

TRADE NAME, FIRM, DENOMINATION SOCIALE AND RAISON SOCIALE. ARE THEY ALL THE SAME?

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Abstract

The present study intends to point out the different designations used to indicate business identifiers and verify whether they facilitate the minimization of the two types of transaction costs usually mitigated by such identifiers.

Even when the Paris Convention for the Protection of Industrial Property was being drafted in the 19th century there were ample debates regarding the need for an international protection for trade names. And even then the reports presented to the Congress then mentioned the fact that national protection for trade names was provided for under various designations and with different scope in the countries that were analyzed.

Since the determination of the various designations used has as its starting point the provisions of the Paris Convention an analysis starting from the designations used in France is necessary. A comparison with the terms used in Germany and France is then provided so as to offer a wide array of models for business identifiers that are to be later assessed as against their ability to mitigate transaction costs.

Key Words: Trade Name, Firm, Dénomination sociale, Raison sociale, Firma, Business identifiers, transaction costs

Introduction

The present study deals with the protection of business identifiers defined as names benefitting from legal protection and used so as to primarily identify a trader. Business identifiers are at the intersection of company and intellectual property law and thus are the object of debate as to their nature and scope of protection. Since company names are mandatory in modern jurisdictions for the incorporation of any trader and similar protection is afforded to traders acting as natural persons and to other associative organizations, they are normally dealt with by either company law or the law relating to such associative organizations. Trade names are, on the other hand, protected as industrial property rights by the 1883 Paris Convention for the Protection of Industrial Property and should thus be offered protection under the special provisions of national and international law dealing with the protection of industrial property.

The economic dimension of industrial property protection concerning distinctive signs is traditionally anchored in the assumption that such rights allow for the minimization of transaction costs for the consumers. Trademarks especially have been evaluated in what regards the scope of protection according to their ability to fulfill their economic function of minimizing such transaction costs.

The present study aims to point out that business identifiers can be themselves evaluated by their ability to mitigate such costs under two dimensions. However there are differences in the names under which such business identifiers are protected under national law and not all of them allow for mitigation of all these costs.

The study undertakes to identify the categories of transaction costs normally expected to be mitigated by such business identifiers and then to determine, by means of verification of their legal content, categories of business identifiers which although have a different name share the same important characteristics.

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There is little literature on the subject, although the various names of business identifiers have been the subject of some analysis¹ while in economic scholarship there has been research concerning transaction costs² and the effects of reputation³

The economic benefits of business identifiers

William Blackstone claimed that the invention of companies “belongs entirely to the Romans”⁴ since it is the Romans who have created the *societates* of the *publicani* and the *collegia* and *corpora* of the lower classes. One of the most important features of the Roman innovation was the idea that such associations would have a collective identity separated from those of its individual human components, i.e. the separation of identity between the company and its members taken either collectively or individually⁵. This was a major step forward from earlier forms of commercial associations in Mesopotamia, Phoenicia and ancient Athens.

The benefit a company brings is, as Ronald Coase put it in his seminal 1937 work “The Nature of the Firm”⁶, the minimization of transaction costs⁷ concerning the coordination of a particular economic activity. Such decrease in costs would normally result in an increase in both parties’ surplus which would then be reflected in the market where the company is to sell its products or services. This Pareto improvement would result in a part of the surplus being further shared with the consumers of said products or services.

Transaction costs are traditionally divided into three categories: search and information costs, bargaining costs and policing and enforcement costs⁸. Another, more recent, classification identifies four categories of transaction costs: search costs, contracting costs, monitoring costs and enforcement costs⁹. Under the latter classification search costs “include the costs of gathering information to identify and evaluate potential trading partners”¹⁰.

¹ Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), Alexandra Mendoza *Les noms de l’entreprise*, Presses Universitaires d’Aix-Marseille (Aix-en-Provence – 2003).

² Ronald Coase, “The Nature of the Firm” in *Economica*, vol. 4 (1937), pp. 386-405; William M. Landes and Richard A. Posner, *The economic structure of intellectual property law*, The Belknap Press of Harvard University Press (Cambridge, London - 2003); Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value” in *Strategic Management Journal*, Vol. 18:7 (1997); Carl J. Dahlman, “The Problem of Externality” in *Journal of Law and Economics*, vol. 22 (1) (1979); O.E. Williamson, *The Economic Institutions of Capitalism*, Free Press, New York, 1985; J.-F. Hennart, „Explaining the swollen middle: Why most transactions are a mix of “Market” and “Hierarchy””, in *Organization Science*, vol. 4(4) (1993), pp. 529-547; D. C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge, 1990 cit. in Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value” in *Strategic Management Journal*, Vol. 18:7 (1997), pp. 535-556.

³ George Akerloff, “The Market for Lemons: Quality Uncertainty and the Market Mechanism” in *The Quarterly Journal of Economics*, Vol. 84, No. 3 (Aug., 1970); Steven Tadelis, “What’s in a name? Reputation as a tradable asset” in *The American Economic Review*, vol. 89, No. 3 (June 1999).

⁴ Quoted in Oscar Handlin and Mary Handlin “Origins of the American Business Corporation” in Frederic Lane (ed.), *Enterprise and Secular Change*, Richard Irwin, (Homewood – 1953), cit. in John Micklethwait and Adrian Wooldridge, *The Company: a Short History of a Revolutionary Idea*, Modern Library, (New York – 2003), p. 4, note 7.

⁵ John Micklethwait and Adrian Wooldridge, *The Company: a Short History of a Revolutionary Idea*, Modern Library, (New York - 2003), p. 4.

⁶ Ronald Coase, “The Nature of the Firm” in *Economica*, vol. 4 (1937), pp. 386-405.

⁷ Initially termed “costs of using the price mechanism”.

⁸ Carl J. Dahlman, “The Problem of Externality” in *Journal of Law and Economics*, vol. 22 (1) (1979) pp. 141–162.

⁹ O.E. Williamson, *The Economic Institutions of Capitalism*, Free Press, New York, 1985; J.-F. Hennart, „Explaining the swollen middle: Why most transactions are a mix of “Market” and “Hierarchy””, in *Organization Science*, vol. 4(4) (1993), pp. 529-547; D. C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge, 1990 cit. in Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms

Therefore one of the cost components that the firm would normally mitigate is the cost of gathering information to identify and evaluate potential trading partners. These costs would be costs incurred by the firm (in order to secure investment, employment, supply) and by the potential investors/employees/suppliers. These costs are different than transaction costs incurred by customers when making purchase decisions regarding the products or services on the market. These transaction costs are mitigated by the trademarks available to entities at all levels (i.e. including firms, investors, employees, suppliers) as demonstrated by Landes and Posner¹¹.

Therefore business identifiers (such as trade names, emblems and the like) are useful in that they minimize transaction costs in the firm's contracting relating to issues non-related to the offering of its products or services on the market as opposed to trademarks which act as identifiers of the originator of the product or service to consumers.

Business identifiers encompass the name of the trader (be it called firm, raison or designation sociale, corporate name or business name), the name of the trader as used in his commerce (trade name, nom commercial, assumed name), his emblem and his Internet domain name (which we will not analyze in the context of the present study).

All these business identifiers serve to mitigate the search category of transaction costs by clearly indicating the identity and allowing for the evaluation of a business partner.

As shown by Dyer¹², there is a correlation between the search costs measured above, the other categories of transaction costs and the means used for their mitigation when one adopts a longitudinal perspective of costs. Thus the safeguards for transactions normally used (i.e. contracts) are complemented by alternative safeguards such as self-enforcing agreements including informal safeguards such as relational or goodwill trust and reputation¹³. These are considered safeguards requiring set-up costs and which pay their dividends over time thereby being more relevant in repeated-round games than on the short-term, where contracts appear to be preferable.

We may therefore proposition that two components are essential to business identifiers when perceived as safeguards lowering transaction costs: (1) a default (base) component allowing the firm to be identified as such by any transactor (and therefore lowering transaction costs in that a single identity is used by the same firm in all transactions and also allowing for the firm to accrue reputation, goodwill and trust under that identity) and (2) a complex component reflecting the reputation, goodwill and trust that firm has accrued over time and allowing not just the more rapid identification of said firm (thereby lowering costs more than the default component and therefore acting as an enhanced first component) but also the minimizing of the other types of transaction costs

Minimize Transaction Costs and Maximize Transaction Value" in *Strategic Management Journal*, Vol. 18:7 (1997), pp. 535-556.

¹⁰ Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value" in *Strategic Management Journal*, Vol. 18:7 (1997), p. 536.

¹¹ William M. Landes and Richard A. Posner, *The economic structure of intellectual property law*, The Belknap

Press of Harvard University Press (Cambridge, London - 2003).

¹² Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value" in *Strategic Management Journal*, Vol. 18:7 (1997), p. 536.

¹³ R. Dore, „Goodwill and the spirit of market capitalism" in *British Journal of Sociology*, vol. 34(4) (1983), pp. 459-482; J. L. Bradach, and R. Eccles, „Markets versus hierarchies: From ideal types to plural forms" in *Annual Review of Sociology*, vol. 15 (1989), pp. 97-118; M. Sako, „The role of 'Trust' in Japanese buyer-supplier relationships" in *Ricerche Economiche*, vol. 45(2-3) (1991), pp. 449-474; D. Kreps and R. Wilson, „Reputation and imperfect information" in *Journal of Economic Theory*, vol. 27 (1982), pp. 253-279; K. Weigelt and C. Camerer, „Reputation and corporate strategy: A review of recent theory and applications" in *Strategic Management Journal*, vol. 9(5) (1988), pp. 443-454 cit in Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value" in *Strategic Management Journal*, Vol. 18:7 (1997), p. 537

(contracting, monitoring and enforcement) by allowing for compensation in repeat orders, economies of scale and scope, lower information asymmetry and increased unilateral defection costs¹⁴.

These two components which we might, for present purposes, name the identity component and the reputational component of business identifiers need to be afforded protection by the law in order to allow for the beneficial effects to be reflected on the market.

But various national laws protect business identifiers under various names and therefore it is important to understand whether the different names under which such business identifiers are protected bring about differences in the level and content of the protection and whether under the complex framework for national protection the two components identified above are both protected by the protection afforded to the identifiers under a given name.

The purpose of the present study is to identify some of the names under which business identifiers are protected in some EU jurisdictions and to find whether the so-protected identifiers allow for both components identified above to be protected.

The terms identified

In the 1883 *Paris Convention for the Protection of Industrial Property* article 8 of the authentic French text indicates that “Le nom commercial sera protégé dans tous les pays de l’Union sans obligation de dépôt, qu’il fasse ou non partie d’une marque de fabrique ou de commerce”. Thus textual reference is made to the “nom commercial”. The official English translation indicates the article to state that “A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark”. Thus “nom commercial” is meant to be the equivalent of a “trade name”.

However, the Report¹⁵ prepared by Le Comte Maillard de Marafy for the International Congress regarding Industrial Property held in Paris from the 5th to 17th of September 1878 indicated that in Germany the law provides for the protection of *firms* – “La firme [...] est une raison de commerce, transmissible comme une marque et soumise à l’enregistrement, soit lors de la création, soit lors des transmissions, modifications, etc.”. Therefore the firm would be a transferrable *raison de commerce* that needs to be registered in order to be offered protection.

In France¹⁶ *firm* is used both *as* having a wider meaning – it is a synonym for the company (*enterprise*), commercial establishment (*etablissement*) or trade name (*nom commercial*) – and in a narrow sense – as a company name (*raison sociale* or *dénomination sociale*). In Germany *firm* is normally used only in the narrow sense¹⁷, thereby excluding the meaning of *nom commercial*.

The same author indicates that the French *nom commercial* is the corresponding name for the German *Firmenname* or *Handelsname* whereby it would designate „a commerce, whichever the form under which it takes place”¹⁸.

The German term *firma* on the other hand is said to be used as an equivalent of the French *raison sociale* or *dénomination sociale*, to which the direct German correspondent would be

¹⁴ Jeffrey H. Dyer, „Effective Interfirm Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value” in *Strategic Management Journal*, Vol. 18:7 (1997), pp. 544-550.

¹⁵ Le Comte Maillard de Marafy, « Rapport présenté au nom de la section des marques de fabrique et de commerce » in *Congrès international de la propriété industrielle tenu à Paris du 5 au 17 septembre 1878*, Imprimerie Nationale, (Paris – 1879), pp. 101 – 103.

¹⁶ Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), pp. 448-516.

¹⁷ Idem, p. 470.

¹⁸ Idem, p. 466 – „les législations allemande, belge, française désignant ainsi un commerce en général quelle que soit la forme sous laquelle il est exercé”.

*Personalfirma*¹⁹. The latter would be the one defined by art. 17 of the 1897 German Commercial Code indicating that „The trade-name of a mercantile trader is the name under which he carries on business and which he signs. A mercantile trader can sue and be sued under his trade-name”²⁰. The German Commercial Code of 1861 contained as well, in article 15, similar provisions – The firm of a trader is the name under which he carries on business and which he signs²¹.

Mention must be made of the fact that both the 1861 and the 1897 German Commercial Code contained the provisions relating to trade names in a separate section entitled *Von handelsfirmen* (in the 1861 Code) and *Handelsfirma* (in the 1897 Code). St-Gal indicated *handelsfirma* to be a synonym for *raison de commerce* or *raison commerciale*²², which were in their turn considered to be synonyms for *nom commercial*²³.

It would thus appear that at least on a linguistic level the differences between the terms appear to be cancelled out by the numerous interconnected references. However subtle differences may be yet observed when analyzing the normative content associated with those terms.

Dénomination sociale and nom commercial

St-Gal presupposes that a subtle but fundamental difference exists between *raison sociale* on the one hand and *raison commerciale* and *nom commercial* on the other. By reference to French provisions of law he indicates that *raison sociale* designates a legal person (only being applicable to such persons) and as such would be an indicator of the company’s personality²⁴ and the equivalent of a natural person’s name²⁵.

Raison sociale would thus be „the name or pseudonym designating the owner or owners of an undertaking or enterprise”²⁶. Moreover he indicates that *raison sociale* is to be differently adopted by different types of companies²⁷. In time however most companies in France came to be able to use a *dénomination sociale* (except for professional civil partnerships still required to use a *raison sociale*) even if non-commercial, thus indicating that *raison sociale* has become „a designation of only residual use in [French] company law”²⁸.

Raison commerciale on the other hand is considered to be a synonym of *nom commercial* and a designation of the very undertaking it identifies²⁹. It can be made up of a name, a *raison sociale* or a *dénomination sociale*³⁰.

¹⁹ Idem, p. 454 – the following synonyms are mentioned: *firma von Einzelkaufleuten, Personalgesellschaften, Firmenvorlaut*.

²⁰ *The German Commercial Code* – transl. A. F. Schuster, Stevens and Sons (London – 1911), p. 8

²¹ Author’s translation of Ernst Sigismud Puchelt *Kommentar zum Allgemeinen Deutschen Handelsgesetzbuch*, Drud und Verlag der Roßberg’schen Hof (Leipzig – 1893), p. 49.

²² Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), p. 467.

²³ Idem, p. 467.

²⁴ Idem, p. 457.

²⁵ Idem, p. 456.

²⁶ Author’s translation of Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), p. 456.

²⁷ Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), p. 457.

²⁸ Alexandra Mendoza *Les noms de l’entreprise*, Presses Universitaires d’Aix-Marseille (Aix-en-Provence – 2003), p. 68.

²⁹ Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), p. 467.

³⁰ Idem, p. 467.

The *nom commercial* on the other hand is shown to „tie (*rattache*) the individual to the goodwill just as his last name ties him to the family or state that he is part of”³¹. The classic definitions provided by St-Gal have, almost unanimously, as a common element the strong link between the *nom commercial* and the goodwill of the trader³².

Other definitions refer to the *nom commercial* along the same lines. Maunoury suggests this would be a designation adopted irrespectively of any distinctive form as a term to indicate his commercial establishment (*maison*)³³. *Nom commercial* would thus designate the goodwill of the trade or the trade itself rather than the personality or identity of the trader or owner of the trade/goodwill.

Maillard de Marafy quotes the Report of the French Senate Committee defining *nom commercial* as being „the simple or compound name under which traders, industrialists, producers or entrepreneurs carry on their business, industry or enterprise”³⁴.

To Azéma și Galloux *nom commercial* is the name under which a natural or legal person carries on his business; it therefore distinguishes a certain goodwill from any similar other goodwill³⁵. *Dénomination sociale* would be the name individualizing the legal person and thus be for a company what the name is for a natural person³⁶.

Philippe Bessis suggested *nom commercial* identifies (*désigne*) a company in its trade, being the name most familiar to third parties³⁷ while *dénomination sociale* would indicate (*désigne*) the company itself³⁸.

Paul Mathely, quoted by Bessis, defines *nom commercial* as “the designation by which a natural or legal person identifies (*désigne*) the undertaking or the goodwill in order to identify it in his dealings with customers”³⁹.

The definition that Yves Reboul quotes approvingly is that *nom commercial* would be an expression distinguishing a goodwill from any other identical or similar goodwill⁴⁰. The same author quotes jurisprudential definitions of the term such as: “nom commercial is the designation by which the goodwill is known and utilized and which is the rallying sign of custom”⁴¹ and *nom commercial* identifies the goodwill in the dealings with the customer⁴².

³¹ Author’s translation of Yves St-Gal „La protection comparée de l’enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d’Istanbul*, vol. 2 nr. 3 (1953), p. 465.

³² *Idem*, pp. 464-465.

³³ Maurice Maunoury *Du nom commercial. Thèse pour le doctorat*, Arthur Rousseau (Paris – 1894), p. 170.

³⁴ Author’s translation of Conte de Maillard de Marafy *Grand dictionnaire international de la propriété industrielle au point de vue du nom commercial, des marques de fabrique et de commerce et de la concurrence déloyale*, Ed. Chevalier-Marescq et comp. (Paris – 1892), Tome VI, p. 2.

³⁵ Jacques Azéma, Jean-Cristophe Galloux *Droit de la propriété industrielle*, 7^e ed., Dalloz (Paris – 2012), p. 943

³⁶ *Idem*, p. 956.

³⁷ Philippe Bessis *Signes distinctifs et distribution. De la création du produit commercial à la notoriété de la marque de l’entreprise*, LGDJ (Paris – 1998), p. 36.

³⁸ *Idem*, p. 37.

³⁹ Author’s translation of Paul Mathely *Le nouveau droit français des marques*, Journal des Notaires et des Avocats (Vélizy – 1994) cit. in Philippe Bessis *Signes distinctifs et distribution. De la création du produit commercial à la notoriété de la marque de l’entreprise*, LGDJ (Paris – 1998), p. 37.

⁴⁰ Yves Reboul „Le nom commercial et la marque” in *Melanges offerts à Albert Chavanne*, Litec (Paris – 1990), p. 283 and note 1.

⁴¹ *Sandoz*, CA Paris, 13 octombrie 1962 in „Annales de la propriété industrielle” 1963, p. 228 cit. in Yves Reboul „Le nom commercial et la marque” in *Melanges offerts à Albert Chavanne*, Litec (Paris – 1990), p. 283 note 2

⁴² Yves Reboul „Le nom commercial et la marque” in *Melanges offerts à Albert Chavanne*, Litec (Paris – 1990), p. 283

Jérôme Passa indicates that *dénomination sociale* “identifies a natural person [while] *nom commercial* identifies a goodwill”⁴³.

In a more recent study it is shown that *nom commercial*, which had been a synonym of *raison de commerce* “identifies the goodwill in what concerns (*a l’égard*) the customers”⁴⁴.

The difference, under French law, between *dénomination* (or *raison*) *sociale*, on the one hand, and *nom commercial* and *raison de commerce* on the other, is now evident. While *dénomination* (or *raison*) *sociale* designates the owner, the company or the trader himself, *nom commercial* and *raison de commerce* designate the goodwill, the trade or the undertaking.

The differences are even more evident once we take into account that the right in *dénomination sociale* is born by its adoption on the Articles of Association⁴⁵, that the claim for its protection is admissible since its registration with the Commercial Registry⁴⁶ and that its protection spans the national territory⁴⁷ no matter whether it is well-known⁴⁸ or effectively used on all the territory⁴⁹.

The right in a *nom commercial*, on the other hand, is obtained not by registration with the Commercial Registry but by means of public⁵⁰ and honest⁵¹ use. In order for such to be opposed to the registration of a trademark it must have been used in all the territory of the state of application⁵² even if it is not required that it meets the criteria for being well-known⁵³.

Firma* and *dénomination sociale

From the above we might conclude that, given *Firma*’s definition in the German Commercial Code, it would more likely be the correspondent of the French *dénomination sociale* than of the *nom commercial*.

This conclusion is further strengthened by the fact that while for *Firma* and *dénomination sociale* the law provides for very strict rules⁵⁴ relating to the components of such while French law contains no similar provisions relating to *nom commercial*.

Moreover, the German Commercial Code section concerning the *Firma* does not apply to fantasy names used to designate trade (*Geschäftsbezeichnungen* or *Etablissementsnamen*), these

⁴³ Jérôme Passa *Droit de la propriété industrielle*, Tome 1, 2^e ed., LGDJ (Paris – 2009), p. 683.

⁴⁴ Author’s translation of Alexandra Mendoza *Les noms de l’entreprise*, Presses Universitaires d’Aix-Marseille (Aix-en-Provence – 2003), p. 76.

⁴⁵ CA Paris, 16 February 1988, in *PIBD* 1988, III, p. 395 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 11, accessed on 20 May 2012.

⁴⁶ *Baby Cool*, CA Paris, 16 January 1995, in *PIBD* 1995, III, p. 191 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 11, accessed on 20 May 2012.

⁴⁷ *Gesimmo*, Cass. Com., 11 February 2003, in *PIBD* 2003, 762, III, p. 210 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 11, accessed on 20 May 2012.

⁴⁸ *Artisans du Monde*, CA Paris, 7 June 1990, in *PIBD* 1990, III p. 713 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 11, accessed on 20 May 2012.

⁴⁹ But it needs to be used - Jérôme Passa *Droit de la propriété industrielle*, Tome 1, 2^e ed., LGDJ (Paris – 2009), pp. 705-706.

⁵⁰ CA Paris, 8 March 2002, in *PIBD* 2002, n° 749, III, p. 409 and TGI Paris, 7 December 2007, in *PIBD* 2008, n° 869, III, p. 155.

⁵¹ CA Paris, 2 October 1991 in *PIBD* 1992, III, p. 7, Com. 29 June 1999, in *PIBD* 1999, III, p. 419 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 12, accessed on 20 May 2012

⁵² CA Paris, 2 February 1997, in *PIBD*, III, p. 363, *Cojuris*, CA Paris, 15 October 1997, in *PIBD* 1997, III, p. 646 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 12, accessed on 20 May 2012.

⁵³ *Cojuris*, CA Paris, 15 October 1997, in *PIBD* 1997, III, p. 646 cit. in *ACTIS/ACTISOL*, OHIM, 2nd Board of Appeals, R 736/2006-2, 13 March 2008, p. 12, accessed on 20 May 2012.

⁵⁴ Alexandra Mendoza *Les noms de l’entreprise*, Presses Universitaires d’Aix-Marseille (Aix-en-Provence – 2003), p. 70.

being protected under Unfair Competition rules⁵⁵, the same being true⁵⁶ for *nom commercial* (but also for *dénomination sociale*) in France⁵⁷.

Mention should also be made of the fact that almost all authors⁵⁸ agree that *nom commercial* is optional while *dénomination sociale* is mandatory, just like the German *Firma*.

The similarities between the German *Firma* and the French *dénomination sociale* also include the fact that the German Commercial Code specifically indicates that the *Firma* is the name that the trader signs. In France it has been shown that the sign the trader signs is not the *nom commercial* but the *dénomination sociale*⁵⁹.

As a short conclusion of the above we propose that the German *Firma* is the equivalent of the French *dénomination sociale* and is different (as the *dénomination sociale* is as well) from the *nom commercial*.

Trade name and firm

According to St-Gal⁶⁰, *raison sociale* would be the equivalent of both firm name (when used as *raison sociale* for a partnership) and a *company name* (when used to designate a company differently incorporated).

Black's Law Dictionary defines *firm* as “The title under which one or more persons conduct business jointly” and “The association by which persons are united for business purposes”⁶¹ but mention is made of the fact that “Traditionally, this term has referred to a partnership, as opposed to a company. But today it frequently refers to a company”.

A *Business Name* is the designation under which a person or an association not required to be registered does business. A Business Name could be the last name of the trader, either alone or with his first name or initial⁶² or, in the case of a partnership, all the partners' names either alone or with their first names and/or initials⁶³.

A *Company Name* is the name of the incorporated company having its own legal personality and, once adopted, cannot be changed as easily as a natural person's name⁶⁴.

A *Trade Name* is defined by the *Stroud Juridical Dictionary*⁶⁵ as the name under which a person or company does or usually did its business and by which it is known in the world of business to which it belongs. A Trade Name thus distinguishes the nature, quality and renown of his goods and of his activity.

⁵⁵ Thomas Edward Scrutton, William Bowstead (ed.) *The Commercial Laws of the World*, Vol. XXIV, German Empire – I, Sweet and Maxwell (London – 1911), p. 83, note 4.

⁵⁶ With the exception of the claim under art. L 217-1 of the *Code de la consommation*, criminal action aimed against the unauthorized use of the name affixed on a product, which is very little used in practice – Alexandra Mendoza *Les noms de l'entreprise*, Presses Universitaires d'Aix-Marseille (Aix-en-Provence – 2003), p. 435.

⁵⁷ Alexandra Mendoza *Les noms de l'entreprise*, Presses Universitaires d'Aix-Marseille (Aix-en-Provence – 2003), pp. 432-439.

⁵⁸ With the exception of Jacques Azéma, Jean-Cristophe Galloux *Droit de la propriété industrielle*, 7^e ed., Dalloz (Paris – 2012), p. 943.

⁵⁹ Thierry van Innis, *Les signes distinctifs. La propriété industrielle*, Larcier (Bruxelles – 1997), p. 69 – by analogy with Belgian law.

⁶⁰ Yves St-Gal „La protection comparée de l'enseigne, de la raison sociale et du nom commercial” – Report at the Congress of the International League against Unfair Competition in Istanbul (11-15 august 1953) in *Annales de la Faculté de Droit d'Istanbul*, vol. 2 nr. 3 (1953), p. 457.

⁶¹ Bryan A. Garner (ed.) *Black's Law Dictionary*, ed. 9, Thompson West (St. Paul – 2009), p. 710.

⁶² *Companies Act 2006* – Part 41, ch. 1, ss. 1192 (2) (a) and (3) (a).

⁶³ *Idem*, ss. 1192 (b) și (3) (b).

⁶⁴ Paul L. Davies *Gower and Davies' Principles of Modern Company Law*, ed. 8, Sweet & Maxwell (London – 2008), p. 83.

⁶⁵ Daniel Greenberg (ed.) *Stroud's Judicial Dictionary of Words and Phrases*, ed. 7, Sweet & Maxwell (London – 2010).

It would thus appear that the equivalent to the German *Firma* would be *firm* while would most easily be translated by *Company Name* and *nom commercial* by *Trade Name*.

Business identifiers and transaction costs

The conclusion that we would like to propose here is that there are generally two types of business identifiers: those that normally serve only as a default safeguard and thus mitigate transaction costs with little consideration for investment over time (*Firma*, *firm*, *dénomination sociale*, *Company Name*) and those akin to *nom commercial*, translated in English as *trade names*, which act as safeguards on both components and derive most value from being developed and consolidated over long periods of time.

Therefore it is evident that most transaction costs are mitigated not by the first type but by the second which is not to say that the second type is of a greater importance. The fact that the first type of business identifier is generally mandatory and the fact that it is used as main identifier in more numerous transactions (albeit possibly of lesser value) and with a more varied group of transactors comes only to emphasize its importance in modern economic life.

Conclusion

The present study has proposed to identify business identifier categories based upon the transaction costs they mitigate. An economic approach to the understanding of regulation of commercial life is not uncommon, but on the contrary, rather welcome. Given the omnipresence of business identifiers and the lack of a specific understanding of their purpose and the function to be fulfilled by their legal protection, some conceptual framework anchoring their importance in economic terms is likely to give more impetus to efforts aimed at deconstructing legal institutions which seem to have lost, in part, their meaning.

Future research should clarify and quantify the effects and value of such business identifiers and requalify their status of protection as either rights in names or intellectual property rights.

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