

## Webinar: “Protection of Brand Reputation”

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### *Philippe Coen*

#### *(i) Union des Fabricants (Unifab)*

- Unifab is an IP protection organisation which promotes and defends IP rights. It was created in France in around 1875 to enable companies to fight against counterfeits and pirated goods, including in the luxury goods and pharmaceutical industries.
- Unifab recorded all IP titles and trademarks until around 1945, when the government established a national IP agency in France. Now, the organisation provides the means and tools for fighting counterfeits, including in online goods and services.

#### *(ii) IP and Brand Reputation*

- There is a need to consider reputation as an important non-material asset of companies. There is also an inherent connection between IP and competition law and a balance between managing exclusive rights and fighting distortions of competition.
- These types of concerns are forefront in the minds of companies as new trends in defrauding consumers and companies proliferate. For example, the counterfeited vaccines currently offered online constitute a large hazard and expose the health of citizens around the world. The fight against counterfeits should not only protect the assets and money of companies but also employment, the physical health of citizens and democracy (for example by preventing tax evasion by illegitimate companies).
- A key method to protect brand reputation is to reduce exposure and/or links to counterfeits. The retail value of counterfeit goods, had they been genuine, seized in the US in 2019 was \$1.5bn, which is a significant loss to the economy. In 2016, Unifab released a report (available at [Unifab.com](http://Unifab.com)) outlining the connections between piracy and counterfeit markets and the financing of terrorism.
- In terms of its advocacy efforts relating to the protection of IP and brand reputation, Unifab is also monitoring the debate surrounding the Digital Services Act, which will impact the UK as a close partner of the EU. The idea is to break down walls between ‘silos’ of law and connect the debate to competition and IP law issues, for example by re-opening the debate about the Copyright Directive enacted in 2019 and the associated uncertainty for stakeholders.

#### *(iii) Protecting Disney’s IP and Brand Reputation*

- Building a brand can be complex and time-consuming and sustaining its reputation can be difficult. Disney started in the 1920s but has gathered several umbrella brands, franchises and IP portfolios to constantly reinvent its self over the years. Examples include Pixar, ESPN, Fox Kids, Marvel and Lucasfilm, where experts have been retained to ensure that new sources of creativity permeate the rest of the group.

- The strengths and powers of the economy are led increasingly by platform companies, rather than content-driven groups like Disney. Strong investment in IP is required to sustain creativity and the attention of consumers.
- IP protection is in danger from progressive erosion by legislation, on the grounds that pop culture should fall into the public domain. However, Mickey Mouse, for example, consists of much iteration; to be creative is not to sit on an asset, continuous effort is required.
- Examples of challenges to Disney's reputation and assets include:
  - a. Finding Nemo – this release prompted complex copyright attacks, including by an author who tried to reinforce the attack by registering clownfish artwork on the cover of a new book as a trade mark.
  - b. Mulan – the live-action release triggered debates and theatre boycotts as the main actress had allegedly promoted the Chinese government's actions against pro-democracy demonstrators in Hong Kong. The film was also heavily pirated.
- To build strong IP is to prepare to be under strong attack, like the Hollywood studio saying: "when there is a hit, there is a writ".

(iv) *The 'Citizenship Role' of Brands*

- Brand reputation can also be protected through the careful selection of investments, including advertisements. For example, companies may choose to avoid exposing their brands on a TV channel that is aggressive and/or politically extreme. This 'follow the money' approach is one way to manage brand reputation in the online and social media world.
- We are also seeing a new stand on responsibility and liability in the context of online commerce and digital platforms. For example, Twitter banning pro-Trump accounts gives rise to questions regarding the brand reputation of Twitter and whether it, as a private company, is in the correct role as judge of this decision.
- Lawyers have a role to play in making a difference, particularly if we are asked by clients to take risks and operate on the edge of legality. Lawyers are regulated by a code of conduct and ethics unlike, for example, marketing, sales, finance or HR departments. While we operate within corporations, we must not forget the role we play in society; there is a 'citizenship role' to protect, not just the reputation of brands, but also reputations more widely through the ethical role we play.

(v) *Respect Zone*

- Respect Zone ([respectzone.org/en/](https://respectzone.org/en/)) is an anti-bullying organisation looking at practical ways to stop bullying and harassment online. In this way, IP law is used to sustain soft law efforts to help fight against breaches of human rights and dignity online; respect for the charter is indicated through display of the Respect Zone label, which is protected through its registration as a certified trade mark.