they are not infringing previously registered rights. In the US, owing to the overwhelming number of unregistered rights, trademark applicants are advised to perform searches not just of the trademark register but of local business directories and relevant trade press. Specialized search companies perform such tasks prior to application.

The extent to which a trademark owner may prevent unauthorized use of trademarks which are the same as or similar to its trademark depends on various factors such as whether its trademark is registered, the similarity of the trademarks involved, the similarity of the products and/or services involved, and whether the owner's trademark is well known.

If a trademark has not been registered, some jurisdictions (especially Common Law countries) offer protection for the business reputation or goodwill which attaches to unregistered trademarks through the tort of passing off. Passing off may provide a remedy in a scenario where a business has been trading under an unregistered trademark for many years, and a rival business starts using the same or a similar mark.

If a trademark has been registered, then it is much easier for the trademark owner to demonstrate its trademark rights and to enforce these rights through an infringement action. Unauthorized use of a registered trademark need not be intentional in order for infringement to occur, although damages in an infringement lawsuit will generally be greater if there was an intention to deceive.

For trademarks which are considered to be well known, infringing use may occur where the use occurs in relation to products or services which are not the same as or similar to the products or services in relation to which the owner's mark is registered.

## **Limits and defenses to trademark**

Trademark is subject to various defenses and limitations. In the United States, the fair use defense protects uses that would be otherwise protected by the First Amendment. Fair use may be asserted on two grounds, either that the alleged infringer is using the mark to accurately describe an aspect of its products, or that the alleged infringer is using the mark to identify the mark owner.

Various jurisdictions have laws which are designed to prevent trademark owners from making wrongful threats of trademark infringement action against other parties. These laws are intended to prevent large or powerful companies from intimidating or harassing smaller companies.

Where one party makes a threat to sue another for trademark infringement, but does not have a genuine basis or intention to carry out that threat, or does not carry out the threat at all within a certain period, the threat may itself become a basis for legal action. In this situation, the party receiving such a threat may seek from the Court, a declaratory judgment; also known as a declaratory ruling.

## **Other aspects**

### ***Public policy***

Trademark law is designed to fulfill the public policy objective of consumer protection, by preventing the public from being misled as to the origin or quality of a product or service. By identifying the commercial source of products and services, trademarks facilitate identification of products and services which meet the expectations of consumers as to quality and other characteristics.

Trademarks may also serve as an incentive for manufacturers, providers or suppliers to consistently provide quality products or services in order to maintain their business reputation. Furthermore, if a trademark owner does not maintain quality control and adequate supervision in relation to the manufacture and provision of products or services supplied by a licensee, such "naked licensing" will eventually adversely impact on the owner's rights in the trademark.

While trademark law seeks to protect indications of the commercial source of products or services, patent law generally

seeks to protect new and useful inventions, and registered designs law generally seeks to protect the look or appearance of a manufactured article. Trademarks, patents and designs collectively form a subset of intellectual property known as industrial property because they are often created and used in an industrial or commercial context.

By comparison, copyright law generally seeks to protect original literary, artistic and other creative works. A trademark also does not expire (if it is re-registered), whereas international copyright law (which varies from country to country) usually lasts the duration of the author's lifespan plus 70 years.[9] This can lead to confusion in cases where a work passes into the public domain but the character in question remains a registered trademark.

Although intellectual property laws such as these are theoretically distinct, more than one type may afford protection to the same article. For example, the particular design of a bottle may qualify for copyright protection as a non-utilitarian [sculpture], or for trademark protection based on its shape, or the 'trade dress' appearance of the bottle as a whole may be protectable. Titles and character names from books or movies may also be protectable as trademarks while the works from which they are drawn may qualify for copyright protection as a whole.

Drawing these distinctions is necessary but often challenging for the courts and lawyers, especially in jurisdictions where patents and copyrights when they pass into the public domain depending on the jurisdiction. Unlike patents and copyrights, which in theory are granted for one-off fixed terms, trademarks remain valid as long as the owner actively uses and defends them and maintains their registrations with the applicable jurisdiction's trademarks office. This often involves payment of a periodic renewal fee.

As a trademark must be used in order to maintain rights in relation to that mark, a trademark can be 'abandoned' or its registration can be canceled or revoked if the mark is not continuously used. By comparison, patents and copyrights cannot be 'abandoned' and a patent holder or copyright owner can generally enforce their rights without taking any particular action to maintain the patent or copyright. Additionally, patent holders and copyright owners may not necessarily need to actively police their rights. However, a failure to bring a timely

infringement suit or action against a known infringer may give the defendant a defense of implied consent or estoppel when suit is finally brought.

### **Trademark dilution**

A trademark is diluted when the use of similar or identical trademarks in other non-competing markets means that the trademark in and of itself will lose its capacity to signify a single source. In other words, unlike ordinary trademark law, dilution protection extends to trademark uses that do not confuse consumers regarding who has made a product. Instead, dilution protection law aims to protect sufficiently strong trademarks from losing their singular association in the public mind with a particular product, perhaps imagined if the trademark were to be encountered independently of any product (e.g., just the word Pepsi spoken, or on a billboard).

In various jurisdictions a trademark may be sold with or without the underlying goodwill which subsists in the business associated with the mark. However, this is not the case in the United States, where the courts have held that this would "be a fraud upon the public". Most jurisdictions provide for the use of trademarks to be licensed to third parties. The licensor (usually the trademark owner) must monitor the quality of the goods being produced by the licensee to avoid the risk of trademark being deemed abandoned by the courts. A trademark license should therefore include appropriate provisions dealing with quality control, whereby the licensee provides warranties as to quality and the licensor has rights to inspection and monitoring.

### **Trademarks and domain names**

The advent of the domain name system has led to attempts by trademark holders to enforce their rights over domain names that are similar or identical to their existing trademarks, particularly by seeking control over the domain names at issue. As with dilution protection, enforcing trademark rights over domain name owners involves protecting a trademark outside the obvious context of its consumer market, because domain names are global and not limited by goods or service.

This conflict was more easily resolved when the domain name user actually used his website to compete with the trademark

owner. Cybersquatting, however, involves no such competition, but instead an unlicensed user registering the trademark as a domain name in order to pressure a payoff (or other benefit) from the lawful mark owner. Typosquatters—those registering common misspellings of trademarks as domain names—have also been targeted successfully in trademark infringement suits.

This international legal change has also led to the creation of ICANN Uniform Domain-Name Dispute-Resolution Policy (UDRP) and other dispute policies for specific countries (such as Nominet UK's DRS) which attempt to streamline the process of resolving who should own a domain name (without dealing with other infringement issues such as damages). This is particularly desirable to trademark owners when the domain name registrant may be in another country or even anonymous.

Registrants of domain names also sometimes wish to register the domain names themselves (e.g., "XYZ.COM") as trademarks for perceived advantages, such as an extra bulwark against their domain being hijacked, and to avail themselves of such remedies as confusion or passing off against other domain holders with confusingly similar or intentionally misspelled domain names.

As with other trademarks, the domain name will not be subject to registration unless the proposed mark is actually used to identify the registrant's goods or services to the public, rather than simply being the location on the Internet where the applicant's web site appears. Amazon.com is a prime example of a protected trademark for a domain name central to the public's identification of the company and its products.

### **International trademark laws**

It is important to note that although there are systems which facilitate the filing, registration or enforcement of trademark rights in more than one jurisdiction on a regional or global basis (e.g. the Madrid and CTM systems, see further below), it is currently not possible to file and obtain a single trademark registration which will automatically apply around the world. Like any national law, trademark laws apply only in their applicable country or jurisdiction, a quality which is sometimes known as "territoriality".

## **Agreement on Trade-Related Aspects of Intellectual Property Rights**

The inherent limitations of the territorial application of trademark laws have been mitigated by various intellectual property treaties, foremost amongst which is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. The Madrid system for the international registration of marks

### **Madrid system**

The major international system for facilitating the registration of trademarks in multiple jurisdictions is commonly known as the "Madrid system". Madrid provides a centrally administered system for securing trademark registrations in member jurisdictions by extending the protection of an "international registration" obtained through the World Intellectual Property Organization. This international registration is in turn based upon an application or registration obtained by a trade mark applicant in its home jurisdiction.

The primary advantage of the Madrid system is that it allows a trademark owner to obtain trademark protection in many jurisdictions by filing one application in one jurisdiction with one set of fees, and make any changes (e.g. changes of name or address) and renew registration across all applicable jurisdictions through a single administrative process. Furthermore, the "coverage" of the international registration may be extended to additional member jurisdictions at any time.

### **Trademark Law Treaty**

The Trademark Law Treaty establishes a system pursuant to which member jurisdictions agree to standardize procedural aspects of the trademark registration process. It is not necessarily respective of rules within individual countries.

### **Community Trade Mark system**

#### ***Community Trade Mark***

The Community Trade Mark system is the supranational trademark system which applies in the European Union, whereby registration of a trademark with the Office for Harmonization in the Internal Market (Trade Marks and Designs) (i.e. OHIM, the trademarks office of the European Union), leads to a registration which is effective

throughout the EU as a whole. The CTM system is therefore said to be unitary in character, in that a CTM registration applies indivisibly across all European Union member states. However, the CTM system did not replace the national trademark registration systems; the CTM system and the national systems continue to operate in parallel to each other (see also European Union trade mark law).

Monitoring is not easy and usually requires professional expertise. To conduct a monitoring there is the so-called Trademark Watching service where it can be checked if someone tries to get registered marks that are similar to the existing marks. Oppositions should be filed on the standard opposition form in any official language of the European Union, however, the substantive part of the opposition (e.g. the argumentations) can be submitted only in the language of the opposed application, that is one of the working languages of the OHIM

A branding agency is a type of marketing agency which specializes in creating and launching brands as well as rebranding. Branding agencies create, plan and manage branding strategies, independent from its clients. Branding agencies may also handle advertising and other forms of promotion.

Like advertising agencies, typical branding agency clients come from all sectors including businesses and corporations, non-profit organisations and government agencies. Branding agencies may be hired to produce a brand strategy or, more commonly, a brand identity, which can then be outputted via a branding campaign, which is a type of marketing campaign.



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