

Covering Your Assets

The Scoop on What a SoCal Pet Company Does to Protect Its Brands

Interviewer Samantha McDermott spoke with Brad Armistead, Vice President of Marketing and Innovation at DOGSWELL®, and Thomas Speiss III, Shareholder and Trademark Attorney at Stradling Yocca Carlson & Rauth about the measures they take to secure and protect the company's brands.

McDermott: What are the first steps a company needs to take to secure a new brand in the marketplace?

Tom Speiss/Stradling: In my experience, from a trademark perspective, the company marketing department and their counsel should communicate as soon as possible in the name selection process, so that counsel can clear the desired brand name for both Federal registration and use in commerce. This way, the company does not incur any unnecessary costs related to brand development, such as, for starters, marketing name selection surveys, creation of product packaging and marketing collateral, meetings with key accounts where the name is introduced to that account. Therefore, from both a cost and brand identity prospective, I recommend clearing the name as soon as possible.

Brad Armistead/DOGSWELL®: At DOGSWELL®, our branding is critically important to our success. We are known as the fun, edgy, natural pet treat and food company with the bright packaging and brand names, such as Happy Hips®, Vitality®, Mellow Mut® and Jerky Bars™. In just the past several months, we've redesigned our packaging and launched, or are in the process of launching, several new brands and brand extensions such as LiveFree™ and Solos™. While we had several other product names on the drawing board, these resonated best with consumers and we worked with our trademark counsel to ensure that they cleared before we began using them in the marketplace and with our accounts, such as, pet specialty and grocery stores.



McDermott: When it comes to securing a new trademark at DOGSWELL®, at what stage do you make sure the brand you are contemplating is available to use?

Brad Armistead/DOGSWELL®: While DOGSWELL® has been marketing and selling pet treats and pet food for almost a decade, we still function as an entrepreneurial start-up in the pet treat and pet food space. Therefore, it is immediate. We have been in innovation and product development meetings and, right there in the meeting, we reach out to our trademark counsel to initially clear the names. As a company that prides itself on being nimble, we want to move onto and off of — if that's what is necessary — a potential new product name as soon as possible, before we begin to identify the product with the brand name.

Tom Speiss/Stradling: I try and clear the brand names as quickly as possible. We've worked together since the beginning of the company, when I was a colleague of the founder in the MBA program at USC. The mantra was: "We're moving quickly, we need immediate responsiveness, we'll work together, and it will be great." And we've followed that shared goal since the beginning, and it has worked.

McDermott: When it comes to protecting its brands, DOGSWELL® pursues both defensive and offensive strategies. Why is this so important?

Tom Speiss/Stradling: For any company that markets and sells consumer brands, it is absolutely essential that the company has the legally recognized ability to market and sell its brands — whether it's apparel, surf boards, skateboards, or pet treats — anywhere in the world where it wants to market and sell its brands. This is the absolute foundation for any brand-based company.

Then, once this foundation is established, the brand owner may and can then look to stop others from using identical or substantially similar brand names to benefit from the consumer goodwill, trust and marketplace recognition of your brand in the marketplace — to market and sell their own goods.

I vigorously protect my clients' rights to market and sell their brands, and when a business decision is made to stop others from infringing upon these rights, we go on offense.

Brad Armistead/DOGSWELL®: As an emerging growth company, our market share means everything. We must have the right and ability to sell our brands in the markets where we have made the strategic decision to market and sell our brands, such as the United States, Canada, Europe, Brazil, and Mexico. Having our intellectual property buttoned-up gives us the right to do this. Then, because our house — our defense — is in order, we can make the decision to stop infringement of our brands knowing that we have the right and ability to do so.

McDermott: I understand there's a saying at DOGSWELL® that "every business dispute is a marketing opportunity." How do you guys work together to make this happen?

Brad Armistead/DOGSWELL®: As part of our decision-making process, we look at branding or trademark disputes as an extension of the marketing department. We work closely to draft the dispute or cease and desist letter, with an eye toward working with our business competitors to peacefully end disputes. Several years ago, with one of our competitors, while we aggressively pursued a resolution of a dispute, we looked at it as an opportunity to work with this company to jointly cooperate to police the pet treat and pet food marketplace for trademark infringement that would harm them or us. Twice since then, we have identified infringers to each other and have worked together to successfully end the infringement. On a different occasion, we looked at the dispute as an opportunity to meet with one of our distributors that was marketing and selling the infringing goods, and offered them an exclusive deal, so that we could have more shelf space and they would stop carrying the infringing goods.

Tom Speiss/Stradling: Before becoming an attorney, I worked in publicity for a record company and as a news reporter in Orange County — my stories appeared in the Orange Coast Daily Pilot, the Huntington Beach Independent and the Orange Independent — this experience taught me to look at every situation as an opportunity to communicate my clients' message and brand identity to the public, which includes my clients' direct competitors. Not only do I want them to stop infringing my clients' goods, I want them to look at us as a good corporate actor — with a great brand and message — and as a potential business partner. For DOGSWELL®, I want the recipients of the communication to think, "You know, these guys are cool, we should stop . . . and, who knows, maybe they'd be a great business partner."

McDermott: What advice would you give to another executive who is contemplating a new brand for the first time?

Brad Armistead/DOGSWELL®: The brand name selection process is a very cool, fun, innovative process. Enjoy it. That said, be careful not to get caught up in a name before it is properly cleared.

Tom Speiss/Stradling: I love marketing, I love innovation, and I love strategy. I suggest the following decision tree: (1) before selecting a name, select the countries: ask yourselves "in what countries do we want to market and sell our brands" — even pull out a MONOPOLY® board, and use Post-Its® for country names, making Boardwalk and Park Place your top market, and so on; then, (2) try to think of one singular brand name that will work in all of these markets; and then (3) once you have a few ideas and there is consensus in the room on a hierarchy of potential names, immediately have the potential brand names cleared for use in commerce and for potential trademark registration.



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