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Made-Up Words Make the Best Trademarks (But Don't Bother Trying to Register "Covfefe")

by Carole E. Reagan, Umberg Zipser LLP

Some of the best-known trademarks in the world are invented words: Pepsi, Xerox, Adidas, Exxon. These are words everyone knows, but they have no meaning aside from the companies and products that bear those names – which is precisely why they are so valuable as brands. Made-up words are “inherently distinctive” in trademark parlance, and entitled to the highest level of trademark protection. Invented words may require a greater up-front investment to develop an association in consumers' minds, but the potential pay-off in brand strength is huge. “Super Cola” would immediately describe a new beverage product to consumers, but a name that bland will never achieve the impact of “Pepsi.”

“Covfefe,” of recent Trump Twitter fame, is the made-up word of the moment. And this being America, no small number of people have jumped to capitalize on its moneymaking potential. There are currently 31 trademark applications for “Covfefe” pending before the US Patent and Trademark Office. There's Covfefe coffee, Covfefe toys, and lots of hopeful Covfefe applications for hats, shirts, and mugs. Most, if not all, of these applications will fail. The PTO will likely refuse registration because a word that “merely conveys an informational social, political, religious, or similar kind of message” cannot function as a trademark. As the PTO recently explained in rejecting another trendy political phrase (“Nasty Women”): “The more commonly a term or slogan is used in everyday speech, the less likely the public will use it to identify only one source and the less likely the term

or slogan will be recognized by purchasers as a trademark.” In other words, it would take enormous effort to make consumers associate “Covfefe” with coffee or toys or anything other than Trump, and until that happens, no one is going to “trademark” Covfefe.

So when the time comes to name your new company or unique product, **do** invent a new word to set your brand apart. In the meantime, sell all the “Covfefe” t-shirts and dog bowls you want, but **don't** waste your time trying to monopolize the latest “it” phrase.

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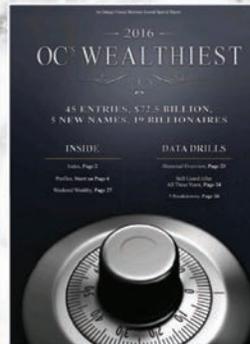
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