



PART THREE

Gaining market share

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Taking your brand to the next level

*Could your brand make an explosive step-change? **John Robson** at Sparkler looks at how you could make it happen*

There are thousands of brand owners in hundreds of markets happily breathing a sigh of relief that they have survived the recession, now hoping for stability or perhaps a few percentage-point year-on-year increases in the next financial year. Usually this sort of steady brand growth comes from the good old-fashioned organic variety; several satisfied customers pass the word on to their friends and sales increase a bit.

Directors and marketing departments looking for this sort of organic growth should focus on gentle encouragement of this natural word-of-mouth phenomenon; ensure that your product or service is excellent, make sure availability is not a problem, and then look after your most loyal customers. Organic growth requires careful tending, pruning and fertilizing. It is about keeping a successful and natural equilibrium intact.

But what about directors and marketing departments for whom an Alan Titchmarsh approach is simply not enough? Perhaps you are looking for explosive growth in a youthful, unpredictable market. Maybe you are the rising star in your company, tasked with doubling sales of the Rising Star brand in your portfolio. Or you might be a brand still sailing in nasty storms whipped up by the recession, rudderless and sinking fast.

If you need this kind of explosive step-change for your brand, then how to go about it?

Be bold

Organic growth is often associated with compromise behaviour – the natural internal ecosystem of the sales team, production, finance and marketing must be kept in balance at all times. And the recession has, understandably, muted expectations in some quarters.

If you are looking for step-change though, then delicate compromises will likely need to be swept aside. You will need to make some bold calls, and follow it up with some bold conversations. There is a reason for this. In the outside world of the marketplace your brand has probably settled into a nice, cosy position. All your customers think they know everything about it.

You need to change all that – make it stand out, jiggle it about a bit, wave and shout and make new customers notice you. The only way you are going to make your brand stand out again in the marketplace is by changing something that, internally, seems radical.

Look at the big numbers

We often encounter directors and managers who obsess about small increases in small numbers – has brand awareness gone from 62 per cent to 64 per cent this quarter? Are our retention figures higher than last year? How can we squeeze more out of our strike rates? This is understandable – they are the metrics of organic growth and directors are evaluated on such measures. But they don't help with brand step-change.

You will never create brand step-change without stepping back and observing the bigger numbers. Here are some suggestions for things you should check:

- When was the last time you looked at your basic, headline sales figures? Graphed over the last 10 years, by volume, and by value? Notice anything blindingly obvious?
- Now do the same again, split by sub-brand or product variant.
- Now, split by large geographical markets (globally split by market perhaps, or nationally, north versus south).
- If you had to split your entire customer universe into three groups – what would those groups be? Which of those three are getting bigger? Which is getting richer or more influential?
- At what level is awareness of your brand? Just because everyone in your private circle of friends has heard of it, don't assume everyone in the country has. You might be surprised at how low spontaneous and prompted brand awareness levels can be for seemingly big national brands.
- What do your best customers think of your brand? Why do other people reject your brand? If you have no brand rejectors, this is probably a bad sign. Good brands have lovers and haters. Why haven't you got any brand haters?
- Are there any macro cultural or economic dynamics affecting your post-recession marketplace? Do interest rates or the state of the housing market impact on your sales? Or perhaps macro health or green issues?

Having answered those questions you will probably now know, in your heart of hearts, where the step-change might perhaps come from. No? Oh yes – we forgot one thing...

Pricing

What is the true elasticity of pricing in your marketplace? How do you know?

Ask the un-askable questions. Just quietly to yourself. What would happen if you doubled the price of your product? What would you need to change to be able to justify that premium? Are there any customer segments who have a strong need for that kind of product or service? And could they afford the new price?

Does that help open any new step-change doors? Perhaps, perhaps not. But these are exactly the kind of questions that can begin to show you a route through to significant brand growth.

Iconoclasm

In searching for step-change you will likely come across false idols and received wisdoms that you will be aching to question. It might be that ‘under no circumstances can the production line make round ones, only square ones’, or ‘you’ll never sell a healthy product in this marketplace’, or ‘the trade will never buy that argument’.

In our experience, it is only when those false idols are shattered that step-change actually happens. And the best corporate cultures not only allow iconoclasm, they actively encourage it.

Global equine dentistry

The day before writing this guide, I was driving down the A1 and saw a van at a service station. On the side of the van was written ‘Global Equine Dentistry’. Wow! Are there that many horses’ teeth in the world to sustain a global equine dentistry industry? Seems like it.

The point is this – in developing your brand, you cannot be too specific in defining your speciality or product niche. You are much more likely to create a step-change if you keep narrowing and narrowing the definition of what you do. You have to, to create impact and be noticed. How many Bloggs & Smith removals vans passed me by unnoticed on the A1 yesterday?

Social engineering

Other than the continued march of new digital distribution channels, perhaps the biggest shift, and biggest opportunity, in the world of marketing in the last two or three years has been the rise of social media. To create step-change in 2011 you should be seriously considering the integration of tools such as Facebook, Twitter, blogs and mobile apps into your marketing and public face. Whatever the size of your business, and whether B2C or B2B, an effective and social ECRM programme can

offer you super-organic, viral growth. In many ways there is no special magic to it – it is about creating a ‘sense of community’, and being more transparent about your business and ideas.

In an ideal world, you and your customers should be interacting continuously, in real-time, and looking towards co-creation opportunities. This has probably been true for centuries – it’s just that social media now make it much more realistic and easy.

Urgency

OK, so you’ve got your step-change plan in your heart of hearts. You’ve looked at the data. You’ve talked to your customers. You’ve smashed a few false idols. You’ve checked out Facebook.

How and when to go about it? Prevarication never helped create step-change. The best way is to start putting your plan into action right now. Today. Why spend any money tomorrow on activity that is, at best, going to have an organic effect on your brand.

Press on urgently and boldly to create that step-change.

John Robson is a founding partner at Sparkler. Sparkler is a brand strategy consultancy that specializes in next generation businesses and brands. Established nine years ago, Sparkler has developed brand strategies for clients such as Nokia, Tesco, Universal Music, Microsoft, LOVEFiLM and Cadbury.

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NATIVE TONGUE



When visiting different countries, it is advantageous to learn a little of the native tongue. It is also essential to know the local traditions and idiosyncrasies. Did you know that in Tibet it is customary to stick out your tongue as a greeting, a habit that evolved from the belief that a person can be analysed through their tongue? We recognise that understanding cultural differences can be crucial to international business success.

Whether seeking information on a market that's foreign to you or looking at things a little closer to home, B2B International can help reduce your margin for error. With more than 30 years' experience in business-to-business market research worldwide, we understand that there can be more to facts and figures than meets the eye. Whilst every project we undertake is unique, each requires a thorough appreciation of your business, markets, customers, competitors and individual circumstances. And, by turning the information we gather into clear, actionable findings, we add insight which allows you to take the next step with confidence.

For more information, please call +44 (0)161 440 6000 or email info@b2binternational.com

Market intelligence

3.2

Nick Hague, managing director of B2B International, discusses three steps to powerful market intelligence

Take a minute to think what it would be like if you had just a handful of customers and you intimately knew everything there was to know about them from their names and personal background through to their differing business needs. Just like a market trader who has a continuous finger on the pulse of customer preference, direct contact with customers allows a business owner to quickly evaluate what he is doing right or where he is going wrong. Such informal feedback is valuable in any company, but hard to formalize and control in anything much larger than a corner shop.

However, it is also just as important to have information on your competitors and potential customers as it is to have information on your existing customers. Having intelligence on your enemy is a key to winning military battles and so it is in business.

Market intelligence can be used to assist with more or less every decision faced by a company (whether they are operating on a local, regional, national or international level). The overriding purpose of most market intelligence is to help the company grow – to increase revenue, profit, or market share. Good market intelligence can therefore have a huge return on investment; just £20,000 to £100,000 spent on intelligence can generate or save many times that amount in extra customer revenue or the avoidance of a bad investment decision.

The problem is that with the advent of the Internet and so much information at our fingertips, sometimes the difficulty is in knowing where to start. The purposes of this chapter are to hopefully make your life easier in knowing how to go about gathering market intelligence and what types of market intelligence will deliver useful insight.

Step 1: Don't reinvent the wheel

There is no point reinventing the wheel if the information we are after is already under our noses. However, the problem normally is that very often people either don't know the information exists or they don't know how to locate the information in the particular format they are looking for.

The best starting point for any project is to get key personnel from different backgrounds of the business to take part in a workshop-type format (from board level down, encompassing marketing, sales, operations, HR, technical, logistics – the whole business). This type of meeting can be very rewarding to assemble knowledge on customers, potential customers and competitors that otherwise would be held in individuals' heads. Using this workshop format also helps clarify what external information has been collected previously and therefore obviates the need to spend money on collecting the information again (gone are the days of Market Research Managers within large corporates who used to know what primary research had been commissioned in the past). A huge amount of learning can be gathered using workshops, especially if guided by a skilled external moderator.

Following this workshop output there will no doubt still be gaps in intelligence but there is no need to spend vast amounts of money on primary research. The expert desk researcher can quickly and inexpensively dig out data from a wide variety of sources to answer many of the questions that have already been asked. With the recent explosion of social networking, this too has resulted in a lot of information that can be quickly gathered inexpensively. This is not to say that it will definitely be correct, but information that is in the public domain has at least been subjected to the test of public scrutiny and it can be then challenged internally to help judge its accuracy.

Step 2: Choose your battleground

Desk research can be very fruitful. However, it has its limits and it may only provide part of the information sought in a project. Where a mix of desk and primary research is used it therefore means that more expensive primary research techniques are used only where essential.

The next step is to clearly state what your key objective is for your business plan and the actions you will take as a result of gathering the market intelligence. In Table 3.2.1 opposite you can see the different types of information that can be gathered to deliver different types of market insight.

Information can be gathered from speaking with many different respondents including:

- **Interviews with customers** – these are arguably the most important interviews of all as they are the lifeblood of your company. There is no more effective, reliable or valuable source of competitor intelligence than customers. Buyers have never been so willing to say exactly what they want, and how they want it, nor so willing to complain or take their business elsewhere if their requirements are not fulfilled. Customers often display a remarkable level of candour when talking about their suppliers, even those with whom they have a close and collaborative relationship. Issues as diverse as price, service, contractual details and technical information can be discussed, as well as information on the competition and future needs.

TABLE 3.2.1 Examples of market intelligence studies

| Type of information needed | Type of study that would meet that need |
|--|--|
| Help to enter a new market, or expand presence in a market | Due diligence, market entry and market expansion studies |
| Minimize the risk of an investment decision being wrong | Market assessment or acquisition studies |
| Keep ahead of the competition, obtain first-mover advantage over competitors | Competitor intelligence study, needs assessment study or customer satisfaction studies |
| Give the customers what they want, expand market share | Needs assessment studies, segmentation studies or customer satisfaction studies |
| Establish and maintain a distinctive corporate identity | Brand positioning studies |
| Tailor products and marketing effort around customer needs | Segmentation and customer satisfaction studies |

- **Interviews with potential customers** – these interviews are often very important to see what market perceptions are like ‘on the other side of the fence’. Potential customer interviews can be used to ascertain brand perceptions in the marketplace, why they choose the supplier they do and what could make them switch to another supplier. These interviews are also useful to ascertain how much demand there is for a product/service so that market sizing estimations can be made
- **Competitor interviews** – competitor interviews are a difficult, but valuable means of gaining competitor intelligence. Clearly senior management such as Marketing VPs are particularly useful sources of information, if they can be persuaded to talk. Gaining cooperation with such groups is one of the most difficult tasks carried out by research and intelligence agencies. If the agency can avoid revealing the sponsor of the survey (this is very rare), a financial incentive may gain cooperation. Far more commonly, the respondent is happy to take part in an ‘information exchange’. This usually results in the respondent receiving a synopsis of the overall market research findings in return for a face-to-face or telephone interview. It should be highlighted that a competitor interview does not necessarily need to target a high-level respondent in order to be useful. Mid-management employees such as sales managers can be an extremely useful source of information on products, innovations, overall strategies and a host of other topics. These employees are

trained to talk and persuade and tend to be less circumspect than their colleagues in other departments.

- **Interviews with suppliers, distributors and industry experts** – in every industry it is worth mapping out the supply chain in order to assess who might be able to provide valuable market intelligence. Those at the centre of the supply chain – intermediaries such as distributors, agents and importers – are often those that know most about the market, as they are in frequent contact with manufacturers and sellers alike. Most markets have a number of ‘experts’ of some kind who are independent and willing to share the information they possess. Industry associations and journalists at industry publications are typical examples.

The means of gathering market information varies according to the objectives of the intelligence – are you looking for insight and understanding or are you looking for robust quantification of market size and segments, brand shares or purchase frequencies? Also, the type of methodology depends on who your target audience is. For example, it is easier to use e-surveys when speaking to customers due to the already existing relationship you have with your customers and therefore the response rates of completion are greater, but also the fact that you have at your disposal an accurate e-mail list. However, even from customers, the depth that is gathered through e-surveys is often not as detailed as an administered interview over the telephone or face-to-face. Focus groups (both online and face-to-face) are still used in abundance in business-to-business research to capture qualitative insight, but other methodologies are also utilized that call on different skills such as observational skills in ethnographic research.

Clearly, scoping out who you are looking to target very much dictates what methodology is chosen. However, there are few real methodological differences when it comes to obtaining market intelligence in different countries. When it comes to data collection, it is true that Asian markets, for both cultural and logistical reasons, often require more face-to-face data collection than Western markets. It is also true that market intelligence can be more difficult to obtain in developing countries. A key reason for this is that economic records tend to be less well-established. However, a market intelligence provider with well-educated employees and a multilingual capability should be capable of obtaining intelligence across different markets. Indeed, this skill is increasingly essential as the requirement for multi-country intelligence increases.

Step 3: Don't stop digging

One of the most important things to remember is that the gathering of market intelligence is delivering insight into a market at that specific moment in time. Many of the issues that affect a customer's buying decision today will most likely evolve in the future. Also, in this global marketplace in which we all play, change is constant and so not only will needs change but suppliers, prices and products will also change. Therefore, it is not only important that intelligence is acted upon when it is collected

but also that a constant review (or feedback loop) is put in place so that a continuous review of market intelligence is at the centre of all business decisions made.

In conclusion

For many companies, the first place to look for more sales and therefore growth is among existing customers. Current customers have already made the ultimate gesture of approval and paid money to buy your products. A bit more persuasion and they may buy more. Also, existing customers know and trust the company sufficiently well to do business. So much so, they may give serious consideration to buying a new product or service from the company. However, every company has a product that can travel. New markets wherever they are – new countries or new segments – carry risk and the gathering of accurate market intelligence is a must in making all these decisions.

Nick Hague is a founder member of B2B International. He has extensive experience in the design and execution of market research projects across a wide variety of industries. He has carried out dozens of surveys on business excellence and has managed research projects that have spanned over 30 countries. Further details: tel: 0161 440 6000; website: www.b2binternational.com.

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Web marketing

3.3

*What's the point of having a website if it doesn't generate you any business or more importantly profit? asks **Tony Mackenzie** at *Web on High**

With major improvements in technology over the last five to seven years, it has now become easier and quicker for the vast majority of the UK populous to go online to look for required products and services. Speed of data access and quicker hardware platforms combined with easy search parameters and the global monster that is Google means that people are comfortably aware that they can find the right solution by simply typing in 'plumber in Westminster', or 'hotel in Newbury' for example. With a staggering 57 per cent of all businesses now being found for the first time using the major search engines, having a visible online presence in the current business climate is not only useful but critical. An effective online strategy can transform a business, even in a downturn... but only if understood and planned correctly.

The following rules and guidelines form the starting point for a successful website and online presence.

Search engine marketing

Sadly a high proportion of sites that exist miss the point entirely when it comes to effective and productive search engine optimization (SEO). Many web-design companies simply do not understand the amount of time and effort needed or more importantly what the major search engines such as Google want to see on your site.

This is where the critically important areas of accurate analysis, research and planning play an important part. It is essential to understand in great depth your overall business model, prior to even starting to think about the creation/design or promotion of a website. This fundamental research and analysis is the foundation to creating a website that targets the right audience and market and will ultimately make a big difference to your online productivity and visibility.

Why aim your website at a market that no one is looking at and will not produce enquiries or orders?

Thoughts and considerations – web design

When beginning to think about developing and creating a website, it is absolutely critical that certain design basics are adhered to because these are the building blocks towards successful promotion and conversion as your website has less than a few seconds to retain the attention of a prospective customer or client once they find you. Aspects such as design, speed of page loading, textual positioning, colours, font, ease of navigation and placement of images all play a major role in how someone will interact and interpret a site. There is no point in having a website that does not convert visitors to customers or orders because they do not like what they see or more importantly cannot find what they want.

When looking at the performance of any website, there are a number of statistics worth considering – and although statistics may be misinterpreted or manipulated, the logic behind these particular statistics is sound:

- People are intolerant of slow websites – 28 per cent won't bother opening a website or wait for it to open if it takes more than seven seconds to do so.
- These same people will spend no more than four seconds determining whether or not a website (and therefore the company it represents) can fulfil their needs.
- Over 69 per cent of the UK population now enjoys access to the Internet and over 90 per cent of those use the major search engines to search for a product or service.

The likelihood of a website becoming successful is far greater if the site is easily found, simple to navigate, and provides ample information in a clear and direct way while driving a potential customer to make contact or buy! Any site developed to attract enquiries would need to take into consideration a number of key points in its design to maximize the potential for attracting and retaining a prospective client and encouraging them to make an enquiry.

Sales message

Bearing in mind that the average potential customer will not visit the site as many times as you will, the placing of the words on the site is critical. Furthermore, with a well-constructed site that is promoted on the major search engines a visitor could enter from any page, which makes the placement of your sales message in the right location imperative.

A company can therefore benefit from a very clear sales message on the home page as well as other pages and of equal benefit are (what we refer to as) 'calls to action' such as 'click here to speak to an advisor'.

Speed

Speed is absolutely crucial, as the majority of users wait no longer than seven seconds (or maybe less) for a page to load. More recently search engines have chosen to add a

considerable amount of weight and ranking value to websites based on their speed and access performance and they will not favour a site that is slow. Speed of access can be affected by both Internet connection and size of page (in terms of megabytes), which is, among other things, affected by pictures and graphics.

What this means in simple terms is that you should be very, very mindful of the overall style used to design and develop the site.

Navigation

Simple and effective navigation of a website is equally important – you must allow users to concentrate on the content of your site rather than on how it should be used. Let's face it, the English-speaking world reads from left to right, therefore navigation placed on the left of the site is intuitive, whereas navigation across the top will effectively lower the text of the site and give less opportunity to promote your sales message.

Colours, text, font and layout

Once opened, the average prospective client will spend no more than four seconds determining if they like your site (ergo, you!) and want to use your services. Clearly you have to make it very easy for them to decide.

We would strongly recommend using black text on a white background, which will give the greatest possible contrast, thus making reading your sales message easy. Using strong colours and branding for the borders of the site will lend itself to good aesthetic balance.

Summary

Given the background to these thoughts, you should remember the whole aim of a website should be to increase sales revenue and profit – a simple desire, but a desire that needs careful planning to attain.

For the purpose of structuring thought, you should divide the project into three main elements: portraying the right image; attracting the right people (via search engine prominence) to the website; and encouraging those prospects to make a purchase or contact you.

The right image will be achieved through embracing these principles of design by creating a 'look and feel' that does three things:

- presents an aesthetic image that gives the feeling of professionalism;
- gives a succinct sales message;
- encourages users to progress.

If you get these fundamentals correct, you are well on your way to having a site that generates fantastic results and plays a major part in the development of your business for years to come.

Web on High was created in 1999 as a result of a vision that saw the Internet as a truly powerful promotional tool for business. The founders were adamant that the Internet would be the most important method of business promotion and marketing for years to come – and time has proved them right.

Web on High's core focus has always been based on search engine promotion in a bid to drive business to client websites. Behind the scenes, Web on High can boast a huge wealth of marketing and solid commercial experience as well as a variety of sound IT skills. With a 22-strong team that includes designers, programmers, SEO engineers, customer account managers and experienced management, Web on High can ensure that clients get exactly what they want – and that it is delivered with dedication, speed and professionalism. For further details visit the website: **www.woh.co.uk**.

Winning new business

3.4

*In a downturn, you have to adopt the right state of mind, says **Renee Botham** at Touchstone Growth*

Running a business is a challenge, like no other. Chances are you spend more time at work than you do at home; you can at times be more in touch with your colleagues than with your friends; and with modern technology, a need to know what is going on when you are not at work, may give you little space for ‘you’ time!

Who said it would be easy? And to compound it there is the ‘R’ word! Recession is very real; however it can also be a mantra for failure! Some of you will recall the recession 20 years ago, I certainly do. Can we compare this with the last? It certainly didn’t have the global implications; personally I think it is a very different kind of recession, however, just like then, there will be survivors – those who don’t just make it through, they also use this as a way to grow their business – and losers. I recall Lord Kalms, founder of DSGi, saying that he used the time when things were tough economically to really push ahead, because once the waves calmed he was way ahead of his competitors. I consider this to be sound advice from one of the UK’s most pioneering, formidable and successful businessmen.

So my call to you is: what is your *plan* to be? Because make no mistake, it is about planning.

Plans don’t stop at reducing headcount or wishing/hoping for a pick-up in your profit margins. What is required is careful consideration of what you want your business to look like. How big do you want your business to be – the shape of it, what are your plans for the business; grow to sell, plan for an MBO? Whatever this is, it must be in the forefront of your mind, should shape your actions and be actively discussed with your colleagues and stakeholders.

I thought it might be a good idea in this chapter to provide a checklist of just some of the important considerations needed to win new business.

What’s my plan?

Here, I would recommend you think about the following:

- Who are our current clients?

- What sectors (if appropriate), geography, size/turnover do we currently work in?
- Who are our most profitable clients and why?
- Why do they work with us?
- Formulate who we want to be working with and why (some clients may be prestigious – can you afford this as a criteria right now)?

Setting time aside – weekly

Each week an hour minimum must be set aside, religiously.

Too often I hear these meetings being postponed for the ‘here and now’ – not good enough! If you are well organized and colleagues clearly understand their responsibilities in maintaining a great relationship and are on top of your clients’ needs this shouldn’t happen.

Nor is a weekly meeting about assessing who you are currently pitching (bidding) for. This needs to take place, but not within this time. What you should be discussing needs to include:

- Who are our competitors and who are they working with?
- What are our distinguishing features? Note I do not use the term USP (unique selling point); they disappear as soon as your competitors get wind of them. It’s more about what makes you special.
- How the business is positioned in our marketspace; are our customers/clients and potential clients clear about what our brand stands for?
- Having clarified who you wish to be talking with, what is your ‘story’ and is it strong enough for someone to say ‘you know what, I really think it would be useful to set time aside to meet with you’?
- How are you going to reach the list of contacts/companies that you have identified as potential clients?
- How are you talking to them? Your message *has* to be ‘with’ them not ‘to’ them – think about the difference and review your own literature!
- Are your messages consistent throughout the business?
- Review of activity adding further intelligence regarding *all* the points above – what’s working, what’s not? Is your message strong enough or does it need adapting? Is it current – fulfilling the issues that your potential clients are facing today and tomorrow?

Who is responsible for all of this?

New business is not only about having great interpersonal skills. The person responsible needs to be brave (to face rejections), tenacious (yet knowing when to

back away), vigilant and persistent (because sometimes this is about getting the ‘timing’ right).

How you keep track of your activity is vital

There is nothing worse than:

- a prospect getting five different messages from five different people within your organization;
- contacting someone who already has a relationship with another person in your company – or, even worse, is a current client;
- there is a ‘history’ that you are unaware of;
- you miss a deadline when a buying decision is being made;
- you don’t keep a track of the history of the call to be made; including any personal data that is useful in the whole relationship-building process.

To conclude and returning to the introduction to this chapter, ‘Business growth is a state of mind’.

To be successful requires all of the above and something more. It needs YOU.

Your people, stakeholders and clients need to truly believe in you. Surround yourself with positive-thinking people who are as passionate as you are about what your company stands for. If they are not, are you partially to blame for not providing them with the necessary tools or not listening to what their individual needs are? Have you and your top management the ability to delegate, or are you spreading yourself too thin to a point where nothing gets completed? And finally, for now, are you taking time out? A problem walked away from for a time can often be seen in a new light. I set up my business over 20 years ago and my concept of ‘work–life balance’ was revolutionary at the time. The reality is that taking care of yourself, your people and your family, makes you a much more effective, ‘real’ person to work with. In an age of cynicism, wouldn’t you rather be working with, surrounded by, people you trust, enjoy and are confident with – because that is the key to understanding why people will work with you.

Renee Botham is chairman of Touchstone Growth. She established the company 20 years ago to create opportunities through strategic advice and practical implementation (making meetings). Her empathetic team has strong corporate backgrounds; all are articulate and engaging. Touchstone supports clients across a wide range of B2B business sectors, including Top 3 management consultants, professional services, marcomms and the IT industry.

Her special field is consultancy in supporting clients to build the foundations before carrying out their business growth initiatives. Contact: reneeb@touchstonegrowth.com.

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Brand rights

3.5

*Name? Logo? Domain? **Maggie Ramage**, president of the Institute of Trade Mark Attorneys, discusses how to make sure you have secured the rights in your brand*

New businesses are the lifeblood of economic regeneration at a time when growth has stagnated; unemployment is constantly rising; bank rates are hovering at a consistently low level; and recession is the buzzword of the final years of the first decade of the 21st millennium. If we are to avoid recession being the keyword of the second decade then we need to look at ways in which new businesses can thrive and how they can grow.

In this chapter I suggest that one of the building blocks for success is developing and maintaining a good trade mark strategy; avoiding some of the common pitfalls that hit new businesses all too frequently and offering guidance on how businesses can take their products and services to a wider audience with a little help from their professional friends.

I will not name names, but much of this article derives from experiences gained from speaking to start-ups and new businesses who seek advice through the auspices of a government-run series of free Business Advice Open Days in which my Institute, ITMA – the Institute of Trade Mark Attorneys – is an active partner and participant.

Business people attend these exhibitions and seminars because they need to know more about running their businesses. A lot attend because they need to know about VAT, employment issues and health and safety but they are often surprised that there are a whole range of issues that affect them, but of which they are unaware. Trade marks fall into this category.

Most people start new businesses because they believe they have a product or service that they think is going to make them money. Some may start new businesses because they believe they are contributing to the greater good of mankind. But what they all must do is to be business minded and, if they are to survive and prosper, they must follow sound business practice and this includes making sure they get things right in the way of trade marks.

The most common misconception from new business people is that they think that once they have set up a company and registered it with companies house, they can merrily go off into the marketplace and trade under that name. This is a huge mistake and can put a new company out of business before it has even started trading. This may sound dramatic but it happens all too frequently. However, it can be avoided with relative ease and is the first point I wish to address.

There are certain legal requirements as to why new businesses need to register their company names at Companies House. However, this does not necessarily prevent others from using that name in the marketplace nor does it guarantee that they are free to use that name if others already own or use the name, which may not even be the registered company name. The key register to check to see if a business can use a particular name for its goods or services is the Trade Marks Register. In fact, while many company names may appear on the Trade Marks Register the most important marks on the register belong to individual products or services deriving from that company.

So, let's start with some basic facts. The prime purpose of a trade mark is to distinguish the goods or services of one business from the goods or services of others in the marketplace. To do this, the trade mark needs to be different from any other mark used in respect of the same or similar goods or services. It can take a variety of forms including a word (for example Virgin), a slogan (Just Do It), a logo (Esso's tiger), a jingle (*Air on a G String* to advertise Hamlet cigars), a colour (the purple colour of Cadbury's chocolate packs), a shape (Dimple whisky bottles), letters (BP, MTV), a number (No 5 for perfume), or a personal name (Walkers).

To avoid any conflict, searches need to be conducted to determine what marks are already on the Trade Marks Register and whether or not your proposed mark is safe to adopt and use within the marketplace without fear of infringing existing marks.

Failure to carry out these searches could result in having to rethink your entire marketing strategy; redesigning all your promotional literature and packaging materials and starting again from scratch – not the most auspicious way to start a new venture and certainly not a cost-effective way to begin! It could even lead to your having to pay damages to the owner of the earlier trade mark you may have unwittingly infringed.

It is possible to conduct identical searches yourself by examining the UK Register and the Community Register online via the websites www.ipo.gov.uk and www.oami.eu.int. However, those online searches are limited. They do not search for phonetically similar marks, nor do they search for what may be deemed confusingly similar marks. They do not guarantee that the mark is free to use or whether it can be registered. That is a skilled undertaking and is really best undertaken by professionals.

This is where the Institute of Trade Mark Attorneys comes in. ITMA members are taught and examined on all the necessary skills. They maintain their professional knowledge through a thorough programme of continuing professional development.

Although it is possible to apply to register trade marks without using the services of a trade mark attorney, trade mark attorneys can undertake the whole process for you. This involves completing forms from the Trade Marks Registry, part of the IPO (the Intellectual Property Office, formerly known as the Patent Office), which give details of the applicant together with a representation of the mark and defining the class or classes for which the trade mark is to be registered.

There are various classes in the UK and it may be necessary to file for more than one class depending on the goods or services in question. The number of classes will determine the fees to be paid to the Registry, currently £200 for the first class and £50 for each additional class. In addition there are, of course, the fees to be paid to your

trade mark attorney. Trade mark attorney charges vary, which is why you will need to talk to individual firms for more detail.

The Registry then examines the application to ensure that it meets the requirements of the Trade Marks Act. Once the Registry is satisfied that the application can proceed, the Registry publishes the application in a weekly *Trade Marks Journal* so that interested parties can learn of the application and may, if they so wish, lodge an opposition. They have two months in which to do this.

If no oppositions are received, the Registry will enter the mark on the Trade Marks Register and will issue you with a certificate. If there are oppositions, your trade mark attorney will endeavour to resolve them and will represent you at hearings conducted by officials of the Registry.

Assuming all goes well and you receive your registration certificate, your mark will remain validly on the Register provided it is in use and the renewal fees have been paid. The mark remains on the Register indefinitely subject to these requirements. The renewal fees are due for payment every 10 years.

The major benefit of registering trade marks is that if anyone uses a mark that is similar to yours, then it is relatively easy to take action since you will have a registration certificate that shows you as the owner of the registered trade mark. Without registration, businesses have to rely on common law rights that are far more costly to enforce since they entail demonstrating 1) a reputation in the mark in question, 2) that the infringing mark has damaged that reputation and 3) quantifying that damage. Although, of course, every case would be determined on its merits, the reality is that to develop a reputation the business would likely have to have been in operation for some time, perhaps several years, or to have acquired reputation from massive advertising, which may, in itself, have attracted an infringement action.

As trade marks are territorial most new businesses will initially consider applying for a UK trade mark; the application process for which is outlined above. If a company wants to move into Europe, or even if the company sees itself in Europe in the first few years of existence, then it may be appropriate to apply for a Community Trade Mark (CTM) which gives trade mark protection in all 27 member states and which automatically extends to new members as and when they join the EU. The CTM application process is broadly similar to UK application but the relevant office (OHIM) is located in Alicante, Spain.

Again, a trade mark attorney can handle the whole process and, should the business expand to other territories, trade mark attorneys can apply for trade mark protection in overseas territories through an International Registration system called the Madrid Protocol, which is run by the World Intellectual Property Organization (WIPO) based in Switzerland. They can also secure registrations in other countries who have not signed up to the Madrid Protocol through international colleagues, some of whom are members of ITMA.

So with trade mark protection in place at home and abroad what else should new and growing businesses consider? Staying on the subject of trade marks the main consideration has to be on the subject of domain names.

Domain names create a unique address that allows a computer to distinguish one address from millions of others connected to the Internet. No two organizations can have the same domain name. Internet users have the right to expect that a domain name which consists of a trade mark in use commercially is associated with the owner

of the trade mark. There have been some court cases because, as domain names are sold on a first-come, first-served basis, it is often the case that someone who does not have the legal right to own that domain acquires it perhaps with the hopeful view that they can sell it back to the rightful owner of the trade mark. Trade Mark Attorneys can advise on such disputes.

There are a couple of other points to note. First, trade mark registration would normally be paramount over domain registrations, so if a company owns a particular trade mark, that is normally the starting base for recovery of a similar domain name. Second, it is important that domain names are renewed automatically because if a domain name is inadvertently allowed to lapse it cannot be restored to record, unlike a trade mark registration.

One of the other services trade mark attorneys can offer is a watching service. This may cover trade marks alone but can extend to a domain name watch. This can prove invaluable to see who else is out there, perhaps active with the same or similar elements. It also enables trade mark attorneys to start speedy proceedings for recovery of trade marks or domain names that have been registered in contravention of clients' rights.

Maggie Ramage was elected President of ITMA – the Institute of Trade Mark Attorneys – in April 2010. She is a UK trade mark attorney and a European trade mark attorney. She is also a member of INTA, ECTA and MARQUES. Maggie has worked for the California-based Raychem Corporation and was seconded to San Francisco in 1987. She then worked for what was Beecham Group (now part of GlaxoSmithKline), before moving to British Telecommunications. Maggie became a Partner in Surrey-based Alexander Ramage Associates in 1991.

A full UK listing of trade mark attorneys in the UK is on our website: www.itma.org.uk and the front page includes a box 'Find a local trade mark expert'.

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Barry Denton,
Operations Director



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*Confidence is the key to better-quality contracts, which is why accrediting your products and using accredited services is the best route to becoming 'fit for market', says **Jon Murthy** at UKAS*

Regardless of where the economy is headed, companies need to have confidence in the goods and services they procure. This is true of all companies, whether large, small, public or private. Developing better-quality contracts – with suppliers and customers – demands confidence, which is why accreditation is becoming increasingly popular as a tool. Accreditation is a method of ensuring an organization's competence. This means that companies that hold or utilize services that have achieved accredited status can be sure that they are fit for purpose.

What is UKAS accreditation?

The United Kingdom Accreditation Service (UKAS) is the national accreditation body for the UK. This means it is the only body recognized by government to assess – against internationally recognized standards – certification, inspection, testing and calibration services. Accreditation by UKAS is a guarantee that an organization is competent to carry out one or more specified tasks. As many of these organizations are conformity assessment bodies, this means that UKAS effectively 'checks the checkers'.

How does it work?

Accreditation is a robust and rigorous ongoing process that takes place over a four-year cycle. The initial assessment is to establish that the organization:

- is impartial;
- is technically competent to perform the task specified;
- has the appropriate resources and facilities;
- can perform to the required standard; and
- is capable of sustaining this level of performance.

There are then annual surveillance visits and a reassessment every four years. In some areas there is also provision for unannounced visits to ensure that the organization isn't just 'scrubbing up for the cameras'. This is why users of accredited services can have confidence in the goods and services they procure.

Who becomes accredited?

Bodies providing the following goods and services may be UKAS accredited:

- **Certification** applies to standards that relate to business operation, the most commonly used being ISO 9001 for Quality Management and the Environmental Management Standard ISO 14001. There are many other aspects of business life that can be certified, including products, personnel, information security, IT and occupational health and safety.
- **Inspection** regimes cover product design, products, materials and equipment, installations, plant, processes and services. Some of these areas will be subject to legislation that demands regular inspection, such as the Provision and Use of Work Equipment Regulations 1998.
- **Product testing and calibration** are used to demonstrate that a product meets a specification. This might be a customer requirement, a part of a product development regime, or even a legal obligation. More than 1,500 facilities in the UK have been accredited by UKAS to the laboratory standard ISO/IEC 17025.

Why accreditation?

There are many reasons why companies might choose to purchase third-party evaluation services. This might be a legal requirement, for health and safety reasons, or a voluntary choice to reduce the risk of product failure. Increasingly, organizations in both the public and private sectors are demanding accreditation as a criterion when tendering for contracts. In areas such as asbestos testing accredited status is mandatory, while in some others, such as food testing, it is an expected norm. However, beyond legal and voluntary requirements, accreditation also offers market differentiation, which means it can help in winning business. Moreover, as it is credible evidence of best practice, it offers a way to prove to potential clients that an organization takes quality assurance seriously. This means that accreditation can help to win new business and offer a route into difficult sectors.

New markets

Accreditation is also recognized worldwide under Multilateral Recognition Agreements (MRAs). This means that it has the potential to open doors to new

markets abroad as well as in the UK. MRAs not only mean that accreditation is recognized in over 120 economies, it also simplifies the audit process as products can be tested once and the results of that test are accepted in each signatory country. This means that accreditation acts like a ‘passport to trade’.

Looking inwards

There are many external benefits to achieving accredited status, but what about internally? It might appear that all the effort of getting there is a large distraction from an organization’s core business. In fact, the reverse is true. By increasing internal efficiency and reducing duplication, becoming accredited can mean that business owners have more time to devote to the sharp end. How does this work?

Accreditation can:

- **reduce paperwork and increase efficiency** – no longer a necessity to re-audit your business or re-test products for new markets;
- **de-risk procurement** – taking the guesswork out of choosing an evaluation body and giving confidence that services will best fulfil a company’s needs;
- **win new business** as the use of accredited services is increasingly a stipulation of specifiers, most notably in the public sector;
- **facilitate access to international markets** since UKAS-accredited certificates have global recognition;
- **help with adopting best practice** because evaluating bodies are required to have appropriate knowledge of that business sector;
- **control costs** as accurate testing, calibration and other evaluation services along with the adoption of best practice can limit product failure and down time;
- **help with knowledge transfer and product development** since accredited evaluation bodies can be a good source of impartial advice;
- **offer market differentiation and leadership** by showing to others credible evidence of good practice, for instance in environmental management systems;
- **demonstrate due diligence** in the event of legal action.

As we can see, becoming accredited is an opportunity for a business to undertake a full internal audit, identifying improvements, streamlining processes and reducing unnecessary duplication – the net result saving time and money.

Sourcing accredited services

Procurement is one of the areas where ‘unknowns’ can have a serious impact on a business. Sourcing appropriate people and organizations can be time-consuming and difficult, but accreditation can make the process much quicker and easier. An

evaluation service that has been accredited by UKAS has demonstrated that it complies with best practice in that industry, that it is fit for purpose, impartial and can consistently provide the appropriate level of service time and again. It is also recognized as such throughout the world. Moreover, if there are safety implications at any stage in the supply chain, using an accredited supplier is a valuable tool in risk management, meaning that an organization can have confidence in the traceability and accountability of the goods and services it is procuring. By choosing a UKAS-accredited supplier, a business can have confidence that it is using the best and most appropriate service for its needs.

The United Kingdom Accreditation Service (UKAS) is the sole body recognized by government to carry out accreditation of businesses offering conformity assessment services such as certification, inspection, testing and calibration. It assesses these bodies against internationally agreed standards. Accreditation by UKAS is the key to ensuring that suppliers, purchasers and specifiers can have confidence in the quality of goods and in the provision of services throughout the supply chain.

By choosing a UKAS-accredited supplier, not only can you be assured that you are receiving the *best and most appropriate service for your needs* but you will also discover that the UKAS 'mark' on your documentation brings with it *national and international recognition and credibility* for your business. Better credibility for your business increases your chances of securing better quality contracts.

To locate a UKAS-accredited evaluation body in your area or one that provides a particular specialist service, help is at hand. Visit www.ukas.com for full details of all UKAS-accredited organizations. Alternatively, further information about UKAS and its accreditation role can be obtained by: tel: +44 (0)20 8917 8400; fax: +44 (0)20 8917 8500; e-mail: info@ukas.com.