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British Brands

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The power of brands

Dr Lindsay Moore and Lesley Craig

'Give me where to stand, and (with this lever) I will move the earth.' *Archimedes*

Remember the lowly days when brands were merely a tool of marketing? Today, those in the know recognize that marketing itself has become the mere tool of branding. Noticeably, brands have risen dramatically in monetary value and strategic significance. The brands of successful enterprises have become the most valuable single asset within the enterprise, often worth billions of pounds, and the most important tool of modern business strategy. No matter what sector of the economy, business titans of this millennium know that it is the brand that can deliver both sustainable competitive advantage and market capitalization or valuation.

In understanding this new found socio-economic power, it is important to realize, (i) that brands are producing much of the new wealth in the world today, and (ii) that brands have a unique ability to orchestrate and distill all of the intangible assets within an enterprise into a powerful market force. Recognizing these unique abilities is key to developing the strategies that can use brands to focus and leverage the assets of an enterprise to achieve untold success. Today, *à la* the Archimedes quotation at the beginning of this article, brands offer the greatest possible strategic business leverage.

1 Brands are producing the wealth in the world

With the merger and acquisition mania of the early 1990s, brands came to possess tremendous economic significance in the world of enterprise. Taking into account what became known as 'brand equity', companies began to command enormous M&A premiums over the traditional 'times revenue' valuations. Today, the most famous brands in the world, brands such as Coca-Cola ($65.3 billion), Microsoft ($58.7 billion) and IBM ($57 billion) are valued in the billions and billions of US dollars, dwarfing the respective values of the traditional physical assets found on enterprise balance sheets and often exceeding the annual revenues of the particular company.

The first credible 'brand valuations' were published in *Financial World* in 1994. Conservative as they were, the values therein stated were a big wake up call to many CEOs and marketing executives. In those days, Coca-Cola was valued at $39 billion – an inconceivable number at that time, followed by Marlboro at $38.7 billion and IBM at $17.1 billion. While the earliest examples were often within the consumer product industries, long familiar with the importance of trademarked brands, today the concept of enormous brand valuations is recognized in all industries, even those that traditionally viewed value as primarily related to patented technology and traditional hard assets.

Over time, the idea that something so apparently ethereal or 'intangible' as a brand could be so valuable has driven many to rethink the role of brands within enterprise and to reassign responsibility for such a valuable asset up the organizational chart into the CEO's office. Currently brands are recognized by many corporations as assets that are too valuable to be managed any longer at the level of a functional discipline such as marketing or by line management.

In 2005, the intangibles within Standard & Poor's 500 Index comprised approximately $10.25 billion, or 89%, of the total $11.5 billion of combined Index value. The tangible assets comprised only $1.25 billion, or 11% of that total amount. Evidently, and increasingly, intangible, intellectual, knowledge-based assets are producing the preponderance of wealth in the S&P Index and, by extrapolation, across the economies of the developed world. In comparison, traditional, tangible book value has delivered only incremental gains in wealth.

Of course, all undertakings have both tangible and intangible assets, but it is how they are prioritized and leveraged that determines their strategic significance and monetary value. For most companies, it is the physical and tangible assets that still receive the greatest strategic attention. Familiarity with the strategies of operational effectiveness lead many executives to focus on already optimized tangible assets where only small gains are possible. In the more successful of modern companies, the tangible assets are all but mastered and are delivering the highest levels of operational effectiveness. However, the same is not true with the intangible assets, which remain largely hidden and unrecognized by many strategists. It is these hidden,

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intangible assets that present the economic opportunity going forward because they offer the greatest opportunity for optimization and thus the greatest possible gains.

Thus the strategic opportunity to win in the marketplace lies with the underleveraged intangible assets, entities such as intellectual property and the brand itself. These assets are non-depleting, have instant global distribution, can be easily shared, and can be packaged and re-packaged to fulfil widely varying product and service requirements. Hence, with the rise of the knowledge-based economy, investment now buys ideas and concepts rather than machines, and innovation has become more important than mass production. As technology creates global competition, it has created a world in which the most productive knowledge wins economically and in the market.

What this shows us is that the asset base of the economy has shifted from predominantly tangible assets, such as plant, property and equipment, to predominantly intangible assets, such as ideas, creativity, the ability to innovate, intellectual property and brands. These are the new assets that are creating the greatest wealth and the greatest of the rewards go to those wisely using brands to orchestrate all other intangibles.

2 Brands distil intangible assets

Aside from their unmistakable economic value, why have brands risen to possess such tremendous strategic significance in less than two decades? Because of their unique ability to assemble other intangible assets and to distil differentiated meanings into market force.

Successful enterprises know that brands are instrumental in and necessary to commercializing all other assets. Bare patents, to even the most amazing technology, are unrealized potential until they are commercialized under a brand that articulates their features and successfully positions them within markets. In fact, although many companies license technology or sell technology-based parts to other businesses, it is the branded end products that generate the highest margins or profit.

Thus, brands offer the key to this whole new class of intangible, intellectual capital assets. They provide us with the means to collect and organize even large numbers of intangible assets such as patents, copyright, trade secrets, trade dress and contracts, and then to leverage their combined critical mass to fulfil the strategic objectives of the enterprise. Many knowledge-based brands demonstrate this fact, and suggest ways to coordinate and leverage varying intangibles with the power of a brand.

Consider Intel Corporation, the maker of microchips. Intel, with their 'Intel Inside' branding strategy, showed technology and commodity component manufacturers how to transfer finite and quickly disappearing equity out of their patent portfolios into more valuable long-term brand equity. Intel introduced a branded approach to selling once commodity products that allowed the company to achieve market differentiation and create substantial demand by using sub-brands with a house mark under a product line extension brand architecture. This allowed the company to conserve the equity from each finite invention, irrespective of patent expiration or obsolescence, referring it up to the sub-brand or house mark (Intel), which kept collecting and distilling the intangible equities of the ever-evolving technology to their brand for safekeeping as brand equity.

Microsoft demonstrated with their branded Windows operating system that intangible assets create wealth differently than tangible assets. Tangible assets are ruled by the law of 'supply and demand', in other words, the more there is of something the less it is worth. If diamonds were as plentiful as dirt they would lack all value. However, with intangible assets, it is adoption and use, versus consumption, that drives value. Thus, the more Windows was adopted as the personal computer operating standard, and as ancillary software was built to run with it, the more valuable it became. The Windows brand became the receptacle of brand equity and as technology shifted and new versions replaced old versions and features were added, the Microsoft platform became *de rigueur* and the value of the house mark increased rapidly. In the new economy, adoption drives value in contra-distinction to the law of supply and demand, thus often allowing the creation of synergistic, exponential wealth.

In sum, the magic of the brand, and that which makes it stand out from all other tangible and intangible assets, is the ability of a well-articulated brand to organize, arrange, relate and otherwise orchestrate and distil the complex of meanings and associations and significances for which a brand can stand and to do so in the socio-economic milieu.

3 The primacy of brands

Branding is the synthetic masterstroke by which capitalism reaches its highest to date accomplishment, and the vehicle by which meaning is injected into otherwise commodity markets to enhance competition and create greater margins. In this respect, the brand may be referred to as the ultimate intellectual capital asset because it can do what no other single or multiple intangible asset can do, it can orchestrate and distil elements into a meaningful entity that moves markets.

Thus, the primacy of brands in modern strategy arises from their ability to create highly differentiated sustainable competitive advantage, often exponential wealth, and valuable and sustainable brand equity for all enterprises. For this reason, brands are becoming the *sine qua non* of enterprise the world over.

Consequently, assuming the efficient management of the traditional assets within an enterprise, the greatest impact upon competitiveness, profitability and capitalization can be accomplished only by leveraging the ultimate intangible asset, the brand, thus making it, *de facto*, into the enterprise strategy.

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Best Global Brands 2007, Interbrand and *Business Week* magazine, page 13. Values stated are for the 2007 calendar year

Plain packaging threatens brands

The Department of Health, in its *Consultation on the future of tobacco control*, raises the prospect of tobacco products in plain packaging, with no brand imagery being featured. It is feared that such a move will commoditise products, reducing consumer information, jeopardising product quality and weakening competition. The British Brands Group, in responding to the consultation, explained the many important roles of brand imagery on packaging. The response can be found at www.britishbrandsgroup.org.uk.

From the Chairman

John Bebbington, *Chairman, British Brands Group*

Since the last edition of *British Brands*, economic conditions in the UK have become increasingly turbulent, with uncertainty a growing feature in our lives. With belts tightening, people are looking for ways to save money wherever they can.

This is a time for those who make branded products to proclaim what makes their products different, special and worth paying for. When times are tough consumers do not lose their sense of value as they strive to economise. Quality remains crucial and paying a higher price for products that perform better often delivers greater value. Also, with branded products consumers know exactly what they are getting. This is not the time to try unknown, unproven products that may disappoint or sit in the cupboard unused. That is money wasted.

It is perhaps not surprising in these market conditions to see some retailers running aggressive 'switching' campaigns persuading shoppers to switch from branded to their own label products. They promise money saved, portraying the retailer as the shopper's friend. The campaigns however have much to do with competition between retailers, with supermarkets preferring to see shoppers trade down in terms of the product they buy rather than the retailer in which they shop. The increased growth of hard discounters such as Aldi, Lidl and Netto highlights the threat. In this game, branded products are just pawns.

On the surface, such campaigns may seem unobjectionable. Don't they help shoppers save and isn't it preferable to see UK retailers win against their German and Danish counterparts that offer less choice to shoppers and fewer benefits to the UK economy? Closer scrutiny however presents some real concerns:

- the focus is on the price differences between products, yet all prices in store – and the differences between them – are controlled by the retailer. The brand manufacturer has no say in the matter;
- the inference is that branded products are always more expensive than own label products. This is misleading as some premium own label products are more expensive than branded products;
- shoppers are encouraged to assume that the branded and own label product are the same, through suggestions that they come from the same factory or by packaging the own label in the familiar brand's clothes. This too is misleading;
- retailers own the space where shoppers' final purchasing decisions are made, be it in-store or on-line. In using this space to switch sell, the competitive playing field is distorted as brand manufacturers are denied the same space to present their side of the story.

It is worth remembering that retailers, in stocking branded products, act as agents for the brand manufacturer, and as such require commercially sensitive information on marketing and new product plans well in advance. As they position themselves ever more as competitors rather than customers through such campaigns, questions must arise about whether it is right that they have access to such sensitive information which may be used to advantage their own label products.

The bottom line is that such campaigns potentially mislead consumers while distorting and dampening competition. Challenging them is not straightforward however. Individual brand manufacturers are unlikely to have grounds to act, while the OFT, as market regulator, is unlikely to consider this a priority, especially if it considers price the overriding determinant of consumer welfare over issues such as choice and quality. Nevertheless it is important such campaigns are challenged, otherwise we face another step down the road towards ever stronger retailers with less innovative, quality products and less choice on their shelves.

It is ironic that these campaigns should break once the Competition Commission (CC) has concluded its investigation of the groceries market. However it is encouraging that, in its final report, it seeks to introduce higher levels of fairness in relationships between retailers and suppliers. This follows the conclusion that the passing of unexpected costs and excessive risks by retailers onto suppliers represents an adverse effect on competition. The CC's preferred remedy, a stronger Groceries Supply Code of Practice (GSCOP) monitored and enforced by an ombudsman with investigative powers, is one we fully support.

Implementing this remedy is far from straightforward however, requiring the agreement of all eleven grocery retailers to be covered by the GSCOP. This will test the veracity of their claims that they seek to treat suppliers fairly. While negotiations with retailers continue, we urge the CC to introduce the new GSCOP as soon as possible, monitored and enforced by the OFT until an ombudsman can be appointed.

To conclude on a more positive note, it is encouraging to read Richard Herbert's article on the contribution of brands to growing categories, charting how brands, through the introduction of new products, innovation and their connection with consumers can create and reinvigorate categories. The evidence he presents demonstrates branding as a positive force, delivering for consumers, retailers and brand manufacturers. Meanwhile Dr Moore and Lesley Craig's article *The Power of Brands* extols the strategic importance of brands as creators of value and wealth. This is a case that continually needs to be made, something the Group is committed to doing. Our ability to do so however is directly proportional to the support we get from brand owners in the UK.

A fair wind for British brands

John Cummings, *MP*

At a recent reception I hosted in the House of Commons for the International Chamber of Commerce on 'British Brands and Intellectual Property' in July, we heard just how valuable brands are and what an important part they play in our lives. We also saw first-hand some examples of counterfeit and look-alike products produced by those seeking to exploit the trust and reputation branded companies build with consumers. Such practices have financial consequences for our economy, law enforcement, businesses and employees, and threaten the safety and well-being of those very same consumers.

The purpose of the reception was not simply to blow the trumpet for British brands, impressive though they are, but to understand what regulatory pressures are being faced by the companies that build them. This is important in a world market where the UK must remain competitive and where consumers are able to enjoy high-quality products well-suited to their needs.

My constituents in Easington, Co. Durham, know all about the price of products and know where to find the best deal. They are canny shoppers but can too easily be conned into 'twilight' markets where products may seem OK but are far from it. Most are unaware of the appalling quality of dodgy products or the organized and violent crime with which such trade is connected.

We heard from Richard Heath, President-Elect of the International Trade Mark Association, how counterfeiting has become the greatest threat to established brands across all sectors. In the 1980s it was viewed as mainly affecting luxury brands but today it touches all industries. Anything that can be copied will be copied. Even members of on-line communities such as Second Life have started counterfeiting virtual goods in virtual worlds but for real profit.

Such trade causes significant economic, social and development damage, involving lost tax revenues, lost jobs, worsening working conditions, health and safety risks, loss of consumer confidence, and a climate hostile to risk taking and investment in research and development. Clearly this is a matter that must be placed high on the public policy agenda, to ensure concrete actions are taken to eliminate this illicit trade and maintain consumer trust.

This was put in perspective by Ruth Orchard, Director General of the Anti-Counterfeiting Group, who quoted a study that concluded that £3.5 billion would be spent in the UK on genuine clothing and footwear each year if fakes were not available. Conservatively, the loss to the Exchequer of unpaid taxes from such illegal trade – just in that sector alone – represents the equivalent of 10,000 care-home beds, Sheffield's total investment in council housing or the total investment in the regeneration of Wembley.

At the reception there was also a display of everyday products that all looked remarkably similar to brands we all know and love. These however were not counterfeits as they carried their own names, often of reputable companies, but the packaging had been clearly designed to reflect the familiar brand. It was concerning to learn just how difficult it is, in the UK particularly, to stop this kind of blatant piggybacking. If shoppers are affected by such tactics, as I suspect they are meant to be, then effective means are surely needed to stamp it out.

During the discussions, and sticking with the packaging theme, a number of people mentioned a recent Department of Health Consultation on the future of tobacco control that suggested that tobacco products be sold in plain packaging, with no brand imagery. In effect such products would look to all intents and purposes the same, so it was not surprising to hear alarm bells ringing among the brand advocates present. Brands are after all about differentiation and standing out from the crowd.

The concern I heard was that this represents the thin end of a wedge that could affect many branded products, should there be sufficient campaigns against them by the public and regulators alike. Measures to regulate tobacco today may well be considered for other sectors tomorrow.

Brands in plain packaging are unlikely to stem the trade in fakes mentioned, and may well exacerbate it were the fakes easier and cheaper to produce and more difficult to detect, whether by consumers or the authorities. The legitimate market may also be affected. With all products looking essentially the same, people would find it more difficult to distinguish between products and to identify those characteristics and qualities that help them decide which products they prefer. There must be a danger too that manufacturers, unable to differentiate their products on quality grounds, shift how they compete away from quality towards price, on the basis that investments in quality will be harder to be recognised and therefore recouped.

The reception was edifying, for it highlighted not just how important brands are but also the policy challenges they face. The counterfeiting war is clearly escalating and requires concerted, co-ordinated action on the ground to fight effectively. It seems all too easy for people to piggyback on the brand reputation of others. And where regulation affects branding, as in the plain packaging proposals, it is essential that the underlying policy is based on robust, hard evidence, and wider ramifications taken into account. These are after all products that bring wealth, both to our lives and our economy.

The role of brands in creating and building categories

Richard Herbert, *Europanel*

Historically the 20th century was the period when brands developed strongly. They gave a name to what was previously sold as unbranded products by local producers or farmers. These brand names and their manufacturers through their marketing provided a quality assurance and trust to consumers. They began the creation and development of the grocery categories we know today.

While private labels have also been in existence since the early 1900s, the development of their significance to markets has been much more recent. Many factors have underpinned the progress of private labels as a market force. However, two key reasons have been the growth of specific retailers and their concentration into fewer powerful operators. This has served to provide two growth drivers for private labels – firstly within each retailer, private label shares increased and secondly, the retailers themselves also improved their overall market share.

Therefore brands took the initial role of creating and developing categories through effective brand marketing and innovation. Private label followed, initially with cheaper and often poorer quality alternatives. But what of today, is this still the case – are brands still the driving force behind categories?

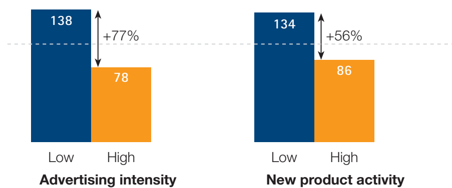
Clearly brands have very different positions in the many grocery categories we have today. In some cases, they represent over 90% of the category while in others this is now less than 10%. So there is a complete spectrum and the average for private label in western Europe is somewhere between 20% and 50%, dependent on country. In addition, the categories with very high private label shares in one country can often be dominated by brands in another.

A global Europanel study of private labels covered over 30 countries and 60 or more categories per country. This showed that many categories with high private label shares had become 'commoditized' with little innovation and advertising, little 'involvement' or interest from consumers and a complete emphasis on price. These have generally been the prime areas for the significant growth of discounters in many countries, thereby also attacking the 'brand' of the mainstream retailers. This in itself highlights the need for brands in the role of being a key part of value creation within a category.

This study also showed that the market shares of brand leaders had been much less affected by private label over time compared with number 2, number 3, number 4 brands and so on. In categories with a strong brand and especially those where there are more than one or several strong brands, value creation in terms of consumer perception of advertising, innovation and involvement was much higher.

Private label shares much higher in categories where consumers perceive less advertising and innovation

Index of private label share (average = 100)



Global findings based on 30 countries and 60 categories per country
Source: Prof. J. B. Steencamp and Europanel Copyright © 2008 Europanel CIE

Evidence for this is seen where brands play the dominant role such as personal and household care categories and, within food and beverages, in categories such as colas, coffee, tea, chocolate, crisps, soup or yogurt. In these cases the Europanel study shows that brands generally deliver added value to the category with advertising, innovation, variety and consumer involvement, resulting in higher willingness to pay and better quality perception.

Even in categories which have over the years become commoditized, brands have shown that they can provide renewed category impetus. A good example is fruit juices which until lately had become highly commoditized and price driven. The development of high value and quality branded smoothies in many countries has changed this. There are also good examples of where brands have created categories such as functional drinks, Febreze and the many types of household cleaners ranging across all possible locations (bath, kitchen, floor, etc.) and multi purpose.

A recent study of innovation by Europanel in the UK looked at some 200 product introductions from 41 categories and 56 different manufacturers. There were several objectives: firstly to identify whether these innovations were successful in driving category as well as brand sales; and then to identify which were the key differentiating factors behind the introductions that were successful in increasing the category and brand.

In line with many previous studies, the analysis showed that only 20% of new products resulted in driving positive overall brand growth. It also showed, not surprisingly, that fewer (14%) resulted in a positive category effect. The vast majority had no effect on category or brand.

However, there were some common attributes behind the innovations that were successful in driving brand and category sales:

- Firstly these introductions were really 'novel', bringing something significantly new to the category, such as new technology or significant new formulation. Therefore generally not a new flavour or size or a copy of something else already in existence;
- Secondly the introductions tended to be from brands with high brand equity – unique positioning, differentiated and top of mind in consumers' consideration set;
- Thirdly they were supported by significant advertising.

There were also some category factors which supported these findings. Success was much more likely in categories where there is a general high level of trust in manufacturer brands. So having more than one strong brand helps! Additionally, successful innovations were more prevalent in categories where there is a higher consumer need for variety –

in other words, where a lot of activity and development is happening.

Linking these results to those from the global private label study shows the importance of having strong brands – for the category. These are the brands that can invest in R&D, can innovate, can support introductions with effective marketing and, importantly, enhance the underlying base consumer equity of the category.

However, there remains a large number of categories where private labels are dominant but would not be described as 'commodity'. These categories vary by country but often include many chilled and frozen foods. The development of fruit juices recently shows what can be achieved by branded innovation but most often the drivers of innovation and development in these categories will be the retailers themselves – and, of course, the pro-active development of new products by their manufacturer suppliers.

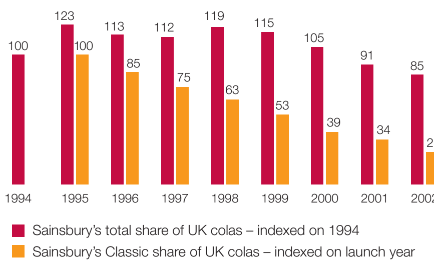
Operationally in these instances, it is private labels (and their suppliers) that take the lead in creating and developing the category. In this way, the benefits seen from successful brand innovation can be brought to bear in non-branded categories. However, it is not the preserve of private labels where an effective branded approach, such as smoothies, can be developed.

The value of brands can also be seen in a number of retailer case histories. The classic (sic) example is the cola war in the UK.

In the mid 1990s, Sainsbury's launched their premium priced Classic Cola private label. In the short term, the product gained brand leadership in Sainsbury's and virtually replaced their other private label colas. The launch contributed to the retailer gaining significant share increases within the UK colas and soft drinks markets. A huge amount of publicity surrounded the launch and its apparent product quality in comparison with the main brands, Coca-Cola and Pepsi-Cola. This publicity was supplemented with the launch on similar grounds of Virgin Cola shortly afterwards.

But the publicity and interest died and consumers gradually went back to Coca-Cola and Pepsi Cola and back to other retailers. The shares for Classic Cola within Sainsbury's declined and the two main brands recovered their lost ground. Four years after the launch, Sainsbury's share of UK colas was dropping quickly and back to levels below those prior to the launch.

The rise and fall of Sainsbury's Classic Cola



Source: TNS Worldpanel 52 weeks to April in all cases
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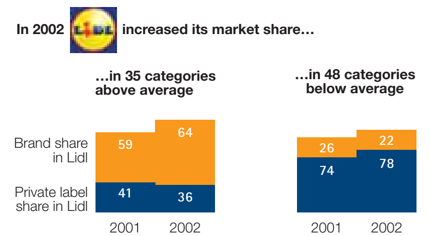
This is an excellent example of how major brands contribute a long-term influence to even a strong retailer's category performance.

More recently, brands have shown their role in providing increased growth and differentiation for one of the two main discounters, Lidl. For a while now, this retailer has been introducing well-known manufacturer brands within their category offering.

Looking at Germany initially some six years ago, Lidl was growing significantly faster in categories where manufacturer brands played a major role in their stores. The example in the next column shows this – the categories on the left had a much higher (and increasing) share for brands. Lidl's market share in these categories increased much more than in the categories on the right, where private label dominated.

This pattern has continued in Germany since then and Lidl is still growing faster through branded products. This is also increasingly the case in other countries where Lidl is introducing similar strategies.

Lidl profits from brands



Source: GfK Consumerscan Germany Copyright © 2008 Europanel CIE

The final example on the role of brands is based on an academic study in the USA (Ailawadi, Kusum, and Bari Harlam, 'An Empirical Analysis of the Determinants of Retail Margins: The Role of Store Brand Share', *Journal of Marketing*, Vol. 68, No. 1, 2004, 147–166).

This study was based on loyalty card data from the CVS (Drug) chain. One of the analyses split buyers into those that bought little private label (less than 10% of their purchasing) up to buyers where private label accounted for over 35% of their spend. The results showed that the highest revenue to CVS and the highest margin in terms of cash came from shoppers where private label accounted for 10-20% of their spend. Even for shoppers who buy less than 10% private label, their revenue and cash margin (number of dollars) is greater than those who have over 20% private label in their basket. Critically, shoppers who buy a lot of private label have a very low value to the chain – half the spend and half the cash margin (number of dollars) of the best group.

These many different studies and examples highlight the need for strong brands to initially create demand and subsequently to develop it further. It is the manufacturer brand that can market the product and the category to the consumer and is generally the first source of innovation – a major key to added value creation. It is also clear that consumers who predominantly buy brands are the most valuable retailer shopper.

Google's AdWords get spicy

Isabel Davies, *CMS Cameron McKenna*

Google's AdWords service allows paying advertisers to place sponsored links to their websites next to the 'natural' search results on Google for any given search term. Advertisers bid on the search terms and Google determines (predominantly based on the amount bid by the advertiser) who is successful.

On 5 May 2008, Google caused a stir by announcing a surprise change to its AdWords policy in the UK and Ireland (but not the rest of Europe): it lifted the restriction on third parties bidding for trade marked terms. Previously, Google allowed trade mark owners to notify Google of their rights and Google would prevent those trade marks from being used as AdWords. This article considers some of the effects of this change on various interested parties.

Consumers

One of the key concerns is the effect on consumers. A recent report by Hitwise found that almost 9 out of 10 internet searches were for branded terms, showing that users tend to search for a particular brand. This suggests that the new policy could mislead consumers if the sponsored search results do not correspond to the brand searched. However, internet users are becoming increasingly savvy and some will be aware of the difference between sponsored and 'natural' search results. Those consumers will now have the choice of being able to go to the website of the searched for brand or to consider other alternatives provided in the sponsored results.

Whether or not consumers tend to be confused by the sponsored results will be influenced also by the manner in which the search results are displayed and differentiated by the search engines.

Ultimately, if consumers decide that they are not getting the most relevant search results and start to distrust Google's service, they may switch providers.

Search engines

Google states that the purpose of the policy change is to help consumers 'make informed decisions'. This change came shortly after Google's paid advertising clicks fell for the first time in its history and the change is expected to significantly increase Google's revenue. Therefore, some commentators remain cynical. The change may also appear contrary to their policy of trying to increase search result relevancy.

The policy change followed shortly after the English High Court 'Mr Spicy' decision, which held (unsurprisingly) that Yahoo! had not infringed the claimant's trade mark 'MR SPICY' by allowing the generic word 'spicy' to be used as a sponsored keyword. However, other jurisdictions, notably France, have held Google liable for trade mark infringement where trade marks have been used as AdWords. In a case concerning use by Google of the Louis Vuitton trade marks, a French court has referred several questions to the European Court of Justice (ECJ), and it is hoped that the decision will bring legal clarity to this area.

Google has stated that it will monitor the effects of its policy change and has claimed that if the policy fails to improve experiences for users then it may amend the policy. No doubt the commercial success of the change (reflected in Google's profit) and liability issues, including the impending decision of the ECJ, will also contribute to Google's decision.

While Google has led in this activity, the outcome of the ECJ is bound to see an increase in this activity if the decision favours the use of trade marks in this way.

Competitors

By bidding on and using trade marks as keywords, competitors will have the opportunity to influence consumer choice even when they are seeking to search for a particular competitor's brand. No doubt some companies will welcome the opportunity to bid on rivals' trade marks: lesser known brands may start to appear on the same search results page as the market leader's website, allowing them to present themselves as a viable alternative.

It is argued that this should encourage competition and make it possible for new brands to be more visible in established markets. However, competitors should consider carefully the image that is portrayed by their brand if they are seen to be trading off someone else's reputation and be aware that they run the risk of appearing to be linked to another business over which they have no control.

Brand owners

Trade marks can be hugely valuable assets and are the only IP right which can increase in value with age. It is easy to see the objections that brand owners will have to Google allowing third parties to use their trade marks as AdWords.

With the prices of paid search advertising predicted to rise, brand owners are now presented with two (unattractive) options: bid the highest to try to ensure that they 'win' their trade marked term or risk competitors doing so.

The question has been raised as to whether this is proper commercial behaviour as the policy encourages brands to link themselves with their rivals. While some advertisers, most famously Tesco, have sought to claim a moral high ground and pledged not to bid for rivals' trade marks as AdWords, others have argued that only market leaders have the luxury of taking such a stance – as is the case usually with comparative advertising.

Conclusion

A positive result of the policy change, when new brands are being considered, may be that brand owners opt for more distinctive trade marks so as to avoid part (or all) of their mark being used legitimately as a keyword, for example, the generic word 'spicy'.

The current legal position in the UK, as to whether search engines, or advertisers registering keywords, are using trade marks in a manner which infringes owners' rights, is unclear. However, if there is confusion as to trade origin it seems possible that the use of a trade mark as a keyword could be infringing. If the decision of the ECJ is clear and not the Delphic utterance which often occurs and is favourable to brand owners, UK brand owners will no doubt seek to rely on it. But, for the time being, brand owners considering legal action will have to make a calculated assessment of the risk and reward.

It is unlikely that there will be any intervention at a policy level as there is no obvious policy defect – rather a difference of opinion in relation to commercial, competition and IP approaches to the issue, depending on where each party is coming from. Accordingly, the ECJ decision is important for all parties.

Carbon – a load of hot air?

Michael Sturges, *Edge*

Whether you are a believer or not, there is overwhelming scientific consensus that climate change is real and is at least in part a result of human activities. Although some scientists continue to contest the climate change forecasts, the most important fact for business leaders is the high level of public and government acceptance of the need to reduce carbon emissions.

While consumers may profess their concern, they are not rushing to buy low carbon products. However, the UK Carbon Trust predicts that by 2010 a significant proportion of purchasing decisions will take into account climate impact. Their report *Brand Value at Risk from Climate Change* outlines factors which may generate a 'tipping point' in consumer behaviour. These factors are not unique to the UK, with similar scenarios in Europe and the USA.

Many businesses have already begun to respond to the potential marketing and public relations opportunity that this consumer sea change will create. For retailers, the environment has become a battleground, with each trying to gain the moral high ground. Bold statements from chief executives of major retailers, such as Marks & Spencer who have set the toughest benchmark to achieve carbon neutrality by 2012, demonstrate that they are taking this issue seriously – and expecting their supply chains to do likewise. Wal-Mart's involvement in the Carbon Disclosure Project (an annual carbon emissions reporting programme for investors) has given the initiative real momentum with its recent Supply Chain Collaboration Project involving major brand owners. Tesco is working closely with the Carbon Trust to develop and implement carbon footprint labels for a selected range of its products.

Walkers Crisps became one of the first brands to carry the Carbon Trust's label. To achieve this, the greenhouse gas emissions (GHGs), with carbon dioxide being the main one, across a product's life cycle have to be quantified, a process which is not without some controversy as there is currently no standard approach, although the British Standards Institution (BSI) will issue guidelines later this year, ie. the Publicly Available Standard (PAS) 2050. This is also a process which requires updating every two years.

A recent Pepsico survey found that carbon labelling has already had a positive impact on consumer opinion about Walkers with 44% stating that carbon labelling makes them feel more positive about Walkers. Some key findings from the research were:

- Even at this early stage, prompted awareness of carbon labelling is high;
- There is only a low level of cynicism towards carbon labelling, and a belief by consumers that it could help them to make a difference;
- Carbon labelling can drive behavioural change by increasing consumer awareness of the environmental impact of the products they buy.

The life cycle analysis of Walkers Crisps revealed that the packaging contributed just 15% of the product's total impact. A similar study for Cadbury's Dairy Milk chocolate bar found that the packaging contributed just 1%. These results reinforce what the industry already knew about the balance between product and packaging in environmental impact terms, despite politicians making opposite statements!

Nonetheless, its high visibility places packaging at the forefront of this hot environmental debate. Consumers – and politicians – are not able to unpick the complexities of supply chain efficiency, product protection and extended shelf life. Even for those brands taking visible action to understand and reduce their environmental impacts this is a potential minefield. Packaging is an integral part of the brand offering, so the key is to turn this threat into an opportunity, reacting to consumer concerns by delivering effective packaging with reduced environmental impact. Many brand owners and their packaging suppliers are already stepping up to the plate and taking a leading role in initiatives such as the Carbon Disclosure Project and carbon labelling. Indeed, only by taking positive action will brand owners retain their customer loyalty. It is crucial that policymakers recognize the brand owners' role and contribution, rather than permitting retailers alone to set the agenda.

The subsequent carbon management policies must recognize the commercial realities and complexities of supply chains. The PAS2050 guidelines for carbon footprinting are a good example. There is a real danger that overemphasis on methodology and data issues will make carbon footprinting an unviable process. On the other hand, a lack of standardization could undermine credibility. There is a fine balance, but the key is not to lose sight of the end goal. Tools and methods are a means to an end, in this case reducing carbon intensity of products and services. With good advice and a strong dialogue between suppliers and customers, a process of continual improvement can be achieved.

www.stfi-packforsk.eu/edge

British Brands Group

The British Brands Group represents the interests of brand manufacturers in the UK. Membership comprises companies of all sizes across a wide range of product sectors.

The role of the Group is to build in Britain the optimum climate for brands to deliver choice and value to consumers, through constant innovation and fair competition.

The Group is the UK representative of AIM, the European Brands Association based in Brussels.

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