



# INTELLECTUAL PROPERTY RIGHTS

Economy and Youth TAT



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## ACTIVATING ASSIGNMENT

# POPPY DISPUTE

Intellectual property rights are increasingly important in business operations. The following assignment introduces one real-life example and challenges you to consider why intellectual property rights are the subject of so much attention.

**TASK:**

**Read the example case and answer the question below**

In 2008, Marimekko stood up in defence of their rights against fashion giant Dolce & Gabbana. Dolce & Gabbana had used Marimekko's poppy print, protected by a trademark, in their products.

Marimekko applied for a sales and marketing ban from a German court against the Dolce & Gabbana products which used the poppy print. The fashion giants finally settled the dispute against payment. The exact settlement sum was not published, but even according to very conservative estimates it was several millions.

Marimekko's poppy print has appeared also on Manolo Blahnik shoes, Avon cosmetics set, walls of the Kone elevators and Hennes & Mauritz clothes. These cases differ from the Dolce & Gabbana case, since they used the poppy print as an authorised part of the licence sold by Marimekko.

**Think why the poppy print is so important to Marimekko that it harnessed its lawyers and applied for a sales and marketing ban against the Dolce & Gabbana products which used the poppy print. Consider this question together in a group and by yourself.**



screenshots from article videos



# INTELLECTUAL PROPERTY RIGHTS

In this module, we will familiarise ourselves with intellectual property rights, which can also be called incorporeal rights or immaterial property rights (IPR). Intellectual property rights offer a challenging, but, simultaneously, extremely interesting and important perspective in entrepreneurship and business operations. Intellectual property rights are present in our everyday lives in one way or another, although we do not necessarily always notice it. With the following assignment, we will examine the goals of this module in detail.

## GOAL OF THE MODULE AND STUDY QUESTION

### GOAL:

**The student understands what intellectual property rights are and how they can be used to strengthen the business operations of the company.** This goal will be reached when the student can answer the goal-related study question asked at the end of the module sufficiently well. A preliminary answer to the study question is provided already at this stage in order to survey the initial situation of the learning process. The same question is answered at the end of the module by utilising the issues learned during the module.

### VIDEOS:

<https://www.youtube.com/watch?v=EbVfs6Gj8dc&t=1s>

<https://www.youtube.com/watch?v=nrYuUf7OPaE>

### STUDY QUESTION:

**How can intellectual property rights strengthen the business operations of a company?**

### ANSWERING INSTRUCTIONS:

Consider, based on your current knowledge, how intellectual property rights can be used to improve the business operations of a company. Try to find at least three points. Think carefully, while remembering that we are now only checking your initial knowledge and concepts.

(Scoring: 1 p/issue, total a maximum of 3 p)



## FACTS

# INTELLECTUAL PROPERTY RIGHTS – PROTECT THE FOUNDATION OF YOUR BUSINESS

Intellectual property rights, also known as “incorporeal rights” or “IPR”, are an increasingly central part of today’s innovation and business. With intellectual property rights, a company or an individual can protect their intellectual property by legally securing their exclusive right to use their property. The holder of an intellectual property right can prohibit others from using their intellectual property. Innovations and the development of intangible assets would be unprofitable if they were freely available to competitors. Thus, intellectual property rights watch companies’ backs and encourage them to develop new innovations and seize the business opportunities they bring.

## What do intellectual property rights protect?

Intellectual property rights are an important but challenging part of business. This is because they protect property that is not physical or tangible. Such intangible assets include, for example, tacit knowledge and know-how of the company, reputation and brand, methods, design, innovation and artistic potential. Due to the increase of intellectual property in companies, it is important to know the basics of which part of this property can be protected by intellectual property rights. Sometimes it may require careful consideration to identify which part of the intellectual property can be protected, for example, when considering how to protect the brand of the company. The company brand may consist of the trademarks, appearance of the products, name of the company as well as operating methods which are linked to different feelings, values and images in the minds of consumers. For example, when a consumer sees the three stripes of Adidas, their mind is likely to activate images of quality, trendiness and athleticism.

Although intellectual property is currently one of the most significant asset items of the company in terms of monetary value, it cannot be registered or protected as such. However, the identifiers of the brand, such as the name, logos and slogans can be protected with registering and trademarks. The design of the company's products can also be protected by design rights and the company's innovations can be patented. In other words, the intellectual property rights can protect the concrete manifestations of intellectual property. However, not all the company's intellectual property can be protected by intellectual property rights, for example, the tacit knowledge and skills of employees. It might be in the interest of the company, for example, to prevent the business secrets related to the methods applied by it from reaching the ears of their competitors in order for the company to benefit from the competitive advantage created by the methods and method development investments. Business secrets are not included in the intellectual property family, but the company can protect its business secrets by contractual means by agreeing with its employees on confidentiality.

## Why consider intellectual property rights?

The importance of intellectual property rights is not limited only to the corporate world, as they are present in one way or another in our everyday lives. When we watch a movie on Netflix, we enjoy the copyrighted work of the filmmakers. Netflix software, on the other hand, is protected by copyrights. Increasingly, we are also owners of intangible assets, and knowing intellectual property rights helps us to



identify opportunities for our own expertise. Knowledge of the basics of intellectual property rights has been described as one of today's civic skills that helps us not only recognise our own potential but also respect other people's creative work.

When a company or a person has an intellectual property right to, for example, their own logo, it may not be used by others without permission. It's not hard to imagine what would happen if anyone could add, for example, the Adidas logo on the clothes they've made. In this case, many operators would end up selling their products using the Adidas brand and consumers would no longer be able to distinguish genuine products from replicas. This would largely deprive Adidas of their current business. Surely, pirated products or fake clothing that misrepresent other companies' brands continue to sell in the underground markets, but their popularity and room for manoeuvres, especially in Western Europe, has declined with rising responsible business and ethicalness.

## **How are intellectual properties utilised in commercial activities?**

Companies often draw up a separate intangible value strategy that defines the company's intangible capital and plans how to use it. Generally, an intangible value strategy has at least three levels:

### **Level 1: Avoiding damage.**

This level simply ensures that the company has the right to use all the intangible assets it needs in its business. For example, whether all copyright issues are in order and whether the company has secured the most critical intellectual property rights for its intangible assets.

### **Level 2: Competition for intellectual property rights.**

At this level, security becomes a tactic in which intellectual property rights reinforce one's position in the market. For example, acquiring and controlling intellectual property rights to the fullest extent can limit the scope for competitors' room for manoeuvres.

### **Level 3: Intellectual property rights become commercial goods.**

At this level, the intellectual property rights sought as a result of tactics will be traded. Angry Birds is a good example of how the same

trademark has been expanded to include a diverse range of products such as games, movies, clothing, amusement parks and soft drinks. Intellectual property rights may also be sold or leased.

Intangible capital often has considerable commercial potential and intellectual property rights are a big business. For example, when Microsoft bought Nokia's mobile phone business operations in 2013–2014, intellectual property rights played a big role. Microsoft was granted permission to use Nokia's valuable trademark on its mobile devices, but Nokia's so-called patent portfolio, which at the time contained about 30,000 different patents, remained with Nokia. Prior to the transactions, Nokia reportedly raised 500 million annually through patent licences alone. The value of the patent portfolio was estimated to exceed Nokia's total market value of approximately EUR 7.6 billion in summer of 2012. On the other hand, Nokia had so far spent EUR 40 billion on research and development alone, thus huge assets had also been invested in the patent portfolio. Since then, Nokia has regained success with the help of its patents and has since regained its trademark following the expiration of the trademark agreement with Microsoft.

## **What is required for the protection of intellectual property?**

Protecting intangible assets is not free. Payments usually are up from a few hundred euros and the protection must be renewed from time to time. For a fee, your application and idea will be evaluated to determine whether or not your solution will be protected. For example, to obtain a design right, you submit images of the design whose ownership you want to protect to the Patent and Registration Office. Therefore, it is good to consider carefully when to apply for the IPR (IPR = Intellectual Property Right). An exception is the copyright of artistic works, which is obtained automatically and free of charge as long as the so-called threshold of originality is exceeded. However, there are general criteria that help you in your deliberation:

- Are you sure your solution is new and original?
- Is your solution really usable?
- Are you sure the possible technical side of your solution is repeatable?

Intellectual property rights			
Nature of the work	Example	Law applicable to protection	How is it protected
<b>Artistic work but, for example, also software</b>	e.g. a photo, a painting or a dance performance	Copyright	Received automatically and free if the artistic work exceeds the threshold of originality.
<b>Product design</b>	for example, a completely redesigned chair or interior or a car.	Design right	Applied separately. Subject to a fee.
<b>Words, logos, patterns, slogans</b>	e.g. "Adidas" and its three stripes	Trademark (Trademark)	Applied separately. Subject to a fee.
<b>Technical invention</b>	e.g. a flying vacuum cleaner, a new method or a purpose	Patent (in addition, for simpler inventions, there is a lighter but less comprehensive <i>utility patent</i> or "little patent")	Applied separately. Subject to a fee.

For more information, visit the Finnish Patent and Registration Office website [www.prh.fi](http://www.prh.fi)



screenshots from article videos

 MATERIAL ASSIGNMENT

## INTELLECTUAL PROPERTY RIGHTS IN EVERYDAY LIFE

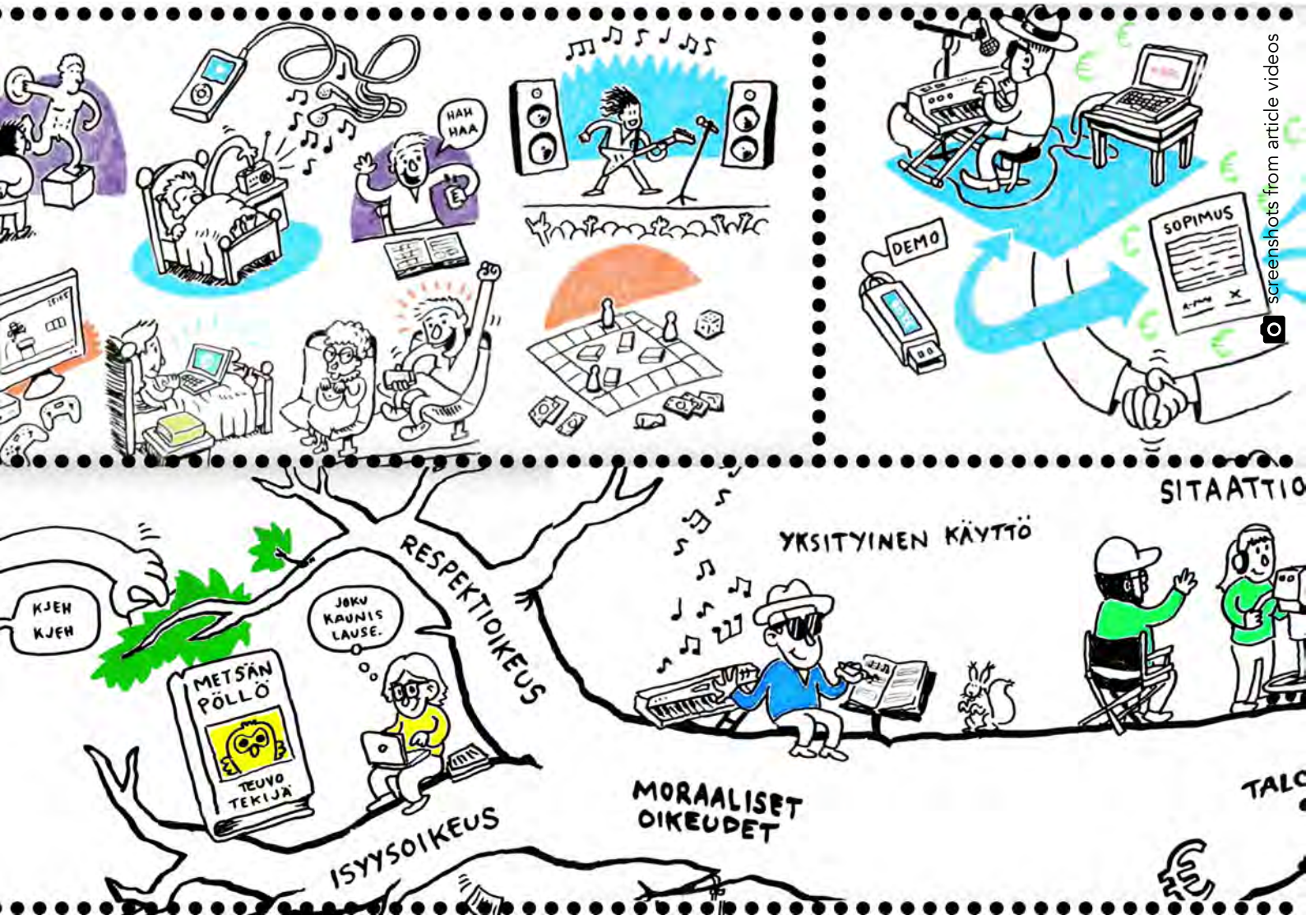
The following assignment briefly introduces how intellectual property rights affect our everyday lives and their impacts on business operations.

## Intellectual property rights are increasingly important in developed economies

Watch the video and consider why intellectual property rights play such a significant role in the business operations of companies in highly developed economies in Europe and elsewhere.

 **VIDEO:**

<https://www.youtube.com/watch?v=0M-fRBXTd6g>



screenshots from article videos

**▶ MATERIAL ASSIGNMENT**

# COPYRIGHTS IN BUSINESS OPERATIONS

Copyright is the most commonly known intellectual property right. Everyone, regardless of their age or background, automatically receives copyrights for their own original artistic works, such as videos, photographs, drawings or compositions. Therefore, copyrights are strongly present in our everyday lives.

## Copyrights are used to protect artistic work and its creators from unauthorised copying and misuse.

For example, the entire livelihood of artists is based on copyrights, when they sell and perform their works or grant licences to use them. Without copyrights, the creation and production of culture and entertainment would not be profitable. Equally important are the copyrights to companies, since copyrights protect the work performed by the company's employees. Therefore, the copyrights as well as intellectual property rights have a tremendous impact on the business operations of the company.

Watch the video briefings on copyrights and answer the questions below.

### **VIDEOS:**

<https://www.youtube.com/watch?v=dGEuvbuJSmQ>

<https://www.youtube.com/watch?v=Uald2uWcVKo>

### **TASK:**

Find an example of a website of a company whose business operations are greatly affected by copyrights. Study the website and answer the following questions based on the video briefing:

**Which aspects at the core of the business operations are protected by copyrights?**

**How is the company utilising, or could be utilising, copyrights in its operations?**

Start by stating the name and industry of the company. (= a free-form description of the industry in which the company operates and what it does).

(Scoring: 2 p/answer = total 4 p)

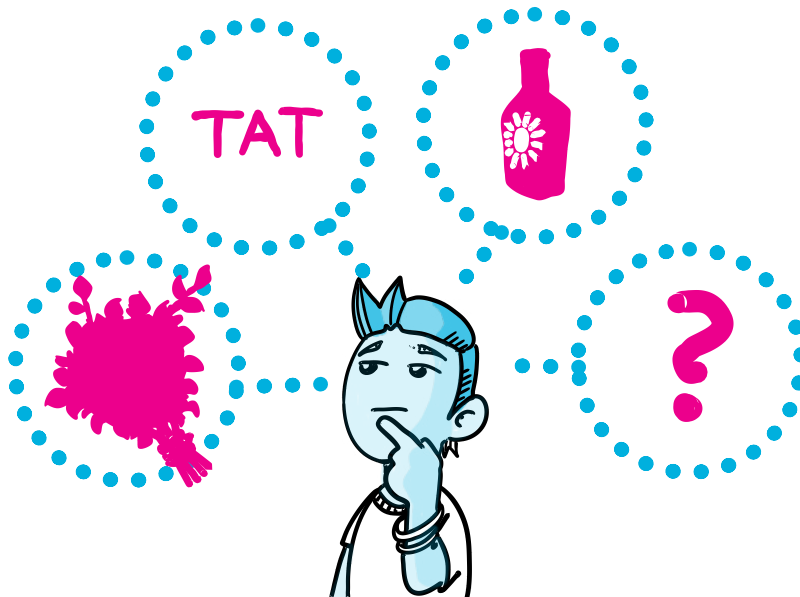


 **FACTS**

## **TRADEMARK AND DESIGN RIGHT – GIVE EXCLUSIVITY TO THE BRAND**

Often, companies use branding symbols or other distinctive marks in the products or services they offer helping consumers identify a particular manufacturer's products from those of their competitors. An example of such a brand identifier is the Coca-Cola logo which makes it possible to identify genuine Coca-Cola from other cola drinks on sale. These distinctive features are also known as trademarks. A trademark can be protected by registering it with the Finnish Patent and Registration Office to become a registered trademark. A trademark is one of the intellectual property rights that can be registered to protect a company's trademark and other distinctive features such as theme music or a slogan.





## What kinds of marks can be registered as trademarks?

A wide variety of identifiers can be registered as trademarks. A trademark may be a word or a pattern or different combinations of words, patterns and numbers. The name of the company or a person can also be registered as a trademark, provided that it is the company's or person's own name and not another's. Nowadays, sound can also be registered as a trademark, as are animations that combine moving image and sound. When applying for a trademark registration, it must be specified in which products and services the trademark will be used. This definition of the product and service classification limits the exclusivity offered by the trademark and trademark protection so that the trademark owner has the right to prohibit others from using similar marks only in connection with products and services defined during the registration. It is important to distinguish between registered trademarks and other marks as only the registered trademark is associated with the exclusive use of the trademark by the trademark owner.

Although a wide variety of marks can be registered, there are two essential conditions to be considered in order to be able to register a sign as a trademark: the sign must be distinctive and it must not be confused with trademarks which have already been registered (risk of confusion). The distinctiveness of a trademark means that it cannot directly describe the products or services it represents since the words describing a product must be available to all traders. A mark that an average consumer might confuse with an already registered trademark or trade name cannot be registered.

## Significance of the trademark in business

There are many competing products and services on the market and branding is one tool to make your own company's product stand out and attractive. At best, an attractive trademark creates brand loyalty when the consumer purchases the same product over and over again because of a familiar brand name. Indeed, an attractive trademark can be very significant in terms of monetary value and can constitute a large part of a company's assets. The importance of the trademarks in the company's business can be understood by familiarising oneself with the functions of a trademark.

## Functions of a trademark

**Identifying function:** With a trademark, a company aims to distinguish itself from competing companies and promote sales. Consumers can distinguish the company's products or services marked with a trademark from other identical products and services produced by other companies.

**Origin function:** A trademark enables the consumer to combine a product or service with a certain origin, i.e. originating in a particular company.

**Quality or guarantee function:** Consumers associate certain goods or services under the same trademark as having similar quality. This encourages the company producing the products to maintain at least the same high quality.

**Advertising function:** A trademark is one of the key advertising tools. The connection between the trademark and advertised product or service is created through advertising. Advertising is used to create an attractive image of the trademarked products for consumers. Therefore, a trademark is also a branding tool.

**Competition function:** All above-mentioned functions are combined in the competition function. The trademark promotes the company's ability to compete with other companies, while the trademark distinguishes the products from the competitor's products and communicates the origins and quality of the product.



## **Models and designs are protected by design rights**

Design rights can protect designs and shapes that are important for business. For example, Minna Parikka's shoes with bunny ears and Crocs sandals have valid design rights. In both cases, design is also a big part of the brand. Applying for a design right becomes topical when you have a unique custom-designed practical object or part of one. Such a situation is quickly encountered in the production of, for example, designer furniture or clothing. Design rights ensure that others do not have the right to use the design you have developed without your permission.

Designs created through original design which support the intended use of an object can be protected by design rights. Design means the appearance of a product or a part of it. So, the design can be, for example, a single decorative ornament or pattern, such as a pattern on the side of a bag or on a fabric (e.g. a Marimekko poppy). However, the design can also be the shape of the whole item, such as the shape of Minna Parikka's Pupu shoes, not just the bunny ears part in the shoes. All in all, a design can be many things from the product's lines, features, colours and shape of the product to its surface texture and material. Often a design is some kind of combination of the above elements. Whether a design is aesthetically or practically good or of good quality is irrelevant to obtaining a design right.

(11) Rekisteri.n:o - Registrerings.nr 26162

(15) Rekisteröintipäivä - Registreringsdag. 04.04.2019

(21) Hak.n:o - Ans.nr: M20185052

(22) Hak.saap.pv - Ans.ing.d: 27.06.2018

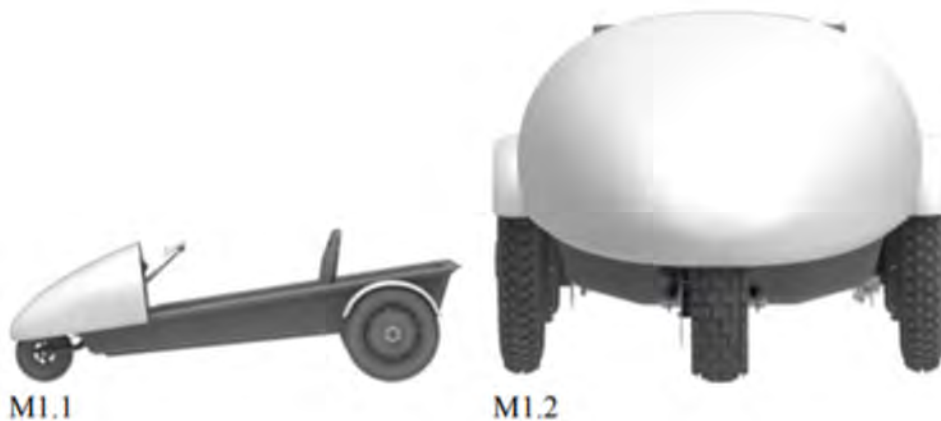
(73) Haltija - Innehavare: PINTONE OY, Oulu, Uleåborg, FI

(72) Mallin luoja - Mönsterskapare: Pentti Airaksinen

(54) Tuote - Produkt: Pyörät. Cyklar

(51) Luokka - Klass: M1. 12-14, M1. 12-11

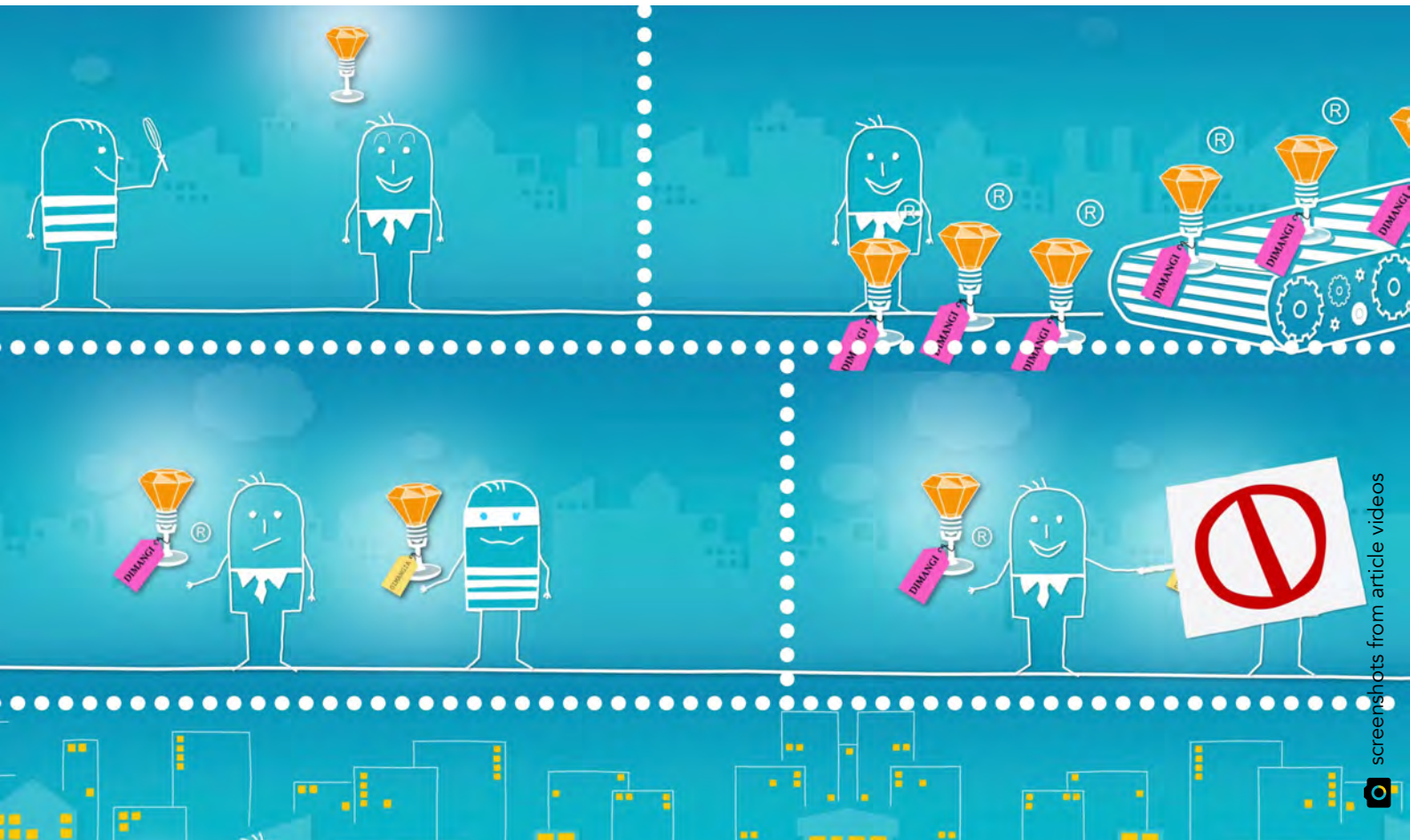
(57) Kuvat - Bilderna: Mustavalkoinen, Svartvit



In order for a design to be protected by design rights, the design must be new and unique. These two criteria form an inseparable assessment tool that determines whether a design right can be obtained. In this context, new means that the design in question has not previously been made public, e.g. by using it in business, advertising or otherwise promoting it. When assessing the novelty of a design, it is also relevant whether it is unique, i.e. whether or not there already are designs from which this design differs from in only minor and insubstantial parts. Because design rights are intended to support creative work and the development of new forms of design, design rights do not cover so-called common designs such as frames or stripes.

One of the prerequisites for a product to be protected by design right is the reproducibility and durability of the design. Reproducibility therefore means that the product can be remanufactured in a similar or partial appearance. Permeability is most easily understood through the example of remanufactured furniture: it is possible to assemble a bookshelf in the same way even when it has been disassembled, i.e. the design is permanent. The shape or design protected by the design right must support the intended use of a specific object. If the design has mainly only an artistic purpose, it is usually classified as a copyright-eligible product. In these cases, it is often not worthwhile to apply for a separate design right, as a copyright is more comprehensive and royalty-free.

Protecting a design with a design right prevents others than the owner of the design right from taking advantage of the design. The use of a design may mean, for example, manufacturing or selling a product of that design or containing that design, as well as the importing or exporting of such products. Design rights registered in Finland are valid only in Finland. If there is a need for an EU-wide design protection for a design, an EU community design can be applied from European Union Intellectual Property Office (EUIPO).



screenshots from article videos

**▶ MATERIAL ASSIGNMENT**

## **TRADEMARKS CAN BE USED TO PROTECT THE LOGO OF A BRAND**

The example of briefing “A logo is not a brand” illustrated how the logo of a certain brand increased the value of the product. In other words, the logo acts as one of the brand identifiers based on which the customer can identify the brand among other similar products. Identifiers are extremely valuable especially to companies that have a strong brand and, therefore, they should be trademarked. The brand and trademark are strongly intertwined in business operations. The brands of especially larger companies comprise several trademarked identifiers.

**TASK:**

**Watch the video and select the statements that are correct from below!**

 **VIDEO:**

<https://www.youtube.com/watch?v=KJfMEzIMXZ4>

**TIP:**

There are three correct statements. Please note! The briefing on trademarks after this assignment will introduce the trademark in greater detail.

**OPTIONS:**

- A lamp can be protected by a trademark
- You will receive the trademark for your innovation automatically once it has been completed
- With the trademark, you can prohibit your competitors from using the name of your product
- The trademark helps you stand out and your customers to recognise your products
- It is not allowed to copy a name even if it is not registered as a trademark

Maximum points for the assignment: 5 p



Diego Catto on Unsplash

 MATERIAL ASSIGNMENT

## IDENTIFYING TRADEMARKS

In Finland, a trademark is registered with the Patent and Registration Office (PRH).



## Checking the trademark and assessing the benefits of registration

### TRADEMARK DATABASE:

<https://epalvelut.prh.fi/web/tietopalvelu/haku>

### TASK:

1. **Come up with a brand or trademark that is well-known in Finland and significant for you.** Then, go to the Patent and Registration Office's trademark database and enter the selected trademark or brand information in the search field. You can search, for example, by the name of a company, product or service.
2. **Did you find a registered trademark for the selected brand?** If not, come up with another meaningful and known brand and try again!
3. **Once you get a hit, find out in which goods and service class the trademark has been registered.** (Click the application number of the search result and view "Class number" and "Heading" in section "Goods and services").
4. **What are the benefits that the company you selected and its brand receive from having registered their trademark?** And what are the risks related to not having registered the trademark?

(Scoring: 1 p for finding a registered trademark, 2 p for clarifying the trademark's goods and service class, 3 p for assessing the benefits and risks)



## MATERIAL ASSIGNMENT

# EXAMPLES OF DESIGN RIGHT

Design rights are used to protect new and original patterns and designs. Design rights become relevant especially in cases in which the design is intended to be utilised more widely in commercial production. A design right in Finland is applied by registering the pattern or design on the Finnish Patent and Registration Office (PRH) website. A registered design also provides the company with several business opportunities.

## Benefits of pattern and design registration

### DESIGN DATABASE:

<https://epalvelut.prh.fi/fi/web/mallitietopalvelu>

### **TASK:**

**Come up with a company or designer manufacturing design products which are well-known in Finland. Then go to the Patent and Registration Office's design database and enter your selection in the search field.**

Did you find a registered design right for your selection? If not, come up with another well-known design product manufacturer. Once you get a hit, see the more detailed information for the registered design by clicking on the application number of the search result. View the photos of the registered patterns and designs. Assess which features of the design illustrated in the photo the manufacturer especially wants to protect. In other words, assess what makes the registered pattern or design special and registration important in this case in question.

Also assess why the selected company has decided to protect its pattern/design using the design rights. Share your thoughts also in small groups!

(Scoring: 1 p for finding a registered design, 1 p for clarifying the design's special features, 2 p for design right selection reasoning, total a maximum of 4 p)



 **APPLIED ASSIGNMENT**

## RISK OF CONFUSION

The following assignment will study the problem related to the risk of confusion of trademarks further. This kind of risk of confusion is one of the most significant legal issues to be considered in terms of trademarks and trade names. This assignment has been created in cooperation with the University of Helsinki's Faculty of Law. Furthermore, one goal of this assignment is to provide an example of assignments which may be encountered during legal studies. Legal case studies are solved on the basis of course literature and applicable law books. However, we will take a lighter approach and utilise the website of the Patent and Registration Office as background material.

## Risk of confusion/confusing similarity according to the Finnish and EU law

### TASK:

Read the case description below and assess it from the perspective of the risk of confusion of trademarks. Consider also what the risk of confusion means.

### ANSWERING INSTRUCTIONS:

Based on the background material, assess whether the trademarks described in the case can be confused. If there is a risk of confusion between the trademarks, explain the reasons for this.

Specify the criteria and points on the basis of which the risk of confusion is assessed in your answer.

### CASE:

Oy Bisse Ab has previously registered the trademark LOPEN KULTA. Now, Panimo Oy X wants to register a new trademark: HOLVI KULTA.

Both trademarks would be under the same trademark class 32 (beer, mineral waters and other non-alcoholic beverages, fruit beverages and juices, syrups and other preparations for making beverages).

**Please note!** In this kind of case, there is often no single, clear solution, but the attorney must provide an interpretation with best possible justifications based on their assessment founded on the clauses in the law. In this assignment, it is not required to refer to the legislation, but you can carry out the assignment on the basis of the background material.

### BACKGROUND MATERIAL:

[https://www.prh.fi/en/tavaramerkit/hakemus/edellytykset/risk\\_of\\_confusion.html](https://www.prh.fi/en/tavaramerkit/hakemus/edellytykset/risk_of_confusion.html)

## **REVISION**

Next, we will revise the key issues of this module.

### **Are the following statements correct or incorrect?**

**“Copyright protects artistic works as long as it has been first registered in the Patent and Registration Office.”**

correct

incorrect

Maximum points for the assignment: 1 p

**“Trademarks can only be used to protect textual identifiers, such as a name or slogan.”**

correct

incorrect

Maximum points for the assignment: 1 p

**“The holder of an intellectual property right can prohibit others from using its intellectual property.”**

correct

incorrect

Maximum points for the assignment: 1 p

**“Design right protects the special characteristics and models which the manufactured products are based on.”**

correct

incorrect

Maximum points for the assignment: 1 p

**“Inventions can be protected with the utility model.”**

correct

incorrect

Maximum points for the assignment: 1 p

## ✓ **ASSESSMENT**

Finally, we will assess to what extent you have reached the learning target set at the beginning. This assessment is carried out by answering the study questions again. Furthermore, we will assess how interesting the module was as well as the most important insights offered by the module.

### **Assessing personal learning: what did I learn and realise?**

Finally, answer briefly the study question presented in the introduction. Formulate your answer carefully, since this answer reveals to what extent you have reached the learning target of the module to be completed.

#### **STUDY QUESTION:**

**How can the intellectual property rights strengthen the business operations of a company?**

#### **ANSWERING INSTRUCTIONS:**

Write three concrete issues or measures which can be used to strengthen the business operations of the company with intellectual property rights! Comprehensively use the concepts and issues that you have learned during the module in your answer.

(Scoring: 1 p/issue + 1 p for an exceptionally good answer, total a maximum of 4 p)