ANALYZING INTELLECTUAL PROPERTY RIGHTS AS ENDOGENOUS FACTOR IN CORPORATE BRAND MANAGEMENT – A BRAND HIERARCHY PERSPECTIVE

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ABSTRACT

Brand portfolios have attracted increasing attention in the academic discussions, including advertising literature. Considering that brands call for careful management – in relation to which portfolios can function as an efficient vehicle for evaluations and implementation – it is relatively surprising to see how little attention has been paid to legal protection of brands. Such protection is important since branding typically involves codified, visible features that are vulnerable to imitation, and protectable practically only through legal means. Yet intellectual property rights (IPRs) are seldom discussed from brand management perspective, not to mention corporate branding in particular. Also, in the relatively rare occasions where IPRs are considered, typically only trademarks and only product brands are discussed.

The purpose of this study is to augment the discussion, and examine the use of variety of IPRs in relation to different brand hierarchies as a part of corporate brand management. In the study we discuss aligning different brand hierarchy strategies and varying IPRs, and consider – through utilizing trademarks as an example – the differences of legal aspects in relation to traditional product-oriented approach and corporate branding.

Our findings suggest that product and corporate branding indeed are different in terms of legal protection: not only are possibilities to use IPRs such as trademarks different, but so is also the range of IPRs that can be relied on for branding purposes. Such differences need to be taken into account when brand management is approached – whether from the point of view of advertising or some other area.

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INTRODUCTION

Brand portfolios have attracted increasing attention in the academic literature during decades (see, e.g. Aaker and Joachimsthaler 2000b; Kapferer 1992; Keller 2003; Laforet and Saunders 2007). They have been discussed especially in advertising context. Advertising perspective is traditionally strongly related to product branding, however, and relying solely on it may in certain cases be too narrow an approach, especially when corporate brands are of concern. In fact, brand portfolios have been approached under different labels such as brand hierarchy (Keller 2003), brand architecture, brand relationship spectrum (Aaker and Joachimsthaler 2000b), brand roles, and brand types and purposes (Osler 2007). Despite the many ways to define brand portfolios, their dimensions and levels, and the variety of explanations and examples related to each level, almost all researchers make the distinction between *corporate-dominant*, *product-dominant* and *mixed* structures (Laforet and Saunders 1999), and most companies use a combination of more than one of these structures (Aaker and Joachimsthaler 2000b; Laforet and Saunders 1999). The purpose of the portfolios is, on the one hand, to exploit commonalities between different brands in order to generate synergy, and on the other hand, find and reduce the differences between brand identities in different contexts and roles so that they do not damage each others. Brand portfolios also reduce confusion and achieve clarity among different brands (Aaker 1996a, 241-242.). We consider the above mentioned three perspectives as a corporate brand management issue and refer to the entity that they form as *corporate brand hierarchy*. Thus, brand hierarchy in this study is a means of summarizing the branding strategy in a graphical way to show how many different brand elements the company has (Keller 2003). This hierarchy can be utilized in planning, categorizing and organizing brand management, and it provides a platform for examining individual management issues.

Among the relevant areas of corporate brand management where the hierarchy can be of relevance is protection of the brands. Despite the extensive interest brand hierarchy has received, legal issues, like intellectual property rights (IPRs), are seldom discussed from corporate brand management perspective. One reason behind this may be that legal aspects are often seen as an external issue (e.g. Cornelissen and Elving, 2003); something that has to be taken as given and can only be reacted to rather than being internally and strategically controllable factor. Another shortcoming is that even if the substantial value that can be derived from brand names and trademarks has given start to some research on protection in recent years (e.g., Morrin and Jacoby 2000; Simonson 1994; Pullig et al. 2006; Alessandri 2007), the existing studies are often limited concerning mainly product (and service) brands rather than corporate brands (e.g. Moore 2003). Furthermore, most of these studies are restricted to protection provided by trademarks (see, e.g., Alessandri and Alessandri 2004 on legal and non-legal protection mechanisms), including studies on trademark dilution based on unauthorized use of a mark (Jacoby and Morrin 1998, Simonson 1994), trademark infringement (Burgunder 1997, Howard et al. 2000), and the application of trademark legislation to the Internet (see Taylor and Walsh 2002). However, managing corporate brand hierarchies successfully requires approaching trademarks differently, and it can also be influenced by other IPRs than just trademarks. Consequently, in this study we adopt a wider approach and consider trademarks, trade names, copyright, and design rights. Also unfair competition is briefly discussed.

In line with the above discussion, the purpose of this conceptual study is to find out, *how IPRs can be aligned to different brand hierarchies as a part of corporate brand management.* This study aims to increase understanding of legal issues as endogenous factor of the company, which can and should be actively managed as an integral part of the corporate brand management. We suggest that brand hierarchy decisions guide the legal choices of the company, and that these decisions need to be actively managed in the company in order to make sure that the wanted outcomes are achieved.

BRAND HIERARCHIES IN COMPANIES

Corporate branding, which can be defined as "*a systematically planned and implemented process of creating and maintaining a favourable image and consequently a favourable reputation for the company as a whole by sending signals to all stakeholders and by managing behaviour, communication, and symbolism*" (Einwiller and Will, 2002, p. 101), is a relatively new and multidisciplinary area in academic discussions (see, e.g., Balmer, 2001 Bickerton 2000; Knox and Bickerton 2003). There has been increasing interest towards this since the turn of the century (Ahonen, 2008). Compared to traditional product branding, corporate branding is notably different. First, product brands focus attention to the final product, both to its physical attributes and to the emotions and associations it creates. The focus of corporate branding is the entire company, not the individual products. Second, middle managers are usually responsible for product branding. Top management is responsible for corporate branding and it is part of the long-term strategic planning of the company. Third, product branding relates, in terms of attraction and support, to consumers or customers. The primarily target is to focus on consumers through a variety of individual products and services with distinct product names. Corporate brands, for their part, need to respond to the expectations of multiple stakeholders, starting from the internal stakeholders and reaching all the way to the external stakeholders and networks, such as authorities, media and local communities. Fourth, product branding is usually handled within the marketing department of a company and using marketing communication tools, e.g., advertising. A corporate brand is made known to the stakeholders through multiple channels of communication including total corporate communication. Finally, product brands live in the present and they are short-term in their aim to help deliver sales and attract potential customers. This creates an occasional need to freshen the product brands with innovative advertising campaigns. The corporate brand is based on values held by the personnel. These values are a mix of the corporate sub-cultures, personal values and corporate-wide values. (Hatch and Schultz 2001; Gylling and Lindberg-Repo 2005; Balmer 2003; Balmer and Gray 2003.)

For managing both corporate and product level branding the literature suggests several perspectives on classifying different brand hierarchies in corporations (see, e.g, Aaker and Joachimsthaler 2000b; Laforet and Saunders 2007; Keller 2008). There are many different ways to define brand hierarchies, their levels, and definitions (see Appendix 1). Nevertheless, most categorizations make the division between corporate-dominant, product-dominant and mixed structures (see Laforet and Saunders 1999).

Corporate dominant – a branded house

Corporate dominant branding is more strongly related to the intangible company value than product dominant or mixed branding strategies (Rao et al. 2004). Especially financial investors seem to better notice companies that choose branded house brand architecture. Branded house structure is well applicable especially in homogenous markets, and prior corporate brand building efforts as well as ads and created publicity can be adapted or used directly with new product entries. This can result in cost advantages. In addition, if a company is competing in turbulent markets with short product life cycles where it is difficult to recover the costs of continually creating new product brands, it makes sense to use a corporate brand to support all the products (Hatch and Schultz 2001) because the master brand adds value to the products (Aaker and Joachimsthaler 2000b) by contributing to associations that enhance the value proposition and make the products more attractive. However, in certain situations, such as if the aim of the company is to create or develop and then sell off successful product brands, having a unified corporate brand does not make any sense (Hatch and Schultz 2001). Alternative approach might be then taken.

Product dominant – a house of brands

Considering the effects of markets on the brand strategy, it can be noted that individual product brands suit multiple markets. However, since the development and support of a new, separate product brand is expensive, good reasoning for choosing the house of brands brand hierarchy is called for (e.g., Simonson 1994). A separate brand is justifiable when the new brand owns a key association for a product class, holds potential to dominate a functional benefit, or represents a notable advance in technology. Also, a house of brands category can be used if the company wants to avoid associations between different products: Sometimes these links might damage the image of brands. Another important aspect is that especially after an acquisition there emerges the question whether to retain or change the name of the acquired brand. If visibility, associations and customer bonds of the acquired brand are strong, it might be difficult to transfer these brand equity assets to a new brand. Retaining the original name (instead for going for corporate dominant branding, for example) helps to maintain the stakeholder comfort, and thus ease the turmoil of changing ownership. Finally, the house of brands hierarchy might prevent a channel or distribution conflict between different brands (Aaker and Joachimsthaler 2000b).

Mixed branding

Companies often choose a brand structure that is neither purely corporate dominant nor product dominant; instead it is something in the middle. According to Aaker and Joachimsthaler (2000a), these mixed brands gain advantage by combining the brand equities of individual brands. They benefit from the reputation of a corporate brand name and the individuality of unique brand names: The product brand simultaneously benefits in its advertising from the company´s heritage, promotes itself, and helps to build the brand equity of the corporate brand. Thus mixed brands should make the associations of the each single brand stronger. In practice this mutual support can enhance getting shelf space and building market share. Family brand hierarchy is a good choice in trend markets where a classical corporate or family name can give continuity while being associated with changing styles. (Laforet and Saunders 1999.) The main risk is that a product brand may harm the corporate brand or vice versa. Especially the brand equity of the corporate brand should be maintained and not damaged by overextending the brand. (see Appendix 2).

PROTECTION OF BRANDS AND BRAND HIERARCHIES

Acknowledging the features of different branding hierarchies is relevant part of brand management. It is important not only for being able to choose the most suitable strategy, but also for making sure that the benefits reaped from the brand building work do not flow to competitors. In fact, the chosen brand hierarchy and intellectual property rights are intertwined in brand management.

Not just trademarks – wider approach to IPRs

Legal aspects of brand management emerge from the very beginning of company establishment and product launches. A company that is building and introducing a new brand is affected by the existing trademark rights of others and restrictions to using and registering trademarks[i], for example. Later on, the rights of the firm need to be executed and defended if necessary. It can be said that protection of a brand is an essential part of brand management (see, e.g., Moore 2003).

Uniqueness and inimitability are of central importance for a successful brand, and these can be enhanced by relying on a variety of intellectual property rights. IPRs constitute several different rights – patents, copyrights, trademarks, designs, etc. – covering different dimensions of intellectual creations. Since the rights do not exclude each other, a combination of IPRs may be quite useful: While trademarks and design rights can be used in connection to individual products or services, the main features of a corporate brand can be protected with trade names, trademarks, domain names (see, e.g., Wang 2006) and copyrights. Also the norms related to unfair competitive conduct may enable protecting the corporate entity: The idea that it is not allowed to imitate marketing communication, e.g., advertising, in any way that is likely to mislead or confuse consumers is embedded in many countries' legislation (see also ICC 2006, Grassie 2006). The overall impression gained from the brand is thus protected against look-a-likes (see Davies 1998).

Restrictions of legal protection

A wide approach may also be beneficial since it cannot be taken for granted that certain forms of protection can be achieved. Obtaining legal protection is not straightforward in relation to product branding, and it can be even more challenging when corporate branding is considered.

While legal protection can be gained even if IPRs are not registered (e.g., copyrights, well-known marks (often marked with TM symbol)), considering the burden of proof registration is often advisable. However, establishing rights is not always easy. For example, considering copyrights, only expression can receive protection, and the object of protection has to be original and creative enough[ii]. Likewise, design right (provided for the appearance of a concrete object or a part of it; overall impression of its lines, contours, colours, shape, texture or materials; consider, e.g., the Coca cola bottle) is available only for creative and new designs[iii]. With regard trade names, perhaps least restrictions exist[iv], although distinguishability is required and offenciveness or illegal connotations typically form obstacles to registration (see, e.g., Arizona Secretary of State Trade Name Standards 2007). Regarding trademarks, there are both relative and absolute restrictions to getting registration[v]. While differences exist in national laws, in general legislation does not typically allow registration of such trademarks where the mark consists exclusively of signs that refer to characteristics of the product or service (e.g., quality or intended purpose)[vi]. Also such marks that are customary in the current language are left without registration, similarly to marks that may deceive consumers, are contrary to law, order or morality, or that consist exclusively of state emblems, badges, religious symbols, and other such features. (See, e.g., Lazaro 2004). Relative obstacles occur, if there is an earlier right and the new mark would be confused with it (see, e.g, Aboulian and Charnley 2007)[vii]. In terms of relative restrictions officials conduct some examination, but the eventual responsibility of executing the rights resides with the rights owner.

A company planning and executing its corporate branding needs to acknowledge these restrictions during the original launch of the brand, and remember that later movements to other business areas may not be possible with the same visual look because of absolute and relative grounds for denying trademark registration. Indeed, product and corporate branding differ in terms of the effects of these limitations, and these differences are reflected in the brand strategies. In the following, trademarks are used as an example to highlight the differences.

Matching brand hierarchies and trademarks – differences between product and corporate brands uncovered

Corporate branding may require a different application of trademarks than would be the case in relation to product branding. As trademarks are applied and granted for certain product and service classes, and typically separately in each country (excluding EU that enables registration of the community trademark) it is important to acknowledge the potential future businesses, internationalization, and product line extensions. The chosen brand hierarchies may enable a variety of trademark strategies, but careful approach is needed.

The increasing costs and difficulties in establishing new trademarks have pushed many firms to using existing trademarks in connection to new offerings instead of introducing new names (Simonson 1994). If the company name is used in relation to product names (i.e., mixed strategy is applied), it may be possible to augment the coverage of the corporation trademark into such areas where it is not originally registered: when trademarks for individual products are applied for, the company name may be included as a part of the mark. Thus, legal protection may be easier to use. However, it may also be that trying to add the company name becomes an obstacle to registration.

Similarly, especially in terms of corporate dominant hierarchy, *registration-related challenges* exist: if the original corporate trademark application is too narrow, it well is possible that another organization will register a similar mark for such a product or service class that would be a beneficial augmentation for a firm. In such cases the original trademark cannot be used in relation to new products or services, or in new markets, which may have an effect on the possibilities to build and maintain the pursued corporate brand. In case of product dominant hierarchy, such problems may be avoided, since a new trademark is applied for in any case.

In addition to registration-related issues, other challenges may emerge in relation to actual use of the marks: The rights need to be executed and defended as well. For example, since the central (legal) tasks of trademarks and trade names are to distinguish a corporation and its offerings from other companies and their offerings, legal protection is provided only as long as the rights actually promote this (see Westerhaus and Butters 2004). As Taylor and Walsh (2002, p. 160) note, "trademarks may be cancelled if it is ruled that consumers use the brand name to describe a generic category". Trademark cancellation, or "*genericide*," has high stakes in that it can result in the loss of a valuable corporate asset. For instance, journalists have a lot of impact on trademarks becoming part of everyday vocabulary, which means that press contacts and promotion need to be approached carefully (Czach 2004). Genericide – if seen as something that takes the control of the mark out of the company's hand – is particularly harmful if it is targeted to corporation brand (consider mixed and corporate dominant hierarchies): in relation to individual offerings (product dominant hierarchy), the downsides can be limited.

Careful management of the trademark is needed also because trademarks may be stripped of brand value if the rights are not actively protected against imitative actions of other organizations. While consumer researchers have considered brand name dilution to cover the potentially damaging effects that a company's own brand extensions can have on attitudes toward its parent brands, a different form of dilution, *trademark dilution*, occurs through the unauthorized use of a mark by some other organization (Feldwick 1996, Morrin and Jacoby 2000, Jacoby 2001). If such actions are not sorted out, the power to influence the brands flows to outsiders. Again, the problem is more pronounced regarding a trademark protecting the corporate brand than individual products. Such a threat exists in relation to other IPRs as well: if copyright or design rights are not defended when necessary, not only is their protective power eroded, but so are their value generating features also. (See Appendix 3 for a table illustrating these issues.)

CONCLUDING REMARKS

Brand management is undoubtedly a multifaceted area. In this study, we have contributed to one particular area, the IPR-related aspects of brand management. Doing this, we have chosen to concentrate, in particular, on brand hierarchies. This has allowed us to see how IPRs and branding can and need to be aligned. Such a discussion has been lacking to a large extent.

Our findings indicate that there indeed is a need to approach IPR issues a bit differently than has been done so far. Frequently, the legal protection has been found from trademarks and brand hierarchies have been considered from advertising perspective. However, putting emphasis on trademarks as a protection mean for brands may take the discussion too much into the direction of product brands and product dominant hierarchies (see, e.g., Moore 2003). This is because trademarks, by definition, are designed for distinguishing products and services of a company from other offerings. Therefore, this study has two important contributions: We argue, that, first, IPRs (including trademarks) are different when they are utilized in relation to product dominant, mixed, and corporate dominant branding strategies, and, second, that also other IPRs than trademarks should be acknowledged in corporate branding. For example, while this discussion has deliberately been left out earlier in this study, it is worth noticing that patents may enhance the corporate branding: having such rights may improve the reputation of the firm as one operating in the leading edge. Thus, we claim that firms cannot afford to neglect aligning the overall IPR strategy to the brand hierarchy of a firm. This is particularly important since branding always incorporates codified features that are vulnerable to imitation, and protectable practically only through legal means.

This study provides a starting point for future work. Especially empirical contributions are needed. Also, the discussion should be augmented to cover areas such as alliance branding and co-branding as well. In these areas, IPRs are likely to play an important role.

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APPENDIX 1: Different brand hierarchies

Brand hierarchy developer(s)	**Main brand hierarchies**	**Possible sub-brands and explanations of each hierarchy levels**	**Examples**
Aaker and Joachimsthaler (2000b)	House of Brands	Not Connected: Independent set of stand-alone brands, each maximizing the impact on a market and differentiating each other from the other brands of the producer	Pantene (Procter & Gamble)
		Shadow Endorser: As above with the exception that many consumers know about the link between the product and corporation brands	Lexus (Toyota)
	Endorsed Brands	Token Endorsement: A master brand is involved in several product-market contexts, usually it is well-known and well-regarded	Universal Pictures, A Sony company
		Linked Name: A name with common elements creates a family of brands with an implicit or implied endorser	Big Mac
		Strong Endorsement: Endorsed brands are independent but are strongly endorsed by another brand (usually by a corporate brand)	Polo Jeans by Ralph Lauren
	Sub-brands	Co-Drivers: Both the master brand and sub-brand have major driver roles, they have equally strong roles	Gillette Mach3
		Master Brand as Driver: a master brand has more significant role than a sub-brand, it acts as a reference for the sub-brand	HP Deskjet
	Branded House	Different Identity: Different brand identities and positions in every context despite the common brand name	Levi-Europe, Levi US
		Same Identity: A master brand has a dominant driver role across a multiple offerings, it acts as an umbrella for all sub-brands which has little or no driver role	Virgin
Kapferer (1992, 149)	Product brand	Each product has an own personal brand name, positioning and target market	Ariel (Procter & Gamble)
	Line brand	A line brand extends vertically its specific concept across different complementary products all under the same name	Studio Line gel, spray, lacquer etc. (L´Oreal)
	Range brand	Assign a single name, promise and positioning on a group of heterogeneous products having the same function	The "soothing line" for sensitive skin (Clarins)
	Umbrella brand	A same brand supports several products in different markets, each with its own communication and individual promise	Yamaha motorcycles and pianos
	Source brand	Identical to umbrella brand strategy but the products are directly named, the parent brand promotes its own significance and identity in a modified or enriched way through its offspring	Yves Saint Laurent with various brands of clothes
	Endorsing brand	An endorsing brand gives an approval to a wide diversity of products grouped under product, range or line brands, it is a guarantor of quality and taste	General Motors cars, e.g. Pontiac and Chevrolet
Keller (2008, 446)	Corporate brand	The highest level of the hierarchy, usually present somewhere on the product or package but can be combined with family/individual brands or receive almost no attention	General Motors
	Family brand	A brand used in more than one product category but is not necessary the name of the company	Tropicana juices (Seagram)
	Individual brand	A brand restricted to one product category, can be used for several different product types within the category	Fritos corn chips and Doritos tortilla chips (Frito-Lay)
	Modifier	Designates a specific item or model type or a particular version or configuration of the product	BMW x5
Laforet and	Corporate	The corporate brand emphasized and is visible	Heinz

Saunders (2007)	dominant brand	everywhere, extreme and rare	
	House dominant brand	A group of similar product share a house/family name	Pedigree (Mars)
	Dual brands	Two or more brand names equally prominent, often corporate name appear with the product name	Kellogg´s
	Endorsed brands	Product brand dominant but endorsed by a small representation of a corporation/house name	Nestlé
	Brand dominant brand	A strong product brand, producer not in an important role	Procter & Gamble
	Furtive brands	The name of the producer not mentioned in the product	Flora (Unilever)

APPENDIX 2: Supply- and demand-side advantages and disadvantages of different branding strategies (Rao, Agarwal and Dahlhoff 2004).

	Supply-side		**Demand-side**	
	Advantages	**Disadvantages**	**Advantages**	**Disadvantages**
Corporate dominant structure -Branded house	- Economies of scale in marketing - Total costs of advertising/promotion can be lower - Lower costs of creating brand equity - Lower costs of new product introductions		- Easier extension of brands - Efficient means to communicate to various - stakeholders	- Limits on firm's ability to expand into some categories - Higher cannibalization among firm's brands likely
Product dominant structure - House of brands	- Can command larger retail shelf space	- No identifiable economies of scale in marketing - Higher costs of advertising - Significantly higher costs of new product introductions	- Distinctly customized brands can be offered - Lower cannibalization	
Mixed branding	Combination of advantages and disadvantages of branded house and house of brands		Combination of advantages and disadvantages of branded house and house of brands	

APPENDIX 3: Brand hierarchies and IPRs

	Corporate dominant branding	***Mixed branding***	***Product dominant branding***
Trademark TM ®	*Corporate name, logo, etc. covered* + cost efficient; one trademark covering multiple products + relatively easy to monitor the rights - possibility that other firms register the same mark for other products (for which the firm cannot use the mark in the future) - great risks in terms of genericide and dilution	*Corporate name, logo, etc. covered, in certain cases registration applied for individual products* + cost efficient + possibility to cover also such product marks that are not registered (the registered corporate element extends to individual products) - risks related to genericide and dilution - risks related to too narrow registration of the corporate trademark	*Product name, logo, etc. covered* + less risks in terms of genericide and dilution (only one product/ service) is in danger) + possibilities to sell individual trademarks - higher costs of registration and monitoring
Trade name	*Covers the corporate name*	*Covers the corporate name*	*Not likely to be applicable*
Copyright	*Covers the corporate name, logo, slogans etc, if these are original enough*	*Covers the corporate name, logo, slogans etc, if these are original enough* *May extend to individual products/ services*	*May cover certain features of the product*
Design	*Not likely to be applicable*	*Applicable in terms of products; covers the design of products*	*Covers the design of products*
Unfair competition rules	*Covers the overall impression related to the company*	*Covers the overall impression related to the company and its products(not as strong as in case of the firm)*	*Covers the overall impression related to the product (not as strong as in case of the firm)*

[i] In intellectual property legislation, a trademark is a unique identifier defined as a word, letter, symbol (logo), number, colour, shape (or, where the legislation of the country allows, sound or smell), or a combination of one or more of these elements – dimensions that can be found in relation to visual identity as a central element of branding as well. Once a trademark is registered, the ® symbol may be legally used with the trademark, and the owner has the exclusive right in the defined territory (country where the application was submitted and the right granted) to use it for any goods or services for which the trademark is registered. (Florek and Insch 2008.) A registered trademark remains legitimate and valid over time as long as it is renewed and/or used, and during this time, owners can assign or license their registered trademark.

[ii] See, e.g., WIPO Copyright Treaty (WCT) - Joint Declarations, Official Journal L 089 , 11/04/2000 P. 0008 – 0014, and Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Official Journal L 167 , 22/06/2001 P. 0010 - 0019

[iii] E.g., Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, Official Journal L 289 , 28/10/1998 P. 0028 – 0035.

[iv] e.g, in Finland, an exclusive right to a company name is obtained either by entering it into the relevant register or by establishing it (See, e.g., Section 2, paragraph 3 of the Finnish Company Names Act), the Trade Register "has adopted a policy where as many company name suggestions as possible are accepted" (National Board of Patents and Registration of Finland 2008)

[v] See, e.g., EU trademark directive (First Directive 89/104/EEC of the Council, of 21 December 1988, to Approximate the Laws of the Member States Relating to Trade Marks (OJ EC No L 40 of 11.2.1989, p. 1)), Art. 3 and 4. and Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, Art. 7 and 8.

[vi] For example, trademark protection may be denied in the case of a mark having the shape of a firm's product.

[vii] If the mark is composed of or contains anything likely to give the impression of being the protected trade name of another, registration is not possible. (See, e.g., the case: Kopie Corporación v OHIM: Intervener – Aceites del Sur CFI Case T-363/04 - 12th September 2007). Similarly, if the mark constitutes an infringement of another's copyright or a protected design (model), or if it is liable to be confused with trade name or symbol of another trader, registration will be denied.