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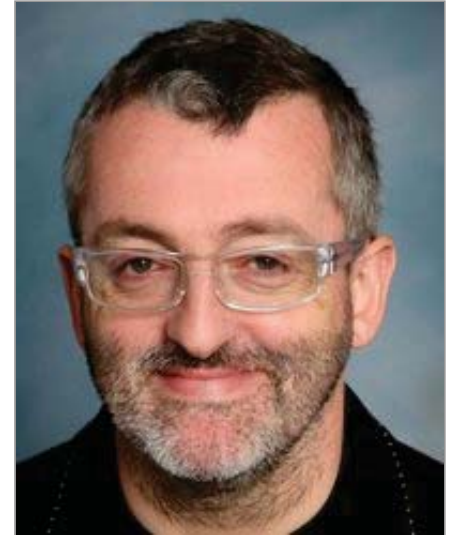


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4 Steps To A Profitable Brand Protection Program

Law360, New York (May 1, 2015, 10:10 AM ET) -- What percentage of your company's 2014 revenue is attributable to its brand protection program? Did your program improve margins? Did it increase market share? If the answer to any of these is "no" or, worse, "I don't know," it may be time to reconsider your program's role within your organization and how you measure its success.

Profits, margins and market share reign supreme in today's competitive business climate, so now is the time to examine whether your anti-counterfeiting and brand protection programs are improving your company's bottom line or dragging it down. A successful program contributes positively to profits. If your program doesn't turn a profit, now is the time to develop a strategy that is crafted to ensure your program delivers a positive return on your company's investment. This article identifies four crucial steps to help counsel and brand protection professionals to transform their brand integrity programs, both in perception and in fact, from cost locations into profit centers.



David Cooper

1. Understand How Intellectual Property Infringement Affects Your Business

The first step to becoming a profit center for your company is to identify and articulate how intellectual property infringement affects your company's bottom line. There is no checklist here; you must carefully analyze your company's products and how various forms of infringement — for example, counterfeiting or trademark infringement — impact manufacturing, distribution, sales, marketing and consumer recognition or confidence. This foundational understanding allows you to design your brand protection strategy to address the problems that truly impact the business with the goal to improve profits. This carefully tailored strategy will, in turn, assist you with convincing C-suite level decision makers to invest in your brand protection program.

Consider counterfeits, for example. The most common roadblock counsel and brand protection managers experience when they seek funding for anti-counterfeiting initiatives is the misperception among leadership that the business either does not have a counterfeit problem or that, if it does, the counterfeit market share is either unknown or too small to warrant increased expenditure on investigations or enforcement. If your company produces popular products, someone, somewhere, is probably counterfeiting them and profiting from that popularity. The misperception that the problem is too small to justify investment in brand protection commonly arises because organizations do not fully understand the financial impact that counterfeits have on the bottom line.

Many organizations fail to recognize the financial impact of intellectual property infringement because the scope of the “problem” is not presented to leadership with sufficient information to allow a truly informed decision. For example, counsel and brand protection professionals frequently — but unintentionally — obscure the risk counterfeits pose to the business by presenting counterfeits as a percentage of market share, not in dollars and cents. For instance, if a business achieves \$5 billion annual revenue and there is a 1 percent counterfeit market share, it is much more compelling to argue that the brand protection program could help the company recoup \$50 million in lost revenue than the 1 percent market share. In order to change the perception that your brand integrity program is a cost of doing business with no return to the company, it is first essential to understand why your organization may be struggling to comprehend how counterfeits affect the business.

There may be several reasons why intellectual property protection is not well socialized within your organization. The simplest is that most employees’ job descriptions do not include brand protection. These employees are not responsible for brand protection and their performance and advancement will not be assessed against the achievements of the program. As such, they have little reason to consider how intellectual property infringement affects the business financially. Internal awareness initiatives can be helpful to educate some of these employees, but the message will not resonate with everyone. The key to raising awareness and changing internal perceptions of the program is to teach the business leaders within the organization how the brand protection function can improve profits and then prove to them that program is improving overall financial performance.

Without a doubt, many employees do have a basic understanding of how intellectual property infringement affects the business. These employees can generally be divided into two subgroups: those who think they know the effects and those who actually know how infringement impacts the company. Those who think they know can be the most challenging to any brand integrity program because their knowledge can be based upon misconceptions and misunderstandings about the origins and severity of the risk. It does not particularly matter whether they overstate or understate the risk either, both can be problematic.

Overstated risk commonly occurs when actual sales are short of target sales in a particular region or country and managers or executives blame counterfeits for declining sales or the failure to achieve target numbers. This knee-jerk reaction is easy to adopt and difficult for senior leaders to refute without proper knowledge and data. Decision makers must be fully aware of counterfeit market share levels in the relevant market and truly understand how they affect revenue at the business unit level. Understated risk is potentially even more serious because it can often lead to underinvestment and misallocation of company resources, both of which can significantly reduce profits.

Both underinvestment and misallocated resources can also magnify the perceived “cost” of your anti-counterfeiting program. But, if you understand which business units are affected by counterfeits and to what degree they are impacted, you are much more prepared to develop and execute a strategy that will address infringement that contributes positively to profitability.

2. Align Your Brand Protection Program With the Business Units it Serves

In order to maximize the profit potential of your brand protection program, you must integrate, communicate, validate and deliver. Start by identifying the business unit(s) with objectives, goals and targets that are furthered by your program. The next task is to determine how to integrate and position the brand protection services to assist those unit(s) to achieve and surpass their targets and revenue goals.

Once you have identified the relevant business units, you can then address funding for the brand protection services. A brand integrity program can be funded in many different ways, some of which are traceable directly to a particular business unit within the company. Regardless of the source of your program's budget, it is common that, at some point, decision makers will look at your program as a "cost location" where the investment in your program is simply a cost of doing business. Justification for the program can sometimes be hollow: "We have to have a brand integrity program to show we are taking the threat seriously and doing something about it." The sentiment behind that statement may not save your program — or your employees — when budgets are being cut. Revenue and its gross-margin component make companies profitable or lead to their demise and it is easy to see how businesses would look to cut brand protection services that lack clear purpose and direction in favor of "investments" in other company programs that promise to generate revenue and increase margin.

An effective brand protection program preempts the difficult, value-add questions entirely by creating an understanding that your brand integrity program improves the company's bottom line because it drives key growth and profitability. The best way to achieve this understanding is to align your program with the business unit it serves so that the program's initiatives can be viewed as tools to drive that unit's profits as opposed to merely "costs of doing business." Only then can you develop a tailored strategy and budget that drive profitability through business-minded brand protection programs and initiatives.

3. Develop a Strategy Geared Toward Return on Investment

Once you understand the risk intellectual property infringement poses to specific business units and the company overall, you should carefully tailor your strategy to address those specific risks and harms. Be sure you comprehend the importance of a well-crafted business strategy at the outset. Strategy is great at telling your team what it will do. But, many managers fail to recognize that their strategy should also define what a team will not do.

It may sound obvious, but the program can be efficient and contribute to revenue generation only if its initiatives are purposefully designed to address the specific harms that detract from profitability. We often hear that brand protection — particularly anti-counterfeiting — is a game of whack-a-mole. It doesn't always have to be that way. Too many programs try to respond to all threats, even those that pose minimal risk, harm or loss to the company. The right intelligence, properly analyzed, can help you focus on the initiatives and enforcement actions that further the program's strategy.

Consider a hypothetical strategy to recoup revenue lost to counterfeit sales. If your intelligence indicates that 85 percent of known counterfeit sales occur through online marketplaces and less than 1 percent of sales take place at local flea markets, it becomes clear that you should not prioritize an initiative to patrol local flea markets instead of monitoring Internet distribution. The "whack a mole" analogy is pervasive and well known, but your program does not need to fall victim to the misperception that anti-counterfeiting initiatives are futile. The key is to identify the moles that undermine your business the most and then target them for a whack that will keep them from reappearing elsewhere. Your time and the company's money will be better spent.

The first step to achieving your program's strategy is to ensure that your team fully understands it. For your team to be efficient, you must educate them about the plan and the initiatives that you want to implement to further the program's overall strategy. You must also educate them about the metrics that will be used to measure the program's success. They should know that if a particular initiative is not part of the plan and does not further the program's strategy, then they should not undertake it. Once this mindset is established within the program, you will increasingly find that your team focuses on value-add initiatives instead of wasting time on futile (or less advantageous) activities.

4. Identify and Apply Appropriate Metrics to Measure Success

Establishing appropriate goals and metrics is critical to analyzing your program's success and to articulating it effectively. Goals will be meaningful only if your program applies the proper metrics to measure achievements against the company's investment.

In order to measure the "success" of completed plan initiatives, you will first need to monetize brand protection "results." For instance, counterfeits seized and products protected have a value to the company. So too do raid actions that shut down counterfeit distribution networks. But, assigning value to these successes is purely subjective, so the best practice is to communicate with the relevant business unit at the outset to obtain agreement as to the values your program should use in its metrics. The unit's buy-in is essential to create the proper alignment with the brand protection program and to demonstrate to the business unit that you understand its business and seek to improve it. The unit's buy-in also allows its managers and executives to trust your program's values, view its metrics as transparent and support brand protection's contributions to the organization.

As your brand protection program develops, pay special attention to building a culture of communication and transparency. Review the program's performance against the strategic plan weekly and know the numbers by heart. Metrics are important because they provide tangible evidence of what has occurred and they validate the program. If you can articulate your program's success in relevant, revenue-based terms, you are more likely to change the misperception that the brand protection program is merely a necessary cost to the organization and to demonstrate the value it adds to the business. The likelihood of successfully changing perception increases if you only pursue plan initiatives or objectives that, on balance, contribute positively to revenue. It is also imperative that you maintain a regular dialogue with decision makers within the business unit about the program's strategic successes and contributions.

With these foundations in place, you can start to consider your program's real effect on the market place. There is no one-size-fits-all approach, but with the correct, carefully tailored strategy, strategic plan, reporting regime and investment you could achieve a program with demonstrated return on investment as high as 10-to-1 in some cases. When implemented correctly, it is unnecessary to include affirmative, monetary recoveries — for instance from restitution awards or settlements — in the figures because it is possible to achieve these numbers based simply upon seizures and market impact. Most importantly, the numbers must stand up to hard scrutiny.

Conclusion

To be truly successful, a brand protection leader must be a profit and loss manager just like all the other business unit leaders and managers within the organization. When you can articulate a clear strategy, demonstrate how you are performing pursuant to a strategic plan, and can deliver and prove a quantifiable benefit to the business's bottom line, you are more likely to transform the perception that your program is a cost location to one where it is a valued profit center working directly to improve the bottom line and secure increased investment in your brand protection program.

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