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THE ROLE OF A TRADEMARK ATTORNEY THEN, NOW AND IN THE FUTURE

Jerry Härkönen

Trademark lawyer

Leitzinger Oy

e-mail: jerry.harkonen@leitzinger.fi

Abstract. The first trademarks in Finland were registered in 1889 which means that the trademark system has existed for a little longer than 130 years. Just by looking at the number, it is evident that the trademark system has undergone some quite significant changes which, in turn, means that the role of a trademark attorney has changed quite significantly, too. The purpose of this paper is to look into the factors which have potentially affected and sparked the change in the system and to offer some insight as to what the system and the role of an attorney working with trademarks will look like in the future.

Keywords: trademark attorney, branding, legal services, Finland, Nokia, intellectual property.

To approach a question like this, I feel like the most logical order is a chronological one. Thus, I will look first into the history of trademarks and branding in general.

Short history of Finnish industry and IPR. As already stated above, the whole trademarking system was launched in Finland in 1889. Just by looking at the year, it is evident that Finland was quite a bit different back then. It was an autonomous part of Russia up until 1917 and generally the Finnish economy relied quite a bit on heavy industry such as forestry and agriculture. After the wars in early 20th century, Finland was one of the poorest countries in the world which naturally meant that trademarking in general wasn't too high on the priority scale. The country was struggling with depression and famines and the general emphasis of industry was simply primarily to allow Finnish people to survive. This general trend is also reflected by the amount of trademark applications, which between 1900 and 1950 was only 2,104, meaning that on

the average, the Finnish trademark authorities received just a bit over 42 applications per year. In comparison, For the period of next 50 years, the corresponding number was 127,855 meaning that the average number of received applications per year rose to more than 2,557. Although the history of trademark attorneys in Finland especially during the early years of independence is not too accurately documented, it could be assumed that the role of a trademark attorney was more an educational one as trademarks in general were not very popular.

The emphasis on the heavy industry can also be seen in the general field of IPR in the form of popularity of patenting, which still today, seems to be the main choice of IPR by Finnish companies. The patent-system was also introduced almost 50 years prior to the trademark system, which in turn supports this finding. Even in the modern day, Finnish IPR-offices and agencies handle predominantly patent matters and according to my own experience the ratio is somewhere around 1:3–1:4 in the favour of patents. In the light of these estimates, it seems that Finland has, and most likely still will be for a while at least a patent-oriented country, which in turn is also reflected in the role of a trademark attorney as well.

Why the situation has been what is described above is obviously a sum of various different factors. However, it is still possible to highlight a few most important ones which have had an impact on the situation: location, language and population. As Finland is located in the northernmost corner of what we nowadays know as the European Union and surrounded largely by water, it is obvious that the country wasn't exactly a trading hub or a "hot spot" of commerce especially in the early 20th century when moving around and transporting goods was slow and technologically limited. At the time, the railway network (which nowadays is quite extensive even on European scale) was still largely under construction which simply meant that especially the rural areas were generally hard to reach and transportation of goods to these areas was tricky to say the very least.

In the mid 20th century, the population of Finland was just a bit over 4 million, which also explains why the hard-to-reach country was not a very popular trading area as the size of especially consumer markets was very limited. This factor also partially explains why the economy was quite heavily concentrated on heavy industry rather than consumer-goods. Naturally, this has also resulted to a situation where trademarks

were (and still to some extent are to this day) seen as more supporting forms of IPR alongside patents rather than something the companies would primary rely on. In the grand scheme of IPR-protection, this also meant that the role of a trademark attorney would be quite limited when compared to for example that of a patent attorney.

These two factors coupled with the somewhat cryptic Finnish language, which doesn't belong to any of the major language families and which isn't really spoken anywhere else outside the Finnish borders, it is easy to see why the Finnish markets haven't been among the most appealing ones in the eyes of foreign companies.

What the above illustrated situation meant for the role of a trademark attorney is however interesting. As trademarks were not in general very popular, it meant that an attorney handling these matters was also a somewhat "rare breed" and especially in the case of a Finnish company expanding to foreign markets, one of the most important things was to be well connected as Finland did not join the international trademark system until 1970. In practice, this meant that especially before that era, good relationships with foreign colleagues able to file trademark applications outside Finland were crucial.

Modern day. Nowadays the Finnish markets are quite a bit different than in the 20th century. Especially the rise of Nokia sparked a somewhat new era in Finnish industry and also IPR-scene as it became one of the first companies to utilize IPR's on a larger scale. This phenomena sparked some general interest in other companies, too, as Nokia was one of the first companies to be able to demonstrate the value of licensing of not only patents, but trademarks, as well. For a trademark attorney, this meant simply more business and general interest towards trademarking as an alternative to patent protection.

Despite the significantly improved and diversified economy and the rise of trademarks as a viable form of protection of intellectual property, the role of trademark attorney is still heavily influenced by the history of Finland as a predominantly patent oriented country. In practice, this means that the role of a trademark attorney is still more of an educational one rather than anything else as trademarks are still not to this day too widely recognized and the level of knowledge of what trademarks can and should actually be used for is still lacking when compared for ex-

ample to the situation in the US. Even in the media, trademarks are still often confused with patents which does not at least make the life of a trademark attorney any easier.

Despite the introduction of international- and EU-trademarking system along with new technology enabling for example the utilisation of AI and online-filing, Finnish trademark attorneys still on a regular basis find themselves educating clients on the basics of trademark protection rather than offering strategical advice on how to utilize intellectual property rights in a way that would support the business strategy and enable greater profits.

The above however shouldn't necessarily be viewed in a negative light, but rather as an opportunity for discovering new ways of helping clients succeed in their respective fields.

Future. As always, predicting the future is far from being an exact science. Despite this, one prediction is bound to be fulfilled: the role of trademark attorneys will undergo a significant change. From a Finnish and EU-perspective, the signs of change are already visible as companies become more and more aware of the possibilities trademarking can give especially for companies such as startups, which do not necessarily have the time or resources for choosing patents as their IPR-weapon of choice.

We have already seen the rise of artificial intelligence in the field of law in the form of for example robot lawyers used to overcome parking tickets and other rather "simple" tasks. More and more companies offering different automated services for example for trademark watching and searching are emerging on the markets which for a trademark lawyer inevitably means one simple thing: adapt or die. It also means that utilizing different AI-products in the trademark world will become cheaper, more efficient and easier to use. For a trademark attorney, this in turn means a significant shift in their role, which will most likely be more and more consultative in the future, rather than just acting as the "missing link" and filing responsible between the client and the relevant IPR-office.

In this paper, I will look deeper into the history, current state and future of trademarking especially from a viewpoint of a Finnish trademark attorney to find out how the role of a trademark attorney has changed, due to what reasons and what the future might look like.