

WTR™ CONNECT



CONNECTING GLOBAL TRADEMARK LEADERS

When brands get political: A masterclass on the IP advisor's role

Last week, HLK partner [Jason Dainty](#) chaired an online masterclass on managing brands through political movements, and the role of legal advisors in advising brands on engagement with social and political issues.

The masterclass, organised as part of the World Trademark Review's [WTR Connect event series](#), featured Sharon Armstrong, Senior Global Trademark Counsel at Align Technology (INVISALIGN), Sharon Sorkin, Chief Trademark Counsel at Ford Motor Company, and Ugreson Maistry, Trademark and IP Counsel for the Forest Stewardship Council (FSC) as speakers.

The speakers were first asked to consider whether brands should take a public stand on political and social issues, or should they, or can they, stay silent.

Ugreson Maistry answered that it depends on the company and industry. He pointed out that for organisations like the FSC, which allows third parties to apply its certification marks if their products meet FSC sustainability standards, the choice is often made for them. Companies that certify that products meet a certain standard have a responsibility to engage with products that falsely claim to meet those standards, and in the FSC's case these are usually products from less sustainable sources. What is more, as a membership organisation, the FSC also has a responsibility to its members to uphold the standards of its certification mark.

Sharon Armstrong pointed out that it can depend on the particular social or political issue. However, the question of what is a political or social issue can evolve, as demonstrated during the COVID-19 pandemic when respirators and personal protective equipment (PPE) became hot political issues where previously they were not. Armstrong added that location also plays a part, as an issue such as same-sex marriage may be "political" in some parts of the world, but is not controversial in places such as the Bay Area, California. As a result, many Bay Area companies publicly advocate support for same-sex marriage, but the same is not true in other parts of the USA or world.

Sharon Sorkin highlighted that authenticity is key when any company chooses to address a political or social issue. If its actions appear inauthentic it could hurt the company's credibility and damage its goodwill. As a result, all the speakers agreed that it is important for IP legal advisors, as "keepers" of a company's goodwill, to be at the table for discussions on brand involvement in social issues.

What happens when political movements use a brand without permission?

The speakers advocated for a co-operative approach between teams to give companies more tools to deal with any unwanted use of their brand, allowing them to choose between the PR response of a public statement, or a legal response such as a social media takedown. The speakers pointed out though that even legal actions can be a form of PR, for example if a cease and desist letter is published online or a social media takedown is publicised, so these decisions should be taken carefully. In addition, companies should be aware of ongoing public perception of their actions – if they only take action against unauthorised use of their brand by undesirable groups and allow unauthorised use by others because it is funny and generating buzz for the company, then they could lose credibility as a result, or even be prevented from enforcing their brand.

An audience member cited recent examples of brands such as Eskimo Pies, and Uncle Bens, changing their branding in response to social media complaints, and asked how brands gauge when online complaints are important, and when they may be a small group of voices being amplified online. Sorkin explained that PR teams look at social media metrics and tracking so can see better than the average consumer when an issue has really gone viral. She added that a change may in fact have been in the works for a while, and companies may just choose a social media flurry as the opportune moment to announce a rebrand, as it probably won't hurt sales but may build authenticity.

The speakers were also asked whether brands should use social media to address IP infringement issues rather than a legal enforcement approach. Sorkin said that generally she prefers enforcement to be quiet. Armstrong recalled a beer company that gave infringers tickets to a sports event, and thereby generated lots of positive press for themselves. She pointed out that companies with lots of financial resources and a dedicated PR team can pull off this approach, which can be a win-win from both a Legal and PR perspective, but these stunts are probably not possible for smaller companies without the same resources.

This masterclass proved a wonderful opportunity to discuss a fascinating topic, one that is only going to become more important both to IP legal advisors and companies in general as consumers engage ever more actively with brands through social media, and expect the companies they buy from to speak out and take action on the issues of the day.

If you would like to discuss this topic with Jason, then please get in touch with the details below.



Jason Dainty

Partner

jdainty@hlk-ip.com

+44 (0) 113 393 1921