

# Contents

<b>Preface</b>	11
<b>Introduction</b>	13
<b>Part One The Brand Name</b>	19
1 <i>You don't need to be big to be a brand</i>	20
2 <i>Seven crucial points to know about trade marks and brands</i>	33
3 <i>Planning your naming and brand strategy</i>	43
4 <i>Understanding the role of keywords, domain names and SEO in online branding</i>	58
<b>Part Two The Visual Brand Identity</b>	71
5 <i>How to own the copyright in your logo or other designs – and avoid the myths and misinformation</i>	72
6 <i>What you always wanted to know about commissioning a website but didn't know who to ask</i>	93
<b>Part Three Brand Promotion</b>	115
7 <i>Copyright in the 'cloud' – how the Internet impacts on copyright.</i>	116
8 <i>How intellectual property law protects your ideas</i>	129
9 <i>Ways to build your brand on social media without risking your reputation</i>	148
10 <i>Navigating the minefield of changing laws when doing business online</i>	168
11 <i>Essential points to know before licensing your products and services</i>	181

<b>Part Four</b>	<b>Brand Protection</b>	195
	<i>12 Securing your brand assets through trade mark registration</i>	196
	<i>13 How to use your trade marks to safeguard your brand</i>	218
	<i>14 Why a social media policy may be the best way to help your staff</i>	231
	<i>15 Infringement of intellectual property: what's involved in litigation – and how to avoid it</i>	239
	<i>16 Domain registration and disputes: how to beat the cybersquatters and retrieve domains in disputes</i>	255
	<b>Conclusion</b>	266
	<b>Appendices</b>	273
	<i>Data Protection Act: privacy policies and your brand</i>	274
	<i>Glossary</i>	279
	<i>Further reading</i>	285
	<i>Acknowledgements</i>	286
	<b>Index</b>	287
	<b>About the Author</b>	292

# Preface

The legal aspects of branding are too important for business owners to neglect, which is why I chose to write *Legally Branded*.

As the Internet revolution gathers pace, and all businesses take on an increasingly digital and virtual form, knowledge of intellectual property (IP) law becomes crucial for business owners and citizens alike. Indeed, I believe an education in IP will become a mainstream subject for school children in the UK within the next ten years. So, I want to communicate the relevance of IP law to the world, and hence decided to write this book.

I love to help business people turn their ideas into a business and a brand. Highlighting the pitfalls and potential dangers ahead helps them to pursue their goals with a higher chance of success, and fewer expensive mistakes.

Whilst I have aimed to make this material as accessible as possible, there is a limit to what can be done, due to the inherently complex nature of IP law. For example, the use of technical terms like ‘infringement’ is unavoidable. To tackle this, I have provided a glossary at the end of the book for reference.

## **Essential terminology to be aware of before reading this book**

The concept of intellectual property rights (IP rights) can alienate some people as they don’t really know what it means. IP is a system of laws governing matters that you can’t see and touch (intangibles), and takes the form of rights, the most well known of which are copyright, trade mark, design, and patent. These terms are often confused or misunderstood, leading people to believe a name can be copyrighted or a book patented, and that all ideas put out there by a business are its IP. So, while the glossary contains more detailed explanations, for now it’s worth taking on board the difference between the various IP rights. You will then be better placed to know which type of protection your business should pursue.

Copyright is the most universal of rights, covering written materials, music, art, logos, and computer programs, to name a few. Names and slogans can be trade marks if they pass various requirements the law lays down but they are never anyone's copyright. As such trade marks are one of the most important of IP rights to understand in relation to brands. Design rights protect the visual aspects of certain designs, like handbags or shapes of packaging, and it is even possible to get a design registration for a logo. Finally, patents protect inventions.

## Reference book

*Legally Branded* should be thought of more as a reference than something to read cover to cover, and may be dipped into according to your particular needs. For example, if you are interested in reading specifically about trade marks and brand names, refer to Chapters 2, 3, 4, 12, 15, and 16. On the other hand, if you want to focus more on copyright, look to chapters 5 and 7 initially.

It will also be useful to consult the index when searching for particular topics which do not have a dedicated chapter, such as patents.

I have covered a wide array of Internet related subjects in this book because nowadays doing business needs to take account of the online dimension. Among other things the book covers online branding and websites, reputation monitoring and brand building on social media, as well as brand naming strategies, logos, trade marks, copyright and other IP issues. Therefore, this book aims to provide first-port-of-call, accessible guidance to business owners aiming to understand how IP rights impact on their business plans.

# Part One

## The Brand Name

# Chapter 1

## You don't need to be big to be a brand

*'Ideas are more powerful than all the armies of the world'* Victor Hugo

Ideas are behind every great business or innovation that transforms our lives. Walt Disney is reported to have said, 'if you can dream it, you can do it', and he transformed his dream of creating an amusement park with attractions for children and adults alike into a reality.

Jeff Bezos, founder of Amazon.com, had the vision of selling books online, while Howard Schultz, who built up the successful Starbucks chain, wanted to bring Italian coffee bistros to America. Pierre Omidyar, the founder of eBay, started with the concept of creating an online auction site.

Each of these well-respected and successful companies started with an idea. Before any business plan was drawn up or any details worked out, each company already had firm foundations in a strong vision, a concept and an innovation.

Although ideas are clearly very powerful, the law does not protect a mere idea (more about this in Chapter 8). Former Apple CEO Steve Jobs is frequently described in the media as an 'innovator', 'revolutionary', 'visionary' and 'creative genius' and was essentially known for his ideas. In Apple, he managed to create one of the most greatly admired companies of our times, and its seemingly infinite capacity for innovation has led it to build up a following of admirers. Apple is one of the best examples of the importance of ideas and consistent branding.

If you wonder why the Apples of this world are more inventive, pioneering and successful than their competitors, Simon Sinek's book *Start with Why* (Penguin, 2011) will shed an interesting light on it for you.

## Turning an idea into a brand

Whether an idea turns into a great business and brand ultimately depends on how successfully the idea is implemented. That is why potential investors always want to know about the track record of the people behind a business, when deciding whether or not to invest in an idea.

Branding plays an important part in the long-term growth and prosperity of a business, so it's relevant for every small business that aspires to greatness to consider what a brand actually is and what's involved in creating one. However, branding as a subject is itself poorly understood by business owners – and yet it holds a fascination for many of them.

People tend to use the word 'brand' loosely, almost as if it were interchangeable with 'business'. But not every business will achieve brand status in the sense of being well known among its target consumers for delivering on a specific promise and thereby enabling it to derive an additional economic benefit, such as being able to charge more for its products and services.

Yes, it's true that every business has a certain personality, which initially derives from its founder or founders, so one could say that every business and every individual is a brand. However, this would be using the word in its loosest sense.

## The elusive brand

My search for a definition of 'brand' revealed strong disagreement between experts, so I decided to ask my contacts to tell me what they understand by the word.

I began by pointing them to the definition by David Abrahams in his book *Brand Risk: Adding Risk Literacy to Brand Management* (Gower Publishing, 2008):

A brand is not a trade mark or reputation. Brands are complex intangibles, whose character is a property that emerges from a blend of attributes, some of them seemingly insignificant. It is the sum of all information about a product, a service or a firm that is communicated by its name. This holds true in industrial and professional markets, where brands can create and project emotional and self-expressive benefits just as they do in consumer markets. Every organisation with an identity therefore has a brand (or brands) that it must manage and protect in order to survive and prosper. A brand can be embodied in a globally advertised symbol. Alternatively, it can be expressed by the renown of partners in a services firm that bears their name.

Here are the various responses I received from business owners, a few of them branding professionals.

- **Your brand is what your customers say you consistently deliver.**
- **Your brand is what people say about you when you're not there.  
A brand is a promise.**
- **I would argue that a brand is a trade mark or 'reputation' that creates a set of expectations about what the product or service will deliver. A brand is an identity, a set of values embodied in words, logos or otherwise physically represented. A good brand brings customers back. A bad brand, or one that is descriptive or has a negative image, keeps them away. A good brand is built to last. The best things of substance are built to last.**
- **Your brand is the identity that you/your product presents to the rest of the world that creates an understanding/belief/picture in the minds of other people about what it is you will deliver.**
- **A brand is when a big red lorry rolls by bearing the word Costa on it and my three year old points to it and says it's the coffee lorry. Brands go way deeper than the surface they appear on ... Recognisable and meaningful spring to mind. Brand is the embodiment of character (inward) and personality (outward) in a business.**

- **A brand is an experience someone has with an organisation across multiple touch points. As Michael Eisner, former CEO of Disney, once said, 'A brand is a living entity – and it is enriched or undermined cumulatively over time, the product of a thousand small gestures'.**
- **Wally Olins, a thought leader in brands and branding says: 'A brand is simply an organisation, or a product, or a service with a personality ... Branding can encapsulate both big and important and apparently superficial and trivial issues simultaneously ... Branding is not only a design and marketing tool, it should influence everybody in your company, it's a coordinating resource because it makes the corporation's activities coherent and above all it makes the strategy of the organisation visible and palpable for all audiences to see'.**
- **It is more than personality, more than reputation, more than a promise, it's the distinctive DNA of a business. My personal favourite definition comes from one of my clients based in China, who defines a brand poetically as 'the face and soul of an organisation'.**
- **To me it's recognition of a product, icon or logo that instantaneously brings to my mind what it stands for, including its value and its values!**
- **It either draws you toward something or drives you away!**

The subject of brands is still in its infancy among business owners and lawyers. People who register trade marks may describe themselves as dealing with 'brands', but that is to use the word in its broadest sense. Brands involve a lot more than trade marks. So, whether you seek guidance from a solicitor who specialises in IP law, or you consult a trade mark agent, you are likely to find that their training has not equipped them to understand the subject of brands in any depth.

In the same way that conveyancing solicitors help people to buy and sell property or resolve property disputes without necessarily knowing very much about property development, it is possible to spend a lifetime

practising IP law and registering trade marks without understanding very much about branding.

As someone who is interested in the subject, I've had to rely on my own reading and seek out professional opportunities to educate myself.

Primarily, a brand involves creating a good business that's reliable and known for delivering on a specific promise. This attracts customers who positively want to do business with it rather than with the competition. It also attracts employees, suppliers and, ultimately, investors. So, a brand is not a logo, it's about having pulling power.

## **Everything you do creates your brand**

Think about the associations you have when considering successful brands such as Ikea or Apple. Notice how these names have a reputation for delivering what is often an unspoken promise. In Ikea's case, we expect to find affordable self-assembly furniture when visiting its stores. When we buy Apple products, we expect to get something that's well designed, intuitive and easy to use.

Every brand has its own distinct 'identity' and 'promise'. It's due to this promise that we know to expect something completely different if we buy a Rolex watch rather than a Swatch.

Bear in mind that the overall response a brand evokes is influenced by *everything you do, or don't do*, such as your marketing communications, slogan, employees, packaging, website, videos, photographs, premises and logo. This is by no means a comprehensive list, because many other factors are also involved, including the products or services you sell, the way you respond to telephone enquiries and deal with your customers and the way customers are left feeling.

Other things that contribute to the overall impression about your brand include:

- **whether you are a virtual business or based in an office**
- **the way you engage on social media platforms**

- **whether or not you blog – and if you do, what you write about**
- **your writing style**
- **your newsletters and emails**
- **your physical appearance and that of your staff.**

The trust that your business gradually establishes in return for delivering a particular result or outcome, when customers buy from you, is how your business becomes a brand. Once your business has a reputation that encourages customers to deal with you, your business can be described as being a brand. However, beyond technical performance and fulfilment of basic expectations common to all competitors in the same field, the most resilient brands have an emotional appeal, or one linked to the brand's status (for example, secretly liking using Farrer & Co because they are the Queen's solicitors).

You will be known for delivering a particular quality or outcome because you have consistently and reliably done so in the past. Customers know what to expect if they use your product or service and there's little risk of an unpleasant surprise. Buying a product or service from a business that has not yet acquired brand status is risky, because it represents something untried and untested.

Once a business becomes recognised as a brand, it can command a price premium or a market premium. People are willing to pay a premium to receive the expected results the brand is known for delivering. This applies even if the promise of the brand is based on price. For example, people may still prefer to shop at Ikea rather than at an unknown shop that offers even cheaper prices, because they have certain reassurances regarding product quality and the shopping experience they can expect. They won't have this comfort and recognition if they use an unknown seller. Shopping at Ikea carries little risk because they know what to expect from the brand.

Some small business owners think it's necessary to be a household name or a large business in order to be a brand. But, as the example of Steve Hatt below illustrates, you don't need to be big to have a brand.

### **Case study: Steve Hatt**

Steve Hatt is a small fishmonger in Islington, north London. The shop has been on the same site and operating within the same family for over a century, so it has had time to develop into a brand.

A Google search on its name brings up many reviews about the business, and on reading them it becomes clear that the business is a brand. The visual appearance of the Steve Hatt shop is of a basic fishmonger. It does not have a fancy or elaborate shop design or sign, which you'd expect to see if a business had received branding treatment to promote favourable awareness and stimulate demand for its services.

The shop has a reputation for consistently offering superior-quality fresh fish at value-for-money prices. People travel from far and wide to buy there and there are often queues outside, especially on a Saturday morning as affluent local customers buy fish for their dinner parties. The shop gives good brisk service and has knowledgeable staff who are skilled in preparing fish to your requirements. At the time of writing the shop does not even have a website, proving that it is not designs – such as your logo, business cards or letterheads – that determine whether or not your business has a brand. A business such as Steve Hatt illustrates that the brand is primarily about substance rather than surface imagery.

From this case study it's clear that, while design may help support the overall impression and feelings a brand wants to evoke and convey, if you don't create a successful business that meets a market need, then no amount of 'branding' in terms of visual identity creation will turn your business into a brand. (For more information on the important role that the visual elements play, see Chapter 5.)

An important point to note is that the good associations that customers have with a brand are, for the most part, transferred to the brand's name. Just as individuals are identified by their name, so we identify a business primarily by its name.

The name plays a very significant part in the way the law protects a brand. Even if a business has many other symbols, like Coca-Cola with its distinctive bottle shape, the name is nevertheless a critical component of its identity. Having legal ownership of the brand name is therefore crucial. (See Chapters 2, 3, 4 and 12 for more on names.)

## Values and beliefs

The values of the business's founder are paramount in establishing what a brand represents and its corporate values, as is standing for something that resonates with its customers.

In Apple's case, its name has connotations of user-friendliness, durability and quality. There are similar products on the market with good functionality, but what Apple's brand also conveys is an über-cool image. Buying Apple products has an emotional pay-off, because people you think are cool own Apple products.

If a brand can work out what it uniquely provides to its market, its marketing messages will be much more effective. You can evoke a desired response in the minds of your customers through the promise that your brand makes. Until your business can consistently deliver that, you will not have a brand.

### **Case study: values and beliefs of the Steve Hatt brand**

In Steve Hatt's case, we could say the brand's values are to source and provide good-quality fresh fish for discerning customers who are seeking that product and prepared to pay the price.

The fact that the Steve Hatt brand has been able to consistently offer fresh, quality fish at value-for-money prices over the years is the reason the business has built trust in the minds of its target customers. They know they will get what they expect when they shop there. It eliminates the risk of the unknown.

If the business were unreliable and sometimes offered fresh fish,

and other times sold fish of dubious quality, it could not hope to be associated in its customers' minds with the ability to reliably offer top-quality fresh fish. And if a change of management caused the offering to become erratic, the business would gradually lose its reputation. As a result, the pulling power of the brand would drop off and could even die if it were mismanaged over a period of time.

Sometimes, it can take just one serious event to completely destroy a reputation, especially when it is the last straw, coming at a time when the brand is already weakened as happened with Pan Am, explained by Matt Haig in *Brand Failures* (Kogan Page, 2003).

Pan Am had been operating for more than 60 years when disaster struck in the late 1980s. A bomb went off in the cargo area of a Pan Am plane en route from London to New York, causing the plane to break in two. The crash had a devastating impact on Lockerbie in Scotland, killing 11 people on the ground as well as all those on board the plane. The nature of the tragedy tarnished Pan Am's name and it never recovered. Despite its constant promises of commitment to increasing its airline's security, the public was simply not willing to fly with Pan Am any more. After three years of flying with empty seats, in 1991 the company went bankrupt and shut down.

However, Pan Am was a much weakened brand when this disaster struck, as it had financial problems. Once you have the protection of brand status, if the business does something out of character that jars with its reputation, people are actually more likely to forgive the incident and put it down to an aberration, provided the aberration does not go to the heart of the brand's promise or undermine the bond of trust between brand and customer. This became evident, for example, when rumours surfaced and were reported in a *Guardian* article on 20 February 2012 about Apple's outsourcing to a supplier in China, which uses cheap labour and dubious employment practices. These have had little impact on the Apple brand.

## Know your unique value

It's important to understand your unique value. For example, if Steve Hatt's business didn't clearly understand that it is valued for offering good-quality fresh fish, it could easily lose its hard-won reputation without even realising why.

What would happen if, in response to some customers' grumbles about fish prices, it decided to focus on slashing its prices? Some of its customers would doubtlessly be satisfied, but at the expense of the quality of the fish the business could source. As such, the business could lose its hard-gained position in a bid to satisfy some of its customers. But price-sensitive customers are not necessarily the target customers of the brand. It's the customers who value quality fresh fish and understand that fish is intrinsically expensive who need to be listened to most. As the saying goes, you can't please everyone.

Similarly, a business that is doing well, but doesn't really understand why it is succeeding and what its customers are truly valuing, gaining and appreciating by doing business with it, could lose the opportunity to build on its early successes.

So, it's important to identify your core customers and know why they are using your products or services. You can then focus on satisfying their needs and get feedback on how they perceive the business.

## Legal definition of a brand

According to *The New Strategic Brand Management* (Kogan Page, 2008) by J.N. Kapferer, the internationally agreed legal definition of a brand is '*a sign or set of signs certifying the origin of a product or service and differentiating it from the competition*'.

The brand name is often the primary way in which consumers identify products and services and is the 'sign' that you would expect customers to use in order to distinguish your goods and services from those of competitors.

However, there are other 'signs' that we traditionally associate with brands.

For example, logos and other visual branding help customers identify brands; examples are the Apple logo, Coca-Cola bottle shape and the Nike ‘swoosh’. (See Chapter 5 for more on visual branding.)

As we know, one of the hottest points of disagreement between brand experts is the definition of a brand. The classical definition is: *‘a brand is a set of mental associations, held by the consumer, which add to the perceived value of a product or service’*.

Nowadays, there are two broad camps among brand management professionals. One places a stronger emphasis on the relationship that customers have with the brand, as the dominant element of the definition, while the other emphasises the monetary value created by the brand. However, both elements are significant to the two camps.

Most importantly, the brand is how you create attachment, loyalty and willingness to buy your products and services over and over again. How your brand evokes this willingness could be due to beliefs of superiority and emotions that are activated by the brand.

In this chapter, I’ve explained how achieving brand status is about being known for something, and running an effective business. Throughout this book, I will use the example of a fictitious business, The Time Management Company (which, for brevity’s sake, I’ll refer to as TTMC), to illustrate the key points in each chapter.



### **A fictitious business: The Time Management Company**

The Time Management Company was founded by Gavin Brown. TTMC has been established for two years and employs one permanent employee – an administrative assistant – as well as seven freelance staff who assist with content creation, social media, and web matters.

It has just appointed its second employee, Caspar Johnson, who

used to assist Gavin in delivering consultancy services on a freelance basis. However, due to the growing demand for Gavin's services and the fact that Caspar was sometimes engaged on other projects when Gavin needed him, Gavin has decided to offer Caspar permanent employment as a member of his staff.

The company aims to push forward with expansion plans: it intends to license its methodology to consultants operating overseas and to introduce a number of products. Recently, it has developed an innovative desk accessory and Gavin wants to protect the IP rights in this.

The company also has growth plans and wants to put its affairs in order so as to be 'investment-ready' in case it needs to secure funding in the near future. Gavin plans to have a new website developed as the business has long outgrown its existing website, which was developed by a member of Gavin's freelance team two years ago when he set up the business.

Developing a brand is going to be an important part of the company's plans, so the first point for Gavin to consider is the suitability of its current name.

## **Conclusion**

Our example company, TTMC, would benefit from having an in-depth conversation with a brand lawyer. By explaining its overall business plan and objectives to a lawyer, TTMC can find out the significant issues it should be addressing, such as the deficiency in its name, which we'll look at in the next chapter.

## **Chapter 1: Key take-home messages**

- **A brand is about creating a good business that's reliable and known for delivering on a specific promise.**
- **Every brand has its own distinct 'identity' and 'promise'.**
- **Everything you do, or don't do, contributes to creating the brand.**
- **You do not have to be big to have a brand.**
- **A brand is not a logo or design feature – substance is more important than surface imagery.**
- **A brand is identified primarily through its name.**
- **Understanding your unique value is core to the survival of a brand.**