

by ANNE BERG

AS SEEN IN **Upsize**  
Minnesota

## How to balance science, art of brand creation



**THE MARKETPLACE** determines a brand's value. And the market forces that drive brand equity are both numerous and complex. But at the moment of its creation, your brand has the opportunity of a lifetime to start out strong — to strike the perfect balance between legal strategy and market strategy, between science and art.

These seemingly opposing forces have the power to work together under a unifying principle called relevant differentiation. The role of differentiation plays powerfully into both trademark and market decisions. My advice to clients is always this: Do not market a brand name that you cannot own. So before you decide to name and launch your new brand, or to rename an existing brand, consider what lies in the balance.

For the record, I'm not an attorney. I don't even play one on YouTube. So this article is written from a brand-strategy perspective, not a legal point of view. It's always advisable to consult a lawyer specializing in intellectual property when you decide to venture into the naming process.

### Science of trademarks

**Coined terms:** The strongest trademarks are coined words such as Kodak, Thrivent and Accenture. Why? Because they're so different. Being different is a potent attribute in the world of trademark law. Although it may seem strange

to adopt a completely unfamiliar word as your brand name, doing so will serve you well over time. Inevitably, you (and your market) will grow to not only accept but also to admire the name, even more so because it is uniquely yours.

### [tips]

- 1 | Trademarks can live forever if managed properly, unlike both patents and copyrights.
- 2 | It's curious then, why such a significant asset isn't taken more seriously throughout the critical naming process.
- 3 | It seems that marketers are often reluctant to rely on made-up names to represent their brands. They tend to think that using descriptive language will make their job easier.
- 4 | In fact, this approach risks the profitability of the brand, if not the brand itself.

**Arbitrary terms:** Another fairly strong tactic to take in naming is to use an existing word but in an arbitrary manner. Some familiar examples in our midst include Caribou Coffee, Black-Berry and Target.

**Suggestive terms:** Moving to the center of the trademark-strength spectrum, we find one of the most common methods used in naming: suggestive terms. Some quite familiar trademarked brands that suggest or hint at the product or

service being marketed include Netflix, Staples and Curves.

**Descriptive terms:** Moving closer to the weaker end of the trademark-strength scale, we find descriptive names such as Family Dentistry, Fast Signs and Transmission Repair. These have little to no likelihood of becoming highly valuable brands. The reason is that they are such weak trademark candidates.

Further, descriptive names are not immediately protectable as trademarks. They first must acquire what is known as "secondary meaning" among the consuming public (over time, the public associates the brand name with the specific offering).

**Generic terms:** At the weakest end of the trademark-strength spectrum are generic names, which pose a deal-breaker challenge: The opportunity to obtain trademark protection is completely unavailable within this category, at any time, for any amount of investment or effort. Generic names that are incapable of achieving trademark status (or have lost their trademark status over time) include words like aspirin, cellophane and bran flakes.

What we've learned by reviewing these trademark-strength categories is that the more a brand name implies the product or service it actually represents, the weaker it is from a trademark perspective. Relative weakness implies the following concerns: the mark is more

“At the moment of its creation, your brand has the opportunity of a lifetime to start out strong — to strike the perfect balance between legal strategy and market strategy, between science and art.”

— Anne Berg, Vyway Market & Brand Strategy

expensive to search, acquire, own and protect; and the mark is more likely to have conflicting (similar and therefore potentially confusing) marks within the same classes of goods and services, which can make it difficult (or even impossible) to get it on the federal register of trademarks.

Trademarks can live forever if managed properly, unlike both patents and copyrights. It's curious then, why such a significant asset isn't taken more seriously throughout the critical naming process. It seems that marketers are often reluctant to rely on made-up names to represent their brands. They tend to think that using descriptive language will make their job easier. In fact, this approach risks the profitability of the brand, if not the brand itself.

As we shift our naming discussion from trademark matters to marketing concerns, one of the most important things to consider is that intellectual-property considerations must supersede internal politics, individual preferences and subjective opinions. This notion is easy enough to understand, yet unduly difficult to apply, because it seems there is no facet of business more vulnerable to uncontrolled emotions than naming.

### Art of marketing

Market strategy bridges the chasm between trademark lawyers and creative teams. Here again, the role of differentiation plays prominently.

All truly great brands are well positioned (differentiated) against their competition. When it comes to competitive positioning, being different is good; but being different while also being relevant to your market is even better. So at the moment of brand creation, bring the essence of the brand forward through thoughtful consideration of both its uniqueness and relevance.

These attributes should inform not only the brand name, but also the brand identity (design of the brand's logo and communications systems). Be creative, not boring! Dare to provoke a feeling. It's your job to imbue the brand with meaning, meaning that matters to the marketplace. Here's why.

Brands create loyalty through their power to connect emotionally, not just rationally. More often than not, the reasons that drive a market's allegiance to a certain brand are both aspirational and inspirational, because we are both thinking and feeling beings. Our purchasing choices reflect this complex integration of head and heart.

Often, a brand's true resonance is found in its emotional appeal, in its personality. The more relevant and resonant a brand feels to us, the more we believe in it and the more we have a sense of belonging to it and its implicit community.

So before you choose a brand name, it is wise to consider not only the positioning but also the personality driving a brand's uniqueness. And it's imperative to consider those characteristics from a customer-centric viewpoint. To that end, testing potential brand names, positioning strategies and messaging platforms with the intended audiences will guide your decision-making toward greater brand success.

As a critical side note, business owners sometimes make the unfortunate mistake of assuming these principles apply only to consumer brands. In business-to-business markets, all the same rules apply. Even in commodity markets, applying these concepts will result in a much more successful brand.

Brand creation is a complex endeavor that requires a two-way balancing pact between lawyers and marketers. With the proper legal and branding guidance, you can create enduring brands that are both legally protectable and creatively aligned for a higher return on investment.

### [contact]

Anne Berg is the principal of Vyway Market & Brand Strategy in Golden Valley:

763.542.3000; anne@vyway.com; www.vyway.com

