

From local to global: The legal aspect of growing your Brand - Part 1

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Starting Strong - setting in place a strategic brand management

A brand is the crux of an organization's identity and may consist of trademarks, whether composed of a word, symbol, a design or some combination of these. A trademark plays a pivotal role in customers purchasing decisions as it conveys a message to consumers about both the source and quality of the products and services with which they are used. It is arguably one of the most valuable assets of a business as it helps maximize and fortify the position of the business in the marketplace. A well strategized and distinctive trademark can be a powerful tool in getting recognized by consumers, hence increasing the purchasing power and ultimately maximizing a company's value. The iconic depiction of the bitten apple to represent Apple is a great example of instant consumer recognition and one that fosters that coveted customer loyalty all businesses aim to achieve.

The Middle East is home to a vast array of franchise businesses; it welcomes and adopts an increasing number of global brands. The mindset in the region is always set in obtaining these global brands to blend into the region. However the Middle East region is not short of talented businesses and innovative ideas, and as such we have started recently to see young local brands becoming successful locally. In this article we will discuss how the law can help develop locally grown brands and develop them into leading global brands. Emirates Airlines is possibly the best example of a UAE brand crossing over to achieve global recognition, recently raising their global profile further by sponsoring the 2014 World Cup and having their brand shown during the presentation of the trophy.

The present article discusses the legal issues that need to be considered when attempting to transform a local brand into an international one.

Creating the brand

Choosing a brand that well defines the intended goods/services and one which will be unique and distinctive is a challenging task. Some brand owners choose a name which is a coined term while others would prefer to implement a distinctive logo or associate their brand with a distinctive color. Here are three issues to be aware of:

Selection stage: the early inception stages of brand selection usually involve the collaboration of the company's marketing and business people to come up with a brand that identifies their company. Consult early on with legal personnel to make sure the chosen brand is suitable and available in order to avoid having to repeat this creation process again with the associated waste of time and resources.

Propose more than one trademark: you need to be prepared that your brand of choice may not be legally available. Always have contingency brands in place which can be ranked by order of preference.

Conduct Trademark clearance. Before deciding and investing on a potential brand, necessary due diligence is required to verify that an identical or confusingly similar name is not used/associated with a third party, and that it does not infringe on someone else's rights. Trademark searches are highly recommended as these provide insights as to third party registrations and projected use in the market. Some companies may argue their budget is too tight to spend on clearances which may turn out not to be necessary. We tend to disagree: this is money well spent as it will avoid additional rebranding costs after the brand is launched if it turns out the brand is too close to someone else's.

Adequately record the date of first use of the brand

The first date of use is a very important piece of information that can help your company if it is ever challenged with a conflicting trademark. Document the date of first use and keep original copies and have them as official as you can.

Protecting the brand

Once the brand has been chosen and cleared, adequate protection of the brand through registration of the trademark as well as any other intellectual property rights is required.

Maintaining brand integrity

In addition to ensuring effective trademark protection, maintaining brand uniformity is key to ensure consistent growth. It is often advised that once a brand is chosen it should be maintained. Again, Emirates Airlines is a good example of this – the consistency, continuity and uniformity of the airlines distinctive red color and unique scripture of the Emirates name are considered key to the brand's success.

Develop branding guidelines

A company should have clear branding guidelines to identify which types of mark are aligned with the overall business and marketing strategy of the company, and to ensure consistency of use of the brand that would maintain its integrity.

Licensing the brand

In order to gain greater market share, brand owners may decide to license their intellectual property. In doing so brand owners need to establish strictly defined procedures as to use of the licensed intellectual property rights. A big part of this step is setting up clear limits on what can and cannot be done with the brand and establishing from the outset of the parties business relationship what is allowed and not allowed. The guidelines should include quality control provisions in order to maintain brand uniformity, and address how the trademarks and designs can be used and displayed, how they are to be placed on any packaging, and more importantly on what products/services the brand can be used in association with.

Once the above mentioned stages have been implemented and the brand has acquired considerable goodwill and fame in the local region, brand owners may consider launching the brand in the global market. In the second part of this article we will discuss the legal requirements and challenges faced with such initiatives.