

Marnus Broodryk and attorney weigh in on Ubuntu Baba

Carmen Murray talks to Roy Taberer, a patent attorney from Taberer Attorneys, Kimberleigh Stark, an actress and producer from Stark SA, Shannon McLaughlin, owner of Ubuntu Baba and entrepreneur Marnus Broodryk SME Africa, who once parked his car in front of Woolworths in Fourways with the writing 'Stop killing SMEs', to understand the lessons we can learn from this and how can we protect our ideas better...

 By [Carmen Murray](#) 31 Jan 2019



Credit: Ubuntu Baba.

We had an incident this year where a small business owner, Ubuntu Baba discovered that her baby carrier product was blatantly copied and even called the same name by the retail giant, Woolworths.

The discoveries Shannon McLaughlin, owner of Ubuntu Baba made, would leave any SME rattled, especially when there is "dark art" to this unethical practice and that this is not the first time that this incident occurred with the retail giant. With that being said, this is not uncommon practice for small business owners, whether you are in a creative industry, marketing or advertising, or in this case, product development. It is a reality we all need to face.

Steve Jobs who famously said in 1996:

“ Picasso had a saying - 'good artists copy; great artists steal' - and we have always been shameless about stealing great ideas. ”



The question is, where do we draw the line? How do we protect the future of our business? What are our rights? What is acceptable and what is unethical and how does the law protect our intellectual property and the ideas that cost our money, blood sweat and tears? Is the law for us or against us? Could we be more proactive?

I arranged a podcast interview with Roy Taberer, a patent attorney from Taberer Attorneys, Kimberleigh Stark, Actress and Producer from Stark SA, Shannon McLaughlin, Owner of Ubuntu Baba and Marnus Broodryk, SME Africa who also parked his car in front of Woolworths in Fourways with the writing “Stop killing SME’s” to understand what are the lessons we can learn from this and how can we protect our ideas better.



DIGITAL

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Here is a summary of what Marnus and Roy had to say about Ubuntu Baba and what we can learn from this incident:

Marnus Broodryk

Woolworths Response:

How the situation was dealt with, I feel that Shannon handled the situation so well with all the activity on social media. From Woolworth's side, it was an absolute disaster. I think if I was a CEO, and something like that happened, I would come out the same day. Here I am, I am going to investigate it, but they didn't and it took some time to get a response. I think it was a horrible response from their end. From Shannon's side, it was a thumbs up.

Ideas are not unique:

I do think there are a lot of people that claim what Shannon's claimed. There is definitely a lot of people that have been bullied by corporates like in Ubuntu Baba's case. On the flipside, I also think there is a line we need to draw there and say that people come up with an idea sometimes, other corporates are doing it, and then they think corporate stole their idea. This is not always the case. Ideas are not unique. If you come up with an idea, you can go and google it, it would've been done somewhere.



RESEARCH

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So I do think there are a lot of SME's coming out now, saying I had this idea 10 years ago, and now this bank is doing it anyway. I don't think that is valid. There are my corporates who are working on ideas all the time and you get an entrepreneur goes to a bank with their unique idea and then the bank is not interested and the next 2 years, they roll out the product. It is not because they copied you, it's because somewhere in the bank it's their full-time thing and they've been working on it.

In hindsight, what happened here was the best bullying ever, done by a retailer and just copying the product shamelessly was absolutely wrong. So I think that Entrepreneurs also need to be more realistic about it to say yes I am going to come up with things, I am going to have competition, and I can't do anything about it. But this scenario is totally unacceptable.

It is all about execution:

Business has changed. Today it is all about execution. The idea means absolutely zero. Someone else can come up with the idea and execute it better, your dad in the water.

Lessons:

- If you have an idea, and you sit with it for 3 years and don't do anything with it, and then complain that someone stole your idea. You need to go out there and do it.
- Look at your ideas and see how you can do it yourself. Here is the golden nugget. We can actually perform better than corporates in this time, because when you come up with an app, this afternoon you can go and plan it, this evening you can hire an Indian development company and in 2 week's time you can have an app. A corporate will have meetings after meeting, designing that app, agreeing on the app and it will take them 3 years. So we actually have the advantage in this time, we just need to view business differently.
- No more ideas, all about the execution

Roy Taberer

A legal perspective on Ubuntu Baba:

This is a cross between ethics and law. This is more unethical than unlawful. The law is a traitorous long process and a coping as such is not unlawful. The whole of human ingenuity and human progress is always leveraged off a prior product which is part of human history. We copy. We take ideas and we build upon them and we pass them off as our own. The issue here is not copying. It is how the copying was done. The law in South Africa does not prevent, make it legally permissible to copy but the common law, copy at will, if it's in the public domain, copy, however, copy with some degree of ethical input and that is where the common law is such a beautiful thing because it brings in ethics.

If it is unethical, it can be unlawful. If it's the slavish copying, if it's done like with Shannon's case where they pre-purchased two or three items of hers and developed their own product with her product in front of them, I think this is where the unethical and possible unlawful conduct occurred. I think that is the point of departure, how she was copied.

Woolworths handled themselves appallingly, not only did they copy her in an arguably unethical and unlawful manner, they took everything. It is the concept, the design, the colour, and most objectionable, it's about taking the brand and the name goes from a bit of opportunism, going straight into unlawful activity. By the way, she was copied. By how they appropriate her brand, how they appropriated the colour and the look and feel of her product.

Can the law protect SMEs?

To put it bluntly, the law is not there to protect SMEs. It is important to get the right advice, entrenching your rights, entrenching your IP right, entrenching your confidentiality undertakings with the people that you are involved with, and interrogating the contractual arrangements you have with your partners. Those are all the legal rights that you have around business. As an entrepreneur, it's incumbent on you to interrogate and look at the rights to see where you can strengthen rights, where there are legal weaknesses and where there is an opportunity for a person that is acting in bad faith. It is not for the law. The law provides a platform, it provides the rights. You just have to have the rights.

Lessons:

- You've got to remain, irrespective of what you have, you've got to remain fleetfooted and as an entrepreneur, you've got a competitive advantage over the monoliths of corporates in South Africa, simply because they are weighed down by decision making
- Your ideas are executed with love, ethics and goodwill
- IP does not sell. You can't think you have a great idea, sit back and think someone is going to buy it. What sells are great businesses that are underpinned by ethical dynamic entrepreneurs and as a cherry on top, having IP rights. Here is the nugget, if you can get IP rights, get them because they are worth something to an investor and the general public.

If you found this interview insightful, you can go learn more by listening to the full podcast and get the whole story and different perspectives from everyone that was present.

Listen to the full podcast [here](#).

ABOUT CARMEN MURRAY

Carmen Murray is one of the most influential modern marketers in South Africa. Her strong background in content, digital, mobile, innovation, and data analytics allows her to identify emerging trends and conceptualise disruptive communication strategies deployed with precision. The customer and their needs are always at the heart of her approach. View my profile and articles...

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