



WHAT'S IN A BRAND?

by John McKeown

The term “brand” is traditionally associated with a distinguishing name or symbol intended to identify the goods or services of the seller from those of its competitors. It signals to the customer the source of the product and protects both the customer and the seller from competitors who may attempt to sell products that appear to be identical. This view is consistent with the concept of a trademark under the *Trade-marks Act* but a brand is more than a trademark.

A “brand” is made up of the brand name and the presentation of the design or associated symbols, the product and its shape, the packaging, and the image and positive associations associated with these elements. Each of these components contributes to making a brand distinctive.

To be successful, the product or the service associated with the brand must typically provide competitive functional performance. The brand must deliver benefits that meet or exceed customer expectations.

The brand is also an aggregation of both tangible and intangible values which exist in the minds of

consumers. The brand name should symbolize to consumers the image and values associated with the brand. When properly managed, the brand influences consumer decisions and generates value for consumers and the brand owner. Frequently this means that the pricing associated with the brand captures the customer’s perception of value.

The tangible attributes associated with a brand are frequently referred to as brand expression. They include the elements noted above as well as advertising.

Brands vary in strength. Traditionally, extensive sales of the product and significant advertising are considered as a measure of the distinctiveness of the brand and its strength. However, the object, from a business perspective, is to develop a brand which is so valued by consumers that they will not willingly accept substitutes even when they are cheaper in price. The brand should be associated with unique values that are welcomed by purchasers. Such famous and trusted brands as APPLE®, REDBULL® and STARBUCKS® transmit information directly to consumers.

Author Bio

John McKeown is a counsel at Goldman Sloan Nash & Haber LLP. With more than 25 years of experience providing advocacy and advice concerning intellectual property and related marketing matters, he is certified by the Law Society of Upper Canada as a specialist in Intellectual Property Law (Trade Marks/Copyright).

John is the author of [*Brand Management in Canadian Law, 4th Edition*](#). This book is the only publication in Canada that brings together the legal and business issues that you need to understand when helping clients reach their business objectives through branding. He’s also the author of [*Fox on Canadian Law of Copyright and Industrial Design, 4th Edition*](#), a work which has been extensively referred to by both the Supreme Court of Canada and the Federal Court of Appeal as an authoritative source.

Modern marketing has focused upon creating differentiated brands. Market research has been used to help identify and develop the components which lead to brand differentiation. Unique brand associations have been established using product attributes, names, packaging, distribution strategies and advertising. Market research can also be used to help maintain a brand by understanding what consumers want, how they feel about the brand and what will differentiate the brand in a changing marketplace. Research can also be used to identify the most financially attractive segments of the marketplace.

If you have any questions or concerns, please contact me at mckeown@gsnh.com.

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These comments are of a general nature and not intended to provide legal advice as individual situations will differ and should be discussed with a lawyer.

