

COLUMNS

Knockoffs: Creating an effective strategy on a tight budget, part 1

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Your brand is hot and is taking off. Or, this year's design is catching lots of media attention and promises to be the next "it" item one more success story. But along with success comes imitation.

Counterfeitors, knock-off artists and copyists abound, and the Internet only magnifies the problem. You know something has to be done, but your budget for dealing with these types of problems is tight.

How do you formulate and implement an effective strategy that remains within budget? How do you determine how much to budget something between zero and a huge amount?

Here are the basic steps for you to consider in creating an effective strategy.

In brief, first, assess the scope of the problem, and categorize the various knockoff problems that are in the marketplace.

Second, prioritize the problem among the different types of knockoffs.

Next, make sure that you have a proper IP foundation in place.

Finally, pursue a strategy that cuts through the distribution chain to arrest the problem at its source.

This article considers the first step, assessment and categorization of the problem. Some of the questions you should be asking, which will provide the framework for the assessment, are:

1. Type of knockoffs out there?

Knockoffs, copies and infringements come in many flavors. Some of the most common are:

(a) Cheap counterfeits: These are cheap imitations made and intended to fool others into thinking the user owns the real thing. The proverbial \$25 Rolex sold on a street corner is the classic example.

(b) High-end counterfeits: These are more expensive imitations, sold for prices that are generally in the range of 60 percent to 80 percent of the real price and are often available through discount chains and on the Internet. The

immediate customer is often fooled into thinking she is buying the real thing, albeit a second or last season's model.

(c) Design copies: These are items that copy or imitate creative designs from well-known designers. Sometimes the design is taken to confuse as to the source, other times, copying is just a short cut to steal someone else's creativity.

(d) Altered goods: These items start off as the real thing, but are subsequently altered to look like a more expensive real model, such as the addition of after-market diamonds to a basic watch model item.

Of course, there may be multiple kinds of problems out there. Categorization by type helps in later stages of the analysis, assessment of harm and prioritizing.

2. What are the distribution channels of the knockoffs?

Most knockoffs nowadays are found on the Internet. Where are you seeing knockoffs of your items? On independent Web sites? On auction sites such as eBay? On social media?

Or, if in bricks-and-mortar stores, are these discount department stores? Or is this a designer who is knocking off your design and selling it in his or her own boutique?

3. Types of harm to your business?

Knockoffs are irritating, but how much and in what ways are they really harming your business? Some of the ways we have seen knockoffs harm our clients' businesses are:

(a) Sales diversion: The copyist siphons off demand for your product. Some of those sales that could have gone to you, cutting into profit margins. Usually, this kind of harm occurs where the price ranges of the items are somewhat comparable.

(b) Tarnishing of reputation: If the knockoffs bear your name, or a design closely associated with you, then consumers will likely be confused. Consumers will think the knockoff is somehow associated with you. If shoddily made, or sold in cheap outlets, or it has something else wrong with it, then that affects your brand's reputation.

This kind of harm can occur with all types of knockoffs that involve confusion, since anything negative about the item is then misattributed to you. It is worth remembering that the law recognizes that there are several different kinds of confusion:

Point-of-sale confusion: The customer thinks it is your brand and is being cheated.

Post-sale: The purchasers know that they are buying a knockoff, but are trying to confuse their friends and other onlookers. The confusion here is someone sees a knockoff being worn, and then the negative associations are ascribed back to your brand.

Initial interest: Something that, at first glance, looks like your brand and draws in the customer. The customer eventually realizes that the item is made by someone else. Meanwhile, the copyist has used your brand to draw attention to its own products, even if by the time of sale the customer knows what she is getting.

(c) Dilute brand power: Sometimes, the fact that something is elite, special or rare makes it hot. If everyone has one, then no one wants one. If knockoffs flood the market, then the demand for your hot product will invariably cool off.

(d) Misuse of post-sale services: Many brands offer post-sale maintenance and repair services. Customers who buy knockoffs thinking they are the real thing and have a problem submit their products to the service center. Apart from waste of time, these customers often become irate when they are informed that their purchase cannot be serviced because the item is fake.

YOU WILL BY now have categorized the knockoffs by type, by distribution channels and by the harms they cause the business.

In my next article, I will discuss how to use this analysis to prioritize among the different knockoff problems.

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