

**The Silent Brand Killer:  
The Risk Of Brand Dilution  
On Established Brands**

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*'Though trade warfare may be waged ruthlessly to the bitter end, there are certain rules of conduct which must be observed: the trader has not freelance. Fight he may as a soldier, not a guerilla'* (Prosser, 1955).

## **DECLARATION**

I, Samantha Woker, hereby declare that the Research Report submitted for the Honours in Creative Brand Communications (HCB) degree to The Independent Institute of Education is my own work and has not previously been submitted to another University or Higher Education Institution for degree purposes.

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Signed S.V.S Woker

## **ACKNOWLEDGEMENTS**

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# **GLOSSARY OF TERMS**

## **Branding**

Branding is defined as ‘the marketing practice of creating a name, symbol or design that identifies and differentiates a particular offering from other offerings’ (Aaker & Joachimsthaler, 2009).

## **Brand Equity**

*Brand equity* is ‘the commercial value that derives from consumer perception of the brand name of a particular product or service, rather than from the product or service itself’ (Oxford Dictionaries, 2017).

## **Brand Dilution**

Brand dilution is defined as the ‘gradual whittling away or dispersion of the brand identity’ due to the overuse of its mark or name through improper methods or in unauthorised circumstances (Schechter, 1927).

## **Comparative Advertising**

Comparative advertising or advertising war is an advertisement in which a particular product, or service, specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it (de Kock, 2013).

## **Free Competition**

A system in which companies operate without a lot of government control and prices are determined by supply and demand (de Kock, 2013).

## **Freedom of Speech**

The power or right to express one's opinions without censorship, restraint, or legal penalty (Brand South Africa, 2016).

## **'Passing-Off'**

Passing-off occurs when A represents, whether or not deliberately and intentionally, that its business, goods, or services are those of B or are associated therewith. It is established when there is a reasonable likelihood that members of the public in the marketplace looking for that type of business, goods, or services of A are those of B or are associated with those of B (*The Methodist of Church of South Africa vs Rantle*, 2014).

## **The Generic**

Genericism is defined as the phenomenon by which a registered trademark becomes the term by which a particular product or service is known (Menezes, 2012). The generic is, therefore, the term by which a product or service is known, which was previously a trademark.

## **Trademark Blurring**

Trademark blurring occurs when competitors make use of the trademark to the point where the trademark loses its unique identity (Hampy, 2012).

## **Trademark Tarnishment**

Trademark tarnishment occurs when the economic value of a trademark is destroyed due to being associated with something that is regarded as unsavoury, such as sex, drugs, or alcohol (Hampy, 2012).

## ABSTRACT

This dissertation discusses the issue of how a strong brand, which has been established over an extended period of time, involving extensive resources, can be destroyed or diminished due to the actions of competitors; particularly when making use of the strong brand in order to promote their own brand. This may, in the beginning, appear to be a form of flattery but, over time, it can lead to the death of the brand. This phenomenon is known as brand dilution.

Through conducting secondary research in the form of desktop research as well as utilising semi-structured, in-depth interviews with brand professionals and legal professionals in the fields of advertising, marketing and branding, this study aimed to determine the value of a strong brand, a comprehensive understanding of the concept of *brand dilution*, how a brand can become diluted through the actions of competitors, and, finally, the steps that a brand can take in order to avoid becoming diluted.

Brand dilution occurs frequently within the marketplace. However, it remains an unfamiliar term. The current marketplace is saturated with choice. Due to the change in the role that competitors play in our modern marketplace and the way in which competitors use established brands in order to establish their own brands, the mechanics and methodologies for defining, protecting, and growing a brand have profoundly changed. These changes need to be understood because branding plays a major role in terms of protecting the organisations that it represents as well as the consumers that it targets.

This study reviewed the benefits of having a strong brand, which is predominantly differentiation from competitors, immediate recognition and brand loyalty, and the multiple ways in which competitor actions can lead to the dilution of established brands. These ways include: becoming the generic, comparative advertising, imitation, trademark tarnishment, trademark infringement, and passing-off. However, this study also determined steps

through which brands can protect themselves from brand dilution. The steps are:

- Registering the brand's unique and distinctive trademark,
- Avoid using the brand name to identify an offering,
- Create a clear and well-defined brand strategy,
- Create an employee handbook,
- Protect the brand's online content,
- Set up Google Alerts,
- Monitor the macro and micro environments, with a particular focus on the activities of competitors,
- Utilise intellectual property measures,
- Set up a legal division, and
- Seek legal advice from lawyers who specializes in trademark law.

Through the research process, it was concluded that brand dilution is not a commonly known term within the marketplace, although, it occurs frequently in many different forms. However, if brands develop an understanding of brand dilution, how it occurs through the actions of competitors and follow the steps provided above, brands should be able to protect themselves from the possibility of becoming diluted.

#### *Keywords*

*Branding, brand dilution, comparative advertising, the generic, trademark, intellectual property, trademark tarnishment, trademark infringement*

## LIST OF TABLES AND FIGURES

<b>Table 4.1:</b>	The Objectives-Questions Matrix	36
<b>Figure 2.1:</b>	Aakers Brand Identity Model	15
<b>Figure 4.1:</b>	Objective One – Determine The Value Of A Strong Brand	41
<b>Figure 4.2:</b>	Objective 2 - Determine A Comprehensive Understanding Of The Concept Of <i>Brand Dilution</i> And How A Brand Can Become Diluted Through The Actions Of Competitors	44
<b>Figure 4.3:</b>	Objective 3 - Determine The Steps A Brand Can Take In Order To Protect Itself	48

# **TABLE OF CONTENTS**

Page No.

<b>TITLE PAGE</b>	i
<b>DECLARATION</b>	ii
<b>ACKNOWLEDGEMENTS</b>	iii
<b>GLOSSARY</b>	v
<b>ABSTRACT</b>	vii
<b>LIST OF TABLES AND FIGURES</b>	ix

## **CHAPTER 1**

### **INTRODUCTION TO THE RESEARCH**

1.1	Introduction	1
1.2	Contextualisation	1
1.3	Rationale	2
1.4	Proposed Journal Article	3
1.5	Problem Statement	3
1.6	Research Purpose	4
1.7	Research Goal and Research Question	4
1.7.1	Research Goal	4
1.7.2	Research Question	5
1.8	Research Objectives	5
1.9	Research Questions	5
1.10	Anticipated Contribution	5
1.11	Conclusion	6

## **CHAPTER 2**

### **LITERATURE REVIEW**

2.1	Introduction	7
2.2	Theoretical Foundation	7

2.3	The Brand	8
2.4	Brand Equity	9
2.5	Benefits of Having a Strong Brand	10
2.6	Meaningful Brand Analysis	10
2.7	Brand Identity	14
2.7.1	What is Brand Identity?	14
2.7.2	What Role Does it Play?	14
2.7.3	Aaker's Brand Identity Model	14
2.8	The Search-Cost Theory	16
2.9	The Competitors and The Law	16
2.9.1	Freedom of Expression	16
2.9.2	The Generic	17
2.10	The Dilution Concept	18
2.10.1	Trademark Blurring v Trademark Tarnishment	18
2.10.2	'Passing Off' (The Methodist Church of Southern Africa v Rantle)	19
2.11	Conclusion	20

## **CHAPTER 3**

### **RESEARCH DESIGN AND METHODOLOGY**

3.1	Introduction	22
3.2	Conceptualisation	22
3.3	Research Design	23
3.3.1	Research Paradigm	23
3.3.2	Research Design	24
3.3.2.1	Deductive Approach	24
3.3.2.2	Descriptive Design	25
3.3.2.3	Case Study Approach	26
3.3.2.4	Multidisciplinary Research Design	26
3.4	Research Plan	27
3.4.1	Secondary Research	27
3.4.2	Primary Research	28

3.4.3	Population and Sampling	29
3.4.3.1	Population	29
3.4.3.2	Sampling	29
3.4.4	Data Collection Method	30
3.4.4.1	Secondary Research	30
3.4.4.2	Primary Research	30
3.4.5	Data Analysis Methods	32
3.4.6	Credibility, Transferability, Dependability, and Confirmability	33
3.4.6.1	Credibility	33
3.4.6.2	Transferability	33
3.4.6.3	Dependability	34
3.4.6.4	Confirmability	35
3.5	Conclusion	35

## **CHAPTER 4**

### **PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS**

4.1	Introduction	36
4.2	The Objectives-Questions Matrix	36
4.3	The Participants	38
4.4	Presentation Of Findings	38
4.4.1	Objective 1: Determine The Value Of A Strong Brand	38
4.4.2	Objective 2: Determine A Comprehensive Understanding Of The Concept Of <i>Brand Dilution</i> And How A Brand Can Become Diluted Through The Actions Of Competitors	41
4.4.3	Objective 3: Determine The Steps A Brand Can Take In Order To Protect Itself	45
4.5	Conclusion	49

## **CHAPTER FIVE**

### **CONCLUSIONS AND RECOMMENDATIONS**

5.1	Introduction	50
5.2	Objective 1: Determine The Value Of A Strong Brand	50
5.2.1	Research Findings	50
5.2.2	Conclusions	51
5.2.3	Recommendations	51
5.3	Objective 2: Determine A Comprehensive Understanding Of The Concept Of Brand Dilution And How A Brand Can Become Diluted Through The Actions Of Competitors	52
5.3.1	Research Findings	52
5.3.2	Conclusions	53
5.3.3	Recommendations	53
5.4	Objective 3: Determine The Steps A Brand Can Take In Order To Avoid Brand Dilution	54
5.4.1	Research Findings	54
5.4.2	Conclusions	54
5.4.3	Recommendations	55
5.5	Ethical Considerations	55
5.6	Delimitations and Limitations	57
5.6.1	Delimitations	57
5.6.2	Limitations	57
5.7	Suggestions For Further Research	58
5.8	Concluding Remarks	58
	<b>BIBLIOGRAPHY</b>	60
	<b>APPENDIX</b>	65
	<b>Appendix 1: Ethical Clearance</b>	65
	<b>Appendix 2: Informed Consent</b>	66
	<b>Appendix 3: Interview Schedule - Brand Professionals</b>	70
	<b>Appendix 4: Interview Schedule - Legal Professionals</b>	71

# **CHAPTER ONE**

## **INTRODUCTION TO THE RESEARCH**

### **1.1 Introduction**

The purpose of this chapter is to introduce the concept of brand dilution as a means to destroy a brand. This chapter commences with a brief discussion of how brand dilution occurs and the detrimental effects that it has on successful brands in a South African context. This chapter also expands on the ultimate direction of this dissertation.

### **1.2 Contextualisation**

The current global market is saturated with products and consumers are constantly overwhelmed with choice (Spenner & Freeman, 2012). In order for a brand to be successful, not only does a brand have to concern itself with a unique offering and a distinctive differentiation from competitors, the success lies in the unique offering and competitive advantage being supported and complemented by a strong brand (Aaker & Joachimsthaler, 2009). Therefore, brand owners must be constantly alert to the fact that competitors may use their trademark to describe their product (Woker, 1999). This can lead to a mark losing its unique character and, ultimately, lead to a trademark becoming the generic and the term will fall into the public domain (Schechter, 1927). This means that all competitors are free to use what was once a unique trademark as a means of identification and comparison in the minds of consumers (Woker, 1999).

South Africa has a constitutional democracy where freedom of speech is regarded as one of the cornerstones of democracy (Brand South Africa, 2016). In the advertising world, this has led to more freedom with regards to what can be said, as well as a much more relaxed attitude towards comparative advertising allowing competitors to compare themselves to the market leader (de Kock, 2013).

When South Africa became a constitutional democracy, there was added emphasis on freedom of expression, and the old rules relating to comparative advertising were challenged (de Kock, 2013). Therefore, as the number of brands, available products, and available substitute products increased, so the opportunities for brand comparisons increased with reduced possibility of legal action and consequences (de Kock, 2013).

Competitors began linking their brand to successful brands in order to give themselves a springboard into the marketplace (Woker, 1999). For example, competitors would say 'we are as good as...', 'we are better than...', or 'we are cheaper than...'. This can lead to the tarnishment of a brand, particularly, when the comparing brand is weaker than the successful brand. Ultimately, this can lead to the dilution of the unique hold that a brand has in the consumer mind (Schechter, 1927). The successful brands cannot always defend themselves due to the fact that the South African economy is based on free competition and freedom of speech (Brand South Africa, 2016). However, comparisons like this can lead to consumer confusion and may constitute unlawful competition. In such circumstances, the law will allow brands to protect themselves (Woker, 1999).

Due to the change in the role that competitors play in our modern marketplace, the mechanics and methodologies for defining, protecting, and growing a brand have profoundly changed. These changes need to be understood because branding plays a major role in the marketplace in terms of protecting the company that it represents as well as the consumers that it targets (Aaker & Joachimsthaler, 2009). This concept is expanded on in Chapter 2 – Literature Review.

### **1.3 Rationale**

Imitation is considered the sincerest form of flattery (Colton, 1820). However, this is not the case in a competitive marketplace where imitation is one the biggest challenges that a brand can face (Magliocca, 2014). Successful brands spend abundant resources on trying to establish and distinguish their brand in order to promote their unique offering and differentiate themselves from their competitors

(Schreiber, 2015). As these brands become well-known and prominent amongst consumers, other similar brand marketers will begin to associate themselves with the market leaders and use them as a springboard to create their own success (Woker, 1999). To the successful brand, initially this may seem to be a form of flattery, but it can lead to *brand dilution* to the point where the brand loses the unique identity that it has worked so hard to create (Nelson, 2003).

Frank Schechter, who is considered the father of the concept, defined '*brand dilution*' as the 'gradual whittling away or dispersion of the brand identity' due to the overuse of its mark or name through improper methods or in unauthorised circumstances (Schechter, 1927). Brand dilution occurs, predominantly, through the actions of brand consumers and brand competitors (Woker, 1999). However, this dissertation will predominantly focus on the role of competitors. It is in a brand's best interest to, not only concern themselves with the strength and success of the brand, but also with how to protect and secure the brand as a whole (Schechter, 1927).

#### **1.4 Proposed Journal Article**

From an academic perspective, this research was conducted with the aim of contributing to the journal of Brands and Branding in South Africa. It is anticipated that the final research will produce an article that will deal with the importance of recognizing the dangers that brand dilution can have on a brand and how brand owners can avoid the dilution of their brands by competitors.

#### **1.5 Problem Statement**

The risk of brand dilution is a common challenge in the branding world, yet it remains an under-researched concept. Previously well-known, established trademarks such as Kleenex, Tipex and Escalator, were once strong brands. However, they are now examples of brand dilution. These brands were once valuable trademarks in the industry, and now they are the generic terms for the products that they sell (Quirk, 2014).

This phenomenon occurs regularly within the marketplace, however, research shows that brand dilution remains an unfamiliar term (Woker, 1999). As market offerings and competition increases, so the risk of brand dilution simultaneously increases and has potential detrimental consequences on successful brands. Therefore, there is a need to develop a comprehensive understanding of *brand dilution* and the steps that one can take in order to avoid the dilution of their brand.

## **1.6 Research Purpose**

The purpose of this research is fourfold:

1. Understand the concept of brand dilution;
2. Determine how a brand can become diluted;
3. Determine the effects that brand dilution has on a successful brand; and
4. Define how a brand can protect itself from brand dilution.

While the concept of brand dilution was recognised decades ago, primarily by Schechter (Schechter, 1927), it remains an under-researched concept. While the concepts that relate to brand dilution are fairly common, *brand dilution* as a distinct practical area for research has not been recognised fully.

In order to ensure the continued success and protection of prominent brands, it is crucial that there is a proper understanding of the concept. An important aim of this dissertation is to thoroughly define brand dilution and identify true characteristics in the process of brand dilution. Once the true nature of brand dilution is understood, it is possible to determine an appropriate means for a brand to protect itself from brand dilution.

## **1.7 Research Goal and Research Question**

### **1.7.1 Research Goal**

The ultimate goal of this dissertation is to explore the risk of brand dilution and to identify the steps that brand owners may take in order to prevent their valuable

brands from becoming diluted and, ultimately, ending up as the generic term for a particular product.

### **1.7.2 Research Question**

What is brand dilution and how can brand owners protect their brands from becoming diluted?

## **1.8 Research Objectives**

To determine, through the viewpoint of industry professionals,

1. The value of a strong brand;
2. A comprehensive understanding of the concept of *brand dilution* and how a brand can become diluted through the actions of competitors; and
3. The steps a brand can take in order to protect itself.

## **1.9 Research Questions**

1. What are the benefits of having a strong brand?
2. What is brand dilution?
3. How does brand dilution occur?
4. What is the role that competitors play in diluting brands?
5. What steps can brand owners take to avoid brand dilution?

## **1.10 Anticipated Contribution**

This study aims to contribute to the knowledge of brand dilution within the particular fields of branding, advertising, and marketing. The primary contribution is to define the risks associated with brand dilution and provide a comprehensive set of guidelines that enable brand owners to protect their brands from brand dilution. In order to achieve this, this study also aims to provide an all-inclusive definition for the brand dilution concept as well as clarify how brands can become diluted through the actions of competitors.

Owing to the lack of sufficient literature on this topic, this dissertation may also lead to an increase in literature on the topic of brand dilution in terms of, but not limited to, alternative ways through which brand dilution can occur as well as the further issues that surround and affect brand dilution. From this study, brand professionals may begin to consider more appropriate strategies during brand building and brand defensive measures.

## **1.11 Conclusion**

Even though the phenomenon is unfamiliar, there is no doubt that brand dilution poses major challenges in the marketplace. This dissertation aims to unpack the concept of brand dilution and to determine how a brand can protect itself from becoming diluted. The following chapter will introduce and discuss the theoretical framework related to the topic of brand dilution.

# **CHAPTER TWO**

## **LITERATURE REVIEW**

### **2.1 Introduction**

The purpose of this chapter is to introduce the theoretical foundation related to the topic of brand dilution. Key and authoritative scholarly works are discussed, including the work of key authors and seminal texts. Concepts relevant to brand dilution are also explored.

### **2.2 Theoretical Foundation**

This section is aimed at identifying, introducing, and briefly discussing the major terms that will be considered, with regard to branding and brand dilution, throughout this dissertation. These include the following:

- The brand;
- Brand Equity;
- The benefits of having a strong brand;
- Meaningful Brand Analysis;
- Brand Identity;
- The Search-Cost Theory;
- The Generic;
- The Dilution Concept;
- Trademark Blurring
- Trademark Tarnishment; and
- 'Passing-Off'.

Through unpacking concepts such as branding, brand equity and brand identity as well as determining the benefits of having a strong brand, the importance of being a meaningful brand and analyzing the Search-Cost Theory, the aim is to create the foundation for determining the value of a strong brand. In terms of analyzing concepts such as the generic, the Dilution Concept, trademark blurring, trademark

tarnishment and 'passing-off', these concepts will lay down the theoretical foundation for understanding the concept of brand dilution and the number of various ways that brand dilution occurs. Together, the theoretical foundation aims to create an understanding of the concepts that are addressed in this study, how they have an impact on each other and the questions that they pose that need to be addressed in the primary research process.

Many of these terms that form the theoretical foundation are defined in the *Glossary of Terms* that can be found at the beginning of the dissertation, while the remaining terms are unpacked in depth in the following literature review.

## **2.3 The Brand**

Branding is defined as 'the marketing practice of creating a name, symbol or design that identifies and differentiates a particular offering from other offerings' (Aaker & Joachimsthaler, 2009).

In a broad sense, the brand is the brand owners' promise to their customers. It is indicative of what they should expect from the branded products and services and serves to differentiate one brand owner's offering from that of its competitors. Ultimately, a brand is symbolic of who the brand is, who the brand wants to be, and who the public perceives the brand to be (Entrepreneur, 2017).

In addition to this, the brand indicates the place that the brand holds in the market and also indicates, to an extent, who or what their intended target markets want and need the brand to be. It is, however, important to note that not every brand will appeal to every market. (Entrepreneur, 2017). This is one of the reasons why brands can become diluted through tarnishment. This occurs when competitors make negative comments about or associate brands with unsavoury concepts (Woker, 1999).

In a world where consumers can become overwhelmed with options and where making a rational choice is not always easy, well known, well-established brands can

assist consumers when making choices. These brands can represent clarity, reassurance, consistency, status, and membership (Entrepreneur, 2017). Brands represent personal identity and the success of a brand lies in its ability to deliver a consistent message. Brands are typically designed to cause immediate recognition by the viewer, inspiring trust, admiration, loyalty and an implied superiority (Entrepreneur, 2017). The most important aspects of creating and building a successful brand can be summarised in the following concepts:

- Consistency
- Instant Recognition
- Desirability (Aspirational)
- Repetition (Entrepreneur, 2017).

## **2.4 Brand Equity**

*Brand equity* is 'the commercial value that derives from consumer perception of the brand name of a particular product or service, rather than from the product or service itself' (Oxford Dictionaries, 2017).

According to Aaker and Joachimsthaler (2009), when the idea of *brand equity* was first introduced, it was perceived as another management fad. Although, over time, each industry realised that brand awareness, perceived quality, customer loyalty, and strong brand associations and personality are necessary in order to compete in the marketplace. It is important to remember that, in this modern day and age, in nearly almost every organisation, the three most important assets are people, information technology and the brand itself. In previous years, brand management had a short-term focus on sales, however, as times changed, so the idea of brand leadership was introduced. Brands are now not only seen as a way to promote assets but actually leads to the success and often the survival of an organisation (Aaker & Joachimsthaler, 2009).

## **2.5 Benefits of having a Strong Brand**

Branding is considered an intangible asset (Aaker & Joachimsthaler, 2009). It lives in the heart and mind of the consumer (Geller, 2012). Therefore, having a consistent and strategic brand leads to a strong brand equity (Aaker & Joachimsthaler, 2009). Thus, the brand's offering has added value due to the brand name and not the product itself. Through this, a strong brand will gain a competitive advantage because the brand presents an additional benefit that another brand does not have (Entrepreneur, 2017). This added value often comes in the form of perceived quality or emotional attachment (Entrepreneur, 2017). One of the major aspects of building a strong brand is being a 'meaningful brand' (Enslin, 2015).

Brand building is no longer regarded as a function that falls under marketing or communication. Instead, it is increasingly seen as a primary activity involving and defining the entire organisation (Enslin, 2015). Through various studies completed by HAVAS (2013) and the World Economic Forum (2013), it was discovered that consumers, in 23 markets involving 700 brands, 'would not care if 72% of brands disappear overnight' and that millennials, who represent a quarter of the world's population, have an increasing expectation for building brands that matter (Enslin, 2015). Therefore, in this modern day and age, there is a growing expectation that brands should have a purpose that extends further than just generating profit (Enslin, 2015). In order to do this, it is important that a brand becomes a '*meaningful brand*'.

## **2.6 Meaningful Brand Analysis**

*'21st-century brands are being forced by increasing consumer activism to become more honest, more authentic and more relevant. The concept of a brand as a vessel of hot air, empty slogans and pompous promises has burst. We have entered the age of genuine brand organisations whose mission is to create genuine value for people. If this continues to gain traction, it will change the world!' - Gordon Cook (Enslin, 2015).*

According to Enslin (2015), in order to be a *meaningful brand*, a brand needs to ensure that it fulfils the following '*meaningful brand*' criteria:

- A meaningful brand is unique and adds value.
  - A meaningful brand is an internally committed and principled brand.
  - A meaningful brand has mindful leadership.
  - A meaningful brand is reciprocal.
  - A meaningful brand invests in community conversations.
- 
- **A meaningful brand is unique and adds value.**

This indicator is the cornerstone of building *meaningful brands*. A brand with a purpose is one that matters. In order for a brand to be successful, it is vital that the brand is one of a kind in its ability to yield and sustain a distinctive benefit. The purposeful brand understands *why* it exists and conducts business. The reason for the existence of an organisation emerges when it exposes why it does what it does and believes what it believes in. The statement of purpose acts as the core of the brand and actions and behaviours stem from this core with the aim to always deliver the brand's unique reason for being (Enslin, 2015).

- **A meaningful brand is an internally committed and principled brand.**

A *meaningful brand* values the important role of its internal brand community. When employees experience the brand purpose in daily terms, they are able to deliver its unique meaning authentically in all interactions with external stakeholders. Added to this, an internal brand community cannot simply be instructed to believe in the brand's purpose. The brand's purpose forms an intrinsic part of the brand's business and there need to be compelling reasons to believe that the brand actually matters. With that being said, the most effective way to achieve this is through the compelling and honest conduct of leadership and management. Therefore, it must be obvious and evident that the actions and decision-making of leadership and management are guided by the brand's unique reason for being, the brand's purpose.

This results in cohesive, principled brand behaviour across all of the brand's points of contact. Employees begin to act for the good of the whole brand, not because they have to. Over time, the brand, as an internally committed and principled brand, will be inherently more able to design and uphold cohesive and truthful experiences that can grow into deep and abiding relationships (Enslin C. , 2015).

- **A meaningful brand has mindful leadership.**

In previous times, individualist leadership methods dominated the industry (Aaker & Joachimsthaler, 2009). Over time, effective leadership has transformed to uphold collective stakeholder purpose through mutuality and co-leadership. Modern brand leaders navigate purposeful and participative brand and business ecosystems, mindful of all stakeholder groups. Therefore, in order to be a *meaningful brand*, a brand needs to be led and managed in a manner that promotes independence, free dialogue, and ethical leadership (Enslin, 2015).

- **A meaningful brand is reciprocal.**

In order to be a *meaningful brand*, brand's must be responsible entrepreneurs. The aim is to set up brand systems that are responsive to the environmental, human, and business wellbeing that surround the brand. A brand should always be reciprocal at its core, and maintain a give-and-take relationship with all stakeholders, ensuring that a brand never takes more than it gives. This is especially important when it comes to the abuse of resources: one should never abuse a resource to the point where it cannot recover. Therefore, *meaningful brands* understand that profit is not a driver for success, but a consequence of creating value in all that it does (Enslin C. , 2015).

- **A meaningful brand invests in community conversations.**

“We are not seats or eyeballs or end users or consumers. We are human beings – and our reach exceeds your (organisation's) grasp.” - Cluetrain Manifesto (Enslin, 2015).

In previous times, communication consisted of a one-way conversation where the brand only spoke to the consumer, with the only intention to sell a product. As society has advanced, a two-dialogue form of communication has formed where the consumers are actively involved in brand conversations and (*meaningful*) brands are actively involved in community conversations. To be a *meaningful brand*, brand owners must actively instigate and respond to conversation. Added to this, stakeholders should be encouraged to share their opinions and experiences, and brands should create authentic conversations that inform the design of better products, services and communication strategies.

In conclusion, the aim here is to build meaningful relationships between people, brands, and cultures. Stakeholders are not passive anymore. They are actively involved in brands and communities and have a lot more power than in previous times. Consumers are expecting a lot more from brands than to simply satisfy a want or need. Especially in the South African market, there is a lot of pressure on companies and organisations to fulfil society's wants and needs that cannot be fulfilled by the government. Being a *meaningful brand* ensures that you are creating sustainable business practices that benefit all of your stakeholders.

'Because in the end, the only way that brands can measure their significance is by valuing their contribution to the lives of others.' - Jacques Lacan (Enslin, 2015).

Building a brand that is meaningful in a modern economy takes a lot of effort, time, and resources. It is not a success that can be achieved overnight. Therefore, it is imperative for a successful brand to protect itself and ensure that other brands do not simply attach themselves to the successful brand and thereby achieve a springboard into the marketplace without having to commit the same resources. If competitors are allowed to do this, they will achieve all the benefits of brand equity without having made the commitment to building a meaningful brand and they will also contribute towards the dilution and, possibly, the ultimate destruction of a brand which was built up to be a meaningful brand (Enslin C. , 2015).

## **2.7 Brand Identity**

### **2.7.1 What is Brand Identity?**

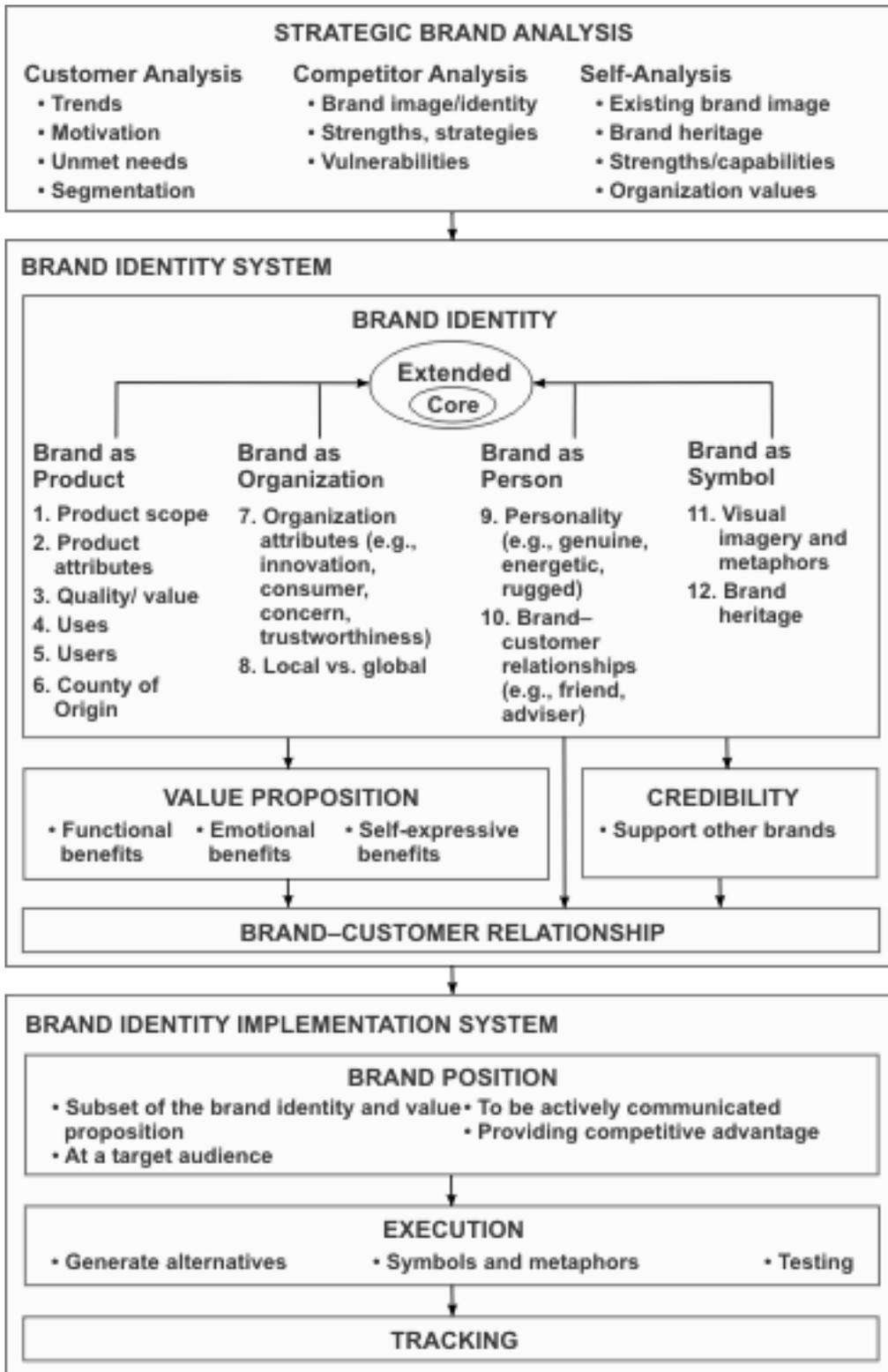
Brand identity is defined as “the outward expression of the brand, including its name and visual appearance. The brand's identity is its fundamental means of consumer recognition and symbolises the brand's differentiation from competitors” (OVO, 2017).

### **2.7.2 What Role Does it Play?**

Brand identity should be aligned with the Brand Image which is defined as “the impression in the consumer's' mind of a brand's total personality (real and imaginary qualities)” (Business Dictionary, 2017). This is to ensure that there is synergy between who the brand says it is and who the consumers feel the brand is in the context of the marketplace (Aaker & Joachimsthaler, 2009). Understanding brand identity is vital for management and employees as the brand identity will set out guidelines that can be followed when creating or exhibiting any brand-related content (Bhasin, 2016). This again serves to ensure that the brand's contact points are working in unison to communicate one holistic message to all stakeholders (Bhasin, 2016).

### **2.7.3 Aaker's Brand Identity Model**

There are many models that enable one to analyse a brand's identity. Although, for this dissertation, Aaker's Brand Identity Model will be considered as it gives a comprehensive, all-encompassing analysis of a brand (Aaker & Joachimsthaler, 2009):



**Figure 2.1: AAKER'S BRAND IDENTITY MODEL**

Source adapted from (Aaker & Joachimsthaler, 2009).

A strong brand should have a rich and clear brand identity. Aaker's Brand Identity Model considers the brand as a whole by analysing each of the factors in the model. To be effective, a brand identity needs to resonate with customers, differentiate the brand from competitors, and represent what the organisation can and will do over time (Aaker & Joachimsthaler, 2009). Thus, a strategic brand analysis enables a brand owner to understand the customer, the competitors, and the brand itself (Aaker & Joachimsthaler, 2009). From this, the brand identity should be used to drive all brand-building efforts and ensure that all contact points are communicating the same message.

## **2.8 The 'Search Cost' Theory**

The 'Cost-Search' Theory explains that when consumers are faced with a recognised trademark, they know what they are getting without having to expend more costs on searching for desirable goods (McKenna, 2012).

It has become a common practice to say that trademarks lower 'the cost of search' for consumers who are seeking desirable goods (McKenna, 2012). 'Search costs' refers to "the costs of gathering information about potential partners to an economic transaction" (McKenna, 2012). Court decisions and commentary by those advocating the protection of trademarks often seem to assume that any activity by competitors that distracts consumers from looking for brands they already know or that causes consumers to expend mental energy searching for the correct brand increases the costs of their search and, therefore, trademark law is often designed to prohibit such conduct (McKenna, 2012) This has put modern trademark law on a collision course with free speech and competition interests (McKenna, 2012).

## **2.9 The Competitors and The Law**

### **2.9.1 Freedom of Expression**

South Africa is a democratic country where the Bill of Rights clearly states:  
Freedom of Expression

- (1) Everyone has the right to freedom of expression, which includes—
  - (a) Freedom of the press and other media;
  - (b) Freedom to receive or impart information or ideas;
  - (c) Freedom of artistic creativity; and
  - (d) Academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to—
  - (a) Propaganda for war;
  - (b) Incitement of imminent violence; or
  - (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that, constitutes incitement to cause harm (Constitution of the Republic of South Africa, 2017).

Advertising is regarded as commercial speech and it is a way in which brands communicate with their consumers (Woker, 1999). Therefore, advertising is protected under the Freedom of Expression right contained in the Constitution. This is why, since the advent of the Constitution in 1994, the approach towards comparative advertising in South Africa has changed. Previously, before 1994, any reference to another brand, including non-competing brands, was disallowed. Since 1994, this is now seen as a freedom of expression issue and can often affect a brand's dilution. This was even the subject of a Constitutional Court decision in the case of Laugh-It-Off v SAB where South African Breweries took exception to the fact that a t-shirt manufacturer made use of its Black Label beer trademarks on its t-shirts (Saflii, 2005).

### **2.9.2 The Generic**

Genericism is defined as 'the phenomenon by which a registered trademark becomes the term by which a particular product or service is known (Menezes, 2012).' It is often the ironic result of a successful brand because once successful, consumers and competitors may use the brand name to describe the actual product itself (Menezes, 2012). This is what occurred with liquorice allsorts, which is further discussed below. This has happened to many brands, including, Kleenex, Tipex, Thermos and Escalators (Quirk, 2014).

The whole purpose of having a brand and developing a brand is to have a unique hold in the mind of the consumer. Therefore, once a brand becomes the generic term for a product, the brand loses its unique identity, and with it goes a big share of the consumer market (Woker, 1999). By becoming the generic, it gives competitors free reign to describe their competing products with what was once a monopolised term (Menezes, 2012). Once a term becomes a generic, brand owners are no longer entitled to forbid others from using that term to describe their products (Menezes, 2012). This then means the death of the brand equity. Even if a trademark is a registered trademark in terms of the South African Trade Marks Act 1996, other brand owners are entitled to apply to the Trade Mark Registrar to have the trademark removed from the register on the basis that that term, which is now a generic, no longer performs the function of a trademark, which is to distinguish one brand owner's goods or services from those of another (CIPRO, 1993). Alternatively, other brand owners can apply to have a disclaimer registered against the registered trademark which states that the owner of the trademark does not have exclusive use of that trademark (CIPRO, 1993).

## **2.10 The Dilution Concept**

As previously mentioned, *brand dilution is defined* as the 'gradual whittling away or dispersion of the brand identity' due to the overuse of its mark or name through improper methods or in unauthorised circumstances (Schechter, 1927).

### **2.10.1 Trademark Blurring v Trademark Tarnishment**

Brand dilution occurs in one of two ways: trademark blurring or trademark tarnishment.

Trademark blurring occurs when competitors make use of the trademark to the point where the trademark loses its unique identity (Hampy, 2012). Eventually, this can result in the trademark becoming the generic, as previously discussed. Protection against dilution through blurring exists primarily for consumer protection because consumers may become confused (Hampy, 2012).

Trademarks also have economic value. This value can be destroyed when a trademark is associated with something that is regarded as unsavoury, usually sex, drugs, or alcohol (Hampy, 2012). This is known as trademark tarnishment. Tarnishment is considered an attack on a trademark's reputation (Hampy, 2012). This is the area where protecting a trademark becomes most difficult due to issues relating to freedom of speech and free competition. Protection against dilution through tarnishment does not exist to protect the public but rather exists to protect the owner of a trademark (Hampy, 2012).

A trademark dilution claim requires that the owner's mark be distinctive and famous. To determine whether a given mark is sufficiently distinctive and famous to be afforded protection, courts consider the following factors:

- (1) The degree of the subject mark's inherent or acquired distinctiveness;
- (2) The duration and extent of use of the mark in connection with the goods or services it identifies;
- (3) The duration and extent of advertising and publicity;
- (4) The geographical extent of the relevant trading area;
- (5) The channels of trade;
- (6) The degree of the mark's recognition in the trading areas and channels of trade used by the mark's owner and the person against whom the injunction is sought;
- (7) The nature and extent of third parties' use of same or similar marks; and
- (8) Whether the mark has been registered (Hampy, 2012).

### **2.10.2 'Passing Off' (*The Methodist Church of Southern Africa v Rantle*)**

It is important to distinguish 'passing off' from 'brand dilution'. While 'passing off' by one brand does tend to result in the dilution of the other brand, 'brand dilution' is a lot more subtle than the practice of 'passing off.' Therefore, it is not necessary for Brand A to prove that Brand B has passed its brand or offering off as being that of Brand A's before it can legitimately complain about brand dilution.

The issue of passing off arose in the case of *The Methodist Church of Southern Africa v Rantle* (2014) where a person attempted to pass himself off as the Methodist Church in Lesotho, where in fact he did not have any legitimate association with the Methodist Church. The Court, in the High Court of Lesotho, gave a practical definition for the term 'passing off'. The Court stated that 'passing-off occurs when A represents, whether or not deliberately and intentionally, that its business, goods, or services are those of B or are associated therewith. It is established when there is a reasonable likelihood that members of the public in the marketplace looking for that type of business, goods, or services of A are those of B or are associated with those of B' (*The Methodist of Church of South Africa vs Rantle*, 2014).

'Passing-off' is a recognised legal wrong and if 'passing-off' is established the law will come to the assistance of the wronged party (Woker, 1999). It is more difficult to find redress when a more subtle form of dilution occurs (Woker, 1999). If a brand owner becomes aware of 'passing-off', immediate action must be taken. 'Passing-off' is the most blatant form of when dilution will occur, as was seen in the case involving Cadbury and Beacon Sweets and Chocolates (*Cadbury v Beacon Sweets and Chocolates*, 2000). In this matter, Cadbury, the brand original owner of the term liquorice allsorts, failed to take action when other brands used the name liquorice allsorts to describe their products (*Cadbury v Beacon Sweets and Chocolates*, 2000). By the time they decided to take action against Beacon Sweets, the court found that the term liquorice allsorts was by then a generic term for a type of confectionary (*Cadbury v Beacon Sweets and Chocolates*, 2000). Cadbury then lost the right to have exclusive use to the term *liquorice allsorts*.

## **2.11 Conclusion**

In conclusion, there are many aspects a brand owner needs to consider in order to create a strong brand. Brand owners need to be constantly alert to what is happening to their brand in the marketplace. Whilst it may be flattering to have others refer to their brand, it can actually have a detrimental effect on the future of their brands. Brand owners can no longer only concern themselves with the success of their brands, but also with how to protect and secure their brands.

Competitors play a very influential role on the successful and direction of one's brand and can play an even more influential role on a brand's dilution. Brand dilution predominantly occurs through the actions of a brand's competitors. However, what makes the brand dilution concept so difficult to grasp is that it is an area to that cannot be concretised, especially in terms of issues such as freedom of speech and free competition in the South African market. This dissertation seeks to explore all these different and complex ideas in order to fully understand the concept of brand dilution, how a brand can become diluted, what effect this has on a brand, and how a brand can avoid becoming diluted.

# **CHAPTER THREE**

## **RESEARCH DESIGN AND METHODOLOGY**

### **3.1 Introduction**

This chapter aims at justifying the use of research methods that will be used to conduct the research as well as briefly describe the entire research strategy and tactics. Therefore, this chapter will discuss the research paradigm, research plan, population and sampling, the data collection method, and the data analysis method that will be used.

### **3.2 Conceptualisation**

As extensively covered in chapter two, the key concepts that are most relevant to the research that will be conducted include:

- Branding
- Brand Equity
- Brand Dilution
- Comparative Advertising
- Free Competition
- Freedom of Speech
- 'Passing-Off'
- The Generic
- Trademark Blurring
- Trademark Tarnishment

It is imperative to have an understanding of these terms in order to form an understanding of the research that will be conducted. These terms are defined in the glossary found at the beginning of this dissertation.

### **3.3 Research Design**

The research design refers to the overall strategy that was chosen in order to carry out and complete the research. The research design should integrate different components in order to ensure a coherent and logical plan that will effectively address the research problem.

#### **3.3.1 Research Paradigm**

'Research is described as a systematic investigation or enquiry, whereby data are collected, analysed, and interpreted in some way in an effort to 'understand, describe, predict, or control an educational or psychological phenomenon or to empower individuals in such context' (Mackenzie & Knipe, 2006).

This dissertation will adopt a pragmatic paradigm, which is a paradigm that focuses on the 'what and 'how' of the research problem (Mackenzie & Knipe, 2006). It 'sidesteps the contentious issues of truth and reality' and "focuses instead on 'what works' as the truth regarding the research questions under investigation". The pragmatic paradigm places the "research problem" as central and applies a number of different approaches to understanding the problem (Mackenzie & Knipe, 2006). With the research question at the centre, the data collection and analysis methods that are used have been chosen because they will most likely provide insights into the question with no philosophical loyalty to any alternative paradigm (Mackenzie & Knipe, 2006).

Pragmatism rejects the distinction between realism and anti-realism that lies at the core of the debates about positivism versus interpretivism. For pragmatists, there is indeed such a thing as reality but it is ever changing based on human action (Mackenzie & Knipe, 2006). So attempts to find an enduring, external reality are doomed to failure. This is the most appropriate paradigm for social research because in everyday life people develop experiences that are not only individual but also affect society as a whole. This paradigm is useful to explore areas where there are diverging opinions and practices that compete against each other.

This is an appropriate paradigm for this dissertation because the concept of branding and what determines a strong brand is ever-changing due to changes in the modern world, such as the advancements in technology. Added to this, society's thoughts and opinions towards notions of 'freedom of expression', 'comparative advertising' and 'brand dilution' depend on the situation and there are no clearly delineated boundaries. Brand dilution is a grey area with no clear black and white boundaries and often depends on the interpretation of the parties involved. One cannot adopt a rigid approach, as conclusions are not readily ascertainable.

This was clearly demonstrated in the case of *Laugh-It-Off v South African Breweries* where the SAB objected to the portrayal of its trademarks in an unsavoury manner because they were connected to South Africa's apartheid past and harsh labour practices (Saflii, 2005). The matter was first heard in the High Court, then in the Supreme Court of Appeal and, finally, in the Constitutional Court (Saflii, 2005). Both the High Court and the Supreme Court of Appeal agreed that such an association was harmful to the SAB's trademarks but the Constitutional Court found that the trademarks were not tarnished by these associations and much of the arguments focused on the right to freedom of speech (Saflii, 2005).

Ultimately, a pragmatic approach considers consequences of actions, is problem centred and is orientated towards real-world practice. This allows for qualitative and/or quantitative methods of research to be employed. The method chosen is matched to the specific questions being asked. Therefore, interviews may be conducted, documents may be reviewed, and observations will be drawn.

### **3.3.2 Research Design**

#### **3.3.2.1 Deductive Approach**

A deductive approach will be used in order to carry out this research. A deductive approach is one that makes use of existing theories (Research Methodology, 2016). Therefore, this means that the research will consider what previous researchers

have done, considers existing theories, and then tests hypotheses that emerge from those theories (Research Methodology, 2016).

While, when considering an inductive approach, the researcher begins by collecting relevant data and looks for patterns in the data, working to develop a theory that could explain those patterns (Research Methodology, 2016). Therefore, an inductive approach is used when a new theory is being developed, which is not the aim of this dissertation.

### **3.3.2.2 Descriptive Design**

This study will be a descriptive study. According to Lynn and Lynn (2015), other types of study include:

- Exploratory: An exploratory design is conducted when a research problem has few or no earlier studies to refer to. Its contribution is in clarifying and shedding light on murky issues, looking for patterns or evidence, exploring an idea.
- Explanatory: Explanatory research is defined as an attempt to connect ideas to understand a cause and effect relationship. Therefore, the researcher wants to explain what is going on.
- Predictive: Predictive research is concerned with forecasting outcomes, consequences, costs, or effects. This type of research tries to estimate from the analysis of existing phenomena, policies, or other entities in order to predict something that has not been tried, tested or proposed before.
- Empirical: Empirical research is research using empirical evidence based on, concerned with, or verifiable by observation or experience rather than theory or pure logic. It is a way of gaining knowledge by means of direct and indirect observation or experience.

This research involves a descriptive study because a descriptive study focuses on investigating and describing problems, processes, and relationships in other existing phenomena. A descriptive study does not deal with the how, when, or why the characteristics occurred. Thus, this is a descriptive study as the research deals with

describing the concept of brand dilution and mapping out how a brand owner can protect his brand (Lynn & Lynn, 2015).

### **3.3.2.3 Case Study Approach**

While there are many approaches to conducting research, this study predominantly makes use of a case study approach. Other approaches to participative action research, evaluation design, or unobtrusive research.

However, this dissertation uses a case study approach because a case study approach is one that is a 'systematic inquiry into an event or set of related events which aims to describe and explain the phenomenon of interest' (Zucker, 2009). 'The typical characteristics of a case study is that they strive towards a comprehensive understanding of how participants relate and interact with each other in a specific situation and how they make the meaning of the phenomenon under study' (Zucker, 2009). This approach complements the purpose of this dissertation as it will strive to create a comprehensive understanding of brand dilution by considering various events and actions of competitors that lead to brand dilution. By analyzing various related events, particularly relevant decided legal cases, this will lead to an understanding of how brand dilution occurred, the effects of brand dilution, and how a brand defended itself from brand dilution or what it should have done in order to protect itself from becoming diluted.

### **3.3.2.4 Multidisciplinary Research Design**

This study uses a multidisciplinary research design which focuses on bringing disciplines together to talk about issues from each of their perspectives. They may collaborate, but they maintain a separation of their disciplines in that process (Zucker, 2009).

Therefore, this research uses a multidisciplinary design as it takes into consideration brand perspectives as well as the law's perspective in order to comprehensively answer the proposed research question.

## **3.4 Research Plan**

### **3.4.1 Secondary Research**

In terms of secondary research, desk-based research will be conducted in order to understand the theoretical foundation of brand dilution. This includes analyzing key and authoritative scholarly works, predominantly the works of key authors, seminal texts, and understanding the central concepts that are relevant to brand dilution.

The key concepts that require a thorough understanding include:

- Branding
- Brand Equity
- Brand Dilution
- Comparative Advertising
- Free Competition
- Freedom of Speech
- 'Passing-Off'
- The Generic
- Trademark Blurring
- Trademark Tarnishment
- Unlawful Competition

The key theory and models that require exploration and a thorough understanding include:

- A Meaningful Brand Analysis
- Aaker's Brand Identity Model
- The 'Search Cost' Theory
- The Generic
- The Brand Dilution Concept

Added to this, in order to create a foundation for the legal options of protecting a brand, the following topics need to be considered:

- Freedom of Expression

- Trademark Blurring v. Trademark Tarnishment
- 'Passing Off'

This theoretical foundation will form the base of the research and allow for greater direction and a refined purpose when planning the primary research process.

### **3.4.2 Primary Research**

The primary research will predominantly consist of interviews with brand professionals and legal professionals whose focus is in the branding, advertising and marketing fields. This is known as judgmental sampling. Judgmental sampling is a 'non-probability sampling technique where the researcher selects units to be sampled based on their knowledge and professional judgment' (Explorable, 2012).

Brand professionals and legal experts based in the fields of branding, advertising, and marketing will be interviewed because of their understanding of the importance of a good brand and their knowledge on the foundation of the branding industry. The legal experts will be interviewed due to their knowledge on how a brand owner can protect their brands.

Through the primary research process, the following research questions will be discussed:

1. What is a brand?
2. What are the benefits of having a strong brand?
3. What is brand dilution?
4. How does brand dilution occur?
5. What is the role that competitors play in diluting one's brand?
6. What legal steps can a brand owner take to avoid brand dilution?
7. Why is it necessary for a brand owner to protect their brand?

Added to this, during the interviews, case studies that involve brand dilution, the generic, 'passing off', trademark blurring, and trademark tarnishment will be

analyzed. This will be done in order to create a more practical understanding of these terms that the methods and processes that revolve around them.

Primary Research Step 2 – interview brand professionals (judgmental sampling) – they understand the importance of a good brand and the foundation of the industry.

### **3.4.3 Population and Sampling**

#### **3.4.3.1 Population**

Population forms a critical part of the research process, particularly in terms of quantitative research where one conducts statistical analyses. One should always have a large sample group in order to ensure that the results are accurate (Maree, 2014). The subjects that make up the population that is being researched need to be relevant to the topic of the study.

Due to the nature of this dissertation, qualitative research will be conducted. When considering qualitative research, a small sample group is typically involved in order to gain deeper insights into the issues being researched (Maree, 2014). The population relevant to this research process consists of brand professionals and legal experts in the branding, marketing, and advertising field. This can also include recently retired brand professionals and legal experts. There are many individuals within the Durban area who could possibly speak about the concepts and issues that revolve around brand dilution, but only approximately 30 individuals can speak knowledgeably about the actual topic of brand dilution.

#### **3.4.3.2 Sampling**

The unit of analysis that will be used in the research process will be individuals. The individuals will be brand professionals and legal professionals in the branding, advertising and marketing fields. This will include recently retired brand professionals and legal professionals. Considering that the brand professionals and legal professionals have valuable insights and knowledge of the concept of brand dilution, this makes them the most suitable sample to be targeted.

Due to this research being a qualitative study, a sample group of between 8 and 15 brand professionals will be targeted. Added to this, between 3 and 5 prominent members of the legal profession who focus on brand protection and associated areas will be targeted.

The sample of interviewees will be brand specialists who understand what a brand is, the cost and effort that is associated with building a successful brand, the characteristics of a diluted brand, and the reasons why a successful brand needs to be protected. While the legal professionals, who will be based in the branding, advertising and marketing fields, understand the steps a brand owner can take in order to protect his brand as well as how far an owner can go when protecting and defending his brand.

#### **3.4.4 Data Collection Method**

##### **3.4.4.1 Secondary Research:**

Secondary research will be done in the form of desk-based research into the relevant theories, models, and literature as listed above and expanded on in Chapter 2.

##### **3.4.4.2 Primary Research**

The primary research that will be done will be qualitative research. The research will predominantly be done in the form of face-to-face interviews. Face-to-face, semi-structured interviews will be conducted. This will allow for elaboration on the secondary research as well as generate qualitative data on detailed perspectives and opinions regarding branding, brand dilution, and brand protection. A set of predetermined open-ended questions on an interview schedule will be developed to guide the researcher during the interviews, and the interviewees will be guided and encouraged to share their knowledge and perspectives. However, if the interview diverges from the interview schedule, yet the information is relevant, this digression will be stimulated. The topic of the interviews consist of:

- Brand professionals on their perspectives with regards to promoting and protecting brands. As well as, interviewing them on the role of competitors and how brand dilution can occur.
- Legal professionals on the topic of brand dilution and brand protection measures.

The researcher aims to gain additional information by means of individual research. Interviewing in qualitative studies is described as 'a unique form of conversation, which provides the researcher with empirical data about the social world, simply by asking people to speak about their lives'.

The main benefit of face-to-face interviews is that the researcher is able to form a relationship with the participants and gain their cooperation, thus, facilitating the production of high response rates (Maree, 2014).

The interview will audiotape all interviews and use handwritten notes to support the recordings. This will assist with the transcription that will be used for analysis purposes. Added to this, observations will also be noted during the interview process, particularly with regards to non-verbal cues.

However, if an interviewee cannot meet face-to-face, the researcher will conduct a telephonic survey using a questionnaire or the questionnaire will be emailed to the interviewee where they can reply in a timely manner. This implies that the researcher will be physically removed from the respondents. Non-verbal communication will be impossible to determine. Telephonic surveys and emailed questionnaires are a convenient means to gather data quickly. However, this method is less-desirable than face-to-face interviews.

A focus group would be beneficial due to a collective argument, in-depth conversation, and a variety in perspective. However, this may be unrealistic, as it may prove difficult to gather all the brand professionals and legal experts in one space at the same time (Maree, 2014).

### 3.4.5 Data Analysis Method

According to Maree (2014), Data analysis is ‘the process of observing patterns in the data, asking questions of those patterns, constructing conjectures, deliberately collecting data from specifically selected individuals on targeted topics, confirming or refuting those conjectures, then continuing analysis, asking additional questions, seeking more data, furthering the analysis by sorting, questioning, thinking, constructing, and testing conjectures and so forth’.

As previously mentioned, the qualitative data will be collected by means of face-to-face interviews and possibly telephonic and emailed questionnaires. In order to analyse the data gathered during the research process, a thematic analysis will be used. A thematic analysis is often used when analyzing qualitative research.

A thematic analysis emphasizes pinpointing, examining, and recording patterns or themes within data. Themes are patterns across data sets that are important to the description of a phenomenon and are associated with a specific research question. Ultimately, a thematic analysis will explain the data based on categories.

The data will then be explained based on the relevant categories for the purpose of interpretation. The interview schedule will be designed based on the objectives of the study and this will allow for categorization into themes, making the process of analysis easier.

Triangulation of the findings will also be performed. ‘Triangulation has generally been considered as the process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation.’ There are different types of triangulation. Triangulation of *methods* is proposed for this study, which refers to the interpretation of the findings by mixing the secondary and the primary research and data. The researcher aims to triangulate the findings from the secondary research (the literature review – see Chapter 2), the face-to-face interviews, and the telephonic and emailed questionnaires. This will allow facilitation to verify and validate the sum of the findings from the research process (Maree, 2014).

### **3.4.6 Credibility, Transferability, Dependability, and Confirmability**

It is important to note that research needs to be objective and scientific in order to be of value (Maree, 2014).

Quantitative research relies on the criteria of internal and external validity, reliability, and objectivity (Mora, 2011). Validity concerns whether the questions asked are relevant to the topic being researched whilst reliability relies on a statistical test to confirm that if the research were to be replicated, it will yield similar findings (Mora, 2011). For qualitative research, the criteria for trustworthiness apply. According to Trochim (2006), these include:

#### **3.4.6.1 Credibility**

The credibility criteria involve establishing that the results of qualitative research are credible or believable from the perspective of the participants in the research. Since, from this perspective, the purpose of qualitative research is to describe or understand the phenomena of interest from the participant's eyes. The participants are the only ones who can legitimately judge the credibility of the results.

Therefore, through ensuring that the participants of the research process are, in fact, brand professionals and legal experts in the fields of branding, advertising, and marketing, this will achieve this. By ensuring this, the data collected will be accurate and a true reflection of the current marketplace. The responses supplied will answer the research questions in a credible manner.

#### **3.4.6.2 Transferability**

Transferability refers to the degree to which the results of qualitative research can be generalized or transferred to other contexts or settings. From a qualitative perspective, transferability is primarily the responsibility of the one doing the generalizing. The qualitative researcher can enhance transferability by doing a thorough job of describing the research context and the assumptions that were

central to the research. The person who wishes to "transfer" the results to a different context is then responsible for making the judgment of how sensible the transfer is.

While this dissertation is particularly focused on brand dilution, and more refined than this, the role that competitors play in brand dilution, it can be transferred and used to understand the concepts, issues and challenges that revolve around brand dilution. Added to this, it can be transferred to and from the starting point to determining the alternative ways in which brand dilution can occur. An example of this is the role that consumers play in brand dilution.

#### **3.4.6.3 Dependability**

The traditional quantitative view of reliability is based on the assumption of replicability or repeatability. Essentially it is concerned with whether we would obtain the same results if we could observe the same thing twice. But we can't actually measure the same thing twice. By definition, if we are measuring twice, we are measuring two different things. In order to estimate reliability, quantitative researchers construct various hypothetical notions to try to get around this fact.

The idea of dependability, on the other hand, emphasizes the need for the researcher to account for the ever-changing context within which the research occurs. The researcher is responsible for describing the changes that occur in the setting and how these changes affected the way the researcher approached the study (Trochim, 2006).

This will be taken into account by providing a comprehensive description of the current marketplace within the branding, advertising, and marketing fields. Added to this, a literature review will be done in order to understand the theoretical foundation, analysing key and authoritative scholarly works, that forms the base of this dissertation. This will ensure that the topic of brand dilution is thorough conceptualised and the relevant central concepts are defined and analysed.

#### **3.4.6.4 Confirmability**

Confirmability refers to the degree to which the results could be confirmed or corroborated by others (Trochim, 2006). Qualitative research tends to assume that each researcher brings their own unique perspective to the study (Trochim, 2006). There are a number of strategies that can be used in order to ensure the confirmability of the study. This includes:

- Documenting the procedures for checking and rechecking the data throughout the study.
- The researcher can take on the role of playing 'devils advocate' with respect to the results and documenting this process.
- The researcher can actively search for and describe and *negative instances* that contradict prior observations.
- And, after the study, one can conduct a *data audit* that examines the data collection and analysis procedures and makes judgements about the potential for bias or distortion (Trochim, 2006).

These strategies will be implemented in order to ensure the confirmability of the study. Added to this, the researcher will continuously consult educated and knowledgeable individuals on brand dilution and the relevant concepts to ensure that the data can be confirmed and collaborated.

### **3.5 Conclusion**

In conclusion, the research process will adopt a pragmatic paradigm that aims at determining the 'what and how' of the research problem. In terms of secondary research, desk-based research will be conducted in order to understand the theoretical foundation of brand dilution. While, the primary research will consist of semi-structured interviews with brand professionals and legal professionals whose focus is in the branding, advertising and marketing fields. Ultimately, through this research process, the aim is to answer the research questions set out in Chapter 1 – Introduction To The Research. The following chapter will discuss the results from the research process stipulated in this chapter, Chapter 3 – Research Design and Methodology.

# CHAPTER 4

## PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS

### 4.1 Introduction

This chapter focuses on the primary research component of this dissertation. It aims to address the primary research data and present the key findings relevant to the research objectives and questions found in the data. The findings are critically evaluated in the broader context of the research problem and related to the literature and theory discussed in Chapter 2 – Literature Review. The references made to the literature is not presented in-depth as it will be covered in detail in Chapter 5 – Conclusions and Recommendations.

### 4.2 The Objective-Questions Matrix

See Appendix 3 for the interview schedule with brand professionals and Appendix 4 for the interview schedule with legal professionals.

**TABLE 4.1: OBJECTIVES-QUESTIONS MATRIX**

<b>OBJECTIVES</b>	<b>QUESTIONS TO BRAND PROFESSIONALS</b>	<b>QUESTIONS TO LEGAL PROFESSIONALS</b>
1. Determine the value of a strong brand	<ul style="list-style-type: none"> <li>• What is a brand?</li> <li>• What are the benefits of having a strong brand?</li> </ul>	
2. Determine a comprehensive understanding of the concept of <i>brand dilution</i>	<ul style="list-style-type: none"> <li>• What do you understand by the concept of brand dilution?</li> <li>• Can competitors</li> </ul>	<ul style="list-style-type: none"> <li>• How would you explain the concept of brand dilution?</li> <li>• What role do competitors play in</li> </ul>

<p>and how a brand can become diluted through the actions of competitors</p>	<p>harm a brand? If so, how?</p> <ul style="list-style-type: none"> <li>• Do you think that the law sufficiently protects brands from the actions of competitors?</li> </ul>	<p>the act of diluting a brand?</p> <ul style="list-style-type: none"> <li>• Should brands be concerned about competitor behaviour diluting the value of their brands? If so, why do you say that they should be concerned</li> </ul>
<p>3. Determine the steps a brand can take in order to protect itself.</p>		<ul style="list-style-type: none"> <li>• What steps should a brand take to protect the value of the brand from competitor behaviour?</li> <li>• Do you think that the law sufficiently protects brands or, alternatively, do you think that the law is going too far when protecting brands from brand dilution?</li> <li>• What role do you see for the concept of freedom of speech in controlling competitor behaviour?</li> </ul>

### **4.3 The Participants**

As previously discussed in Chapter 3 – Methodology, the primary research participants were selected utilising judgemental sampling. Judgemental sampling is a ‘non-probability sampling technique where the researcher selects units to be sampled based on their knowledge and professional judgement’ (Explorable, 2012).

Therefore, the participants comprised of both brand professionals as well as legal experts whose focus is in the branding, advertising and marketing fields. They were interviewed based on their knowledge and expertise of the branding industry, the importance of having a strong brand, the concept of brand dilution, how competitor actions can lead to brand dilution and how a brand can be protected from brand dilution. The findings from the interviews with the brand professionals and legal professionals are as follows:

### **4.4 Presentation Of Findings**

The presentation of the findings takes into consideration the responses from the interviewees, both the brand professionals and the legal experts. Ultimately, these findings are used to answer the research questions presented in Chapter 1 – Introduction To The Research with the aims of attaining the research objectives.

#### **4.4.1 Objective 1: Determine The Value Of A Strong Brand**

A brand is a complex system that is difficult to fully encompass into a succinct definition. In previous times, brands were used to differentiate between products. However, as industries and marketplaces have evolved, so has the branding construct and almost every organisation, regardless of their offering, has an associated brand. These ‘organisations’ include churches, hospitals, charities and even countries.

Therefore, a brand is a unique design, sign, symbol, words or a combination thereof that aims to identify an organisation and their offering and differentiate the

associated organisation from competitors. This explanation complements the definition of *branding* provided by Aaker and Joachimsthaler (2009) that states that branding is 'the marketing practice of creating a name, symbol or design that identifies and differentiates a particular offering from other offerings' (Aaker & Joachimsthaler, 2009). The brand represents the organisations offering that is joined together by a theme, purpose and mission, often represented in the form of a *brand blueprint*. A *brand blueprint* 'establishes the voice and personality of an organisation, and it governs every aspect of communication from the organisation. The brand blueprint forms the basis for all interactions on behalf of an organisation (Klopper and North, 2011).

Ultimately, a brand represents an entity. This entity can be a person, product, service offering, or company, and the brand establishes the entity's recognition within the public domain. It is an all-encompassing way in which the entity presents itself. Over time, once the brand has established itself, it comes associated with a level of credibility, quality and satisfaction within the minds of the consumers

There are numerous benefits of having a strong brand. In short, these benefits include:

- Legal protection;
- Reduces risks;
- Helps recall information and speeds up purchasing processes;
- Assists with decision-making processes;
- Creates a personal or emotional experience;
- Repels competition; and
- Creates strong brand loyalty.

Strong brands are a key driver of business value creation. The most prominent benefits amongst the respondents were that strong brands differentiate an organisation from competitors and act as a means for immediate recognition in the minds of the consumer. While it is difficult to define a strong brand, due to the vast variety of entities and entity offerings, the other major benefits stated by the

respondents were trust from consumers, customer loyalty, brand awareness and credibility.

Ultimately, a strong brand allows for easy identification and allows the target market buy into more than just a product. They buy into the associated lifestyle that comes with the brand. The target market is more inclined to follow a brand that they can identify with and allow themselves to be influenced by a brand that they trust, creating customer loyalty. A strong brand is one that will stand out from the crowd and has the ability to communicate its message with a much greater reach, impact and frequency. Ultimately, this leads to a competitive advantage and greater stability regardless of their micro and macro environment.

A strong brand is one that:

- Has one particular purpose;
- Has a purpose that is unique;
- Ensures that the brand purpose is served in all that the organisation does;
- Satisfies wants and needs by building long-term relationships with the target market; and
- Builds sustainable relationships by never taking more than it gives.

These findings complement Dr Carla Enslin's *Meaningful Brand Criteria* (2015), discussed in Chapter 2 – Literature Review, which states that, in order for brands to survive in the modern day and age, they need to have a purpose that extends further than just generating profit. A *meaningful brand* is one that is:

- Unique and adds value,
- Internally committed and principled,
- Has mindful leadership,
- Is reciprocal, and
- Invests in community conversations (Enslin, 2015).



**Figure 4.1:** OBJECTIVE ONE – DETERMINE THE VALUE OF A STRONG BRAND

**4.4.2 Objective 2: Determine A Comprehensive Understanding Of The Concept Of *Brand Dilution* And How A Brand Can Become Diluted Through The Actions Of Competitors**

Brand dilution occurs when the value of a brand is decreased either through the actions of competitors or through the actions of consumers. It can also be self-inflicted through poor marketing practices. However, the focus of this research is how brand dilution can occur through the actions of competitors. This complements the definition provided by Schechter (1927) which states that brand dilution is the ‘gradual whittling away or dispersion of the brand identity’ due to the overuse of its mark or name through improper methods or in unauthorised circumstances.’ The brand loses its unique hold in the market because it no longer has a unique identity. Brand identity is defined as “the outward expression of the brand, including its name and visual appearance. The brand's identity is its fundamental means of consumer recognition and symbolises the brand's differentiation from competitors” (OVO, 2017). A respondent gave the example of a model whose face is used to market various different goods and services. The public no longer associates the model with a particular offering and, thus, when exposed to the model, they no longer associate

her with a particular offering or benefit. The marketing value of the model is, therefore, lost. This phenomenon similarly happens when brands become diluted.

Another respondent defined *brand dilution* as the loss of power that a brand has in the marketplace. A common example is where infringement of the intellectual property of the brand owner takes place, for example, trademark infringement. Trademark infringement is expanded on in Chapter 2 – Literature Review. This is when one brand utilizes a confusingly similar trademark as that of another brand and subsequently confuses the consumer and, ultimately, dilutes the original brand identity in the minds of the consumers. This is particularly detrimental when the brand that performed the trademark infringement is an inferior brand in comparison to the original brand.

Brand dilution also occurs when one brand will make use of another brand in order to create a springboard into the marketplace. This is done when one brand will utilize an established brand as a comparison or use the established brand to describe their offering. The general public stops associating the trademark with an offering and, instead, begins to view the trademark as the name for the actual offering. This can lead to the trademark becoming the generic. Ultimately, the trademark becomes the generic name for the type of offering itself. Common examples of trademarks becoming the generic include Tipex, Jik and Band-Aid. In theory, genericism is defined as ‘the phenomenon by which a registered trademark becomes the term by which a particular product or service is known (Menezes, 2012).’

A good legal example of a brand becoming the generic was Liquorice Allsorts. This was a brand name for a particular sweet marketed by Beacon. Cadbury then began utilizing the name Liquorice Allsorts because it was descriptive of the product offering. When Beacon complained, Cadbury argued that the name was now the generic for a particular kind of sweet and so could not be used exclusively by Beacon as a trademark. An alternative way in which a brand can become the generic is through other brands using an established brand as a benchmark. An example of this is a brand referring to the Rolls Royce of Restaurants or the Rolls Royce of bicycles or the Rolls Royce of watches. With time, the Rolls Royce brand will begin to lose its value. This is particularly problematic when the established trademark is associated with inferior goods.

Ambush marketing is also a prime area where brand dilution may take place. An example of this is during major sporting events, such as the Olympic Games or FIFA World Cup. Official sponsors pay hundreds of millions of dollars for the rights to officially market their products and services in relation to the sporting event. When non-sponsors, and often competitors of the sponsoring brands, of the event also flood the marketplace with marketing, saturation may take place and the sponsoring brand's offering becomes diluted.

In the context of 'image rights' protection of celebrities, brand dilution can also occur. Famous actors, athletes, influencers and examples alike frequently enter into endorsement deals with product and service providers, and the celebrity can earn significant income from this. It was reported in 2015 that former top golfer Tiger Woods had earned more than 83 times from endorsement deals than from his actual earnings from winning golf tournaments. When a brand misappropriates the celebrity's image for commercial purposes, uses the image of the celebrity to market an offering without authorization, this can dilute the celebrity's image brand; by flooding the market with Tiger Woods's image, that image becomes less attractive for potential future endorsement deals for Tiger Woods.

In addition to these examples, outside of the competitive marketing context, dilution can also occur through the conduct of outside parties. These parties include 'hacktivism' and political or social protests aimed at brands as well as WikiLeaks exposure of confidential corporate information, information shared on platforms such as HelloPeta and examples alike.

Ultimately, brand dilution can occur through the actions of competitors in a number of different ways. These ways include:

- The established brand name becoming the generic term for a particular offering,
- When a brand utilises another brand as a springboard into the marketplace,
- Comparative advertising,
- Imitation
- Ambush marketing,
- Trademark blurring,

- Trademark tarnishment, and
- 'Passing-off'.

In conclusion, competitors can actively pursue the dilution of a brand by a variety of means, including intellectual property and trademark infringements, which are more blatant and unlawful acts, or by ambush marketing, which is less blatant and the unlawfulness is not as clear. A further possibility is that of brand disparagement by a competitor, which may occur, for example, in the context of competitive or comparative advertising.



**Figure 4.2:** OBJECTIVE 2 - DETERMINE A COMPREHENSIVE UNDERSTANDING OF THE CONCEPT OF *BRAND DILUTION* AND HOW A BRAND CAN BECOME DILUTED THROUGH THE ACTIONS OF COMPETITORS

#### **4.4.3 Objective 3: Determine The Steps A Brand Can Take In Order To Protect Itself**

In this modern day and age, it is exceptionally important for brands to protect themselves. As mentioned above, there are a number of ways in which one brand can, whether intentionally or not, dilute another, many of which are relatively inexpensive with little to no potential legal implications. In addition to this, consumers are fickle. The current global marketplace is over-messaged and hyper-connected and the consumer is burdened by choice and, therefore, lacks brand loyalty. With the inclusion of the internet and social media, it has become much easier to dilute a brand because messages on these platforms have a much greater reach, with a much greater frequency and, therefore, a much greater impact. A disparaging ad, for example, may go viral and reach thousands of consumers in a very small timeframe.

There is a theme amongst respondents that, currently, the law does sufficiently protect brands from brand dilution. Before the Trademarks Act was revised 1993, it was very difficult to refer to another brand at all. Hence, it was very difficult to have any form of comparative advertising. However, the Act was then amended to include a new section, section 34. Section 34 of the Trade Mark Act sets out three instances where one cannot refer to another brand at all. Therefore, brands can now refer to one another, and a certain amount of comparative advertising is permissible, provided that the reference does not contravene section 34 and the comparison is fair and truthful. Therefore, the law is attempting to create a fair balance in the marketplace; however, it does need to adapt to the changes that come with the current marketplace, particularly in terms of online platforms and social media. This includes the Internet and new media.

That being said there are examples of the law going too far when protecting brands. When considering anti-ambush marketing laws, the laws are developing in the direction of overkill in protection, and, in the process, stifling freedom of expression and impacting on civil rights. The experience with recent global sports mega-events has been that special laws have served to ring-fence elements of the public domain to the benefit of wealthy multinational corporations and serving to establish naked restraints on competition by marketers, the legitimacy of which is dubious. In addition

to this, corporate commercial interests are trumping the public interest. An example of this: FIFA pressured the legislature in Brazil for the 2014 World Cup to lift a years-old ban on the serving of alcohol at soccer matches, which had clear public interest benefits, because Budweiser was one of FIFA's biggest sponsors. Intellectual property law regimes may sometimes facilitate 'trademark bullying' by brand owners, whereby such owners may use their wealth and the might of the law to bully smaller, and often new to the market, competitors into refraining from marketing activities that may not pose any real danger to the brand.

Brand dilution is a difficult concept to fully encompass into a succinct understanding. However, there are a number of steps that a brand can take in order to protect itself from the possibility of brand dilution. These steps include:

1. The first and arguably the most important step is for a brand to register their associated trademark. Trademarks are subject to the distinctiveness of the mark, therefore, it is imperative that the trademark is unique and cannot be confused with another or misappropriated.
2. Avoid using the brand name as a means to identify a particular offering. Ensure that the brand name is associated with the product but that the brand name and the offering are still distinctive in their own right. This aims to ensure that the brand does not become the generic name for the offering.
3. Ensure that the brand is supported by a clear and well-defined brand strategy. This ensures that the brand has a unique identity and occupies a distinctive position in the marketplace as well as in the minds of the target market. Ultimately, this aims to protect the brand from competitor actions because they cannot replicate the brand's position or identity and safeguards the brand's offering in terms of consumer confusion.
4. Create an employee handbook. Employees are one of the most important contact points that a brand has. Therefore, it is imperative for a brand's employees to not only have access to the brand blueprint but to also be aware of the value of the brand and how important it is to protect the value of the brand. The employee handbook ensures that employees know how to treat the brand in a manner that will avoid the possibility of brand dilution and can identify possible points of contact or competitor behaviours that can result in

brand dilution. An example of when an employee diluted a brand was when a Standard Bank branch manager bought a bunch of branded t-shirts that stated, instead of Standard Bank, 'Standard Wank' and encouraged his employees of the branch to wear the t-shirts on Saturday afternoons.

5. Protect your online content. Many brands are aware of the need to protect their trademark and brand, however, brands may overlook the content that they display online. This aims to ensure that brands are aware of their competitors and how easy it is to replicate content and, ultimately, communicate a similar message.
6. Particularly for smaller, start-up brands, set up Google Alerts. Google Alerts will update the brand on when its name is mentioned. This ensures that the brand is well-aware of how the brand is being portrayed and communicated in the public domain and allows the brand fair warning to deal with any issues if there has been any misconduct.
7. Be vigilant in brand monitoring with a focus on the activities of competitors, particularly on online platforms and social media. This aims to ensure that the brand is aware of activities in the micro and macro environment. If there is any unlawful behaviour, particularly from competitors, the brand can prevent or stop the activities before the actions extend too far and legal action needs to occur.
8. Utilise intellectual property protection measures. Intellectual property protections can include trademarks, copyrights and patents depending on the nature of the property. Through these intellectual property protections, a brand can ensure that any offering, process or information that is unique to the brand cannot be replicated by a competitor ensuring that the property remains unique to the original brand.
9. Set up a legal division within your brand. While this may be a far-fetched reality for smaller brands, a legal division can monitor the brand and the brand's competitors from a legal perspective and ensure that the brand is taking precautionary measures in terms of protecting the brand from brand dilution. In addition to this, the legal division can identify when the brand is being misappropriated or disparaged and can give advice or take immediate action on how to deal with each situation.

10. Finally, if a brand is being misappropriated or disparaged beyond the brand's capabilities, seek legal action. As previously discussed, an established brand is a very valuable asset to an organisation and brand dilution can lead to the complete destruction of the brand, ultimately, the death of the brand. Therefore, if a brand is facing the possibility of brand dilution, there are legal steps within the Trademarks Act as well as the Copyright Act that should be taken. At this stage, it is imperative for the brand to consult a lawyer who specializes in trademark law.

The steps stipulated above are completely in a brand's control, whether it is a start-up brand or a well-established brand. The steps range from simple steps that aim to prevent the possibility of brand dilution to demanding steps that are reactive measures that aim to stop the dilution of a brand.



**Figure 4.3:** OBJECTIVE 3 - DETERMINE THE STEPS A BRAND CAN TAKE IN ORDER TO PROTECT ITSELF

## **4.5 Conclusion**

In conclusion, the research process provided sufficient insights and findings into the research questions and objectives set out for this study. Ultimately, the findings presented the value of a strong brand, created an understanding of the concept of brand dilution and proposed steps that a brand can take in order to prevent and protect itself from brand dilution. The following chapter will summarize the research findings in order to draw the final conclusions of this dissertation and make the appropriate recommendations.

# **CHAPTER 5**

## **CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter presents the conclusions and recommendations in relation to each objective stipulated in Chapter 1 – Introduction To The Research. The findings under each objective draw from the literature presented in Chapter 2 – Literature Review and from the fieldwork presented in Chapter 4 – Presentations And Discussions Of Research Findings. Each objective is followed by a conclusion as well as appropriate recommendations. In addition to this, suggestions for further research are considered with a closing comment to complete the dissertation.

### **5.2 Objective 1: Determine The Value Of A Strong Brand**

#### **5.2.1 Research Findings**

Branding is defined as ‘the marketing practice of creating a name, symbol or design that identifies and differentiates a particular offering from other offerings’ (Aaker & Joachimsthaler, 2009). However, it is a complex system that is difficult to fully encompass into a succinct definition. A brand is the visual and verbal manifestation of an organisation and aims to differentiate the associated organisation from competitors, create instant recognition in the public domain and encourage brand loyalty in the minds of the target market.

In a world where consumers can be overwhelmed with options and where making a rational choice can be challenging, strong brands represent clarity, reassurance, consistency, status and membership (Entrepreneur, 2017). Strong brands are a key driver of business value creation and offer benefits that include:

- Legal protection
- Reduces risks

- Helps recall information and speeds up purchasing processes;
- Assists with decision-making processes;
- Creates a personal or emotional experience;
- Repels competition; and
- Creates strong brand loyalty.

However, Enslin (2015) states that there is a growing expectation that brands should have a purpose that extends further than just generating profit in order to be a strong brand. These brands are known as *meaningful brands*. In order to be a meaningful brand, one must:

- Be unique and add value,
- Be internally committed and principled,
- Have mindful leadership,
- Be reciprocal, and
- Invest in community conversations.

### **5.2.2 Conclusions**

In conclusion, a strong brand is one that is differentiated from competitors, is instantly recognisable and aims to create long-lasting relationships with the target market. However, in addition to this, a strong brand is also one that is honest, authentic and relevant and whose ultimate goal is to create genuine value that extends further than their shareholders, employees and target market.

### **5.2.3 Recommendations**

Therefore, in terms of recommendations, this research suggests that in order to be a strong brand, a brand must aim to create a unique position for itself that is indicative of the place that it holds in the market as well as the consumer that it aims to target. It is important for the brand to note that it cannot appeal to everyone. The brand should be supported by a clearly defined brand strategy that is consistently communicated through all of their contact points. In addition to this, the brand should also aim to ensure that profit is not a driver but a consequence of success; that it

uplifts and supports the economy, the communities that it impacts and the environment in which it exists.

### **5.3 Objective 2: Determine A Comprehensive Understanding Of The Concept Of Brand Dilution And How A Brand Can Become Diluted Through The Actions Of Competitors**

#### **5.3.1 Research Findings**

Brand dilution is the gradual whittling away or dispersion of a brand's identity due to the overuse of its mark or name through improper methods or in unauthorised circumstances. The brand, ultimately, loses its unique position and power within the marketplace because it no longer has a unique identity. Brand identity is defined as "the outward expression of the brand, including its name and visual appearance. The brand's identity is its fundamental means of consumer recognition and symbolises the brand's differentiation from competitors" (OVO, 2017). To be effective, a brand identity needs to resonate with customers, differentiate the brand from competitors, and represent what the organisation can and will do over time (Aaker & Joachimsthaler, 2009). The brand identity should be used to drive all brand-building efforts and ensure that all contact points are communicating the same message. However, if a brand loses its identity, it no longer represents anything and, therefore, the organisation no longer represents anything and has no position in the marketplace or in the minds of consumers.

Brand dilution can occur through the actions of competitors in numerous ways. These ways include:

- The brand name becoming the generic term for a particular offering,
- When a brand utilises another brand as a springboard into the marketplace,
- Comparative advertising,
- Ambush marketing,
- Trademark blurring,
- Trademark tarnishment, and

- 'Passing-off'.

The above-mentioned examples, when utilised by a brand's competitors, make use of a brand in inappropriate circumstances or disparage the brand and, ultimately, weakens the value of the brand in the marketplace as well as in the minds of consumers.

### **5.3.2 Conclusions**

In conclusion, brand dilution is the gradual whittling away or dispersion of a brand's identity due to the overuse of its mark or name through improper methods or in unauthorised circumstances. It is a common phenomenon in the marketplace, however, it remains an unfamiliar term. There are multiple ways in which a brand can be diluted, some of which can be accepted as complementary. However, a strong brand is one that is supported by a clear and defined strategy which needs to be communicated effectively at each of the brand's contact points. When competitors make use of a brand in the manners mentioned above, it is completely out of the brand's control and, whether progressive or destructive, will lead to the dilution of the brand.

### **5.3.3 Recommendations**

Brands need to be aware of the concept of *brand dilution* and the numerous ways in which it can occur. Brands are unaware of how even the smallest actions or non-threatening behaviours from competitors can lead to the destruction of a brand. Brands need to be aware of the actions that they can take in order to prevent the potential of becoming diluted or the reactive measures that they can take when they are facing brand dilution.

## **5.4 Objective 3: Determine The Steps A Brand Can Take In Order To Avoid Brand Dilution**

### **5.4.1 Research Findings**

There are numerous steps that a brand can take in order to prevent the possibility of brand dilution. In addition to this, there are certain legal steps that a brand can take when facing brand dilution. These steps include:

- Registering the brand's unique and distinctive trademark,
- Avoid using the brand name to identify an offering,
- Create a clear and well-defined brand strategy,
- Create an employee handbook,
- Protect the brand's online content,
- Set up Google Alerts,
- Monitor the macro and micro environments, with a particular focus on the activities of competitors,
- Utilise intellectual property measures,
- Set up a legal division, and
- Seek legal advice from lawyers who specializes in trademark law.

### **5.4.2 Conclusions**

In conclusion, a brand can avoid the possibility of dilution from the beginning. If a brand establishes itself and becomes successful, the possibility of competitors utilising the established brand in order to create their own success, whether intentionally or not, is exceptionally high. However, a strong brand that utilises the abovementioned steps has a greater chance of survival than one that does not. While a brand does not have complete control over the possibility of facing brand dilution through the actions of competitors, it is a phenomenon that can be avoided through simple and straightforward steps to an extent. In addition to this, if a brand does, at some stage, face the possibility of brand dilution and it has utilised the initial

steps, put the precautionary measures in place, the initial steps will act as a powerful tool that can be used as a defense during the more demanding steps, such as taking legal action against a competitor.

### **5.4.3 Recommendations**

Brand dilution is a common occurrence in the marketplace, whether it is acknowledged as brand dilution or not. Through the research process, it is recommended that brands familiarise themselves with the concept of brand dilution. Brand dilution can occur in many different forms. Therefore, it is strategic for a brand to understand the different forms and have the ability to recognise and acknowledge when a competitor's actions can actually lead to brand dilution. This will allow the brand to prepare itself and cease any misappropriate or disparaging actions from competitors halting the possibility of brand dilution. It is recommended that brands utilise the above-mentioned steps in order to protect or defend itself from brand dilution. Ultimately, these steps should ensure the survival of the brand, in terms of brand dilution.

## **5.5 Ethical Considerations**

It is important to remember that, when conducting research, that it cannot simply be conducted by anyone, anywhere, at any time (Maree, 2014). In order to morally conduct research, one must remember the ethical considerations.

In order to be ethical, the research needs to be relevant and responsive to the needs of the people of South Africa. Through addressing the topic of this dissertation, the ultimate aim is to understand the concept of brand dilution and lend towards educating and creating awareness around how brand dilution occurs, the problems that stem from brand dilution, and how one can avoid the dilution of a brand. This was done in order to enhance the decisions and behaviours of the people involved in the branding, marketing, and advertising sectors within South Africa (Maree, 2014).

Before conducting the research, ethical clearance was obtained (See Appendix 1). This ensured that the research carried out was by no means 'improper scientific research'. According to Maree (2014), the following ethical principals are relevant to this research and were followed and abided by:

Before conducting the research, the potential interviewees were contacted prior to the research process and asked for their willingness to participate in the study. If they agreed to partake in the research process, they signed a consent form. (See Appendix 2) During the research process, the interviewees were all treated equally. No personal information that would identify an individual will be accessible to any other party, unless permission was granted, and would only be used for the purpose of this dissertation. The dignity and autonomy of all individuals were respected. The research aimed to maintain humanity and granted freedom of choice in all situations. Individuals involved with the research were fully aware of their situation and remained informed at all times.

The study was free of any bias and, thus, completely based on the facts deduced from the research process. The findings were not manipulated in order to suit the research goals.

No group of people who could be considered vulnerable were interviewed. These groups include, but are not limited to: people who are in captivity, people who are mentally handicapped, and children.

Throughout the research process, a high level of professionalism was upheld and professional qualities such as integrity, quality, and accountability were expressed at all times (Maree, 2014).

## **5.6 Delimitations and Limitations**

Research will always encounter restrictions. These restrictions are known as *delimitations* and *limitations*.

### **5.6.1 Delimitations**

Delimitations are the boundaries set for the study, put in place by the researcher (Maree, 2014). The delimitations of this dissertation include:

Due to the fact that this dissertation is limited to 15 000 words, it is impossible to deal with all the ways in which brand dilution can occur. Therefore, this dissertation only focused on the role that competitors play in the event of brand dilution.

This study was only conducted in Durban and is based on the views and opinions of brand professionals and legal experts found in Durban.

### **5.6.2 Limitations**

The limitations of a study are those characteristics of design or methodology that impacted or influenced the interpretation of the findings from the research (Maree, 2014). The limitations of this dissertation include:

This was a small scale study with a limited budget and number of resources. Added to this, the research process lacked a larger research team. Therefore, there was a limitation to the amount of data as well as the quality of that data that could be collected and analysed.

There was also a very limited amount of information regarding the concept of brand dilution. Therefore, the researcher had to rely on other sources of information that lend to brand dilution but was not entirely centred around brand dilution.

Certain brand professionals and legal professionals were not available and were not able to contribute to the research. Another limitation was that the researcher did not know about certain brand professionals and legal professionals who could have provided critical data during the research process.

## **5.7 Suggestions For Further Research**

Brand dilution is a complex phenomenon. It is suggested that for a more in-depth analysis of the concept and for more rigorous methods on how a brand can avoid becoming diluted, a larger study needs to be conducted. This study should take great consideration of the many case studies that have resulted in the destruction of a brand through the actions of competitors in order to highlight the various other ways in which competitors can dilute a brand. It would give brands greater insight into how a brand can become diluted and the actions and behaviours that should concern the brand.

This study suggested steps that a brand can utilise in order to avoid brand dilution. These steps could form the basis of further research to be tested on their success. Once more research has been conducted and more examples of how brand dilution can occur are presented, further steps could be added.

In addition to brand dilution occurring through the actions of competitors, it can also be self-inflicted brand dilution or it can occur through the actions of consumers. Analysing these forms of brand dilution is also suggested for further research.

## **5.8 Concluding Remarks**

This study explored the concept of brand dilution and how brand dilution can occur through the actions of competitors. This study aimed to ascertain the value of a strong brand and how brand dilution is detrimental to the associated value. The research determined a comprehensive understanding of brand dilution, how brand dilution can occur through the actions of competitors and the steps, both internal and external, that a brand can take in order to avoid and protect itself from brand dilution.

This study adopted a pragmatic approach throughout the research process. Qualitative data was collected through semi-structured, in-depth interviews with brand professionals and legal professionals whose focus is in the advertising, marketing and branding fields. A literature review was conducted to introduce the theoretical foundation that related to the topic of brand dilution and provided the academic base for the research.

Acknowledging the research findings, it is evident that brand dilution is not a commonly known term within the marketplace. However, it occurs frequently in many different forms. In addition to this, the findings also presented steps that a brand can take in order to avoid or protect itself from becoming diluted. Having drawn valid conclusions, appropriate recommendations have been presented, and if implemented should protect brands from the possibility of becoming diluted.

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## **APPENDIX**

### **APPENDIX 1: ETHICAL CLEARANCE**

## APPENDIX 2: INFORMED CONSENT



### PARTICIPANT CONSENT FORM

#### RESEARCH TITLE:

**The Silent Brand Killer: The Risk Of Brand Dilution On Established Brands**

#### 1. INTRODUCTION

You are invited to participate in a research study about **The Silent Brand Killer: The Risk Of Brand Dilution On Established Brands**. The main purpose of this study is to explore the risk of brand dilution, and to identify the steps that brand owners may take in order to prevent their valuable brands from becoming diluted.

The information in this consent form is provided to assist you in deciding whether you would like to participate in this study. If you decide to participate, you will be required to participate in an individual interview with the researcher. You will be asked questions about your knowledge of branding, brand dilution and the steps one can take to avoid brand dilution.

It is important that you fully understand what is involved if you agree to participate in this study. If you have any questions that you feel are not addressed or explained fully in this consent form, please do not hesitate to ask the researcher for more information. You should not agree to participate unless you are completely comfortable with the procedures followed. The contact details of the researcher are as follows:

Email address: [samanthawoker@gmail.com](mailto:samanthawoker@gmail.com)

Contact number: 083 659 4604

## **2. THE NATURE AND PURPOSE OF THE STUDY**

The purpose of this research is fourfold:

1. Understand the concept of brand dilution;
2. Determine how a brand can become diluted;
3. Determine the effects that brand dilution has on a successful brand; and
4. Define how a brand can protect itself from brand dilution.

While the concept of brand dilution was recognised decades ago, primarily by Schechter, it remains an under researched concept. While the concepts that relate to brand dilution are fairly common, brand dilution as a distinct practical area for research has not been recognised fully.

In order to ensure the continued success and protection of prominent brands, it is crucial that there is a proper understanding of the concept. An important aim of this dissertation is to thoroughly define brand dilution and identify true characteristics in the process of brand dilution. Once the true nature of brand dilution is understood, it is possible to determine an appropriate means for a brand to protect itself from brand dilution.

## **3. EXPLANATION OF PROCEDURES TO BE FOLLOWED**

The interviews will take place in an environment most convenient for the interviewees. It will take approximately one hour. The interviewees will be asked semi-structured questions based on their knowledge and understanding of branding, brand dilution and the steps one can take to avoid brand dilution.

## **4. WITHDRAWAL CLAUSE**

- Your inclusion in this study is purely voluntary;
- If you do not wish to participate in this study, you have every right not to do so;
- Even if you agree to participate in this study, you may withdraw at any time without having to provide an explanation for your decision.

## 5. CONFIDENTIALITY

ALL information gathered in this study will be held in strict confidence and only the researcher will have access to the original data. Results will only be retained for as long as required for the research purpose and will thereafter be depersonalised and presented in such a way that you will not be identifiable.

## 6. CONSENT TO PARTICIPATE IN THIS STUDY

I have read the information presented to me in a language that I understand and I understand the implications of participating in this study. The content and meaning of this information have been explained to me. I have been given the opportunity to ask questions and am satisfied that they have been adequately addressed. I understand that I am under no obligation to participate in this study and that I can withdraw from this study at any stage without having to provide an explanation for my withdrawal. I hereby volunteer to take part in this study.

I have received a signed copy of this informed consent agreement.

### PARTICIPANT

Full Name and Surname: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**INFORMED CONSENT DECLARATION**

I, ..... (full names of participant),  
hereby confirm that I understand the contents of this document and the nature of the  
research and I consent to participating in it.

I am aware that I am at liberty to withdraw from the research at any time, should I so  
decide.

\_\_\_\_\_  
Participant Signature

\_\_\_\_\_  
Date

## **APPENDIX 3: INTERVIEW SCHEDULE**

### **BRAND PROFESSIONALS**

1. What is your name and title?
2. What is your occupation?
3. What is a brand?
4. What are the benefits of having a strong brand?
5. How does one develop a strong brand?
6. What do you understand by the concept of brand dilution?
7. Can competitors harm a brand? If so, how?
8. Do you think that the law sufficiently protects brands from the actions of competitors?
9. Please include any further comments that you feel are relevant to the topic of branding, the role of competitors, and brand dilution.

## **APPENDIX 4: INTERVIEW SCHEDULE**

### **LEGAL PROFESSIONALS**

1. What is your name and title?
2. What is your occupation?
3. How would you explain the concept of brand dilution?
4. What role do competitors play in the act of diluting a brand?
5. Should brands be concerned about competitor behaviour diluting the value of their brands? If so, why do you say that they should be concerned?
6. What steps should a brand take to protect the value of the brand from competitor behaviour?
7. Do you think that the law sufficiently protects brands or, alternatively, do you think that they law is going too far when protecting brands from brand dilution?
8. What role do you see for the concept of freedom of speech in controlling competitor behaviour?
9. Please include any further comments that you feel are relevant to the topic of brand dilution through the role of competitors.