



samuriwo attorneys

*Imagine. Inspire. Grow*

**Intellectual Property (IP)  
and its relevance to the  
Insurance  
Industry**

# DEFINITION OF IP

## Industrial Property - Registrable

- Patents - new inventions that are capable of being used or applied in industry or agriculture
- Industrial designs - protectable aesthetic and/or functional creations
- Plant Breeders' Rights - protectable new plant varieties
- **Trade marks/Trademarks** - marks which distinguish the goods (products) or services of one trader from those of others.
- **Communication tools:**
- a) badge of origin and;
- b) symbol of uniformity and quality, standardization

## Copyright - Unregistrable

- Literary and artistic works - e.g.
- Drawings
- Written works - business strategies, training manuals, standard operating procedures etc.
- Creative quality not material
- Protects forms of expression, NOT ideas.
- Actionable wrong, substantial, slavish copying, not inspiration.

# DEFINITION OF IP 'CONTD'

## TRADE SECRETS



- The Coca-Cola formula - famously protected by trade secrets.
- Restaurants - 'secret sauces' 'secret spice mixes' - KFC.

# LIMITATIONS

Due to time constraints the IP focal areas of this presentation will be limited to:

- trade marks; and
- trade secrets
- Focal point – how the insurance industry CAN? - MUST? - leverage on these tools of trade.

# Making effective use of IP tools in the insurance industry

- Effectiveness/efficacy - derives from how these tools can be used to address meaningfully the specific needs of the insurance industry.
- Needs assessment - derived from an understanding of the product-to-market needs of businesses in this industry.
- Therefore - need for a landscape evaluation of the industry from an IP perspective, which now follows.

Summary of the product-to-market issues facing the insurance industry in general and the Zimbabwean industry specifically.

## **“DEMANDING MARKET SPACE”**

(or like New York ... the ‘concrete jungle where dreams are made of...)

IP tools are essential for the establishment, growth and maintenance of **MARKET** and **MARKET POWER** - simple definitions of these concepts employed for this presentation.

**DEMANDS** - these derive from:

1. **Competition** - product quality, diversification and pricing.
2. **Operating framework** - effect of prevailing economic factors - appetite for assumption of risk greater?



# DEMANDS 'CONTD'

**3. E-Commerce** - rolling with the good and the bad inherent in this relatively new frontier and in an era of disruptions in relation to most traditional ways of doing business.

## **Concerns:**

**a) of infringing,**

**b) being infringed** - the

dynamics of asserting rights whilst at the same time being responsible for acknowledging and respecting third party rights; and

**c) Managing and '*sweating*' information**  
generated from websites for strategy planning  
purposes - the need for convergence in respect  
of IP, business and marketing strategy planning.

# DEMANDS 'CONTD'

**4. Consumers needs**, actual and potential needs - need to address both needs informs strategy - which must be forward and outward looking business strategy.

## **Consumer needs - characteristics:-**

- increasingly **sophisticated**,
- constantly **evolving**,
- **spoilt for choice** - existence of comparable alternatives and/or (cumulative and disjunctive) - substitutes.

# DEMANDS 'CONTD'

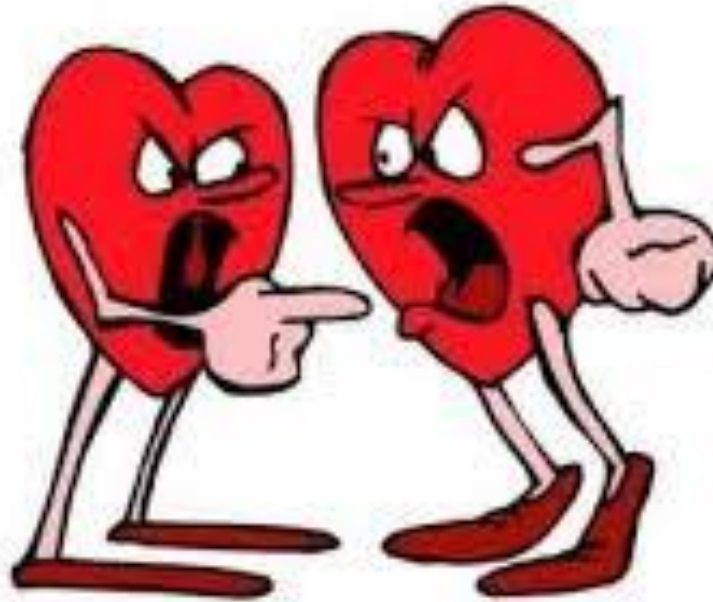
**5. Shareholder expectations** - increase profitability/return on investment - grow market and market dominance:

*“ A business enterprise has two basic functions: ‘marketing’ and ‘innovation’. The rest are costs.”*

*Peter Drucker*

# Purpose of IP tools

I love you more!!!



No, I love you more!!!

# **Purpose of IP in conjunction with competition law**

- Create a level playing field for fair inter-brand competition with the ultimate aim of protecting consumers.
- Establishes basic rules for the assertion of own rights, engagement with third party rights and regulation of behavior in the marketplace.

# MY TAKE

- **In the madness that market competition is - the rudimentary aim of IP tools should be to assist businesses in changing consumer perspectives in far as practicable from “I WANT” to “I NEED”.**
- **Aim: Customers must place a demand for your products NOT as an alternative or a substitute but as a PRIMARY need.... “when only the best in the beginning will do”.**

*Always*

*Coca Cola*



pepsi



# RELEVANCE OF IP TO THE INSURANCE INDUSTRY

- IP strategies are essential and have a cross-cutting effect in modern businesses including the insurance industry specifically in these areas:

## **Product/ service differentiation when:**

- **Starting** a new enterprise.
- **Selecting/creating** a suitable name or logo for a new product/service or subsidiary business enterprise.
- **Entering** a new market or launching a new product/service or entering into a new business relationship with another company, supplier, R&D institute etc.
- **Exit planning** - mergers and acquisitions (M&As), insolvency, closing a business line etc.

# Relevance of IP 'Contd'

- **Informs business policy and strategy when:**
- **Hiring of new employees** - safeguarding the business from the information that they bring and safeguarding the business' interests in the information to which the new employees will be exposed to.
- **Termination of employee relationships** - safeguarding information gained and separating that from "experience" earned - where do YOU draw the line?
- Confidentiality agreements/ trade secrets and contract law interventions.

# Relevance of IP 'Contd'

## **Business and policy strategy 'contd'.**

- **Informs and guides when engaging in venture and other capital raising initiatives** - how much of the business to disclose - and other third party commercial engagements.

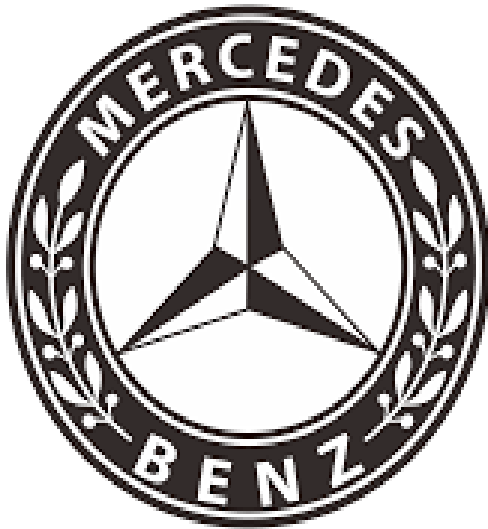
# Management of market dynamics through trade marks



- In a crowded market space competitors must go on an all out warfare against each other. Therefore know your battlefield and make effective use of your armoury in the battlefield.



# Trade Marks and Product Differentiation



- Badge of origin.
- Promise of quality/standardization of quality.
- Differentiation through distinctiveness.

# Trade Marks - Key Performance Indicators (KPIs).

- **An effective trade mark must:**
- Provide a **unique selling proposition** for a new product.
- Establish a **unique identity**.
- **Develop trust, confidence and loyalty to your business** and products from those of competitors.

# Trade Marks – KPIs ‘contd’

- **Be versatile** - be able to stretch to suit a variety of goods/services and maintain relevance in a fast-paced market.
- **Evolutionary** must assist consumers to evolve from **interesting - preferred - to must have.**
- Establish a reputation or image....
- **Ummmm... what reputation/image? Intentional and calculated or an inadvertent spin off from existence?**



# Trade marks - practical examples:

NIKE: Distinctive, unique selling proposition -  
evolutionary



Trade Mark KIPs 'contd':  
INNOXA - classic use of a tag line /pay-  
off line



INNOXA  
FIRST DO NO HARM

The logo for INNOXA features the brand name in a large, bold, sans-serif font. Below it, the tagline "FIRST DO NO HARM" is written in a smaller, all-caps, sans-serif font. The entire logo is centered on the page.

**INNOXA**

FIRST DO NO HARM

**SATIN SHEEN**



**NATURAL FINISH  
MAKEUP**

Allergy Tested.  
100% Fragrance Free.

**sandstone**

40mL e 1.3 fl. oz

# Trade Mark KIPs - Intended controversy

fcuk<sup>®</sup>

FRENCH CONNECTION



- The fashion retail group, French Connection Limited saw it right to register its FCUK trade mark in the UK - rejected - May 2005.
- Phonetically and visually identical to the swear word "f\*\*k" and therefore fell within Section 3(3)(a) of the UK Trade Marks Act, 1994 for unregistrable trade marks.
- May 2006 - Appealed - rejected same reason as above.
- Further appeal: “the controversial trade mark "FCUK" ... not ‘contrary to ... accepted principles of morality’ under Section 3(3)(a) of the Trade Marks Act 1994.

Appeal upheld. Trade Mark registered. Costs incurred. Attention gained too.

**- Controversy sales? To what extent would YOU, as a significant decision maker stretch your business trade mark to make similar ‘identifiable noise’ in the market?**

# Trade Mark KIPs 'contd' – Intended controversy



# FLIPSIDE – UNINTENDED CONTROVERSY/ATTENTION TO A TRADE MARK

- The role played by Nando's as a social commentator:



# Nando's as a social commentator

- ***“Nando's has always celebrated everything uniquely ... African, both loveable and challenging! We love to fire-up conversations and believe that talking about the current hyperbolic portrayal of African-ness is one such growing conversation.”***
- Doug Place, Nando's South Africa CMO





# Africanacity

/ 'afrɪk(ə)nəsɪti/

*noun*

"The distinctly African ability to always find ways to **get things done.**"

# Nando's versus absa...

- Is Africanacity = African - Nasti?
- ***“The diversity and beauty of Africa should be rightly celebrated; however, the portrayals in recent advertising are often bizarrely over the top and seemingly the same between brands and categories... (over-use of) face paint, neon lights, a certain new financial industry logo, burning TVs, overused and superfluous hashtags, bizarre metaphors, smoke bombs, the ‘announcer’ voice, the ubiquitous inner-city backdrop, a Mad-Max inspired throne, and even a hyena feature... There’s so much more to being South African ...and we thought it would be fun to point out some of the absurdities of it all.”***
- Doug Place – Nando's

**Trade marks: #ParodyandFreedom-of-Speech  
(sufficiently Africanacitized?)**

Are you safe and how thick should your skin be in the market space?



# IS IT A LAUGHING MATTER?

## SABMiller

- **“Carling BLACK LABEL enjoyed by men around the world”**
- **“America’s lusty, lively beer.”**
- **SABMiller - Parody - detrimental harm to the mark and its reputation - not funny!**

## LAUGH IT OFF PROMOTIONS CC

- **Black Labour/White guilt**
- **‘Africa’s lusty, lively exploitation since 1652’ and ‘No regard given worldwide’.**
- **Laugh It Off - LAUGH IT OFF!!**
- **Ruling SCA - either be thick skinned and throw shade back or laugh it off.**

# Trade Mark KIPs – Versatility is it necessary? A fact-based consideration



*We light your way to final Destiny*





Sahwira Mukuru  
Umngane Omkhulu



# TAKE AWAYS FROM THE ABOVE

**In the market fame and fortune abound**

- **In the market a measure of grace abounds.**
  - **Are you willing to join them?**
- as do friends and foes
  - - as do pigs who love to play in the mud and would want you to join them.
  - Think now about the pigs before they become a reality. Think carefully about the formulation of your trade mark and its role in and brand positioning **BEFORE** you take products to the market.

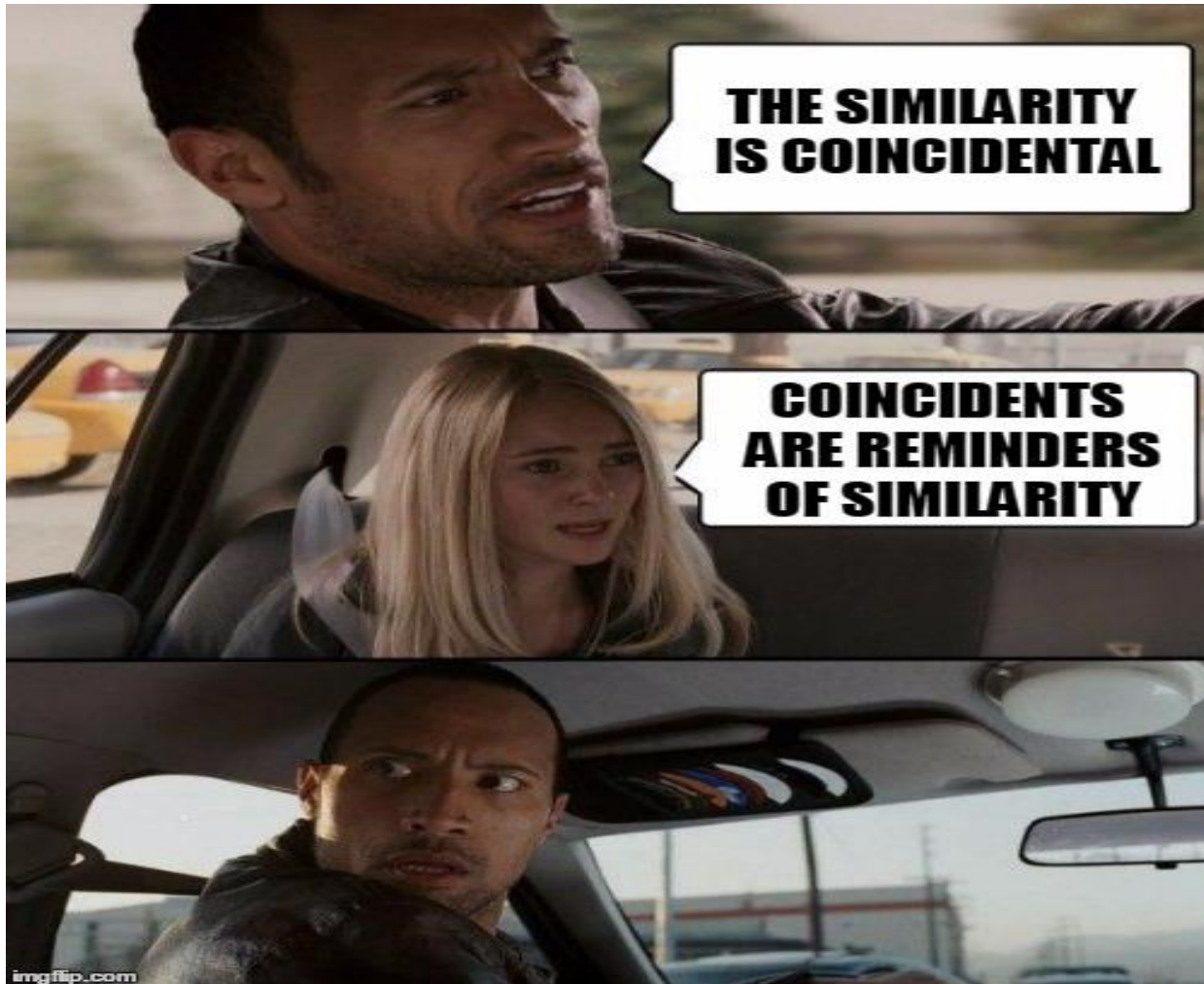
# ROADMAP FOR TRADE MARK PROTECTION

1. **CREATE/SECURE A TRADE MARK**
2. **CHECK FOR AVAILABILITY**
3. **APPLY FOR/SECURE THE REGISTRATION OF THE TRADE MARK**
4. **REVIEW AND MAINTAIN AS FREQUENTLY AS NECESSARY**
5. **Consider the “WIFE” (not WIFI) approach:**
  1. **W-ilful**
  2. **I-ncomparable**
  3. **F-ar-reaching**
  4. **E-ngagement (Inattention for WIFI)**

**MARK, DEFINE and SECURE your territory**



# Trade Mark Availability



# Trade Mark Availability

- **Search** - Trade mark registers - national , regional (ARIPO) and international (Madrid) – appropriate and **strategic** designations:
  - 1) **State** and 2) **Class** designations - must give effect to business and marketing strategies.
- **Consider** - trade mark applications and registrations that may constitute a material block to the registration and/or use of your preferred trade mark.
- **Consider unregistered trade marks** that may constitute legally protected prior rights.

# Trade marks – Availability – contd.

- **Search for conflicting company names** - have the provisions of section 17(1)(b) of the Zimbabwe TMA in mind - trade marks that are confusingly similar to company names and likely to cause confusion or deception in the market place are not registrable.
- **Potentially problematic company names - consider possible disparity** in the relevant market/field of activity. Consider goodwill and reputation, whether established or not.
- **Make use of appropriate searching tools - relevant legal advice** advisable. Establish correct parameters to determine appropriate scope of search.

# Trade marks - Registrability

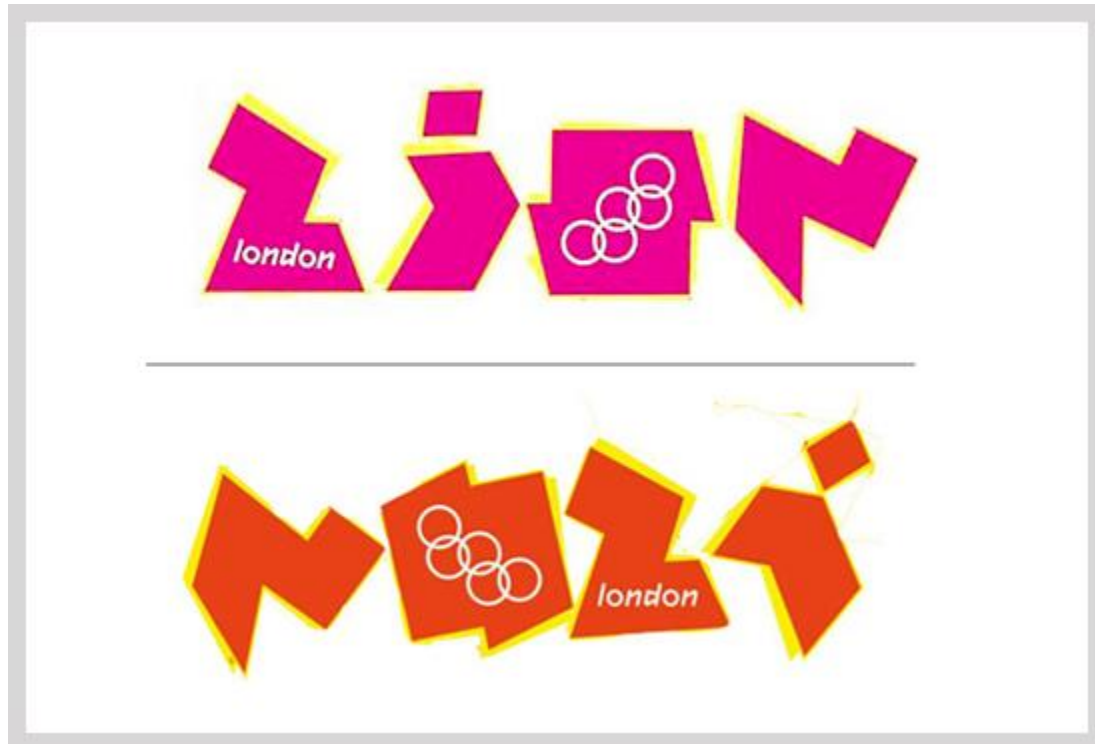
- **Advisable to seek expert advice.**
- **Legal requirements including distinctiveness – what constitutes?**
- **Part A registration – or Part B, C or D – how does this tie in with your international registration/business/marketing strategies?**
- **Which classes and specific goods and/or services to register for - tie in with your international registration/business/marketing strategies?**

# Trade Mark registrability – negative connotations

- **Negative connotations** – jurisdictional, what constitutes – consider local (social, political, religious) nuances in each national/international jurisdiction of interest.
- **The case of Airbnb** - the image of an ‘innocent paperclip’ inverted heart, bell or conveys sexual innuendoes - naughtiness on the rampage?



# Trademarks – negative connotations contd. – The 2012 Olympics logo revisited.



# The 2012 Olympics logo

- **The Republic of Iran:** - threatened to pull out of the games – regarded the logo as **racist** and politically charged claiming it spelled “**ZION**”.
- **Others** argued that the logo was derived from the Nazi symbol and depicted the word “**NAZI**” in addition to elements of the Swastika.
- **Trade marks are susceptible to different interpretation,** have this in mind from the onset of the creative process.

# **Registrability - negative connotations - the challenge of tag lines/pay-off lines and slogans**

- Trade marks of this nature can easily make or break a marketing campaign by either firmly resonating with a market which is intended, or literally flying off the wall!
- The internationalized nature of the current global market makes it critical to formulate a product campaign tag line that is fanciful, unique, interesting and is able to rally consumers across a wide spectrum of demographic, geographic, cultural and social settings towards a product... easier said than done....



# Trade marks - tag lines gone bad...

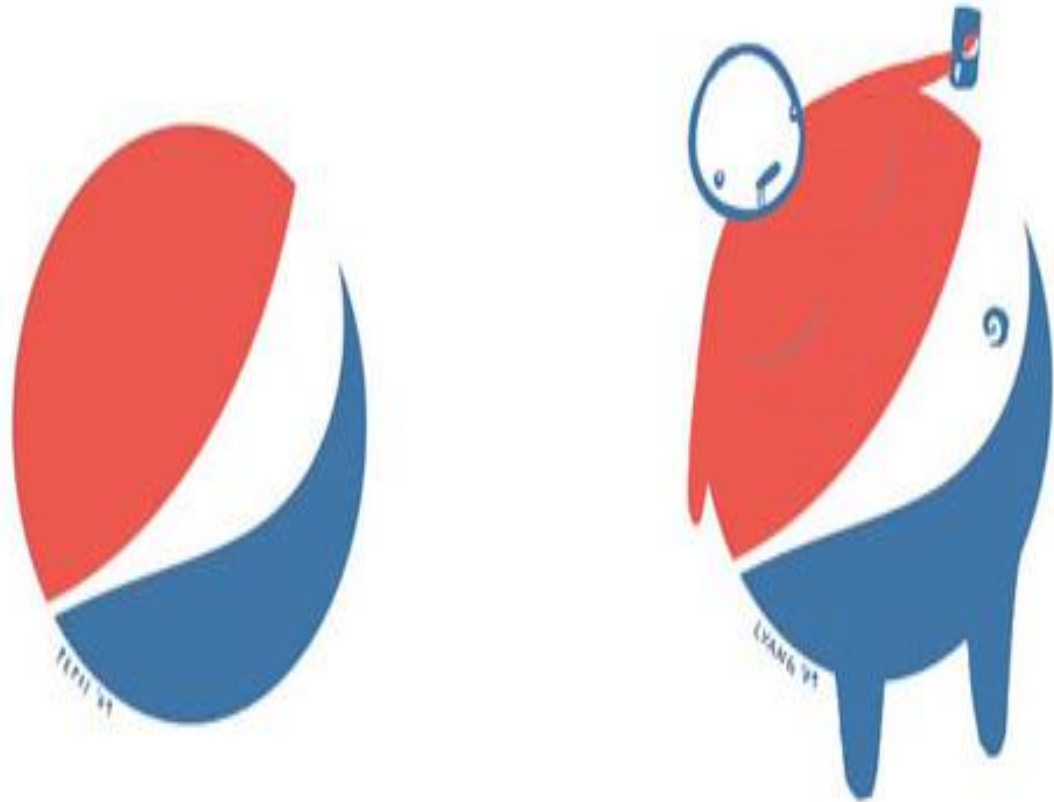
- Tiger Food Brands' popular **FATTIS & MONIS** for pasta – failed to take off in the Nigerian market had to be rebranded for that specific market.
- Pepsi Inc. - Chinese market slogan, “**Pepsi Brings you Back to Life**” - failed to resonate - translated to “**Pepsi Brings Your Ancestors Back from the Grave.**”
- True or false? Should a brand make false claims? Drabble in sensitive issues and make light of life and death? Clearly a case of unintended cultural nuances.

# Tag lines and other trade marks gone bad.

- Ford - **PINTO** - car sales failed to make economic sense in Brazil well... “Pinto” is slang for “tiny male genitals”. Ford had to rebrand to **CORCEL Portuguese for HORSE**.
- Failed under my watch in Zimbabwe - : **DRESS YOUR BOOTY** for denim wear for females and **RUFF RIDER** for a brand of condoms.
- Zimbabwe is by all means a conservative jurisdiction with humour and moral compasses that are more sensitive than other jurisdictions.

# Tag lines and other trade marks gone bad

- **“Schweppes”** - Asia... word difficult to pronounce and write.
- **Close your eyes... can YOU spell it correctly and quickly?**
- Italy - **“Schweppes Tonic Water”** translated to **Schweppes Toilet Water”**.



THIS IS WHAT I THINK WHENEVER I SEE  
ONE OF THE NEW PEPSI ADS. ☺

# Trade Mark lessons contd

- Is obesity what comes to mind when you see the trade PEPSI logo.
- What do YOU think comes to consumers minds first when they refer to your business' mainstay trade mark/brand?
- **(A top of mind (T-o-M) reaction assessment called for.) The ATOM approach.**

# Main aims of IP - and - Competition laws

- Create a level playing field for fair inter-brand competition with the ultimate aim of protecting the welfare needs of consumers.
- Establishes basic rules of assertion of rights, engagement with third party rights and behavior in the marketplace.

# Trade marks – renewals and maintenance

- I recommend that you seek legal advice in respect of these important and fairly complicated topics which involve understanding of jurisdictional timelines and interpretation of “use” requirements, both topics cannot be covered within the time limit available for this presentation.

# FOOD FOR THOUGHT

- Think through:
- **Your corporate business/marketing and IP strategies.** Are they in sync?
- **Your branding tools/armory,** do they make adequate and effective use of IP tools?
- **Your human capital policies** - are employees made aware of IP and how to use and protect it for the benefit of the business and therefore their own benefit?
- Are the policies integrated with IP/business and marketing strategies? Good policies do not operate disjunctively – must be cross-linked so that they ‘speak to each other’.



# “FOOD FOR THOUGHT” contd.

- **Thinking through:**
- Our **method for the creation or selection of trade marks** - is it **systematic** and **systemic** ? If not, then why not? How can YOU improve on this issue for your organization? Covers primary, potential/defensive market? Covers actual, potential and similar goods and services?
- **Social media** and its **ability to influence and affect** our products and consumer acceptance, appreciation and perception of these products. Do you have a feasible **before, during** and **after** social media platforms entry strategy plan in hand?
- **The quality of our products** - both goods and services and our reputation - do they lend us to attack for failing to deliver on our promises; are we vulnerable to criticism, ridicule or attack because of what we have done and/or what we have failed to do...

# Absolution from the market or Absinthe for the mind?



**SOMEDAY**  
i will get served

**Joke** *Diet*  
© lightbluecoffee

# CONCLUSION

- **The Beginning**
- <sup>1</sup>In the beginning God created the heavens and the earth. <sup>2</sup> Now the earth was formless and empty, darkness was over the surface of the deep, and the Spirit of God was hovering over the waters.
- <sup>3</sup> **And God said, “Let there be light,” and there was light.**
- And so will light abide and abound...
- The conclusion/end is as good a place as any to begin from. **Let us hit the ground running with our audits of IP/business plans/strategies as necessary.**

????? & Comments?

THANK YOU

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