



MODERN STRATEGIES FOR A PERFORMING COMPANY MANAGEMENT

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Abstract *Beside product quality, distribution and promotion, we have a justified tendency to appraise an asset against its market price. Customers and competition are analysed from the point of view of the micro-environment. In the case of the macro-environment the attention is directed to the continuous study of all the aspects of the environment, market survey and forecast of changes according to various possible scenarios and to the analysis of the actual potential exerted by change on the capacity of companies to meet the requirements of its customers or of the targeted public. As regards the actual ways used by companies to expand their activities beyond the borders of the country of origin we distinguish five variants of strategic market penetration: indirect export, direct export, licensing, the joint venture and the direct investment abroad. The intellectual property has a paramount importance for these approaches since its highlights, its justification with solid arguments backed up by a professional appraisal and value negotiation, can contribute to a fair transaction of the entire or only part of the targeted company.*

Key words:

Intellectual property, appraisal, strategic asset, transaction, brand, exhaustion of the right

JEL Codes:

F500, M210, M310, K110

1. Introduction

Whereas we are all used with the marketing mix, with a constant positioning of company activities in relation with the marketing environment together with product quality, distribution and promotion, we have a justified tendency to appraise an asset against its market price. Customers and competition are analysed from the point of view of the component elements of the micro-environment.

In the case of the macro-environment the attention is directed to the continuous study of all the aspects of the environment, market survey and forecast of changes according to various possible scenarios and to the analysis of the actual potential exerted by change on the capacity of companies to meet the requirements of its customers or of the targeted public¹.

As regards the actual ways used by companies to expand their activities beyond the borders of the country of origin we distinguish five variants of strategic market penetration: indirect export, direct export, licensing, joint venture and direct investment abroad².

The intellectual property has a paramount importance for these approaches since its highlights, its justification with solid arguments backed up by a professional appraisal and value negotiation, can contribute to a fair transaction of the entire or only part of the targeted company.

If, in order to transact goods or services (G/S) the intangible assets of the intellectual/industrial property³ attached to G/S are integral part of the marketing mix

the same is not valid when it comes to the actual sale of such assets. In this case the marketing mix is no longer operational.

In terms of quality, characteristics, appearance, packaging, the Product, represents the combination of goods, services, ideas which the company markets. Therefore, in terms of marketing mix the product means more than a physical item. The physical execution of the product does not represent a marketing activity. However, the marketing specialists must also study the expectations of the consumers so as to be able to design the right products capable to meet those expectations. Furthermore, the concept of product includes aspects related to brand, packaging, labelling and after sale services.

The *Placement* aims at the distribution channels coverage, assortments and stocks. Also known as distribution, the placement represents the activities of a company whereby the product is rendered available to the target customers. To satisfy the customers the product must be available at the best possible moment, in the most convenient place and in the right quantities. Therefore, the marketing specialists will have to choose the best distribution network and to establish proper stock, transport and storage control procedures.

The *Price* refers to the catalogue price, sales and facilities. The price represents the amount of money the customer has to pay to purchase the product. The price is important for the customers since they are concerned with the value they obtain for their money. Often the

price is used as a competitive instrument leading to the so called „price wars”.

The *Promotion* refers to the activities aiming at promoting sales, advertising, public relations, direct promotion and sales force. The promotion represents the activity whereby the merits of the product are brought to the knowledge of the public in order to trigger purchase decisions. It is used for various reasons. For instance, the promotion can be used to increase the awareness of a company, a new product or a new brand at the level of the general public. Furthermore, it is used to inform the public about the characteristics of the product or to stimulate a favourable attitude towards the product. It can also be used as a means to renew the interest in a product the popularity of which is declining.

When two or several promotional elements are combined we obtain a „*promotion mix*”, also known as communication mix. The promotion mix is conceived depending on the company objectives, financial resources and on the target public. The main instruments used are: advertising, sales promotion, public relations and door to door sales⁴.

It can be noted that the brand, patent, design etc., are attached to G/S and they must be used by the holder with the right conferred by the effect of the law or as conferred by the holder to a third party; first G/S is introduced by brand, packaging, patent, design; all these elements contribute to the final „sale” of G/S only if the market is capable to connect G/S to the price/quality ratio which, in turn, depends on the bidder. The additional brand margin (ABM), patent margin (APM), design margin (ADM), etc., add up to the mark-up; they all start from a „zero” value and they can evolve slowly or fast contributing to the additional profit either by selling quantities of one and the same units of brand acknowledged G/S at increased market prices, or by increasing the sales volume at the same price/unit.

The brand/patent/design/etc., in themselves, are not packed and labelled and they do not benefit from after sale services; they do not have a distribution network and do not benefit from adequate stock, transport and storage control procedures; as one off elements, they do not have a catalogue price and therefore they cannot benefit from price reductions and accommodations; usually they are transacted through negotiations carried out in secrecy.

So far we have made the following assertions: i) a holder of law granted rights – individual or legal entity – who turns the respective rights to value; ii) a transferee to whom the holder transfers all the rights usually in exchange of a negotiated amount of money, the transferee becoming the new holder; iii) an exclusive licensee to whom the holder conditionally transfers the usage right, usually against a negotiated amount of

money, the holder retaining just the right to receive royalties and to cancel the contract if the licensee defaults and to regain all the respective rights; iv) a non exclusive licensee to whom the holder conditionally transfers the usage right, usually against a negotiated amount of money, the holder retaining the right to receive royalties and to cancel the contract if the licensee defaults regaining all the respective rights plus the right to offer the license to other interested parties.

A less approached topic is the way the transaction is made not with marketed/patented/authorised/etc. profit surplus carrying G/Ss but with the asset itself. In the general framework of the direct foreign investments, the intellectual/industrial property right viewed as an asset governed by the exclusive usage right is part of Stephen Hymer's theory of the monopoly advantage which asserts the necessity that the investing company should hold the control⁵. The control can also be exerted by means of the intangible asset instruments from among which the most important are the brand and the patent.

Such a transaction disregards the G/S, G/S price, G/S promotion, placement and marketing^{6,7}. The creation, protection, promotion of an asset is expensive but its comparison with other similar assets and its valorisation are no longer based on the market price but on the assessed value. The success of a product is appraised on grounds of the profit gained on the market. Whether it is sold in large quantities with a lesser mark-up, or in moderate quantities at a higher price, or the bidder speculates the market detecting the right moment to increase or reduce the price, the comparison is based on the sold product unit. The moment is speculated. This is what marketing deals with.

In the case of the intellectual property assets the transfer of rights is based on the negotiation of the asset value⁸. This value relates both to the history of the G/S and to its medium and long term potential, i.e. to its future. On the other hand, all these assets stand out as being unique. The litigious and non-litigious procedures are characterised by long and difficult fights to avoid unfair competition promoted, deliberately or by mistake, by taking advantage of confused situations or subtle similarity; non litigious procedures during the preliminary stages, before the release of the certification document or patent, when the parties get recourse to the decision making authority of the national, regional and international certification bodies (for trademarks, origin certificates, plant and animal species, industrial design, integrated circuit lay-out) and patents (for inventions, models and design in certain countries such as the US); litigious procedures – at the level of specialised courts of law. These specialised courts are more and more under the pressure of the

technical, economic and financial professions which understand and enforce the instrument of the law in the field of intellectual property (the patent attorney actually covers all the aspects of the intellectual property) as opposed to the judiciary law which has no technical, economic or financial instrument. The Law Schools do not include such study disciplines in their curricula.

According to numerous specialised works⁹ "the market value of a company is calculated through:

a) Stock capitalisation in the case of stock exchange rated companies.

$$\text{Company value} = \text{Number of ordinary shares} \times \text{The closing exchange rate at a certain date} \quad (1)$$

The value of stock exchange rated companies is known at any moment. This value may be irrelevant in the case of companies that are discontinuously rated.

b) The appraisal method of the revenue based approach which consists of up-dates of the net available cash-flow expected in the foreseeable future. The applied up-dating rate reflects the weighted average cost of the capital used by the company (own capital and loans). This company value calculation method is adequate and necessary for unrated companies but, it can also be applied to rated companies (to identify the difference between the intrinsic value of a share and its exchange value).

c) The market comparison method i.e. comparison between the transaction prices of similar companies (in size and profile).

The total value of the intellectual capital is seen as a residual value calculated as the difference between the

market value of the company and the market value of the other components of company capital:

$$VCI = VpF - VpCC - VpCF \quad (2)$$

Where:

VCI – the value of the intellectual capital

VpF – the market value of the company

VpCC – the market value of the tangible capital

VpCF – the market value of the financial capital.

It is good to know that this formula should be understood and applied in compliance with the requirements of the discounted cash-flow method (DCF)".

Well reputed¹⁰ sources offer values of international level trademarks/brands. Their appraisal is based on recognised methods and techniques (Table 1).

"The accounting standards offer no standard method for the value calculation and, in fact, these standards generally include the brand value and the related commercial goodwill into the balance sheet. In exchange, investments in intangible assets are in the best case scenario entered under the heading of running expenses. Excepted from this rule are the companies which have acquired a formal appraisal of a brand following the purchase or sale of a business. In the majority of the countries companies are allowed to recognize the value of the purchased brands/trademarks, for instance an acquired goodwill, as identifiable intangible fixed assets and to enter them in the balance sheet of the acquiring company"¹¹.

Interbrand			BrandZ			Brand Finance		
Company	Brand value 2013 (in billion USD)	Brand value as a percentage of market capitalization	Company	Brand value 2013 (in billion USD)	Brand value as a percentage of market capitalization	Company	Brand value 2013 (in billion USD)	Brand value as a percentage of market capitalization
Apple	98.3	58.0%	Apple	185.1	41%	Apple	87.3	19%
Google	93.3	20.7%	Google	113.7	39%	Samsung	58.8	32%
Coca-Cola	79.2	39.3%	IBM	112.5	56%	Google	52.1	18%
IBM	78.8	26.9%	McDonald's	90.3	94%	Microsoft	45.5	18%
Microsoft	59.6	22.9%	Coca-Cola	78.4	46%	Wal-Mart	42.3	18%
General Electric	47	19.9%	AT&T	75.5	43%	IBM	37.7	19%
McDonald's	42	43.9%	Microsoft	69.8	27%	General Electric	37.2	16%
Samsung	39.6	35.2%	Marlboro	69.4	NA	Amazon	36.8	27%
Intel	37.3	20.0%	Visa	56.1	49%	Coca-Cola	34.2	20%
Toyota	35.4	17.8%	China Mobile	55.4	25%	Verizon	30.7	23%
Average	61	30.5%		91	46.7%		46	21%

Table 1. The values of the 10 first brands in 2013 expressed in absolute terms and as a percentage of the company stock exchange capitalisation

Source: 2013 World Intellectual Property Report, Brands – Reputation and Image in the Global Marketplace, WIPO Economics & Statistics Series
 Note: the stock exchange capitalisation values are based on the New York Stock Exchange assessments obtained from Yahoo! Finance, on September 6 2013.

Source: OMPI, based on data offered by BrandZ, Brand Finance, Interbrand.

"At the beginning of 2012, IKEA became one of the first companies revealing its brand value as part of a financial transaction between a holding and one of its subsidiaries. Interogo Foundation sold the brand of Inter IKEA Systems – a subsidiary currently holding the IKEA brands, for approximately 11 billion dollars, as a „consolidation and simplification of the group structure“. The estimate was done based on internal data combined with an outside analysis"¹².

"SCN 2008¹³ acknowledges five categories of intellectual property assets¹⁴:

- a. Research and development (R & D).
- b. Mineral exploration and assessment.
- c. Software and data bases.
- d. Original entertainment, literature and artistic
- e. Other intellectual *property products* (IPP).

Each of the five IPPs can be further broken down to the following types:

- Original intellectual property products – whether or not they are produced or sold (customized).
- IPP reproduction licenses.
- Copies of the original which the owner can use for more than one year.

Services can also be rendered by the original IPPs: usually, such services are rendered by means of copies which the owners may use for maximum one year but which may also, represent services rendered by means of customized products which are not connected to a basic original, with a life expectancy of maximum one year.

SCN 2008 and BPM6 (Balance of Payments and International Investment) independently consider (the original, the reproduction licenses and the copies) as product assets. Since the assets are viewed as products, any international transaction with the such assets or any international services should be entered in the goods and services accounts.

The intangible nature of IPPs makes it easy to register them as company property if they are used in the production process of a company from a different country. This characteristic generates an incentive for companies to register their IPPs as belonging to an entity in a fiscal heaven. For instance, a cell phone manufacturer from a country with high taxation which develops its own cell phone software may opt to transfer the property right over the original software to a subsidiary based in a country/jurisdiction with a lower taxation system the respective subsidiary producing only copies of the original software to be used by the mother company. This shifts the added value from the mother company to the subsidiary although the

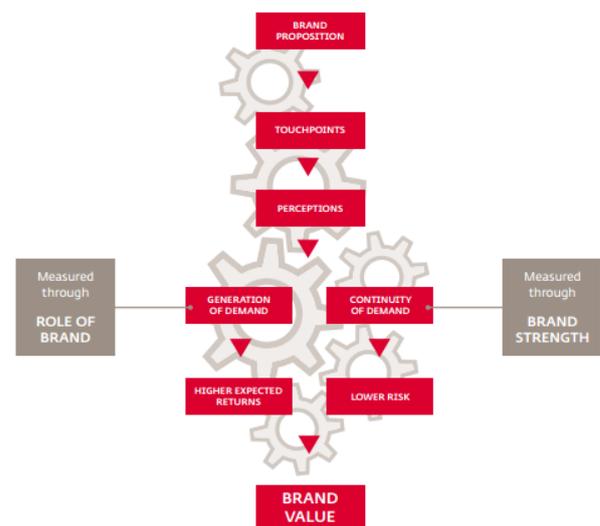
manufacturing function of the mother company remains the same.

At global level, there are specialised companies who provided and continue to provide data and methods for the appraisal of brand assets and of intellectual/industrial property assets, in general. One such company is INTERBRAND.

According to studies carried out by INTERBRAND¹⁵, "from the brand management perspective, brand appraisal is a strategic instrument bringing together in one and the same framework the market, the competitor and the financial data, based on values used to assess the brand performance level, to identify the areas that need improvement and to quantify the brand financial contribution.

From the perspective of strategy and business plan development, the same data can be used to assess the strategic options and to generate a business plan for the change of the brand. (...)

Figure 1. Brand assessment system



Source: INTERBRAND - Financial applications for brand valuation

Eventually, a wide range of financial applications for brand assessment appeared in time as a result of a series of factors including (without limitation):

- An ever greater attention paid to brands in the relationship between investors and annual reports.
- Brands that significantly increase the value of bonuses in mergers and acquisitions.
- Centralised brand governance and management of intellectual property in off-shore locations for fiscal purposes which requires both appraising and establishing adequate royalty rates;
- Brand assets considered more and more often as acceptable collateral for asset guaranteed financing;

• The accounting standards need an assessment balance sheet of brands and other intangible assets acquired following a merger/acquisition.”

However, we must not skip two incorrect reasons which, although in opposition, are as dangerous as ever: i) (under)valuation „on order” of one/several brand(s) of a company to be bought cheap by an interested third party (see Plafar case) and ii) (over)valuation ”on order” of one/several brand(s) of a company in order to be sold at a higher price to an interested third party (see the case of Editura Rosetti sold to WK).

2. The intellectual property market as a strategic asset of companies

By studying the most valuable French brands¹⁶, one can easily notice that they have seniority, market stability even if their history saw ups and downs caused by the inherent fluctuations of the home market and by the direct or indirect influence of other markets (Figure 2).

The stability and evolution of the market can also be noticed in the number of protected brands/trade names/inventions/designs.

Figure 2. The first 10 French trademarks

TOP 100 1 - 20			
Brand	Value, mln.\$	Logo	Industry
1 Louis Vuitton	14 130		Clothing & Fashion
2 AXA	5 091		Insurance
3 Christian Dior	4 346		Clothing & Fashion
4 Crédit Agricole	3 905		Financial services
5 President	3 427		Foods
6 Hennessy	3 278		Alcohol
7 Auchan	3 059		Retail
8 L'Oréal	2 949		Cosmetics
9 Moët & Chandon	2 910		Alcohol
10 Chanel	2 832		Clothing & Fashion

Source: MPP Consulting

The entrepreneurs and companies have filed in lesser applications at OSIM in 2011 as a result of the melt down of the economy. The number of brand registration applications dropped from 12,033 in 2010 to 11,600 in 2011¹⁷.

The total number of brand registration and renewal applications increased to 19,735 in 2011. Of these applications 11,251 were submitted nationally including brand renewal applications.

Bucharest holds the first place on the list of the territorial units which submitted brand registration applications with the State Office for Patents and Brands (OSIM) in 2011 even though the number of the applications dropped by 8% to 4,143 as compared with the 4,498 applications in the previous year as

communicated by Andra Muşatescu Law & Industrial Property Offices, according to Agerpres.

On the list of the administrative units which submitted the largest number of applications in 2011 the first three places are held by the county of Ilfov followed by the counties of Cluj and Brasov.

In Ilfov 517 applications were submitted for brand registration which shows a slight increase as compared to the 475 applications in 2010. In Cluj and Brasov the number of submitted applications also increased comparatively with the previous year to 452 and 277, respectively. Top 10 also counts Timis with 268 applications, Constanta 263, Prahova 23, Iasi 217, Galaţi 217, Bihor 155, Dolj 145.

The most dramatic drop in the number of applications was reported in Arges from 175 applications submitted in 2010 to 97 in 2011.

Drops in the number of submitted applications were reported in the counties of Sibiu, Vâlcea, Suceava, Hunedoara, Bistrița Năsăud, Brăila, Arad, Dâmbovița, Buzău, Giurgiu, Teleorman, Caraș Severin, Călărași, Mehedinți.

The largest numbers of applications were submitted for brands belonging to companies active in the FMCG (Fast Moving Consumer Goods) sector, including food products, beverages, clothing and shoe wear followed by brands from the pharmaceutical sector.

According to Andra Mușatescu Law & Industrial Property Offices, the entire FMCG sector registers the largest number of brand related litigations for original brand counterfeiting.

In an extremely competitive globalised environment where power is built on inventiveness and patent protection and where it is increasingly difficult to compete with the low labour cost, industrial property, as part of the intellectual property, constitutes a strategic and economic asset of paramount importance both for companies and states.

Industrial property is for a company more than a simple protection means. It is a tool for conquest and communication.

A rational policy of the industrial property could significantly contribute:

- To the protection and conquest of markets
- To the image the company wants to project on the market
- To the valorisation of the industrial property titles as long as they can be transferred or licensed.

A company which is aggressive and knows how to defend itself is sure to gain respect and notoriety.

The intellectual property protocol is a valuable asset which could substantially benefit the company when it wants to turn its assets to value.

As opposed to the other services in the field of International Transactions of the Immaterial Economy, the services offered in the field of intellectual property allow for appropriation them functioning as distinctly appraisable assets. This is mainly due to the existence of the „certificate” conferred upon the name of the company, brands, plants and animal species, industrial and layout of printed circuits, or „patent” of registered inventions and functional models. These instruments are all documents opposable to third parties, granting the holder an exclusive right to use until proven otherwise.

3. Commercially applied modern rules

a) A specific form of transfer of brand rights is the so called *tacit license* allowed for by the law in favour to a person who uses a brand without right but for which, the holder of the respective brand does not deny the use over a period of five consecutive years. No documents need signing in such a case.

b) With a few exceptions, the notion of *exhaustion of the exclusive usage right* after the first sale is consecrated both in the copyright field and in the field of industrial property. This rule also applies to computer software.

The French National Chamber of Industrial property Counsellors – CNCPI intends to launch an aggressive innovation and intellectual property plan to encourage companies to use this type of property by:

- Developing a general culture of the intellectual property in companies for a better understanding of the general mechanisms of IP, of its strategic and of its economic impact;
- Introduction of stimulating measures and provision of support to companies in their effort to use more the intellectual property, including the fiscal credit for research;
- Turning France into an attractive judiciary space in the matter of intellectual property with an excellence centre in Paris, unifying and consolidating the competences of judges;
- Developing full service offer at global level and harmonising the professions of lawyer and industrial property counsellor.

We need to highlight the evolution of Romania who reported a three times increase of brand registration in EU in 2011 and 2012 comparatively with the entire period between 1996 - 2010, which was facilitated by the following causes: i) an increase in the economic interest of the Romanian companies in the EU countries ii) an improved strategy to protect Romanian brands against the economic policy of the EU member states or of the non EU states throughout the territory of the EU; and iii) both causes.

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² Adăscăliței V. (coord), Mușetescu A., Crăciun C.-Ș, Nicolau I. – op cit, p.82

³ There are financial intangible assets (e.g. debts).

⁴ http://ro.wikipedia.org/wiki/Marketing_mix

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¹¹ 2013 World Intellectual Property Report, Brands – Reputation and Image in the Global Marketplace, WIPO Economics & Statistics Series, p.40

¹² Source: press editorials and investor provided information, August 9 2012.

¹³ The 2008 National Accounting System (2008 SNA) is the most recent version of the international statistics standard of the United Nations (CSONU). SNA 2008 is an up-date of the 1993 System of National Accounts. The inter-secretariat work group for national accounts (ISWGNA) was assigned to do the 2003 up-date in order to solve the problems generated by the changes brought about in the economic environment, by the progress in the methodological research and by the needs of the end-users.

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