Research Proposal

Sham Generics: A Risky Proposition for Mimic Strategy

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August 28, 2010

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This version has been modified to fit its abbreviated online publication for David W. Pan’s Post Doctorate Bridge 2010 program at The University of Florida
**Problem:**

Intellectual property (IP) is characteristic of being non-exclusive and intangible. Unless legally protected, the usage of IP cannot exclude others from doing the same. Some examples of these intangibles include trade secrets, patents, copyrights, and trademarks. Among those, trademarks are synonymous as brand names for companies. They differ from other types of IP because brands can be easily mimicked by others. A brand does not need to be initially registered and can be immediately marketed. Thus, a legitimate trademark is awarded to the first company that can make its brand known in commerce. In U.S. law, protection of a trademark is therefore equivalent to protection of a brand.

At first, a brand is considered as a concept that occupies a place in the mind of consumers (Ries and Strout 1981). According to Simonson (1994), the concept's basic functions are believed to be:

1. identifying the seller's products and distinguishing from competing ones,
2. signaling quality, and
3. serving as advertisement and promotion instruments.

As the brand becomes well established, it becomes a **prominent** brand. A **prominent** brand occupies a **unique** place in the mind of consumers. The uniqueness is deemed to help consumers enhance the speed which it can identify and process the brand among a crowd of competing products (Warlop and Alba 2004). How to learn, maintain, and enhance a product’s brand position in the mind of consumers has been a long research focus with various strategies...
(e.g., Aaker 1991; Keller 1993, Osselaer and Alba 2000). Therefore, brands are the most important intangible assets for companies in sustaining competitive advantage.

Numerous paths exist in mapping successful brand construction and development. The most effective path is product differentiation as advocated by many scholars (e.g., Boulding, Lee and Staelin 1994; Carpenter and Nakamoto 1989; Henard and Szymanski 2001, Porter 1998). Unfortunately, the benefits of a prominent brand associated with a successful product also offer a standing temptation for others who also want part of those benefits. For them, product imitation is an alternative to product differentiation. The proverb “If you can't beat them, join them” best summarizes this strategy.

The use of imitation strategy has always occurred in those opportunistic endeavors by market followers. The end result is a narrowing gap of competitive advantage built by market leaders. The mimic strategy exists in various forms in practice, ranging from copycatting product itself to purporting legitimacy of the authentic brand. It typically happens where there is strong demand for products with high brand equity in a low purchase power market. Such phenomenon is best represented in the emerging economies of Brazil, Russia, India, and China (BRIC). Our study is to use the newly popularized “Shan-Zhai” in China as an illustration.

*Shan-Zhai* (山寨) in Chinese character literally means “mountain stronghold.” It refers to ancient Chinese warlord holdouts in mountainous areas that were outside of government control. These warlords could do whatever they want according to their own rules. *Shan-Zhai* is a contemporary satire term to describe mimic versions of products, persons, ideas, events, or even architectural structures in the marketplace. Year 2008 was dubbed as the first year of *Shan-Zhai*, contemplating to become a strong sub-cultural phenomenon in China.
Generally, a Shan-Zhai brand emerges right after an authentic brand with high brand equity has gained prominence either domestically or by importation. Shan-Zhai originated from the imitation of consumer goods such as mobile phones and sports apparel. It has rapidly clamored attention in a wide range of products such as automobiles, cultural performances, celebrities, and buildings. Example given, a miniature U.S. White House was replicated as a government building in a Chinese local city to mimic its more powerful authority than those of nearby counties.

Shan-Zhai versions have captured strong public interest being both criticized for copycatting and appraised for their ability of mimicking and, sometimes, improving. Its criticizers deemed the emergence of Shan-Zhai versions as being ill-conceived with intent to attract attention. It has created unfair competition over the established authentic brands by diluting their equity with an original design and legitimacy that normally would requires intensive R & D. Its proponents argued it as being equity leverage to push market leaders for constant improvement on their brand and product by sharing the “fruit of civilization,” because no one could be creative in a vacuum. The market leader's ingenuity must have been built upon discrete ideas of others who did not receive any reward, either. Furthermore, a targeted authentic brand that is mimicked seems to have strengthened its brand prominence from the paralleled attention from Shan-Zhai copycats.

The connotation of Shan-Zhai realistically refers to the intent of shaming individuals, and that brand community itself, for improvement through imitation. Although Shan-Zhai is meant to be funny, its greater purpose still rests with constructive social criticism to make a marked notice for sales. To help understand Shan-Zhai in a Western context, we have delved to introducing a linguistically and literally paralleled English term called as “Sham Generics” or
Sham Gen as a short version to replace Shan-Zhai. Similarly, Sham Gen is considered as a competing and imitating version with intent to stride somewhere on a spectrum between product differentiation and mimic strategies.

Sham Gen can emerge anywhere. When a high volume of product information flows through a marketplace, consumers tend to only accept what appears to be consistent with prior knowledge. Mimic strategy is essentially an attempt to make a trailing product to be in line with a leading one. Warlop and Alba (2004) indicated that companies always fear imitations because consumers may interpret similarity between competing products for mimic ones. Their findings suggested that undifferentiated trailing brands tend to invoke a comparison from leading brands, while differentiated trailing brands tend to be evaluated on their own merits.

We would additionally reason that a differentiated brand requires more time and challenge for learning. Only when substantially learned would the consumer’s gained knowledge become the usage of comparison to fend off mimics. Before that can be achieved, when being often overloaded with information as in real marketplace, consumers tend to rely on an innately built “instinct.” Such is what we call simplified congruent consistence, rather than complicated incongruent consistence, in the brand evaluation process. Generally, consumers will shy away from anything that is inconsistent during a comparison because of the risk of disaffirmation with already learned knowledge.

Sham Gen brands are virtually inconsistent in the consumer’s knowledge with the targeted authentic brand form. Nevertheless, they are strikingly impressed to be consistent to some extent in substance. By straddling in the middle somewhere, Sham Gens have enjoyed being both overtly undifferentiated in categories and subtly differentiated in features. This
phenomenon has offered an interesting question and opened a new research area, opposite to the
studies in brand extensions. How much differentiation in feature or how much similarity in
category a newly introduced product should be able to capture the desired attention of consumers?
The study of a difference between counterfeit and Sham Gen products within the realm of mimic
strategy could provide an answer. The copycat is with disguised intention to deceive consumers
from authentic brands, while the Sham Gen attracts attention so consumers could make a
decision. This is the rationale for conducting this study.

**Governing Laws in Legal Premise**

The United Nation’s Organization for Economic Cooperation and Development reported
in 2007 that international trade in counterfeit goods was worth about $176 billion, accounting for
about 2 percent of global trade. Chinese producers on Mainland and Taiwan accounted for 65
percent, and the United Arab Emirates had 12 percent of the European market in fake products
(Tirone 2010). Sham Gen has apparently become a serious concern where there is a weak
protection system for IP, particularly in those jurisdictions where high-life products are imported
and desired. Consequently, gained competitive advantages can be short-lived for market leaders
if they are easily imitable by competitors (Porter 1984).

To protect legal rights for a brand from being infringed by others, trademark laws have
evolved over time. The original Lanham Act, 15 U.S.C. in the United States was enacted in 1946
(The Trademark Act 2000). The statute intended to ward off unfair practices of using mimic
brand strategies to confuse consumers. But recently, the significant case law of Wal-Mart Stores,
Inc. v. Samara Brothers, Inc. 529 U.S. 205 (2000) further requires that, in an action for
infringement of unregistered trade dress under §43(a) of the Lanham Act, a product’s design is
distinctive, and therefore protectable, *only upon a showing of secondary meaning* (emphasis added), extended from the previous key criterion of confusion (Allen 1991).

The Wal-Mart decision has further extended the requirements for legal protection of a brand, consequently encouraging competitiveness via a variety of means, including mimic strategies. Distinctiveness alone as a valid trademark element could no longer be found “inherent,” or automatic, for product design by virtue of its uniqueness. Instead, distinctiveness now requires further proving with a “secondary meaning,” defined as a connection in consumers’ minds between a product and its origin of manufacturer. That is, to describe the use of design features to “signal” to the consumer the identity of a producer. (Wal-Mart Stores, Inc. v. Samara Bros. 529 U.S. 205, p. 212-213, 2000).

In today’s global marketplace, increased flow of products has intensified competition among prominent brands across national boundaries and legal jurisdictions. The main governing law for international trade on IP is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), promulgated by the World Trade Organization (WTO). The law allows all WTO member nations to adopt differing IP rules. While TRIPS specifically requires that members treat both foreigners and nationals equally, it also implicitly accepts that nations may differ in substantive IP laws as long as the adoption promotes public interest in sectors of vital industries. Such de jure “proportional” parity within WTO member nations has created differential IP laws as higher-protection rule nations vs. lower-protection rule nations. Consequently, different de facto mimic brands have emerged with increased flow across nations and posed threats for enforcement. A mimic brand created in a low-rule nation is most likely illegal in a high-rule nation, but not vice versa.
The business implications of such parity in law can be viewed in many perspectives. In perspective of high-rule nations, strict protection of their own brands in low-rule nations is prerequisite for a fair trade platform. So, imported products from high-rule nations can better maintain competitive advantage over rivalries in low-rule nations. Consequently, ingenuity and innovation in high-rule nations can be further promoted through increased exportation to lower-rule nations. From a viewpoint of low-rule nations, however, imported brand products from high-rule nations are differently viewed. They may be considered as an exchange for market share for a prototype aspired to be learned through imitation in lower-rule nations. The standard of imported products can serve as a domestic benchmark for a frog-leap development of technology and brand equity. Consequently, enforcement of trademark protection laws is less incentive and only becomes necessary if by TRIPS. Therefore, evaluation on imitable brands by end users may show a higher degree of acceptance in lower-rule nations than that in higher-rule nations.

In a strategic marketing viewpoint, competitive advantage gained through the firm’s ingenuity and innovation is short-lived unless it comes from the firm’s hard-to-be-imitable core competencies (Porter, 1998). Sustainable competitive advantage is always relative. In addition to strategy and R&D, sustainability is largely dependent upon less compassionate forbearance from competitors toward the firm prominent product. This is to say how the effect of imitable brands can be avoided, neutralized, minimized, or used by market leaders through understanding how Sham Gens attack. Numerous questions still remain unanswered:

1. how Sham Gens, regardless of their legitimacy, are perceived and evaluated by consumers;
whether and how mimics such as Sham Gens can be evaluated as cues to induce a “secondary meaning” in the minds of consumers;

how preference towards an authentic vs. Sham Gen is formulated;

what can be done to mediate the effect of Sham Gens with authentic ones; and

(5) can Sham Gens moderate the function of perceived similarities and brand concept in reference to invoked identities taken by consumers, or somewhat concomitant in all.

Furthermore, what magnitude of the “secondary meaning” contained in Sham Gens can qualify for legal protection? How the “secondary meaning” would be interacted with a differing brand typology (such as categorized by function-oriented vs. prestige-oriented brands, domestic vs. international product categories, or higher vs. lower-rule nations)? These questions provide the specific interest in our research.

In our current study, a brand evaluation and development paradigm is proposed to depict a three-level evaluation process by consumers. Figure 1 shows the framework for our conceptualization and analysis in their pertinent relationships.

Represented in the middle of the model is a movable imaginary line of the “Secondary Meaning” (a varying legal threshold) to separate mimic and extension strategy domains in higher or lower rule nations. This model shows how each level of evaluation would be made dependent upon how and what brands are presented and reached at that level. The primary objective of our research is to use a series of designs to experimentally demonstrate the differing effect of Sham
Gens on authentic brands, and how these effects are being evaluated by consumers of different contextual backgrounds within this paradigm.

**Literature Review (Omitted)**

This study is therefore further designed to test the hypotheses in the proposed framework with a focus on non-conflict evaluation process and the source of a “secondary meaning.” We will conduct a series of our experiments with a mimic brand alone and with both an authentic and mimic brand. Our study will also span across various types of products to see if consistent responses occur, dependent upon the nature of controlling identities invoked by a product and other contextual factors.

**Objectives:**

The main objectives of this research are (1) to identify how consumers would evaluate mimic brands particularly in Sham Gens across differing product typology comparing to differentiation brands in authentic versions, (2) to identify effects of demographic variables on selected dependent variables in brand evaluation, (3) to identify the “secondary meaning,” if any that would be relevant in brand evaluation, and (4) to identify if there is the effect of “non-conflict” value-identity evaluation on mimic brand particularly in Sham Gen version across differing product typology as comparing to differentiation brands in authentic version.

**Hypotheses:**

Built upon the given premise aforementioned, we believe the following variables are tenable for constructing testable hypotheses.

1. Demographics of Consumers:
a) Low vs. high rule protection nations;
b) Junior vs. senior age groups;
c) Low vs. high income groups;
d) Female vs. male groups;
e) Idealist vs. pragmatist groups;

2. Nature of Brands:
   a) Prestige vs. function oriented brands
   b) Imported vs. domestic brands
   c) Existing vs. future authentic brands

3. Cued Settings
   a) Sham Gen version alone;
   b) Sham Gen version in comparison with targeted authentic brand together;
   c) Future authentic brand alone;
   d) Existing authentic brands in comparison with future brand together.

Correspondingly, we propose a series of hypotheses to be tested, just name a few as examples, as follows.

H1. Consumers of given demographic characteristics such as idealist, higher income, senior in age, or in low-protection rule nations, when cued by mimic brands of prestige oriented products with strong brand prominence and without the cue of actual authentic brands, tend to show stronger degree of strength in sources of manufacturer for authentic brands (“secondary meaning”) and weaker degree of preference toward Sham Gen versions than their counterparts.

This hypothesis is made on the basis of the fact that a well-established prominent brand concept for prestigious products on brand concept level and value-identity level tends to “resist”
inconsistent negative messages mimic brands would have created and possibly magnified through the brand concept “filters” during evaluations.

H2. Consumers of given characteristics such as pragmatist, lower income, junior in age, or in low-protection rule nations, when cued by mimic brands of function oriented products with less brand prominence in comparison with a cue of actual authentic brands together, tend to show weaker degree of strength in sources of manufacturer for authentic brands (“secondary meaning”) and stronger degree of preference toward Sham Gen function-oriented products than their counterparts.

This hypothesis is made on the basis of the fact that the presence of actual authentic brands of function orientated products would have “short-circuited” a non-conflict evaluation process from the value-identity level on which a conscientious comparison process has been transformed into an objective need-function comparison, thus making any previously stronger personal attachment to a salient identity become less attachable.

**Methodology:**

This research is to use a series of studies with repeated measures to test the proposed hypotheses. Specifically, we are going to investigate the effect of a group of selected variables on “secondary meaning,” preferences, price probability, affective compatibility, and acceptance of trademarks in various forms of products and services as viewed and evaluated by consumers in low vs. high IP protection rule nations.

**Data**

The dependent variables are: (1) “secondary meaning”, (2) preference, (3) price probability, (4) affective compatibility, and (5) acceptance toward presented brands. Each construct is
measured by a number of items that would be selected through a literature review and/or an exploratory factor-analysis in a pilot study.

The independent variables are: (1) brand of interest (e.g., mimic vs. authentic, or current vs. future), (2) origin of product or service (i.e., domestic vs. international), (3) product orientation (i.e., function-oriented vs. prestige-oriented), (4) IP protection rules nations (i.e., low vs. high); and (5) contrasting identity (i.e., an idealist vs. a pragmatist), plus the selected demographic variables that are to be collected.

**Instrument**

A group of questionnaires have been constructed on the basis of the literature review and the suitability of the proposed theoretical framework for constructing the domain of selected dependent and independent variables. This instrument will enable participants to provide responses in two forms: (1) cued responses alone, and (2) cured responses in comparison with the other pertinent one. Respondents will be asked to rate the relative degree of their assessment toward a group of selected qualified terms deriving from cured scenarios on a 7-point Likert scale from 1 (least or none) to 7 (most important or all), as well as provide pertinent information in the demographic section.

Insert the Instrument Files Here (omitted)

**Participants**

Stage 1, college students will be nested-randomly selected at numerous universities located in high and low protection rule nations. The determination of sample size will be consistent with Malhotra’s criteria (2004) for conducting this type of marketing research. The
criteria suggested consideration of the following factors: (1) importance of the decision, (2) nature of study, (3) number of variables, (4) nature of the analysis, (5) sample size used in similar studies, and (6) research constraints. College students are selected because of a high degree of homogeneity among participants in a comparative study across national borders. A cover letter explaining the purpose of the study, the importance of the respondent’s cooperation, the institutional sponsor, and the questionnaire will be distributed to class instructors who also will administer the data collection.

Stage 2, participants from general public will be surveyed using the mall-intercept method in high and low protection rule nations. The profile of participants in Stage 2 will be compared with that of Stage 1 to determine if a significant different profile

Validation *(Omitted as in this abbreviated online version)*

Results and Conclusions *(To be found and made)*

References *(Omitted as in this abbreviated online version)*

**Acknowledgement:** This research proposal and the proposed Brand Uniqueness Model (BUM) have been conceived, developed, and substantiated under the confirmation/reconfirmation plus advisory and staff support from the faculty of Post Doctorate Bridge program 2010, Warrington College of Business Administration at The University of Florida. Particularly, special acknowledgement should be attributed to Dr. Joseph Alba for his specific advice, along with Dr. Jason Colquitt, Dr. Robyn LeBoeuf, Dean John Craft, Dr. Linda Clarke, Dr. William Rossi, Dr. Fred Sturdivant, Dr. Craig Tapley and Dr. Sanford Berg for their inspiring research and teaching experience, plus the administrative support from Associate Dean Dr. S. Selcuk Erengus, Dr. Berna Mutlu and their staff.
Figure 1. Proposed Framework for Brand Uniqueness Model (BUM)

Value-to-Identity Non-Conflict Evaluation

Product Similarity & Brand Concept Evaluation

Feature-to-Feature Cataloging

"Secondary Meaning"

Mimic

Authentic

Identity Invoked

Perceived Fit

Feature-Categorization

- Differentiated

Mimic/Extension

+ Differentiated

Availability

BE is prominent in nature, being either positively or negatively strongest

BE is moderately strong among competing product due to a fierce competition

BE is minimal or extremely hard to differentiate