

A Thoughtful Approach to Trademarks is Important for Food and Beverage Companies

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Q How do trademarks come into play when a food and beverage company launches?

Patrick Concannon: Protecting the flagship brand generally is the most compelling intellectual property protection need for food and beverage companies. Getting off to a good, “clean” branding start is important because it’s how a company is known in a very crowded marketplace.

Brand identity is not just all about the words that appear in a company or product name, but also the graphics and color scheme on packaging, point-of-sale displays, and at the website. It all comes together to form part of a larger brand that consumers identify and, hopefully, identify with.

Part of the process of launching a brand is ensuring that it is available, which requires trademark research. This process needs to be thorough enough to search for unregistered brands, as potential competitors might not apply to register their marks, in which case they wouldn’t show up in registry searches.

Companies need to have their filings in place and their act together on a brand front for the purposes of satisfying potential investor inquiries and carving out a niche in the marketplace.



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Patrick J. Concannon is a partner in Nutter’s Intellectual Property and Business Departments, with over 20 years of experience devoted to helping businesses establish and protect their brands, including more than 15 years as a practicing trademark attorney. He focuses his practice on U.S. and international trademark clearance, trademark portfolio management and protection, and trademark and copyright licensing.

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Q Why are trademarks important to potential investors and acquirers?

PC: When a potential investor or acquirer is doing due diligence on a business, they want to see that trademark applications are filed for the company name and important product names, and that appropriate domain names are registered.

Investors and acquirers also like to see a story behind the brand and how a founder’s personal background ties into the product because it makes the company more relatable. Conveying a positive, authentic message helps smooth the way to fruitful investor interactions.

Q Why is it important to police a brand?

PC: A company must constantly watch for those who come along and use a brand that’s too similar to their own in relation similar products. There are tools available, such as trademark “watching” services, that can help identify situations that require action. The danger is that if a company allows others to muddy the waters, their trademark could become “weak” or they could lose their trademark.

Q Are there any common missteps that food and beverage companies make?

PC: Yes. It can be tempting to use a word to describe a product that directly tells consumers about the product, but words that directly identify a product, its ingredients, or its benefits generally aren’t protectable as trademarks. For example, “corn flakes” directly and obviously describes what the food is like, and accordingly can’t be trademarked.

Q Does a trademark filed in the United States extend to worldwide protection?

PC: No. Companies need to make cost benefit decisions about whether it’s worthwhile to protect their brands outside the U.S. Many smaller companies only protect in Canada. This decision is a matter of budget and realistic business plans. Each country has their own application process and fees, and most registration need to be renewed every 10 years. So it can get costly, but it is important if you want to do business abroad.