David Vs. Goliath – Stealing Innovation

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This article appeared in IMPO's May 2013 [1] issue.

Last January, I wrote [2] about Dan Brown and his invention the Bionic Wrench. I really like his story because his company is a small manufacturer, and I thought the methods he used in developing a successful new product would be an inspiration to other small manufacturers interested in developing new products.

I was also impressed by his resistance to send his new invention off shore, so it could be manufactured in the U.S. His objective was to create a business model that would allow him to make his product in America, and sell it into a market space dominated by low-cost imported tools.

Brown is a product developer with over 30 patents, and he knows the value of using a new product process that will lead to successful development, value creation, and customer sales. Here is a brief summary of some of the things he did right:

- He sought to design into a market and technical white space.
- He researched the markets, patents, and the competitors.
- He structured the process around a real problem, defining real needs.
- He profiled the ideal customer as well as the end users of the tool.
- He evaluated sales channels to identify the best strategy for success in the sales and distribution channels.
- He designed for manufacturing by designing and redesigning the wrench to “Lean” out the process, defining the best material options, reducing the number of parts, standardizing components, eliminating steps in the manufacturing, and re-designing issues with tolerances etc.
- He focused on searching for the best American supplier that could build the tooling, stamp the product, and assemble the wrench.
- He developed a supply agreement with PA-based Penn United, who not only designed and built the tooling, but also had some skin in the game and acknowledge the financial terms dictated by the mass-market buyers.

After patenting the wrench in 2005, Brown formed LoggerHead Tools to bring it to market. The Bionic Wrench was greeted with enthusiasm at trade shows and in industrial design competitions, helping the company survive the downturn in 2008. Brown resisted overtures from retailers that wanted to sell the tool under their house brand, preferring to establish his own brand. He wanted to create a company and a brand identity based on an American made business model. “I was raised a different way,” says Brown.

Although LoggerHead has shipped 1.75 million units of the Bionic Wrench, Brown claims the company had operated on a low-overhead business model, investing much of the profit back into the company. “You cannot have big offices, fancy cars, everybody with an administrative assistant, because we are competing with China,” says Brown.

In 2009, LoggerHead hit pay dirt when Sears agreed to do a test sale. The product sold out and Sears ordered 75,000 Bionic Wrenches the next year. In exchange Brown agreed not to sell the wrench to Sears’s competitors, namely Home Depot and Lowe’s.

In 2011, Brown promoted the Bionic Wrench on TV, helping sales at Sears while also doing well at LoggerHead’s other outlets, like the QVC shopping channel and smaller hardware stores. Brown was informed by the Sears’ buyer that the wrench’s holiday sales in 2011 exceeded their sales target by 23 percent.

According to Brown’s account of his dealings with Sears, the chain was pleased with the tool’s performance and agreed to place an order for 2012 in plenty of time to keep the cost low. Despite the fact that the sale of the Bionic Wrench in 2011 was a big success, Brown couldn’t figure out why the buyers only wanted to place an order for Father’s Day TV and not all of 2012 as discussed previously.

Dana Craig, a user of the Bionic Wrench in Massachusetts spotted, a Sears Craftsman tool called the Max Axess wrench that looked exactly like the Bionic Wrench – right down to the "try me" packaging. Craig emailed LoggerHead to inquire about the knock-off product. “The tools have one significant difference, Craig noted. “The Bionic Wrench is made in the U.S., and the Max Axess wrench is made in China.” Brown claims that the Max Axess wrench copies his own, and LoggerHead has filed suit against Sears, who has declined to answer any questions about the wrenches.[1]

The shift at Sears from a tool invented and manufactured in the U.S to a very similar one made offshore has led to a loss of American jobs and a brewing patent battle. Penn United Technologies (Cabot, PA) has had to lay off 31 workers, said Keith Hammer, the project manager at the company, “And that’s not to mention our suppliers,” he adds.

Brown and his lawyer think they have a good case against Sears, but it could take years to litigate. More importantly, Sears has the resources to drag out the lawsuit and make it very expensive for Brown’s company. There is also the problem of the cost to replace the large orders from Sears, and keep the company going. Brown is also concerned that while he fights in court, Sears will get a cost advantage by making the knockoff tool in China and lowering the user price.

Another thorn in Brown’s side involves the contract agreement LoggerHead made with Sears to not sell to any of their competitors. “Loggerhead’s lawsuit”, says Brown, “will most likely include claims that Sears interfered with the company’s ability to do business with other stores. “

This isn't the first time that Sears has tried to steal supplier ideas. In one case, Peter Roberts, a Sears's employee, invented a new type of socket wrench on his own time. He told the court that Sears had played down the value of his invention, paid him $10,000 for the rights, and then made tens of millions of dollars. He eventually received a settlement, but it took two decades of litigation, according to news reports.

The inventor of the Rotozip claims he had disclosed trade secrets to Sears in an attempt to get the store to carry a new version of the tool. A jury decided that Sears had taken his design and made the tool offshore for their Craftsman line – just as they are doing with Brown's Bionic Wrench. The judge awarded $25 million to the inventor.

Brown calls this the "Piracy Business Model", and apparently Sears believes that the penalty, if they do get caught, is well worth the risk.

There is a tendency for people to judge these large corporations as they wished them to be. We want them to be ethical, moral in their practices, patriotic with a sense of social responsibility; favor their country and be supportive of their economy; value their employees, support their suppliers, and have some sense of community. However, people forget that most of these giant companies are multi-national bureaucracies, lacking in moral leadership where making money far outweighs doing the right thing.

A free-market enthusiast would say that these companies are an example of capitalism at its most efficient; a common sense capitalist would disagree.

These large corporations' main purpose is to satisfy customers just enough to make profits to satisfy their investors, within the limits of the law. No matter what their press and publicity releases say, they do not have an obligation to the public interest, community, or society's view of ethics or moral behavior.

Achieving their money goals may require moving jobs and plants overseas, replacing living wage workers with wage slaves with no rights, ruining communities and small towns by shutting down a plant, holding their profits in offshore banks, or even damaging the environment as long as it is within the laws, or outside the reach of the laws of underdeveloped countries.

As long as their deals are arguably legal and they continue to make a profit for their investors, and big salaries and bonuses for themselves, these executives will pursue them. Every entrepreneur should be wary of dealing with big corporations. However, this is easier said than done for an entrepreneur in the real world, especially the consumer marketplace, where it appears anything goes.

The Bionic Wrench dilemma suggests a larger problem. Most people agree that the only way American manufacturing can compete and create jobs in the U.S. is through innovation. But if inventors and entrepreneurs can't protect their designs and new products, there will be too much risk to produce domestically. Brown says, "Our situation is an example of why we're not getting jobs out of innovation. When

Pirates steal your innovation, they go right offshore. What happened to me is what happened to so many people so many times. You just do not hear about it, or the situation is much more complicated and it is a difficult story to report."

"I'm in favor of free trade, but I prefer and advocate "fair trade"," says Brown. "The person who's out-innovated loses. The winning innovation brings more value to society. It's destructive when someone competes but doesn't out-innovate, or they undermine and destroy the existing marketplace; they just steal the technology and produce it in a developing country without regard to human, civil, or property rights, because of safety and environmental precautions." This is not innovation based on fair trade, no new value for society is created, and often the human and environmental rights are arbitraged. The Pirate gets his bounty and everyone else gets to walk the plank.

If Sears successfully puts LoggerHead out of business and somehow gets around Brown's patent, it raises the issue: Can entrepreneurs and inventors realistically protect themselves from this Piracy Business Model? The strategy of using small manufacturers to innovate and develop new products, and then stealing the designs and making the product in China is a profitable strategy as long as the future sales and profits are bigger than the court costs. We must take the incentive out of this destructive practice.

The only way this will stop is if the courts award punitive damages to small entrepreneurs like Brown that exceed the profits made from sales of knock-off products at such a punitive level that the Pirates would rather become innovators that continue on as Pirates. Another strategy is giving Sears enough bad publicity that buyers boycott their knock-off business model by voting with their feet and dollars. Let's just hope that the courts punish Sears and other Pirates hard enough that they will think twice about knocking off anyone again.

Brown says, "The right thing to do is to enforce invention and innovation rights. These rights create jobs, economic benefits, and profits for our society, while our patent-piracy tolerance destroys the economic benefits we seek. If a product like ours — a patented, award-winning innovation, and an American-made business model — is destroyed by the cannibalistic capitalism of our marketplace, what products can survive to create jobs in our society? Simply, if we cannot produce innovative products domestically, what products can we produce domestically?"[2]

1. "Popular Wrench Fights a Chinese Rival," Shaila Dewan, New York Times, November 8, 2012.

2. "You're the Boss, The Art of Running a Small Business," Gene Marks, New York Times, November 26, 2012.

Mike Collins is the author of "Saving American Manufacturing" and its companion book, the "Growth Planning Handbook for Manufacturers." To learn more about the author or these titles, visit http://www.mpcmgt.com/ *[3].*

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