

WHO'S WHO AND WHO CAN WE SUE?

GOOD MARKETING IDEAS CAN SOMETIMES BACKFIRE IF THE LEGAL RAMIFICATIONS OF THEIR INITIATION AREN'T PROPERLY CONSIDERED. MAKE SURE YOU UNDERSTAND THE LEGAL PITFALLS OF COMMON BRANDING IN CORPORATE GROUPS.



by Maureen T. McKay & Murray Gottheil

Companies often choose to structure themselves in such a way that their various products and services are managed through separate corporate entities. In doing so, however, they often brand those corporations in a way that indicates that they operate as a cohesive group. To do this, companies will often use a common trademark or business name. For instance, a group of logistics companies might identify themselves as:

Johnny Come Lately Logistics Inc;
Johnny Come Lately Warehousing Ltd;
Johnny Come Lately Trailer Leasing Corp;
Johnny Come Lately Transport Inc;
Johnny Come Lately Cold Storage Limited; and
Johnny Come Lately Holdings Corporation.

They may also use one set of logos and trademarks, a common letterhead, a common phone number, and a single Web site. They often share premises and have their employees carry business cards that indicate that they work for "Johnny Come Lately" or "The Johnny Come Lately Group." In doing so, they present a common front to the public.

Marketing departments think that this is a good thing. Lawyers might disagree — especially if the process isn't managed correctly.

When Marketing clashes with Legal

Unfortunately, marketing managers may not fully understand the rationale for dividing what could be run as a single business into discrete corporate entities. While there are a number of reasons for doing so, one of the primary reasons is creditor protection.

The law considers a corporation to be a "person," and just as one person can't generally be sued for the actions of another person, even if they are related, one corporation can't generally be sued for the actions of another corporation, even if they are owned by the same shareholders.

For this reason, it often makes sense not to put all of your corporate eggs in a single corporate basket, especially if the operations of one part of the business carry greater commercial risk than the operations of another part of the business. If a single corporation were to provide the range of products and services that the Johnny Come Lately group of companies provides, that single corporation would be responsible for everything that happens in any part of the business, and all of the assets of every division of the business would be available to satisfy the claims of the creditors of any operating division. As such, there would be a greater risk that a problem in one division could mean the end of the entire

