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### Marketing to the Senses

*Whether it's the Intel peal or the roar of MGM's lion, an onslaught on the senses can push your product to the forefront.*

Generally, words and logos are used for the trademarking of goods and services. However, these days touch, smell, sound and other non-visual senses open up new vistas in trademarking. These senses can gain potent associations with products and services.

Though visual trademarks have been de rigueur since the establishment of trademark laws, occasionally we also come across trademarks directed towards senses like shapes, sight, sound and smell. The television channel NBC has trademarked the sound of a chime to signify a station break, while the smell of cut grass has been registered for tennis balls in the European Union and a California company has trademarked a floral scent for a knitting yarn.

Non-traditional trademarks generally gain public acceptance by being associated with the product or service over a period of time before they get legal protection. For example, take the fluted and bulging shape of the Coca-Cola bottle. It has been around since 1915, but did not get registered as a trademark until 1960. Though the movement in the direction of non-traditional trademarking has been slow, the possibilities of harnessing this largely unexplored area are great.

#### **The power of the senses**

Sensual encounters with brands can have a powerful effect on consumers. According to trademark attorney Daniel Schloss, non-traditional marks can serve as powerful tools for conveying emotions and ideas underlying a brand if they are used in a clever and informative way. For example, a sound mark for dishwashing products owned by Unilever, which is described as "*a squeak produced by the friction of thumb or forefinger on dishware*" implies that by using the product your dishes will be squeaky clean. According to Nobel scientist Ivan Pavlov, research shows that trademarks that are sound driven may even be superior to trademarks that are word driven.

#### **Fun and fame along the way!**

Non-conventional marks can also be funny and entertaining. For instance, the Minnesota State Lottery is trying to register the funny sound of a wild loon to advertise its lottery services on radio and television. Non-traditional marks can also become famous. Even if your eyes are not on the television screen, you won't confuse MGM's trademark lion's roar with one on the Discovery channel or National Geographic. Time Warner's famous Merrie Melodies theme, which enjoys a trademark protection, has established its reputation as suitable for children's viewing, having been used with Looney Toons cartoon series for a long time.

#### **Communicating the exact sense can be difficult**

## TenStep Supplemental Paper

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In spite of the limitless possibilities of non-traditional trademarks, the pace has not picked up and registrations are few. There are some inherent difficulties in trademarking non-visual senses.

One major hurdle is the requirement for graphic representation of the trademark. Initially, when the US trademark law was established, a clear drawing of the design had to be provided for registration. This was an impediment to the registration of non-visual marks, which could not be easily represented on paper. The European Court of Justice too allows non-visual marks to be registered in principle, but again the requirement of graphic representation becomes a barrier. The laws have now been relaxed to a certain extent so that sound and scent marks do not have to be accompanied by a drawing.

The difficulty of trying to prove distinctiveness in sound is witnessed in Harley-Davidson's attempt to register its engine sound, which it considers distinctive, to prevent rivals from mimicking it. Some riders claim the engine sounds as if it's saying 'potato, potato, potato' while some describe the sound as two long vrooms followed by four short vrooms and others hear a low, guttural growl. Rival companies, including Suzuki and Kawasaki, questioned the claim by saying that all engines sound pretty much the same, and after six years of legal proceedings, Harley-Davidson finally gave up the attempt.

In the case of scents, they can be registered only if they do not have any functional purpose. Therefore, fragrances for perfumes cannot be registered. There are unresolved issues related to trademarking colors as well. The European Court of Justice has noted that although color can be recorded on some media in a permanent form, in some media like paper, shades of color change over a period of time and cannot be permanent. Owens-Corning failed in its initial attempts to trademark the color pink for its fibrous glass insulation, although it was eventually successful.

### **Technology to the rescue**

Like the trademarking of sound and color, computer technology can probably facilitate and give a boost to registration through digital coding. Cell phones and the Internet too could be explored as platforms for sound marks. In fact, technology is opening up new possibilities for using non-traditional marks. Cell phones are powered on and off with vibration and sounds. Banner ads on the Internet could very well intrude in the form of sound marks.

### **Summary**

Non-conventional trademarks, if used imaginatively, can open up immense possibilities. In spite of the obvious hurdles, with the continuing improvements in technology there is likely to be an upswing in their use mainly led by the larger companies with bigger advertising budgets. Marketing will then literally become sensational!