Effective brand management strategies

In order to maximise its potential value, a brand licensing programme has to be subject to very strict management principles.

By Mary J Hildebrand and Jacqueline Klosek, Goodwin Procter, New Jersey

In an increasingly competitive world market, a key component of a healthy product line is often the brand that accompanies it - the intangible but unmistakable value of marks such as Cosmopolitan®, Coke® or McDonalds®. As valuable assets of your business organisation, they realistically demand the same level of attention as the equipment in a factory or the money placed in lucrative investments. While branding programmes are industry and product specific, the basic steps necessary to sustain underlying marks demonstrate some consistency.

An overall brand strategy should only be implemented with full recognition that the brand may traverse numerous different product lines and geographic regions. Moreover, traditional retail and online markets may be relevant. Witness the recent travails of the Gallup Organization as it attempts to regain control of its mark worldwide. Gallup controls the mark in the United States but years ago permitted foreign companies to operate under Gallup and, in some instances, register the mark in foreign jurisdictions. The right to use Gallup was granted by the Gallup Organization not through formal trademark licences but through informal letter agreements. Taylor Nelson Sofres (TNS), a London-based market research firm, later acquired those rights in several key European nations, setting the stage for a court battle that is just beginning. Given the brand recognition of Gallup on a worldwide basis, the stakes are high. The immediate take away from this scenario is that no exceptions can be granted from brand strategies regardless of the informality of the documentation.

Success also requires close coordination between the licensor and licensees in different markets, a consistent quality control programme and effective monitoring. Forward-looking companies report success in implementing programmes to identify brands that might be used in the future for new products and services. There are also a number of other issues to consider.

Ensure consistency
Effective brand management strategies also necessitate emphasis on ensuring consistency between the brand licensing strategy and the enterprise’s overall business goals. Efforts should be undertaken to ensure that the brand reflects positively on the company, does not detract from other product lines and remains profitable with other parts of company.

Select profitable and innovative licence partners
The importance of consistency should also be reflected in the selection of licence partners. Focus should surely be placed upon licence partners that enjoy healthy businesses and that offer innovative products. At the same time, however, emphasis should also be placed upon licensee partners with similar cultures and business goals, since doing so may help to reduce the amount of time that is expended on reaching the basis business terms. Companies should develop a profile of the ideal licence partner but recognise that while many licensors and licensees may enjoy long-term relationships, few of such relationships will be permanent.

Focus on maximising leverage of the brand
Successful brand management will involve a focus on maximising the leverage of the
brand. Of course, this may mean different things in different contexts. However, in all circumstances, a considered judgement regarding brand placement will be crucial.

**Licence agreements: exclusive or non-exclusive?**

The exclusivity of the licence agreement will be a key factor in brand management, with implications for the entire business. When considering the exclusivity of a licence grant, it must be recalled that the licence can only be granted once as an exclusive licence. Accordingly, particular scrutiny must be directed towards the strategies and business goals of potential exclusive licensees.

In addition to understanding the current interests and strategies of the prospective exclusive licensee, it is advisable to construct the licence in such a way so as to maintain the licensee's commitment to the brand. Clearly, it will be in the interest of the licensor to ensure that the licensee's interest in the brand is and will stay as high as possible. This can be done in a number of ways including, for example, by requiring additional payments or some other form of compensation during the licence term in order to maintain the exclusivity of the arrangement.

While exclusive licensing arrangements will be extremely important, it must be recalled that non-exclusive licences can also play a role in the business. Accordingly, proper attention and resources should also be devoted to constructing such non-exclusive arrangements and ensuring that they are profitable.

**Enforcing key provisions**

All licence agreements should include effective means of enforcement. Most licence agreements will address extremely important issues including quality control standards and reporting standards. However, such standards and requirements will not be effective without enforcement mechanisms – and the will to use them. The precise enforcement mechanisms that should be used will depend on the particulars of the licensing arrangement. As an example, however, in an exclusive licensing arrangement, the termination of exclusivity may be an effective remedy for the breach of certain contractual requirements.

**Be proactive on products and services**

Licensors should be not adopt a hands-off approach when dealing with the licensee's products and services. Rather, efforts should be undertaken to ensure that the licensee's products are desirable and up to date. Clearly, it will be in the licensor's interest to ensure that its brand will be affixed to the most popular products and services. Of course, consumer interest can change over time so it will be essential to monitor periodically changes in demand for the licensee's product and services.

**Allocate ownership and control of assets equitably**

When undertaking a brand licensing relationship, it will also be important to allocate equitably ownership and control of the IP assets. While this will be an important issue in all relationships, it will be particularly important when a long-term relationship is contemplated. In all instances, the licensor will have the stronger interest in the brand and will probably desire to retain the maximum amount of control. However, particular business issues may impact the ultimate allocation. Such allocation should include consideration of each party's business plans and innovations that impact power of the brand. The allocation should also be conducted with recognition of the fact that the association of the name with particular products or services will be key.

**Dedicated staff**

Your organisation’s staff will play an extremely important role in overall brand licensing initiatives. Selection of licensing staff should be undertaken with the recognition that such staff members will be required to organise, control and coordinate all the activities of the licensees. In addition to focusing on the key licensing staff, other relevant staff members should be trained and encouraged to take an active role in the overall brand licensing efforts.

**Active integration**

Companies should be active – and not static – when undertaking efforts to integrate the brand strategy into product development and launch activities. A clear and proactive strategy is likely to generate the most reward.

**Conclusion**

Business organisations must respect the brands that support products and services as dynamic assets worthy of attention from top management. While the priorities may shift among the foregoing recommendations from time to time, they all play a role in developing and sustaining a successful strategy. As for Gallup, stay tuned!
Mary Hildebrand, a partner and chair of the firm’s IP transactions & strategies practice area, focuses her practice on strategic planning, analysis, protection and management of intellectual property and technology assets in the United States and foreign jurisdictions. Ms Hildebrand has been lead counsel in many substantial transactions with particular emphasis on complex structures involving the development, distribution, exploitation, sale, license and outsourcing of intellectual property assets, e-commerce and web-enabled ventures. She regularly provides counsel regarding franchising ventures, product distribution, marketing, dispute mediation, the acquisition and sale of technology companies, and due diligence evaluations in the context of mergers, investments and venture capital transactions.

Some of the clients Ms Hildebrand has performed work for include State Street Bank & Trust Company, Telcordia Technologies, The CIT Group Inc, Viacom International Inc, Allied Signal (now Honeywell), Chase Manhattan, Hypovereinsbank, Citibank, Dell Financial Services and Life is Good Inc.

Jacqueline Klosek is an associate in the firm’s business law department and a member of its intellectual property group. Ms Klosek’s practice focuses on advising clients on various issues related to data privacy and security. She also drafts and negotiates various technology agreements, conducts legal audits of websites and advises on different aspects of the law relating to intellectual property and technology.

Ms Klosek is currently serving as Team Leader of Intellectual Property and Technology Law for the Afghanistan Transitional Commercial Law Project, an initiative that seeks to assist Afghanistan in revising its commercial laws.

Ms Klosek has served as a consultant to various directorate generals of the European Commission in connection with a number of studies relating to various aspects of the information society, including a study on international private law and electronic commerce, for which Ms Klosek served as the national expert for the United States.