

# ■ THE ROLE OF TRADEMARKS IN BRANDING

WIPO Training of Trainers Program on effective use of  
intellectual property assets management by SMEs

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# LEARNING OBJECTIVES

- Understand the basics of the concept of brands, trademarks, branding and their impact on business.
- Understand the role played by trademarks in reinforcing a branding strategy and how to apply it to a business.
- Understand the importance of legally protecting trademarks and the steps to be taken in case your trademark is infringed.

# OUTLINE

- **Brand versus trademark**
- **Relevance of trademarks in a branding strategy**
- **Process of setting up a Branding Strategy**

# INTRODUCTION

## ■ THE « POWER » OF A NAME

- In 'blind' taste tests, people prefer the taste of Pepsi over the taste of Coke.
- However, if the test is not 'blind' and the tasters know which beverage is which, they prefer the taste of Coke over Pepsi!
- The Coca-Cola brand has the power to actually change an individual's taste!
- That is the emotional power of a name.



# INTRODUCTION

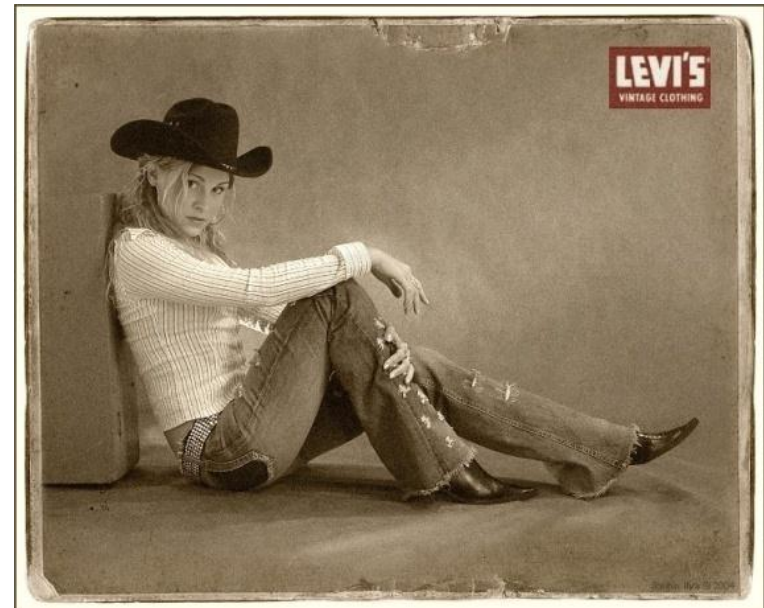
## ■ MARLBORO

- Masculine, freedom, adventure



## ■ LEVIS

- Rebellion, freedom



# INTRODUCTION

■ Every day a new product enters the market...



# BRANDS IN BUSINESS

## ■ What is a brand?

■ In marketing terms it is:

**The intangible, but real, value of words, graphics or symbols that are associated with the products or services offered by a business.**



# BRANDS IN BUSINESS

## ■ What is a brand?

■ A brand is the set of **perceptions** and **expectations** created among key stakeholders:

- Consumers
- Business partners (distributors, suppliers...)
- employees

.... for the future performance of your company

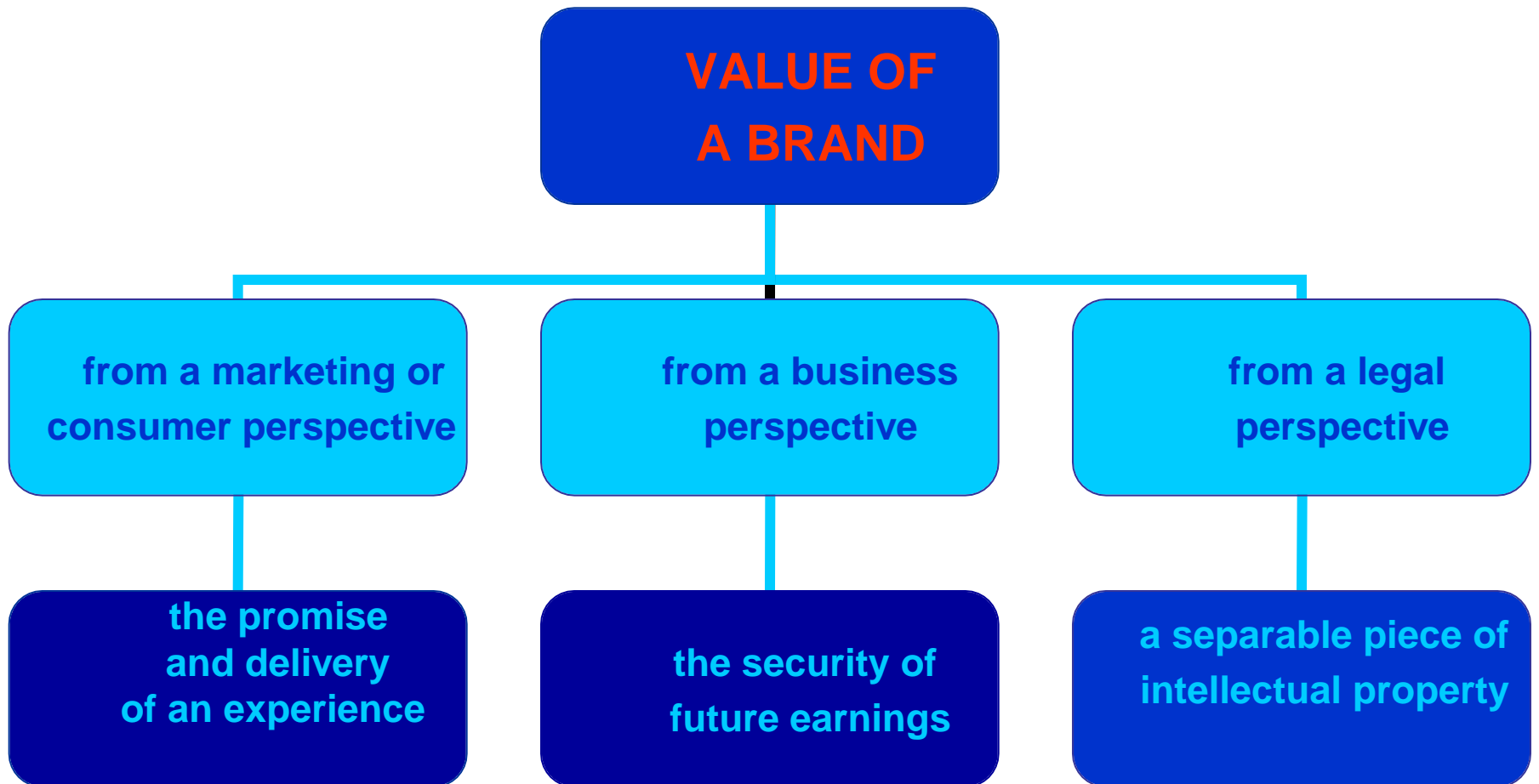
■ A brand is a **promise** and its reputation depends entirely on how well that promise is kept



# BRANDS IN BUSINESS

- A brand represents the holistic sum of all information about a product or group of products.
- It is a **symbolic construct** which typically consists of
  - a name;
  - identifying mark;
  - logo;
  - visual images or symbols; or
  - mental concepts

# BRANDS IN BUSINESS



# BRANDS IN BUSINESS

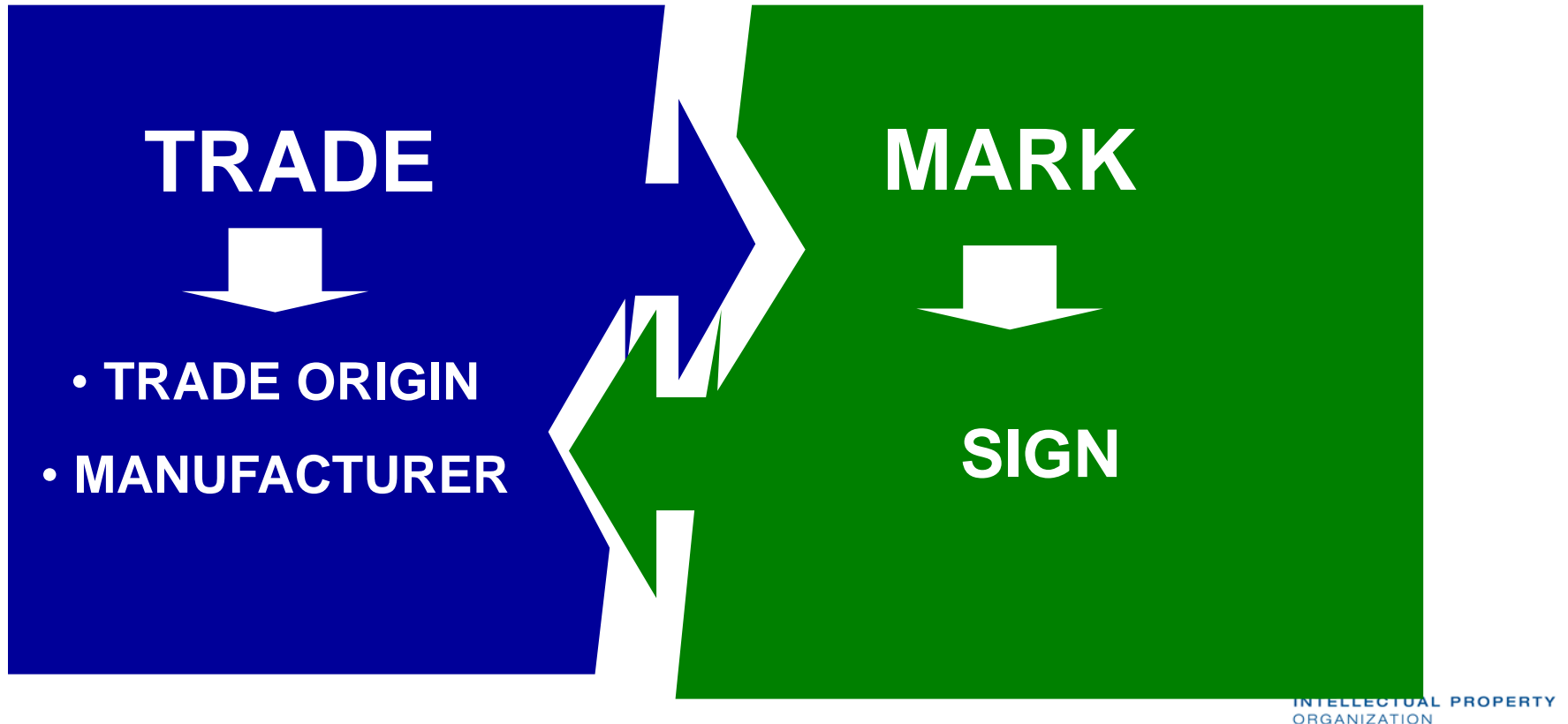
## ■ VALUE OF Brands

### ■ A valuable business asset

Brand	Country of Origin	Sector	Brand Value (\$m)
	United States	Beverages	70,452
	United States	Business Services	64,727
	United States	Computer Software	60,895
	United States	Internet Services	43,557
	United States	Diversified	42,808
	United States	Restaurants	33,578
	United States	Electronics	32,015
	Finland	Electronics	29,495
	United States	Media	28,731
	United States	Electronics	26,867

# TRADEMARKS VERSUS BRANDS

- In common usage, a 'trademark' is often referred to as a 'brand.'



# TRADEMARKS VERSUS BRANDS

## ■ DEFINITION

- A sign capable of identifying and distinguishing in the marketplace the products of one enterprise from those of other enterprises.
- The term “products” encompasses both goods and services.
- Different from trade name: company business registration: A trade name cannot be registered as a trademark unless it also functions as a trademark.  
E.g., **Apple Computer, Inc.** owns **Apple**<sup>®</sup> computers

# TRADEMARKS VERSUS BRANDS

## ■ TRADITIONAL

- Words
- Phrases
- Letters
- Numerals
- Pictures
- Colors
- Drawings
- Pictures
- Label

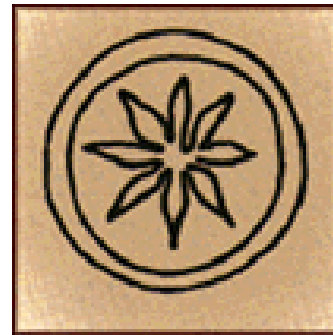
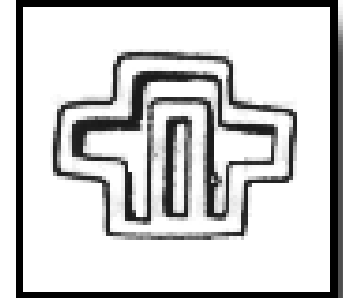
## ■ NON- TRADITIONAL

- Single colors
- Three-dimensional signs
- Sounds
- Smells
- Tactile marks
- Gesture

# TRADEMARKS VERSUS BRANDS

## ■ ORIGIN

- **5000 b.c.e:** Marks are found on pottery.
- **12th century:** trade guilds begin using marks.
- **1876:** Bass® brewery registers first trademark in UK.
- **1883:** First international trademark agreement was reached at the Paris Convention for the Protection of Industrial Property.
- **1887:** Coca Cola® first used as a trademark for a tonic beverage
- **1895:** Quaker® registered as a trademark for oats.



# TRADEMARKS VERSUS BRANDS

## TRADITIONAL

**NOKIA**

*Coca-Cola*



**Google™**

## NON-TRADITIONAL



W  
ORGANIZATION



# TRADEMARKS VERSUS BRANDS

## ■ TYPES OF TRADEMARKS

- **Trade marks:** to distinguish goods
- **Service marks:** to distinguish services
- **Collective marks:** to distinguish goods or services by members of an association
- **Certification marks**
- **Well-known marks:** benefit from stronger protection
- **Trade name vs. Trade mark**

# TRADEMARKS VERSUS BRANDS

## ■ FUNCTIONS OF A TRADEMARK

- Allows companies to differentiate their products
  - Indicator of origin
  - Product differentiation function
- Ensures consumers can distinguish between products and ultimately develop brand loyalty/Trust
  - Symbols of quality
  - Goodwill

# TRADEMARKS VERSUS BRANDS

## ■ PROTECTION



TM

- Registration is **key** and is **territorial**
- Provides coverage in relevant markets where registered
- Exclusive rights prevent others from marketing products under same or confusingly similar mark
- Promotes customer loyalty/ reputation / image of company
- The right to prevent others from using the name for internet domain name registration purpose
- Registration gives the right to authorize the use by others (license or franchising agreements)
- Secures investment in marketing effort

# TRADEMARKS VERSUS BRANDS

## ■ PROTECTION

- **National route:** IP Office in each country.
- **Regional route:** Countries members of a regional trademark system: African Regional Industrial Property Office (ARIPO); Benelux TM office; Office for Harmonization of the Internal Market of the EU (OHIM); Organisation Africaine de la Propriété Intellectuelle (OAPI).
- **The international route:** the Madrid system administered by WIPO (over 70 member countries)

# TRADEMARKS VERSUS BRANDS

## PROTECTION

DISTINCTIVENESS IS KEY

Not Protectable

GENERIC

DESCRIPTIVE

SUGGESTIVE

FANCIFUL/ARBITRARY

Very Protectable



# TRADEMARKS VERSUS BRANDS

- **Use of the Trademarks as Business Assets**
- **Licensing:** owner retains ownership and agrees to the use of the TM by other company in exchange for royalties > ***licensing agreement*** (business expansion/diversification);
- **Franchising:** licensing of a TM central to **franchising agreement**. The franchiser allows franchisee to use his way of doing business (TM, know-how, customer service, etc.);
- **Selling/assigning TM to another company (merger & acquisitions/raising of cash).**

# TRADEMARKS VERSUS BRANDS

## ■ Trademark= Legal concept.

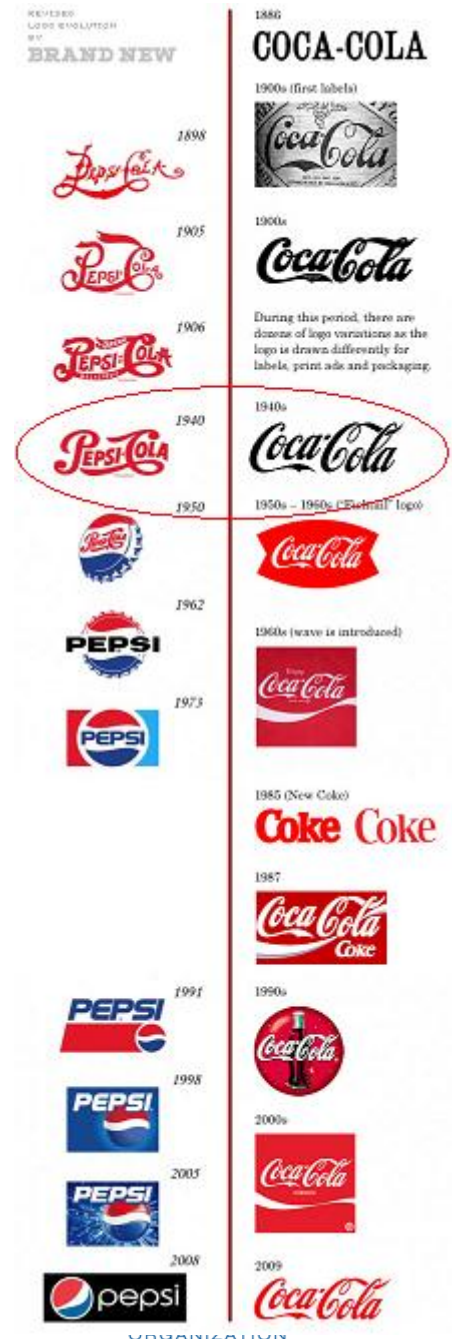
- Intellectual Property Right
- Registration of a trademark will add value to your business as it protects its other inherent assets;

## ■ Brand = Marketing concept.

- Holistic sum of information concerning a product (name, color, emotion)
- Brand profile and positioning may vary over time, but trademark protection will remain the same.

# TRADEMARKS VERSUS BRANDS

- **Enforcing trademarks- E.g: The Coca-Cola Co. of Canada v Pepsi-Cola Co. of Canada (RPC) 1942**
- Coke sued Pepsi for infringing their registered trademark.
- Court held that “Cola” was simply a descriptive word identifying a type of beverage and that the “distinguishing feature” of the Coca-Cola trademark is the word COCA.
- As the distinguishing feature is not borrowed, there is no likelihood of deception.





# TRADEMARKS VERSUS BRANDS

- **Enforcing trademarks. Eg. Adidas America, Inc et al v. Payless Shoesource, Inc**
- Whether Payless Shoesource Inc has violated Adidas's THREE STRIPES trademark and the SUPERSTAR Trade dress by infringement, dilution or injury to business reputation?
- The final jury verdict in 2008 awarded Adidas a staggering total of \$304.6m.
- Later reduced to \$65m-Adidas remains victorious.



Sample of Adidas shoes



Sample of Payless shoes

# CONCEPT OF BRANDING

- **Communication and differentiation purposes:**
- A positive image or reputation of a business creates a relationship of **trust**. The trust so developed provides the basis for developing a **loyal clientele** and enhancing a business's goodwill in the long term.
- Often satisfied consumers develop an **emotional attachment** to a mark. They perceive products/businesses bearing the mark as sharing a **brand identity or image**, which reflects a set of **desired attributes, benefits or values...**
- The brand may also define the **cultural image, personality and type of consumers** linked to the product sold under that mark or brand.

# CONCEPT OF BRANDING

## ■ DEFINITION OF « BRANDING »

- Branding is an effort to give a unique identity to the company's products and create emotional associations with consumers.
- The intangible, but real, value of words, graphics or symbols that are associated with the products or services offered by a business
- A brand is a promise. A promise to achieve certain results, deliver a certain experience, or act in a certain way. A promise that is conveyed by everything people see, hear, touch, taste or smell about your business.

# CONCEPT BRANDING

## ■ PURPOSE OF « BRANDING »

- Gives your business a significant edge over the competition;
- Makes the customer view your business as the only solution to their need or problem
- A strong brand will engender feelings of trust, reliability, loyalty and recognition in the customer's mind;
- Through its brand image, a business will attract and retain customer loyalty for its goods and services and increase the value of its business.

# CONCEPT BRANDING

## ■ WAY OF BRANDING A PRODUCT

1. Develop a brand that is **part and parcel of your business plan**;
2. Associate your brand with a key customer promise.
3. **Target what customers care about**: articulate precise values and qualities that are relevant and of direct interest;
3. Differentiate your brand: **emphasize features** that are both important to consumer and quite differentiated from competitors;
4. **Sell the brand outside and inside**: Motivate employees to identify with brand;
5. **Keep brand flexible**;
6. **Communicate** the brand image at all levels of operation;
7. Use Intellectual Property Rights (IPRs), tools for branding, such as **trademarks** and **industrial designs**.
8. Keep your brand focused: repeat, repeat your message

# CONCEPT BRANDING

- **Trademarks** and **industrial designs** increase the power of Marketing



# CONCEPT BRANDING

- **Brand Name**-name, tagline, logo
- **Brand Position**-description of your organization
- **Brand Promise**-The single most important thing your organization promises to deliver every time
- **Brand Personality**-what you want your brand to be known for (fun, serious, magical, forceful, imaginative, etc.)
- **Brand Tone**-edgy, humorous, conservative, subtle
- **Brand Story**-Your organizational history and how it adds value to the brand, highlights how your products and services grew from that background and how your methodology impacts what you offer
- **Brand Associations**-colors, taglines, images, fonts, uniforms, signage, equipment, etc.

# CONCEPT BRANDING

## ■ EFFECTIVE BRANDING INCLUDES :

- **The Functional Dimension:** perceived benefits of product or service
- **The Mental Dimension :** the ability to create insight or guidance for the individual
- **The Spiritual Dimension:** perception of responsibility in the industry, society, locally or globally
- **The Social Dimension:** ability to create a social context for a group



# CONCEPT BRANDING

## ■ EXAMPLE: NOKIA

- **The Functional Dimension:** user friendly technology and design
- **The Mental Dimension:** Connecting people
- **The Spiritual Dimension :** bridging the technology gap
- **The Social Dimension:** Nokia group



**NOKIA**  
Connecting People



**wemeet** Nokia  
spread the word

# CONCEPT BRANDING

## ■ POSITIVE IMPACT OF BRANDING

- Recognition And Loyalty
- Image of Size
- Image of Quality
- Image of Experience and Reliability

## ■ NEGATIVE IMPACT OF BRANDING

- Cost
- Impersonal
- Fixed Image
- Timescale

# CONCEPT BRANDING

## ■ LIFE CYCLE OF A BRAND

### 1. Brand recognition

- Customers know your name but don't prefer it over competition

### 2. Brand preference

- Customers pick your product based on a previous experience with it

### 3. Brand insistence

- Customers won't accept another product (monopoly status)

### 4. Generification

- Customers associate your brand with the category of the product. You are « cannibalized » by your own success

# CONCEPT BRANDING

## ■ LIFE CYCLE OF A BRAND

■ Eg. THE NIKE'S CASE



- Reflects the popularity of a well-known TM
- The “Swoosh” is the well known symbol of Nike
- Originally Nike’s logo included also the shoemaker’s name
- At the end of the nineties, the Nike’s name disappeared
- The swoosh remained as the main identification symbol of the shoemaker
- Today there is no need to include the brand into this logo since the recognition of a simple swoosh automatically brings our attention to Nike

# CONCEPT BRANDING

## ■ Importance of Brands' management

- Brands' audit
- Improper use of trademarks may result in their loss as they become generic.
- E.g: which of the following brands were initially registered Trademarks?

- Nylon
- Kerosene
- Trampoline
- Zipper
- Cola
- Escalator
- Cellophane
- Thermos
- Kleenex
- Aerobics
- Super Glue
- Yo-Yo
- Aspirin
- Coke



...ALL BUT became **generic trademarks** and  
**“cannibalized”** by their own success

# CONCEPT BRANDING

## ■ BRAND EQUITY AND TRADEMARK PROTECTION

- **Brand equity:** brand's power/goodwill and name recognition against competing brands (private labels).
- **Built on** the foundation of a protected Trademark
- **Valuable business** asset that **MUST BE** protected

# CONCEPT BRANDING

## ■ What to do for a Successful branding Strategy ...

1. Develop a brand that is part and parcel of your business plan;
2. Target what customers care about: articulate precise values and qualities that are relevant and of direct interest;
3. Emphasize features that are both important to consumer and quite differentiated from competitors;
4. Sell the brand outside and inside: Motivate employees to identify with brand;
5. Keep brand flexible;
6. Communicate the brand image at all levels of operation;
7. Use Intellectual Property Rights (IPRs), tools for branding, such as trademarks and industrial designs.

# CONCEPT BRANDING

## ■ Branding strategy

### ■ Multi brand strategy

- Marketing of two or more similar and competing products by the same company under different and unrelated brands

### ■ Family brand strategy

- A brand which is used on a group or products of a given company. A family brand may be the corporate brand or there may be a number of family brands under a corporate brand.

### ■ Line extension strategy

- An established brand name is used to enter a new market segment in the same product class. A new variation of a product or service sharing the same essential characteristics as the parent, but offering a new benefit, such as flavor, size, package type, etc.

### ■ Brand extension strategy

- Established brand name is used to enter a completely different product class. A new product or service that is related to an existing brand, but that offers a different benefit and/or appeals to a different target segment.



# CONCLUSION

- It's all about **REPUTATION, CUSTOMER RETENTION, CONSISTENCY, MONEY** .....Through a name, a sign...for which you can claim the ownership...
- It's a guaranty of **CONSISTENCY** and the foundation of **TRUST**



Million of cars  
recalled to preserve  
company's reputation



GM Offers Toyota  
Owners \$1,000  
To Switch

"We want to be able to  
provide peace of mind  
to customers and all  
of our vehicles are safe."



# CONCLUSION

- How do you communicate with your customers?
- How do you get people recognize your name?
- How do you build trust with your customers?
- What is your Unique Selling Proposition for claiming a premium price for your products?
- How do you differentiate your products from those of the competition?
- How will prevent others from using your distinctive signs?
- How do you communicate with your customers?
  
- How do you get people recognize your name?
- How do you build trust with your customers?
- What is your Unique Selling Proposition for claiming a premium price for your products?
- How do you differentiate your products from those of the competition?
- How will prevent others from using your distinctive signs?

**These are TRADEMARKS AND BRANDING ISSUES.....**



**THANK YOU!**

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