



STRATEGY

Protecting Your Brand Via Social Compliance

By Michael A. Levine

Traditionally, the methods that start-up companies employ to protect their trademarks and brands include trademark registration, anti-counterfeiting and anti-infringement programs, and litigation. Implementing a program to protect the workers who produce the products on which trademarks appear, however, is also a vital component of successful trademark and brand development protection.

Imagine tuning in to "60 Minutes" or "Dateline" and seeing the following headline story: In a remote mountain strait, popular with tourists for its spectacular physical beauty, there is a factory where thousands of underage girls work making consumer products. They work 14-hour days, seven days a week in 100 degree temperatures. The girls endure meager wages with no overtime pay or breaks to eat or use the bathroom, constant verbal abuse by supervisors, and crowded rooms with no windows from which to see sunlight—let alone the beautiful scenery being enjoyed by tourists.

Then comes the news report: "Bad Factory" is the employer responsible for creating these conditions. The factory produces consumer goods for BrightFuture Co. 1, an up-and-coming company whose goods are being manufactured alongside those of its competitors. In this story, the footage shows only BrightFuture's trademarks on its products in the factory and on signs being paraded prominently in the

background by protestors marching outside BrightFuture's corporate offices.

These images are devastating to the brand that BrightFuture has worked to develop so diligently. As a result of the show, BrightFuture's sales drop dramatically and its retail customers cancel pending orders, return completed orders and demand costly chargebacks. Thereafter, BrightFuture is investigated by governmental agencies and is sued by the government and by Bad Factory's workers. By failing to safeguard the workers who manufactured its products, BrightFuture has compromised its trademarks and its brand.

Reasons for Implementing a Compliance Program

Companies implement social compliance efforts for several compelling moral and business reasons. First, articulating and enforcing supplier standards simply may be the "right thing" to do from a moral perspective. Second, by implementing a monitoring program a company will gather more information about its supply chain—something that will help it to protect its marks from counterfeiting and trademark dilution.

The third (and perhaps greatest impetus) for a start-up to adopt a social compliance program: Failing to do so can have a substantially negative impact on a company's public image and, by extension, its business. A brand's image likely will be

shaped not only by its merchandise's quality, but also by advertising and other marketing efforts. In some cases, the brand may owe its popularity or its commercial success less to its product's utility than to the carefully projected lifestyle that consumers associate with its products. Public allegations that the brand's products were made in factories with illegal, unsafe, unhealthy, abusive or exploitative work conditions doubtless would damage the brand and its related good will—things in which the company probably has invested considerable resources. This damage will occur whether the brand made the products directly or allowed (typically under a license agreement) someone else to manufacture them.

The issues addressed by social compliance programs are important to both the start-up's retail customers, to which it acts as a supplier, and the start-up's ultimate customer—the consumer. Start-ups will need to ensure compliance with these standards regardless of whether they, or their subcontractors, make the products sold to the retailer. Established retailers generally are familiar with social compliance programs, and often will require their suppliers to execute written certifications evidencing their compliance with production standards. This may include the start-up's assurance that it has met these standards, that it has inspected its subcontractors to confirm compliance or that it requires that such inspections be conducted regularly. The start-up's sales to the retailer typically will be written up on its retail customer's standard purchase order. Such purchase orders may include terms expressly obligating the start-up to comply with the retailer's production standards and subjecting it to penalties for manufacturing

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goods in substandard conditions.

Consumers likewise will be concerned with a start-up's adoption of and adherence to social compliance programs. According to several published reports and surveys, consumer product purchasers—particularly high school or college students—may be affected by beliefs about the conditions under which products are manufactured. In fact, it has been suggested that many consumers would pay more for an item if they could be assured that it was made under safe, legal and humane working conditions. An increasing number of groups and organizations concerned with social compliance issues are urging consumers to steer clear of products from companies they believe are not sufficiently attentive to or concerned about these issues.

Sample Standards

No company wants to be forced to create a social compliance standard or monitoring program reactively, in response to inquiries by consumers or other parties in the wake of published reports of bad conditions at a production location. Therefore, at the outset, a start-up should develop production standards and obtain commitments from its suppliers to abide by those standards.

Supplier or vendor standards or terms of engagement, also known as "codes of conduct," typically address topics including child labor; forced, prison and convict

labor; work hours and wages; nondiscrimination; freedom of association; and collective bargaining. Some codes also address the concept of a "living wage," which essentially focuses on whether the wage paid provides the worker or the worker's family unit with discretionary income, or merely sustenance. Codes also sometimes address gender-based issues, the environment, corporate ethics, narcotics interdiction and customs compliance.

Codes also meaningfully differ with respect to the manner in which they provide for compliance monitoring, address instances of noncompliance, and disseminate supplier and audit information. Companies may wish to compare their proposed code with the following codes, which address many of the same topics but define some concepts, limit certain practices, and handle monitoring issues and compliance violations differently: the Fair Labor Association's Workplace Code of Conduct, the Social Accountability International's Social Accountability 8000 Standard (SA 8000), the American Apparel Manufacturers Association's Worldwide Responsible Apparel Production (WRAP) Principles, the Workers' Rights Consortium's Code of Conduct, the Clean Clothes Campaign's Code of Conduct and the Ethical Trading Initiative's Base Code of Conduct.

Formulating a Code

To protect its workers effectively, a com-

pany must communicate to its suppliers the standards under which it expects its products to be made, monitor compliance with those standards and address instances of noncompliance.

Here are some tips for a company on how to formulate a strong code of conduct and devise an effective monitoring program:

- (1) The company first must ensure that its code reflects its core values, essential human rights principles and key legal compliance issues;
- (2) The company must carefully evaluate its business operations and those of its suppliers to determine possible areas of conflict or tension between its proposed code and its current practices. The company should not adopt a code or monitoring program it does not believe in or is not prepared to support. Companies that have adopted codes or monitoring programs without being committed to them have been savaged by interest groups and by their own customers;
- (3) The company must be aware of key past, current and emerging social compliance issues and trends and develop means of addressing them;
- (4) The company must be willing to act to ensure compliance with its standards;
- (5) The company must establish a budget for the costs involved in creating a code and enforcing a monitoring program;
- (6) The company must decide who will do the monitoring and how it will address instances of noncompliance;
- (7) Finally, the company must decide what it is prepared to do about noncompliance long before it is faced with an actual compliance problem.

It is important for a company to develop social compliance standards and monitoring programs. These standards should be drafted only with the advice of counsel because of the complexity of the issues involved and the risk posed to a business of by creating an ill conceived standard or program. In addition to providing brand and trademark protection benefits, such standards and programs provide a company with a vehicle to express its values and an opportunity to act as a responsible corporate citizen.

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PROVISION OF THE MONTH

Sample Production Standard Policy Clauses

The following are examples of child labor; health and safety; harassment or abuse; and forced labor provisions from a sample production standard policy.

Child Labor. *BrightFuture's products shall not be made by persons younger than 15 years of age (or 14, if permitted under the law of the country where the products are made) or younger than the age for completing legally required education if such age is higher than 15.*

Health and Safety. *BrightFuture's suppliers shall provide safe and healthy working environments to prevent accidents and injury to health stemming from, connected to, or occurring in the course of work or as a result of the operation of such suppliers' facilities.*

Harassment or Abuse. *BrightFuture's suppliers' employees shall be treated with respect and dignity. No BrightFuture's suppliers' employee shall be subject to physical, sexual, psychological or verbal harassment or abuse.*

Forced Labor. *BrightFuture's suppliers must not use forced labor, whether in the form of prison labor, indentured labor, bonded labor or otherwise to make or to work on BrightFuture's products.*