Part I

Trade marks and brands

1 What is the value of a brand to a firm?

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A brand for a company is like a reputation for a person. You earn reputation by trying to do hard things well.

Jeff Bezos, founder and CEO of Amazon.com

I. Overview

Brands play a pivotal role in the marketing of goods and services and thus are valuable assets. For example, Interbrand, a management consultancy, estimates the value of the world's top brands in 2010 to be worth US$70 billion (Coca-Cola), US$65 billion (IBM), US$61 billion (Microsoft) and US$44 billion (Google).[1] For many leading firms, the value of its brands is a significant proportion of the firm's overall market value. Hence, brands are a tremendously important intangible asset to firms.

This chapter provides three different perspectives on the importance of brands as assets to firms – from a marketing perspective, from a strategic management perspective and from a legal perspective. The first and second perspectives focus on the value and use of brands within firms, while the third perspective focuses on the extent to which the law protects these uses and values.

II. Brands and reputation, a marketing perspective

Within marketing, a brand is viewed as a name, sign or symbol that delineates one product as being unique from others in the market.[2] Delineating a product, within the mind of the customer, as being unique is a critical precondition for firms to be able to secure channel access and support,

[1] Interbrand, *Best Global Brands Ranking for 2010* (2011), www.interbrand.com/en/best-global-brands/best-global-brands-2008/best-global-brands-2010.aspx.

[2] See, for example, American Marketing Association, *Dictionary* (2011) www.marketingpower.com/_layouts/Dictionary.aspx.

charge a premium price, build and maintain customer loyalty and ultimately enhance the profitability of the firm. In this regard, brands are clearly valuable and firms seek to build brand value (also referred to as 'brand equity') through their marketing activities.

To facilitate our discussion, it is useful to consider the process by which brands are built (hereafter, 'branding'), why brands are valuable and how firms look to utilise this value. One way of thinking about a brand is as conveying a promise that the firm makes to potential customers. The assumption underpinning this perspective on branding is that in choosing between brands, consumers seek to maximise their expected satisfaction or utility. Thus they are drawn to those brands that make the most attractive promise. In a competitive marketplace, where consumers face a myriad of brand choices in any given category, firms try to ensure that their brand makes a uniquely attractive promise of satisfaction. The attractiveness of a brand promise may extend to the market as a whole, or more commonly to a specific group, or segment of the market. For example, a brand promise may appeal particularly to young males (Axe deodorant), or price conscious families (Walmart). The brand promise may focus on functional benefits (Dyson vacuum cleaners), emotional benefits (Apple iPhones and iPads), symbolic benefits (Louis Vuitton handbags) or in many cases a combination of all three.[3]

Typically, brand builders look to establish a unique promise – or at least a promise that is uniquely believable. Uniqueness and believability become key concerns for the marketer. On the issue of uniqueness, marketers usually focus on establishing what their brands will offer in terms of points of differentiation and points of parity. Taking points of differentiation first, products/services (offerings) will typically have multiple features and benefits. Many of these will not be exclusive to any given brand. Cars, for example, have multiple common features that come readily to mind: internal combustion engine, steering wheel, electric windows, power steering, etc. Therefore, in building a car brand, it is of limited benefit to focus on features and benefits that are common to all brands of car – instead marketing focuses on emphasising the attributes where the brands have unique advantages or where they can claim unique advantages. Turning to points of parity, typically a provider will struggle to credibly claim superiority on all possible dimensions of an offering. However, firms will commonly need to be able to claim parity (with competitors) on performance dimensions that are important to the

[3] For an extended discussion, see Sicco van Gelder, *Global Brand Strategy: Unlocking Brand Potential across Countries, Cultures and Markets* (Kogan Page, London, 2005).

customer. Often these points of parity are, in turn, claimed as points of differentiation by the competition.

A typical example of the battles that brands wage in claims of parity and differentiation can be seen in the branding activities of Apple and Microsoft in the personal computing market. Since the launch of the Apple Mac in 1984 Apple has positioned its brand as being less corporate, more creative and more personal than Microsoft-powered personal computers (PCs). In parallel, Microsoft and its hardware partners have tended to position the PC as the ultimately efficient and reliable computing solution. In 2006 Apple began a sustained campaign to pointedly highlight the brand's unique points of differentiation – creativity and personality over its more corporate and sedate competitor.[4] In doing so, Apple sought to build its brand equity while simultaneously diminishing the attractiveness of the PC alternative. This enhancement of the Apple brand and simultaneous diminishment of PCs is largely unavoidable given that in this instance the consumer is limited to two broad choices – Apple or PC. In response, Microsoft on the launch of its operating system in 2009, focused on demonstrating with their 'I'm a PC' campaign how Microsoft-supported PCs appeal to 'creative' people. While the situation is in this regard extreme, it does help to draw our attention to an essential element of branding – brands exist as competing promises – because customers assess promises against one another.

The perspective that brands are about making promises is helpful in understanding the role brands play in ensuring that a product is chosen from, for example, a crowded supermarket shelf. Promise-making is, however, but one component of brands and brand building. Equally important is the notion of promise-keeping. As consumers tend to evaluate both the attractiveness and credibility of brand promises, failure to deliver on a given promise or promises may result in high levels of customer dissatisfaction, low levels of repeat purchase (or loyalty) and a lower likelihood that the customer will buy other products carrying this brand. In this respect, failure to deliver on the brand promise may be seen as an erosion of value, or, in extreme cases the creation of a brand liability, at least with respect to the firm's ability to engage with dissatisfied customers.

When brand promises are delivered, then the firm may benefit through increased customer loyalty, lower price sensitivity, higher propensity to trial new products and higher levels of product endorsement or word-of-mouth referral. Brands might then justifiably be said to have a value or

[4] To see examples of this campaign: YouTube, Buy a Mac (15 Ads in 1 Pack) HQ (14 October 2007) www.youtube.com/watch?v=C5z0Ia5jDt4.

equity attached to them. An indication of the growing interest in brand value is the emergence over the last decade of a range of providers offering brand valuation services that put a dollar amount on the equity tied up in a brand.[5] Typically, these service providers apply a valuation mode that discounts future revenues and profits based on current expectations. The emergence of these service providers is in part a response to the void left by global accounting standards, where brand values are, in most circumstances omitted from the firm's balance sheet.[6]

Firms that have successfully built brand equity are typically concerned with issues of protection and utilisation. Protection normally relates to ensuring that the promise continues to be articulated to the market or target market and the relevance of the promise is maintained in light of market changes. Utilisation is concerned with fully realising the potential value of the brand – by optimising the price charged, bringing new offerings to the market under the brand name, extending market share, building customer loyalty or introducing the brand to new markets. In sum, brand value, or reputational value, is influenced by the awareness and trust customers have in the brand's promise and the firm's success in leveraging that value.

For many firms in developed markets, brand value accounts for much if not most of the total value of the firm. The growing importance of brand and reputational value as a portion of overall value is a relatively recent phenomenon, driven in part by the shift in emphasis from industrial to service economies and in part by the trend towards outsourcing of production. Think, for example, of the value of a successful legal practice – and consider what portion of that value is likely to be bound up in the reputation of the firm, its associates and senior partners. Then consider the portion that is likely to be bound up in tangible assets such as premises, fixtures and fittings.

Some recent examples are useful to illustrate our consideration of brands and their value. First, consider the US firm Gillette. In 2005, the consumer goods company Procter & Gamble (P&G) acquired Gillette for US$57 billion. The Gillette acquisition gave P&G control over extremely valuable brands such as Gillette and Braun in the personal grooming market, and Duracell in the batteries market. It was therefore broadly welcomed by investors and P&G's share price appreciated after the acquisition. What is perhaps most interesting about the acquisition is

[5] See, for example, Brand Finance www.brandfinance.com and Interbrand www.interbrand.com.
[6] Roger Sinclair, 'The Importance of Brand Equity in Creating Firm Value', Prophet, www.prophet.com/downloads/whitepapers/sinclair-brand-equity-firm-value.pdf.

its scale. To put the US$57 billion acquisition price in context, it equates to approximately US$10 per person alive on the planet at the time. P&G justified the price of the transaction by citing the strength of the Gillette brand in particular.[7] Indeed Gillette is an excellent example of brand equity. It has high levels of brand awareness globally, high levels of channel support (Gillette is in the vast majority of retail outlets that it needs to be in) and crucially, Gillette enjoys very high levels of product loyalty coupled with low levels of price sensitivity. The portfolio of products offered under the Gillette brand ranges from disposable razors to premium-priced multi-blade shaving systems. This portfolio, which includes products for the male and the female markets, allows the firm to service a wide range of income groups in any market. For decades, the company has invested behind its brand promise. This investment is in the form of heavy expenditures on awareness-building marketing, high-profile endorsement with leading sports personalities, and continuous product innovation and upgrades. It is this latter activity – product upgrades – that has enabled Gillette to consistently deliver enhanced earnings from the brand year on year in spite of operating in a mature market that had limited ability to grow. At the time of the acquisition commentators noted that P&G could add further to the value of the brand through its distribution strength in emerging markets including China and the wider Asia Pacific region.[8]

Another notable example is Cadbury. In 2010, US food company Kraft (originally part of Philip Morris) acquired the UK chocolate manufacturer Cadbury. Again, this acquisition points to the value of brands. Cadbury, like Gillette has a brand that enjoys high levels of awareness and loyalty in many markets globally. While the deal (worth approximately US$19 billion) included the entire firm and not just the brand, the Cadbury brand was a critical – if not the most critical component of the deal. It is noticeable that in the period prior to the acquisition Cadbury had been aggressively cutting costs, closing factories and reducing the number of Cadbury employees. In other words, Cadbury was actively reducing the physical assets on its balance sheet. In the absence of these hard assets, we are left with intangible assets (mostly brands in this instance) and cash. What is perhaps most interesting about the Cadbury acquisition is the particular attributes of Cadbury's brand strength. First,

7 Nanette Byrnes, Robert Berner, Wendy Zellner and William C Symonds, 'Branding: Five New Lessons', *BusinessWeek* (online), 14 February 2005 www.businessweek.com/magazine/content/05_07/b3920042_mz011.htm.

8 See for example P&G press release at the time of the launch: 'P&G Acquires the Gillette Company' (28 January 2005) www.pginvestor.com/phoenix.zhtml?c=104574&p=irol-newsArticle&ID=871677&highlight=.

the firm's brands had a dominant position in the Asia Pacific region and in other emerging markets. While these markets tend to have lower per-capita consumption, they also tend to have higher growth and growth expectations associate(d) with them. Thus, dollars earned in these markets tend to be valued more highly by investors, as they are indicative of even greater future dollars. Second, Cadbury was a pure play confectionary company – all of Cadbury's revenues coming from chocolate, candy, gum, et cetera. These are products that enjoy higher levels of brand loyalty than, for example, ready meals and other food items where Kraft generated revenue. Reflecting this higher loyalty, Cadbury operated off a higher earnings multiple than Kraft.[9] In this respect, the Cadbury acquisition is a very telling example of the value created by brands.

A further interesting example is Glaceau. In 2007, Neville Isdell, the chief executive officer (CEO) of Coca-Cola, oversaw the acquisition of Glaceau, an eleven-year-old bottled-water company. Coca-Cola spent just over US$4 billion in cash for the purchase. The acquisition is remarkable for a number of reasons apart from the price paid. First, the Coca-Cola Company already had a portfolio of soft-drinks brands – including Coca-Cola, which is consistently rated as the most valuable brand in the world. Therefore, on the face of it, there would appear to have been little need for the company to pay such a large sum for yet another soft-drinks brand. Also, not only did the firm have widely recognised water brands of its own, it also had one of the strongest distribution operations in the market. However, in the years prior to its acquisition, Glaceau had enjoyed what analysts described as astronomical growth driven by the success of its brands Vitaminwater, Fruitwater, Smartwater and Vitaminenergy. Critically, from Coca-Cola's perspective, this growth was achieved in the enhanced-water and energy-drink categories, which were expected to grow significantly in the medium term. At the time of the acquisition, Coca-Cola justified its decision based on the firm's ability to add further to the value of the Glaceau brands by combining them with the firm's global distribution capability. In this regard it is notable to see how Glaceau has grown its global sales subsequent to the acquisition.[10]

While many high-profile brand acquisitions are used to gain access to emerging markets – including those in the Asia Pacific region, there are

9 Earnings multiple is a measure of firm performance where the share price is expressed as multiple of current earnings.

10 By 2009 Coca-Cola had achieved unit sales of 100 million for Glaceau. This represented a 33 per cent year-on-year volume growth. See for details: Coca-Cola Amatil, 'Annual Report: 2009' (14 May 2010) www.ccamatil.com/InvestorRelations/AnnualReports/2009/2009%20Annual%20Report.pdf.

also notable examples of regional competitors buying global brands. Perhaps most notable is the acquisition of IBM's PC operations (and related brands such as ThinkPad) by Chinese PC manufacturer Lenovo.[11] On the face of it, as a going concern, IBM's PC operations had little to recommend them as they were running at a yearly loss. However, motivated by a stated ambition to develop a global PC operation, Lenovo acquired IBM's PC operations for US$1.75 billion. It is interesting to note how Lenovo subsequently managed the IBM brand and the Lenovo brand in the PC market. In the first instance, Lenovo took great care to reassure IBM customers that little had changed and that they could be assured of continual product quality, service support and innovation. In effect, Lenovo began by investing to ensure that the IBM brand that it had acquired retained its reputation for quality PCs. Following this, in a deliberate strategy, Lenovo began to more clearly associate with the IBM and ThinkPad brand with the aim of benefiting from the brand association. Lenovo credits the IBM–ThinkPad association for much of its post-acquisition success in developing Lenovo as a global PC brand. Ultimately ThinkPad became a sub-brand of Lenovo once the transition period was completed.

A final interesting aspect of each of the acquisitions discussed above is that the acquiring firm clearly made the decision that it would be cheaper to buy the firm and its brands rather than create a competing brand. Thus, these examples help to focus attention on why brands are valuable. Channel support, customer loyalty, awareness and price premium, are difficult to achieve and difficult to imitate – thus the market for brands and brand-dominant firms.

III. Brands and reputation, strategic management

Apart from being important in marketing, brands are also important in strategic management, which refers to the overall management of a firm from the CEO's perspective. From this vantage point, a brand affects not just the firm's position in its marketplace, but also how internal resources are allocated and what signals are conveyed to competitors and collaborators.

The marketing promise that a brand makes represents part of the firm's strategic positioning in the marketplace. In the examples above,

[11] For a discussion of Lenovo's motivation, see Rhys Blakely, 'Interview: Yang Yuanqing, Lenovo chairman', *Sunday Times* (online), 28 August 2007 http://business.timesonline.co.uk/tol/business/industry_sectors/technology/article2341612.ece.

Microsoft positions itself as a software solution provider for desktop computers through its Microsoft Windows and Microsoft Office brands, while Apple positions itself as a boutique focusing on easy-to-use integrated solutions (iPhones, iPads, iMacs, etc.). Other players in the market pick different positions. Dell, for example, is a formidable low-cost competitor while Lenovo and Asus are increasingly viewed as notebook/laptop computer specialists. Positioning in the marketplace is important because it helps to avoid direct competition with other players: if every firm in the industry were to produce indistinguishable goods, this would lead to intense rivalry and it would drive prices and profits down for all firms.[12] From a strategic perspective it does not make sense for every firm to be identical to Apple or Cadbury or Coca-Cola, but that they aim to create value in unique ways, therefore enabling them to compete in ways other than through direct price competition.

Brands and internal strategic alignment

The importance of positioning goes beyond the promises conveyed to consumers by a firm's efforts at branding. It affects the internal allocation of resources within the firm because different brands imply different ways of creating value. This in turn affects the allocation of money, people, managerial attention and other resources within the firm.[13] It also means different kinds of capabilities have to be developed within each firm in order to generate the desired positional strength.

Consider for example two motorcycle companies, Honda and Ducati. Honda's strategy is to sell a large volume of motorcycles to the 'man in the street'. Honda is often credited for having created this market from scratch in the 1960s and 1970s through an aggressive marketing campaign.[14] For instance, in an early Honda advertisement, the reverend from a neighbourhood church is shown to ride enthusiastically on a Honda motorcycle.[15] In contrast to Honda, Ducati is a boutique Italian motorcycle manufacturer specialising in high-speed racing bikes.[16] Each unit is handcrafted and customised to the individual buyer's needs.

[12] See Joshua Gans, *Core Economics for Managers* (Thompson, South Melbourne, 2005).
[13] Robert E. Hoskisson, Michael A. Hitt and Duane Ireland, *Competing for Advantage* (South-Western/Thomson Learning, Mason, OH, 2004), ch. 4.
[14] Evelyn T. Christiansen and Richard Tanner Pascale, 'Honda (A)', Harvard Business School Case (23 August 1983).
[15] See YouTube, Classic Honda Commercial (26 November 2006) www.youtube.com/watch?v=Nz0L9PeGsHg.
[16] Jordan Mitchell and Bruno Cassiman, 'Ducati: in pursuit of magic (A)', Harvard Business School Case (27 October 2006).

While Honda bikes can be purchased for a couple of thousand dollars, Ducati machines are often in the US$10,000 to US$20,000 range per motorcycle.

What are the internal implications for the CEO of Honda versus Ducati? A firm such as Honda has to be organised for large-scale mass production, consistent with its goal of pursuing a large market share and a brand with broad appeal. Hence the source of Honda's competitive edge is the ability to produce a large number of motorcycles (millions of units per year), using the latest manufacturing and lean production techniques so that it can benefit from economies of scale and scope. Over the years, Honda has developed a strong capability in engine technology as well as producing bikes that are comfortable to ride; motorcycles that regular men and women can use as a basic form of transportation and that require little maintenance or skill to operate. In contrast to Honda, Ducati's approach of selling expensive racing bikes means it has to focus on a different set of internal capabilities. It produces only 30,000 to 40,000 motorcycles a year (much lower than Honda's output) and each is carefully built and tested by skilled engineers.[17] The experience of riding a Ducati is much more important than the engine itself. Ducati bikes generate a deep, throaty sound that their enthusiasts simply love. Ducati's designs are sleek and elegant. It invests heavily in research and development (R&D) to produce high-performance speed demons and as a result has won many racing championships. Ducati represents speed and Italian passion. In 2001, when it went through an important corporate turnaround, the CEO famously invested in building a Ducati museum rather than in upgrading factories.[18] When a customer buys a Ducati, he or she is buying into a heritage of racing excellence. Ducati now has an exclusive membership programme, which includes weekend racing events and factory tours for racing enthusiasts. This is expensive to operate but builds upon consumers' willingness to pay to be associated with its racing history and culture.

The link between branding and internal strategic capabilities is also apparent in other industries. As discussed above, Gillette is positioned as an innovative leader relative to most other 'unbranded' shavers. However, this means P&G must continue to invest heavily in R&D to sustain its position. Gillette's Mach3 line of razors introduced in 1998 cost the firm

[17] Ducati designs its own motorbikes, while a large amount of its manufacturing is outsourced to Italy's 'Engine Technology District', which also supplies to the like of Ferrari and Maserati.
[18] Giovanni Gavetti, 'Ducati', Harvard Business School Case (28 June 2001).