

Tackling IP change at Pernod Ricard

Audrey Yayon-Dauvet, group IP director at Pernod Ricard, explains how she shaped the company's IP function to match the corporate culture

Feature by **Trevor Little**

Implementing a consistent approach to trademark and brand protection is always a challenge, but in a company with a decentralised portfolio of brands and a history of expansion, the job is harder still. Yet this was precisely the task facing Audrey Yayon-Dauvet when she took on the role of group IP director at Pernod Ricard.

Since its creation in 1975, Pernod Ricard has adopted a devolved management structure, being organised into a holding company, which focuses on strategic management and monitoring business activities, and brand-owning subsidiaries, which develop products and define the global marketing strategy for their brands.

Yayon-Dauvet explains: "When I joined as the global head of IP, a brand-new IP organisation had to be developed and coordinated. Because Pernod Ricard is a decentralised group, which is one of its key strengths, we really had to integrate the culture of the group into the IP structure."

To achieve this, the decision was taken to shy away from creating a central IP function ("by which I mean that we don't have all the IP resources based in Paris"), and instead create regional IP hubs working directly in the sites where the brand owners are themselves located.

"The Pernod Ricard holding company is not the owner of all the IP rights of the brands — certain of its affiliates, called

brand owners, manage their IP rights and products. In order to ensure the best possible consistency and harmonisation in the protection and defence of our IP rights, we had to put in place an overall organisation, sharing the same values and rules. The IP team I now coordinate is composed of six IP hubs, based near the businesspeople in each major brand-owning company — for example, in Australia, the United States, the United Kingdom, Sweden and France — while also taking into account the development of the group."

This landscape has shifted continuously as Pernod Ricard has pursued acquisition strategies (see illustration on page 10). In 2001 the company acquired 38% of Seagram's wines and spirits business, while in 2005 it took over Allied Domecq. "It was after this acquisition, and with the increase in the size of the IP function, that the general counsel and senior management decided it was a good idea to look at the IP structure," notes Yayon-Dauvet. In 2008 came the acquisition of the Vin & Spirit group, leading to the need for a dedicated team in Sweden.

Today, the emphasis is on taking a common approach to trademark issues. She explains: "The link between the IP hubs, which we do see as one global team, is that each team member works with one specific brand owner to obtain and protect its IP rights and conduct all the prosecution and enforcement work. They are there to manage litigation, advise, negotiate, work on agreements such as licensing and sponsorship agreements, and review advertising materials. They also oversee all internet issues, like domain names (with the support of a single administrative and technical contact for the whole group) and other areas where IP expertise is required, such as social networking. They are

essentially involved in everything to do with the life of the brand. The hubs provide support to the brand owners, which we literally view as internal clients, and work in a coordinated and positive way.”

Selling change

Having taken the decision to restructure the IP function, the next step was to sell this new emphasis on mark protection, and the implementation of consistent practices, to a cohort of business affiliates who had historically developed their own strategies – or not.

Yayon-Dauvet recalls: “As there was no coordinated approach, we found that in some countries certain brands, such as Martell or Chivas Regal, were really well protected, but elsewhere brands were not as protected as they should have been in specific emerging, local markets. So we had to explain why IP would benefit from a coordinated approach at the group level. If you have different approaches to the management of marks or domain names, you can suffer from inconsistencies in protection and defence. So we put in place common rules, guidelines and policies to be followed by everyone and had to ensure that, as well as the IP team, the businesspeople complied with the global IP policy in the interest of the group. When we talked to them about IP, we talked about one global IP portfolio for major principles, even though each brand has its own particular

environments, specific markets, geographical indications and so on. In the past, individual actions would have been initiated exclusively locally, and sometimes redundantly (eg, two brand-owning companies starting two distinct judicial actions against the same defendant without coordinating their strategies). Today we bring one action and all agree that together we are stronger.”

This consistency in approach is also important in strengthening relations with other business partners. “As well as the brand owners, Pernod Ricard has its own integrated network of distributors – over 70 affiliates dedicated to the distribution of our brands. It’s important for them to understand how we defend our brands against lookalikes and counterfeits. The message received from Paris, London, New York, Stockholm or Adelaide has to be the same.”

Too much, too young?

Restructuring the IP function at Pernod Ricard was a Herculean task and for many early 30-somethings could have been a daunting challenge. Yayon-Dauvet is thus quick to pay tribute to Ian FitzSimons, general counsel of the group, “who gave me the chance to develop the IP structure, to implement global strategies and manage one of the greatest trademark portfolios in the world, in addition to the other IP rights owned by the group”.

Managing risk in trademark acquisitions

As a brand-focused business, Pernod Ricard has been involved in some high-profile deals, giving Yayon-Dauvet first-hand experience of some of the issues that can arise when acquiring new brands.

She is keen to stress the importance of an IP audit, as often the problems that may be encountered down the line can be identified long before they actually occur.

One is the development of lookalikes on the market – often a consequence of lack of action by the owner. She elaborates: “When we took over Allied Domecq, we acquired the Malibu brand, which was not protected against lookalikes by the owner. So when we inherited it, we had to start a strong action plan to go in and really clean up the market.

Now the situation is much more satisfactory and most lookalikes have either drastically changed or disappeared altogether. If you don’t bring any action against the first or second lookalike launched into a specific market, suddenly you will be fighting dozens as infringers won’t anticipate problems when using the distinctive elements of your brand.”

On the other hand, an IP audit can also provide welcome peace of mind. “With the Vin & Sprit acquisition, for example, we carried out an internal and external audit to investigate the level of protection for Absolut. In this case we were really pleased as the brand had been well protected historically.”

In breaking down the issues at stake in a pre-acquisition audit, suggests Yayon-Dauvet, the first concern is “the level of protection and the way the brand has been defended in the past. You need to see if there is an issue of co-existence with infringing products, as was the case with Malibu, and check levels of infringement.

“You also have to look at the agreements related to the brand, including all possible agreements which have an impact on IP. Really, everything related to the life of the rights. We have also found it important to go beyond the brand name itself to look at issues such as its treatment on the Internet and the protection of product characteristics, such as bottle shapes.”

While the IP audit predominately focuses on levels of protection and past action, it can also contribute to the wider company audit – adding additional value to the acquisition process. “We have engaged in peer reviews of litigation and agreements, and supported other departments, such as the finance department, to give a view on the value of the brand on the legal side. Finally, we have looked at the strategy to anticipate new territories where the brand can be strong in the future – for example, in Asian or South American markets. So you don’t look just at the ability to exploit the mark’s position in current markets, but also the possibility of extending the brand and anticipating a protection strategy for the future.”



Yavon-Dauvet joined from the IP department of Bird & Bird in Paris, having previously obtained a law degree from the Sorbonne and Assas in Paris, and a diploma from Sciences Po, specialising in economy and finance. She recalls: “After my studies, I spent almost a year as an IP in-house counsel at Danone, followed by a year at Stibbe Simont (now Latham & Watkins). I then moved to Bird & Bird. I joined three months after they opened the Paris branch, in 2000. It was just a small office then and I had just one colleague doing IP. However, I saw the team grow over the following years. It was great to see the development of a law firm with great energy and a lot of ambition, to become a key actor in the sectors of telecoms, IP and IT – which are now still among its key specialities, especially in Paris.”

After seven years at the firm, she joined Pernod Ricard as group IP director. The beverage giant had not been a previous client, so she came completely fresh to the company and its inner workings – and it was precisely these that sold her on the role. “I felt it was a great position because when I met people at Pernod Ricard, especially the general counsel, I really got the feeling that IP was considered an important business asset.”

The move in-house

Yavon-Dauvet now heads up a 30-strong global IP team, including in-house counsel and paralegals, and oversees a portfolio of over 26,000 trademarks, in addition to other IP rights, covering more than 150 countries. She has also just been elected vice president of the French Association of Practitioners in Trademark and Design Law, which has 760 members.

While she spends time coordinating the respective IP hubs, she also works with the company’s affiliates to promote IP globally. However, she argues that she does not “want to be just a public figurehead. I also want to be working on the ground. I work on specific matters considered by senior management as strategic affairs, including key litigations, brand acquisitions, assignments and restructuring. So I still work on technical IP matters.

“It’s important to do that to understand the concerns of my team and to be the person they can call, not only with organisational and management questions, but also technical and legal ones. It’s difficult, though – we work across 150 different jurisdictions so we can’t be a specialist on them all, but we can give helpful and pragmatic advice to our businesspeople in terms of strategy.”

The relationship with outside counsel is also one which is tackled strategically, mirroring the decentralised approach to the Pernod Ricard business. “We have teams that are completely linked to brand owners, but we also develop geographical competence – having people in most continents, we try to optimise the local expertise of each of these teams and develop know-how internally. So while we use external counsel, it’s important to have our own databases and meetings to share our knowledge and experience of local legislation and case law. When we have someone in the UK who needs clarification about a US law, for example, they will first call a colleague in the US to try to find a solution. After, if the question is too specific, we will then turn to external counsel.”

In terms of selecting outside counsel, it is the individual whom she looks at, rather than firm size and resources. “We definitely consider it more important to work with individuals than with corporate structures. If an excellent lawyer who is among the most renowned local leaders in IP is in a big structure, then that’s fine, but it really isn’t my priority.”

Looking like a problem

Turning to the protection of Pernod Ricard’s trademark portfolio, Yavon-Dauvet suggests that while the company faces a range of potential issues, the most prevalent are lookalikes and illicit uses of the various brands. “Some products aren’t concerned at all by this problem; some are locally, some globally,” she notes. “But most brand owners in food and beverages face these issues. We are in an industry where infringers can develop a business and mislead consumers very quickly when successful brands emerge in a market. Importantly, the development of lookalikes is often a consequence of the absence of action of the brand owner” (see box on page 9).

The lookalike problem is particularly troublesome if it attacks the heart of a company’s values – the brand itself. “We have strong and even iconic brands, and one of the mottos of our general management is that the brands are our main asset. We are also in an industry where we have a historical context to take into account. When you talk about whisky or champagne, there are real historical environments around the products and we have to take these into account and be strict about their defence. Also, we are not in an industry where we develop a new spirit brand every day, so we have to very carefully protect the existing portfolio we do have.”

Protection can also be extended to

Key brand evolution



60-second interview

What aspects of your job do you find the most challenging?

At Pernod Ricard, the multicultural approach can be a challenge and not having everyone here in Paris makes it more complex. Looking more globally, the development of new technologies is a challenge for all IP practitioners – particularly social networking and video sharing. These will expand in the future and we all need to be aware of the challenges they pose.

What aspects do you find the most rewarding?

It's the flipside: the international approach is also a real positive. Being at the holding company allows me to work on interesting global issues. I feel privileged to have access to these. Another plus is that the general management is really positive about IP protection and adheres to the plan – in fact, they always push for more protection. So management support is great.

Who has been the greatest influence on your career?

It's difficult to name one person. Certainly Pascale Gelly, a French

lawyer who really helped me at the beginning of my career and has also followed me since then. Finally, without the Pernod Ricard IP team, and their enthusiasm and great involvement, all this would not have been possible. It's all still a work in progress, but with this team we can do more.

If you could make one change to the industry, what would it be?

I'm not sure I would want a change, but rather an evolution. I think that in most countries, even emerging markets, there are some great IP laws. However, what I'd like to see is more efficient enforcement of existing laws.

What career do you think you would have followed if not law?

I would have been a chef and opened my own restaurant by now. Parallel to my legal studies, I also studied cooking and I still try to cook whenever I have time. That isn't often, but certainly at the weekend I'll be in the kitchen.

markets that have not yet been the focus of product expansion. The successful action taken in India in relation to Blenders Pride whisky best illustrates this approach. While Pernod Ricard had not sold Blenders Pride directly in India, it successfully argued that the brand had a worldwide reputation and halted the defendants' sale of whisky under the Blenders Pride name, which they had been using since 1993-94 (prior to Pernod Ricard's 1995 application). The decision affirmed the 'first past the post' precedence of the international trademark held by Pernod Ricard outside India.

On the issue of protecting marks in countries where Pernod Ricard has not yet launched its products, Yayon-Dauvet notes: "It is difficult to anticipate all issues, but in this case and all others we use the same strategy – to protect as much as we can, but in a consistent way. We know, for example, that if we take action in markets we are not involved in and have no solid plans to do so, this will put us in a difficult position, as if we don't use our rights within a certain period of time (depending on the jurisdiction), we could lose those rights."

As in all organisations, a particular challenge over the past 12 months has been maintaining this level of protection while keeping one eye on the bottom line. She explains: "As intangible assets are considered key to the strategy of Pernod Ricard, we haven't lowered the level of protection in defence of our IP rights or our enforcement actions due to the economic crisis. That said, we are completely in line with the global strategy of the group and prioritise certain matters differently. So, where there are efforts to rationalise costs and limit expenses, we are part of those efforts. For example, we have limited travel expenses and developed video conferences internally. It can actually be a positive – everyone understands why we have to cut costs and we don't see ourselves as different from other departments."

All this makes for a hectic workload – and one perhaps not expected when Yayon-Dauvet first joined the company. "When I came to Pernod Ricard, people at my previous firm said I would find it much calmer than being in private practice. But the reality is that I now work a lot harder." **iam**