

# The importance of intellectual property and brand management in the creation of a strong brand

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## **II. List of Abbreviations, Diagrams, Graphs**

### **Abbreviations**

AMA- American Marketing Association

ASAI- Advertising Standards Authority for Ireland

IP- Intellectual Property

IPO - Intellectual Property Office (UK)

OHIM -Office of Harmonization in the internal Market

PRL- Polo Ralph Lauren

UK - United Kingdom

USA- United States of America

U.S.P.A -United States Polo Association

WIPO- World Intellectual Property Organization

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## **1. Relevance of the topic**

Taken into consideration the merger and acquisition boom of the mid-1980s, the awareness of top executives and board members in the importance of managing brands as valuable intangible assets became more obvious. The advantages of having a strong brand and the resultant disadvantages of having a weak brand began to be realized in many different industries. A strong brand advantage is, for example, the fact that it enjoys a higher probability of consumer choice, which could be materialized in a higher degree of loyalty. Therefore, it can usually claim a price premium over other brands offering the same product. Considering this and other strong brand advantages, there has been a growing interest and commitment of branding (Scotchmer, 2006).

Brands are not merely another word for logo but they are considered to be drivers for innovation, differentiation and diversity (Sandner, 2009). The Global Chief Executive of Interbrand, Jez Frampton is convinced that "Today's best brands [...] listen to consumers, employees, and investors alike and respond to the messages they receive. They want to know how people really feel about their company, they gather input and use it to drive innovation. The challenge for brands is to respond quickly and with sincerity, or they risk compromising the relationship." (Interbrand, 2012, p.3). Hence, the adoption of modern branding strategies, interaction with consumers and good management strategies has increased in the last 25 years (Scotchmer, 2006)

On the other hand, researches show that the most important weapon in a brand owner's armory is a comprehensive registered portfolio. Thus, the importance of branding is not only the mere brand strategy but also the protection and enforcement of intellectual property rights. When a brand starts to be successful, other companies in the same business would like to be as well. Therefore, if the brand is not protected, others can free ride and take away the market and uniqueness it has acquired. Experts on the field suggest that this protection has to be at the beginning and during the development of it. David Lammy, Minister of State for intellectual Property in the UK expressed "Whether the brand is long established like or relatively young [...] it is the Intellectual Property rights within the brand that allows the businesses behind them to prosper." (IPO, 2010). Although IP rights are the only legal way for companies to protect their brands, claim ownership and control them in order to grow and be strong, there are surprisingly few studies, which investigate jointly the importance of IP rights and brand management.

## **2. Introduction**

In this paper a strong brand will be defined as a brand, which has a high equity value and is placed in the hearts and minds of consumers by its relevance and distinctiveness. In addition it is powerful enough to, for example, overcome a crisis because of its value.

Firstly, this concept will be analyzed in chapter three in order to gain an understanding of the difference between just a brand and a strong brand. In addition, the literature analyzed leads to the findings that brand strength can be measured by its brand equity value. This concept will be explained considering its five dimensions, which will be clarified by accurate examples.

This paper will focus mostly in brands, under which products are sold not services. It is important to point out that the creation and strength of a brand can be different depending on the industry the company is, the conjuncture and the readiness of the consumers for a specific innovation or concept.

Secondly, the literature leads to the findings that trademarks, patents, trade dress and copyrights are the most important IP rights in order to protect a brand. Hence, chapter four will only analyzed these mentioned IP forms and their relationships. In addition to this, two legal cases will demonstrate how IP rights were put into force to protect the brand. At the end of the chapter, a guideline showing the relationship of the different IP forms and a fictional example will explain, how to choose an IP form depending on the scope of protection looked for.

The meaning and enforcement of IP rights varies from country to country. This paper will focus mainly in the European and US intellectual property right approach.

Thirdly, the fact that a brand has to be perceived distinctive in the eye of the consumer in order to differentiate itself from others and that it is a promise of performance, a good management is vital for its development. On the one hand, many brands end up being history or even people do not remember them because they did not manage to be perceived unique and valuable. On the other hand, the success of some brands in the market could not be control anymore and, instead of representing the source of origin, the name of the brand became the name of the product itself. Considering this, the brand

became a generic term and the owner ends up losing the rights of protection. The latter will be explained in chapter four as well as in chapter five.

Fourth, chapter five will examine a brand from its creation to the different development phases it can suffer according to the brand strategy pursued by the company. Studies show that brand positioning is of extremely importance because this represents how consumers will position the brand in their minds. Therefore, the different types of positioning from the less effective to the strongest ones will be analyzed and explained by accurate examples. Because brand development is of extremely importance, a continuous check or test to decide the next step or strategy is essential. Cases and precise examples concerning this matter will be considered and explained. At the end of this chapter, a guideline is presented in order to summarize and choose the accurate brand strategy depending on the strategy chosen by the company.

Researchers emphasize that a brand represents a promise of performance creating a reputation, which is ultimately what IP rights will protect. If the image or reputation of the protected brand is perceived to be bad, the brand will never be strong nor perceived any benefit or value behind it.

Overall it will be explained that the achievement of a strong brand without intellectual property rights is not possible because it has to be protected to be able to develop into a strong one and, a protected brand without a good and proper management can not become a strong one. The aim of this paper is to demonstrate, therefore, the strong relationship and role, which exists between IP rights and brand management to achieve a strong brand.

### 3. Brands

Brands have been an essential tool for centuries in order to distinguish the goods from one producer from those of another (Keller, 2012) and are viewed as the major durable assets of a company (Kotler et. al, 2008).

Although the word brand can be traced back from the early Greek and Roman times, the meaning, which we know best suggests the one used by cowboys in the days of the Wild West to demonstrate ownership of livestock. Farmers took an iron plate with the symbol of the farm or the initial of the farm owner and heated to glowing point in order to apply it onto the backside of a farmer's animal in order to mark the animal and show identification (Hammond, 2011). Nowadays, the American Marketing Association (AMA) defined a brand as a "name, term, sign, symbol, or design, or a combination of them from those of competition." Therefore, there is considered that "whenever a new name, logo or symbol for a new product is created and used, a brand has been created" (Keller, 2012, p.2).

On the other hand, Hammond (2011, p.14) goes beyond the factual definition of a brand and points out "A brand is the total emotional experience a customer has with the product or service". This emotional experience, which is linked to a brand, is one of the core essences in order to develop a strong brand.

#### 3.1 The Importance of brands

Kapferer (2012, p.8) is convinced that "A brand is a name with the power of influence" because brands are not a mere name to identify products from a source of origin but it is also a system of mental associations, values and believes. In addition it is recognized as a key asset for creating value for businesses and considered to be the communication link between an enterprise and its consumers (Lom, WIPO). These statements and the difference between a strong brand and just a brand will be analyzed in the following.

#### 3.2 Difference between a strong brand and a brand

John Stewart, co-founder of the strong brand QUAKER OATS, once highlighted "If this business were split up, I would give you the land and bricks and cement, and I would keep the brands and trademarks, and I would fare better than you". A former CEO of MCDONALD's agreed and pointed out "if every physical asset were destroyed in a terrible natural disaster, I would be able to borrow all the money to replace these assets quickly because of the brand's value" (in Kotler et al., 2008, p.521). These statements show the



power that a strong brand has not only to recover itself from, for example a crisis, but also its power among competitors. At the end of the day, a strong brand forms the basis for building durable and profitable assets.

Sandner (2009) relates a strong brand with a higher probability of a consumer choice and lead to a higher degree of loyalty. Likewise, Miller and Muir (2004, p.5) point out that a "[...] strong brand is one whose stakeholders feel a sense of ownership: that's my brand". Sandner (2009) argues that a strong brand can be studied through two measurable concepts: brand strength and brand value. Researches argue that taking a consumer-oriented perspective, the strength of a brand is analyzed while firm-oriented approaches seek to analyze its value. This implies an essential relationship because the brand strength, which influences consumer product choice, eventually materializes in brand value. Therefore, consumers view a brand as an important part of a product and branding can add value to a product.

A key fact of a strong brand is that it can claim a price premium over other brands offering the same product. Some consumers could perceive, for example, a bag of BURBERRY as a high-quality expensive product. However, the same bag unmarked would probably be perceived to have lower quality, even though the bags were identical (Kotler et al., 2008). Paul Feldwick summarizes this behavior as follow "A brand is simply a collection of perceptions in the mind of the consumer." (in Miller and Muir, 2004, p.5). Stephen King highlights the fact that consumers based their purchase decisions on perceived added value and is convinced that "A product is something that is made in a factory; a brand is something that is bought by a consumer" (in Miller and Muir, 2004, p.3). Thus, authors maintain that the strength of a brand is located in the minds of consumers and argue that trademark law seeks to prevent any interference with consumer's perceptions and concludes that what finally is protected is the "[...] property over a specific share of mind" (Sandner, 2009, p.80).

In addition to the already mentioned, Miller and Muir (2004) affirm that for a brand to really be strong, it must be more than merely the "image" of the company but it must be aligned with its stakeholders and be a uniting force throughout the organization, providing

the business with direction and values. Thus, the real value of a strong brand is its power to capture consumer preference and loyalty (Kotler et al., 2008).

According to this, a brand has a lot to do with public perception. Even though a brand is, for example, relative new in the market or one that has never been registered, it could be quickly become a strong brand if it creates a powerful public impression (Shiling, 2002).

### 3.4 Brand Equity Value

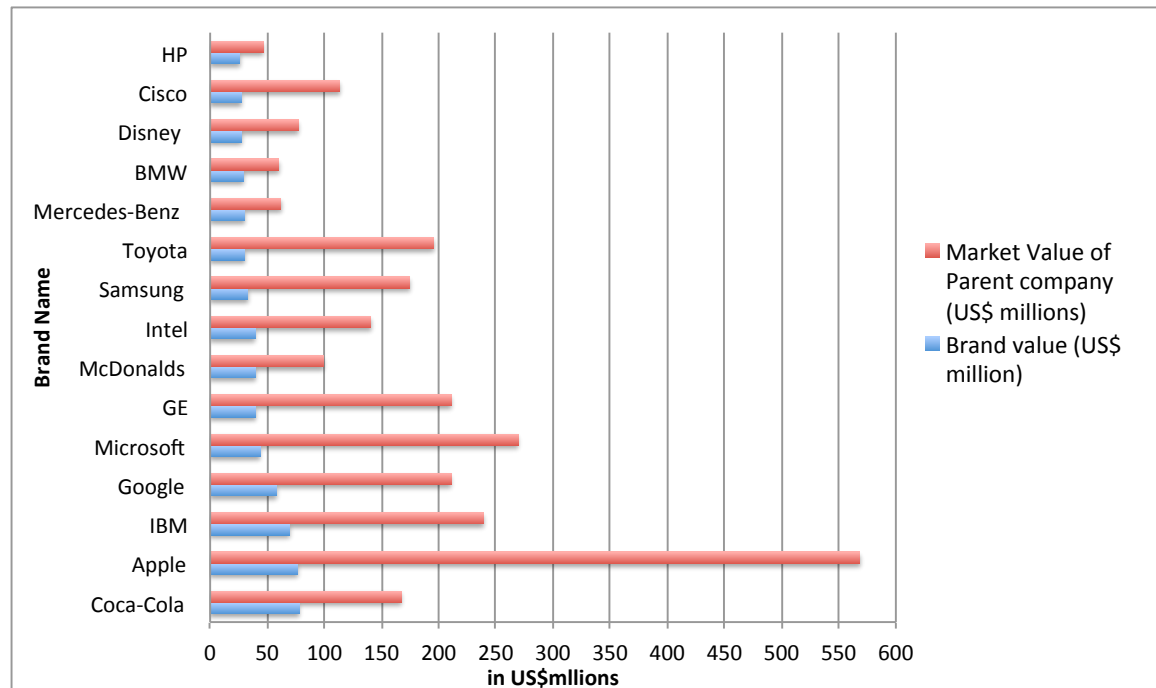
According to Pettis (1995, p.205) brand equity value is “[...] the financial advantage of a brand over a generic or less worthy brand.” In other words it is the incremental cash flow difference that increases from the linking of the brand with the product. Hence, it is the additional amount of money the consumer is willing to pay to get the same product from a specific brand. The term brand equity combines legal aspects of trademarks and brand names and the implicit reputational aspects associated with a specific brand (Jennewein, 2005).

According to the fact that brand valuation is the process of estimating the total financial value of a brand name, its measure can be difficult as it is based mostly on the perceive value of it (Kotler et. al, 2008). However Interbrand, a global branding consultancy, publishes studies to estimate the world's leading brands. It estimated, for example, the brand equity value of COCA-COLA on more than US\$77.839 millions, which represents 47% of the company's market value (Interbrand, 2012). Similarly and considering the above mentioned, Kotler et.al (2008) point out a study, which found that 72% of customers would pay a 20% premium for their brand of choice comparable with the closest competing brand; 40% said that they would pay a 50% premium and also stated that some customers from some brands like HEINZ are willing to pay a 100% premium.

In the following it will be considered the brand value of the fifteen Best Global brands of 2012 according to the study made by Interbrand. Graph 1 will illustrate and show the value of the brand in proportion with the overall market value of the company.

Considering Graph 1<sup>1</sup>, brand equity is reflected in the Market Value of the Parent Company. The Brand Value of MCDONALDS, for example, represents 40% and for HP 56% of its overall company Market Value.

Graph 1: The world most valuable brands of 2012



Sources: Interbrand, 2012; Interbrand (a), 2012

In addition Graph 1 shows that brands vary in the amount of power and value they have in the marketplace. The study Best Global Brands of 2012 (Interbrand, 2012) suggests that these brands enjoy brand preference because buyers choose them over others. Kotler et al. (2008, p.523) affirmed that "These brands win in the marketplace not simply because they deliver unique benefits or reliable service but rather they succeed because they achieve deep connections with customers". Moreover, strong brands names also carry high credibility, making it easier to launch line and brand extensions. For example, Microsoft leveraged its recognized Windows brand to introduce Windows XP and Windows Mobile (cf Kotler et al, 2008 and Sandner, 2009). This and other forms of brand management will be discussed in chapter five of this paper.

<sup>1</sup> Table 1 on page 50 in the appendix shows the calculations of percentages and the exact numbers used for this graph

Furthermore, this graph leads to the finding that the best global brands of 2012 have a brand equity value >10% (calculated percentage in Table 1 on page 50 in the appendix), as consumers are willing to pay a premium for having the desirable product or service from a specific brand. Considering this, Jennewein (2005 p.228) denotes that "[...] the incremental cash flow, which can be generated by linking a brand with a product, is not the result of mere luck or purely arbitrage but attributable to the dimensions of brand equity".

The analyzed literature suggests that authors named and take different dimensions in order to explain brand equity. In the following, it will be explained the ones which one believes are the most important ones for achieving a strong brand.

#### Brand awareness

It is the capability of a potential buyer to recognize that a certain product belongs to a specific brand (Jennewein, 2005). Keller (2012) states that brand awareness is a necessary, but not always an enough step in building brand equity. He points out that other considerations, such as the image of the brand, often come into play. In the soft drink industry, for example, in terms of taste very little differentiates sodas. However, consumers are very aware of the brand COCA-COLA, in terms of its image and name due to an impressive brand management and marketing campaigns, which transmitted the values and positioned the soft drink brand. This awareness is also used as a shield in order to prevent competitors from gaining market share and also represents a barrier to imitation (Jennewein, 2005).

#### Brand Loyalty

This dimension refers to the connection of a certain consumer with a brand name and expresses the probability of the costumer to change the brand if the product suffers a change in performance or price. Moreover, it is significantly influenced by the previous satisfaction of the customer, switching costs and knowledge of performance. However, there is the case in which consumers are not attached to any particular brand and only search for the cheapest offer. The higher the brand loyalty, the lower the risk of rivals and the lower the marketing costs compare to competitors with a smaller or less loyal customer portfolio (Jennewein, 2005).

Some studies suggest that building a deeper emotional connection is what establishes loyalty and triggers positive behavior. It is known from the fields of neuroscience and psychology that it is not enough for companies and organizations to rationally prove and demonstrate that they meet expectations. For many people, for example, meeting Mickey Mouse and posing in front of Cinderella's Castle is a memory for a lifetime (APCO Worldwide Inc., 2013). Graph 1 estimated DISNEY's brand value of 36% of the total company market value and positioned it number thirteen of the best global brands of 2012. Thus, the magic of these experience and others gave DISNEY the pass to the world's most valuable brands.

### Perceived quality

This dimension expresses the subjective evaluation of the quality that is associated with a certain brand. Thus, the quality perceived in a product can significantly differ from the objective quality. According to Hammond (2011, p. 52) "perception is the process by which the brain organizes and interprets information brought in through the senses or created in our imagination [...] enabling us to construct an understanding of the world around us." Having this definition in mind, the perceived quality can be understood as the quality which a consumer has interpreted through the senses and stores in his/her mind. Perceived quality is therefore subjective and difficult to seize. However, a constant perceived quality is important because if the quality of the product under certain brand is perceived to be inconsistent, this can erode the trustworthiness of the brand (Jennewein, 2005). FORD, for example, is for many people a trusted family member automobile company. People are familiar with its brand heritage, independence and constant quality shown over years (APCO Worldwide, 2013).

In addition, the perceive brand quality represents a key argument why to purchase or not a certain branded product and governs the readiness of the consumer to pay a price premium. It is important to point out that a mere improvement of the objective quality, does not directly lead to an increase in the perceived quality. This improvement has to be communicated and confirmed over a certain period of time (Jennewein, 2005).

## Brand associations

This dimension represents the associations built over time, which consumers connect with a certain brand and influences the effect they expect from the purchase of the product, which carry the brand name (Jennewein, 2005). Associations come in all forms and may reflect characteristics of the product or aspects independent of the product (Keller, 2012). These associations can influence the purchasing decision by generating positive or bad attitude or feelings. Because brand association is the basis in order to position a brand, this dimension will be deeply discussed in subchapter 5.2 of chapter five. A brand is associated generally with attributes, benefits and more important, values and believes (Jennewein, 2005). Case 1 will take a closer look to this dimension.

### Case 1: THE BODY SHOP brand associations

THE BODY SHOP effectively created a global brand image without using conventional advertising. Its strong associations to personal care and environmental concerns are mirrored in its products and staff. For example, its brand is associated with only natural ingredients and environmental friendly staff. In addition, its packages are refillable and recyclable and its products are never tested on animals. In short, the body shop has achieved some strongly brand associations, which catapult the brand (Keller, 2012).

## Brand credibility

It describes the extent to which customers see the brand as credible in terms of innovation, keeping customers interests in mind and is reliable and competent. In other words, credibility measures if consumers perceive the brand good at what it does and know what it does. For example, FEDEX has communicated its speed, skill and dependability in shipping and delivery, from its early beginning. "We understand" is its most recent brand campaign, in which it reinforces how reliable but cost-effective it is in shipping all over the world (Keller, 2012).

## Further brand advantages

The last dimension of brand equity is related to the proprietary advantages. The package of a product, for example, and also the exclusive ownership or permission to use the subject matter of a patent, are assets that can strengthen a brand (Jennewein, 2005). In the pharmaceutical industry, for example, new formulas are created and are been patented in

order to be the only ones to produce it as long as the patent has not expired. This can be the source of an initial advantage, which allows to efficiently build an initial brand equity.

The purpose of this chapter was to achieve an understanding of what a strong brand means and the importance of brand equity value and its dimensions to measure it. These terms intend to give the initial steps of what has to be considered and analyzed in order to start building a strong brand

#### **4. Intellectual property rights (IP rights) and brands**

Contrary to personal or real property, IP is considered to be an intangible form of property, which is the outcome of the creation of the mind. In brands, this can be expressed in physical forms like, for example, images, symbols, names, ornamental designs and utility methods (IPO, 2010).

Jennewein (2005) points out that if a company does not have legal rights on using its brand, the exclusivity of the returns of it will be difficult. Due to the fact that brands are such a key part of doing business, the law protect a business' right to identify its own merchandise and to keep other people from imitating merchandise or using confusingly similar brands (Shiling, 2002). That is why Intellectual property rights enable any enterprise to protect its creative and intellectual investment (Clifton et al. 2009). This can be achieved by obtaining property rights such as trademarks, patents, and copyrights among others. Thus, intellectual property rights can be defined as those intangible assets of a company, which are protected by legally enforceable rights, respected by society and represent, therefore, the company's private ownership (Jennewein, 2005).

##### **4.1 IP rights filing**

The question of the current geographical presence and future goals of a business, are key factors in order to file for IP rights. Even though one possibility is to file applications in each of the countries of interest directly through the national registration system of each country and pay fees for lawyers in each country, studies showed that in most cases the budget will not be sufficient to cover all possible available protection. Therefore, it will be necessary to prioritize and determine what gives the best value in terms of the extent of protection afforded.

Due to the growing quantity of companies willing to expand its business abroad, international registration systems, for example, the Madrid Agreement and Madrid Protocol, allows for a single application to file at the World Intellectual Property Organization (WIPO) in Geneva. This can result in significant savings, as local lawyers will need to be hired only if there is objection to the application. It is important to mention that only the member countries of both the agreement and protocol have the right to do it. Table 2 on page 50 in the attachment shows the list of members.



In the EU is now possible to file a single application for a community trademark registration through the Office for Harmonization in the internal Market (OHIM), which is based in Alicante, Spain. This is a unitary system, which results in a single transaction enforceable in the EU and recognizes the EU as a single market. Consequently, it is cheaper than filing separate applications in each of the EU countries. This fact is very important for companies in the EU, which would like to file in a future in others EU countries (Clifton et al., 2009).

## 4.2 Types of IP rights relevant for brands

Considering that brands are constructs that are perceived by consumers as a whole image, studies show that the most relevant IP rights for the protection of brands are trademarks, patents, trade dress and copyrights. Therefore a brand does not necessarily need to be associated with a single IP form but it is and can be protected by a plurality of IP forms in order to protect different components of it (Mendoça et al., 2004). This is well illustrated, for example, by the brand COCA-COLA, which represents a bundle of IP forms, including several protected word marks and numerous protected graphical signs (Sandner, 2009).

There are two forms of patents: utility patents, which protect functional features or manufactured items; and design patents, which protects the way in which items look. Copyrights protect the way that ideas are expressed in written, musical, dramatic and visual works, although not the ideas themselves. Trademarks protect the words, designs and other indicators of the brand. Trade dress protects the non-functional distinctiveness of the brand (Shiling, 2002). Following, each type of IP form mentioned will be analyzed in order to develop a strong brand.

### 4.2.1 Trademarks

Considering that trademarks prohibit competitors from using similar source-identifying marks leading to consumers' confusions (Smith, Gambrell & Russell LLP, 2010), the concept ensures that a sign, for which protection is wanted, is neither identical nor too similar to other already existing trademarks (Sandner, 2009). Thus, the first requirement is that all characters and words including letters, colors, phonetic signs and figures are legally protectable and eligible for register as long as they can be graphically represented and these do not cause consumer's confusion (Jennewein, 2005).

It is important to point out that businesses cannot simply decide they are going to claim something as their own. A picture of the House of Parliament, for example, will not infringe any trademark. However, if someone tries to sell a brown sauce with the picture on the side, this would infringe HP Sauce's trademark (BBC, 1999).

For a while, some courts denied that a color could ever be a trademark. The judges were afraid of color exhaustion that soon, manufacturers were not going to be able to find colors, which have not already been claimed. Nowadays it is possible for a color to be eligible for a trademark only if strict tests are satisfied. This test can be, for example, the proof that the color has acquired secondary meaning and, consequently, the color reminds consumers automatically of a specific brand. In the context of trademark law, secondary meaning refers to the fact that consumers associate the mark with the offered goods. It can be proved with studies or testimony from consumers, the amount and type of advertising for the trademarked product and the volume of sales. Moreover, if the mark has been used for a long time, it tends to imply that it has developed secondary meaning. Having said this, a "color mark" does not only have to demonstrate a secondary meaning but also it has to be nonfunctional and be used as a symbol. For example, the fluorescent colors used in safety gears cannot be trademarked as these colors have a function (Shiling, 2002).

ORANGE personal communications, for example, has registered both the name ORANGE and the color orange for telecommunication services and related goods because it has fulfilled the three mentioned criteria (Clifton et al., 2009).

The second requirement guarantees that generic or offensive words or signs cannot be registered (Sandner, 2009). A generic term, such as "umbrella" or "glasses", cannot be a trademark by itself, because a generic term does not distinguish products of one manufacturer from the products of another. In addition just translating a generic term into another language does not stop it from being generic. For instance "*Regenschirm*" in German for umbrella and "*Brille*" for glasses is not eligible for register. An exception will be if a generic term is part of a trademark, then the trademark is protectable as a whole (Shiling, 2002). In addition to this, names or symbols are not eligible if they are against the law or lead consumers to think that goods under that brand have a quality, which they do

not (IPO, last updated on April, 2011). Moreover name of any living person are challenged for registration, unless that person gives consent.

One type of trademark is the descriptive one. It describes something about the product, for example, the quality, quantity, purpose, value or geographical origin of the goods. This kind of trademark can be also catalogued as generic and are challenged, unless it has a secondary meaning (Shiling, 2002). Case 2 illustrates two different companies trying to file descriptive trademarks, which could be disputed.

#### Case 2: PROCTER & GAMBLE: "BABY DRY" and WRIGSLEY: "DOUBLEMINT"

According to EU's Community Trademark Regulation, names based solely on descriptions are refused for registration. Nevertheless, back in 2001 PROCTER & GAMBLE succeeded in registering the PAMPERS "Baby Dry" brand. BABY DRY's success was, according to Francis Jacobs Advocate-General, because of its "extreme ellipsis, unusual structure and resistance to intuitive grammatical analysis" (in Kotler et al., 2008, p.527).

On the other hand, WRIGLEY's "Doublemint" brand was not eligible for registration. According to the experts, the word "Doublemint" might not appear in any dictionary but it is essentially two generic words written together describing the product. Because of this, "Doublemint" could not be trademarked (Kotler et al., 2008).

This case shows that words intend to be filed as trademarks, have to be chosen carefully. In order to succeed, there has not to be any room left to challenge them. An alternative could be that WRIGLEY's could think about a set of words, which can accompany the "Doublemint" word so that the exception of registering generic terms could be applied and the mark could be protected as a whole.

Contrary to a descriptive trademark, an arbitrary trademark is a word that can be found in the dictionary, but it is not normally considered related to the product. For example, APPLE for electronic products and CAMEL for cigarettes, are arbitrary trademarks that can be easily registered. Other form of trademark is the fanciful one. These are, for example, POLAROID, XEROX and KOTEX. Arbitrary and fanciful trademarks are entitled to protection immediately upon use because consumers cannot associate the mark with anything except the particular good's provided. Consequently, these two types of trademarks are considered to be from the beginning inherently distinctive (Shiling, 2002).

Trademark protection can be obtained either by officially registering the name or sign in the trademark register of the respective national register or by simply using the name or sign in business activities (Jennewein, 2005). Once a trademark is registered, it will become part of a large database that is open to the public and the symbol ®, R in a circle, (Registered trade mark) can be used in connection with the brand. Thus, everyone is considered to have knowledge of it and can be held responsible for knowledge. On the other hand, any trademark, registered or not, can be identified with this symbol ™, TM (trade mark). However, this symbol does not denote that any government agency has approved or registered it (Shiling, 2002). If a trademark is not already been granted and the symbol ® is used, it constituted a criminal offense (BBC, 1999).

It is important to point out that, if a trademark is already granted, the law contains a list of exceptions to challenge it. It can be challenged if "is not used over a period of five years, was obtained fraudulently or if the trademark turns into a generic term" (Jennewein, Klaus 2005, p.168). For example, brands like BAND-AID, ASPIRIN, KLEENEX and THERMOS were so well known and dominated their respective markets to such an extent that over time, the brand did not identify adhesive bandage or facial tissues from a producer, but they eventually came to identify the product itself (Chen, 2008). Thus, they are now part of the generic list. Nowadays the term "google" has been used as a synonym for "search in the internet". An interesting case is whether the brand GOOGLE is going to become a generic. Case 3 will illustrate this matter.

### Case 3: Google, becoming a generic term?

Nowadays there is the question if GOOGLE will become a generic term for "search in the internet". GOOGLE INC. has actively taken steps to maintain distinctiveness of its brand to make sure it does not end up on the list of generic terms. It specifically discourages the use of the term "googling" in reference to web searches. In 2006, GOOGLE INC. incites its users to use "google" when they are actually referring to GOOGLE INC. and its services (Van Treeck, 2013).

If Google becomes in the future a generic term or not, would be a matter of brand management. It has the task to differentiate its brand from purely an action "to search".

This message has not only to be known but more important it has to be perceived by the public.

#### 4.2.2 Patents

Studies in the USA affirm that a patent is the most desirable type of intellectual property protection, because it is absolute (Shiling, 2002) and is a legal monopoly (Scotchmer, 2006). It gives only to the creator of the invention and his/her licensees the right to use, manufacture and sell the invention (UK Copyright Service, last updated on July, 5 2013). Even if someone discovers the core of how the invention covered by the patent functions (reverse engineering), this person cannot use it as long as the patent is still in force. That is why patents are the only form of intellectual property, which has to be screened at a national or territory level by an appointed government body before this right is conceded (Scotchmer, 2006). As soon as the patent expires, anyone is allowed to take advantage of the information contained in the patent (Shiling, 2002). Patents typically take two to three years to be granted (UK Copyright Service, last updated on July, 5 2013).

Considering that all patents are registered and on display where the public can access detailed descriptions of the invention, it benefits the concept of the progress of general knowledge, because inventors and technicians can keep current on what has been invented, and they might get new ideas for improving on the prior art and making new inventions that, in turn, can be patented.

On the other hand, it is very important to mention that the patent's holder right to control individual objects, which contains the invention, ends as soon as he or she sells them. This doctrine is called exhaustion (Scotchmer, 2006). Exhaustion is very important because otherwise the person purchasing the good with an intellectual property right, in this case with a patent right, would never be the owner or entitled to it.

#### Utility Patents

This form of patent protects the functional features of an item, a composition of matter or a novel method or process, regardless of how the product looks like, for a period of 17 years from date of grant or 20 years from date of application. In addition, renewal fees have to be paid in this period as well (Shiling, 2002).

A utility patent can only be granted to a useful, novel, nonobvious invention (Scotchmer, 2006), which makes a meaningful step forward from the prior inventions (Shiling, 2002). The requirement of usefulness will be understood as an invention that offers some positive benefit to society. In the past, this requirement has been used to deny, for example in the United States, inventions against public policy like gambling devices. Novelty states whether the patent has been previously used or described in another publication. Likewise, non-obviousness refers whether the invention differs from prior art in a way, which would not have been obvious to somebody who had ordinary skills in that particularly field of technology (Scotchmer, 2006). With the practical case 4, there would be illustrated this type of patent.

#### Case 4: PRINGLES' Utility patent

Picture 1: PRINGLES' can



Source: <http://stuffpoint.com/pringles/image/34058/pringle-picture/> last visited on July, 20 2013; Madrigal, 2011

According to the fact that PRINGLES' goal was to deliver chips that were uniform in size and shape to the end consumer without them to lose its form (Madrigal, 2011), Baur, the creator of the method of packaging PRINGLE's chips in a can, patented the method in 1970 (Rogers, 2011). Although the patent already expired for more than twenty years, researches show that PRINGLE's marketing campaign to promote this method as its own, has been very successful as many consumers perceive this method to package the chips in a way they do not break as "Pringles".

Considering the fact that the patent has already expired, CHIPSLETTEN from LORENZ is a German that is now packaging the chips in the same way as PRINGLE's does.

This case shows that utility patents have a definite life, which will sooner or later expires. After this, competition will use the invention without distress. However, if there is a fierce marketing campaign in order to generate a secondary meaning during the time of the patent, the brand can still take advantage of it and be a source of differentiation. Remember that brands are constructs that rely on consumer's minds and as long as consumers link the invention with the brand, the holder of it can benefit from that.

### Design Patents

Considering the goal to promote progress in decorative arts and to reward inventors, design patents are granted for a new, original and non-functional ornamental design for an article of manufacture, which protects how an item looks (Matheson, 2009). One can file for a design patent in order to protect an item's shape as well as its outward decoration as long as the design is not obvious (Smith, Gambrell & Russell LLP, 2010) and creates a separate commercial impression from the others already in the market (Shilling, 2002). Considering advanced planning and payment of additional fees, a design patent takes usually around three to six months to be conceded (Matheson, 2009).

For instance, a utility patent might cover the method of how to package the PRINGLE's chips, whereas the distinctive appearance of PRINGLE's might be, for example, entitled to a design patent. The life of a design patent is 14 years from date of grant (Shilling, 2002) and, contrary to trademark registration, a requirement to use the design in commerce is not prerequisite to be eligible to file for a design patent or sue for patent infringement (Matheson, 2009).

In the EU, following the implementation of the EU's Design Harmonization Directive and the introduction of a new European Registered Community Design right, the scope of what can be registered as a design has been extended significantly. "It now includes such things as logos, get-up and packaging, which traditionally would have been protected through trademark registration or copyright" (Clifton, et al. 2009, p.166). Similarly in the USA researches of 2010 point out that since the first design patent was granted to George Bruce for a typeface in 1842, only about 600,000 design patents have been issued in comparison with more than 7.5 million utility patents.

However, recent changes in the case law of design patents now give companies more protection over the look, styling and visual appeal of new products, which in turn gives design patents greater value (Smith, Gambrell & Russell LLP, 2010).

Although design patents protect only one design at a time, one can file multiple applications to protect multiple, nonobvious variations of a single design. On the other hand, one can use a "patent pending" in order to signalize innovation and competitive advantage, although there is not a protection until the patent has been issued (Smith, Gambrell & Russell LLP, 2010). An accurate example of design patent will be given when the fictional case study "Bluli" is analyzed in subchapter 4.2.5.

### 4.2.3 Trade dress

Trade dress "involves the total image of a product and may include features such as size, shape, color or color combinations, textures or even particular sales techniques" (definition extracted of the case *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 765 (1992) in Matheson, 2009). For example, the total image of RED BULL, the energy drink, consists of the combination of blue and silver color combination, two red bulls facing each other ready to fight, the words "Red Bull", the trapezoid-like graphic and the red font for its logo.

Trade dress protection allows a company to prevent third parties from using a product's entire design or an aspect of the design that is likely to cause confusion in the marketplace. It can be registered but does not need to be in order to be recognized by the courts. The requirements, which have to be fulfilled in order the total image can be catalogued as a trade dress, are that it has to be a non-functional design and that such combination of elements has acquired secondary meaning (Shiling, 2002).

In a dispute, courts consider numerous factors to determine whether a design has acquired distinctiveness, including the length of design used and efforts to link the design with the brand. In order to achieve this, companies require normally significant time and publicity efforts to have substantial proof of secondary meaning.

Similar to design patents and copyrights, trade dress is only entitled to protect non-functional product designs. Thus, if a claim arises challenging a trade dress and it has been claimed before as a utility patent, it will be very difficult to establish that it is nonfunctional and entitled to trade dress protection (Oakley and Lovejoy, 2012).



Therefore, in an infringement case the defendant has to prove that the feature is functional.

Even though trade dress is a key part of the product's image, statistics suggest that more trade dresses applications are rejected than accepted. They might be rejected for functionality or because the applicant has not shown that the trade dress is distinctive enough (Shiling, 2002).

Therefore, companies interested in securing trade dress protection, should give careful thought to how they will market the product in a manner to create an association between the product design and the company (Oakley and Lovejoy, 2012). The latter will be explained by the following case:

#### Case 5: Unilever's Viennetta ice-cream dessert design

Picture 2: Vienetta's Ice-cream block



Source:[http://www.real-drive.de/isernhagen/product/386189\\_1\\_1/Langnese+Viennetta+Schokolade](http://www.real-drive.de/isernhagen/product/386189_1_1/Langnese+Viennetta+Schokolade), last visited on June, 5 2013; <http://ellanaa.deviantart.com/art/vienetta-177756484>, last visited on June, 5 2013

UNILEVER claimed that the decorated block of ice cream under its VIENETTA brand represents a distinctive shape for this brand. A High Court judge refused the registration of the ice cream's shape. According to studies, VIENETTA was widely recognized by the public. However, it had not been shown that UNILEVER had used this shape to distinct the VIENETTA ice cream from others ice creams. In other words "[...] what was not been proved is that any member of the public would rely upon the appearance alone to identify VIENETTA by just looking at the shape [...] and that the shape had not acquired a distinctive character because a small but significant proportion of the public confused other fancy ice-cream desserts with VIENETTA" (in Kotler et al., 2008, p.527). The research submitted by UNILEVER suggested that 15% of those questioned confused other products with VIENETTA (Kotler et al., 2008).

This example enhances the protection of the trade dress prerequisite, which is that it has to be "distinctive", which Unilever could not fulfill in this case. In order UNILEVER can be successful, it has to promote the shape of VIENETTA in a way in which the shape is perceived to be the main component of the ice cream.

#### 4.2.4 Copyrights and branding

For brands, copyrights can be registered for the company logo or associated with the brand promotional materials as long as it is a work of artistic creation including artistic or design elements (UK copyright Service, last update on July, 5 2013). According to Scotchmer (2006, p.76) "copyrights gives holders the exclusive right to copy, reproduce, distribute, adapt, perform or display their works". Therefore this author concluded that this right is narrower than a patent because it only protects expressions. In addition, this author points out that unlike patent law, copyrighted works do not have to meet the novelty standards but show creativity.

When compared with trade dress protection, copyrights protection does not required to be distinctive. It safeguards creative designs from copying by others and also entitles the copyright owner to create derivative works and to control distribution and importation (Shiling, 2002).

Considering that copyright is an automatic international right, unauthorized copying of that logo or promotional materials, for example, the unauthorized copy of Intel Corporation's jingle used in its promotional campaigns, would be an infringement (Clifton et al., 2009). The © C *in a circle* is the usual copyright symbol and can be applied to most types of work (UK copyright Service, last updated on July, 5 2013).

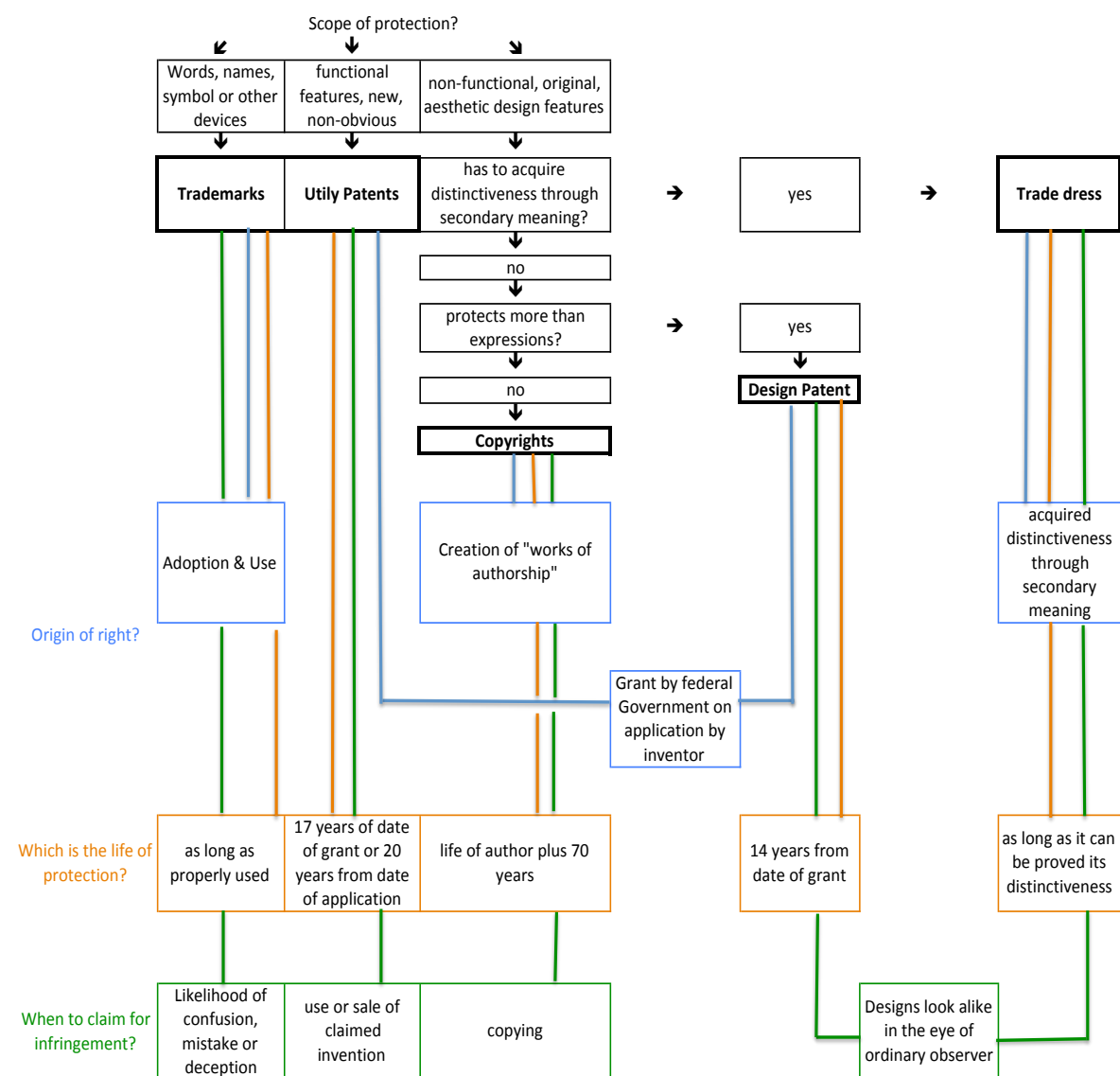
According to the fact that copyrights can be applied to the brand's logo, it is very important to point out that copyright should not be seen as a substitute for trademark registration, but it can provide a further basis for protecting unauthorized use of visual and sound marks (Clifton et al., 2009). In the USA, for example, Article 102(a)(5) of the federal Copyright Act allows copyright registration of pictorial, graphic, and sculptural works, including labels, which may also be described as or include in trademarks. Nevertheless, the copyright office will denied protection, if the material presented for registration only includes trademark material rather than copyrightable material (Shiling, 2002).

Even though in the USA and in some other countries it is possible to register copyrights, there is no requirement to register it and protection is available immediately upon creation of the design or work (Oakley and Lovejoy, 2012). Copyright is of a defined and limited duration, usually the life of the author plus a further 70 years (Clifton et al., 2009)

#### 4.2.5 Relationship and use of types of IP rights relevant for brands

In this chapter there was explained the different IP forms relevant for brands. Guide 1 relates and summarizes them in one overall picture.

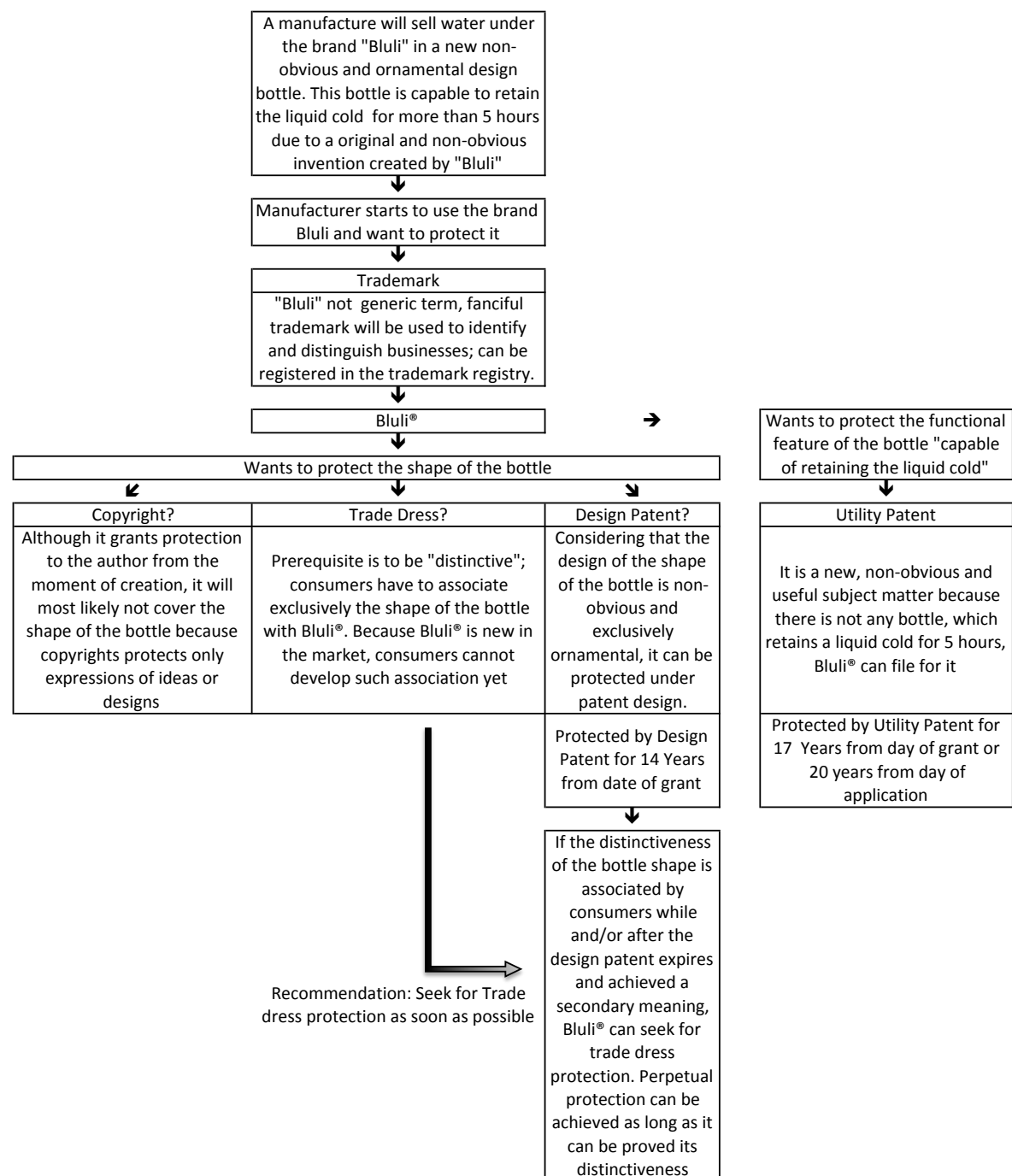
Guide 1: Relationship between the types of IP rights relevant for brands



Source: own creation

Guide 1 is an analysis, which can be used in order to choose which IP right is the accurate one in order to protect a specific element of the brand and how each IP form relates with each other and function. In the following, there would be put into practice this guideline in a fictional example called "Bluli" to choose the accurate IP form.

## Guide 2: Bluli: IP form decision-making



Source: own creation

The fact that BLULI can file for trade dress even though the design patent has not expired, addresses the fact that a feature can be protected from different IP rights as long as the prerequisites are satisfied. Although trade dress and design patent scope of protection is of non-functional features, the way of protection itself is quite different. This difference can be explained by the distinct goal of patent law, which grants an exclusive property right for a limited time to an inventor, and trademark law, which is a type of consumer protection law. Due to the fact that law intends to avoid consumer confusion, trade dress can protect a design only if the latter is non-functional and maintains its secondary meaning (*Matheson, 2009*). Thus, trade dress protection is also available without formal registration.

So far, there has been shown how IP forms can be granted and its scope of protection. In the following it will be presented two cases to illustrate how these IP rights can be enforced.

#### 4.3 Legal cases concerning the enforcement of IP rights

Case 6: United States Polo Association, Inc. v. Polo Ralph Lauren USA Holdings, Inc.<sup>2</sup>.

For years, Polo Ralph Lauren and the U.S. Polo Association have a long history of disputes over Ralph Lauren's polo player trademark.

The United States Polo Association (U.S.P.A) was first found to infringe Polo Ralph Lauren's (PRL) mark in 1984. At the time, a Manhattan Federal Court granted the U.S.P.A permission to use the double horseman logo on their merchandise, as long as it would not cause consumer confusion. In 2006, the U.S.P.A's use of a double horseman without text was found to infringe PRL's trademark, but no infringement was found where the U.S.P.A used it accompanied by the letters U.S.P.A.

Picture 3: Polo Ralph Lauren trademark



Picture 4: U.S Polo Association trademark



Source:<http://www.caseclothesed.com/polo-ralph-lauren-score-goal-in-trademark-match-against-the-u-s-polo-association/> last visited July 4, 2013

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<sup>2</sup> Case No. 12-1346 (2nd. Cir., Feb. 11, 2013) (Raggi, J.; Hall, J.; Droney, J.)

A dispute arose when the U.S.P.A moved its use of the double horseman mark, earlier only on clothing, to use in connection with fragrances. Seven years after PRL introduced its Polo Blue fragrance in 2002, the U.S.P.A designed its own fragrance, with a similar packaging. In order to analyze if there was infringement or not, the court focused on the particular industry where the brands compete. The U.S. Court of Appeals for the Second Circuit concluded that a double horse logo used on fragrances was too similar to the PRL horse and rider used on the same goods. The court denoted that consumers could think that U.S.P.A products are actually made by PRL. Based on this and PRL's claim, the district issued an order excluding the U.S.P.A's use of either the double horseman logo or the word "polo" in connection with fragrances (cf. Whelan, 2013 and Lindenhovius, 2013).

A further interesting case addressing is the following:

Case 7: Red Bull GmbH v. Arseni

Picture 5: Red Bull trade dress can and Arseni can



Source:<http://www.petosevic.com/resources/news/2013/05/1737>, 05.07.2013

In June 2012, RED BULL GmbH had a claim against ARSENI, an Albanian energy drink importer, alleging that the defendant's product design was violating the plaintiff's trade dress.

Although in Albanian law there is no legal definition of trade dress, the trademark law and the unfair competition law stipulates legal basis for protection against trade dress infringement.

After examining the evidence submitted by RED BULL showing that 97% of Albanian public recognized the RED BULL energy drink trade dress, the Court recognized the status of RED BULL trade dress in Albania. It further stated that the blue and silver color combination and the trapezoid-like graphic is one of the most distinctive characteristics of this brand and it

has acquired distinctiveness through the extensive use in the Albanian market.

In addition the size and shape of the ARSENI energy drink (Picture 5), can cause also confusion in the course of trade.

Consequently, on December 24, 2012, the First Instance Court of Tirana acknowledged the distinctiveness that RED BULL brand image has acquired in Albania and that the defendant's design causes likelihood of confusion and detrimental harm. The decision is still under appeal and with it the final outcome of this case (Cami, 2013).

Considering both cases, IP rights ensure that their owners can control their use since a company can take legal actions if a competitor reproduces or seeks to unfairly appropriate an IP right's value. It is the requirement of distinctiveness protected in trademark law and the legal protection that it offers, which preserves a brand's communicative power and allows it to proceed free from interferences (Sandner, 2009).

#### 4.4 Further benefits of IP rights for brands

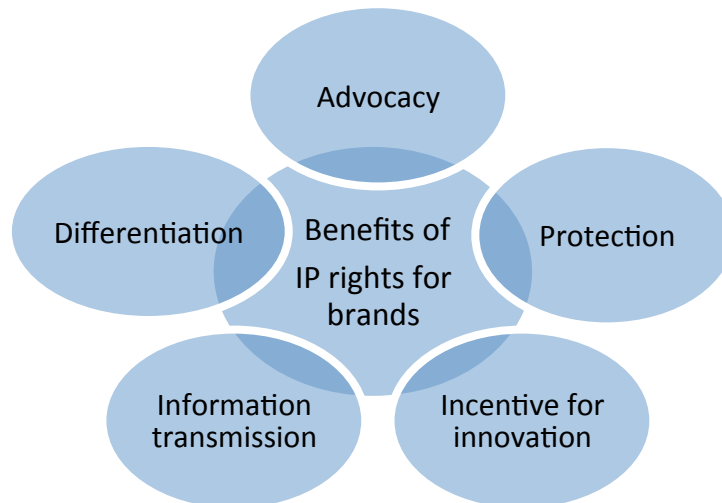
Considering the prerequisites of all IP rights, they enable consumers to identify the products of one company and to differentiate them from those of competing businesses (Sandner, 2009).

If a competitor files an application that is identical or confusingly similar to an already registered form of IP, the holder of the existing IP can stop the competitor's application from being granted or used (Sandner, 2009). Simultaneously, as shown in the RALPH LAUREN and RED BULL cases, IP rights give the holder the right to prevent the unauthorized use of it by a third party in circumstances where such use is not justified. If there is an infringement, one usual remedy is the grant of a sanction to block the continued use of the distinctiveness and an award of damages to compensate for the loss attributable to the unauthorized use (Clifton et al., 2009).

Other important benefit is that IP rights transmit information (Miller and Muir, 2004) creating at the same time advocacy for the holder of the right. As stated before, when IP rights are granted, this is public to everyone. Therefore, everyone knows that someone has filed for that specific design, logo or feature. An unauthorized party, which is willing to use it, will think it twice before trying to use it and be party of litigation.

Moreover, Kotler et. al (2008) point out that trademark law and patent law also increase innovation by giving producers an incentive to look for features that has not already been claimed. The different benefits explained before, are presented in an overall picture in Diagram 1.

Diagram 1: Benefits of filing IP rights for brands



Source: own elaboration



## **5. The importance of Brand Management for the creation of strong brands**

The value of a brand is build over time by continuous investments in marketing, research and development, constant product and service quality, adaptations to new trends and technologies. This result in continuous innovations and improvements not only in the product offered but also in the brand as such. Considering that consumer preferences are not static but continuously changing, a brand has to be manage in a way it can catch up with such preferences. Consequently, a brand has to be good managed in order not only to be an attribute of distinction but also remain appealing for the target consumers (Jennewein, 2005).

Sandner (2009) is convinced that understanding the link between brand management and the valuation of brand assets allows managers, in one hand, to measure how decisions in brand management affect the image and reputation of a brand and, on the other hand, how financial markets measure the brands strength that a company holds.

Researches suggest that brand management involves issues such as brand creation, positioning and development, in which the latter can be in form of brand makeover, modernizing or extending. Since new IP rights need to be filed to protect the development of the brand, activities in brand management will be, to a large extent, reflected in the IP registers (Sandner, 2009).

### **5.1 Brand Creation**

Brand management starts with the creation of a brand. According to Shiling (2002) a lot of the new products put on the market fail because manufacturers do not create a brand name that reminds consumers of the availability of the product or makes consumers think of the product as useful, desirable or simply better than similar offers. This could be the result, for example of selecting a brand name, which do not create corporate identity. A good name can add greatly to a product's success. However, finding a suitable brand name is a challenging task. It starts with a meticulous evaluation of the product and its benefits, the target customers and markets and last but not least the company's vision and values (Kotler et.al, 2008).

Shiling (2002) emphasizes that a good brand name is characterized by:

- Is distinctive and memorable
- Is attractive to the target audience

- Is not complicated to pronounce or remember
- Does not leave room to link the product with wrong ideas. For example, Trico NOVA suggests that the car "no va" (does not go) to roman speaking persons.

Kotler et. al (2008, p.533) emphasize that after defining this, "[...] finding a brand name becomes part science, part art and a measure of instinct."

On the other hand, when a company already established in the market wants to create a new brand, new brand filings make sense for a business when the existing brand name is weakening and a new brand is needed or when the company pursue to enter a new product category for which none of the company's current brand names are appropriate (cf. Kotler et al., 2008 and Sandner, 2009).

TOYOTA, for example, introduced LEXUS as a new car category to target premium market segment. This strategy avoided any associations with the corporate brand TOYOTA because this brand is perceived to manufacture cars for the mass market and not for the premium market. Thus, it chose intentionally a new unrelated brand for its luxury cars in order to penetrate a new market segment with different consumer preferences (Sandner, 2009). Likewise, SIEMENS launched XELIBRI, in order to sell under this brand luxury and fashion headsets. However, this brand did not succeed as expected. A closer look at this will be taken in the following case.

#### Case 8: XELIBRI: a valuable, but expensive lesson for SIEMENS

SIEMENS launched in 2003 the new brand XELIBRI to create a distinctive identity for a line of high-class, fashion mobile phones in order to target a niche segment. However, it turned out that this was an expensive lesson.

According to ARC chart<sup>3</sup> report, SIEMENS started the project of launching the new brand named XELIBRI in 2001 because the company wanted to associate this new brand with fashion and style rather than with technology features associated with the brand SIEMENS. The brand was launched in February 2003, with the plan to release two portfolios a year,

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<sup>3</sup> ARCchart is a research and consulting firm focusing only on the wireless communications industry. Since 1994 this firm has been researching, analyzing and reporting.

which would be in sync with the established fashion seasons. The first XELIBRI collection named *Space on Earth* was launched in March 2003 (Picture 6) and the phones were sold in fashion boutiques and department stores, located alongside the clothes and jewelry and not the electronics.

Picture 6: XELIBRI headsets launched in 2003



Source: [www.eurekamovil.es](http://www.eurekamovil.es) 4.07.2013

The first collection did not reach its goal of sales despite of the fear marketing campaign. The second collection launched in October 2003 did not have better luck than the first one. Eventually, in May 2004, XELIBRI was officially taken away from the market. The Wall Street Journal reported that XELIBRI sold a total of only 720.000 handsets, less than 2% of SIEMENS's total handset sales in 2003.

While the conceptualization effort was good, XELIBRI missed some relevant points. Although there was brand awareness due to the fear marketing campaign, the perceived quality of the brand was poor. The handsets supported only voice and SMS in a market where high-quality color screens and integrated digital cameras were expected. Thus, XELIBRI lack expected technology and consequently harmed sales. In addition there was no association with high fashion as most consumers pointed out that the handset looked and felt inexpensive. This brand was competing in a niche in which the finish of the product, materials, look and style are highly value. While the goal was to position XELIBRI as an accessory for the fashionable and high-class segment, the handsets themselves did not carry design traits, which could appeal to this audience (Constantinou, 2006). Overall, there was not a fashion element perceived nor an innovative trendy association achieved. Thus, XELIBRI could not build any positive image in order to start and develop brand loyalty.

## 5.2 Brand positioning

Due to the fact that brands are in customers' minds, companies have to position their brands clearly (Sandner, 2009). As the name suggests, positioning means finding the proper location in the minds of a group of consumers or market segment, so that they think about the product in the desired way to maximize potential benefit to the company. In other words, brand positioning is a guide to clarify what the brand is all about, how it is unique and why consumers should buy and use it (Keller, 2012). Researchers show that a brand can be positioned at several levels:

### Attributes

To begin with, a company can position the brand on a product attributes in order to seek association with such attributes. For example, MERCEDES suggests attributes such as "well engineered", "well built" and "high prestige" among others. This provided a positioning platform for other attributes of the car. THE BODY SHOP markets their products under attributes such as natural, environmental friendly ingredients, unique scents and special textures. Nevertheless, attributes are the lowest level for a brand positioning because competitors can easily copy them and, more importantly, customers are not interested in attributes as such; they are interested in what the attributes will do for them (Kotler et al., 2008).

### Benefits

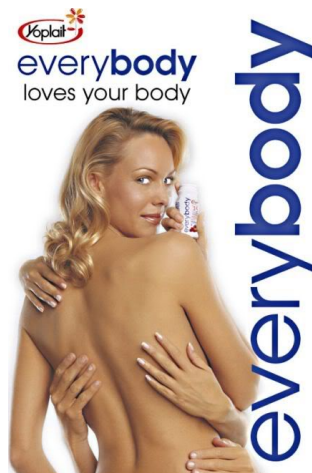
A brand can be better positioned by associating its name with a desirable benefit. Therefore, attributes must be translated into functional and emotional benefits. Hence, THE BODY SHOP can go beyond product attributes and highlight the resultant beauty benefits, such as clearer skin from its Tea Tree Oil Facial Wash. Some successful brands positioned on benefits, for example, VOLVO "safety", LEXUS "quality" and NIKE "performance".

However, promoting a brand on benefits can be risky. If LEXUS advertises its main benefit as "high quality" and other automobile brands emerge with as high or higher perceived quality, or if car buyers begin placing less importance on quality as compared to other benefits, LEXUS will need to move into a new benefit positioning (Kotler et al, 2008). It is very important to point out that the "how" these benefits are transmitted to the consumer

is crucial as it can be distorted (Miller and Muir, 2004). The next case illustrates closer this matter.

#### Case 9: Yoplait: communication flop in Ireland

Picture 7: Yoplait advertising campaign ad in Ireland



Source:<http://marketing.drprem.com/yoplait-everybody-loves-your-body.html>, last visited on July, 5 2013

In 2001, Yoplait introduced its products in the Irish market with a marketing campaign called *Everybody loves your body* with the purpose to associate the benefits of health and beauty with the brand. Considering the fact that the poster features a picture of the back of a naked woman with two pairs of hands on her body which are not hers, this poster left some room for misinterpretations. Consumers found this ad insulting for women with a hint of orgy linked to it.

The Advertising Standards Authority for Ireland (ASAI) supported the complaint and pointed out that the words *Everybody loves your body*, does not respect the dignity of women and should not use provocative images merely to attract attention (Condon, 2003)

This case shows that benefits have to be transmitted in a clear way in which misinterpretation is avoided. Moreover, the product, which is being advertised, has to be a core part of the advertisement. In this example, the yoghurt is a tiny little bottle held by the woman. The last thing, in which consumers thought about seeing this ad was to associate the benefits of health and beauty with the brand.

### Beliefs and Values

Researches show that the strongest brands go beyond attribute or benefit positioning and engage consumers on a deeper and emotional level. They are positioned on strong beliefs and values, which will create loyalty. Thus, THE BODY SHOP can talk not just about environmentally friendly ingredients and skin-care benefits, but how purchasing these products empower its socially consciousness. On the other hand, brands such as PRADA and LOUIS VUITTON, for example, rely less on products' tangible attributes and more on creating surprise, passion and excitement surrounding a brand. A brand says also something about the buyers' values. Thus PRADA buyers value prestige and fashion. A brand manager has to identify the specific group of buyers whose values coincide with the delivered benefit package.

### Personality

A brand also projects a personality because brands are targeted to a specific customers group. Thus, it is defined as "the set of human associated with a brand" (Aaker, 1997, p.347). Consumers might visualize, for example, MERCEDES as being a wealthy, middle-aged business executive. The brand then, will attract people whose actual or desired self-images match the brand's image (Kotler et al., 2008). In contrast to the other brand positioning levels, this level tend to perform as a self-expressive function, creating therefore a stronger connection with the targeted group (Aaker, 1997, p.347). Keller (2012) points out that once brands develop a personality, it can be hard for consumers to accept information perceived inconsistent with that personality.

Considering all this, a brand is a complex symbol. If a company treats a brand only as a name, it misses the point of branding. The challenge of positioning is to develop a deep set of meanings or associations for the brand. When positioning a brand, there should be a vision of what the brand must be and do. As pointed out before, the success of a brand relies on the company's promise to deliver a specific set of features, benefits, services and experiences consistently to consumers (Kotler et al., 2008). Therefore positioning is a very important part of brand management because it is the appreciation of what the customers will get, feel and experience if they buy a specific branded product.

### 5.3 Brand Development

During the life of a brand, there are different ways in which it can be developed in order to satisfy consumers' association and maintain or gain consumers' loyalty. Many brands that were created more than one century ago remain strong today. There can be mentioned brands such as COLGATE toothpaste, GILLETTE razors, KELLOGG's cornflakes and CADBURY's chocolates. Like these brands, many have been developed and evolving over the years and made a number of changes (Keller, 2012). Unless a brand strategy is fully aligned with the overall business strategy, values and vision of the company, it will probably fail (Miller and Muir, 2004). Following, the most important forms of brand evolution and development would be analyzed.

#### 5.3.1 Makeover

Nowadays, there are more markets characterized by intense competition, rapidly changing products and increasingly vacillating customers. Therefore, many managers are thinking of makeovers to bring new life into their brands. Logos, symbols, colors, packaging and even brand names are being updated to create or enhance meaning, relevance or differentiation (Keller, 2012). In addition to this, consumers give feedback to brand managers in order to enhance or to embrace a value, which the brand is perceived to be lacking of. The following cases will illustrate this form of brand development.

Case 10: MCDONALD's: background color change to green

In 2009 it was announced that MCDONALD's is going green. The red background color behind the golden arches logo will be replaced with green (Glover, 2009).

Although the company has in recent years committed itself to environmental friendly practices such as converting used oil into biodiesel fuel it has been targeted by European activists as being environmentally unfriendly. Consequently, this change pursued customers to associate the company with a commitment to the environment promoting a more eco-friendly image in Europe. Therefore, Holger Beeck, vice chairman of MCDONALD'S Germany, pointed out "With this new appearance we want to clarify our responsibility for the preservation of natural resources. In the future we will put an even larger focus on that." (public statement in Glover, 2009). But not only the background of the logo would be changed but also the color of the restaurants.

The red walls would now be green. Considering that this measure was only implemented in Europe and not in the United States, Glover (2009) is convinced that this measure would be hard to imagine in the United States as it is seen as a very dramatic change in the familiar established MCDONALD's logo.

According to this case, MCDONALD'S is trying to highlight its environmental measures in its brand because it seeks to drive away the growing image of being environmental unfriendly. The fact that it changed its brand color to green shows this engagement.

#### Case 11: TROPICANA: packaging makeover

In February 2009, PEPSI presented a dramatic change in the visual image of its category-leading orange juice. The image of an orange with a straw coming out of it was replaced with a glass of orange juice and the phrase "100% orange". Consumers' reaction was mostly negative and felt that the look was too generic. Therefore, adjectives like "ugly", "stupid" and "bargain brand" were associated with this new package image. Considering this, PEPSI returned to the original package version and announced that it has underestimated the emotional bond consumers had with the original package (Keller, 2012).

This case demonstrates that it is very important that changes have not to be perceived to be extreme or odd because the loyalty, which has been gained through the years, might be on risk.

### 5.3.2 Modernizing

It refers to those cases where a company files trademarks to update or maintain the appearance of a brand. This is necessary to prevent the symbols that represent a brand from becoming obsolete and to protect established brands against erosion and harm. The latter is important because the attractiveness is a potential platform for extensions and new product launches (Sandner, 2009). Examples are brands like PEPSI and XEROX, which appearance changed several times over the last century in order to remain modern and attractive.

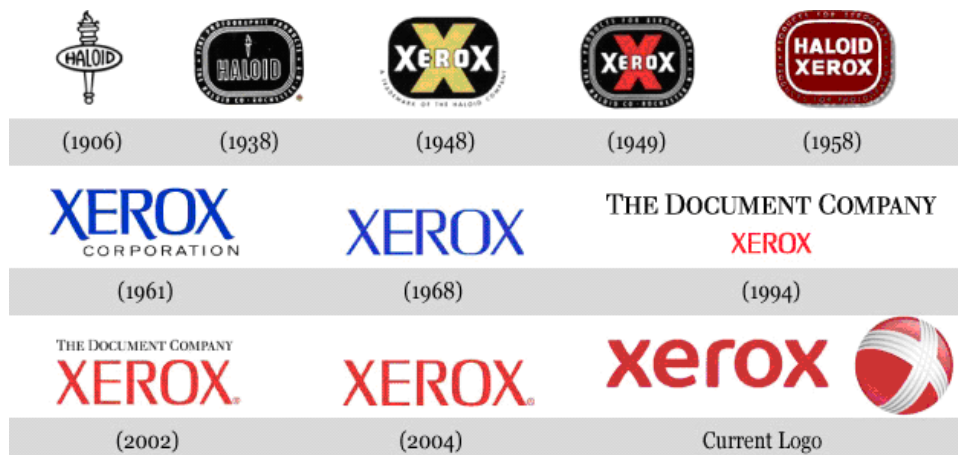


Picture 8: PEPSI logo evolution 1898- Present



Source: DKumar, 2009

Picture 9: XEROX Brand logo evolution 1906- Present



Source: Dkumar, 2009

When modernizing a brand, brand managers have to be careful in order not to make a drastic move as what it seeks to innovate the established brand not to make a new one.

### 5.3.3 Extending

Extending brands refers to those cases where established brands are applied to new products in familiar and/or new markets in order to spread the success it has achieved. Extensions are typically implemented not only to diversify the portfolio but also to stronger its brand satisfying more consumers.

When extending an established brand, researchers distinguish between line extension and brand extension.

Line extension refers to the application of an existing brand to a new product with the new product being in a category the brand is already known in. In other words, the existing brand is not extended to new product classes but the brand is extended to products related to the product category the brand is already recognized (Sandner, 2009). For example, after generations of maintaining the original format of KITKAT, NESTLÉ successfully extended it KITKAT Chunky in 1999. This success was soon followed by repeated extensions including KITKAT Low-Carb, KITKAT Minis and KITKAT Ice-Cream.

Another important application for line extensions is to boost a brand, which is losing attractiveness. For example, in 2006 AERO, NESTLÉ'S number two chocolate bar brand, was losing sales. Therefore, managers boosted this brand with the AERO BUBBLES extension, which was designed to compete with MARS' MALTESERS. Other example is QUAKER. It has numerous line extensions and offers its original QUAKER oats in several flavors and several dry cereals such as Oatmeal Squares, Toasted Oatmeal and Toasted Oatmeal-Honey Nut (Kotler et. al, 2008).

This form of extension is catalogued to have low-cost and low-risk because is a method to introduce new products with an already established brand when there is excess capacity or simply to boost its brand. Nevertheless, there has to be cautious when using line extensions. The line extension trap refers to the case in which there has been such an overextension that the brand has lost its meaning. Another risk is that sales of an extension may put in risk the sales of items in the line. A line extension idea is to show diversity and take sales from competing brands, not when it cannibalizes the company's other offers (Kotler et. al, 2008).

A brand extension, on the other hand, refers to the application of an established strong brand to different product classes, which are new to a brand (cf Sandner, 2009 and Kotler et. al 2008). For example, VICTORINOX extended its SWISS ARMY brand from multi-tool knives to products like cutlery and ballpoint pens to watches, luggage and clothing.

CANON, for example, has initially produced photographic cameras and later extended its brand to printers and photocopiers. HONDA stretched its company name to cover different products such as cars, motorcycles, lawnmowers, marine engines and snowmobiles. A brand extension strategy offers many advantages. A good brand name helps the company to enter new product categories more easily as it gives a new product instant recognition, positioning and faster acceptance. Moreover, brand extension can save advertising costs, which are typically required to build a new brand (Kotler et. al, 2008).

At the same time, a brand extension strategy involves risk. In order a brand extension can be successful, there usually has to be some logical association between the original product and the new one. In addition to this, if a brand extension fails, it may harm consumer attitudes towards the other products carrying the same brand name. Therefore, companies that are planning to transfer a brand name must research how well the brand's associations fit the new product.

Considering both type of extensions, the main advantages are informational leverage, transferable reputation and spillover effects. This can be understood because when launching a new product under the mentioned extensions, an association to established brands allows consumers to deduce the quality of these new products by considering their past experiences with the brand (Kotler et. al, 2008). Consequently, consumers can build a loyalty with the extended product, as they are already familiar with the experience that the brand has offered them.

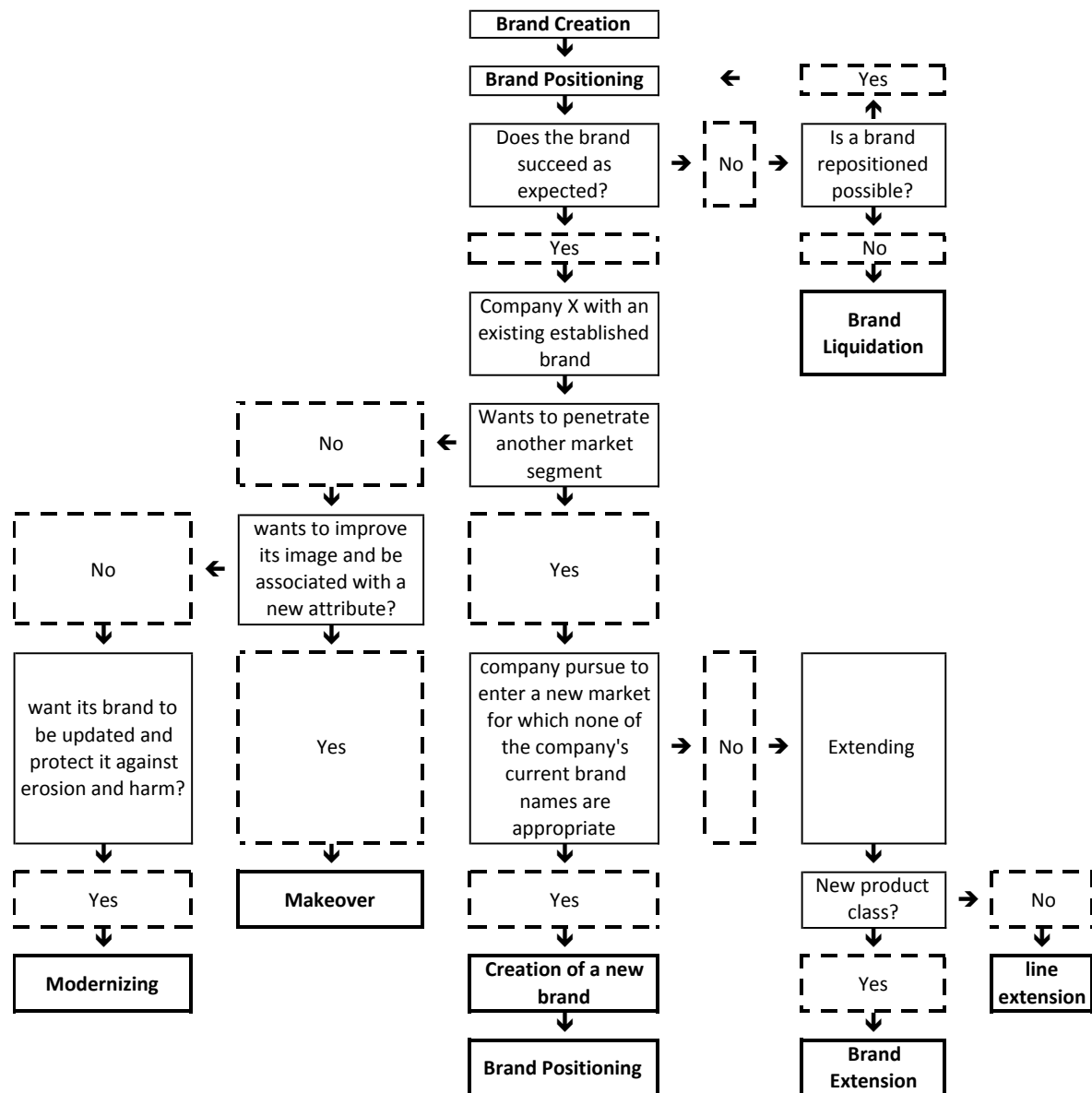
#### 5.3.4 Liquidation

It occurs when the brand did not succeed as expected and a repositioned is not possible. As shown with the XELIBRI brand (Case 8), SIEMENS liquidated this brand as it did not bring any value neither for the customer nor for the company.

#### 5.3.5 Summary of brand management findings

In this chapter, there has been explained the brand management approaches from the creation of a brand till the different forms it can be developed. In the following Guide 3, there would be summarized all these forms in a logical sequence.

### Guide 3: Relationship between brand management approaches



Source: own elaboration

According to Guide 3, the approach, which a company will choose, depends on the strategy it pursues and the goal it wants to achieve. However, as pointed out with the case of XELIBRI, a good research of consumer preferences has to be done before launching a new brand and the brand has to be clearly positioned with values and believes. If the brand did not achieve the desirable success and it cannot be repositioned, brand liquidation is in this case the best option. There has to be some differentiation between the brands where there is a line of extension pursued in order not to cannibalize the existing lines and; modernizing and changing to such extent that the core feature of the brand is not lost and be perceived as an entire new brand losing the image that has already gained.

## 6. Conclusion

In this paper there has been analyzed that brands are not only the mere logo or symbol but are link to a certain reputation and image through its positioning and actions over a period of time.

IP rights and brand management are core components in order to make a brand strong.

Filing IP rights for brands enable companies to develop and establish a link between the consumers and the brand, which will be won through continuously communication and contact with consumers. Trademarks, patents, copyrights and trade dress are powerful tools for developing the mentioned potential value. As showed in Guide 1 and 2 a company will file for a specific IP right depending on the scope of protection looked for its brand. These forms of IP rights must be then transformed from legal concepts into enforceable rights, by taking legal actions against competing businesses that seek to use it to obtain unfair benefits, as showed with the RALPH LAUREN and RED BULL case. It is the brand image and reputation as a whole, and not merely a trademark, design or patent as a stand-alone element, which differentiates the company's goods from the other companies.

Brand management deals with the management of the whole brand. As showed in chapter five, brands are not static but continually developing in order to satisfy consumer expectations and to remain appealing for them. Thus, brands need a proper developing according to the strategy the company wants to implement. That is why companies need to check periodically their brands' strengths and weaknesses to consider what will be the next step for the brand. As showed in Guide 3, companies will choose an approach depending on the strategy it wants to implement. In order to do so, questions like: Does the brand is well positioned? Does the consumers perceive an add value in the product launched under the brand? Is there any value, which has to be shown directly in the brand? Is the brand still appealing to consumers or does it needs to be modernized or change? Does consumers have a positive image of the brand? Could the brand have extensions, if yes which one? This brand check may turn to decisions about repositioning, development and also, if necessary, liquidation of it. Thus, Guide 3 is an analysis to suggest the different approaches managers can choose in order the brand can yield and maintain uniqueness and value.

It is important to mention that a brand does not become strong from one day to another, but it is a process in which interaction with customers, research and development, innovations and the sense of uniqueness play an important role. There is not a specific time

frame to become strong, what important is, is that the company positioned its brand clearly and provides its benefit in a way in which the target consumers does not perceive a distorted image of it or to be "one of a bunch" but to be perceived with an add value and uniqueness compare to the other ones.

Overall, it is demonstrated that the achievement of a strong brand does not happen from one day to another or depends only of one element but it is the set of different elements and strategies that has to be taken into account to develop and maintain a strong brand. A company has to be aware that there are different IP rights in order to protect the brand and together with a well management, the brand can become strong.

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## VI. Appendix

Table 1: The world most valuable brands of 2012

| Brand Name    | Brand value (US\$ million) | Market Value of Parent company (US\$ millions) | Brand Value as % of Market value (Brand Value*100/Market Value of Parent Company) |
|---------------|----------------------------|--|---|
| Coca-Cola     | 77.839                     | 167.047  | 47  |
| Apple         | 76.568                     | 568.615  | 13  |
| IBM           | 69.726                     | 239.53   | 29  |
| Google        | 57.853                     | 210.835  | 27  |
| Microsoft     | 43.682                     | 269.511  | 16  |
| GE            | 40.062                     | 211.096  | 19  |
| McDonalds     | 40.062                     | 99.451   | 40  |
| Intel         | 39.385                     | 140.687  | 28  |
| Samsung       | 32.893                     | 174.39   | 19  |
| Toyota        | 30.28                      | 195.633  | 15  |
| Mercedes-Benz | 30.097                     | 61.9   | 49  |
| BMW           | 29.052                     | 59.96  | 48  |
| Disney        | 27.438                     | 77.089   | 36  |
| Cisco         | 27.197                     | 113.266  | 24  |
| HP            | 26.087                     | 46.487   | 56  |

Sources: Interbrand, 2012; Interbrand (a), 2012

Table 2: List of members of the Madrid Agreement for the International Registration of Marks

| Madrid Agreement (Marks) (1891), revised at Brussels (1900), at Washington (1911), at The Hague (1925), at London (1934), Nice (1957) and at Stockholm (1967), and amended in 1979 |                            |                     |                          |
|--|----------------------------|---------------------|--------------------------|
| Status on May 17, 2013   |                            |                     |                          |
| Country  |                            |                     |                          |
| Albania  | Estonia                    | Lithuania           | Sao Tome and Principe    |
| Algeria  | European Union             | Luxembourg          | Serbia                   |
| Antigua and Barbuda  | Finland                    | Madagascar          | Sierra Leone             |
| Armenia  | France                     | Mexico              | Singapore                |
| Australia  | Georgia                    | Monaco              | Slovakia                 |
| Austria  | Germany                    | Mongolia            | Slovenia                 |
| Azerbaijan   | Ghana                      | Montenegro          | Spain                    |
| Bahrain  | Greece                     | Morocco             | Sudan                    |
| Belarus  | Hungary                    | Mozambique          | Swaziland                |
| Belgium  | Iceland                    | Namibia             | Sweden                   |
| Bhutan   | India                      | Netherlands         | Switzerland              |
| Bosnia and Herzegovina   | Iran (Islamic Republic of) | New Zealand         | Syrian Arab Republic     |
| Botswana   | Ireland                    | Norway              | Tajikistan               |
| Bulgaria   | Israel                     | Oman                | The former Yugoslav      |
| China  | Italy                      | Philippines         | Republic of Macedonia    |
| Colombia   | Japan                      | Poland              | Turkey                   |
| Croatia  | Kazakhstan                 | Portugal            | Turkmenistan             |
| Cuba   | Kenya                      | Republic of Korea   | Ukraine                  |
| Cyprus   | Kyrgyzstan                 | Republic of Moldova | United Kingdom           |
| Czech Republic   | Latvia                     | Romania             | United States of America |
| Democratic People's Republic of Korea  | Lesotho                    | Russian Federation  | Uzbekistan               |
| Denmark  | Liberia                    | Rwanda              | Viet Nam                 |
| Egypt  | Liechtenstein              | San Marino          | Zambia                   |

Total: 91 countries

Source: WIPO, Madrid System for the International Registration of Marks

## **VII. Affirmation Form**

I, Ana Regina Martinez Flores with the matriculation number: 2012 4 025 affirm that I completed the Master's Thesis with the title:

"The importance of intellectual property rights and brand management in the creation of a strong brand"

without unauthorized help and that I did not use any other materials other than those cited in my master's thesis. Any information that I quote or on which I base any passages is clearly and correctly cited.

Further, I have neither submitted this or a similar work to fulfill the requirements for another course or program nor published this or a similar work.

26.07.2012

Date

Signature

## VIII. Cheating Form

I understand that the master's thesis of the Bucerius/WHU Master in Law and Business Program ("thesis") must be my own work and that, for this reason, all forms of 'cheating' are forbidden.

'Cheating' is an attempt to benefit myself (or another person), by deceit or fraud. This includes (but is not limited to) deliberately representing the work of another person/source without proper citation (plagiarism).

In particular, I understand that plagiarism is not acceptable and will not be tolerated. A significant amount of unacknowledged copying shall be deemed as constituting evidence of plagiarism. In this case, I will not be awarded credits for my thesis.

Where text (or a passage thereof) is taken from another author/source, I must indicate unequivocally the source of the material in question. In any case, my essay must be in my own words. This means the following:

(a) Even if I only indirectly make use the work of another person, all sources must be fully referenced. Proper citation is essential. I must not present the ideas of another person as my own work. Instead, it is my task to show that I have understood the ideas/concepts of other persons so that I can engage in critical evaluation.

(b) In those cases in which I fully reproduce the text of another person from another source (such as a book, an article, a case or the internet) in order to emphasize a point (direct quotation), I will correctly cite the passage. I must indicate the relevant passage with quotation marks ("...") and I must provide the full citation to the source and site consulted. Generally, the use of the "copy&paste" function in order to reproduce text/material from the internet into my thesis is deemed to constitute evidence of plagiarism, unless quotation marks are used and the citation is complete.

I fully understand these rules and will adhere to them when working on and/or submitting my thesis. A breach of these rules could lead to a failing grade in the Bucerius/WHU Master in Law and Business Program.

Date/Name: 26.07.2012/ Martinez Flores, Ana Regina

Signature: \_\_\_\_\_

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