

COLD STONE CREAMERY®



CASE STUDY: MAKING ITS MARK ON THE STONE

"Snell & Wilmer strives to understand our business and our particular objectives by working within our legal, financial and marketing constraints, and is an important part of our growing commercial success."

Chris Ward, General Counsel
Cold Stone Creamery

SITUATIONAL ANALYSIS

When Cold Stone Creamery® founders Donald and Susan Sutherland decided it was time to make its family ice cream business grow, they recognized one franchise industry fact that has made all the difference – a name isn't everything anymore. Not in an industry like theirs with heavy competition from nationally recognized, corporate giants.

To achieve success, they needed to continue offering customers a distinctive dessert experience, and to provide that experience exclusively. With guidance from intellectual property attorney Lee Fraley, a member of the Retail Services Group at Snell & Wilmer, Cold Stone Creamery is doing just that. The Company has made a science of securing and protecting the rights to its distinctive intellectual property from the look of the storefront signage, counters, and menu boards at each location, to the method in which their employees scoop their premium ice cream product, among others. With its presence currently expanded to over 40 states with more than 500 store locations, Cold Stone Creamery learned how to successfully establish and protect their image and brand as the "Ultimate Ice Cream Experience®."

Originally based out of Tempe, Arizona, the Sutherlands opened their first Cold Stone Creamery store in 1988. Within seven years they grew to five locations– the fifth being the first Cold Stone Creamery franchise. A new concept in ice cream service, Cold Stone Creamery offered customers a variety of ice cream base flavors and a number of fruit, nut and candy toppings that could be blended on a frozen granite stone and served in a waffle cup or cone.

The concept proved to be popular, and to meet an increasing demand for new locations, the Company expanded its structure and leadership, adding partners Ken Burke and Doug Ducey to spearhead expansion.

GOALS AND OBJECTIVES

In the year 2000, Cold Stone Creamery's leadership determined that they wanted to be the number one producer and seller of super-premium

ice cream, with a goal of having the world know Cold Stone Creamery as "The Ultimate Ice Cream Experience" by having 1,000 profitable stores operating by December 31, 2004. In addition to selecting only those employees and franchisees of the highest caliber to carry out their mission, they also directed significant efforts towards increasing general consumer awareness of the Cold Stone Creamery brand and experience.

Recognizing that these aggressive expansion plans would require aggressive efforts to further establish and maintain their brand inside and outside of the store, in existing and new markets, the Company formulated a strategic plan. The strategic plan included tactics for protecting its current intellectual property, building its expanding portfolio, and enforcing those significant rights, not only in the U.S. but also worldwide.

TACTICS

- 1) Cold Stone Creamery brought in counsel from the Retail Services Group at Snell & Wilmer to act as business development partners in meeting its organizational goals. In addition, Cold Stone Creamery successfully hired general counsel Chris Ward to direct and manage its expanding legal matters. Snell & Wilmer Intellectual property attorney Lee Fraley was the principal consultant in working with Ward and Cold Stone Creamery's Marketing Team in developing a strategic plan for protecting and enforcing Cold Stone Creamery's brand identity.
- 2) Fraley worked with Cold Stone Creamery to prioritize its global intellectual property goals consistent with its business objectives and budgets, with the group ultimately creating a three-tiered campaign to pursue, protect and enforce a variety of trademark and trade dress rights. With each element pursued, they focused on simple principles – use the trademarks/trade dress consistently throughout its franchise locations and promote them widely through aggressive marketing and public relations efforts.
- 3) Cold Stone Creamery also revised and updated its logos, signage and the look and feel of its store appearance while maintaining its long and well-recognized elements, such as the mark COLD STONE®, the use of cones in the logo, the signature colors red and black, and use of its signature methods of mixing ice cream that have distinguished the company and built significant goodwill. Cold Stone Creamery marketed the revised brand through wide-scale community focused public relations campaigns following

a marketing roadmap that was established to direct the company through the various stages of brand development to accomplish its aspirational identity goals.

THREE-TIERED CAMPAIGN

Tier One: Addresses trademarks, trade dress and other distinctive elements that were integral in supporting the Company's identity, including Company name, logos, signature colors and certain taglines, including "The Ultimate Ice Cream Experience." Activities included securing broad U.S. and foreign registrations for the trademarks and trade dress, and strictly enforcing these rights to prevent unlawful encroachment by third parties.

Example: With previous registrations for the word marks COLD STONE CREAMERY® and COLD STONE® already in possession, the team pursued additional registrations for the new logos for various goods and services. In addition, applications for registration of the logos were pursued for "black and white" that covers any colorization of the new logos, as well as applications for the signature colors red and yellow. As a result of the complete filing strategy and resulting registrations, a very broad scope of formal trademark protection was obtained, setting the tone for aggressive enforcement.

Example: Trade dress refers to any of the Company's aesthetic components and features that can serve as an indicator of source. Trade dress includes the layout and décor of each franchise location, and the use of the signature colors red, black and yellow in its logos, counters, menu boards, and signage and other features within the franchise store. Cold Stone Creamery requires that all of these distinctive elements are used uniformly at its many franchise locations. Further, aggressive marketing and public relations campaigns have been focused on consistently reinforcing the distinctive image.

Example: Primary tag lines, "The Ultimate Ice Cream Experience®" and "Every Day is a Great Day for Ice Cream®" are generally used as the lead or closing messages in communications and promotional materials for the Company. The tag lines have become a significant indicator of source for the company's brand and image, and strategic efforts have been directed to strictly enforcing these rights against third parties, with numerous successes having been realized.

Tier Two: Reserved for items which are distinguishing characteristics of the Cold Stone® identity, yet supportive to the dominant elements for which the Company is widely known.

Example: Cold Stone Creamery's Creations™ flavors were developed to address a need to provide a list of suggested ice cream selections for its indulging customers. Used extensively on menu boards in every location, Creations™ selections include novel concoctions Our Strawberry Blonde™, Peanut Butter Cup Perfection™, Coffee Lovers Only™ and Apple Pie Ala Cold Stone®. The company touted its Creations™ selections in extensive marketing campaigns and included them on store signage for more than two years. Furthermore, registrations are being finalized for "Creations Cold Stone Originals™" and "Creations™" such that the Creations™ brand is owned exclusively by Cold Stone Creamery.

Example: Other elements include the distinctive shape and texture of its waffle cone and ice cream within, and the novel

and distinctive ice cream scooping method used by store employees known as the "Ice Cream Pull" in which every ice cream employee uses an overhand technique with both hands to "pull" ice cream from the freshly made ice cream containers. Like the activities in Tier One, specific marketing and public relations campaigns have been developed to further bolster these rights, acquiring further distinction and goodwill with the consuming public.

Tier Three: Focused on elements that were integral to the Company, but have a lower-profile and supportive role with its overall identity.

Example: Cold Stone Creamery's individual Creations varying levels of importance to the company. Those that have the greatest commercial success have often been followed with applications for registration. Many others of the individual flavors are protected by common law rights, which enable Fraley and the Retail Services Group to defend the Company's rights based on the Company's widespread use in its stores and extensive promotion throughout the U.S. Such elements are frequently protected by common law rights while a trademark is pending, or while corporate leadership is testing how the element is received in the market, prior to further expenditures with applications for registration. This has proved to a cost-effective approach, freeing up yet additional resources for the Company's expanding revenue base to address infringing third parties.

RESULTS

- Over 20 trademarks registered for Cold Stone Creamery in the U.S., with an additional 40 or more applications pending and awaiting registration from the United States Patent and Trademark Office. Furthermore, registrations have been obtained in approximately 20 foreign countries, with more than 25 other countries awaiting final confirmation prior to registration.
- Cold Stone Creamery has realized numerous successes in defending and enforcing its growing trademark and trade dress rights, with its significant intellectual property rapidly growing in strength.
- Cold Stone Creamery has opened over 500 stores in over 40 states with plans on having 1,000 profitable stores operating by December 31, 2004.
- As a result of growing consumer recognition, system-wide YTD sales exceeded \$100 million in August 2003.

CONCLUSION

The distinctive Cold Stone Creamery trademarks and trade dress, as evidenced in its logos, storefronts, marble counters, signage, menu boards and signature practices and related marketing materials, support a highly recognized and defined brand. Having an understanding of the Company's plans, objectives and expectations allowed Fraley to devise a strategy that supports its goals, and serves as a guideline for franchisees and marketing campaigns, while building the brand through consistency and increasing market recognition.

As Fraley and his colleagues from Snell & Wilmer did with Cold Stone Creamery, restaurant visionaries need to consider the securing, protecting and enforcing of trademark and trade dress rights as a comprehensive, strategic effort. Merely providing legal services without long-term goals and a specific strategy is neither cost-efficient nor structurally supportive for food service entrepreneurs.