

## Stand by Your Brand

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As the Great Recession persists, business and consumers alike are shifting their focus from coping with the initial shock of the downturn, to figuring out how to weather the uncertain duration of this economic crisis. It is a time when short-term thinking about trademark strategy can have a very dangerous long-term impact.

During a recession, it is common for companies to respond by hibernating and cutting brand building out of their budget. Many companies, in times of recession, have the misconception that consumers buy what is cheap regardless of brand or quality. As a result, many companies make a number of critical errors as they try to retain market share during the recession: they discount their products and move to down-scale retail establishments; they slash or even cease promotional efforts; they abandon protection efforts and give up on enforcement. The reasoning that underlies these decisions is not only wrong but detrimental to a company's long-term economic health.

A recession has proven to be the best of times to strengthen brand building and increase market share even if money is tight.<sup>1</sup> Research has shown that companies that continue to protect, enforce, and promote their brands during a recession can capture market share that might be financially unattainable in better times.<sup>2</sup> In fact, several of the most recognized brands were launched during this country's worst economic climates including Rice Krispies<sup>®</sup>, Plymouth<sup>®</sup>, Miracle Whip<sup>®</sup>, and iPod<sup>®</sup>.<sup>3</sup> In other words, a little investment can go a long way in a down economy.

The misconception that consumers prefer non-branded generic products during a recession over their more expensive branded counterparts has been disproven again and again. Recent studies show that consumers still prefer branded products, but increasingly feel compelled to purchase lower-priced alternatives.<sup>4</sup> Private labels, such as the lines of Target and Wal-mart, are also emerging as short-term challengers to established brands as stores are capitalizing on the economy by sinking more resources into marketing their private-label lines.<sup>5</sup> However, according to the chairman of comScore, a leading research group, "[d]espite these shifting consumer dynamics, research has repeatedly shown that premium brands which invest in marketing and promotion activities aimed at maintaining buying at 'preferred' levels are able to minimize short-term erosion of share to less expensive brands and position themselves for a bounce-back when the economy improves."<sup>6</sup>

As we all know, successful brand management helps consumers get to know and grow to trust and appreciate a brand. Unlike any previous economic downturn, the advent of social media tools has changed, and potentially leveled, the ability of a business to manage its brand's perception in real time. A business can position itself to capitalize on such tools and build customer

relationships: "Brand maintenance is a fair fight, if you know the moves to make."<sup>7</sup> Diligence in maintaining a brand throughout these troubled economic times may be rewarded as consumers pay closer attention to a business's actions and reactions.<sup>8</sup> In fact, "[c]onsumers are more likely than ever to award their hard earned dollar to those brands that provide the greatest value, build the strongest relationship and connect in the most meaningful way."<sup>9</sup>

Brand building comes in many forms: brand management, promotion, protection and enforcement. Faced with limited resources, many companies allow their most valuable assets to languish, diverting resources away from promotion, protection, and enforcement to more tangible concerns. And slowly their brands lose visibility, goodwill and ultimately market share, emerging from recession weaker and perhaps permanently compromised. Even if a company's goal is not to grow a particular brand for long-term retention, strengthening brands to better position the product or service for sale is equally valuable to a company's bottom line, as a brand that has retained or even grown its value during a downturn is far more attractive to potential buyers than one that has vanished to obscurity.<sup>10</sup>

Limited resources require strategic spending. History demonstrates that, from a marketing and brand perspective, in a recession a little spending goes a long way. What, then, should be done to give your brand the attention it requires when resources are stretched thin? Where should you spend and how can you save? How should you defend and enforce your brand? How can practitioners ensure the most efficient distribution of resources? What follows is a summary of some steps to help get you, and your brands, through the tough times—with limited spending and maximum results.

## **Where to spend**

*Launch new categories or brands.* Recessionary markets provide competitive vacuums, making it easier to build market share, enhance brands and build equity. Several major hotel chains are now experimenting with collaborating with independent hoteliers creating a separate group under the parent company umbrella brand.<sup>11</sup> Similarly, car manufacturers are realizing that generational brand loyalty is waning, thus re-branding and launched targeted marketing towards tomorrow's buyers.<sup>12</sup> The symbiosis of creativity and consumer understanding creates a unique opportunity to invigorate or re-imagine a brand.

*Maintain, maintain, maintain.* It's much more expensive to restart a protection programme than to maintain it. Filing fees cost more than maintenance fees. Establishing loyalty for new brands costs more than maintaining loyalty for existing brands. Take the time to go through the portfolio, identify important brands and identify those not so critical to the business plan. Do not continue to invest money in a mark that won't serve long-term needs.

*Keep advertising.* Certain advertising media cut their costs during a recession, giving the same reach and frequency at around 30 per cent of the pre-recession rates. Try to lock the price in for the long term. Focus advertisements on the tried and true, emphasizing brand history and stability. In a volatile market, even a little advertising will go a long way.

## **How to save**

*Use in-house resources and knowledge of the marketplace.* Do some investigating yourself. Look on the Internet — does someone have the domain name registered? Are competitors using a similar mark? Did marketing people derive the mark from a competitor's campaign?

*Pick the most distinctive mark given available resources.* If the goal is a mark that will stand out from the crowd, be prepared to spend some money to help consumers make the connection between the mark and the product. The more unusual the mark, the more resources will have to be expended to generate that mark-product connection. The more the mark tells a consumer about the product, the less ability it will have to stand apart from the crowd.

*Keep a first-use file.* Make files for each mark and domain name. In the file, place specimens of the mark's first use in advertisements, on packaging, on software splash pages, on the company website and in magazine articles and other publications. Keep track of any press coverage and any awards. Keeping this file will save time and money both in the registration process and in any enforcement proceedings. The more documentation collected, the better.

*Develop a FAQ list.* Work with counsel to develop a list of frequently asked questions that have been asked in the past and will likely be asked again in the future. This way you pay for the information once, not again and again. Think about maintaining a link on the company's intranet to this list and requiring all personnel to consult the FAQs before seeking outside advice.

*Develop an in-house trademark manual.* The more marketing people know about trademarks, the less likely annoying and expensive trademark disputes will crop up in future. The manual can offer easy background on trademark law principles, summarize a company's current intellectual property holdings, and offer quick advice about how to avoid common legal pitfalls (metatags, unauthorized links, use of competitor marks etc). Although compilation of the manual may involve some up-front costs, it will surely save money in the long run.

*Create a TM intranet.* Trademark information can be instantaneously accessed on a corporate intranet 24 hours a day, seven days a week, in every company office around the world. And, a TM intranet site doesn't mind repeating itself and won't make anyone feel self-conscious about asking questions.<sup>13</sup> On the site should be the FAQ and watch lists, trademark files and trademark manual, trademark glossary, and links to various trademark legal websites. It can also offer special portals tailored to different departments and include their specific FAQs and pertinent background information. It may take a lot of effort to build but will end up saving hundreds of hours of valuable time and money in the future. In fact, Nike estimates that its intranet has saved its in-house trademark counsel five to ten hours a week, increasing department capacity ten percent to 20 percent and decreasing outside-counsel bills.<sup>14</sup>

*Approach foreign filing more conservatively.* Do not file in every country. Approach foreign filing more strategically and realistically. It is an expensive and time-consuming process. Realize it may take years to get a registration in most foreign countries. Take the time to identify your most critical markets now, in a year, in two years. It does not make sense to spend money abroad, only to abandon those applications a year from now (and thousands of dollars later).

## **Endnotes**

<sup>1</sup> See Kevin Roberts, *Forum: Worst of Times Is Best of Times to Build Brands: Adversity in Asia an Opportunity to Expand Global Business There*, Advertising Age, July 13, 1998, at 26; see also *Bad Times Are Good for Brands*, Finance Week, vol. 42, no. 8, Oct. 2, 1998, at 62; Kevin Randall, *Time for a Brand Stimulus Package*, brandchannel, Mar. 16, 2009 ("A weighty and consistent body of historical data shows that marketers will do harm in the short- and long-run to their businesses and brands by knee-jerk budget slashing and running scared.").

<sup>2</sup> See *Business Front Line A Beacon Of Brand-Building In Japan*, Daily Yomiuri (Tokyo), Oct. 8, 2001, at 15; *Marking During Recession: To Spend or Not to Spend*, Millward Brown, Apr. 2008.

<sup>3</sup> 9 Successful Brands Launched During Downturns, Business Pundit, July 23, 2009, <http://www.businesspundit.com/9-successful-brands-launched-during-downturns/>.

<sup>4</sup> Press Release, comScore, *comScore ARS Reports Decline in Loyalty for Many Consumer Goods Brands During Recession*, May 4, 2010 (releasing results of a study on brand loyalty among consumer goods products); Lisa Baertlein, *Recession takes bite*

*out of brand loyalty: study*, Reuters, June 22, 2009.

<sup>5</sup> Alice Truong, *As generic brands gain market share, retailers capitalize on trend*, Medill Reports Chicago, Mar. 11, 2010.

<sup>6</sup> Press Release, *comScore*, *comScore ARS Reports Decline in Loyalty for Many Consumer Goods Brands During Recession*, May 4, 2010.

<sup>7</sup> Kern Lewis, *How to Maintain a Brand*, Forbes, May 16, 2009.

<sup>8</sup> Jorina Fontelera, *Elevate Your Brand In a Down Economy*, Industry Market Trends, May 21, 2009.

<sup>9</sup> Greg Verdino, *Brand building during tough times, Amex-style*, Marketing, Media, Technology & Trends, January 28, 2009.

<sup>10</sup> Scott Davis, *Successful Brand Turnarounds Require Fearless Moves*, Advertising Age, Mar. 29, 2010.

<sup>11</sup> Susan Stellin, *From Hotel Rivals to Allies*, New York Times, June 14, 2010.

<sup>12</sup> Daniel McDermon, *What's Your Brand*, New York Times, Oct. 21, 2009.

<sup>13</sup> Kenneth Kwartler, *Nike Creates a Legal Intranet to Help Protect its Trademarks How to Just Do an IP Site*, Corporate Legal Times, p.18, June 12, 2000.

<sup>14</sup> *Id.*

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