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# BUILDING BRAND PROTECTION STRATEGY IN CONTEMPORARY ENTERPRISES

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**Abstract:** The aim of this paper is to present comprehensive solutions in the field of brand protection against the actions of dishonest imitators. First, the brand elements important from its protection point of view were identified, i.e. physical product with packaging and/or service, visual identification system and intangible ('soft') brand elements. Then the methods for determining the brand protection status were described. The brand protection status study consists in a diagnosis of the brand life cycle phase and of the implemented brand protection tools. Next the method of examining the state of the existing and potential violations in the form of the designed early warning system against imitation was presented. Finally, the model procedure of the brand protection strategy was proposed. It provides guidelines for the creation, selection and implementation of the strategies, both preventive and corrective.

**Keywords:** management, management strategies, brand management, brand protection.

## 1. Introduction

In the modern theory and practice of business management, the role of the brand management area is emphasized. Many authors (Grębosz, 2012; Kotler, 2004; Liczmańska, 2008; Urbanek, 2012) believe that the brand is a key element around which all activities related to marketing management in an enterprise are focused.

Building a brand is a time and capital consuming process. Creating a strong and distinctive brand requires the owner to incur many outlays, and dishonest imitators want to use the brand's potential. A number of economic, psychological,

political, social, technological and intra-organizational factors have an impact on the decision to start illegal brand infringement (Sałamacha, 2018). The scale of brand counterfeiting (Sałamacha, 2016; Soon & Manning, 2019), as well as the tendency of consumers to make decisions about buying counterfeit products (Chand & Fei, 2020; Moon, Javaid, Kiran, Awan, & Farooq, 2018; Sałamacha, 2015) give the reason to believe that entrepreneurs should incorporate protection into the brand management process. Unfortunately, research on microenterprises in Poland indicates that the level of brand protection does not appear to be high (Sałamacha, 2019). Considering all the above, it seems appropriate to design a brand protection model procedure that includes brand protection tools.

The proposed brand protection model procedure is aimed at supporting the undertaking of both preventive and corrective actions related to brand protection by:

- a) presentation of brand protection strategy creation and selection methods in the process of protection,
- b) identification of applicable brand protection strategies,
- c) indication of types and rules for selecting protection tools,
- d) presentation of rules of conduct in the process of brand protection strategy implementation. These involve:

- I. Indication of brand elements relevant from the protection point of view.

- II. Identification of the brand protection status.

- III. Examination of existing and potential brand violation status.

- IV. Creation of brand protection strategy.

On the basis of many possible approaches used in literature and in practice in the scope of the brand concept, in the first stage the definition of the brand for the purposes of protection against dishonest imitation was referred to. The basic components of the brand, relevant to safety, were identified. As part of the second stage, two key aspects were discussed: identification of the protection tools used so far and the characteristics of the individual stages in the brand's life cycle. Diagnosis of the tools allows for determination of what actions have been taken so far for the brand owner to ensure safety. In turn, the concept of the brand's life cycle allows to design activities in the various stages of its existence on the market. In the third stage an early warning system was designed which indicates the actions that the brand owner can take to determine the existence of the phenomenon of dishonest imitation, and then estimate its scale. The last stage in the brand protection model procedure, which takes into account the results of the analyses carried out during stages I to III, is the selection and implementation of a brand protection strategy. Preventive and corrective brand protection strategies were identified, as well as the procedure and brand protection tools being part of each strategy were described.

## **2. Indication of brand elements relevant from the protection point of view**

A brand is understood as a combination of mutually dependent groups of elements: physical product with packaging and/or service, visual identification system and intangible ('soft') brand elements. These three identified groups of elements are aimed at identifying the brand owner, creating and maintaining the company's distinctive competitive position, creating strong relationships with customers by providing measurable and immeasurable benefits to both parties, as well as protecting the manufacturer against the actions of dishonest imitators (Sałamacha, 2015). Each of the listed elements of the brand has its own specificity, which is important from its protection point of view.

## **3. Identification of the brand protection status**

The process of determining the strategy requires first of all establishing the actual state of protection of a given brand. The condition can be described by determining the protection tools used and the brand life cycle stage.

### **3.1. Diagnosis of the brand life cycle phase**

It is said (Witek-Hejduk, 2010) that the basis for making brand decisions is the stage of the life cycle in which the brand is currently located. Effective implementation of the protection strategy should also take into account the dynamics resulting from changes in individual phases in the life cycle (Brunetti, Confente, Kucharska, & Kaufmann, 2017). In the literature on the subject three approaches to the brand life cycle are recognized: Young & Rubicam (Chernatony de & Dall'Olmo Riley, 1998), J. Murphy (Kall, 2005) and G. Caron (Kall, 2005; Witek-Hajduk, 2010).

The brand life cycles proposed by the Young & Rubicam marketing agency and by Murphy cannot become the basis for building a model brand protection procedure because:

- a) they are too vague;
- b) they assume that after some time the brand must be withdrawn from the market, and do not take into account the possibility of using marketing tools to refresh the brand;
- c) they assume that the brand must go through all phases in the life cycle;
- d) they do not include fluctuations resulting from temporary brand problems.

The brand life cycle created by Caron was devoid of the above restrictions, and was adopted as an attitude to build a brand protection model procedure. However, it is necessary to supplement this brand life cycle with a preparatory phase that includes:

- a) conducting market research to determine its potential;
- b) defining the target group of the brand;

- c) creating a new product or improving an existing one – for manufacturing companies;
- d) developing the method of providing the service or designing a new one – for service enterprises;
- e) testing and research on products and services;
- f) preparation of the machine park/place of service;
- g) creating a visual identification system;
- h) creating of a distribution network.

**3.2. Diagnosis of implemented brand protection tools**

At the stage of identifying the brand protection status, it is necessary to indicate all the tools that have been implemented in the enterprise so far. This study determines the situations in which the brand is at present. At the time of diagnosis, the brand may be imitated or threatened with potential imitation.

Both imitated brands and brands threatened by potential imitation may have implemented brand protection tools. It should be emphasized that the tools could have been used in an unplanned manner so far and did not constitute comprehensive and strategic actions. Therefore, it seems necessary to gather more detailed information. Information sources vary ranging from internal documentation to publicly available databases (see Table 1).

**Table 1.** Sources of information regarding implemented brand protection tools

Brand protection tools	Sources of obtaining information
1	2
Trademarks Geographical Indications Inventions Utility models Industrial designs	Analysis of documentation available in the enterprise regarding notifications and decisions in the field of industrial property items Analysis of patent information databases available online at: National: databases of the Patent Office of the Republic of Poland UPRP <a href="http://www.uprp.pl">www.uprp.pl</a> Regional: EPO European Patent Office databases <a href="http://www.epo.org">www.epo.org</a> Worldwide: World Intellectual Property Organization databases <a href="http://www.wipo.int">www.wipo.int</a> And other commercial and non-commercial patent information databases
Trade names	Analysis of documentation available in the company regarding the establishment and operation of a business Analysis of the resources of the National Court Register and the Central Register and Information on Economic Activity
Literary, artistic and scientific works Audiovisual works Computer software Database Trade secret	Analysis of internal documentation regarding individual tools – no need for external actions

1	2
Customs tools	Analysis of applications to the Customs Chamber Analysis of documentation regarding customs officers' training
Product protection Packaging protection	Analysis of product technical documentation
Brand positioning Building consumer loyalty Information campaigns	Analysis of internal and external documentation on marketing management in the enterprise in terms of the brand, among others marketing messages

Source: own work.

#### 4. Examination of existing and potential brand violation status

The actions of dishonest imitators of the brand can be carried out at any stage of the brand's life cycle, so the owner should learn about the problem as soon as possible. Determining violations is a relatively complex process, so the procedure provides for an early warning system against imitation (Rutkowski, 2011). The basic function of the system is to collect and analyse information on dishonest imitators in a comprehensive manner. The following stages were designed as part of the system:

- Stage 1: diagnosing the problem;
- Stage 2: estimating the scale of dishonest imitators;
- Stage 3: summary of existing information;
- Stage 4: conducting detailed research;
- Stage 5: data analysis.

The implementation of Stage 1 is based on monitoring the market for the appearance of dishonest imitators. Information on threats can be obtained from clients, the authorities responsible for combating infringements or based on own market monitoring. The methods of obtaining information whether a particular brand has been attacked by dishonest imitators include:

a) analysis of complaints – an increased number of complaints may be caused both by problems that the brand is currently undergoing, and by the fact that customers submit complaints about dishonest imitations. Therefore products should be regularly tested in order to check their authenticity;

b) introduction of product identification service – the product identification service consists in the fact that a consumer who has acquired a product in good faith in legal distribution channels, considering it to be branded, but still has doubts about the authenticity, may raise objections to the brand's owner. If it turns out that the product is a fake, the brand owner exchanges it for the original one. The product identification service, in addition to collecting information about counterfeit products appearing on the market, helps build brand value and customer loyalty;

c) ongoing monitoring of the dishonest imitation market the brand owner should identify possible and probable places where imitators produce or sell and then periodically check for counterfeit products. It should be also remembered about the ongoing updating of the list due to unfolding activity of the dishonest imitators;

d) ongoing monitoring of the legal distribution market imitation risks may also occur in the legal distribution market. The brand owner, outsourcing production to external companies, must check if these companies do not sell so-called overruns (goods in unauthorized distribution) – surplus production made outside the contract quantity. In addition, products available at legal wholesalers and legal retailers should also be randomly tested;

e) ongoing monitoring of licensees even licensees, i.e. entities that should take care of its protection on an equal footing with the brand owner, may allow license limits to be exceeded, so the ways of using the brand should be monitored on an ongoing basis;

f) analysis of alarming symptoms such as a sudden drop in sales, the appearance of a large number of products in distribution channels (at retailers, on the Internet), increase in component orders, increased activity of entities in the grey area, increase in product damage rates;

g) interviews with employees – employees often have information on competitors' products due to their interest in the market. In addition, it is worth monitoring the level of employee satisfaction with the conditions at work, as there is a risk that dissatisfied personnel will want to leave the company and provide information that should be protected to a new employer or start their own business using their knowledge.

Stage 2. Preliminary examination allows estimating the scale of dishonest imitators. The actions the brand owner should take at this stage are:

a) collecting information on the availability of products (services) that infringe the brand;

b) determining the availability of products (services) in distribution channels;

c) conducting an analysis of product sources in selected distribution channels;

d) estimating the approximate number of products suspected of originating from unauthorized sources.

In the next stage (Stage 3), the information gathered so far should be summarized. This regards infringed products (services): general information, external producers, licensing; entities suspected of infringing; data collected by employees. Analysis of the above information will allow decisions to be made about additional detailed tests.

As part of Stage 4, detailed research is carried out by both the brand owner and an external company. Conducting proper research includes determining the scope of information collected and choosing the technique of gathering information. Information that should be collected may include (Berman, 2008; Post & Post, 2011):

a) identifying sources of unfair production and distribution;

b) identification of sale points, buyers and sold quantities of imitators' products;

- c) identifying online sales outlets, industry publications and related media for the appearance of imitators;
- d) identification of the original source and unauthorized products' transport methods;
- e) knowledge of the production, storage and dispatch system;
- f) identification of potential sources that may provide additional information on suspicious activities.

The above information may be collected using the following research techniques: interviews with employees, dealers and agents, field interviews to determine an alternative source of products, analysis of Internet resources, purchase of a product (service) suspected of violation, forensic research, reverse engineering or investigations of the main past suspects selected when collecting data in the field.

The last stage (Stage 5) is the preparation of reports and analyses of collected information, furthermore forwarded to those responsible for brand protection.

## **5. Creating and implementing brand protection strategies**

The next stage in the brand protection model procedure is the creation, selection and implementation of a brand protection strategy. Taking into account the existence of the phenomenon of dishonest imitation of a particular brand, the above strategies can be divided into: preventive strategies, in which the actions of brand owners relate to the prevention of violations and corrective strategies, when a brand is violated.

### **5.1. Preventive strategies**

Solutions for the protection of a brand threatened by potential violation relate to situations in which the brand has not yet become the object of interest of dishonest imitators. They present strategies and tools for brand protection to counteract the occurrence of an infringement. In order for the strategy to be effective, the brand owner should follow these stages:

1. Deciding whether actions will be taken to protect the brand against dishonest imitators;
2. Selecting partial strategies (selection of tools) for brand protection;
3. Implementing brand protection tools;
4. Brand monitoring.

Stage 1. The entrepreneur must decide whether the brand will be protected. It is worth emphasizing that when making the decision to discontinue brand protection activities, the entrepreneur must be aware of the consequences of the potential threat of imitation brands. It is also necessary that this decision is consistent with the development policy implemented by the enterprise.

Stage 2. The choice of partial strategy can be influenced by, among others: the company's business profile; the industry in which the enterprise operates; brand

elements on the basis of which the company builds its competitive position; the size of the enterprise; the amount of expenditure that the company will spend on brand protection; the company marketing program. Distinguishing partial strategies for brand protection requires defining situations in which a brand can be found. Taking into account the theory of a brand life cycle and the owner's decisions in the area of its management, one can distinguish:

a) changes in the offered product range over time, the brand owner may decide to introduce completely new products and/or services. These decisions can appear at various stages of the brand's life cycle and for various reasons. This can be dictated by the desire to use the strong and distinctive brand potential, as well as an attempt to refresh it. For this reason, it is necessary to take additional measures related to ensuring safety;

b) changes in the brand over time the brand owner may also decide to make changes outside the product range structure. Examples of modifications include: improving existing products (services), manufacturing technologies or the visual identity system elements;

c) increasing the geographical scope of operation the owner of the brand at the beginning of its life is not always able to predict the entering foreign markets possibilities. It is only after some time that decisions are made regarding expansion to other countries, which may result in the need to obtain protection in them;

d) changes in the brand owner's approach to the issue of safety entrepreneurs should regularly analyse changes in the environment. The dynamics of the market make it necessary to adapt to the situation, and existing decisions to ensure brand protection may become outdated, e.g. increased competition in the market may result in the need to register the trademark, previously not used;

e) introducing a new brand a special case that allows the entrepreneur to plan and implement consistent actions in the area of brand protection is to design and introduce a new brand to the market. Designing and launching a new brand gives entrepreneurs a unique opportunity to implement brand protection tools at the moment when their application is most effective, and the chances of their implementation are still being missed out.

Depending on the situation in which the brand is at present, the following partial strategies can be distinguished:

- S1 Introduction of changes in the product (including packaging) or service;
- S2 Introduction of a new product (including packaging) or service;
- S3 Introduction of changes in the visual identification system;
- S4 Introduction of changes in intangible elements of the brand;
- S5 Introduction of changes in the geographical coverage of the brand;
- S6 Maintenance of existing brand solutions;
- S7 Introduction of a new brand.

Stage 3. The choice of partial strategy indicates a set of tools that can be implemented to protect the brand (see Table 2). The brand owner must always choose the brand's protection tools taking into account its current status.

**Table 2.** List of brand protection tools that make up the partial strategies of a non-infringed brand

S1	Inventions Utility models Industrial designs Literary, artistic and scientific works Computer program Database Trade secret Trademarks Customs tools Technical product protection tools Technical tools for packaging protection	S2	Inventions Utility models Industrial designs Literary, artistic and scientific works Computer program Database Trade secret Trademarks Customs tools Technical product protection tools Technical tools for packaging protection
S3	Trademarks Trade names Geographical indications Literary, artistic and scientific works Customs tools	S4	Brand repositioning Building consumer loyalty Information campaigns
S5	Inventions Utility models Industrial designs Literary, artistic and scientific works Computer program Database Trademarks Customs tools Geographical indications	S6	Trademarks Geographical Indications Inventions Utility models Industrial designs Trade names Literary, artistic and scientific works Audiovisual works Computer software Database Trade secret Customs tools Product protection Packaging protection Brand positioning Building consumer loyalty Information campaigns
S7	Trademarks Geographical indications Inventions Utility models Industrial designs Trade names Literary, artistic and scientific works		Audiovisual works Computer programs Databases Trade secret Customs tools Product protection Packaging protection Brand positioning

Source: own work.

Stage 4. After applying the brand protection strategy, it is necessary to periodically monitor the brand in the following areas:

- a) checking that the brand protection tools are working properly;
- b) checking whether there has been a need to introduce new partial strategies and/or brand protection tools;
- c) checking whether the brand is not violated despite the use of the protection strategy.

**5.2. Corrective strategies**

The diagnosis of the modern market, allowing to state the existence of imitated products and services, indicates the need to create a solution for enterprises whose brands have already become the target of dishonest imitators. The successful application of the proposed strategies requires the brand owner to proceed in the following stages:

1. Deciding whether to commence or refrain from actions against dishonest imitators;
2. Deciding to inform consumers about the existence of imitated brands;
3. Issuing a formal call to stop fraudulent imitation;
4. Monitoring the infringer’s behaviour;
5. Taking appropriate action to combat dishonest imitation;
6. Deciding whether to withdraw the brand from the market or make changes to it.

**Table 3.** List of brand protection tools that make up the partial strategies of an infringed brand

Infringed brand protection tools supporting a partial strategy: Fight against the infringer	Infringed brand protection tools supporting a partial strategy: Failure to act
Informing consumers of the imitated brands existence A call to stop dishonest imitation Observation of the infringer’s behaviour Court proceedings Arbitration Mediation Withdrawing a brand from the market Introducing brand changes Introduction of a new brand	Market monitoring

Source: own work.

Stage 1. After diagnosing the gravity of the problem of rights violation, the owner must decide whether to take appropriate action to combat or to abandon it. The reasons for abandonment include: small scale activities of dishonest imitators; no risk to consumers arising from the use of the product; the costs of fighting imitations outweigh the profits resulting from their removal; the opportunity to increase brand awareness by reaching more consumers.

Stage 2. The entrepreneur whose brand is being imitated must decide whether to inform consumers about it. The benefits of informing consumers include, firstly, the awareness of the consequences of using counterfeit products (which is particularly important in the case of categories affecting the health and life of the customer), as well as the ability to distinguish the brand from the product of dishonest imitators. However, the brand owner should be aware of the undesirable consequences that may occur after the dissemination of information about the dishonest imitators existence, such as the fear of buying the brand due to lack of faith in the originality of the purchased product or the loss of consumer confidence in the brand resulting from the belief in the insufficient effort of the company offering the brand in the area of safety protection.

Stage 3. If the entrepreneur decides to assert his/her rights, he/she should call the dishonest imitator to stop breaking the law. Thanks to such actions, the brand owner shows that he/she is prepared to defend the property rights, which can lead to the withdrawal from unfair activity.

Stage 4. After the call to stop dishonest imitation, the owner should monitor the behaviour of the infringer. In practice, it can be observed that the imitator is not aware of the violation of the rights of another entrepreneur, e.g. using manufacturing technology without knowing that it is protected by a patent. In such cases the very call to stop dishonest imitation may result in the violator's withdrawal from that market.

Stage 5. If dishonest imitator, despite a call to stop, continues the procedure, the brand owner may take the case to court or use alternative dispute resolution systems, i.e. arbitration and mediation.

Going the court is a very effective method of combating dishonest imitation, especially if brand protection tools are implemented (for example, registered industrial property elements), but its use requires the consideration of the possible consequences. Settling disputes through the courts may require the initiation of proceedings in various national jurisdictions, and in addition it is a time-consuming and expensive procedure in which the reputation of the brand owner may also be affected.

The World Intellectual Property Organization, taking into account the shortcomings of lawsuits, has proposed alternative dispute resolution systems, i.e. arbitration and mediation. In arbitration proceedings the dispute is settled by impartial experts or conciliators whose ruling is binding and enforceable in many countries, without the need to re-examine matters (Konwencja..., 1958), while in the case of mediation the matter goes to a third party (also an expert in the disputed case), which helps the parties achieve a convergence of positions. This method helps the parties involved in the dispute to maintain and even improve their mutual trade relations (Alternatywne..., n.d.).

The Act on combating unfair competition is a particularly important tool supporting brand owners in proceedings against dishonest imitators. It regulates

activities related to the prevention and combating of unfair competition in business operations, which are considered in the public interest of entrepreneurs and customers (Ustawa o zwalczaniu..., 1993).

Stage 6. When the above actions fail, the brand owner should decide whether to withdraw the brand from the market or introduce significant changes in it to distinguish it from the imitators' products.

In cases when the entrepreneur decides to withdraw the counterfeit product from the market, it should be done publicly. The consequence will be the inability to sell fake products, since the brand will be absent, in which case it is proposed to introduce a new brand and apply preventive brand protection strategies.

Making changes to a brand can be an effective way to fight imitators, but it must be remembered that adverse consequences may arise because of it. Introducing changes to the brand may cause consumers to stop recognizing it and its owner will lose the capital invested in its construction. There is also a risk that consumers will not accept the brand after the changes. In the case of changes to the brand, it is proposed to use preventive strategies.

## 6. Conclusion

Many empirical studies show that brand orientation has been recognized as having a positive impact on organizational performance (Ghobehei, Sadeghvaziri, Ebrahimi, & Afshar Bakeshloo, 2019) It is equally common knowledge that that having a brand can significantly and positively affect the company's financial results (Urbanek, 2012), and thus its development and survival on the market. Given all the above, the development of dishonest imitation seems to be a particularly unfavourable phenomenon. In addition, it is worth noting that in global terms that the dangers of counterfeiting can significantly threaten not only the brand owner and consumers, but also the countries of brand origin and the countries that are trading partners (Salamacha, 2019).

In order to support brand owners, a brand protection model procedure has been developed which may include the following advantages:

a) universality – the solutions it contains can be used in brands with different characteristics. Brand owners can implement the procedure regardless of: the industry in which the enterprise operates, the size of the enterprise, the number of brands offered, brand value or brand scope (offering products and/or services);

b) completeness – the procedure contains solutions for every possible condition of the brand;

c) practicality – the procedure contains detailed recommendations for the brand owner for each brand condition;

d) optimality – the pros and cons of individual strategies and tools are presented that will allow the brand owner to optimize the level of brand protection.

In addition, to approach holistically the issues discussed, in addition to using the model procedure, it would be worth defining and implementing a brand protection policy.

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## **BUDOWANIE STRATEGII OCHRONY MARKI WE WSPÓŁCZESNYCH PRZEDSIĘBIORSTWACH**

**Streszczenie:** Celem niniejszego artykułu jest przedstawienie kompleksowych rozwiązań w zakresie zabezpieczenia marek przed działaniami nieuczciwych naśladowców. Na wstępie zidentyfikowano elementy marki istotne z punktu widzenia jej ochrony, tj. produkt fizyczny z opakowaniem i/lub usługą, system identyfikacji wizualnej oraz niematerialne („miękkie”) elementy marki. Następnie opisano metody określania stanu ochrony marki. Identyfikacja stanu ochrony marki składa się z diagnozy fazy cyklu życia marki oraz diagnozy stosowanych narzędzi ochrony marki. Przedstawiono metodę badania stanu istniejących i potencjalnych naruszeń w postaci projektu systemu wczesnego ostrzegania przed naśladownictwem. Na koniec zaproponowano modelową procedurę strategii ochrony marki, która zawiera wytyczne dotyczące tworzenia, wyboru i wdrażania strategii – zarówno prewencyjnych, jak i naprawczych.

**Słowa kluczowe:** zarządzanie, strategię zarządzania, zarządzanie marką, ochrona marki.