



Trademark Licensing

Stephen R. Reily

Developing Branded Consumer Products Like Consumer Products

In last month's column, I described how companies can find themselves distributing or authorizing branded products that either weaken the protection of their trademark, violate the positioning of their brand, or both. Licensing is sometimes blamed for producing an indiscriminate number of products that do not support a brand, but a company's licensing director rarely generates the products that most seriously threaten the brand's trademark protection or contradict its meaning.

Who does? Internal departments and employees who authorize or develop merchandise but are not subject to any official procedures governing the use of the company's trademark on consumer products.

Brand equity (and the market share and profit margins it sustains) is impacted by everything that represents it, whether it is the core product or not, whether given away or sold, high- or low-priced, offered on a gift shop counter or through a Web site. But too many companies allow the distribution of goods that badly represent the brand, without the discipline that governs the company's more direct marketing efforts. Those companies will find that products in circulation weaken brand equity (thereby diminishing market share and margins) because they either diminish trademark protection or

undercut an otherwise carefully developed positioning of the brand.

What is the answer? No company should allow the development and distribution of any branded merchandise without the oversight of a centralized department. It does not matter whether that office is called the Intellectual Property Department, the Branded Consumer Products Department, or the Stuff Department. What matters is that no product representing the brand be authorized, sold, given away, or distributed until it has gone through a consistent process, one with both legal and brand management components.

What would this office look like? As I have indicated, it would look a lot like a well-run licensing department and its work would look a lot like the collaborative efforts of an in-house licensing director and his or her licensing agency.

No one in the company could source, authorize, produce, or license products that include the company's trademarks or logos until it had been approved by this department. In this role it would work with many in-house product developers (promotions, procurement, gift shop managers, Web site developers) and, of course, many outside agencies (whether licensees directly, licensing agents, promotions companies, or advertising agencies).

The Branded Consumer Products Department could not approve any such product unless they did so with direct approval by trademark counsel and the appropriate brand manager, or within guidelines developed by them.

Those who develop products within and without the company would fear the centralized power of this department, including its ability to stop them from making

money off the sale of items that previously escaped notice. In the big picture, such sales did the company and its intangible assets no good. Trademark counsel and brand managers alike should fight for an office that prevents the company's trademark from being merchandised indiscriminately. The lawyers will be doing their client a great service, along with ensuring the long-term efficacy of the IP work they do. The marketers will be ensuring the value of their own work—the carefully maintained brand positioning (and expensively acquired advertising) to which they devote all their energies. Brand owners cannot afford to let their IP lawyers and marketing staff continue to complain but do nothing about the items they have long found popping up in markets because someone in the company “needed them.”

Moreover, those who fear increased scrutiny on the development of branded products usually want to preserve their own grip on ill-advised merchandising deals. As someone in the business of licensing, I would welcome increased scrutiny of branded product development because products developed along these lines will sell better and will do more to build brand equity for my clients.

Such an effort will avoid the too-common duplication of merchandising efforts. It will keep the brand-owner from entering into, and remaining in, ill-advised licensing deals with someone's golf buddies and brothers-in-law, and it will avoid the junk that clutters shelves, sends the wrong message to consumers, does not sell, encourages infringement, and weakens brand value.

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