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DEVELOPING BRAND EQUITY FOR THE PRODUCTS AND/OR SERVICES OF SMEs:  
USE OF TRADEMARKS, TRADE NAMES, GEOGRAPHICAL INDICATIONS AND  
INDUSTRIAL DESIGNS FOR ADVERTISING AND MARKETING IN DOMESTIC AND  
FOREIGN MARKETS

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## 1. INTRODUCTION AND OVERVIEW

The intelligent creation and use of intellectual property by SME's can significantly increase:

- 
- turnover and profits;
- return on investment in an enterprise;
- the asset value (i.e. equity) of the enterprise.

“Branding” involves the use of a multiplicity of forms of intellectual property. It is far more complex than simply creating and using a trademark.

Strong branding and brand promotion gives rise to:

- product/service desirability and attractiveness;
- customer loyalty and goodwill;
- competitive edge;
- better pricing and higher profits;
- greater reach/geographic extension;
- brand stretching through line extensions;
- product range extension;
- licensing/franchising opportunities;
- equity (wealth) creation.

No SME can afford not to create and maintain brands and brand equity. This is not necessarily expensive or unattainable and is not an academic exercise. Brands make money and are very valuable assets.

It is therefore important to understand:

- the meaning of “brand”;
- how to create brands;
- how to create brand equity.

Brand equity must also be maintained and protected or else competitors will take advantage of the lack of protection, infringe and destroy all the advantages mentioned.

The maintenance and enhancement of brand equity requires:

- consistency of quality of goods and services;
- availability of products and services to meet demand;
- market vigilance over competitors' activities;
- legal protection and enforcement of IP rights.
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## 2. BRANDS AND BRAND CREATION

### BRAND

The meaning of "brand" is not easy to define but it includes:

- a multiplicity or collection of different IP rights:
  - trademarks
  - designs
  - copyright
  - trade names
  - goodwill
  - geographical indications.
- a "gestalt" of intrinsic values (equities) which are intangible but which give rise to tangible, measurable benefits for an SME and customers. These include:
  - image
  - attraction
  - reputation
  - customer recall
  - trust and loyalty
  - perceived quality and reliability
  - increased and sustained sales and profitability.

As an example, the branding of a BMW Z3 Roadster includes:

- trademarks - BMW, BMW logo, Radiator grille;
- designs - of vehicle body, wheels and individual parts;
- copyright - designs and artistic and graphic components;
- trade name - "BMW AG" (same as and reinforces the trade mark).
- goodwill - in shape, trademarks and vehicle quality

### BRAND CREATION

This is a complex process involving various creative and marketing skills, knowledge and processes.

The initial stage is late in the development of a product (or service) and of features to create a brand.

- firstly, obviously, there must be a product or service with a market demand or potential demand;
- in approaching this aspect, it is essential to know and understand what competitors are doing and analyse the strengths and weaknesses of their products or services;

- the new product or service must itself be innovative and creative, have extra, interesting, attractive and/or novel features, appearance and qualities compared with existing competitive products or services. This will involve, for goods:
  - intrinsically sound internal structural design;
  - eye-catching and attractive overall (outer) design and shape;
  - added or extra aesthetic or functional features compared with existing products;
  - having an original design which does not copy competitors';
  - cost reductions in design and manufacturing processes and materials.
- an excellent example in this regard is the design of the APPLE iMAC computer.
- external labelling and packaging should be created which is:
  - graphically clear and eye-catching;
  - uses colour and graphic design to enhance recognition and recollection;
  - includes design features and embellishments which are compatible with the product and reinforce recognition;
  - differentiates your product from competitors and does not copy them.
- the adoption and use of a good trademark. This involves, from a marketing point of view:
  - the use of a mark which includes a word or letters (i.e. which is pronounceable by humans);
  - the inclusion of a logo/device to enhance and compliment the word/letter mark adopted;
  - a mark which is easy to remember, and pronounce, differentiates your goods or services from those of competitors and which is NOT DESCRIPTIVE of the goods or services;
  - a mark which translates well into other languages and has a meaning which will not cause embarrassment or a negative image in foreign countries.
- potential legal pitfalls must be understood and avoided including:
  - not copying competitors product designs or labelling. These must be the subject of existing patent, design, trademark or similar rights, or copyright;
  - if a degree of copying is, however, necessary, checking (through a qualified legal practitioner) (through a process of searching) as to what IP rights are held by the competitor and whether you will infringe them;

adopting a trademark which is not confusingly or deceptively similar to any existing trademarks (registered or used);  
 adopting a trademark which is capable of distinguishing your goods or services from those of others and can be registered; avoid marks which are purely descriptive of the goods or services, are geographic names, are reasonably required by other traders for use in trade etc.

- using, where available, geographic indications to enhance the desirability and special quality of the product. Many well-known examples exist and form an integral part of the relevant brands, including:

- MOËT ET CHANDON Champagne  
CHIVAS REGAL Scotch Whisky

Having created a brand (in all its different aspects) through the design and creation stage, the next essential step is to develop equity (value) in it.

### 3. EQUITY AND BRAND EQUITY CREATION

#### EQUITY

Simply stated, the equity in a brand is the value it develops and enjoys. The value can be expressed or exist in terms of money and goodwill (the value to the owner) and intangible qualities such as image, ambience and perceived quality (value to the customer).

Brand equity forms a very valuable asset of a business. The asset of a business may be represented as:

working capital  
 +  
 fixed assets  
 +  
 intellectual capital.

In turn, intellectual capital is:

intellectual property (including brand equity)  
 +  
 human capital  
 +  
 other intangible assets (eg. valuable contracts).

In many businesses, intellectual capital exceeds in value the physical assets. For example, Microsoft has allocated the value of its assets as follows:

Intellectual Capital:	95%
Net Working Capital:	3%
Other Assets:	2%.

CREATION OF BRAND EQUITY

Creation of brand equity is also a complex and multi-skilled exercise involving at least the following steps:

- firstly developing and perfecting the brand elements as discussed in the previous section;
- ensuring the quality of the product or service and its delivery. This involves strict quality control in manufacture, distribution/delivery and merchandising. Poor quality in any of these areas will destroy brand equity (and the brand) in a very short period of time. The demise of the famous international accounting firm of Arthur Andersen well illustrates this point;
- advertising and promotion using the brand prominently and clearly to the maximum. The importance of this cannot be overstated. Advertising can be expensive but, if focussed and innovative, it can start in a fairly modest manner and be built up as income and cash flow improves. A good example is THE BODYSHOP, the well-known chain of retail outlets selling skin and hair care products in the UK. Initially, and for a long period, this business refused to spend any money on conventional forms of advertising;
- depending on the nature of the goods or services involved, continual upgrading, improvement and modernising of the goods/services to meet changing trends and market needs. This also involves watching the market place and competitor activities of the brand elements (particularly for consumer goods);
- where appropriate, brand equity can be considerably enhanced and extended through properly drafted licence/franchise agreements.

FOREIGN MARKETS

Brand equity (and all its associated benefits) can also be extended into and exploited in surrounding countries and further afield as a business grows. Exploitation of IP in foreign markets further increases brand equity.

All the steps mentioned already in connection with brand equity creation apply equally to foreign branding but, in particular, attention should be given to:

- trademark searching and clearance (both legally and linguistically) in each foreign country;
- obtaining IP protection in potential future markets as soon as possible.

The intellectual property rights giving rise to brand equity must always be legally protected and enforced, failing which these rights and equity will be lost through infringing activities.

4. BRANDPROTECTIONANDENFORCEMENTPROTECTION

The illegal activities of infringers and counterfeiters are universal and, by African standards at least, increasing. This also seems to be an international trend. This is one of the consequences of the modern global village, international media reach, improved communication and the internet.

Nearly every successful product or service, particularly its brand, will inevitably encounter IP infringement at some time. This is a given fact. Unless infringements are detected and combated, brand equity can be diminished or destroyed by such conduct.

The first essential step is to seek and obtain appropriate IP protection for the brand, remembering all its different elements and the different types of intellectual property rights that exist:

- register rights wherever possible;
- indicate registered rights on labelling and documentation (e.g. ®);
- where no registered right is available (e.g. copyright), ensure proper marking (©) and warning notices regarding copying;
- understand or determine the differences in national laws as to the forms and nature of IP protection available, formalities etc. where foreign markets are to be penetrated;
- use, to the extent available, regional systems of IP registration, for example the PCT, Madrid Protocol, CTM, OAPI, ARIPO etc. These can be cost and time effective;
- understand and apply the legal requirements that exist to maintain valid IP protection (e.g. 5 year non-use of trademarks);
- protect trademarks as domain names.

MONITOR

This second important aspect is to constantly monitor your markets to detect infringing conduct. Use your sales representatives, legal advisors and investigators to help. Constant vigilance is essential.

Search and watch for conflicting domain name registrations, or use.

Similarly, subscribe to one of the trademark watching services that are available to be given notice of trademark applications which conflict with existing trademark rights.

## ENFORCE

Finally, rigidly enforce your IP rights against all known infringers, large and small, and conflicting trademark applications. Failure to do so will have the following consequences:

- loss of market share and profits;
- gaining of conflicting IP rights by competitors;
- dilution and diminishing of your IP rights.

## 5. CONCLUSION

A alert and sensible business and legal approach to branding, both in domestic and foreign markets, can considerably boost the business income and asset value of SMEs. Following, at least, the steps and procedures mentioned above can project the value of a business from a small or mediocre beginning to the stars!

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