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The strategic use of intellectual property rights in corporate branding - Visual identity perspective

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Abstract

Despite the increasing interest in both academia and business, and multidisciplinary nature of the corporate branding research, legal protection mechanisms of the brands – most notably intellectual property rights (IPRs) – are seldom discussed in detail in the studies. However, we argue that IPRs including not only trademarks (which have so far been practically the only discussed aspect) but also e.g. trade names, copyright, design rights and unfair competition, may be important aspects to consider in corporate branding discussions. Also, we assert that IPRs should be seen as a strategic tool instead of some external factor that can only be reacted to.

Therefore, this conceptual paper aims at providing an overview of how relevant IPRs actually are in relation to branding, and corporate branding in particular. We examine how IPRs can be used in relation to different elements of symbolic perspective on corporate branding, namely corporate visual identity (CVI). This focus area has been chosen especially because of the tangible nature of CVI, which makes it vulnerable to imitation, yet well protectable with IPRs. The study presents different CVI elements and their legal protection mechanisms, and suggests that aligning branding and IPRs strategically from the very beginning of the company establishment is necessary. With this study, the authors encourage further empirical studies in the research area.

Categories Brand identity and corporate reputation

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Keywords Corporate branding, corporate visual identity system, Intellectual property rights

The strategic use of intellectual property rights in corporate branding - Visual identity perspective

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INTRODUCTION

Corporate branding is a relatively new and multidisciplinary area in academic discussions (see, e.g., Balmer, 2001; Bickerton 2000; Knox & Bickerton 2003). Corporate branding 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 & Will, 2002, p. 101). The research area has faced increasing interest and the subsequent outputs since the turn of the century (Ahonen, 2008). However, certain areas have been overlooked. Despite the multidisciplinary nature, legal issues, like intellectual property rights (IPRs), are seldom discussed in corporate branding studies. We argue that IPRs are by no means insignificant 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 beginning 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 trademark rights of others, for instance, and know the restrictions to using and registering trademarks. Later on, the rights need to be executed and defended, if necessary.

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; Simonson 1994; 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 (see, e.g., 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, in this study we adopt a wider approach and consider trademarks, trade names, copyright, and design rights. Also unfair competition is discussed. From branding perspective, we focus on the symbolic perspective on corporate branding, i.e. corporate visual identity system (CVIS, a 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), not considering the behavioural perspective on corporate branding.

The purpose of this conceptual study is to demonstrate that *IPRs are a relevant strategic tool in corporate branding*. We discuss the role of trademarks in relation to corporate vs. product branding, and examine where the relevance of also other IPRs than just trademarks stems from. CVI and its elements provide us with the lenses through which legal protection is addressed.

CORPORATE VISUAL IDENTITY SYSTEM

Corporate visual identity, CVI, (see, e.g. van den Bosch et al. 2005, 2006; Melewar et al. 2005, 2006), visual presentation of 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” (Selame & Selame 1975, 4 via 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 & Saunders 1998; Van den Bosch *et al.*, 2006) These can be applied, e.g., on stationery, printed matter, advertisements, websites, vehicles, buildings, interiors, and corporate clothing (Van den Bosch *et al.*, 2006). Furthermore, 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, 871).

Thus, as the most tangible asset for 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.) Considering that CVI is one of the cornerstones of corporate brand, it should be an area where also IPR issues are of central concern. In particular, the tangible nature of CVI allows utilization of such protection mechanisms, and also makes it relevant.

PUTTING ABBREVIATIONS TOGETHER: IPRs IN CVIS

It has been noted in prior literature, that protection of a brand is an essential part of brand management (see, e.g., Moore 2003). Indeed, 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.

Frequently, the legal protection has been found from trademarks: 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 – dimensions that can be found in relation to visual identity as a central element of branding also. 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) 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 the trademark.

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 slightly. Besides, also other IPRs than trademarks may come to play a role when corporate brands are considered. For instance, trade names, copyrights, and design rights may become more relevant. Thus, focus should be turned to restrictions and possibilities provided by IPRs. In the following

these issues are discussed through examination of the potential protection mechanisms and related risks in connection with the elements of corporate visual identity.

Restrictions to legal protection – wider approach needed

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 registrationⁱ. 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). 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, official medals, 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 such rights (see, e.g., 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 corporate visual identity 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 enoughⁱⁱ. 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) is available for creative and new models and designsⁱⁱⁱ. 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, e.g., Arizona Secretary of State Trade Name Standards 2007). Thus, in terms of protecting uniqueness of corporate visual identity (which naturally is desired by managers), 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, a combination of IPRs may be useful. In other words, the whole IPR strategy 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 (see, e.g., Wang 2006) and copyrights – even 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. 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 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). The overall impression gained from visual identity is thus 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. The table 1 below illustrates the potential use of different IPRs.

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

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 using 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. Likewise, if trademark is registered with a narrow geographical coverage, problems may emerge later on. 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 in terms of obtaining protection, where CVI may be affected. The rights need to be executed and defended as well. For example, since the central task of trade-

marks 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 (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). 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.

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 some 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. 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

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, etc.). 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 enables achieving better coverage and provides security for situations where one form of protection fails. In particular, 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, this study contributes to the discussions on corporate brand management. The legal dimension related to it seems to be under-examined so far, and therefore this study aims to providing a start for filling this gap. From the managerial perspective, many legal cases have shown that under-estimating these perspectives from the very beginning of the 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.

Although this study only concentrates on visual identity and certain perspectives of intellectual property rights, we believe that this study can be used as a vehicle to spur further discussion. For example, differences between product and corporate branding in IPRs can be studied more detailed, similarly to ownership and co-creation issues. Especially, empirical research on handling legal issues in corporate brand management is most likely welcomed.

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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.