IP ENSight

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Blockchain and trade marks, what's that all about then?

by Ilse du Plessis

Blockchain is very much in the news these days, most often in the context of Bitcoin. But people are also talking about blockchain in the context of brands and trade marks. This can be a bit alarming for those of us who aren't techies, but fortunately, there are those in-the-know who can explain just what the links between blockchain and trade marks are.

In an article entitled "How blockchain is replacing branding as a source of trust" (*Forbes,* 19 March 2018), Dr Jemma Green draws parallels between brands and blockchain. Before going any further it might be worth reminding ourselves just what brands and trade marks are all about.

Branding is essentially about trust. A trade mark is often described as a "badge of origin", which simply means that the trade mark assures the consumer that all goods bearing that trade mark come from the same source (without the customer necessarily knowing who that company is), and that all goods bearing that trade mark are therefore of the same quality (for this reason, a trade mark is sometimes also described as a "badge of quality"). The consumer trusts the trade mark. Yet, as we all know, that trust is often broken, not necessarily because of any action taken by the brand owner, but because of actions taken by third parties: counterfeiters or others who interfere with the supply chain and compromise the quality of the product.

Green goes back to Victorian times, discussing how a miller by the name of Molly goes from simply selling her high-quality flour to the people in her Yorkshire village, to people throughout the entire UK. To do this, Molly creates a trade mark comprising her name and a picture of a windmill, and this, of course, needs legal protection. But even with this legal protection, Molly needs to make sure that there's no tampering with her product – grocers mixing it with cheaper substitutes for example. So, she has to travel the length and breadth of the UK, checking that her product is unadulterated. It's hard work!

Fast-forward to the present. Large supermarket chains like Tesco sell huge quantities of burgers and lasagne ready meals. This obviously requires a great deal of minced beef. But things can go awry in the supply chain – horse meat filled with antibiotics and steroids finds its way into the meat that becomes part of the supermarket burgers and ready meals. This inconvenient truth only comes to light when DNA tests reveal that the lasagne is up to 100% horsemeat. This huge fraud is able to take place notwithstanding the fact that Europe is awash with checks and balances: regulations, directives, food standards agencies and food inspectors who conduct random visits.

Green says that the horse-meat scandal is directly linked to the obsession with cheaper, better, faster –companies will do whatever it takes to "improve" the supply chain. This invariably involves an ever-increasing number of participants and with this comes an ever-greater scope for fraud. She calls this "maximum efficiency, minimum visibility."

This is where blockchain comes in. Blockchain creates a "digital record that's inseparably connected to the product you've got going through the chain." Think of it as "distributed ledger technology", which Green says can be considered a "digital version of the packing note that accompanies a consignment of goods." But unlike paper notes that can be forged and computer records that can be changed, with blockchain nothing can be modified without it showing up as corrupted. That's because each computer in the chain has an immutable record. She suggests that we're moving to a world where there is zero fraud in the supply chain.

In an article that appeared in the April 2018 issue of Managing Intellectual Property, *Blockchain Party*, Ellie Mertens describes blockchain as "an encrypted, distributed ledger of data that can be used to record information and trade securely without intermediaries...it functions through a global network of computers, each piece of data (block) is recorded, then verified by multiple participating computers before being timestamped as it is added to an immutable list of previous data (chain)."

Mertens also discusses the issue of supply chain transparency and says that if customers trust a supply chain, the brand's reputation is likely to be enhanced. She gives some interesting examples of blockchain at work, including:

- Everledger, which uploads the characteristics, history and ownership of diamonds to blockchain, with the information of over one million diamonds being recorded. This provides an extra layer of protection to the Kimberley process.
- Provenance, which allows companies to use the term "Powered by Provenance" on labels if the supply chains are made transparent on Provenance's blockchain platform.

Mertens then looks at how blockchain, something that provides a clear record of ownership, is of obvious interest to IP. She says that trade mark information could be stored on blockchain, not simply registrations but also the detailed stuff like ownership and assignments.

Mertens mentions Cognate, a company that offers a blockchain service called chain marks as an alternative to trade mark registrations. The benefits are that registration takes only a day and costs USD40. The downside is that no-one knows whether these registrations are worth anything from a legal point of view. But Mertens does say that the European Intellectual Property Office is looking closely at blockchain as a way of recording and enforcing IP rights.

Blockchain and trade marks – it's about quite a lot as it turns out!

Ilse du Plessis

trade mark attorney | director | IP

cell: +27 82 411 7547