

Visual Identity and IPRs in Corporate Brand Management

Pia Hurmelinna-Laukkanen, Professor,
Department of International Business
Mari Juntunen & Saira Saraniemi
Department of Marketing
University of Oulu, Finland
pia.hurmelinna-laukkanen@oulu.fi
mari.juntunen@oulu.fi, saila.saraniemi@oulu.fi
and
Wim J.L. Elving
Dept of Communication / ASCoR,
University of Amsterdam, The Netherlands
W.J.L.Elving@uva.nl

Purpose : *Intellectual property rights (IPRs) can influence corporate brand management. In this study we consider not only trademarks – the most common form of IPRs in connection to branding – in a different light, and also adopt a wider approach and consider the roles and features of trademarks, trade names, copyright, and design rights.*

Approach: *Corporate brand management and visual identity play an important role because of their connection to identity, image, and reputation management. However, visual identity, like corporate brand management in more general, lacks profound combining of IPRs – that are increasingly important in the turbulent business environment – into its elements.*

Findings: *We assert that in relation to corporate brands and visual identity, a combination of IPRs is relevant. This means that companies need to improve their readiness and awareness in terms of obtaining and strategically utilizing various means of legal protection.*

Research implications: *As far as we know, IPRs have not been studied extensively within corporate communication or in marketing.*

Practical implications or applications: *Frequently, both in practice and research, only trademarks have been considered, and the differences between product vs. corporate brands have been often neglected. Our study fills this gap by discussing the role of aligning IPRs and visual identity in brand – and image – management.*

Paper type: *general review*

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Theme: *Image, identity, and reputation management*

Corporate Branding is tightly connected to image, identity and reputation management, and is a relatively new and multidisciplinary area in academic discussions – and also in conscious managerial practices (see, e.g., Balmer, 2001 Bickerton 2000; Knox and Bickerton 2003). Corporate branding is 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). Corporate branding has faced increasing interest and the subsequent outputs since the turn of the century (Ahonen, 2008). However, certain areas have been overlooked: The corporate brand is strongly influenced by the ways its elements are used in the markets (consider, e.g., pro or contra writings and other appearances in the internet), and thus both the uniqueness and the associations made in connection to the brand need to be controlled. The legal protection of the logo, slogans and other CVI elements can – especially in the turbulent environment – play an essential role.

Nevertheless, and despite the multidisciplinary, legal issues, like intellectual property rights (IPRs), are, as far as we know, seldom discussed in the literature on corporate branding. We argue that IPRs are significant when branding is of concern: they are not just a necessary evil or some external issue (e.g., Cornelissen and Elving, 2003) that is taken as given, but that they can be used as a strategic tool in branding. After all, IPR issues emerge from the very origins of company establishment, product launches, and the related branding activities. A company that is building and introducing a new brand needs to acknowledge the existing intellectual property rights (including trademarks) of others, for instance, and know the restrictions to using and registering trademarks and other legal rights.

Even if the substantial value that can be derived from brand names and trademarks has given start to considerable research on protection in recent years (e.g., Morrin and Jacoby 2000; Pullig et al. 2006, Alessandri 2007), the studies that exist are often limited concerning mainly product (and service) brands rather than corporate brands (e.g. Moore 2003). Also, most studies are restricted to trademarks (Alessandri and Alessandri 2004 on legal and non-legal protection mechanisms). However, we assert that *the corporate brand management requires approaching trademarks differently, and it can be influenced by other intellectual property rights (IPRs) as well*. Consequently we adopt a wider approach and consider the roles and features of trademarks, trade names, copyright, and design rights. We also include unfair competition as it often is placed under the umbrella of IPRs. From a branding perspective, we focus on the symbolic perspective on corporate branding, i.e., corporate visual identity system (CVIS), that can be defined as the way in which an organisation uses, e.g., its name, logos, and other visual elements to communicate its corporate philosophy and personality to all stakeholders.

We will discuss the importance and relevance of *IPRs as a strategic tool in corporate branding*. Consequently, we discuss trademarks in relation to corporate and product branding, and illustrate why also other IPRs than just trademarks are essential. CVI and its elements provide us with the lenses through which legal protection is addressed.

Corporate Visual Identity System in Brand Management

CVI, (van den Bosch et al. 2005, 2006; Melewar et al. 2005, 2006), the visual presentation of a corporation, plays a significant role in the way an organisation presents itself to both internal and external stakeholders (van den Bosch et al. 2006). It can be described as “...*the firm’s visual statement to the world of who and what the company is – of how the company view itself – and therefore has a great deal to do with how the world views the company*” (Melewar et al. 2006, 139). In other words, visual identity consists of organisation’s symbols and system identification (Balmer 2001).

Key elements of a CVI are the corporate name, logo or symbol, color palette, font type, a corporate slogan, and tagline and/or descriptor (Melewar and Saunders 1998; Van den Bosch et al., 2006) These can be applied, on stationery, printed matter, advertisements, websites, vehicles,

buildings, interiors, and corporate clothing (Van den Bosch et al., 2006). CVI 1) provides an organisation with visibility and “recognisability”, 2) symbolises an organisation for external stakeholders and hence contributes to its image and reputation, 3) expresses the structure of an organisation to its external stakeholders, visualising its coherence as well as the relationships between divisions or units, and 4) relates to employees’ identification with the organisation as a whole and/or the specific departments they work for (depending on the corporate visual strategy in this respect). (Van den Bosch et al. 2006, p. 871).

CVI is seen as the most tangible asset of the self-expression of an organization; CVI can be viewed as an important strategic instrument within corporate communication and needs to be managed on a structural basis, to be internalized by the employees and to be harmonized with future organizational developments. (Van den Bosch et al. 2006). CVI is seen as one of the cornerstones of the corporate brand, and should IPR issues as well. In particular, the tangible nature of CVI allows utilization of such protection mechanisms, and also makes it relevant.

Intellectual Property Rights

The protection of the corporate brand is an essential part of brand management (Moore 2003). The uniqueness and inimitability are of central importance for a successful brand, and these can be enhanced by relying on IPRs, for example, especially when tangible, and consequently relatively easily imitable features are of concern. Already a quick glance at the different IPRs shows this.

In intellectual property legislation (which is to a large extent internationally harmonized, although some national differences still exist), 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; the trademark always has to be presentable graphically), or a combination of one or more of these. 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 right was granted, or all EU countries if a Community trademark has been granted) to use it for any goods or services for which the trademark is registered (i.e., product and service classes need to be considered; trademark right can only be enforced in such areas where it is registered, which means that if, for example, a trademark for shampoo is registered in class 3 (cosmetics and cleaning preparations, the same trademark may be registered by someone else in another class) (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 the trademark. Alternatively, trademark protection can be established through active use and making the trademark known among customers. In this case, TM-symbol may be utilized.

Trade names are similar to trademarks: Whereas the role of trademarks is to differentiate and separate the products and services of a firm from the products and services of some other company, trade names need to do this at organization level. However, only the name gets protection, and the form that it is in (e.g., font) needs to be covered with other means.

Copyright, for its part, covers original and creative creations (works of art). It is most commonly connected to different kinds of writings, music, or pictures, but it can also be a useful means of protection for short slogans or other expressions that are connected to the corporate brand. Only the actual expressions, not the idea behind them, are protected. Copyright is readily available since it does not require any registration. However, it only provides protection against copying and imitation, and if someone independently creates something similar, the copyright owner cannot really prevent use of the other work. Also the life of copyright is more limited, as it only endures (as a general rule) 70 years after the death of the original copyright holder.

Design rights (or model rights), that are provided for the appearance of a concrete object or a part of it; overall impression of its lines, contours, colours, shape, texture or materials also are limited in terms of duration: A registered design may enjoy prolonged protection from copying up to 25 years (The design is registered for 5 years and can be renewed four times, for 5 years each time) in EC countries. In addition to national rights, also Community Designs are available.

Naturally, also *patent rights* and *utility model rights* (that are also called as “petty patents”) are included in the list of IPRs. Both of these protect inventions that meet the requirements of novelty, inventive step, and technical effectiveness, and for both, the duration of the protection is limited in terms of time and geographical scope – like in terms of the actual claims in the patent application.

Finally, the legislation aimed at preventing *unfair competitive conduct* is often placed under the umbrella of IPRs. The idea that it is not allowed to imitate marketing communication in any way that is likely to mislead or confuse consumers (for example through the general layout, text, slogan, visual treatment, music or sound effects) is embedded in many countries’ legislation (see ICC 2006, Grassie 2006).

Intellectual Property Rights and Corporate Visual Identity

Frequently, when protecting corporate brand (and elements of visual identity in particular) the legal protection has been found from trademarks. The problem is that putting emphasis on trademarks as a protection mean for brands highlights protection of *product* brands (see, e.g., Moore 2003). This is because trademarks, by definition, are designed for distinguishing *products and services* of a company from other offerings. In line with this, there has been discussion the role of trademark protection mostly as a part of product brand management (e.g., Moore 2003) and on the different functions of trademarks. Prior research has concentrated, for example, 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). The current understanding of legal issues related to *corporate* brands and branding may still fall short. We argue, that as the discussion moves to corporate branding the role and management of trademarks changes considerable. Besides, other IPRs may be applicable to corporate branding. For instance, trade names, copyrights, and design rights may become more relevant, and also domain names in various countries. The focus should be on restrictions and possibilities provided by IPRs. In the next paragraph we will discuss these issues and the potential protection mechanisms and related risks in connection with the elements of corporate visual identity.

Restrictions to legal protection

Legal protection for brand-related elements can be gained even if IPRs are not registered (consider, e.g., copyrights, protection against unfair competition (imitation in particular), and well-known trademarks (often marked with TM symbol), but considering the burden of proof, registration is often necessary or useful. Nevertheless, attaining legal protection for the different elements of corporate visual identity is not straightforward, but several issues need to be taken into account.

Regarding trademarks, for example, there are both relative and absolute restrictions to getting registration⁽ⁱ⁾. While differences exist in national laws regarding these both, in general *absolute restrictions* refer to such obstacles that officials take into account *ex officio* when

evaluating trademark applications: 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). Trademarks 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, official medals, badges, religious symbols, and other such features (Lazaro 2004). *Relative obstacles* occur, if there is an earlier right and the new mark would be confused with such rights (Abouljian and Charnley 2007). 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. 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. In terms of these restrictions it is often up to the proprietor of original right to take proper action. Officials conduct some examination, but still the eventual responsibility of executing the rights resides with the rights owner. The company planning its CVI needs to acknowledge these restrictions during the original launch of a corporate 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. Similarly, the firm needs to be prepared to defend its rights.

Similar restrictions exist in terms of getting other types of IPR protection. Considering copyrights, the expression of elements of corporate visual identity can only receive protection if the object of protection is original and creative enough⁽ⁱⁱ⁾. Likewise, design is available for creative and new models and designs⁽ⁱⁱⁱ⁾. With regard trade names, perhaps least restrictions exist (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^(iv), and 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), although distinguishability is required, and offensiveness or illegal connotations typically form restrictions to registration (see, for example, Arizona Secretary of State Trade Name Standards 2007). Thus, in terms of protecting uniqueness of corporate visual identity, the most efficient way to accomplish wide coverage may be to use the trade name as the basis and combine it with other features –protected with other forms of IPRs.

In fact, we assert that in relation to corporate brands and corporate visual identity, relying on a combination of IPRs may be useful, and this combination and its use should be aligned with corporate branding. While trademarks and design rights can be used in connection to individual products or services, the main features of corporate visual identity and be protected with trade names, trademarks, domain names (Wang 2006) copyrights, and design rights. For example, while trademark protection may be denied in the case of a mark having the shape of a firm's product (on the grounds that it refers to the characteristics of the product), the design right can be used to cover such features. Naturally also the norms related to unfair competitive conduct may enable protecting the corporate entity: The overall impression gained from visual identity is protected against look-a-likes (see Davies 1998). Since the rights do not exclude each other and since it cannot be taken that, e.g. trademark protection can be achieved, a wider approach may be beneficial for the CVI as a whole. In table 1 the some of the potential uses of different IPRs is listed.

TABLE 1. CVI elements and their protection mechanisms

<i>Visual identity element</i>	<i>Protection mechanisms</i>
Corporate name	Trade name Trademark Domain name
Logo	Trademark Copyright Design (3-dimensional)
Color palette	Trademark Copyright Unfair competition
Font type	Trademark Copyright Unfair competition
Corporate slogan	Copyright Trademark
Tagline	Copyright Trademark
Descriptor	Copyright Unfair competition
Shape (of the product)	Design (3-dimensional) Trademark Unfair competition
Domain name	Domain name Copyright Trademark

The table 1 is not conclusive, and both other elements of CVI and protection mechanisms for these elements may be found. Nevertheless, already this illustration suggests that varying approaches can be taken. For example, the logo of Nokia phones can be protected with trademarks, and the shape of the phones can be covered with design right – like the shape of the Coca Cola bottle. The shape of a Toblerone chocolate bar could be covered with trademarks, and the colours of a pizzeria may be considered such a unique differentiator that unfair competition rules may apply. The different elements need to be considered, as practical examples suggest: For example, recently a lot of money and dispute has been involved in domain name registrations, as some individuals and organizations have registered domain names that are trade names or trademarks of others and tried to sell those to such firms.

Reliance on trademarks in relation to corporate visual identity

Besides taking a wider approach to legal protection, corporate visual identity may require a slightly different application of trademarks than is presented in relation to product branding: As trademarks are applied and granted for certain product and service classes, in terms of corporate branding, it is important to acknowledge the *potential future businesses, internationalization, and product line extensions*. In fact, the increasing costs and difficulties in establishing new trademarks have pushed many firms to use existing trademarks in connection to new offerings instead of introducing new names (Simonson 1994). The same applies to movements to international markets. While cultural differences naturally need to be taken into account in branding, relying on existing work enables building a consistent brand for the corporation and allows benefiting from previously established reputation. However, if the original 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 later on. For example, a hair product producing firm named FOMER has registered FOMER as the trademark in the class 3 (cosmetics and cleaning preparations; cf. the discussion on the product and service classes above) for its shampoos and conditioners, it may wish to use the same trademark for extensions like combs and hair brushes as it augments its product lines. However, this may not be possible if some other comb-producing firm has registered the same name in the class 21 (housewares and glass) covering such items. Likewise, if trademark is registered with a narrow geographical coverage, problems may emerge later on. Utilising the previous fictitious example, even if FOMER is registered in Finland, Sweden, and Germany, it may be that it cannot be registered in the USA and England, as in these countries PHOMER is already in use; the risk of confusion stemming from similar pronunciations may be considered too great by the officials. 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 visual identity. Thus, it is important for managers to evaluate future business strategies, brand management and IPRs simultaneously.

Besides, it is not only the protection, where CVI may be affected. The rights need to be executed and defended as well. For example, since the central task of trademarks and trade names is 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 (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). Surely, in some cases genericide may be beneficial (that is, if the connection to the particular firm is strong enough), but in general, it can be said that genericide is particularly harmful if it is targeted to corporation brand (in relation to individual offerings, the downsides can be limited): The company loses its control over the trademark and it cannot be predicted, how it will be treated in the future. Teflon, Nylon, and Kevlar are just examples of the trademarks that have faced genericide.

Finally, careful management of the trademark is needed also because trademarks may be stripped of corporate 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 other organization than its owner (Feldwick 1996, Morrin and Jacoby 2000, Jacoby 2001). If such actions or others are not dealt with, the power to influence the brand and CVI flows to outsiders. For example, if the Audi-logo and appearance are used in connection to very poor quality toy cars, the damage may be notable also to brand Audi. 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 copyrights or designs are not defended, not only is their protective power eroded, but so are their value generating features also.

Discussion and Conclusions

This study contributes to the corporate communication research by opening discussion on the seldom studied arena of intellectual property rights in corporate brand management. The findings suggest that corporate brand building and management benefits from using overall IPR strategy of a firm in line with and in service of brand management. As using one form of IP protection typically does not exclude using another, the company should pay attention to getting the big picture right. It is not enough to know just the potential legal pitfalls related to trademarks (e.g., relative and absolute restrictions of trademark registration, risk of losing the legal registration, etcetera). In line with this, utilization of IPRs should be aligned with the CVIS of the firm: The corporate visual identity consists of elements, each of which can be protected with varying IPRs. Taking a wider approach achieves better coverage and provides security for situations where one form of protection fails. This is relevant since the possibilities and limitations related to obtaining legal protection, and the risks related to infringement, genericide, and IPR dilution are different depending on the context.

Consequently, the legal protection of names, slogans, and CVIs are part of the corporate branding discussions on corporate brand management. This appears to be neglected in the literature on corporate branding. From a managerial perspective, many legal cases have shown that under-estimating these perspectives from the very beginning of brand building may cause problems. By taking notion of the differences between legal protection of product vs. corporate brand – and the potential of IPRs to support brand management, the random and unplanned approach can be replaced by more sophisticated way of operation.

We think that legal protection of corporate branding, the visual identity and certain perspectives of intellectual property rights, has been neglected in the corporate communication. Instead of considering them as given, external issue of the corporate identity management (c.f. Cornelissen and Elving, 2003), we recommend more strategic view on them in companies and in future studies. For example, differences between product and corporate branding in IPRs can be studied in a more detailed manner, as well as brand ownership and brand co-creation issues related to intellectual property rights. Considering that branding is an international activity, international comparisons would be a fruitful arena for future research as well. Despite large scale harmonization in the field of IPRs, some differences still exist (e.g., Iphone in Switzerland is not protected, whereas the European Trademark Office accepted the Iphone as a protected name) that may call for attention when corporate branding is of concern. Especially, empirical research on handling legal issues in corporate brand management is most likely welcomed. This study provides a starting point for such endeavours.

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- (i) 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.
- (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) See, e.g., Section 2, paragraph 3 of the Finnish Company Names Act.