Universitat de les Illes Balears

[2012/2013]

Final Degree Project

This Final Degree Project analyses in depth the topic of Brand Management from different perspectives. A review of the historical evolution of Brand Management and the most important theoretic contributions to this area by authors of different schools of thought will be carried on.

Managing brands in the web 2.0 is a current concern for today's companies. This topic will be introduced explaining the major benefits and drawbacks that it has attached.

The legal framework regarding brands in Spain will be presented as a delimitation of the role of brand managers.

Theory will be complemented with real world practical examples as evidence to get a better understanding of the topics.

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1. Abstract.

Brands have become a major symbol of economy and society as they have penetrated in all spheres of life. Since brands have become the centre of attention in the last decades the question of how to manage them properly in order to maximize its value has been in the sight of companies. Brand management has passed through different stages during time, receiving influences from different business schools of thought and borrowing knowledge and methodology from other sciences. This process has stated the complexity of brand management by providing a big spectrum of different perspectives through which the topic can be studied: microeconomics, macroeconomics, philosophy, sociology, phycology, anthropology, etc.

This paper aims to summarize the most important academic contributions in the field of brand management and to analyse how today's technologies have impacted the way brands should be managed. Furthermore, a review of the regulation regarding brands in Spain will be introduced to enclose the area where brand managers can perform their task. By reading this paper the lector should get an insight of the strengths and weaknesses of the diverse theoretic approaches of brand management and get a global understanding that allows building customized brand strategies to overcome challenges and exploit possibilities that a brand could face at any time.

2. What are brands?

The Brand is without a doubt the most ancient industrial property sign. Originally, 'to brand' something (which comes from the Norse's word 'brandr') meant to burn a symbol in the flesh of an animal with a hot iron to identify its property. Later, with the development of markets, the necessity of making distinguishable one product from another became apparent. Since hundreds of years, manufacturers and artisans have put special care in identifying their products among their similar in the marketplace by using unique symbols. However, it is in the 1980's when academic and press authors came to realize that brand names were not only distinguishing symbols but the principal assets of companies. Since then, brand equity -the financial value of the brand- has become a point of interest for management. Before this new era, the value of companies was measured only by the set of tangible assets at its disposal (lands, building, machinery, inventory, etc.). Nowadays, it is commonly agreed that there is a big component of real value that lies in the minds of customers: brand awareness, image, trust and reputation. Since 1985 many company acquisitions have come to support this belief with selling prices that were over

the value of their balance sheets, e.g., *Rowntree (Kit Kat, After Eight)* was bought by *Nestlé* for three times its stock market value or twenty six times its earnings.

The term "brand" has been defined differently across history depending on the academic background of the authors and also depending in the discipline perspective from which brand was perceived. The classical definition of brand was settled by the AMA (American Marketing Association) in 1960 as:

"A name, term, sign, symbol, or design, or a combination of them which is intended to identify the goods or services of one seller or a group of sellers and to differentiate them from those of competitors".

This classical definition has evolved during time integrating internal and organizational processes, being broader to try to cover all the different aspects related to brands. However, there is not a common accepted final definition and each author comes up with his/her own definition. For example, K. L. Keller's definition is based in cognitions:

"A brand is a set of mental associations, held by the consumer, which add to the perceived value of a product or service"

But this definition doesn't integrate the product itself as part of the brand and it is considered as an external element. This implies that brand management would only have a communication task, which is totally false. Actually, brand management starts with the product or service as the core of perceived value and, additionally, intangible value must be added. Furthermore, brands are not only about cognitions but also about emotions.

From a financial perspective, a brand can be seen as an intangible asset that is part of the balance sheet. By its nature of asset it is supposed to produce benefits over a long period of time but brands can be called conditional assets as they are subjected to the support of other assets (conditionality) to deliver such benefits (*Kapferer, 2008)*.

From a legal perspective, brand is internationally defined as "a sign or a set of signs certifying the origin of a product or service and differentiating it from the competition". This legal perspective is very helpful to defend brand's rights from infringements and counterfeiting and although it is not the core of brand management it has some important implications that a brand manager must take into account when carrying out his/her activities (This topic will be further developed in section 5).

From a marketing perspective, brands can be seen as names that have the power to influence consumer's choices. In the world where we live, with a vast amount of goods to be compared at the marketplace and few time to make our purchasing decisions, brands become a risk-reducer by conveying certitude and trust. They are a tool to overcome our perceived risk regarding the price, the functionality, the performance, the durability, the quality, etc. and even a way to manage our self-conception and the social conception that others will have about us. Usually, it takes time for a brand to get power of influence over consumers and when it has it, it can be lost if the brand is mismanaged. When this occurs, a brand could keep its awareness, its image and its market share but no longer influence purchasing decisions (Kapferer, 2008). Consumers don't buy products only because of the brand name, but also for the promise of tangible and intangible benefits it is supposed to deliver. Branding is about making promises and maintaining them along time.

Unifying the several brand perspectives, it can be argued that brands far from being mere promotional tools to be used by the marketing department are important assets for companies that -if well managed- can provide a competitive advantage over a period of time. Thus, as the goal of strategy is to build such sustainable competitive advantages, brands become (like patents, designs or rights of use) a strategic tool to achieve them. For this reason, brand strategy is a key element of corporate strategy.

3. Overview of Brand Management (1985-2006). Theoretical Background.

Since Brand Management theory started to be developed in 1985 till the present time there have been two main paradigms in the academic branding disciplines: one focused on a positivistic point of view and the other on an interpretative perspective. Although both paradigms use different methodology for explaining the phenomena, they are based on the common intention of understanding behaviour. (Riley et al., 2000)

The positivistic/empiricist paradigm is based in the principle that truth exists firmly with independence of the observer, who may have a partial perception of it. That is, there is an objective reality and people can know this reality and accurately describe it. Positivism tries to define the laws that illustrate, explain and manage outcomes. In other words, positivism believes in causality, it assumes that there are cause and effect connections that explain natural phenomenon and the goal is to discover the patterns that explain these relationships. To find out truth, the positivistic paradigm relies on quantitative

data collection through empirical experiments and evidence (Zikmund, 2000). In brand management, the positivistic paradigm considers the brand as an asset owned by the marketer who controls and utilizes it to influence a passive customer. That customer is said to be an "economic man" who acts rationally and by self-interest (Zaichkowsky, 2001; Heding et al, 2009). This paradigm holds that the brand equity is created by the owner/manager and the brand is seen as "a manipulable lifeless artefact (product plus that is created by its owners/managers and that can be positioned, segmented and used to create an image)" as written by Hanby (1999).

The interpretivism/constructivism holds that the truth is relative as it is a construct created or affected by the observer. As reality is constructed by subjective thoughts, predictions cannot be made. It defends that human behaviour cannot be explained by the same laws that apply to physical sciences because humans are qualitative different from natural phenomena. People behaviour must be studied as active agents. The basic premises of this paradigm are:

- The world is made up of objects that have determined social meanings.
- Social life consists in interactions and therefore is continually changing.
- Language represents an essential part of social life and people understand their experience according to the symbols they find in their primary groups.
- People make decisions according to their subjective understanding of situations in a determined moment. People base their actions in interpretations.

The interpretative paradigm relies on qualitative methods like interviews and subjective observation to try to explain the perceived truth by the individual (Zaichkowsky, 2001). In brand management, the interpretative paradigm states that the customer has an active role in the relationship with the marketer and the brand and its equity is considered to be a product of such interaction between these two agents. As pointed out by Hanby (1999), brand can be seen "as a living entity (with a personality with which we can form a relationship and that can change and evolve over time)"

Under these two main paradigms, various brand approaches have appeared over time coexisting and completing one to each other from different insights. These approaches will be now presented by their order of appearance and in their historical context following the classification Heding et al. made in their

book “*Brand Management: Research, Theory and Practice”* after an extensive analysis of more than 300 brand management articles.

3.1. Period 1985-1992: Company/sender focus

In this very first period of brand management, the positivistic paradigm applies being the company perceived as a sender of brand communication. Brand managers formulate a brand vision and act like senders when communicating it. The message directed to the audience is a combination of the corporate name, the corporate identity, the trademark, the product and the positioning, being all this elements perceived as a unity. These five parts of the message have to be in harmony in order to transmit a reliable brand image. Brand becomes then the essence of strategy and management is called to control all matters relating brand. With this background, the two first approaches appear: the economic approach and the identity approach.

3.1.1. The economic approach

The concept of brand management was born inside *Procter & Gamble (P&G)*, the largest company manufacturing goods for households, when a young employee of the Camay soap product campaign called Neil McElroy decided to write one of the memorandums that were used for internal communication in the upper echelons of the company in which he explained how he believed the different brands of *P&G* could be promoted. McElroy realized the Camay soap campaign went so well it was cannibalizing sales from other *P&G*’s products, so his idea was to put a hierarchic team of people composed by a brand manager, a brand assistant and a workforce to perform the different tasks under each of the product brands of *P&G*. This way, each team would focus their efforts exclusively on promoting its brand through decentralized decision-making, like if they were separate businesses, providing each brand product inside the company’s portfolio a different personality. McElroy’s ideas made sense to the company’s president who implemented a product-centered platform structure following the ideas of his worker. After this, *P&G*’s products started to be perceived by the customers as different to each other and to those of the competition, so the company could target them separately and achieved a great success. Since then, product differentiation became a key point in marketing and advertising. The neoclassical economic theory and the classic marketing theory provided the basis that *P&G* used to deal with brand management and are the main

building blocks of the economic approach. Furthermore, the economic approach is based in the following premises:

- Adam Smith's 'invisible hand': Resources are allocated in the way the optimal outcome for both individuals and the society is achieved.

- Customers behave as 'the economic man' who makes rational decisions based on perfect information trying to maximize his own welfare.

- The brand-consumer exchange is produced as an isolated event every time a transaction has to be made (no long-lasting relationships) following the above premises.

- The transaction cost theory, by which customers may not choose the product that has the greater utility for them if transaction costs (e.g. search costs) are high, making worthwhile to acquire a product that has less utility but fewer or none transaction costs. Transaction costs appear to be barriers to utility maximization that brand management has to eliminate using the proper marketing mix in order to facilitate transactions.

"The economic approach builds on one of the most fundamental concepts in marketing, namely the idea that the right marketing mix will generate optimal sales"- according to Heding et al. Concretely, it has its roots in the early marketing theory from the 1950's and 1960's which still is valid nowadays (Constantinides, 2006). Companies manage their brands to try to attract and affect the customer's brand choice by configuring a unique recipe of their marketing mix (the 4P's: product, price, place, promotion). "The creation of brand value is investigated as influenced in changes in e.g. distribution channels, price modifications and promotions" (Heding et al., 2009). The purpose of managing brands is to stand-out of competitors and the brand itself is not considered to have any emotional value for customers, who are merely receptors of the brand communication issued by the company. As customers are said to be rationale in their decisions (positivistic paradigm), the marketer will try to obtain the optimal mix that creates the greater value for customers, so they will choose his brand over those of the competitors.
To get that exact marketing mix that will drive into superior brand performance companies have to collect large quantities of data. Marketers utilize quantitative data that they obtain from research through laboratory experiments and supermarket scanner systems to try to determine the

reason why customers choose brands (Heding et al., 2009). Mathematical modelling and statistical analysis are key in this phase to explain how empirical observations are linked. One of the main goals is to obtain valuable information about how customers react when a change is produced in each factor of the marketing mix.

Main critics to this first approach to brand management argue that the marketing mix's brand-building qualities are questionable and that it is totally founded on micro-economic theory and not in empirical research. Despite of all the drawbacks that this approach may present, it is still suitable as planning and execution brand management tool and it constitutes the starting point from where the brand management discipline is developed in later more complicated theories.

3.1.2. The identity approach

The rationale behind the identity approach comes from Peter Behrens, a consultant of the German turbine manufacturer *AEG*, who advised the company to create a unified identity of the brand. To do this, the products, logos, advertisements and company publications had to be in the same consistent unified line. In the late 80's, Behrens ideas started to influence brand management and Abratt (1989) made an in-depth study of corporate identity and corporate image that developed the concept in which this approach is based. In this context, after future research the concept of brand identity as a conjunction of organizational identity, image, reputation and corporate identity was born. This approach to brand management has influences from numerous academic fields such as graphic design, organizational culture and behaviour studies or strategic management. Unlike the economic approach, the identity approach believes that customers form images of companies based on the attributes they perceive and in the experience they get. For this reason, brand equity creation doesn't rest only in the hands on the managers but also in all the workers of the organization, especially in those who are in the lower part of the organogram and get in touch with customers. Hence, brand management cannot be focused in short-term product tactics (like the 4P's in the economic approach) and must be directed from a strategic (long-term) corporate level. It is no longer an exclusive matter of the marketing and sales department and it becomes a responsibility of the top managers. At this point, the concept of corporate branding arises, conveying unified messages to be created at a corporate level and then shared within the whole organization. Corporate branding is "a move towards conceiving more integrated relationships between

internal and external stakeholders linking top management, employees, customers and other stakeholders." (Schultz et al., 2005)

Lego –one of the top toy sellers in the world- is an example on how to shift from product to corporate branding. In the mid 90's *Lego* experienced a decline in sales and after some research they discovered the problem was that its famous product *Lego Brick* was an impediment to growth as people identified the brand with that particular product and not with the company. To resolve this situation, they shifted from their previous product-focus situation to a corporate brand focus where the brand image and the strategic vision were aligned in the shape of creative and learning toy producers.
Contrary to the remaining other seven approaches, the brand-consumer exchange isn't key in the identity approach. In this approach, the brand-consumer exchange considers all potential stakeholders as receivers of the brand communication. In the first years, this relationship between the company and all stakeholders was assumed to be linear, i.e., the common belief was that the brand identity could be completely managed by the company. In later years, this thought evolved to a broader perception where identity was context-dependent and thus couldn't be linear. It started to be perceived as a negotiation between internal and external stakeholders.

They key point in the identity is the concept of brand identity which is supported by four pillars (the two first are internal and the other two external to the organization):

- Corporate identity: It is the conjunction of different visual, physical and behavioural facts that make a company recognizable to all stakeholders. It emerges when visual identity (names, logos, colours, sounds, smells, etc.) matches behaviour (the way workers in the organization think, behave and work). As Wally Olins (1979) stated, "the fact of matter is that when an organization has a clear idea about itself, what its business is, what priorities are, how it wants to conduct itself, how it wants to be perceived, its identity falls fairly easily in place".

- Organizational identity: It has to do with behavioural and cultural aspects that affect brand identity. "The organizational identity provides a cognitive and emotional foundation on which organizational members build attachment. It also sets the scene for how employees create meaningful relationships with their organization" (Heding et al., 2009)

- Corporate image: It is the mental picture that comes to mind of people when hearing a brand's name. It can change and evolve in time as it is composed of various psychological impressions (performance, pronouncements, media, etc.). It is not what or where the company is but how it is perceived by the stakeholders. For this reason, it is very important for companies to project one single image to all of them.

- Reputation: It is the stakeholder's evaluation of the brand equity. It is based on what the company has done and how the company has behaved in a long period of time. Reputation can also be enhanced through communication and public relations.

According to which of these four topics is subject of study, the method used to collect and analyse data will vary. When studying the corporate identity, heuristic methods will apply to get information about historical and actual strategic and visual expression of brand identity. When looking for the organizational identity, anthropologic and cultural studies will contribute with knowledge about cultural manifestations. By contrast, the study of image uses a mixture of qualitative and quantitative methods.

As Heding et al. wrote, "research and management of the four supporting themes adding up to brand identity require very diverse data collection methods and a variety of skills and processes to implement in practice, because they respond to very different constituencies". The aim, however, is not getting information about these topics separately. The way the four pillars of brand identity relate are the key of success as they must be aligned. Manager's first aim is to ensure that all stakeholders experience a strong brand identity in all contacts with it, what can only be achieved if there is a perfect alignment of these four key areas. Nevertheless, in practice it can be difficult because each of them have different drivers. Corporate identity is created by the top managers but organizational identity rests in the hands of the employees. Image and reputation depend on all stakeholders. For this reason, gaps in the alignment between the vision (corporate identity), the culture (organizational identity) or the image can arise. After detecting and neutralizing the possible gaps, a process of alignment must be carried on:

1) Brand identity is stated by the corporate managers. Core values are articulated. (Who are we? What do we want to become?)
2) Brand identity is organized. Link the vision, the culture and the images.
3) Ensure all stakeholders are supporting the creation and implementation of brand identity. Make them get involved through culture and image.

4) Integrate all identity types into a unique brand identity. Get the alignment done.
5) Monitor new gaps do not appear and brand performance is at the desired level.

The identity approach has still validity nowadays and most companies build and manage their brand identities to express the exact values and capabilities they want.

An example on how to create a strong brand identity is *Quicksilver* –the surf, snow and skate product manufacturer–. Since the company was born in 1970, their owners were part of the same environment as their customers. Even nowadays, *Quicksilver*'s employees are 'living the brand', sharing the passion for board riding and getting in touch with board-riding communities. The company also organizes and supports many activities and events related with board riding around the world.

3.2. Period 1993-1999: Human/receiver focus

In this second period, the attention is no longer focused in the company and the receiver of brand communication becomes the central subject of study. New research articles investigate the receivers of information and different branches of phycology are adapted to brand management theory. Both quantitative and qualitative methods are used (and sometimes mixed) but qualitative research becomes more important and data collection is considerably reduced. In this interval of time, three new approaches to brand management appear:

3.2.1. The consumer-based approach

Customer-based equity holds in the assumption that brands are cognitive constructions that customers create in their minds. This approach was born in 1993 when Kevin Lane Keller published an article called '*Conceptualizing, measuring, and managing customer-based brand equity'* in the *Marketing Journal.* Since this article was published, the term of brand equity started to be widely accepted and used by other authors and according to Holt (2005) the consumer-based brand equity described by Keller is the most comprehensive treatment of branding.

Contrary to the first two approaches, the consumer-based approach places the customer in the centre of the attention. This implies that the brand equity is

developed outside the organization and thus there must be a shift from a corporate strategy focus to an external strategy focus. In the consumer-based approach the consumer 'owns' the brand as it is a mental construct, so brand strength resides in strong and unique constructs in customer's minds and brand value creation is controlled by them. However, brand image creation still rests in the hands of the marketer who has to feed customers with the right information so that customers pick his brand over the others. According to Heading et al. (2009), "the customer 'ownership' of the approach is paradoxical; even though the customer 'owns' the brand, he or she is still treated as a generic entity that the skilled communicator is able to 'program' into intended action".

The consumer-based brand equity derives from the information-processing theory which is in turn based in the cognitive consumer perspective. Next, this theoretical progression will be explained:

(**Cognitive consumer perspective**→Information-processing theory →CB brand equity)

The cognitive consumer perspective is based in the cognitive phycology and sees the customer as a computer who is exposed to information from the environment that will cause the stimulus to behave in a certain way. By the cognitive consumer perspective researchers were trying to understand how we store knowledge in our memory, how we remember and how our attention is captured to find out how this process leads to brand choice. Experiences in our live provide us with knowledge that is stored in our memory and retrieved from there when needed. Knowledge is composed by nodes (mental representations) of information and links between them that are structured into associative networks. For example, if we hear the word *'Ferrari',* other words like cars, luxury, expensive, Italian, high-quality, powerful, sportive, racing, F1, etc. will come to our minds. Also associated images to that word like the logo of a rampant horse, the red colour, a particular model of car or the Formula 1 model appear in mind. Same happens with sounds, smells, tactile experiences, etc.

(Cognitive consumer perspective →**Information-processing theory**→CB brand equity)

The information-processing theory seeks to explain how customers process the information before making a choice. According to Bettman (1979), "the customer is characterized as interacting with his or her choice environment, seeking and taking in information from various sources, processing this information and then making a selection from among some alternatives". Customers commonly make questions themselves prior to purchasing goods.

Does this product satisfy my needs? Shall I buy this or other? Which brand offers a higher quality? When and where should I buy it? “The marketer should seek an understanding of these choice processes in order to fine-tune marketing communication to make the customer choose as intended” – Heading et al. (2009).

(Cognitive consumer perspective →Information-processing theory →**CB brand equity**)

According to Keller (1993), “customer-based brand equity is defined as the differential effect of brand knowledge on consumer response to the marketing of the brand”, i.e., it is the brand knowledge in the mind of the customer that results in favourable action towards a brand when there are multiple brand choices. This brand knowledge can be divided into brand awareness (brand recognition and brand recall) and brand image (mental associations). If the brand is recognizable and recalled, then brand image can be drafted. Brand image is a set of associations of tangible and intangible aspects of a brand, attributes, benefits and attitudes. By defining brand association (favourability, strength and uniqueness) it is possible to compare customer-based equities of different firms.

For gathering data in this approach there are mainly two methods: the input-out method (inputs are altered to watch changes in outputs) and the process-tracing method (explain choice processes through verbal protocols, prompted protocols, etc.).

The marketer in the consumer-based approach is meant to constantly monitor markets and to ‘program’ the best brand communication to catch customer’s attention, make the brand known to them, position it and make it consistent. When building the brand image, especial attention must be paid to align it with the customer’s most relevant and congruent mental associations. As memory is supposed to store permanent codes, to gain consistency repeated efforts to position the brand must be carried on. Marketers commonly balance the strong sides of the identity approach with those of the consumer-based approach as ‘founding the brand solely on consumer associations can lead to a lack of vision for the brand’ (Heading et al., 2009).

3.2.2. The personality approach

This approach starts from the fact customers automatically ascribe personality to brands and it pretends to answer the questions of how and why consumers choose brands with certain personalities and thus how these persuading brands can be used to create and empower brand equity. Brand personality can be defined as “the set of human characteristics associated with a brand” (Aaker, 1997). It is both the personality that the brand is trying to endow and the personality that the consumer perceives. In this approach customers drive their purchasing choices based in the need of self-identity and self-expression. They do not only take into account functional characteristics but also symbolic benefits of products. Like human personality, brand personality is both distinctive and enduring. Building a strong and attractive personality (usually by human-like characters) can be an element of differentiation and brand power. For example, the hygiene product manufacturer *AXE* is seen as a brand with attributes like masculinity, individuality, seduction and unconventionality. *Weight Watchers* does not only sell weight-loss solutions but also empathy and empowerment. Brand personality also provides a symbolic signal value through stereotypical/ideal users of the brand. It is a tool for companies to gain differentiation and positioning and for building emotional links with customers.
The personality approach has influences from the human psychology (different categorizations of human character) and from the behaviour research (how customers use brands for their self-construction). The subjects of study are brand personality and customers self. The more customers perceive a brand as a reflection of their own personality, the greater is the personality of the brand. A powerful and differentiated brand is that with a high level of personality that is perceived by customers as a tool for constructing and expressing themselves. Brand personality is supported by three themes:

1. Personality: This concept has its origin in the human psychology. It tries to predict and explain the mental characteristics of humans that make them behave in a certain way when facing a determined situation. It also helps to understand how humans connect with other humans and what role are the different personalities playing in those relationships.

2. Expression of consumer self: Customer’s symbolic consumption of brands can be explained because humans consider possessions part of themselves, attaching them meanings. Material possessions become an ‘extension of the self’. In words of William James –cited by Belk (1988)–, the ‘self’ can be defined as “the sum total of all that he can call his, not only his

body and his psychic powers, but his clothes and his house, his wife and children, his ancestors and friends, his reputation and works, his lands and yacht and bank-account". But possessions change over time as the individuals substitute them by others when they feel that those are not expressing their actual ideal self-images. Belk (1988) exposed that, in modern life, through our possessions we gain our identity, we can define our past pathways and we learn, define and remind ourselves.

3. Brand-self congruence: Consumers choose brands projecting a determined personality in order to identify themselves with those attributes that match their current or ideal definition of self. Also, "customers who prefer a particular brand because of its personality endow and influence the brand personality with their own self and symbolic signalling, strengthening or weakening the brand personality" (Heding et al., 2009). The brand manager must ensure the brand is appealing the right customers in order to get the brand's personality strengthened and not weakened.

To study brand personality and consumer's expression of self a mixture of quantitative and qualitative methods is used. Quantitative methods provide a solution for categorizing and uncovering brand personality. Qualitative data allows understanding the complex nature of consumer self and how brand personality can be used to enhance it. Research is very important to find out which parts of the consumer's self-construct are relevant for a specific brand.

The main goal of the brand manager is to instil the brand with an attractive personality that enhances customer's creation and expression of self. A strong brand personality can create a feeling of association to customers and persuade them to purchase that brand over the competitor brands. It can also be an important source of consumer loyalty. The marketing activities must be aligned to the brand image because otherwise customers could feel that inconsistency and abandon it.

3.2.3. The relational approach

Humans are social beings that relate one to each other for different reasons and with different intensity. Some of these relationships are lifelong (family, couple, close friends…) while others are more volatile and only last for the period in which persons are sharing experiences (university, work, etc.). In the same way, customers' relationships with brands can be of diverse nature. Loyalty can

be seen as a long-term relationship in the brand-customer exchange where the customer chooses the brand on a continuous basis. Brand relationship theory tries to explain how and why these long lasting relationships take place. It is based on a brand-consumer relationship where there is an equal exchange between the two parties and where brand value creation is shared. In this approach, however, the consumer starts to be seen as the real 'owner' of the brand. In the consumer-based approach the consumer was said to 'own' the brand but this can be questioned as brand manager was a 'computer programmer' that could manipulate customer's choice as if they were 'information-processing computers'. The relational approach is leading brand management into the 21st century and supposes a shift from the positivistic paradigm towards the interpretative paradigm with this new perception of the consumer as the 'owner' of the brand.

Phenomenology is the basis for the relational approach. It is the qualitative philosophical study of the structures of consciousness and subjective experience. Phenomenology assumes that each individual possesses an inner reality as opposed to the objective reality defended by the positivistic thought. This inner reality is a construct that the individual makes according to his/her lived and felt experiences.

The relational approach is based in the meaning created in the interaction between brands and consumers (the relationship is no longer linear). The reality "consumers experience with brands is often phenomenologically distinct from those assumed by the managers who tend them" (Fournier, 1998). As each consumer relates with a brand in an individual manner and has an individual inner reality construct about it, the investigations in this approach are carried on individually.

The supporting themes for this approach are the animism and the relationship theory. The animism is simply the attribution of personality characteristics by humans to objects. Consumers tend to animate and humanize brands fruit of their interaction experience. The relationship theory considers that human relationships are phenomena influenced by different sources that can lead to life themes, life projects or current concerns.

The brand relationship theory is the core theme of this approach. It argues that brands with human personality attributions can serve as relationship partners for consumers and be used for solving those life projects, life themes and current concerns. According to Heding et al. (2009), "the role played by brands in the life of the individual consumer is deeply linked to the overall identity and the way the identity is reflected in their human relationships". People with lasting human relationships tend to be loyal to brands while people with dynamic human relationships are less likely to be loyal to brands.

The role of the brand manager is to make these brand relationships as meaningful and lasting as possible. Fournier's BRQ (Brand Relation Quality) is a construct that pretends to make quality, deep and strong consumer-brand relationships. The perceived quality of the relationships is based in six important facets: love/passion, commitment, interdependence, self-connection, intimacy and brand partner quality. However, the relationship is also affected by the actions of the both parties. These actions affect the durability and stability of the relationship and make it be in a constant flux. Hence, management becomes a complex and unstable process.

As this approach is based in the phenomenology, qualitative methods must be applied in order to try to understand the inner reality of consumers. To do so, the most common is to carry on depth interviews and life stories (sometimes a combination of both). In-depth interviews permit "the understanding of the subjective meanings of customers' lived experiences with brands […], establishing consumer validity of the brand proposition as a whole" (Fournier, 1998). Life stories, on the other side, contribute with important information that links the statements gathered in the interviews with stages on the individual's life story and thus linking the consumer's experiences with his/her identity. According to Kleine et al. (1995), "Identity is reflected in one's life narrative, or life story, capturing various roles including past, present, and anticipated future selves. My life narrative describes the path of my identity development; it defines who I am, who I have been, who I am becoming, and/or who I am no longer".

Data analysis becomes an arduous work as transcribed interviews and life story telling represent mountains of unstructured data that, in addition, is difficult to categorize. For this reason, it is necessary that the researcher has an insider perspective that allows him/her to pinpoint important themes that could be beneficial for the research.

Because of the complex nature of human relationships and the difficulties in gathering and categorizing data related to them, there are no clear managerial best practice guidelines. However, the literature suggests that successful management of the brand relations can be achieved if the brand acts as a true friend. Brand managers should adapt the strategy based on the fluctuations of the consumer-brand relationship. Managing requires then to understand and to be informed of customer's living experiences. This, however, leads again to information overload. The researcher has to value if the benefits he/she obtains from deepening in the loyalty concept are worth the difficulties of getting the data. "The trick is to find some common factors in the meaning negotiation between the brand and key customers and integrate them in the branding strategy" - (Heading et al., 2009). Furthermore, brands should be honest when

approaching customers and give some benefits to them according to the inconveniences they are incurring when sharing information.

3.3. Period 2000-2006: Cultural/Context focus

The last period of brand management theory development emerges from academic discussions as well as from environmental changes that affect the way humans consume brands. Technological and cultural changes have driven to new phenomena such as autonomous consumers, brand online communities, brands icons and anti-branding movements. In order to try to explain this new reality, new theoretical tools appeared leading to two new approaches: the community approach and the cultural approach.

3.3.1. The community approach

This approach is an approximation to brand communities. Brand communities are consistent conversations and interaction among loyal consumers of a particular brand. *Harley Davidson* is more than a brand; it's an exclusive community where passionate customers sharing the same interests and the same lifestyle feel pride to belong to.

These brand communities -sometimes driven by the marketer and sometimes by consumers interacting on their own- are used to share brand experiences and stories. Brand communities are an important focal point for consumer loyalty and an important source of brand value. "The brand communities are social interaction entities that reflect the situated embeddedness of brands in the day-to-day lives of customers and the ways in which brands connect consumer to brand, and consumer to consumer" (Muñiz & O'Guinn, 2001).
This approach introduces the role of interacting groups of consumers to the negotiation in the brand-consumer exchange and the perspective of social brand management. The conversation is no longer between the marketer and a consumer. Now the marketer communicates to potentially millions of customers as the conversation will be reproduced between customers after the marketer interacts to a group of them. By this approach, brands "are social entities experienced, shaped and changed in communities. Therefore, although brand meaning might be ascribed and communicated to consumers by marketers, consumers in turn uncover and activate their own brand meaning, which is communicated back to the marketers and the associated brand community", according to Brown et al. (2003). Brand communities can be a double-edged

sword: the social benefits that consumers can experience by consuming the brand and being part of the community can add significant loyalty to the brand but also negotiation power is shift to consumers and any negative action perceived by the community (such as a bad marketing move) can be collectively rejected and create a big harm. If we add the capability of consumers of communicating rapidly and to a huge audience through Internet, this represents a big threat that brands must handle (this matter will be deeply analysed in the section 4 of this paper).

Apple Newton discontinued personal computer is an example of how brand communities can take the lead and add for brand meaning. When *Apple* abandoned this product, its users decided to overrule that management decision and they created an online brand community with more than 22.000 daily users that provide from technical support and software creation to story-telling about this product.

The relationships between consumers of the same brand are key in this approach. “Members feel an important connection to the brand, but more importantly, they feel a stronger connection toward one another. Members feel that they ‘sort of know each other’ at some level, even if they have never met” – Muñiz & O’Guinn (2001). This is due to legitimacy and oppositional brand loyalty. Legitimacy refers to the sentiment of members of a brand toward the attitude of others consuming the brand for the ‘wrong’ or the ‘right’ reasons. Oppositional brand loyalty refers to the sharing of dislike towards competition brands that users of a particular brand may have. For example, *Coca-Cola* consumers usually dislike *Pepsi*. Also *Apple* product owners tend to criticize PC’s. The ‘sense of moral responsibility’ by which users of a brand community feel sense of duty towards the community and its members also contributes to group cohesion.

The methods used to analyse brand communities come from the ethnology and have a socio-cultural perspective of men. Data collection is produced by phenomena count and small samples with great variation are sought.

Brand managers can basically manage brand communities in two ways:

- As observers: Whether in face-to-face venues or in virtual communities, managers can obtain valuable information by observing the interaction between groups of consumers and deduct from there brand meaning. This brand meaning can be later used to market new products and the information about user experiences can help driving the marketing of these new products. However, managers should be cautious because community members like to feel autonomous and may resent if they realize they are being spied. The dilution of the brand mystique is also a

threat as actions carried on by community members could harm its appeal. Although communities are an important source of intimate consumer information, marketers from other brands can have access to the information.

- As facilitators: Brand communities can be a powerful force and facilitating these communities can be a great retention tool. The social interaction around the brand can increase brand loyalty and create brand meaning. The marketer must be cautious and discreet, acting in the background and try to engage members to the brand but also to each other. Intentional marketing do not please community members, so no sales must be directed to the communities and the focus must be to enhance brand loyalty that later on will hopefully derive in sales.

3.3.2. The cultural approach

This last approach tries to discover how brands (and thus brand management) are affected by cultural influences and how brands can influence in culture. The focus of analysis in this approach broadens from the individual consumer level of the previous approaches to a macro level. The literature of this approach focuses in two main topics of interest: how to use the cultural forces in society to build iconic brands and what are the concerns related to anti-brand movements.

Starbucks is an example of a brand facing these two sides of the coin. On the one hand, it is a brand that was founded in 1971 with a single shop which by 2006 owned 12.440 establishments around the world. The company changed the way coffee is consumed world-wide by its '*Starbucks revolution'* and became a world brand icon. On the other hand, *Starbucks* faces anti-brand movements that criticize and accuse it of being a cultural imperialist and act against the fair trade rules. As Thompson and Arsel (2004) wrote, "Starbucks has become a cultural icon for all the rapacious excesses, predatory intentions, and cultural homogenizations that social critic attribute to globalizing corporate capitalism".

Brands are subjected to cultural changes which are out of manager's control. This means that brand managers are not the only authors of brand meaning and it implies that a manager who gets to understand the cultural currents could manage to press these cultural issues of the time. Managers will try to endow brands with cultural meaning to play a role in consumer's culture. According to

Heding et al. (2009), “The brand is seen as a storied product putting shared myths relating to cultural identity projects up for consumption”.
The supporting theme of this approach is the cultural consumption introduced by Grant McCracken in 1980s, by which goods not only have a utility but they also carry and communicate cultural meaning. This cultural meaning flows from the culturally constituted world to the lives of customers by the consumption process of consumer goods. The cultural meaning is incorporated into products by the advertising and the fashion system.

The theory of cultural branding by Douglas B. Holt is the core them of this approach. This theory pretends to explain the strategic principles on how to create and manage a brand by making use of culture to later convert it into a brand icon. Cultural icons (and thus brand icons) are exemplary symbols that offer to the majority of people the most potent and relevant solutions to the cultural situations –general concerns- of a determined moment in time.
The Rolling Stones logo of an illustration of lips and a tongue is one of the most recognizable symbols for rock & roll worldwide. Another example of iconic brand is *IKEA*, if you think of equipping your home with furniture at an affordable price, then it automatically comes to your mind. The logotype of *Coca-Cola* has remained the same since its beginnings and it is instantly recognizable anywhere. But this iconic status is actually only achieved by a few brands and permits them to have a visual power that represents an intrinsic advantage over competitors. Although there is no guide on how to become an iconic brand, empirical research has found common denominators in actual iconic brands that will now be introduced with the case of *Snapple* –juice drink producer- as a practical example:

- Iconic brands have been able to perform a powerful myth by targeting cultural contradictions. *Snapple* managed the discontent of the American society of the 90’s regarding the labour market situation by creating a myth of a company run by amateurs and thus suggesting that the overpaid elites weren’t needed. The consumption of its fruit drink became a way to support that cultural meaning.

- Iconic brands are activists that act as cultural leaders that drive the way people thinks through story telling. *Snapple* engaged the situation of social discontent before anybody else even noticed the problems.

- Iconic brands are artistic in the sense they provide new and original things and share their own unique visual expressions. *Snapple’s*

branding activities were radically new in aesthetics and in line with the political voice of the company.

- Iconic brands must transmit a deep understanding of the values it represents and try to be perceived as a populist voice. *Snapple* gained credibility in the eyes of the public when it endorsed the brand through two radio hosts that represented defiance against the establishment.

One of the major challenges for iconic brands is to keep their status through time and cultural changes. The myth has to be reinvented continually to match the political, economic and socio-cultural reality. According to Holt (2004), “Iconic brands remain relevant when they adapt their myths to address the shifting contradictions that their constituents face”.
Anti-branding movements tend to analyse branding actions with concerns about human rights, cultural degradation and environmental issues. They claim that consumer desires are manipulated using advertising and question whether there is real value in the selling proposals of iconic brands or if they only sell empty images and promises. These movements monitor corporations from close and exert pressure on them to comply with the corporate social responsibility.
Data collection for analysis is gathered by different methods and from different interpretive research traditions. These include phenomenological interviews, case methods, ethnographic immersion and semiotic decoding of cultural manifestations. The findings obtained from the collected data are then interpreted from a macro level perspective.

4. The importance of managing brands on the internet

To continue with the evolution of brand management through history, this section will focus in how the technologies of the 21st century have affected the consumer-brand (and consumer-consumer) relationship and how brand management is called to drive this relationship to a positive destination.
The way business takes place nowadays has nothing to do with how it was one or two decades before. Today, almost all consumers in the developed world own a computer, tablet, smartphone or any other device with internet connection by which they can search, compare and read opinions and analysis of a product before purchasing it –online or at the store-. Since internet has become a very important marketplace, brands need to position themselves there to be visible and accessible to customers. By setting a webpage,

companies get presence in the internet -that means worldwide- and they can show and sell their products to a wider public, give pre and post-sales support, etc. But this is not enough. Brands need to have a deeper interaction with customers and this is done through social media.

4.1. Social Media Marketing (SMM) as a key tool for managing brands

Social media refers to the use of an online platform composed by several instruments of communication to share information with others. Social media mainly differs from the traditional media in the fact it is a bidirectional way of communication, it's a conversation where all participants can take part. It allows users to share photos, audio, video, documents, votes, ratings, comments and all kind of information with others and get feedback from anyone who is interested. It provides a way communities of people with common interests can easily, quickly and effectively communicate through the internet. Social media is one of the branches of web 2.0 and includes social networks (such as *Facebook, Twitter, LinkedIn*…), blogs, microblogs, wikis, podcasts, forums and content communities (*YouTube, Flickr*…).

"*Social media marketing (SMM) refers to the process of gaining website traffic or attention through social media sites*" (Tratter, C. ,Kappe, F., 2012). It is an increasingly important component of digital marketing communication and its corporative function is to evaluate the impact of social media in a business and use methodically these social media in order to achieve specific marketing goals for the company. One of its principal objectives is to produce content that users are likely to share within their social networks so that the brand exposure and the customer reach are increased. But although businesses generate content, the major part of it is actually produced by users and that's precisely where the power (and the danger) of SM resides in. Social media is like a huge conversation and that's why brands want to take part of it. If that user generated content made by any potential or current customer of a firm refers positively about a product or the organization itself, then the most powerful form of marketing -the so called electronic word of mouth- will be taking place (Akar and Topcu, 2011). Internet represents a huge shop window where firms can not only show and sell their products but where they are exposing their brand image to the world. This is why firms must pay a lot of attention when using the social media, as any action perceived by the audience in a negative way can translate into a big damage to its reputation. One of the keys to success when managing

social media is to give the attention to the customers and let them generate the content because at the end, no one can better influence customer's behaviour rather than other customers. As Rosalind Henshell (2012) stated, "*everyone loves a recommendation and social proof such as reviews, feedback and comments are one of the most powerful features online at the moment*". Companies can start and participate in SM conversations about products, promotions and customer service to obtain valuable information about their customers and support them raising the way the organization is being perceived. Despite SMM is a powerful marketing tool, normally it's used to support other traditional marketing methods rather than to replace them.

4.1.1 Key benefits of using SMM for managing brands.

- It allows firms communicating to a much wider audience in a much rapid way than by traditional media. With SM it doesn't take hours or days to send information to customers, the message can be transmitted in seconds. For example, the giant grocery retailer *Walmart* has more than 23 million users on *Facebook* and yet it only takes *Walmart* a 28 minutes average first response time to communicate back to them.
  Moreover, the content that can be shared using SM is more diverse (photos, videos, ratings, comments…) and entertaining than in the traditional media. It allows creating an interaction with customers that empowers the perception of the brand. *Bud Light* is a great example of a high engaging brand using social media. It usually creates contests where users can actively participate, on its *Instagram* account they do not only post photos but let customers to participate and upload theirs and its *YouTube* channel is used for placing commercials.

- Direct feedback and knowledge can be obtained from both current and potential customers. According to Rosalind Henshell (2012), "*by invoking questions about the usability of your experience you will get an understanding as to what clients are looking for*" and "*you will be able to gauge how to improve things in the future*". In addition, the intelligence gathered allows firms to detect early warnings of product issues and to perform a better brand reputation management. The isotonic drink brand *Gatorade* uses its pioneer *Gatorade's Mission Control Center* to gather important information from their social media channels that impact decision making. By this tool, they compile detailed sentiment analysis about how their products are seen by customers that allows *Gatorade* to drive its future movements.

- It can be used to attract customers by building brand communities. *Nike+* is an example of brand online community where personal connections are built, peer-to-peer support is given and interaction between members to achieve training and performance goals takes place. Creating funny videos on *YouTube* is probably the best way of making the message become viral as users love to share videos through this channel. *Heineken* is an example on how to engage their public with humourist videos using *YouTube.* But humor is not the only way to engage the public on this channel. The key is to provide content focused in the interests of the target audience. *GoPro*, the high-quality sport cameras manufacturer is a master in this topic, with a huge *YouTube*'s community fed not only by the videos they upload showing images taken by its cameras of sport professionals performing their tricks but also for the big quantity of videos created and shared by their customers. Also, if a firm uses social networks such as *Facebook* or *Twitter* to create a fun community that catches users attention by posting frequent updates, then traffic can be derived to the main web page of the company increasing the chances of making more sales. *Taco Bell* tries most of times to create funny ads and its social media accounts aren't different. They create clever pictures to make followers laugh and try to respond with humour when other brands criticize them. Communities can have a great impact among users as "*customers also rate the opinions of their pairs, friends and family highly, so they can be highly influential*" – according to Chaffey, D. and Ellis-Chadwick, F. (2012, p.539).

- It allows establishing a brand and increasing its awareness. According to *Statista,* 25.9 millions of people in the UK use a social network at least once a week, and this number is forecasted to grow up to 27.7 million in 2013 and 29.4 million in 2014. Since social networks are a channel through which a huge and increasing audience can be reached, firms are likely to position there to raise their brand exposure. This is especially important taking into account that most of a firm's competitors will have presence in social media sites.

- Creating connections. Rather than increasing sales, social media offers virtually limitless opportunities for building and managing long-term relationships with customers. By sincerely taking care of customers' complaints and by hearing and answering customers' questions and queries firms can show to their communities that their brand "*has integrity and values interaction, criticism and debate and more importantly knows how to deal*

with it'- as James Debono argues. All this makes the brand being perceived by their customers as a close person rather than as a business, what leads to an increase in customers' trust and loyalty. *Carnival Cruise Lines* got a problem on one of their ships that had to return to port. After the issue, lots of the passengers were complaining on social media. The company soon wrote on its *Twitter* account the following statement: *"Our company was founded on the idea of providing great vacations to fun loving Americans and clearly we failed on this cruise"* and then responded carrying with the expenses of transport and accommodation of its disappointed passengers. In the end, the company dealt with the problem and most customers kept loyal to the firm.
SM can also be used to reduce costs in after-sales service. "*Customers can even leave messages on your page if they have a customer service concern. Social media marketing enables you to provide them with assistance on-the-spot*" - as Miranda Brookins from *Demand Media* explains. Many times, however, users in a brand's community that may have experienced the same issues in the past do the firm's job providing customer support to new users (often through forums).

- Social media can also be used to have an eye on the competition. As long as competitors have presence also in the social media a firm can "spy" what content about new products and promotions they are making public. This implies having an early source of information on competitors' movements that can help a business to quickly adapt to changes in market. It can provide relevant information on how competitors are managing their brands online that can be used to neutralize their marketing efforts.

- Developing partner networks. By using social networks -especially *LinkedIn*- brands can obtain business contacts and create connections that may lead to strategic partnerships in the future.

4.1.2 Key drawbacks of using SMM for managing brands.

- The main problem with SMM (especially social networking) is that it is very time-consuming. Firms must dedicate human resources to constantly monitor what's going on in each network, posting valuable information for customers, responding users' comments and extracting intelligence from users' interaction. This may not be an issue for big firms with great marketing budgets such as *Coca-Cola* or *BMW* but it definitely is for small businesses.

- Marketing campaigns and even brand images can be very affected by negative responses of users. As pointed out by Strauss, J. & Frost, R (2012), "*company or individual executive reputations can be lost in a matter of hours online*". Unhappy customers, ex-workers and competitors are able to post comments on a brand's social media site and there is no way to stop them doing it. "*Bad news can go viral as easily as good news and can do your business irreparable harm*" - according to Tracey Sandilands. As an example, the case of Dave Carroll can be cited. Dave was a country-musician with no fame that one day took a plane of *United Airlines* where the company's workers accidentally broke his guitar. The company got out of Dave and refused to repair his guitar or to pay him a new one. Dave decided to carry his personal vendetta creating a song with the title "United breaks guitars" that posted on *YouTube* (click here to watch the video). After 12 million views and a few interviews in traditional media, *United Airlines* tried to communicate with him but it was too late: by that time he was a celebrity with no time for calls and United had already lost its reputation.
  The only way companies can face this big danger is to manage properly their media sites by constantly monitoring them so that a quick response can be done to try to neutralize that harmful posts. Of course, this leads to the drawback stated above: the need of dedicating human resources. And going further, there is a big danger of placing in the hands of one person (or a few people) the whole's brand reputation. The car manufacturer *Chrysler* twitted on 2012 "I find it ironic that Detroit is known as the #motorcity and yet here no one knows how to fucking drive". This statement fall as a bomb on followers and made a big harm to the brand. Later, *Chrysler* had to apologize and announced that it won't renew the contract with *New Media Strategies* (the subcontract firm running its social media sites).

- It mainly attracts current customers who are already loyal to the brand but there is needed for much more effort in order to gain new customers. There is a need to dedicate time and resources to create content that current users are likely to share, so that they can influence new customers.

- Social marketing can be seen as intrusive. "Some avid social network members feel that marketing and advertising is intrusive to their privacy" as Rhonda Abrons wrote. According to Web Pro News, 80% of SM users consider social networks as low security sites when it comes to sharing personal information. The fact ads in social media sites are shaped to the user's interests from personal information (like web browser cookies) can

have negative and offensive reactions and can finally create repulsion to the brand.

- Social media cannot compete with face-to-face relationships and if poorly managed it can lead in a dehumanization of brands rather to contribute to make them close and personal. For example, if a firm utilizes *Twitter* automated messages (auto DMs) for responding customers, then they will perceive that the firm doesn't care about them, harming the existing relationship and the brand image perceived by the customer.

5. Brands protection in Spain. Legal implications for Brand Management.

This last section will be focused in the legal implications for brand management in Spain. The principal normative regulating the use of brands in this country (and in the European Union, when common normative applies) will be presented with the aim of getting an insight of what are the actions a brand manager is permitted and prohibited to carry on according to law.

5.1 Justification of the existence of protective and distinctive signs of the firm. Spanish regulation.

In a free competence market it is needed that the demanders of products and services have not only knowledge about prices but also about other characteristics of the product such as the quality. For this reason, it is very important that products can be easily identified and differentiated by the customer from those who produce and commercialize other firms within the same industry. On the other side, business owners incur in costs for raising the quality of their products and improve their commercialization, costs of design of their distinctive signs and publicity that allow the firm and its products to be known and identified so that they can rise their reputation, their volume of sales and their clientele. So, both the customers and the business owners are interested in the existence of laws defending the protective signs of the firm. Although this protection could be achieved by the "Ley de Competencia Desleal" (the law defending fair-trade in Spain), the distinction between competitors is so important that the lawmakers had decided to give the owner of the brand the exclusive and excluding use over their distinctive signs creating other laws that reinforce the penalties for the offenders.

To be worthy of this protection, the distinctive signs must follow the principle of novelty, that is, signs must be different of any others currently used by other competitors, and the principle of specialty, which allows to use two or more similar signs owned by different owners when used in products or services of different markets (Appendix 1 –Synopsis of the sentence of the “Tribunal Supremo” of 17th March 254/2000, Camel vs. Kamel).

The distinctive signs regulated by the Spanish lawmakers are:

- The commercial names, that allow the business owners to be identified in the market.
- The trademarks, that identify the products and services that the business owner places in a market.
- The shop signs, which identify the headquarters where the business owner develops his activity.

Before 1988, brands were regulated in Spain by the “Estatuto sobre Propiedad Intelectual de 26 de Julio de 1929”. In 1988 the “Ley de Marcas” was made following the European Directive Project 89/104/CEE of the 21th of December 1988 by which all the Member States of the European Union approached their laws regulating the use of brands. Later, when the Project became finally a Directive, a new adaptation of the Spanish law was required, being the “Ley de Marcas 17/2001” introduced and further developed on the 12th of July of 2002 by the “Real Decreto 687/2002”.

This law regulates the Spanish brands, which must be registered as trademarks in the “Oficina Española de Patentes y Marcas (OEPM)”. International brands are registered in the World Intellectual Property Organization (WIPO) and they are automatically registered and protected in Spain under its national legislation and in the rest of countries that have ratified the European Treaty of 1981 also under their own legislations. The European brands are registered in the “Oficina de Amortización del Mercado Interior (OAMI)” and are regulated by the rule 40/94 which is common for all countries in the EU.

5.2 Requisites for a sign to be registered as brand. Absolute and relative prohibitions

The property right over a brand is gained after paying a tax and registering it in the OEPM as a trademark. However, this gaining of a right over a brand will only take place if the acquirer has act in good faith. The “Ley de Marcas” doesn’t protect those who register a brand under fraud of the rights of third

parties or infringing legal or contractual obligations. Also, there are some brand rights that can be acquired before their inscription in the public registries. For example, the regulation protects owners of non-registered brands that by their volume of sales, duration, geographical range or prestige reached in the marked are considered as “notorious brands”, allowing brand owners to oppose to a registration of an identic or similar brand that produces identic or similar products and that could generate confusion among customers. Furthermore, when the brand is known by the general public, the so called “renown brands”, the legislation gives it protection no matter it is registered or not against other brands commercializing any kind of products (breaking at this point the specialty principle).

According to the “Ley de Marcas 17/2001”, a brand is the sign that can be graphically represented using letters, numbers, images, sounds, tridimensional shapes, colors or any combination of them that is used to distinguish in the market the products of a firm from those of its competitors. However, there are absolute prohibitions when registering a sign. It is the case of signs that are so generic that they cannot accomplish its distinguishing function; when they are contrary to law, ethics or public policy; in case they can confuse the public about the quality, origin or nature of the product; or when they are reproducing official emblems of the Spanish government with no authorization. When trying to register a sign with one of these prohibitions, the OEPM will deny it and in case it has already been registered the same organism will exercise actions to declare it void.

Relative prohibitions apply when similar or identical signs to an existing brand are being used to designate similar or identical products or services if there is a risk of confusion between them. Other cases of relative prohibitions are the use of a name that can be related by the public to a different person rather than to the petitioner or a previously registered name, in which case the authorization of the name holder is needed. A brand with a similar or identic social name of an existing legal entity can neither be registered if it is going to be used in the same activity and can confuse the public. In all cases of relative prohibitions, the OEPM can only deny the petition if the owner of the registered brand opposes to the concession and in case it had already been registered, he will only have the right to ask for the nullity if he had opposed to the use of that brand in a period of 5 years.

5.3 Contents of the right of using a brand

A registered brand confers its owner the right of its exclusive use in the economic traffic. Also, if published in the "Boletín Oficial de la Propiedad Industrial", it makes possible to prohibit the use of that sign to commercialize similar or identical products or make publicity of it by third parties with no consent of the owner. The registry of a brand gives the owner a ten-year-right over that sign counting from the day the application was made and it can be renewed for periods of ten more years after paying a tax. There is no issue in letting the brand owner monopolize the use of a brand as, contrary to inventions, there is no general interest in the brand becoming of public domain. Rather than that, the general interest is to keep brands in the hands of their owners as it permits to identify it indefinitely on behalf of the customers. Nevertheless, to avoid brand owners holding brands unnecessarily to impede other businessmen to use them, the legislation imposes brand owners to use their brands in Spain in a period of five years since its concession, by themselves or by third parties (concessions).

The regulation does not allow brand owners to add new brands to their products (for example, producer + distributor) or to make any reference in their products to other brands. It neither allows a brand owner to oppose to the commercialization by third parties of products marketed in the European Economic Area (EEA) (with some exceptions) or worldwide. This impedes a brand owner in Spain to oppose to the import of products proceeding from other EEA countries with the same brand. However, he could oppose to the import of that products if the country where those products come from is not in the EEA. As an example, the Sentence of the Court of Justice of the European Union of 20th of November of 2001, case *Davidoff S.A.* vs *A&G Imports Ltd.* (Appendix 2).

5.4 Nullity and expiry of the brand.

The inscription of a brand can be cancelled by nullity or expiry. The brand is void if declared so by a mercantile judge. In the case of absolute prohibitions, the request of nullity can be presented by the OEPM, any physical person or legal entity, representative associations of businessmen or consumers or by affected customers. In the case of relative prohibitions, the request can only come from the currently registered brand owner.

Brands in Spain can expire in the following cases:

- In case it hasn't been used in a period of uninterrupted 5 years unless there is no cause attributable to the brand owner or the use has been conceded to a third party.
- In case it is not renewed after its ten-year-period of license.
- In case the brand owner renounces to use it.
- If it stops having distinguishing properties.
- In case it generates confusion among the public.

5.5 Actions to protect the rights of brands.

In case a third party uses a brand without the permission of its owner, the owner will have the right to:

- The cease of the actions infringing his rights, with a compensation of no less than 600 euros per day till the violating actions stop.
- A damages-compensation for the loss in reputation, business interruption and general damage plus a 1% of the profits that the offender gained with the operation.
- The necessary actions to withdrawal the offending products, the publicity and packaging to prevent the violation to continue.
- The destruction of the offending products or transfer to humanitarian purposes.
- The property of the confiscated goods.

5.6 Licensing

Brand equity has an important value that can be ceded to other firms to gain an additional source of revenues. Brands can also be co-owned, ceded in warranty as a mortgage, usufruct or franchise. The most common temporary agreement of brands to third parties is licensing. By licensing, the licensor allows the licensee to use his brand for a certain period in all the national territory or a part of it for all or a part of the products or services hold by the brand, in exchange of a compensation. It can be non-exclusive, if the licensor keeps the right of using himself the brand or to create more licenses; or exclusive, if the only right to exploit the brand remains on the licensee.
If there is no contrary agreement, the acquisition of a whole firm implies the transmission of its brands.

5.7 Commercial names.

The commercial name or trademark is a distinctive sign that identifies the firm in the business traffic and distinguishes it from those developing similar or identical activities. Commercial names can be patronymic names, legal names or entity names that can coincide or not with the firm's name. They can also be anagrams, logotypes, images, shapes, draws or a combination of them. Although they cannot coincide, the most usual is to use the same sign as brand and commercial name, both of them referring to one or various markets. If there is a conflict between a commercial name and a pre-existing patronymic name, legal name or entity name, it is the case of a relative prohibition if the owner of the pre-existing patronymic name, legal name or entity name proves the use or an evident knowledge of those signs in the reference market.
Commercial names can be transferred *inter vivos* or *mortis causa* and as in the case of brands, when a firm is acquired as a whole the commercial name is also transferred (excepting pact in contrary).

6. Concluding remarks

Brands have become very important assets for companies that can make the difference providing a competitive advantage. For that reason, companies invest time and efforts in building and empowering brands so that they can influence consumers to choose their brand from the big range of offers at their disposal. Brands are more complex than it may seem and thus they have been studied from very different perspectives across history. The knowledge that emerges of the conjunction of those studies should be the starting point of any brand manager. Furthermore, brand managers must be creative, instinctive, enthusiastic, open-minded, good communicators and good analyst. When performing their role, they must consider the many aspects affecting brands so that their decisions are in line with the desired brand image they want to create. Specially, the way new technologies impact in how information is shared among current and potential customers nowadays must be taken into account. Any bad movement could be a disaster and special care must be put in ensuring the consumers are going to interpret the message as the company wants. Brands are based in behaviors and characteristics that with time become brand images which are expected and relied upon by the customers, just like if companies made promises to customers. The best way to sustain such promises is to be honest and credible, authentic and transparent, committed and reliable.

7. Appendix1 - Synopsis of the Sentence of the Tribunal Supremo 254/2000 of 17th March 2000 (Camel vs Kamel).

The companies *RJ Reynolds Tobacco co*. and *RJ Reynolds Tobacco International* filed a complaint against *Mr.Oriol P.R.* and *Kamel Dermofarmacia S.A*. in the Spanish Court in the year 1990 when they noticed the second party was selling perfumes. *RJ Reynolds* asked for an 'Industrial Property Rights Statement' as they considered that by their condition of owners of Camel -a prestigious tobacco brand internationally recognized not only by its name but also for its logo of a camel- they had the exclusive right of exploiting their brand not only for selling tobacco and cigarettes but also for the rest of products under the same Brand's Official Nomenclature or International Classification (which in this case includes perfumes).

In turn*, Mr.Oriol P.R*. and *Kamel Dermofarmacia S.A.* filed a counter lawsuit against *RJ Reynolds* to stop them using the name *"CAMEL"* in perfume products as it may lead consumers to confusion and they claimed a compensation for the damages caused.

In the year 1993 the judge of the lower court stated that *Mr.Oriol P.R*. and *Kamel Dermofarmacia S.A.* didn't have the right to use the name CAMEL (with "C") to distinguish and commercialize perfume products and that *RJ Reynolds* must cease their production, sale and publicity of perfume products and similar under the name of Camel (with or without the camel logo) as it was against the rights of the *Kamel* brands. They were also condemned to make the sentence public on the TV, shopping malls, shops, newspapers, etc. and to pay a compensation for financial loss and general damage.

The sentence was appealed in 1995 and the "Audiencia Provincial de Barcelona" determined that *Mr.Oriol P.R*. and *Kamel Dermofarmacia S.A* .did have the right to use de name *CAMEL* (with "C") to name and distinguish perfume products.

In 2000, the sentence of 1995 was re-appealed to the "Tribunal Supremo" (the highest Court) that ratified the decision of the judge of the lower court saying in its sentence that the principle of speciality permits the simultaneous existence of two or more brands -identic or similar to each other- belonging to different owners (such in this case, with *Camel* as a tobacco seller and *Kamel* as a perfume seller).

Therefore, *Camel* cannot commercialize different products than those for which it initially inscribed the brand because the right to do so has already been given to a third party under an identic or similar brand name (in this case, *Kamel*) and it could lead to consumer confusion. However, the sentence also considers that *Mr.Oriol P. R* and *Kamel Dermofarmacia S.A.* cannot use graphical symbols in their logo that could make the initial "K" look like a "C" as it would be an irregular exploitation of Camel's commercial reputation and could also lead to consumer confusion.

8. Appendix2 - Synopsis of the Sentence of the Court of Justice of the European Union of 20th of November of 2001 (Davidoff vs A&G Imports).

The company *Zino Davidoff S.A.* signed an exclusive distribution contract with a distributor from Singapore who committed to sell *Davidoff's* products to other sub-agents outside the EEA (European Economic Area) with the prohibition of selling those products outside of the agreed territory. However, the company *A&G Imports Ltd.* acquired products from the Singapore's distributor and imported and tried to sell them in the UK eliminating partially or totally the lot number written on them.

Zino Davidoff S.A. filed a lawsuit against *A&G Imports Ltd.* in the British Court complaining that the sale of those products in the UK was infringing its brand rights. *A&G Imports Ltd*. alleged that by the article 5 of the European Directive 89/104/CEE of 21 December 1988 the import and sale of those products were done under the tacit consent of *Davidoff S.A* as they were acquired from a distributor from Singapore contracted by *Zino Davidoff S.A.*

Zino Davidoff S.A. in turn said they didn't give their consent and they had to oppose to the import and sale of such products with altered or eliminated lot numbers.

The British Court suspended the procedure and asked the Court of Justice of the European Union (CJEU) in which circumstances can it be considered that the owner of a brand has consented, directly or indirectly, the import and commercialization in the EEA of its brand products that are in possession of third parties and being commercialised outside the EEA.

The CJEU answered that the consent of the brand owner towards a third party for commercializing products in the EEA that have been already commercialized outside the EEA is given if there is proof that the owner has renounced to his right of opposing to the sale of those products inside the EEA. However, a tacit consent can never come from a lack of communication between the brand owner and the third party or from the lack of imposition of prohibition in the products or from not imposing specific clauses in the contracts between brand owner and distributor. The CJEU added that although *A&G Imports Ltd* didn't know about the opposition of *Davidoff S.A* of importing and selling those products in the EEA and although the authorised suppliers (the distributor from Singapore) didn't place clauses prohibiting such imports in the contracts, *Davidoff S.A.* has by law the right of opposing this operation.

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