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Good Products Vs. Good Names

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Over the years of dealing with individual inventors and start up companies I have noticed an interesting phenomenon concerning product ideas and their respective product names. Quite often clients come in with a business or product idea and have a corresponding name that is attached. It is very interesting to see how attached people become to the names they have chosen for their products or concepts. Often times the attachment is so great, or the fact that the trademark is really the product, that after a negative clearance search comes back and the individual finds out that most likely they will not be able to use their chosen trademark, they abandon the project. This has even occurred with product ideas that I have thought were quite innovative, clever and marketable. I think it has something to do with the thought that the individual believes that they have come up with the perfect scenario – the perfect product coupled with the perfect trademark, which in their minds will yield the perfect storm of product and marketing which will cause their product to be an overnight success and make them millions of dollars. Then when things don't go exactly to plan – they feel the venture can't possibly succeed because the marketing can't possibly work without the "perfect" name for the product.

The fact of the matter is that at the beginning of a product's life the value of the trademark is ZERO. You heard me correctly. It is worth – ZIP, NADDA, ZILCH. That is because the value of a trademark solely depends on the goodwill the public associates with it. This can be seen in the public's awareness of the mark, the impression the public has of the goods the trademark identifies and the overall message your mark conveys to consumers. These attributes are usually built through marketing and other investment in raising the awareness of the company's products or services in the eyes of the public. Goodwill can only be built over some amount of time. Sometimes it's quite quick and happens in a matter of months and sometimes it takes years or decades. We can all think of trademarks that are associated with the best of the best and some that are mid-range and some that are associated with lower quality goods. What causes those impressions? Is it the name that was chosen – or is it the attributes of the products themselves that cause a Ferrari to be a Ferrari, a Rolex to be a Rolex, a Tiffany to be a Tiffany, or a Renoir to be a Renoir? Likewise what causes a Pinto to be a Pinto, or Timex to be a Timex ? The truth of the matter is that many of the well known

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trademarks are either completely made up (fanciful in trademark parlance) or have absolutely nothing to do with the product or service they identify (arbitrary). Think about Kodak, Xerox, Google, Ford, Dell and many other very recognizable trademarks – they are either completely made up or often are the last name of the creator/inventor/business owner. There is nothing special about the actual marks themselves – it's the companies and their products that make them valuable. Products whose majority of value is derived from the catchy or clever names given to them are most likely gimmicks, and will not have the longevity or continued success that are the hallmarks of truly valuable trademarks.

Now don't get me wrong – trademarks can be very valuable pieces of intellectual property and therefore steps to protect and leverage the value your trademarks should be taken. The application of an existing trademark to a new product offering can create instant credibility with consumers and instant brand awareness. However, in the beginning it is the product that counts. The important thing to remember is that crappy product with the "perfect" name is still a crappy product and a great product with a strange or odd name can take the world by storm and make millions. Just ask the guys at Kodak, Xerox and Google.

About the Author -

Mr. Lemire is a Founding Member of the law firm of Leyendecker Lemire LLC, specializing in business and intellectual property law. Previously, Mr. Lemire served as in house counsel to various companies in the Denver Metro area in industries ranging from high tech ".com's" to strategic investment firms specializing in the purchase and sale of distressed commercial debt. Mr. Lemire has advised companies on issues such as general corporate and business law, employment law, mergers and acquisitions, contract drafting and negotiation, software licensing, strategic relationships, copyright, trademark and cyberlaw. He is a Member of the Colorado Bar Association, the American Bar Association's (ABA) Business Law section, the ABA Cyberspace Law and Internet Law Committees as well as the ABA's subcommittee on Electronic Commerce, as well as the Secretary of State's Legislative Drafting Committee on Trademarks.

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