government as loci of bargaining. Unionism, in this context, evolves into a form of social unionism, where there is a greater integration of social sectors (through incorporation and networking), increasing resort to social and political advocacy, and multi-mode organizing (on the levels of the plant, the industry, the craft, the community, the sector). Likewise, new forms of activity might be explored, including the provision of non-traditional services (job matching and placement, enterprise development program, social housing, and the like) and an increasing resort to what some call "global unionism."

Consequently, in this wider perspective, collective bargaining beyond the factory can now begin to incorporate much wider concerns: overarching social clauses, pre- and post-employment benefits, over-all social welfare programs, and even international standards setting.

V. CONCLUSION

These creative responses are not possible without greater workers' awareness and conscientization with regard to globalization itself. Even as this should be done, there should also be continuing education on the prevailing given structures in Philippine jurisprudence, as all employers and employees, and prospective employers and employees must be adequately informed of their respective rights and responsibilities under Philippine labor law. More importantly, workers and employers are also called to a greater awareness of all other possible avenues for interaction within the present framework. For example, there is a need to further explore and pursue the formation of workers associations, LMCs, and other non-union organizations at the enterprise level as providing an alternative *locus* for preliminary collective bargaining that can be less adversarial and threatening to management, and more collegial.

In the end, the more long-term response in law would mean the alteration of the legal infrastructure itself to correspond to the shifts due to globalization. In conjunction with this, there is a corollary demand for the development of new legal recourses that might better address the plight of the working class in the new global economy. In the meantime, the efforts should be directed to a deeper understanding of the processes and ways of globalization and the discovery of alternative responses within the existing dispensation.

The Real Thing: 7x Plus More*

*Selina Tolosa***

* This article is based on "The Evolution of the Real Thing:" A Case Study by Kristin Greene, Nobu Kawanishi, Jennifer Ni, Kimberly Schuy, and Selina Tolosa, Wharton Batch 2002, University of Pennsylvania, Business School.

Under current Philippine laws, there is no specific provision addressing the protection of trade secrets similar to trade names, trade marks, or service marks. Yet the Intellectual Property Office is of the opinion that trade secrets are adequately protected by the Civil Code and Revised Penal Code. This paper is based on American laws and jurisprudence.

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I. INTRODUCTION

A billion hours ago, human life appeared on earth.
A billion minutes ago, Christianity emerged.
A billion seconds ago, the Beatles changed music.
A billion Coca-Colas ago was yesterday morning.

Robert Goizueta[1]

A. Overview

Deep in a bank vault somewhere in Atlanta, Georgia, there is a piece of paper with 17 or 18 regular ingredients on it.[2] Mix those items in the right proportions under the proper conditions, and "one of the best kept secrets in the world"[3] has just been formulated: Coca-Cola.

The Coca-Cola Company has existed for the past 115 years. What began as a company that sold nine glasses of the Coca-Cola drink per day in the year of 1886 ended up producing 10 billion gallons of syrup a century later. Billions of people around the world have drunk this soda at least once in their lives, but rumor has it that only three or four company executives know the exact formula from that piece of paper in the vault. Special safety measures are taken to protect these individuals. They rarely travel together, and when one dies, the others must approve his successor.

The formula, known as "Merchandise 7X", has successfully been a trade secret for more than one hundred years. In *Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*,[4] the United States District Court of Delaware explained that "although most of the ingredient[s] are public knowledge, the ingredient that gives Coca-Cola its distinctive taste is a secret combination of flavoring oils and ingredients known as Merchandise 7X."

Unlike a patent that has a maximum life of 20 years,[5] a trade secret is eternal. It does not need to conform to any definition of patentable subject matter. It requires no disclosure. It does not need to be novel or non-

1. Late CEO of Coca-Cola, explaining in April 1997 that 1 Billion Cokes are sold every two days.
2. THE SLEUTH, SUPER SECRETS UNDER LOCK & KEY 1 (2000), *at* http://www.topsecretrecipes.com/sleuth/sleuth1.htm (last visited Feb. 8, 2003).
3. Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 107 F.R.D. 288 (District of Delaware, 1985).
4. 107 F.R.D. 289. (1970).
5. *See generally* Republic Act No. 8293, Intellectual Property Code of the Philippines, § 54 (1988).

obvious, only useful. The only requirement is that a trade secret should be kept secret. And the Coca-Cola Company did just that.

But just because no one else outside of 3 or 4 individuals knows the secret formula, is this the cause of Coca-Cola's success? In September 2001, AC Nielsen published a review on global brands that have sales over a billion dollars as well as a geographic presence in all of the major regions of the world. Of the 200 brands in its study, Coca-Cola emerged as the No. 1 brand.[6] The Coca-Cola Company was, and continues to be, an extraordinary story of how a company first created an industry and maintained a leadership position in that industry for majority of its lifetime, and of how it shaped the times as well as is shaped by them.

B. Approach to Paper

This paper explores the Coca-Cola Company, and how its trade secret not only has been sustained over time but also continues to be interwoven and tightly linked with the core activities of the company. It takes an *activity-based approach* by identifying four core activities that by themselves and through their interrelatedness with each other contributed largely to the company's success. These activities are inextricably linked with each other and other activities, such as Research and Development.

The activity-based approach entails an analytical outlook on these activities that are believed to be the core of the company's success. The first core activity is *strong legal protection* where the company constantly defended its turf when it decided to make the formula a secret and keep it as that.[7] The second activity is *aggressive brand investment* where, through the company's rigorous efforts in developing the equity of its brand, Coca-Cola actually "grew up" with America, and continues to undergo global colonization. The third activity is the company's *unwritten policy of focus on growth*. It is "unwritten" because although it is not explicitly stated in the

6. For a brand to be included as a "Global Billion Dollar Brand", AC Nielsen's study is based on 3 criteria: a) the cumulated sales for year ending Q1 2001 had to be equal to, or exceed $1 Billion; b) sales had to have measurable presence in each of the four geographic regions (Latin America, Asia Pacific, North America and Europe, Middle East and Africa); c) sales outside of the home market needed to represent at least 5 percent of the global sales value. *See* AC Nielsen Global Services, *Reaching the Billion Dollar Mark*, EXECUTIVE NEWS REPORT 5 (2001), *at* http://acnielsen.com/products/pubs/billion/ (last visited Feb. 8, 2003).
7. Kristin Greene, Nobu Kawanishi, Jennifer Ni, Kimberly Schuy and Selina Tolosa. The Evolution of the Real Thing, (2002) (unpublished Case Study, Wharton Business School, University of Pennsylvania on file with the author).

company's mission statement,[8] it nevertheless is central to the company's success. The fourth activity is *leadership* where through the entrepreneurial approach of the company's CEOs, the core activities were effectively carried out.

The activity-based approach, however, does not in any way, limit the paper to the concept of an activity system. This paper brings in various schools of thought to further explain the hybrid of success drivers.[9] Pankaj Ghemawat's concept of commitment explains the ability of Coca-Cola not only to create a trade secret as a competitive advantage but also to sustain it. Management gurus' Henry Mintzberg's and James Waters's entrepreneurial approach gives light to the strong leadership that has consistently existed over time.

Contrary to popular belief, Coca-Cola's success is not only because of its ability to commit to and keep a top secret. True, the universal mystique of its 7X, not only to Americans, but also to people all over the world, has achieved tangible and intangible benefits for the company consistently over time. However, this paper aims to dig deeper into factors behind the company's success. It aims to analyze how the secret formula, in and of itself, is a method of intellectual protection, and a part of the greater whole. The paper dwells into the company's ability to link this legal right into the rest of the organization, so much so that the secret formula in context of the "real thing" is more than just "Merchandise 7X."

The paper seeks to answer the key question implied by the following story. A Coca-Cola spokesman was once asked what he would do given the following situation: after all the mystique of the original Coca-Cola formula, if it turns out that another drink actually contains the original formula, what would he do? He replied by saying, "Fine. Now what? What are they going to charge for it? How are they going to distribute it? See what I'm driving at? Why would anyone go out of their way to buy (another product), which is really just like Coca-Cola, when they can buy the Real Thing anywhere in the world?"[10]

8. The Coca-Cola Company "exists to benefit and refresh everyone it touches. For more than a century, we have been fulfilling that promise." This promise is stated in Coca-Cola's 2001 Annual Report, *at* http://www2.coca-cola.com/investors/annualreport/2001/introduction.html (last visited Feb. 8, 2003).

9. Lecture notes of Nicolaj Siggelkow, Professor of Wharton (2001) (lecture notes scribed by Selina Tolosa).

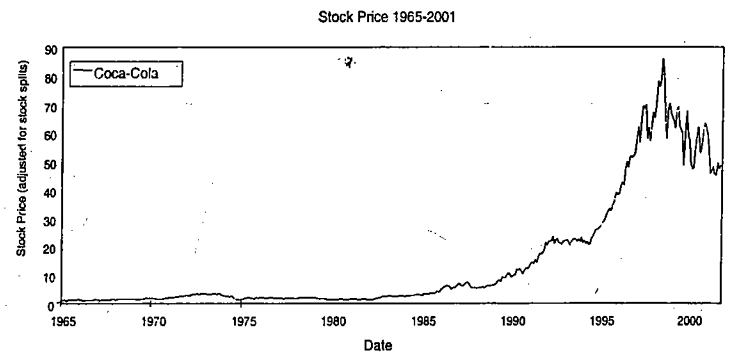
10. MARK J. PENDERGRAST, FOR GOD, THE COUNTRY, AND COCA-COLA 207 (2000).

II. BACKGROUND

A. Trade Secret Protection

Today, the value of a public company's intangible assets exceeds those of its tangible assets. Even in today's depressed stock market, the market capitalization of a company exceeds by many times the book value of the company.[11]

The figure below shows the evolution of Coca-Cola's stock price from 1929 until 2001.



Source (Stock Price): Center for Research in Security Prices

The difference in value is the market's assessment of the value of a company's intangible assets; such as, good will, brand investment, patents, trademarks, copyrights, and trade secrets. Of these, trade secrets are usually the most neglected and yet may represent the largest single contribution to intangible assets.

There are several ways of protecting the novel ideas and secrets that are the core of a company's business. The most common form of protection is a *patent*, which protects an invention, a new machine or apparatus, composition, article of manufacture or process that passes muster as non-obvious. It requires disclosure, and its exclusive rights expire no more than 20 years after application.[12] Once the patent is issued, all of the material related to the subject matter is publicly available. Trademarks, on the other

11. Trade Secret Office Inc., Why Trade Secret Protection Is Important 1 (2001), *at* http://thetso.com/Info/important.html (last visited Feb. 8, 2003).

12. Joseph N. Hosteny, *Litigators Corner: Patent or Trade Secret: Which One is Best?*, INTELLECTUAL PROPERTY TODAY 1 (2000), *at* http://www.hosteny.com/archive/hosteny%2008-00.pdf (last visited Feb. 8, 2003).

hand, protect only the printed word or image referencing a product or service in commerce. Copyrights protect only the manner of expression, but not the content — the idea, information, or concept — being communicated.[13]

There is an alternative form of protection: trade secret. It is legally protected in every state in the United States by either statute or common-law principles of unfair competition. The most prevalent law is the Uniform Trade Secrets Act, which has been adopted in some form in 42 states and the District of Columbia. However, the Restatement of Torts Sec. 757 provides the most comprehensive and widely relied-on definition of a trade secret.[14] As provided in section 757, a trade secret is

> any technical or non-technical data, *a formula*, pattern, compilation, program, device, method technique, drawing, process, financial data, or list of actual or potential customers or suppliers that is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use.[15]

In addition, many states have enacted criminal statutes making it a crime to knowingly participate in the theft of a trade secret. This is illustrated in the Economic Espionage Act of 1996, which creates two federal crimes involving trade secrets. The first crime is economic espionage, which makes it a felony to knowingly steal a trade secret intending to benefit a foreign government or agent. The second crime is the general theft of the secret relating to a product that is produced for or enters interstate commerce. The penalty for these acts is imprisonment, ranging from 10-15 years, along with substantial fines.[16]

B. *Trade Secret as Choice*

Choosing the type of legal protection for a particular subject matter is a strategic decision to be made. Renowned management author, Henry Mintzberg,[17] defines strategy as "a plan — some sort of consciously intended

13. Trade Secret Office Inc., Why Trade Secret Protection Is Important 1 (2001), *at* http://thetso.com/Info/important.html (last visited Feb. 8, 2003).
14. Ladas & Parry, Transfer of Trade Secrets in the United States 1 (2002), *at* http://www.ladas.com/IPProperty/IPTransfers/IPTran10.html#fn133 (last visited Feb. 8, 2003).
15. Restatement of Torts §757, comment b (emphasis supplied).
16. J. Christopher Jensen, *Are You Carrying Trade Secrets?* 7 (vol. no.), THE INDUSTRIAL PHYSICIST 7, 31 (2001), *at* http://www.aip.org/tip/INPHFA/vol-7/iss-5/p31.pdf (last visited Feb. 8, 2003).
17. Henry Mintzberg, *Five P's for Strategy,* THE STRATEGY PROCESS (H. Mintzberg and JB Quinn editions) 12-19 (1992), *at* http://www.mmd.eng.cam.ac.uk

course of action, a guideline (or set of guidelines) to deal with a situation. By this definition, strategies have two essential characteristics: they are made in advance of the actions to which they apply, and they are developed consciously and purposefully." Thus, the company has to become cognizant of the comparative advantages and disadvantages of the product in the context of the organization and the industry in which it plays in.

The company or person involved usually decides between applying for a patent or making the subject matter a trade secret. A significant advantage of a trade secret over a patent is its indefinite life — that is, as long as it is kept secret. Another advantage is the lack of any administrative record that can be used to narrow the scope of the trade secret, or to create some kind of estoppel limiting its coverage.[18] On the other hand, a major disadvantage is that someone who independently derives a trade secret can use it, whereas a patent can be infringed even by another inventor when his own invention is the same with the patented object. Thus, a trade secret can be found out through analysis or reverse engineering, after which it may be produced commercially. To do this, competitors can analyze the chemical composition of the subject matter or they can take tours of the factories and observe the production process.

Certainly, there are advantages and disadvantages to any method of obtaining protection for intellectual property. The key to its successful implementation is by carefully analyzing the efficacy of the protection scheme and aligning it to the goals and core activities of the company.

G. *Trade Secret as Competitive Advantage*

An effective way of keeping a competitor from developing the same product is through legal protection. A trade secret, if successfully kept, provides two major strategic benefits. One is that it indefinitely keeps competitors away. By not knowing the secret flavoring of oils and ingredients, competitors cannot imitate the exact drink. A significant implication is that customers know that no other company can formulate Coca-Cola — as long as the formula remains a secret. The other benefit is that the hype and mystique surrounding a secret makes for an effective marketing strategy. Promoting the secrecy of the matter, whether a formula or process, as defined in the Restatement of Torts, and the security surrounding it sends the message that the customer is getting something original and very special for what he pays; indeed something that he can get nowhere else.[19] The willingness to pay of

/people/ahr/dstools/paradigm/5pstrat.htm (last visited Feb. 8, 2003) [hereinafter Mintzberg, Five P's].

18. *Id.*
19. The Sleuth, Super Secrets Under Lock & Key 1 (2000), *at* http://www.topsecretrecipes.com/sleuth/sleuth1.htm (last visited Feb. 8, 2003).

the customers thus increases; they may decide to pay a premium for this unique drink. During World War II, one bottle was reported to sell for 5 to 40 dollars. In an extreme case, a bottle sold in an Italian auction was $4,000.[20] Officially, Coca-Cola insisted on selling its 6-ounce bottle for 5 cents during that time.

In other words, both benefits are complementary to each other. That is, while a trade secret keeps the competitors away, it brings the customers (and at times, even the competitors' customers) in.

In 2001, AC Nielsen valued the company No. 1 globally for brand value.[21] Coca-Cola captures this value in the difference of what consumers pay versus the low cost that sugary fizzy water costs to make. This is one of Coca-Cola's key factors for its long-standing success. Since its founding, Coca-Cola has successfully created value for people with its brand image, trade secrecy, and product consistency.

III. MERCHANDISE 7X

A. History

The formula was founded in 1886 but was not yet named as 7X. 1886 was the Gilded Age, when America, after the Civil War, transformed itself from a land of farmers into an urbanized society of mill owners and farmers. Consequently, the new, increasingly fast-paced life resulted in high states of nerves among the people seeking to begin life anew. It was, then, during this age, that John Pemberton, an Atlanta pharmacist, stumbled upon and founded the formula for Coca-Cola. The fizzy soft drink began as a patented medicine, primarily intended to cure headaches and frazzled nerves, and transitioned into a beverage enjoyed by the mass market.

In 1888, Pemberton sold the company to Asa Candler for $2,300.[22] Candler altered the formula. He changed the flavoring component and referred to it as 7X; yet Pemberton's formula only had 6 ingredients. Candler wanted to keep his version completely secret because there was increasing competition in the patent medicine[23] industry where Coca-Cola primarily

20. PENDERGRAST, *supra* note 10, at 207.

21. AC Nielsen Global Services, *Reaching the Billion Dollar Mark,* EXECUTIVE NEWS REPORT 15 (2001), *at* http://acnielsen.com/products/pubs/billion/ (last visited Feb. 8, 2003).

22. THE COCA-COLA COMPANY, THE STORY OF COCA-COLA 1 (2002), *at* www.coca-cola.com (last visited Feb. 8, 2003).

23. A patent medicine was more accurately meant as a proprietary medicine where an inventor, such as Pemberton, patented the label or trademark of his product.

belonged. In Mark Pendergrast's book, *For God, the Country, and Coca-Cola,* he describes the patent medicine industry:

> The period after the Civil War saw an exponential growth in the industry, due partly to wounded veterans who had acquired a self-dosing habit out of necessity... Another reason for the boom in self-dosage was that the medical profession had not caught up with the industrial revolution. Many doctors killed as many patients as they cured, so cheap nostrums sometimes provided a safer alternative.[24]

In addition, this industry enjoyed high profit margins where for a dollar, a manufacturer sold a bottle which cost less than a dime to produce.

Candler then strove to differentiate his company from all the other competitors. Since at least 10 people knew the original formula when Candler bought the rights from Pemberton[25], he decided to keep his version of the formula secret.

B. How the Formula Was Made Secret

According to the Restatement of Torts, some factors to be considered in determining whether given information is one's trade secret are: "(1) the extent to which it is known by employees and others involved in his business; (2) the extent of measures taken by him to guard the secrecy of the information; and (3) the ease or difficulty with which the information could be properly acquired or duplicated by others."[26]

These factors are apparent when Candler decided to keep the formula secret. He created a system whereby the ingredients were stripped of all labeling, and were referred to by numbers "1" through "9". During his time, Candler was the only individual who ever knew the formula or went into the laboratory. In addition, he intercepted all invoices. However, when the company grew to the point where he could not handle the invoices himself, he had his suppliers use his numbering system of "1" to "9" on their invoices. This numbering system has been figured out, and it breaks down as follows: Merchandise # 1 is sugar; Merchandise # 2 is caramel; Merchandise # 3 is caffeine; Merchandise # 4 is phosphoric acid; Merchandise # 5 is a coca leaf & cola nut extract; Merchandise # 6 is probably lime juice (but was incorporated into Merchandise # 7 as an oil); Merchandise # 7X is the flavoring mixture; Merchandise # 8 is vanilla; and Merchandise # 9 is glycerin (but is no longer used).[27]

24. PENDERGRAST, *supra* note 10, at 100.

25. Soda Museum LLC, Where the Coca-Cola Formula Came From 1 (2000), *at* http://www.sodamuseum.bigstep.com/generic.jhtml (last visited Feb. 8, 2003).

26. Restatement of Torts §757, comment b.

27. Soda Museum, *supra* note 25.

Asa Candler was so protective of the secret formula that even his son, Howard, once said, "One of the proudest moments of my life came when my father initiated me into the mysteries of the secret flavoring formula, inducting me as it were into the 'Holy of Holies.'"[28]

C. How the Formula Has Been Kept Secret

In the article, *What is Strategy?*,[29] Michael Porter, a management guru, states that "[a] company can outperform rivals only if it can establish a difference that it can preserve." A century after the formula was made secret, the protection of Coca-Cola's secret formula has become increasingly difficult with the advent of technology and the computer revolution. The Internet, for example, can now be used as a tool for the destruction of trade secret rights. Computers make it extremely easy to surreptitiously copy and transfer this valuable trade secret information within minutes to any part of the world. Trade secret protection, therefore, requires continuous effort to allow defense by lawsuits against infringers at a later time, rather than a single application and grant by a federal agency — as in the case of patent protection.[30]

The Coca-Cola Company has, therefore, taken extreme measures to keep its formula secret. One measure is the sophisticated way of locking it up in a bank vault whose information is known to only three or four individuals — who are protected like they are members of the royal family.

Another measure is the difficulty to have the formula reverse engineered. Even though billions of sodas are made available everywhere and Coca-Cola employees conduct tours of the soda manufacturing process, an individual or company has yet to unlock 7X. This complexity is intensified through the "black boxing" technique. "Black boxing" is the selling of end result without selling the process. In effect the information required to produce a product, process, or design may be in the public domain or even obvious, but what remains a secret is how the proprietor combined the information to produce the end result. The success of the black boxing technique depends on taking a key component of the process in which the end result was achieved and making this component a secret.[31] Thus, by making the flavoring mixture, and not the whole formula or process as the secret, the Coca-Cola Company has exponentially increased the complexity of making the secret known. Such variables as the timing and conditions of adding 7X to the whole process further complicate the process.

A third measure is the tightness of the trade secret's fit with the rest of the organization. In and by itself, the trade secret serves as protection against the company's competitors. However, it is not enough to keep competitors away from stealing Coca-Cola's market share. The soft drink industry (with its high profitability margins) is very attractive to existing players and hopeful entrants. The formula for a soft drink contains mostly common ingredients. Even though competitors may not know what 7X is exactly made of, they may still produce a very similar drink and offer it at a greatly reduced price. But Coca-Cola maintained its dominant position in the soft drink industry. What it has effectively done and continues to do is make the trade secret a central part of the company's activity system. An activity system is central if given that the company aims to implement an innovation or a strategic change with respect to that particular activity, other activities need to be changed as well due to the various links that activity has with others.

By making the trade secret a central activity, it has effectively reduced the attraction of competitors to try to find out what 7X really is. The Coca-Cola Company has signaled to their competitors that even with the successful discovery of the formula, that alone would not enable them to produce the "real thing." Pankaj Ghemawat, a strategic management guru, states that commitment, ability to remain focused, explains Coca-Cola's success in not only making the formula secret, but sustaining it as well.[32] In order to be sustainable, Ghemawat states that the company has to curb the threat of imitation and substitution. The formula was durable, specialized, and untradeable. The company largely reduced the competitive threat through its trade secret protection and its fit with its other core activities.

IV. 7X PLUS MORE

A. Strategic Positioning

Since its inception, the Coca-Cola Company strove to serve the needs of several groups of customers; *e.g.*, urban consumers, women, and children. It has undergone several shifts of customer perception. During the 1900s, it

28. PENDERGRAST, *supra* note 10, at 57.

29. Michael E. Porter, *What is Strategy?*, HARVARD BUSINESS REVIEW 4134, 1 (1996), *at* http://harvardbusinessonline.hbsp.harvard.edu/b01/en/common/item_detail.jhtml?id=4134 (last visited Feb. 8, 2003).

30. Trade Secret Office Inc., Why Trade Secret Protection Is Important, 1 (2001), *at* http://thetso.com/Info/important.html (last visited Feb. 8, 2003).

31. Clendon Feeney Barristers and Solicitors, *The Creator's Problem: Keeping it secret and still getting the money*, 3 (2000), *at* http://www.clendons.co.nz/library/papers/The%20Creator's%20Problem%20-%20Nov%202002.PDF (last visited Feb. 8, 2003).

32. Pankaj Ghemawat and Patricio del Sol, *Commitment vs. Flexibility*, CALIFORNIA MANAGEMENT REVIEW Article 124, 2 (1998), *at* http://harvardbusinessonline.hbsp.harvard.edu/b01/en/common/item_detail.jhtml;jsessionid=2OoRTQRoVZ1Z2CTEQENSELQ?id=CMR124 (last visited Feb. 8, 2003).

shifted its image from being a patent medicine to a "refreshing and delicious" beverage. During the 1950s, it became an American icon. Two decades after that until the present, it became a global brand — with an emphasis on local execution.

The Coca-Cola Company has created the soft drink industry, but has not become a victim of it yet. It has not fallen into the first-mover "curse" where a company, after a very successful invention and launch of an innovative product, has failed to shape or be shaped by external environmental changes because it mistakenly believed that its product could withstand all environmental changes in the industry that it primarily established. Coca-Cola is an exception to this curse.

Given its strategic positioning, the company aligned its mission to four core activities. Mintzberg defines strategy as

> a perspective — its content consisting not just of a chosen position, but of an ingrained way of perceiving the world.... What is of key importance is that strategy is a perspective shared by members of an organization, through their intentions and/or by their actions... when we talk of strategy in this context, we are entering the realm of the collective mind - individuals united by common thinking and/or behaviour.[33]

The four core activities and their link to each other and to other aspects of the organization prove Mintzberg's point.

B. Fit Analysis

Michael Porter describes fit of a company's activities within each other and with its strategy as a source of competitive advantage and sustainability.[34] *How tightly did the trade secret fit with the rest of the company?* This analysis sets out to prove that the summation of all activities is greater than its parts.

The activity system of the Coca-Cola Company over time is presented in a figure.[35] Links between and among the activities are illustrated. Coca-Cola has four core activities; namely, legal protection, brand investment, focus on growth and leadership. Through these activities, Coca-Cola clearly aligned them with its over-all strategy: to achieve wide presence for the drink — everywhere and for everyone, over time.

33. Mintzberg, Five P's, *supra* note 17.

34. Michael E. Porter, *What is Strategy?*, HARV. BUS. REV. 4134, 1 (1996), *at* http://harvardbusinessonline.hbsp.harvard.edu/b01/en/common/item_detail.jhtml?id=4134 (last visited Feb. 8, 2003).

35. See diagram at the end of the article.

C. Activity One: Legal Protection

Legal protection is mainly responsible for the company becoming a master of influence in the soft drink industry. Trade secret protection is heavily supported by a legal infrastructure that protects the company's turf. One strategy is that the legal department manages an intellectual property portfolio complementary to the secret formula itself. Frank Landgraff, Senior Patent Counsel for the Coca-Cola Company, states,

> Coca-Cola has a patent portfolio that consists of approximately 800 US patents and 1,800 patents outside of the US. Coca-Cola's portfolio includes patents relating to several different beverage related technologies. Because we tend to keep most of our product formulations as trade secrets, a large portion of our patent portfolio relates to technologies that are complementary to the beverage itself. The technology areas, in addition to product formulation, where we have particular expertise are: 1) Packaging, 2) Vending Equipment, 3) Fountain Equipment, and 4) Water Treatment.[36]

In addition, the company is focusing more on key technologies that it believes will drive the soft drink industry.

This focus is tightly linked with the company's research and development. Landgraff states,

> Coca-Cola is committed to maintaining its leadership position in Research and Development (R&D) for the beverage industry. I think that Coca-Cola will continue to focus its R&D strategy on maintaining its industry leadership position and continuing to deliver value to the consumers of our products. The value proposition to our consumers is the key driver of Coca-Cola's R&D strategy because it is also the fundamental goal of the entire organization.

He continues,

> [The company] treats patents as business assets and asks, 'What is the value proposition for each filing?' If there is little or no value to filing or maintaining a patent we re-direct those resources back towards the key technologies mentioned above.[37]

Another strategy is that Coca-Cola licenses technology both in and out. Its licensing strategy is aligned with its business strategy. Landgraff states,

> It does not make much sense for us to try to 're-invent the wheel.' Therefore, if there is a technology available that provides us with an opportunity to improve our products or service, we will certainly examine

36. Frank A. Landgraff, *Patenting at Coca-Cola*, Interview with Frank Landgraff, Industry Feature yet2.com 1 (1999), *at* http://www.yet2.com/app/insight/insight/20010401_landgraff (last visited Feb. 8, 2003).

37. *Id.*

> the 'license in' possibilities, either through a direct license or through some different type of arrangement, such as a partnership. This strategy allows us to truly focus on the development of breakthrough technology for the beverage industry."

On the other hand,

> Coca-Cola also 'licenses out' some of its technologies. The 'license out' opportunities are also due to a variety of factors. For instance, there are technologies developed by Coca-Cola that are more suited to be used by suppliers to the beverage industry. There are also technologies developed by Coca-Cola which have applicability outside of the non-alcoholic beverage market segment. We try to take advantage of these opportunities as well.[38]

Through its various methods of intellectual property protection, alignment with its Research and Development arm, and licensing technology, Coca-cola's use of legal protection has served as the defender of the company's research and development, good name, and reputation.

H. *Activity Two: Brand Investment*

A brand serves to identify and distinguish the products or services of a company from its competitors. Barry Day, an advertising guru, states "[a] brand is not a synonym for something that comes in a package, tin or bottle. Every product, every service, every cause that has a competitor is a brand that needs to define and defend its uniqueness."[39] The term "brand investment" differs from mere advertising in that the former treats brand development and promotion as an "asset" with future benefits rather than the latter that treats advertising as an expense. That is, by spending a particular amount on it (sometimes blindly), the company hopes to generate greater sales.

In its earliest years, Coca-Cola promoted the drink as an image, not a product. The soft drink industry, prior to Coca-Cola, generally evolved from the patent medicine industry. In the 1830s, when scientists perfected a way of producing artificially carbonated water, pharmacists and doctors experimented with a multitude of ingredients from ginger ale to lemon. For many years, the pharmacists and doctors were the driving force behind the patent medicine industry. After the Civil War, enjoyable drinks were not very common since it was the time of a turbulent, noisy and neurotic America. With the advent of the Coca-Cola drink, perceived as an enjoyable, thirst-quenching beverage by the consumers, Coca-Cola actually shaped the

38. *Id.*

39. Clendon Feeney Barristers and Solicitors, *What's In A Brand Name*, 1 (2000), *at* http://www.clendons.co.nz/library/papers/What's%20In%20a%20Brand%20Name%20Nov%202002.PDF (last visited Feb. 8, 2003).

soft drink industry. The industry was, then, named as such — as opposed to "patent medicine" — when the pharmacists and doctors ceased to become the driving force and consumers began perceiving the drinks not as remedies, but as refreshing beverages.

It successfully launched on the post Civil War attitudes of the Americans who were consciously looking for something "refreshing and delicious", attributes that existed in the Coca-Cola drink. The mystique of Coca-Cola, developed by its secret formula, contributed to this image. Americans felt unique because of the "special" flavor, yet identified with the culture surrounding the drink. Americans so strongly identified themselves with Coca-Cola that even the company understated its brand power.

In 1984, Coca-Cola for the first time lost its market share by 0.4% while Pepsi gained by 0.6%[40] Based on its secret market research, Coca-Cola believed its new formula product would beat Pepsi because it beat Pepsi by six percentage points in the taste test.[41] In 1985, Coca-Cola introduced New Coke as a replacement for the original Coca-Cola, with $4 million spent on research and marketing development[42]. Unfortunately, the public resentment to New Coke was so strong that it quickly became a disaster. In fact, on the day when Coca-Cola announced New Coke, Pepsi declared their victory and made it as an employee holiday. Only three months later, the original Coke was reintroduced as Coke Classic and the market share surged — even without Coke in the market for three months, the 1985 market share by case volume still increased by 2%. New Coke's failure was considered the biggest marketing blunder of the century. It revealed the fact that Coca-Cola, as much icon as soft drink, stood for traditional values that Americans still held on to.

Why did New Coke fail? The competitive advantage Coca-Cola had was the ability to retain loyal consumers. People preferred Coca-Cola to Pepsi largely because they grew up drinking it. It was considered a heritage and a mysterious tradition. People had also long developed the taste not as sweet as that of Pepsi. Once New Coke replaced the original Coke, not only did it take away the drink for the older generation who preferred their soft drinks not as sweet, it also alienated consumers who treasured the history more than the drink itself.

As Michael Porter states in *Competitive Strategy*, a framework for competitive analysis includes assessing competitors' and one's own capabilities — strengths and weakness — and making appropriate

40. JOHN C. MAXWELL, JR., BEVERAGE INDUSTRY U.S. SOFT DRINK MARKET SHARES BY CASE, VOLUME 346.

41. *Id* at 347.

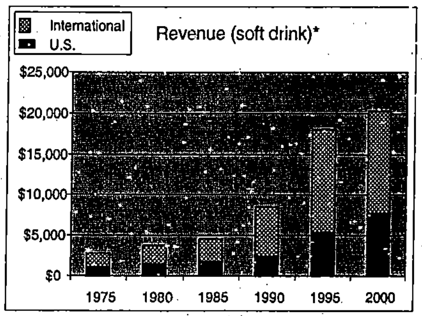
42. *Id* at 362.

assumptions.[43] For Coca-Cola, it overlooked its huge asset, strength, it had long invested in intellectual protection, branding, and fostering the culture. It also made a mistake, assuming that existing consumers would accept the new drink. While Coca-Cola wanted to take over Pepsi's positioning — attracting younger generation with sweeter taste, it forgot to retain the most loyal consumers. Had Coca-Cola introduced New Coke without taking away the old Coke, it might have experienced a different outcome.

Today, brand investment is still a core commitment of the company. In fact, it spends $1 Billion annually on advertising and marketing worldwide.[44]

I. Activity Three: Focus on Growth

Over the years, the company followed a horizontal growth, as well as vertical growth. Horizontal growth refers to basic economies of scale, while vertical growth refers to product proliferation as well as backward (*e.g.*, suppliers) and forward (*e.g.*, retailers and distributors) integration. Although



Sources: A Hundred-Year War: Coke vs. Pepsi, 1890s-1990s Exhibits

* Excludes non-soft drink revenue such as from Columbia Pictures during 1980's

Coca-Cola is now sold in all parts of the world (in 200 nations[45]) and has several product extensions (such as bottled water, sports drinks, blended juices, prepared teas and gourmet coffee offerings), it does not enter a new market without in-depth research of the industry and consumer research. For example, Coca-Cola primarily refused to produce and sell its soda in

43. Michael E. Porter, Competitive Strategy, HARV. BUS. REV., 9-799-125, 1 (1999), *at* <http://harvardbusinessonline.hbsp.harvard.edu/b01/en/common/item_detail.jhtml;jsessionid=ZLSLXS2Y5DERICTEQENB5VQKMSARWIPS?id=799125> (last visited Feb. 8, 2003).

44. The Globalist, *Coke – Globalization's Real Thing*, 1 (2001), *at* <http://www.theglobalist.com/DBWeb/StoryId.aspx?StoryId=2004> (last visited Feb. 8, 2003).

India because Indian law required that trade secret information be disclosed. In 1991, India changed its laws regarding trademarks, and Coca-Cola is currently sold in that country.[46]

Coca-Cola moved into product diversification and expanded overseas. In the international markets, Coca-Cola focused on a few products and replicated its home system at an unmatched pace.

J. Activity Four: Leadership

Michael Porter emphasizes the role of leadership in properly communicating a strategy and ensuring that the customer's needs are met accurately and without delay. Throughout the history of the Coca-Cola Company, all of its Corporate Executive Officers (CEOs) shared a unique skill. They had the ability to create a distinctive vision and communicate it effectively to its employees and customers. In the article, *Of Strategies, Deliberate, and Emergent*,[47] Mintzberg and Waters explain the rationale behind the formation of a company's strategy. They distinguish deliberate from emergent strategies where the former focuses on clear and articulated intentions of the company and the latter on "consistency in action over time — in the absence of intention about it." During Candler's leadership as founder and CEO, he fervently believed that Coca-Cola was the finest product on earth. He unhesitatingly made 7X a secret from the rest of the world. He constantly treated his sales forces as missionaries, not merely paid employees.

In 1923, Robert Woodruff as CEO, decided to build plants worldwide to manufacture concentrate so that only the secret ingredients, 7X and Merchandise No. 5 (i.e., the coca and kola extracts) would have to be exported. Sugar and other materials were obtained at each country where the plant was built. He made sure that the trade secret was once again kept.

V. CONCLUSION

Throughout Coca-Cola's 115-year history, the soft drink industry has metamorphosed into a complex and competitive structure. A successful strategic positioning is achieved by the tightness of its fit with the activity system; *i.e.*, strong legal protection, aggressive brand investment, consistent focus on growth, and strong leadership. Leveraging these four pillars, Coca-Cola has been able to lead innovative changes, and maintain its image as an

45. *Id.*

46. How Stuff Works Inc., *What is a trade secret, and how is it different from a patent or copyright?* 1 (1998), at <http://www.howstuffworks.com/question625.htm> (last visited Feb. 8, 2003).

47. H. Mintzberg and J. Waters, *Of Strategies, Deliberate, and Emergent*, *in* STRATEGIC MANAGEMENT JOURNAL 257 (1985).

icon of America. The ability of balancing commitment and flexibility with its activity system is key to Coca-Cola's dominance of the industry.

Below are four key insights into the company's success.

First, Coca-Cola was both a shaper and adapter of the industry. There are times when it was important to be a first mover, but this did not at all guarantee competitive advantage or competitive sustainability. During its infancy years, Coca-Cola shaped the soft drink industry by securing its formula as a secret. It drove its competitors, imitators, and substitutes away, while embedding the mystique of the formula into consumer perception. The climax of this mystique was made apparent in the New Coke disaster where the original formula has been ingrained into the American icon.

Secondly, Coca-Cola changed the structure of the game, both offensively and defensively. Coca-Cola branded itself as an imperative part of American life rather than just being a mere soft drink, through which Coca-Cola has retained most loyal customers for generations. Because of its association with American culture and life, Coca-Cola, with local experts' help, leveraged its branding far more effectively than its competitors. On the defensive side, Coca-Cola employed its legal team to preventing imitators and competitors from stealing its market share. While many companies have legal divisions, Coca-Cola's legal strength can be traced back to its early inception where the legal team has long known how to preempt competition and mitigate legal risks even before they surfaced.

Thirdly, Coca-Cola focused heavily on brand investment, but the brand, or any single core activity, was not the sole reason for its success. Rather, Coca-Cola had key intertwined activities that were difficult to replicate, but proved formidable in surviving the competition in the soda industry.

The secret formula then is more than Merchandise 7X. Rather, it includes each and every tactic, aspect, service, and product that makes the Real Thing.

ACTIVITY SYSTEM OF THE COCA-COLA COMPANY