

## **Staying Ahead of the Crowd – Why Building a Brand is Essential for Business Owners**

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In today's world of too much information across a plethora of social media platforms, most businesses need to compete for consumers' attention and ensure that the goods or services they offer would be the one chosen.

When other circumstances or aspects such as high technological barriers to entry, steep capital requirements, government regulations or high distribution costs are factored in, it can be said that running a business, a successful one at that, does not come easy.

At the core of recognition as to whether a business flourishes or otherwise, would be the products sold or services provided. Good quality products made and sold at reasonable prices will always be sought after and in the service industry, one will never fault a provider that is attentive to its customers' needs. How a business is distinguished and how it is chosen over another still very much remains a question of preference and to a certain extent, the branding of a company does play a role.

This article will explore how branding can help to elevate a business entity and how it is intertwined with the legal realm vis-à-vis trademark law.

First and foremost, there is a distinct difference between trademarks and brand. Not all trademarks can be a brand, but a brand often will originate from the former. The essential characteristic that distinguishes them both is that one is entrenched as a legal concept whilst the other is a marketing tool developed by businesses.

In Malaysia, a trademark has been given a wide definition under the Trademarks Act 2019 as per Section 3 of the Act, which defines it as:

*Any sign that is capable of being represented graphically which is capable of distinguishing the goods and services of one undertaking from those of other undertakings.*

In laymen's term, a trademark can be simply stated as a mark, which can comprise of any sign, which is used in the course of trade to indicate a source of origin. It functions as an identifier of the source of goods or services. It also enables consumers to distinguish between similar or identical products and most importantly, a trademark that is used by a business is a guarantee of the quality of their goods or services to their customers.

Whilst registration of one's trademark is not mandatory, it is highly recommended as the benefits of obtaining statutory protection are second to none. Registration of a trademark will give its owner exclusive rights to use the trademark. Once registered, it affords the registered proprietor the full kaleidoscope of legal protection as provided under the Act which include restraining any third party from using the same or similar sign in respect of the same and/or similar goods and or services. In instances of any copying, the registered proprietor is at liberty to take legal action against any unauthorised use of the mark by an infringer.

Additionally, a registered trademark is treated as a personal or movable property and the registered proprietor has full control as to how the trademark is used in trade. The registered proprietor may exploit the mark themselves whereby it can be assigned, licensed, mortgaged, charged, or devolve by operation of law (notably through death or bankruptcy). As time goes by, the registered mark may be an asset to the company / business, and these may be inherited by the successor through generations and continue to be subsisting for perpetuity subject to timely renewals. In exploiting the trademark, the registered proprietor should take care that the trademark does not become generic, to avoid being revoked by any aggrieved third party.

Trademarks also serve as marketing tools nowadays. When a good trademark is chosen and used in relation to products which are then widely advertised and heavily marketed, this will generate goodwill and reputation to the business. And when the sales of goods are on the rise, this results in an increase in market share for the entity, its business grows and so does its goodwill and reputation.

Tying the above with the idea of branding, it can be said that brands are normally elevated trademarks which command consumer loyalty and preferential acceptance, reflecting in the premium that they are willing to pay for a particular product or service.

A clear example would be automobiles, where premium luxury makes of cars are normally favoured by those who are able to afford it over and above cars that are mass produced. Brands such as "LAMBORGHINI", "FERRARI" and "BENTLEY" are sought after not only for the quality of the cars but for their top-notch technology and safety aspects.

Successful brands invariably will create a set of expectations on the part of the consumers, that accounts for them to choose a particular good or service over another. Being a marketing tool and when used to its fullest advantage it taps into the emotions of a consumer and constitutes an image of personal experience. Generally, the preferential acceptance of one brand over another will generate a certain perception in consumer behaviour which result in increased bonding and customer loyalty. It goes without saying that due to premium pricing thresholds for an item that utilizes a widely known and accepted brand will mean higher profit margins for the business. Another strategic deployment would be the usage of brand ambassadors, who nowadays will comprise of celebrities and social media influencers.

To be a successful brand, which can increase the business's income opportunities through licensing, cross-licensing and even franchising, a proper regime of trademark protection and marketing would be required. In today's global commerce, the world is a borderless space where much of the buying and selling takes place over the internet. Thus, a strong trademark is needed to ensure it is distinctive and easily remembered by the masses.

Thereafter, a strategic outline of the necessary registration in which country must be considered and budgeted for. After Malaysia joined the Madrid system in 2019, foreign trademark protection has become significantly affordable for Malaysian businesses to register their trademarks abroad and likewise, it is easier for foreign companies to achieve registration of their trademarks by designating Malaysia as one of the countries for protection. Continuous advertising, marketing and promotional efforts will result in higher



recognition of a company's trademark and coupled with the right exposure and virality, a brand may be born.

In conclusion, the importance of a unique or distinctive sign that is used as a trademark, which when registered, is properly nurtured and fully exposed through extensive promotions will result as a boon to its owner. The branding of one's entity has never been more important in today's world and when a brand gains the recognition and fame, that business will be one step ahead of its competitors and stand out in the crowd.