

# The 'No logo' trend

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*No Logo* is, of course, the name of Naomi Klein's best-selling book, a book in which she has a bit of a go at global brands. By all accounts, it's also the name of a new trend in branding.

In an article that appeared in *World Trademark Review* on 12 October 2012, the author, Jack Ellis, discusses the seemingly absurd fact that some companies are starting to sell their products without logos or other branding. He mentions Louis Vuitton as an example: the company is apparently selling a new line of clothing without a logo. Another luxury goods company mentioned is the leather goods manufacturer, Bottega Veneta, which has been selling *sans* logo for some time.

So why would any company do something that is so counter intuitive? We have, after all, been brought up to believe that the trademark is the sign by which consumers identify goods, the sign that they use to guide them when they want to buy more of the same. Well the reasoning's not that easy to follow, but it goes something like this: the Chinese - who are, of course, the main buyers of luxury goods these days - are moving on to that post-*nouveau riche* stage, when quality become more important than flash.

## The China syndrome

An increasing number of Chinese consumers, it seems, still want high-quality luxury products, but they don't want big name brands, which they see as being brash and overstated. These consumers have therefore started buying products from equally good, but lesser-known, designers. The big luxury goods manufacturers have responded to this trend by selling unbranded products, the suggestion apparently being that their brands are so cool or so well known that they don't need anything as mundane as a name or logo.

In a totally unrelated development, Chinese computer manufacturer, Lenovo - which has acquired IBM's ThinkPad trademark - is considering dropping the Lenovo trademark from the ThinkPad product because it believes that many consumers regard Chinese brands as being synonymous with low end, mass-produced products. The company therefore thinks that keeping its name off the product will avoid reputational damage to its new brand.

## The legal implications

Psychologists would, of course, have a field day with all this. But what are the legal implications of selling unbranded goods? How, for example, do you deal with counterfeits? It goes without saying that if your product has no branding on it, you cannot rely on trademark law to stop copycat products. Yes you may be able to rely on design law if you have a design registration for the actual product, or even common law rights if the look-and-feel of the product is closely associated with you, but cases like this are unusual. Yet the author of the article claims that the lack of a brand name or logo is not a problem when it comes to luxury goods. Why?

Well, he argues, although names and logos can be easily copied, the one thing that the counterfeiter can't replicate is the high quality of the product. But what if the punter isn't even that worried about the quality of the product, and simply wants the exclusive brand name or logo? Not a problem says the author, if the original product doesn't feature the name or logo, the copycat product can't do so either. Say Ellis: "I don't think that removing logos from the outside of products will necessarily make counterfeiting easier. In fact, it may actually deter counterfeiters, as often people who buy counterfeits do so to be able to show they have a product by that brand." In any event, argues Ellis further, companies who sell unbranded goods are still likely to use subtle forms of branding - think internal branding in the lining, or accompanying branding like guarantee cards. Counterfeiters apparently find this kind of branding very difficult to copy.

## And if you *don't* use a trademark?

The article also deals with another legal implication which relates to the non-use of trademarks. As many of you will know, the law in most countries is that if you don't use a registered trademark for a continuous period of five years the registration can be cancelled. But this is unlikely to be a real problem in cases where a company simply reduces the use of its brand name or logo, because the limited use will still be use of the trademark. In any event, if the company does follow the route of subtle internal or accompanying branding, this will probably count as use of the trademark. And if the company does, in fact, cease all use of its brand name or logo, well then it probably won't be too concerned if it loses its trademark rights!

Another legal consequence is that the scaling down of the use of the brand name or logo may result in a reduction in the brand's reputation. This could be important, because trademark law gives extra protection to a registered trademark with a reputation - this is the controversial protection against dilution, as opposed to the protection that all trademarks have against consumer confusion. If a well known trademark loses its reputation somewhat, it may conceivably lose this form of protection. On top of that, the common law action of passing off is only available to trademarks that have acquired a reputation or goodwill through extensive use.

I'm not convinced that the no logo trend is going to take off in a big way. But if you are considering taking this route, I would suggest that you consider the legal consequences before doing so.

## ABOUT ILSE DU PLESSIS

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