

**РОЛЯТА НА ТЪРГОВСКИТЕ МАРКИ В МАРКЕТИНГА**  
**Савица Димитриеска, Таня Ефремова, Александра Станковска**

**THE ROLE OF TRADEMARKS IN MARKETING**  
**Savica Dimitrieska<sup>68</sup>, Tanja Efremova<sup>69</sup>, Aleksandra Stankovska<sup>70</sup>**

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**Abstract**

*Brand is defined as an unique design, name, sign, symbol, word or a combination of these, employed in creating an image that identifies a product and differentiates it from its competitors. At the same time it is associated with a quality, credibility and satisfaction in consumer's mind. Brand is a promise that helps consumers in their buying process. It represents the most valuable intangible asset that company possesses.*

*The legal name of a brand is a trademark. By definition, a trademark is any word, name, symbol (logo), number, colour, slogan, design, sound or smell, or any combination thereof used to identify and distinguish products from those manufactured or sold by others. Trademark is another way of referring to brands. As such, trademarks need careful handling, care, nurturing and protection; otherwise they may lose value, be stolen or simply be destroyed or lost. Choosing and defending a trademark is often a very important part of a company's marketing strategy.*

*Brands can be protected and unprotected. Unprotected brands are famous and popular and can afford not to be protected. However, a better option for companies is to protect their brands. In this modern world, where there is a trend of deregulation of businesses and industry and liberalization of international trade, along with revolutionary changes in business models and the advance of IT and communication technology, the need for brand protection is enormous. The subject of protection may be a name, logo, color, slogan, design or a combination thereof. However, there are certain questions about protecting brands regarding what can and can't be protected as a trademark, what are the most used trademarks, what are their advantages and*

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<sup>68</sup> European University-Republic of Macedonia, Skopje, Faculty of Economics, Full-time professor in Marketing, PhD, [Savica.Dimitrieska@eurm.edu.mk](mailto:Savica.Dimitrieska@eurm.edu.mk)

<sup>69</sup> National Bank of the Republic of Macedonia, Advisor, Statistics Department, [Efremovat@nbrm.mk](mailto:Efremovat@nbrm.mk)

<sup>70</sup> European University-Republic of Macedonia, Faculty of Economics, Full-time professor in Corporate Finance, PhD, [Aleksandra.Stankovska@eurm.edu.mk](mailto:Aleksandra.Stankovska@eurm.edu.mk)

*disadvantages, how to choose brand's elements that need to be protected, etc. This paper aims to answer these questions as trademarks are very important for business and marketing.*

**Keywords:** trademark, brand, protection, brand identity, differentiation, marketing

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## **1. Introduction**

The company's property can be divided into two parts: a material (tangible, physical) and immaterial (intangible) part. The material part of the company is composed of buildings, infrastructure, machines and finance. Physical property is made of up matter. Until recently this part was more important than the intangibles and it expressed the value and competitiveness of the company. The intangible (non-physical) part refers to the knowledge and skills of personnel, business strategies, business ideas, brands, design. This part represents the intellectual property, that is, a product of the mind. This part is today more valuable than the physical part. Nowadays, companies decide to outsource, i.e. to manufacture their products elsewhere, and are exclusively focused on creating, designing, innovating.

Intellectual property refers to all the inventions, patents, designs, brands, literary and artistic works, trade secrets and intangible deeds created by the mind. In different countries, intellectual property is protected by different national intellectual property laws. Innovative products and procedures are protected by patents, brands with trademarks, creative designs with industrial design, microchips with integrated circuits, and trade secrets with secret information. Cultural, artistic and literary works are protected by copyright and related rights.

There are four basic types of intellectual property (patents, trademarks, trade secrets, and copyrights) that have some type of legal protection.

- Patents can be granted for any new production process, machine, manufacture or composition of matter or any new useful improvement thereof.

- Trademarks can be a word, phrase, symbol, or design or combination thereof which identifies and distinguishes the source of the goods or services from current or potential competitors and other firms.

- Copyrights: protect artistic works such as books, plays, music, movies, computer software, paintings, etc.

- Trade secret is any intellectual property that gives its holder a competitive advantage over the competition. Trade secret law is not a clear cut as it is for patents, trademarks and copyrights (WIPO Magazine, 2002).

Trademarks serve the following functions (Hennessey, W. O., 2008):

- Source Identifier: represents the source (producer, manufacturer, sponsor, authorised body) of the goods or services,
- Distinguish goods or services: differentiates one firm's products from competitors,
- Indicate value, image and consistent level of quality: an effort to create an impression of quality or exclusivity in the mind of the consumer,
- Indicate awareness of the brand and the goodwill embodied in the trademark

Trademarks can come in a variety of forms including words, logos, symbols, shapes, fonts and letters, numbers, labels, slogans, sounds, and colours. (Volpe and Koenig, P.C., 2006) An increasing number of countries allow registration of less traditional forms of trademark, such as three-dimensional signs (Clifton and Simmons, 2003, p.15) (Coca-Cola bottle or Toblerone packaging), auditory signs (the roar of the lion on MGM movies) or olfactory signs (smells, perfumes). However, many countries have set limits on what they can register as a trademark, allowing only signs that are visually perceptible or signs that can be presented graphically. Trademarks need to be chosen carefully, and they need to be defended consistently against all possible violators of those trademarks. (Lombard&Celiebter, 2009)

One product may be protected by various intellectual property rights. In the case of a brand-new computer, its innovative technical features are protected by a series of patents. Internal computer programs and software are copyrighted. The aesthetic design is usually protected as an industrial design and the brand is protected by a trademark. Additionally, manufacturers are carriers of numerous trade secrets ranging from their customer list to one of the production processes or other confidential business information that they do not want to disclose to the competitors.

So, how to choose the right protection? It is important for companies to make the right choice about how they want to protect their brands, in a cost-effective manner, and to avoid copying and imitation by competitors. Companies should consider what is the main reason for selling their product. What is the feature that attracts consumers mostly? What feature mostly distinguishes the product from the ones of competitors? Is it an innovative technical feature? Is the design of the product? Is it the brand itself? Are the creative artistic or literary elements that are contained in the product? Company can protect a single aspect of the brand or a combination of different aspects that are critical for consumers in their buying process.

What cannot be protected as a trademark? (Reizbos R, 2003) Some categories of products and characters are not acceptable for registration as trademarks. Among them are:

- Generic concepts: if a company intends to register a trademark "detergent", the trademark will be rejected, because detergent is a generic term for the product.

- Descriptive terms: terms such as "fast", "best", "classic", "innovative", "new" are likely to be rejected because it is unfair to give to one producer exclusivity over these words.
- Misleading trademarks: terms that can confuse and mislead consumers regarding the nature, quality or geographical origin of the product. For example, margarine with an illustration of a cow on its packaging will be rejected, since it misleads the consumers. Consumers are likely to associate the brand with dairy products (for example, butter).
- Trademarks that are contrary to public order or ethics: words and illustrations that violate the generally accepted norms of morality and religion.
- Trademarks that use flags, anthem, official state signs and symbols and signs of international organizations.

## LITERATURE REVIEW

The literature pays much attention to intellectual property and to the legal protection of brands. Intellectual property refers to creations of the mind, such as inventions, literary and artistic works, designs and symbols, names and images used in commerce. (WIPO World Intellectual Property Organization)

A trademark is any unique name, word, symbol, design, or device used to identify and distinguish the goods of one seller from the goods of another. (Upcounsel) Trademarks expire after 10 years, and renewal terms are 10 years. (Geertjan De Vries, Enrico Pennings Joern H. Block, 2004) Trademarks usually last the lifetime of the brand as long as it is being used correctly. There is a difference between trademark and copyright (Landes, W. M., 2011). A copyright is the protection of original authorship and it mainly secures original literary and artistic works including literary, dramatic, musical and artistic works, such as poetry, novels, movies, computer software and architecture. Copyrights are more artistic in nature. However, for a standard business or organization, trademarking covers 90-100% of the brand assets. There are certain instances where a company needs the protection of both a copyright and a trademark. This often occurs when a company has a logo that possess a lot of artistic components. (Dumb Little Man, 2009)

There are different types of trademarks: (Erixon Fr., Salfi, M., 2015)

- Trademarks are distinguished marks used for goods and services that make them different from those of others.
- Service marks distinguish company's services from those of others. Services, according to their nature, can be financial, banking, advertising, travel, tourism, trade, catering, etc. Service marks can be registered, renewed, cancelled, transmitted and licensed under the same conditions as trademarks.

- Collective mark: holders of this mark are generally associations or cooperatives whose members can use it on the market to mark their own products. Members exclusively can use this mark provided that they comply with the requirements set in the regulations for using the collective mark (geographical origin, quality standards).

- Certification marks are given for compliance with defined standards, but are not limited to any membership. Anyone who meets certain established standards can use these marks for their products.

- Well-known marks generally benefit from stronger protection. They are protected even if they are not registered (or not even used) in a given territory.

## ANALYSIS AND DISCUSSION

In the Republic of Macedonia, the State Office for Industrial Property is in charge of the protection of brands and trademarks. In the course of 2007, a total of 5.816 applications for trademarks were received in the State Office. Compared to the previous year, there was an increase of 15.2% due to more foreign applications received under the Madrid Agreement. In the period 2003-2007, a total of 24,488 trademark applications were received, 89.9% of which are from abroad, and only 10.1% are from domestic companies.

According to the International classification of products and services (the Treaty of Nice) in 2007, the most trademark applications were received from the pharmaceutical industry, products for medical use, advertising, office supplies and dietary supplements. This shows that in Macedonia the most developed is the pharmaceutical industry and the manufacture of products for medical use.

Regarding the foreign applicants, the largest number of registered trademarks comes from the United States with 21% of the total number of approved decisions, followed by Croatia with 8.6%, Serbia with 7.6%, Germany with 7.3%, Japan with 3.8%, Bulgaria with 2.8%. Most of the products registered by foreign companies are in the field of food industry, cosmetics, IT sector, clothing and footwear. (The State Office for Industrial Property)

The most protected Macedonian products abroad are the Macedonian ajvar, the Kriva Palanka honey, the Kocani rice and the wine "Disan". Protected products in the Republic of Macedonia, but not abroad, are the Tetovo beans, Ovche Pole honey, Ohrid tea, Maleshevo cheese and waters from various sources.

This shows that the situation with the internationally registered Macedonian brands is not satisfactory. Macedonian companies have not yet understood the importance of international protection of trademarks and the advantages of this system.

## CONCLUSION

In today's world of globalization and liberalization, it is very important for companies that have successful brands to protect them. Brand protection has many advantages. It prevents the abuse, imitation and copying by competitors. However, many companies do not protect their brands. This is justified if the brands are well known on the market and are favored by consumers. However, a better option for companies is to protect their brands.

In the Republic of Macedonia, according to the data from the State Office of Industrial Property, the brands of foreign companies are more protected than domestic brands. Macedonian companies are still not protecting their products and services. This is a sign of the low level of information of the Macedonian companies about the advantages of the protection system. More measures must be taken to increase the awareness of companies to invest more funds to protect their property.

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