

Intellectual Property Rights

‘A study into how Coca-Cola manages its IPR to ensure it maintains its status as a global superbrand.’

Intellectual Property Rights (IPR) is divided into four separate areas, being trademarks, patents, copyright and designs. By gaining the IPR for a product, a company/individual can protect against infringement or counterfeiting, allowing the product and the profit to remain the company’s/individual’s property. IPR is vital if any company wants to protect its business interests, or preserve its competitive advantage.

Within this study only two areas of IPR will be focused on; trade marks and copyright. Copyright occurs automatically when an individual puts an idea down on paper, giving them the right to stop others from copying their work. Copyright applies to anything that is artistic or aesthetic. A trademark is a badge of origin identifying who makes a product and applies to logos, signs, shapes etc. Trademarks are a fairly unstable form of Intellectual Property, as their uniqueness must be vigilantly guarded in order to remain defensible. Trademarks are especially effective in creating brand loyalty as consumers identify a successful product through the strength of its brand.

A successful brand is the result of a product that has filled a niche in the market; however a truly successful brand is one that will endure the test of time. Brands are often what the consumer shops for and are usually brought through loyalty/preference because it has been strategically advertised and marketed to appeal to the correct side of its audience. For example ‘Hovis’ was the first ever bread to be made from flour that retained wheatgerm (1886) and became synonymous with health and goodness. Thanks to its history and through clever and emotive advertising, ‘Hovis’ is still one of the biggest bread brands around. This is a good example of a trademark that has created brand loyalty from consumers. After all successful brands “are always brand leaders in their segment.” (ref 1)

According to Peter Doyle in Leslie Butterfields’ book ‘Excellence in Advertising’ (ref 2) brands can either be:

- ‘Strong negative brand’-: Brands that are known for bad things e.g. B.T.
- ‘Differential advantage’-: Customers prefer that brand to the competitors
- ‘Sustainable’ -: An advantage that is not easily copied by competitors e.g. Coca-Cola

If a brand is particularly successful then it has a ‘sustainable differential advantage’ meaning it has a competitive advantage above all the other brands within its area. For example ‘Coca-Cola’ is the second most recognised word in the world; ok being the first (ref 3). Coca-Cola is also the world’s number one brand, having achieved 94% global recognition (ref 4), and is the leading producer and marketer of soft drinks (ref 5). This is in part due to the trademarks Coca-Cola own; without such dominant and defined trademarks their advertising strategies arguably would not have found such exceptional results.

In its first year Coca-Cola was sold at a soda fountain for 5 cents a glass, and made \$50, averaging nine drinks a day (ref 6). Now in 2005 more than 1.3 billion Coca-Cola

servings are consumed per day in almost 200 countries (ref 7). In Great Britain 41% of non-alcoholic drinks consumed are soft drinks. Of this total of soft drinks, 48% are carbonated soft drinks. Coca-Cola accounts approximately for 45.8% of the total of carbonated soft drinks sales in the country, showing the popularity of this product, and leaving little space for its competitors (ref 8).

The Coca-Cola Company owns 400 brands in over 200 countries; none however have had the success of Coca-Cola itself. Coca-Cola has many trademarks, one of the most infamous being the contour 3D bottle that was designed so that it would be “recognize even if he feels it in the dark” (ref 9). Originally in 1915 the bottle design was registered as a patent, however in 1977 it was registered as a trademark and is still to this day one of only a handful of consumer packages to have been allowed to be registered as a trademark (ref 10).



Examples of Coca-Cola's trademark. From left to right, the 3D contour bottle, their signature logo, the 'Diet Coke' brand and the Coca-Cola label.

Some of Coca-Cola's other legendary trademarks are the name 'Coca-Cola' which was registered in 1893, the signature logo of white flowing writing (Spencerian script) on a red background also registered in 1893 and the name Coke which was registered in 1945 for the diet version (ref 11). Ever since 1886 when Coca-Cola was invented the trademarks have become even more cost effective due to the way Coca-Cola has been marketed. From the very beginning when they used hand painted oilcloth signs reading 'Coca-Cola' and 'Drink' to disturbing coupons for a free glass of Coca-Cola and also to handing out souvenirs of clocks, fans and other goods, this product has been marketed correctly. Even the changing face of Coca-Cola's packaging has not fazed consumers; instead it has merely impressed them for what type of miraculous container they would next make.

Coca-Cola has not always had a smooth running; they have had to defend their product from infringement many times over. Years ago Coca-Cola lost a battle to stop other cola manufacturers from using the name 'Cola' for their products as the judge ruled 'Cola' has become a generic term for referring to soft drinks (ref 12). From there the word 'Cola' became public domain and brands like Pepsi were able to use it within their title, making the essential link between them and Coca-Cola. 'Pepsi-Cola' is now Coca-Cola's biggest competitor.

Another battle Coca-Cola fought in 2000 was against its fans; preventing the use of a domain name 'Vintagecocacola.com'. The site that was originally set up for fans (senior citizens) to display their vintage Coca-Cola merchandise as a goodwill gesture by

Maxistore.net was objected to by Coca-Cola themselves. Coca-Cola sent Maxistore a cease-and-desist letter asking them to stop 'using the Coca-Cola trademark and to either assign the domain name to Coca-Cola or abandon the name immediately' (ref 13). The site was purely for displaying and talking about Coca-Cola in a good light, no money was made or exchanged. However since the anti-cyber squatting legislation was passed in the November of '99, (protecting businesses against those who register company trademarks as an Internet address in 'bad faith'), Coca-Cola had the right to object. Coca-Cola said that it must 'protect its trademark if it doesn't want to lose the rights to it' (ref 14). Coca-Cola was not objecting to the content but the domain name. A Coca-Cola spokeswoman said:

"If people see our trademark (in the domain), they may think we're responsible, and we can't monitor sites everyday to see what could be on them, if people have a negative experience going to the site... they might attribute that to us." (ref 15)

Sally Abel from Fenwick & West law firm commented when viewing this situation that:

"They are obligated to protect their trademarks under the law, but they obviously don't want to upset their loyal fans...Coca-Cola made a choice that it's willing to suffer negative press in the short term for confidence that it has done everything it can to ensure its trademark rights are protected in the long term." (ref 16)

This not only shows how important Coca-Cola's trademarks are to them but also the extent Coca-Cola will go to insure that the trademarks, which in this case was the name 'Coca-Cola', will be protected from infringement of any kind. As Sally Abel said, Coca-Cola is that big that it can do such things and still remain top of its market.

Another example of how Coca-Cola has protected its trademarks was in the battle of 'Coca-Cola Co. v. Gemini Rising Inc. 1972', (ref 17) when the defendant (Gemini) produced posters for profit reading 'Enjoy Cocaine' in the same style and colour of writing used for the Coca-Cola trademark. Over 100,000 copies had been sold throughout the U.S and the defendant said that "the poster was intended to be a spoof, satirical, funny, and to have a meaning exactly the opposite of the word content", however Coca-Cola felt that even though the defendant was not offering a similar product; the posters were still damaging the company and the trademarks reputations as well as infringing on it for profit. In this case the judge ruled in Coca-Cola's favour and granted an injunction against the defendant because:

"The continued success of plaintiff's business depends upon millions of purchase decisions made daily. The soft drink industry is highly competitive. Many substitute products are available, so that even the slightest negative connotation concerning a particular beverage may well affect a consumer's decision." (ref 18)

However like in this case it can be hard to decide who is right as Coca-Cola had to pay the defendant for any losses incurred to the sum of \$25,000 (ref 19). Trademark and copyright battles can be tricky to decide as it's a messy area; in this case satire caused the defendant to lose.

To retain its status as the number one soft beverage, Coca-Cola has constantly had to re-invent itself. It does so on a regular basis, coming up with new slogans, marketing strategies and new products. Coca-Cola have tried many different slants, and realising its worldwide appeal, markets itself as being a unifier of people. Coca-Cola has in the past used viral marketing; that is to say it uses (often alternative forms of) advertising in which the brand or product propagates itself. An example of this was in Mexico (2000); Coca-Cola produced the world's largest mosaic from 5,400 photos of the local people – forming a giant 'super ad' of a Coca-Cola bottle (see image below). Its strapline of 'Tu Formas Coca-Cola' meaning 'You are part of Coca-Cola' was literally realised by the public when viewing their own image through telescopes (ref 20). Such grand advertising schemes could not have failed; Coca-Cola gained acceptance of what could be seen as a monstrosity by asking the public to be in it, as well as creating a sense of community.



Photo mosaic taken in Monterrey, Mexico from the book 'Branding-From Brief To Finished Solution' by Rotovision

Another example is the strapline of 'Eat Football, Sleep Football, Drink Coca-Cola' that was first used in a 1996 advertising campaign. By stating that it is 'the' drink of football, Coca-Cola places its product into one of the largest audiences in the world, insuring the product remains familiar within the minds of the consumers. Aside from this commercial, Coca-Cola does have a real interest in football, as it sponsors major events, (The Coca-Cola Cup), once again asserting the brands trademarks with a mass audience.

In an early advertising campaign Coca-Cola demonstrated astuteness by marketing on a worldwide occasion. They placed a bottle of Coca-Cola within the hands of Father Christmas. This established a powerful psychological bond in the minds of an impressionable young audience; the association between the product's colours and Christmas had been formed. The posters (shown on the next page) depict Santa drinking Coca-Cola left for him, sneaking a Coca-Cola from the fridge and giving bottles of Coca-Cola to the young children he is visiting. Coca-Cola again demonstrated their ability to

use the trademarks of their product in conjunction with a global icon, in order to boost sales and introduce Coca-Cola to a wider audience.



Poster's illustrated in the 1930's by Haddon Sundblom commissioned by Coca-Cola, today these posters are very valuable.

It therefore seems that through a network of ways Coca-Cola has marketed itself in situations that bring people together, insuring maximization of brand introduction to larger gatherings of people and maybe explaining why it has been so successful. Coca-Cola's marketing strategy of 'Think Global Act Local' has ensured that the brands trademarks have become known worldwide. Now the trademarks have transcended beyond being just normal trademarks and Coca-Cola has become more than just a drink; it's now a lifestyle choice. With factories in over 200 countries, Coca-Cola has had to look after its reputation to the highest degree, especially when regarding locals objecting to new sites productions. However Coca-Cola, through the protection of their vital assets (being their trademarks), has managed to secure over 100 years of remaining at the top of its market. It offers original tastes that are loved by many, and with their three timeless principles of **acceptability** - through effective marketing, **affordability** - Coca-Cola guarantees it offers the best price and **availability** - making sure that Coca-Cola brands are available anywhere people want refreshment (ref 21), has gained the markets loyalty. Coca-Cola has become a 'super brand' which owes its allegiance to its trademarks, for without them Coca-Cola is just another soft drink. That is why Coca-Cola must protect, defend, innovate and challenge, if it is to remain top of its market, keep its reputation and stay successful. IPR is vital for any brand.