

A TikTok guide for brand owners



What brand owners need to know about game-changing platform TikTok

Apps provide brand owners with a new way to connect with and market to consumers, but how do you make the most of the opportunities and manage the risk? In this guide, we set out marketing and IP considerations for brand owners taking a first step into TikTok.

If you hadn't already heard about or used it, TikTok became practically inescapable during the COVID-19 lockdown as friends, family, colleagues and celebrities began to spend all their free time making dance and other videos for the mobile phone app. The video-sharing sensation has racked up 800 million active users worldwide with more than a million videos viewed daily.

During the pandemic TikTok also became known for more direct political commentary, as posts around the Black Lives Matter movement, as well as LGBTQ+ and feminist issues have gone viral.

More recently, it's been making headlines for other reasons, with the threat of a US ban (because of the app's origins in

China) now potentially sidestepped, thanks to a deal with Oracle Corp to set up a US-headquartered company, as well as an ongoing patent infringement suit filed by rival Triller.

Unsurprisingly, many companies have been unsure whether they should spend their valuable time on the app – or where to begin.

TikTok – too successful to ignore?

Nonetheless, TikTok holds opportunities and risks for many brand owners that should be considered as part of any marketing and IP strategy. In this guide, we set out:

1. TikTok – time for you to get on board?
2. The rise of the influencer
3. Marketing advantages for brands – including the 'TikTok for Business' proposition
4. IP considerations – including the all-important issue of online brand protection
5. Guidance on how and where to get started
6. Additional considerations – other apps and future trends.

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PART 1

TikTok – time for you to get on board?

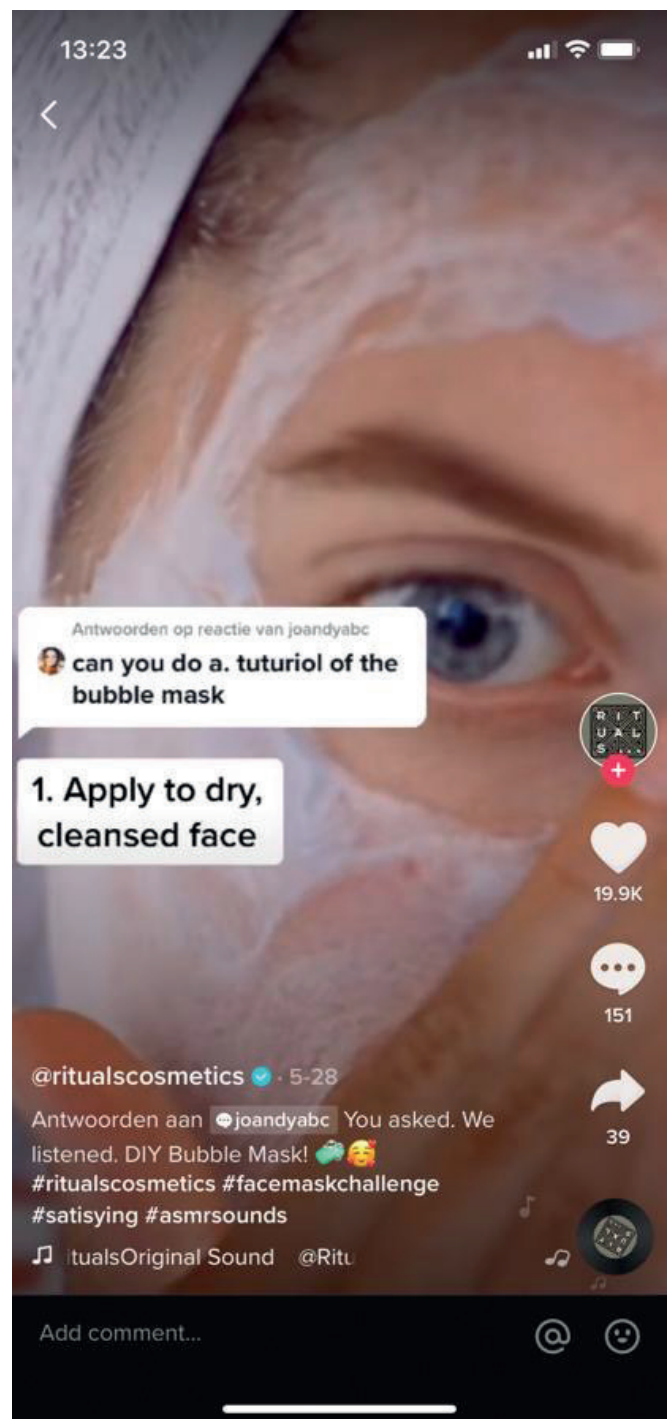
While TikTok was previously the domain of Gen Z, as well as tweens and teenagers, the app has widened out its user base, as the older generation has begun to fall in love with the range of family-friendly lip-syncing and dance routine challenges.

For this reason, brands that may previously have discounted TikTok – because of its audience and their lack of disposable income perhaps – are beginning to come around to the platform and its potential to engage with consumers in fun and innovative ways. It also represents the next major step in the general move towards online as the main retail/marketing space for many brands.

Finding a synergy

Plenty of brands have already found a natural fit with the app, such as the beauty care and cosmetics company Rituals, which shares face mask and other product demos under the #ritualcosmetics (see image right), while Red Bull has amassed nearly 5 million followers on the platform with its sport and adventure videos. As these companies show, there is a valuable opportunity on the platform to open up a direct line of communication and exchange with customers. But, you need to be “authentic” to succeed, according to Trevor Johnson, Managing Director, Global Business Marketing for TikTok in Europe.

This may be one of the reasons why brands tend to have fewer followers on TikTok than influencers do. Indeed, TikTok set up a ‘creator marketplace’ as part of its new TikTok for Business offering (see page 5) to help companies to find influencers to collaborate with them on the app and thereby provide the necessary authenticity and creativity to succeed.



The issue, of course, is that it can be hard for users to distinguish between brand-authorised content, and use by ‘wannabe’ influencers who piggyback on recognised brand names without always being associated with, or authorised by the brand.

Indeed, given the prevalence of impersonation and other forms of brand damage in the digital environment, even those brand owners who are not interested in the marketing opportunities offered by the TikTok platform, cannot afford to overlook it in their online brand protection strategies (see section 2).



The rise of the influencer

On TikTok, as on social media more generally, there is a symbiotic relationship between brands and influencers. By associating with an influencer, a brand can extend its reach in ways that it couldn't otherwise.

For example, Danette (part of the Danone Group) engaged the help of seven powerful influencers to broadcast its challenge, #ToujoursDeboutPourDanette in France. In a similar way, an influencer can gain prestige by associating with a brand, thereby making themselves more attractive to potential followers.

TikTok offers the impression of spontaneity and authenticity, so of course when a consumer sees a branded product on an influencer's account, important connections are made. On the one hand, the branded product represents an aspect of the influencer's lifestyle; on the other, it may be perceived as an endorsement of the product.

Monitoring is key

This does not, however, detract from the fact that the way in which an influencer represents or otherwise uses the brand – whether authorised or not – should be carefully monitored.

It may have taken place on Instagram, but the kerfuffle between German designer and influencer Philipp Plein and Ferrari vividly illustrates the point. For those who don't know the story, Plein featured a pair of his branded sneakers on his Ferrari (clearly signalled by the signature horse). This association so displeased Ferrari that it successfully took Plein to court for "free riding" on the fame of its classic and prestigious brand.

Indeed, the Genova Court agreed with Ferrari's position by noting that while *"the depiction of one's personal life on social media will almost inevitably include his/her consumption habits, and therefore, will feature the distinctive signs of consumer goods' brands, the use of third-parties' trademarks by an influencer is considered lawful only when such use is authorised by the owner of the distinctive trademark or when the images are descriptive of life scenes of the influencer or of third persons and are not merely being used for commercial or advertising purposes"*.

On that last point, the Court also found that, given the overdetermined composition of the photo – green sneakers on a similarly green Ferrari – consumers may be led to believe that the brands of Plein and Ferrari are somehow connected when in fact they are not.

Marketing advantages: Don't make ads, make TikToks?

The [TikTok for Business](#) offering, launched in June 2020, promises to “give brands and marketers the solutions to be creative storytellers and meaningfully engage with the TikTok community.”

In practice, that means building on the existing tools available to brand owners – content sharing, brand takeovers, hashtag challenges and branded lenses – via a new ad platform and ‘Creator marketplace’, where brands can find influencers and other collaborators.

The platform also includes a range of case studies ([‘Inspiration’](#)) to help brands to understand the possibilities. Examples of successful campaigns featured here include: the launch of [KFC UK’s delivery service](#) during the COVID-19 pandemic (via in-feed ads); [Balenciaga’s e-commerce](#) campaign in France and the UK (via brand takeover, which launches an ad on opening of the app); and [BMW Motorsport’s launch](#) of its new iFE.20 car in Germany (with a hashtag challenge), which led to it gaining 18,000 new followers in six days.

PR and communications agencies, which often play a crucial role in the creation and development of a brand, enjoy a special position from which they can weigh up a social media channel’s potential to promote a brand and build its online presence. According to Vincent Mani of [Buxum](#) Communication and Digital Strategy in Geneva, there are two interesting points to consider.

“First of all, there’s the novelty of the platform. Given that relative to such platforms as Snapchat, Pinterest, and Instagram, TikTok for Business is very much a newcomer, businesses have a golden opportunity to claim their territory and determine the extent and the nature of their presence on TikTok. Second, the emphasis on spontaneity and personality that is a signature feature of TikTok (as opposed to the less authentic and more curated feel of Instagram) can provide brands with the perfect setting to develop a more personalised, interactive, and transparent connection with customers. By encouraging and possibly integrating user-generated content through hashtag challenges and the like, brands can develop a sense of community among customers while at the same time extending their reach.”

PART 2

IP challenges and considerations

Alongside the marketing potential, however, there are also brand infringement and reputation issues to consider – even if you choose not to engage with the platform through a business account.

[Predictions last year](#) that TikTok may become the new ‘battleground’ for IP owners provides a salient warning to brand owners. While TikTok has put in place a series of measures to assist IP professionals in this respect, apps and social media platforms pose a major challenge for brand owners, and a clear online brand protection strategy is necessary if they are to identify and act against malicious use of their brand.

Here are some of the key issues to consider when formulating such a strategy:

1. Brand protection

What is missing on TikTok, in our view, is that stamp of authenticity on accounts that can help consumers to distinguish between authentic and fake accounts.

Although the ‘blue tick’ mark does exist on the platform, unlike Facebook or Instagram, there is no procedure on TikTok to request a ‘blue check mark’ to indicate that you are an authorised user.

- The ‘verified account’ badge is hard to obtain and generally reserved for well-known celebrities, although many brands are also beginning to achieve this status (e.g. Rituals);
- The ‘popular creator’ badge is awarded if the content meets the algorithm or reaches the eyes and ears of the TikTok staff.

As a result, there is a significant risk of impersonation and fake accounts on TikTok, and brand owners would be wise to add the app to their monitoring and enforcement programme, as well as to consider investing in their presence in the space – whether to crowd out the unauthorised users or to work towards that verified account badge.

Even authorised influencers need to be managed to ensure that IP rights are upheld and the content kept on 'message' and the question of who owns the content they produce considered and formalised.

Successful influencers and content creators should also consider obtaining their own protection. Research by *World Trademark Review* earlier this year showed that few TikTok stars have registered trademark protection despite the number of lucrative sponsorship deals they are signing with brands. 17-year-old singer Loren Gray, the most successful TikTok star at the time of its research (with 39.7 million followers) had not applied to register a single trademark to protect her vast empire.

2. Trademark infringement and anti-counterfeiting

As a relative newcomer into the social media space, TikTok has quickly extended the field of action in which trademark infringement and counterfeiting can occur.

Even if many of the fake accounts or apparent infringers seem not to correspond at all to the persona of the brand, the fact still remains that the brand is infringed and damage may still have been done to the brand.

Every time that a TikTok user creates an identity on the basis of a prominent brand, there are two perspectives that come into play. From the perspective of the brand, if unauthorised, this is an outright trademark infringement. From the perspective of TikTok users, the infringing account is a potential source of confusion. Specifically, while they may recognise that the account is not that of the official brand, they may still believe that the account owner is an authorised ambassador of the brand on TikTok, especially if there is a blue check mark beside the account name.

3. Copyright infringement

The concept of TikTok relies heavily on video creation and the use of well-known music to create dance routines and other choreographed content. As a result, there is a risk of copyright infringement, even though it is often done without knowledge or ill will on the part of the creator.

Unsurprisingly, music companies have threatened to sue (or have already done so) over use of songs without licence, including seeking retrospective royalties. TikTok has reportedly entered into short-term agreements with a number of publishers, such as Universal Music Group and Sony Music, as well as signing licensing agreements with royalty societies such as the US National Music Publishers' Association (NMPA), which represents songwriters, composers and publishers in the country.

Brand owners should make sure they have secured the appropriate rights before launching any content on the

Use of blockchain to establish copyright

A noteworthy copyright issue involving TikTok was raised in 2018 before the Beijing Internet Court in which TikTok claimed copyright infringement by competitor Baidu of one of the short videos posted on its platform. In its ruling, the Court recognised that short videos posted on TikTok could be copyrightable material, as our colleague [Echo Xu from Kangxin Partners PC](#) explains.

TikTok claimed that Baidu, without TikTok's consent, provided download-and-share service on its own platform, Huopai, for a video originally uploaded on TikTok.

Baidu argued that the short video was not a 'work' in the sense of China Copyright Law and should not be protected. Interestingly, the Court considered that the length of the video is not necessarily related to judging whether it is creative or not. The shorter the video, the more difficult it is to create, and the more likely it is to be creative. The short video is created

independently by producers and contains the multi-faceted intellectual work of the creator. Therefore, the Court considered that the short video should be protected by the China Copyright Law as the work.

Although the Court finally decided that Baidu did not infringe TikTok's copyright (for various reasons), it is worth noting in this case that TikTok commissioned a third-party electronic platform to conduct evidence collection and ensured the authenticity of evidence through a series of technologies on its behalf. This included blockchain certificate storage technology and third-party judicial authentication. During the trial, the Court played the video evidence submitted by the plaintiff and captured by the blockchain technology on the screen. While the Court did not comment on the specific details of blockchain, it nevertheless recognised its effectiveness without questioning its authenticity.

platform. That should include music, but also potentially choreography and slogans/sayings, which were coined by someone else.

Of course, they should also be conscious of the risk that their own content will also be infringed: for example, reshaped without permission or used on other platforms. Here, the usual good practice around copyright and stamps of ownership is recommended.

4. *Monitoring and enforcement strategies*

As more and more brands tailor strategies towards TikTok, and the risk of infringement grows, monitoring on this platform (and other similar apps and social media sites) is critical. If your online brand protection tool or service does not include this and other apps in its service, now may be the time to look around for an alternative.

Consider too, the need for rapid action against any threat when identified. Here, semi-automated enforcement tools can make a major difference when it comes to sending out 'batch' enforcement, for example, take-down requests and/or cease and desist letters.

As we have written previously, such enforcement actions need to be proportionate to the threat, however. Heavy-handed enforcement could well result in a backlash on the platform, which is considered by users to be an informal and fun platform that celebrates creativity. To refer back to the Philipp Plein vs Ferrari case discussed earlier, it is worth noting that Plein published the cease and desist letters of Ferrari on his Instagram account, trying to paint Ferrari as the bad guy "trademark bully" and using social media to try to influence user sentiment in what was originally a justifiable and strictly legal battle.

As with most well-known apps, TikTok has put in place tools to assist brand owners in this respect. Novagraaf's Online Brand Protection service is fully equipped to address copyright and trademark infringements on TikTok, which – because of its rising star status – we monitor actively.

PART 3

How to get started, and additional considerations

For brand owners that do not have social media experts in-house, the first port of call for any marketing launch is to get the right support in place first. As we have already mentioned, TikTok is a platform that rewards creativity and authenticity, and finding the right approach and tone of voice can be tricky.

The same applies to online brand protection. While it is important to monitor and take action against trademark infringement (e.g. counterfeiting) and reputational harm on the platform, it's equally important not to do so in too heavy-handed a way.

It's not just a question of what you do (and don't do), but also how you do it. Too aggressive a strategy can often turn consumer sentiment against a brand – as Backcountry.com recently found to its cost – while too lax an approach can amount to having no strategy at all. What is needed is an overarching strategic vision that aligns long-term branding and business goals, whether that be market growth or product consolidation, with the need to manage the here and now.

Having the advisers and tools is already a good start. To minimise the impact on in-house teams, that should mean tools that facilitate monitoring and enforcement, as well as identify the threats – ideally on all digital platforms (apps, domain names, web content, marketplaces, social media). Automation in monitoring and enforcement workflows also delivers increased efficiency, the capacity to handle higher volumes of data, and increases the swiftness of response.

Other apps and future trends

Indeed, when it comes to online brand protection in general, if you don't have a strategy and the right resources in place, now is the time to fix that. TikTok is not the only app that should be on your radar in this respect: Instagram, Snapchat and others are already stepping up their efforts to rival TikTok when it comes to engaging with consumers and attracting marketing spend.

Just this month, for example, YouTube launched its new 'Shorts' platform in India to target the estimated 120 million users who used TikTok in the country, before it – and 58 other Chinese apps – was banned, following escalating tensions between the two countries.

What is clear is that video-sharing and other apps are here to stay, replacing more traditional forms of media and offering new ways to play and interact in the online space. Even 'traditional' offline brands are wise to be alert to the possibilities and dangers of these growing platforms, especially at this time of the COVID-19 pandemic as we retreat even further into the digital world.



For advice on how to design an online brand protection strategy that reflects your brand and IP portfolio, contact us at brandprotection@novagraaf.com.

About Novagraaf

For more than 130 years, Novagraaf has been helping iconic brands and innovative organisations around the world drive competitive advantage. One of Europe's leading IP consulting groups, Novagraaf specialises in the protection and global management of IP rights, including trademarks, patents, designs, domain names and copyright. Headquartered in the Netherlands, Novagraaf has 18 offices worldwide and a powerful network of more than 330 specialists. Part of the Questel group, Novagraaf is unique in its ability to provide tailored legal expertise, efficiency-gaining administrative services and proactive commercial insights across the full life cycle of clients' IP rights.

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