Brand is king when all eyes are watching

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Over the decades that apartheid held sway in South Africa, politicians and members of the security forces were rarely held accountable for their actions. People in business also saw opportunities to "steal" the trademarks of global brands not active in South Africa, and McDonald's, Gap and Ralph Lauren were affected. By the first democratic elections in April 1994, the transformation of every aspect of the country had already started. Business was good for the legal profession, as agreements were drawn up, new structures were created and trademarks registered. Some trademarks had to be rescued from "foster parents" that cared for them in the face of international trade restrictions, and this remains an issue, as wily domestic operators continue to challenge some global behemoths.

Since South Africa re-joined the international economy, there have been two major changes: the explosion in the use of technology, and the drawing up of global trade and legal agreements that attempt to regulate world affairs, invariably with US regulators at the centre. The US regards itself as a sort of global Super Cop, attempting to impose its will and what it considers to be the correct way to do business, often causing friction. The Sarbanes-Oxley Act, overhauling US corporate governance laws and promulgated in 2002, expects company managers to regain shareholders' trust by demonstrating a commitment to earning it.

In September 2015, the U.S. Department of Justice released its policy on Individual Accountability for Corporate Wrongdoing – better known as the 'Yates Memorandum' which is "designed to ensure that individual accountability is at the heart of [DOJ's] Corporate Enforcement Strategy". To that end, the Yates Memorandum outlines DOJ's 6-step plan for increasing the number of cases it brings against individuals who may be accountable for corporate wrongdoing. There are many people who consider the US and much of the First World to be overregulated, and that some in Washington DC are overreaching by imposing yet more regulations that have a global impact, especially by charging and penalising business – particularly the banking sector – with fines running into billions of dollars.

It is hardly surprising that companies and countries are increasingly headed by lawyers. In the past three decades or so, there has also been a swing from tangible value to intangible value – largely intellectual property such as brands. The market capitalisation of an average company may be less than a third tangible. The US darlings of the investment community are the so-called "Fang": Facebook, Amazon, Netflix and Google. With the possible exception of Amazon, these companies' tangibles make up less than 10% of their market capitalisation.

Today many brands are now the major assets of companies. They can be bought and sold, yet few companies know the value of these assets. Does the average board of directors understand brands and the legal issues associated with their ownership and protection? Is there legal and reputation expertise on the board? Are there risk management structures in place, and do the directors have international experience? Do the directors and officers truly understand the world of social media and the risks and opportunities that brands face in that world?

Being part of the global community again means there is a code of conduct to follow. An entry fee and dues have to be paid, and there is punishment if the rules are not followed. The agreement with the US on the African Growth and Opportunity Act, the trade of agricultural products such as citrus and wine – which adds R36bn to the economy and 289,0000 jobs, according to *Wines of SA* – and the import of chicken has a huge effect on South African jobs, financial inflows and, therefore, the fiscus. But agreements such as this one are about reciprocity, should not be one-sided, and are subject to review from time to time. The law of unintended consequences looms large.

We all have to be extremely careful about what we post on Facebook, Twitter, and share on email, as once these are in the public domain, they are difficult, if not impossible, to recall or delete. There is no privacy, and no such thing as 'off-the-record'. An estate agent in Kwa-Zulu Natal and an eminent Johannesburg economist have both found themselves charged with making racist comments. Political leaders are particularly prone to making stupid comments and, when held to account, try to argue they were misquoted.

Every company has to respect the laws of their domicile, the laws of countries in which they operate, and global regulations that may affect them. Directors are held accountable for this compliance. At the World Economic Forum in Davos earlier this year, it was estimated in 2015 that more than $735bn was removed from developing countries. The potential for global illicit activity is enormous.

The Institute of Directors of Southern Africa and the iterations of the King Report on corporate governance – with the fourth version released on November 1, 2016 – warn that directors have serious responsibilities, accountability and consequences. In South Africa, private-sector directors are increasingly aware of the risk to themselves, especially their reputations and finances, and are invariably heavily indemnified. Yet, in the public sector, there are many political appointees on boards who not only don't understand their responsibilities, but don't understand they are putting themselves at risk. In the last few months alone we have seen in South Africa the ever-growing scandal of the so called 'Gupta Leaks' implicating the President and his family, Cabinet Ministers and numerous public officials. As a result international PR consultancy Bell Pottinger has closed its doors, KPMG South Africa is in disarray with its top eight executives leaving and perhaps more to come, Eskom and McKinsey are now in the cross hairs, and it all continues to unravel. As a result of this it is estimated by a former Minister of Finance that the harm to the economy has cost the country in excess of R100 billion. Sadly all this impairs the reputation of RSA Inc and sullies its image to the detriment of all its citizens.

No longer can any country think of itself as a standalone entity. Socio-political forces outside its control may have a profound effect. Dictators and dominant factions and political parties – of which Africa has the lion's share – may hold sway for a time, but outside forces will increasingly influence affairs. Already with companies, this is non-negotiable. Boards of directors and governance committees now have agendas that are ever longer, and compliance is non-negotiable. Business is no longer simply about financial and legal issues – reputation and brand issues are crucial and can no longer be left in the "any other business" folder.

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