



LAUDENS

Patent and Trade Mark Attorneys

When it comes to IP, **don't be chicken!**

For those who don't know him, Levi Roots or Keith Graham, came from nowhere to being able to boast the fastest selling product on the shelves at Sainsbury's. Levi used to run a jerk-chicken stand at the Notting Hill Carnival in London. Then, in 2007, he appeared on the popular BBC television programme, Dragons' Den, after being spotted by one of the show's producers at a food festival.

Mr Roots, a musician, gave an attention-grabbing presentation of his sauce, which resulted in him securing £50,000 of funding from two of the Dragons in exchange for 40% of his business. Following that, his rise was nothing short of meteoric.

He now has a business estimated to be worth £55m. There has been some controversy on the way concerning ownership of the recipe, but the case for breach of contract and misuse of confidential information is another story, as they say.

What Intellectual Property did Mr Roots have?

An interesting question. We often hear lawyers and politicians emphasising the importance of good protection of Intellectual Property (IP). In this case, though, there were definitely no patents, no registered trade marks, nor any design rights or copyright to speak of. Yes, there was probably copyright in the labelling, etc., but nothing that would be particularly potent at stopping a competitor when the brand is very young and virtually unknown.

At the time, no doubt, IP protection was not a luxury Mr Roots could afford. But, taking a step back, here we have a £55m business, which started with just a good product, some investment, some good contacts and some slick marketing. Admittedly, the company's products are now covered by a handful of registered trade marks, but you wouldn't really call it a portfolio of IP.

What can we learn from Mr Roots?

Some businesses can reach greatness without being underpinned by IP rights. His business is one of them. As IP lawyers, this might seem like turkeys voting for Christmas, but there is no point lying. It's very easy to toe the line and say that IP protection is always essential and you must have it. In some cases, it just isn't necessary. Assuming you have a good product, what is more important is good contacts, investment and excellent marketing. Mr Roots has shown himself to be very marketable. He goes to great lengths to point out that he, like Richard Branson, is the brand. Typically, it can take a while for a brand to become established and achieve fame. Television can help though and once you are established, there are other reasons why you might want IP protection, e.g. in the form of trade marks.

On the other hand, this turkey will not always vote for Christmas. There are circumstances where IP protection, if not essential, is very helpful at keeping unwanted exploitation of your good idea while it is in its infancy and indeed beyond that, e.g. when you have invented something technical. If one of the above elements were not there, for example the marketing or the investment, what would have stopped the folks at Heinz from bringing out a very similar product? They could, of course, synthesise something now, but Mr Roots' brand is so strong that Heinz would find themselves in a similar position to their own competitors who sell tomato ketchup in direct competition with their Heinz 57 brand.

If you can, and it makes sense, get some IP protection. However, if the IP protection doesn't really give you any practical protection then it's better to spend the money on your marketing budget and get your product out there. You can always apply later to protect your brand, once you have something worth protecting. At the end of the day, it all boils down to a risk assessment: what are the chances of someone ripping me off at this early stage?

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