

10. THE USE OF TRADEMARKS AND IP RIGHTS AS COMPANY ASSETS – AN OVERVIEW OF THE STATE OF PLAY IN THE REPUBLIC OF NORTH MACEDONIA IN RELATION TO GLOBAL TRENDS

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ABSTRACT

The aim of this paper is to evaluate the importance of trademarks and intellectual property (IP) rights as company assets in general. The evaluation is performed through the analysis of the legal framework in the Republic of North Macedonia and assessment of the interface between trademarks and IP rights in general as intangible assets and company law within the country.

This paper firstly analyses trademarks as IP rights, primarily through their essential functions. Afterwards, the paper assesses trademark and IP rights in general through the prism of the company law in the Republic of North Macedonia. In particular, the paper analyses the possibility of investing IP rights in companies as equity – the legal framework and the methods for valuation of the IP rights. The paper further explores methods for IP commercialisation – licensing and franchising as the most suitable and commonly used practices for trademark promotion.

The final part of the paper will analyse some of the world's most successful companies and how they create value and successful brands using trademarks before addressing the situation with domestic companies, how much they invest in trademarks as a means of building a successful brand, and how much IP rights as intangible assets participate in the overall value of the companies in the Republic of North Macedonia.

Keywords: trademarks, IP rights, company law, brand value, IP commercialisation, intangible assets, Republic of North Macedonia.

1. INTRODUCTION

The purpose of intellectual property (IP) rights is to protect the creations of the human mind. More precisely, IP encompasses rights related to literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.¹ From this broad scope of the definition provided within the World Intellectual Property Organization (WIPO) Convention, it can be concluded that IP rights are deeply rooted in all fields of society.

The trademark has been used in its rudimentary form by traders in the past to mark their products. Today, the trademark has the most widespread use since all businesses use it in their commercial activity as a sign of recognition. In this sense, businesses use trademarks to distinguish their products from the competition and to be more easily identified by the consumers. Trademarks play an important role in building brand image and creating value in the eyes of consumers since they associate trademarks with a particular value of companies.

The paper first defines the trademark as an IP right by analysing its main functions. Afterwards, trademarks and other IP rights are analysed through the prism of company law – firstly, in terms of the possibility of investing IP rights in companies, and secondly, in terms of commercialization of IP rights. Furthermore, the paper

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¹ WIPO Convention (signed at Stockholm on 14 July 1967, entered into force in 1970 and amended in 1979).

will analyse some of the world's most successful companies and how they create value and successful brands through the utilization of trademarks. Finally, the paper addresses the situation with domestic companies, how much they invest in trademarks as a means of building a successful brand and how much IP rights participate in their overall asset value.

2. DEFINING TRADEMARK

A trademark is a distinctive sign, word, phrase, or symbol that signifies a given product and thus makes a legal distinction of the same from other products in circulation. According to the Law on Industrial Property of the Republic of North Macedonia, the trademark 'protects a sign which may be represented graphically, and which is capable for distinguishing goods or services of one undertaking from those of other undertakings.'² The trademark protects signs that can be composed of words and letters in any language or alphabet, numbers, pictures, drawings, colour combinations, three-dimensional shapes, shapes of goods, their packaging, as well as combinations of some or all listed signs.³ Unlike the Macedonian national legislation, which provides only for the protection of colour combinations, within the European Union (EU), even particular single colours⁴ or sounds⁵ can be protected as trademarks.

The trademark has been used as a sign to distinguish products since the beginning of trade. In this way, the merchants guarantee that a certain product has particular characteristics. Through the trademark, the customers and clients create expectations for certain qualities which the branded product should possess. The functions of the trademark can be differentiated from the

way it is utilized in day-to-day activities. The most important functions of the trademark are the origin function, the distinctive function, the quality function, the advertising function, and the competitive function.⁶ The origin function indicates the origin of the product, i.e., it associates the product with a particular company. Similarly, the distinctive function has the purpose of distinguishing particular products from one company from similar products on the market from other companies. One of the most important functions of the trademark is the quality function, which guarantees that the product bearing the trademark has certain characteristics and qualities. Through the advertising function, companies utilize trademarks to promote and build a recognizable brand that will be remembered by the customers. While a brand is a broader concept, trademarks form an integral and indispensable part of the creation of a brand image. Consequently, the terms brand and trademark are at times used interchangeably in this paper. Finally, the competitive function summarizes all the above because the successful use of the trademark differentiates the trademark holder and puts him above the competition in the market.

When discussing trademarks, it is important to note that in addition to the individual trademark that differentiates one product from all others, there are also collective trademarks and certification trademarks (CTM). The collective trademark protects a sign intended for collective designation of the goods or services put on the market by an association of legal and natural right-owners.⁷ For example, McDonald's® is a collective trademark of the McDonald's Corporation used for the designation of all ranges of products of the company regardless of their characteristics. The CTM, on the other

² Macedonian Law on Industrial Property (Official Gazette of Republic of Macedonia No. 24/2007, 81/2007, 152/2008, 36/11, 18/13, 164/13, 41/14, 33/15, 61/15, 53/16, 83/18 and 31/20) (hereinafter Macedonian Law on Industrial Property) Article 175(1).

³ *Ibid.*, Article 175(2).

⁴ For example, Deutsche Telekom has registered the 'magenta' colour as a trademark <<https://trademarks.justia.com/787/98/n-78798428.html>>accessed 28 May 2021.

⁵ In 2003, the European Court of Justice decided that Beethoven's melody '*Fur Elise*' may be protected as a trademark. Case 283/01 *Shield Mark BV V. Joost Kist h.o.d.n. Memex* [2003] ECR I-14313.

⁶ Anastasovska JD, Pepeljugoski V, *Pravo na Intelektualna Sopstvenost (Intellectual Property Rights)*, (Akademik – Skopje, 2012), 21; 'Introduction to trademark law and practice: The basic concepts', WIPO Training Manual, (1993) 15, <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_653.pdf> accessed 28 May 2021.

⁷ Macedonian Law on Industrial Property, (n 2) Article 219.

hand, protects marks that indicate a certain quality, origin, method of production, or other common characteristics of the goods and services of the companies which use them.⁸ The use of CTM is conditioned with the possession of the required characteristics, and it is under the supervision of its holder. For example, Woolmark® is a CTM that can be put on products made from pure wool which meet quality standards set by The Woolmark Company, regardless of which company produces the wool product.

The trademark falls within the category of IP rights, whose existence and recognition is conditioned by registration. Unlike copyright protection, which is granted to the author from the moment of the creation of the work, trademark protection is acquired only under a previous system of registration by an authorized national agency, which in the case of the Republic of North Macedonia is the state office of industrial property (SOIP).⁹ The applicant can be a domestic or foreign natural or legal person.¹⁰ According to the latest report of the SOIP, in 2019, a total of 8488 trademark applications were submitted, out of which 1471 are directly submitted to the SOIP while 7017 are submitted by virtue of the Madrid Protocol¹¹, i.e., they are submitted to other national registries which are then forwarded to the SOIP.¹² Consequently, more than 89% of the applications are submitted by virtue of the Madrid Protocol, whereas slightly more than 10% are submitted directly to the SOIP. From the 1471 applications submitted directly to the SOIP, 870 are domestic, and 601 are from foreign applicants,¹³ i.e., 40.8% are foreign applications, and 59.2% are domestic applications. From the 7017 applications through the Madrid Protocol, 2965 are new applications, and 4052 are applications for extensions. The data indicate that the Republic of North

Macedonia is a relatively small but active and diverse market. While there is a significant number of foreign applications, the majority are still submitted by domestic applicants, which indicates that domestic merchants are aware of the importance of trademarks and take necessary steps to secure their protection.

The Macedonian national legislation is in line and complies with the **EU acquis** as well as with other international instruments in relation to the conditions for copyright protection, as well as the rights and obligations which arise from trademark protection. According to the Law on Industrial Property, the trademark term is 10 years from the date of filing the trademark application¹⁴, and it may be renewed an indefinite number of times for a term of 10 years.¹⁵ This provision is fully in line with the 10-year renewal period from the Madrid Protocol.¹⁶

A. TRADEMARKS AND OTHER IP RIGHTS THROUGH THE PRISM OF COMPANY LAW IN THE REPUBLIC OF NORTH MACEDONIA

As already noted, the trademark was used in a very rudimentary form as a seal distinguishing various products since ancient Greece and Rome. However, that occurred in a period that long preceded trade as we recognize it today. There were no business enterprises, so the trademark was always tied to a natural person – a farmer or a craftsman. However, over the years, as trade and, more importantly, international trade began to develop, and as the idea for profit maximization and costs and risks minimization came into existence, it became necessary to consolidate the economic ventures and create economies of scale, which gave rise to the first companies. Companies are the dominant merchants in

⁸ *Ibid*, Article 223(1).

⁹ More on SOIP <https://www.ippo.gov.mk/EN/Index_en.aspx> accessed 29 May 2021.

¹⁰ Macedonian Law on Industrial Property, (n 2) Article 179.

¹¹ Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks [2007] TRT/MADRIDP-GP/001 <<https://wipolex.wipo.int/en/treaties/textdetails/12603>> accessed 29 May 2021 (hereinafter Madrid Protocol).

¹² Annual report of the State office of industrial property of Republic of North Macedonia for 2019, 5, <<http://www.ippo.gov.mk/docs/xFiles/articles/lzvestaj%20za%20DZIS-2019/lzvestaj%20za%20DZIS-2019.pdf>> accessed 29 May 2021.

¹³ *Ibid*.

¹⁴ Macedonian Law on Industrial Property, (n 2) Article 211(1).

¹⁵ *Ibid*, Article 211(2).

¹⁶ Madrid Protocol, (n 11) Article 7(1).

trade, and as a result, the trademark is more closely associated with companies rather than with natural persons. In this part of the paper, we will review the current legal status of the trademark as an IP right through the prism of company law – first in relation to the possibility of investing trademarks in companies as a contribution, and then in relation to the possibilities for its commercialization.

B. TRADEMARKS AND IP RIGHTS AS SHARE CAPITAL IN COMPANIES

The contribution from the shareholders is the first precondition for the establishment of the company. With this act, the founders of the company transfer a portion of their property to the newly established company. With the constitution of the company, those contributions now become the property of the newly established legal entity. The company as a legal fiction is, in fact, a sum of all the contributions (and after its establishment – share capital) of its shareholders. Generally, the accepted rule is that contributions can be in cash or in kind. According to the Macedonian Company Law Act (CLA)¹⁷, monetary contribution means the amount of cash expressed in domestic or foreign currency that the member or shareholder transfers to the company. The non-monetary contribution, on the other hand, is the total amount of contributions in-kind (movable and immovable) and rights that members or shareholders transfer to the company.¹⁸ The Macedonian CLA provides that for certain forms of companies, the contributions can also be in labour and services.¹⁹

The Macedonian legislation does not contain restrictions regarding the types of contributions, so the members or

shareholders can have a combination of cash and contributions in kind. However, considering the protective function that the share capital has for the creditors of the company when it comes to non-monetary contributions, it is necessary that they are determined in monetary value. The Macedonian CLA regulates the procedure, form, and manner of subscribing contributions in kind through general provisions that refer to all types of companies,²⁰ as well as with more specific provisions for different forms of companies.²¹

Since non-monetary contributions, besides movable and immovable property, may also contain the rights of the members or shareholders of the companies, it is rational to consider that IP rights also fall within this category. As a form of non-monetary contribution, IP rights must have an estimated value that is expressed in domestic or foreign currency. Movable and immovable property as a form of non-monetary contribution is more susceptible to trade and turnover. Hence, the assessment of their market value is easier. IP rights, on the other hand, are a specific form of contribution since there are several variable factors on which their value may depend. Hence, it is necessary to have rules and methods for the correct assessment of the value of these rights. In the Republic of North Macedonia, assessments are regulated in the law on appraisals, which stipulates that the competent ministries are obliged to adopt an appraisal methodology in their respective areas.²² As the competent ministry for the field of industrial property, the Ministry of Economy in 2011 issued the methodology for appraisal of industrial property.²³ The methodology proposes the following

¹⁷ Macedonian Company Law Act (Official Gazette of Republic of Macedonia No. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015, 06/2016, 30/2016, 61/2016, 64/2018, 120/2018 and 180/2020), Article 3(1)(38).

¹⁸ *Ibid*, Article 3(1)(27).

¹⁹ This opportunity is allowed for the partners in general partnerships as well as for the general partners in limited partnership. This approach is justified since the partners in the public company and the general partners in the limited partnership have personal, unlimited and joint and several liability for the obligations of the company. *Ibid*, Articles 34(2) and 27(2).

²⁰ *Ibid*, Article 35.

²¹ *Ibid*, Article 175 for non-monetary contributions in limited liability companies and Article 291 for non-monetary contributions in stock corporations.

²² Macedonian Law on Appraisals (Official Gazette of Republic of Macedonia No. 115/10, 158/11, 185/11, 64/12, 188/14104/15, 153/15 192/15 and 30/16), Article 47(1).

²³ Methodology for appraisal of industrial property, Ministry of Economy of Republic of North Macedonia (Official Gazette of Republic of Macedonia No. 178/11).

method for valuation of industrial property rights, which are listed in hierarchical order:

- Market method;
- Cost method; and
- Income method.²⁴

According to the methodology, the first method which should be applied is the market method – which determines the value based on the prices for the past transactions of the same or similar IP assets. The cost method determines the value of the IP assets based on the costs necessary to replace them with an asset with identical or similar characteristics. Finally, according to the income method, the IP asset is valued based on the total amount of economic income it is expected to generate in the future for the asset's lifespan. These three methods are also recognized by WIPO as the most common method for appraisal and valuation of IP rights, although the income method is considered as the most used one.²⁵

When assessing the value of industrial property rights, including trademarks, multiple appraisal methods can be used, as they are largely complementary and do not exclude each other. The choice depends on the objectives of the valuation, the basis of the valuation, market activity and the availability of information on previous transactions.²⁶ However, despite the fact that the methodology contains precise parameters and mathematical formulas for determining the value, all calculations are based on the existence of an active market for IP rights or reliance on the companies on IP assets in their business activities, which would serve as a starting point for application of all the listed parameters. However, because in the Republic of North Macedonia, there is no active market for trading IP assets, the application of the methodology and consequently the valuation of IP assets is significantly more difficult.

²⁴ *Ibid*, Article 5(1).

²⁵ 'Valuing Intellectual Property Assets' (*WIPO IP Valuation*) <https://www.wipo.int/sme/en/value_ip_assets/> accessed 30 May 2021.

When discussing trademarks as contributions in companies, the situation is even more unusual due to the nature of trademarks. When establishing a new company, the assumption is that it starts with its business venture from the very beginning and that it still does not have a recognizable product or service. On the other hand, a trademark signifies a product or service that is already to some extent established on the market. Consequently, while trademarks qualify as company assets, the value of a newly registered trademark would be negligible, and because of this, it is uncommon for a trademark to be used as a contribution to a newly established company. In essence, the value of all trademarks is negligible when they are new, but it increases over time with the growth of the company and the product to which it is attached. When discussing an increase of the share capital through new contributions, there are a number of cases where one company acquires another company in order to obtain a trademark or similar IP assets, but such an act does not always mean that there will be an increase in the subscribed share capital of the acquiring company, or that the value of the acquisition will be reflected in the financial statement of the company.²⁷ Besides acquisitions, the same holds true for mergers and restructuring of companies.

If it is a trademark that is already established on the market and recognizable in the eyes of consumers, for it to be utilized as a contribution to a newly established company, the holder of the trademark should transfer the ownership through assignment to the newly established company, thereby forfeiting its own benefits. This situation seems unrealistic, as the right is more likely to be transferred by virtue of a licensing or franchise agreement. These agreements as a form of commercialization of the trademark and other IP rights will be considered below.

²⁶ Methodology for appraisal of industrial property, (n 23) Article 5(2).

²⁷ Companies may not wish to increase the subscribed share capital, if it is above the required minimum share capital required in the relevant jurisdiction.

3. COMMERCIALIZATION OF IP RIGHTS

The commercialization of IP assets constitutes the dynamic side of IP law.²⁸ The commercialization of IP rights is the realization of successful intellectual creations. The goal of every company is to make a profit through IP rights, in the same way as with all other resources at its disposal. Profit can be achieved using IP rights to improve the efficiency of own production or service activities (e.g., patents), which will reduce production costs; through the use of IP rights for self-promotion and creating brand image (e.g., trademarks or industrial design); or through the transfer of rights to use an IP asset to third parties.

Below, we take into consideration licensing and franchise agreements as a form of commercialization of IP rights. When it comes to trademarks, these types of agreements are the most important and most often used in practice due to the nature of the trademark as an IP right. Because a trademark is a distinctive sign associated with a particular company, it is rare for ownership of trademarks to be transferred completely through assignation, but rather, if companies decide to allow other companies to use their trademark, it is usually through a licensing or franchise agreement.

The Macedonian Law on Obligations regulates the licensing agreement in section XVIII, Articles 742 through 767.²⁹ According to the Law on Obligations, licensing agreement is an agreement in which the licensor undertakes the obligation to transfer to the licensee in whole or in part the right of use, of the patent, know-how, trademark, sample or model, for which licensor undertakes an obligation to pay the licensor a fee.³⁰ It follows from the definition that with the licensing agreement, the owner of the trademark, i.e., the licensor, may transfer to a third party the right to use the trademark against payment of a fee or royalties. Unlike

an assignment agreement, where transfer of ownership of the right occurs and where the assignee becomes a legal successor and owner of the IP right, with the licensing agreement, the licensee has only the right to use the IP right, while the licensor retains ownership. It also follows from the definition that the list of industrial property rights which may be the subject of a license is limited, and it encompasses patents, trademarks, and utility models. From the wording of the definition, it would seem that industrial designs or integrated circuits cannot be the subject of a licensing agreement. However, the list of IP rights is provided within Article 742 of the Law on Obligations should be considered as a non-exhaustive list, especially considering the principle of party autonomy in international commercial contracts.

From a legal point of view, the licensing agreement is characterized by several elements. Firstly, the agreement must identify the parties – the licensor and the licensee. Besides the parties, the most important and essential element in the licensing agreement is the subject of the agreement. The subject of the agreement is the IP right, as well as the extent to which it can be used by the licensee. The license may be exclusive – granting the right to use the IP asset only to the licensee, or non-exclusive, which would allow the licensor to grant that particular right to third parties as well.³¹ The question which arises is whether the price is considered an essential element of the licensing agreement. It follows from the definition provided within the Macedonian Law on Obligations that without compensation, the licensing agreement would be null and void.³² However, there are situations where the licensing agreement can be concluded without a payment fee, for example, in the situation of licensing agreements without compensation.³³ The licensing agreement is characterized by both temporal and territorial dimensions. Namely, the contract must contain a period for which the right is granted, as well as the territory in which the licensee can use it. The Macedonian

²⁸ Anastasovska JD, *Pepeljugin V* (n 6) 396.

²⁹ Macedonian Law on Obligations (Official Gazette of Republic of Macedonia No. 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008, 81/2009 and 161/2009), Section XVIII.

³⁰ *Ibid*, Article 742(1).

³¹ *Ibid*, Article 745.

³² *Ibid*, Article 742(1).

³³ Anastasovska JD, *Pepeljugin V* (n 6) 409.

Law on Obligations stipulates that the duration of the licensing agreement cannot be longer than the period for legal protection of the particular IP right, which is the subject of the agreement.³⁴ Consequently, the duration of a licensing agreement for a trademark cannot be longer than 10 years, given the fact that legal protection of trademark is given for 10 years (subject to renewal for an unlimited number of times). Regarding the form of the licensing agreement, both the Law on Obligations³⁵ and the Law on Industrial Property³⁶ stipulate that the agreement must be concluded in writing.

Trademark licensing agreements are important for the licensor because they generate profits. As already noted, the licensee pays a fee for the use of the trademark. The fee can be in the form of a fixed amount (lump sum), as a percentage of realized sales, or as a combination of both. Besides profit, trademark licensing agreements help companies expand their operations to new geographical or product markets. On the other hand, trademark licensing agreements are also beneficial for the licensees because the familiar and already established trademark stands as a guarantee for certain qualities and characteristics of the products or services, which allows the licensees to generate a guaranteed level of profits.

In addition to the licensing agreement, an important agreement for the commercialisation of IP rights is the franchise agreement. A franchise can be simply defined as a unified method for selling products or services. With the franchise agreement, the franchisor allows the franchisee to use his developed business method against payment of the fee. In the past, the franchising agreement had close links and was often compared to a distribution agreement, but today it is generally accepted that there is a clear distinction between the two types of agreements.³⁷ The essence of franchising is that it allows

companies that have a recognizable image and developed operational method to expand into new markets, as well as to generate additional income from borrowing the method to third parties which have enough funds to start a business but may not have enough knowledge and experience to build a successful brand themselves. The subject of the franchising agreement is a package of IP rights that usually include trademarks, industrial designs, copyright and also know-how and trade secrets. The trademark is an integral part of the franchise agreement because it represents the visual part of the business venture, and it helps the consumer to detect certain qualities.

Unlike the licensing agreement, which is regulated in the Macedonian Law on Obligations, there are no provisions that regulate the franchise agreement, and therefore it is considered to belong to the group of so-called agreements of autonomous commercial practice. Since there are no special rules for the franchise agreement within the national legislation, the general contractual provisions of the Law on Obligations will be applicable to this type of agreement. The subject of the franchise agreement is the transfer of the right to use a certain business method and formula, i.e., a uniform way of selling the goods or providing the services, while the goods or services themselves can be considered as a secondary subject of the agreement.³⁸ By its nature, the franchise agreement is close to the licensing agreement, but the difference is that in franchising, in addition to the package of IP rights, it is necessary to transfer know-how as well as trade secrets.³⁹ For this to be done successfully, it is necessary for the franchisor and franchisee to have close and continuous cooperation. From the substance of

³⁴ Macedonian Law on Obligations, (n 29) Article 744.

³⁵ *Ibid*, Article 743.

³⁶ Macedonian Law on Industrial Property, (n 2) Article 272.

³⁷ Anastasovska JD, 'Franchising Activity and the Franchise Agreement in the Law and Practice of the Republic of Croatia and the Republic of North Macedonia' [2011] 61(2) Zbornik Pravni Fakultet Zagreb 705 – 706.

³⁸ Anastasovska JD, *et al.*, *Dogovori na avtonomnata trgovska praktika (Contracts of Autonomous Commercial Practice)* (Iustinianus Primus Faculty of Law – Skopje 2012) 24.

³⁹ 'Starting a New Company: Consider Franchising as an Option' (*WIPO Magazine*, 2003) 15 <https://www.wipo.int/export/sites/www/wipo_magazine/en/pdf/2003/wipo_pub_121_2003_11-12.pdf> accessed 30 May 2021.

the franchising agreement, these several characteristics can be observed:

- The agreement is concluded between two independent persons as contracting parties; The subject of the contract is the transfer of the right to use a uniform business model and brand image;
- There is a need for close cooperation and trust between the contracting parties – the franchisor is required to provide continuous assistance and training, while the franchisee is required to provide feedback for its performance.⁴⁰

Today, franchising as a method of commercialization is widely used and spread on a global scale. Statistics show that it is most used within the United States (US). In 2019, as many as 773,603 franchises were established.⁴¹ This fact is not surprising given the fact that the franchise as a method has its roots in the US. The number of franchises operating on European territory is significantly lower, and it is estimated that the number is 10,000 franchises operating successfully in more than 20 countries.⁴² The leader in Turkey with roughly 1,600 franchises, followed by France with 1,300 and Spain with 900.⁴³ The least number of franchises are registered in Slovenia – 107, and as much as 48% of these franchises are international, which is the highest percentage of all countries.⁴⁴ Unlike the rest of the world, in the Republic of North Macedonia, there is no data on the number of franchises. Some of the franchises of well-known companies such as Domino's, Coca Cola, Burger King, KFC are easily detectible, but still, the current state of play cannot be successfully determined only through visual observations. Also, the listed examples are international franchises where the franchisors are international companies, whereas the domestic companies are franchisees. There are very few cases where domestic companies are in the role of

franchisors, both at home and abroad. The pharmaceutical company Alkaloid is one of the few examples which has successfully franchised some of its products internationally.⁴⁵ The data indicates that while the franchise agreement is a powerful tool for the commercialization of IP rights on a global scale, Macedonian companies still have difficulty catching up with these trends. This inactivity inevitably reflects on the value of trademarks of domestic companies.

4. THE TRADEMARK AS AN ASSET FOR SUCCESSFUL COMPANIES

The importance of trademarks is best seen through their use by the world's most successful companies. The companies that have the highest market value in general also have very high, if not the highest brand values. Successful companies use trademarks to increase their market share as well as to conquer new markets. Unlike in the past when the companies allocated most resources for building production capacities and developing distribution channels, and the investments were directed towards material assets, it is obvious that in recent years this trend is changing. Statistics show that more and more companies from developed countries invest more in intangible rather than tangible assets. This is evident from the data provided in Table 1, where it is clear that US and UK companies invest more in intangibles than in tangible assets.

⁴⁰ Anastasovska JD, *et al.* (n 38) 23.

⁴¹ 'Number of franchise establishments in US 2007-2020' (*Statista*, 11 January 2021) <<https://www.statista.com/statistics/190313/estimated-number-of-us-franchise-establishments-since-2007/>> accessed 30 May 2021.

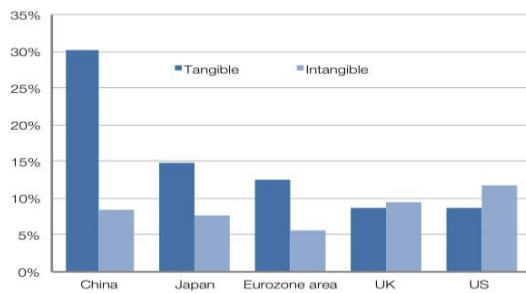
⁴² Miles K, 'Franchise statistics for Europe' (*FranchiseED*, 7 February 2018) <<https://www.franchise-ed.org.au/uncategorized/franchise-statistics-for-europe>> accessed 1 June 2021.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Anastasovska JD (n 37) 720.

Table 1 – Graphic data of tangible and intangible assets of companies based on regions



Source: WIPO, World IP Report 2013.

Investments in intangible assets can be divided into three groups: investments in **economic competencies**, which include brand investments, investments in **computerized information** and **innovative property**.⁴⁶ Although it is not possible to determine exactly how much of the investment in intangible assets is invested in promoting and strengthening the brand and image of companies, it is evident that there is a growing trend of these investments, particularly in more developed markets.

In practice, the terms trademark and brand are often used interchangeably. At the academic level, there is a debate whether these terms are synonymous or whether there is a difference. Initially, trademarks and brands were considered to be **rough synonyms** because they have essentially the same characteristics.⁴⁷ Afterwards, authors begin to differentiate them from one another, pointing out that trademark is primarily a legal instrument while the brand is a business tool.⁴⁸ The literature in the field of marketing points to a distinction between the two terms, considering the term brand to be a much broader concept than trademark, since it includes, but is not limited to, perceptions, expectations of consumers, reputation and image of the company, and even other IP rights, such as copyright and industrial design rights.⁴⁹ However, despite this difference between

the two concepts, it is indisputable that a trademark as a distinctive symbol represents the foundation and the core of each brand. Consumer expectations, beliefs and perceptions are of a secondary nature because they are inextricably linked and driven by the trademark of a particular product, service, or company. Hence the brand cannot be analysed separately from the trademark.

When discussing successful companies worldwide and how they use trademarks for successful promotion, it is evident that there is a correlation between the value of the company and the value of the brand of the company. Table 2 contains the list of the top 10 companies with the highest brand value. From this list, seven companies also form the list of the top 10 largest companies in the world by market capitalization.⁵⁰ Amazon, Apple, Microsoft, Alphabet (Google), Alibaba Group, Tencent and Facebook are all listed in the top 10 most valuable companies by market capitalization, while Visa is listed at 13, Mastercard at 19, and McDonald's is listed the lowest – at 63.⁵¹

Table 2 – List of top 10 companies with highest valued brands

#	Company's name	Brand value (Mil., USD)	Market capitalization (Mil., USD)	Brand value % in market value of the company
1	Amazon	415.9	1,711.8	24.29%
2	Apple	352.2	2,252.3	15.63%
3	Microsoft	326.5	1,966.6	16.60%
4	Alphabet (Google)	323.6	1,538.9	21.02%
5	Visa	186.8	483.9	38.60%
6	Alibaba group	152.5	657.5	23.19%
7	Tencent	151	773.8	19.51%
8	Facebook	147.2	870.5	16.90%
9	McDonald's	129.3	173.8	74.39%

⁴⁶ 'World IP Report 2013: Brands – Reputation and Image in the Global Marketplace' (WIPO Economics and Statistics Series, 2013) 29 <<https://www.wipo.int/publications/en/details.jsp?id=384>> accessed 2 June 2021.

⁴⁷ *Ibid.*, 21.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ 'The 100 largest companies in the world by market capitalization in 2021' (Statista, 10 September 2021) <<https://www.statista.com/statistics/263264/top-companies-in-the-world-by-market-capitalization/>> accessed 2 June 2021.

⁵¹ *Ibid.*

10	Mastercard	108.1	383.6	28.18%
	Average	229.3	1,081.3	21.20%

Source: BrandZ Global Top 100 Report 2020.⁵²

What is even more important is the percentage which the brand has in the total market value of companies. From the statistics, it is noticeable that, on average, the value of the brand is roughly 21% of the market value of the companies. This means that through the successful use of the brand and trademarks, the companies create value. It is evident from the data that the most valuable asset which successful companies have is the trademark. The company where the value of the brand has the largest percentage share in the market value of the company is McDonald's with almost 75%, which is almost four times the average. At the same time, McDonald's is the largest franchisor company, with over 33,000 franchise agreements worldwide.⁵³ McDonald's operation is a model for a company's success through the efficient use and commercialization of the brand.

Unlike measuring a company's market capitalization, which is a relatively simple process,⁵⁴ assessing brand value is a more complex task because there is no uniform valuation method. The data from Table 2 on brand value is measured from BrandZ, as one of the most reputable brand valuation companies. This company uses a complex value calculation formula where the brand value is based on past profits and projected profits in the future.⁵⁵ In addition to BrandZ, Brand Finance⁵⁶ and Interbrand⁵⁷ are also commonly used sources for brand valuation. These companies use different methods to assess the value of

brands, but despite this fact, there are no drastic differences in the final assessment.

While on a global scale, there is a growing trend of investing in companies' brands and trademarks, the same trend is yet to be reflected in the operations of Macedonian domestic companies. In the next part of the paper, we give an overview of the current state of play in relation to the value of the trademark and other IP rights of domestic companies.

5. TRADEMARKS AND IP ASSETS OF MACEDONIAN COMPANIES

Unlike the rest of the world, where successful companies rely heavily on trademarks and use them to expand their business ventures, in the Republic of North Macedonia, there are not many companies that can position themselves as global brands. As a result, there is a lack of significant data on the value of domestic brands. What is more interesting is that there are cases where established brands that have operated on the domestic market for many years and have had a large number of customers have abandoned the use of trademarks through rebranding.⁵⁸ The last example is the merger of the telecommunications operators Vip and One in 2015, after which the company one. Vip was created,⁵⁹ which in 2019 was completely rebranded in A1 Macedonia, in accordance with the owner company, the A1 Telekom Austria Group, thereby completely abandoning the use of previous trademarks.

⁵² 'BrandZ Global Top 100 Most Valuable Brands Report 2021' (Kantar, 2021) <<https://www.kantar.com/campaigns/brandz/global>> accessed 2 June 2021.

⁵³ 'The Top 10 Biggest Franchises in the World' (Whichfranchise, 2021) <<https://whichfranchise.co.za/the-top-10-biggest-franchises-in-the-world/>> accessed 2 June 2021.

⁵⁴ Market capitalization is measured by a simple mathematical formula: market value of the company's stocks in particular time, multiplied by the total number of stocks issued.

⁵⁵ More information on the methodology of a company's brand value <<https://brandz.com/about-us>> accessed 2 June 2021.

⁵⁶ More info on the activities related to brand rankings, metrics and research conducted by Brand Finance <<https://brandfinance.com/data>> accessed 2 June 2021.

⁵⁷ More info on the activities related to brand rankings, metrics and research conducted by Interbrand <<https://interbrand.com>> accessed 2 June 2021.

⁵⁸ This is most evident within the telecommunication sector. For example, the first mobile operator company Mobimak which was established in 1996, was rebranded on several occasions as it changed ownership structure. First in 2006, it was rebranded as T-Mobile Macedonia, when it became part of the T-Mobile group, and in 2015, it merged with Makedonski Telekom and T-Home Macedonia, to create single company under the brand Makedonski Telekom.

⁵⁹ The brand VIP existed in several countries where the Telecom Austria Group owned telecommunication operators, which have now all been rebranded to A1. The brand One existed only on the Macedonian market and was created with the rebranding of the company COSMOFON after its acquisition by Telekom Slovenia from COSMOTEL Greece.

Regarding the valuation of trademarks and brands as companies' assets, the lack of information is noticeable at the level of the entire Balkan region. Although there are organizations that award certain quality certificates to certain companies, other than basic company data, they do not conduct any in-depth research related to brands and trademarks. As an example, the organization Superbrands Macedonia grants the status of a super brand to certain companies that are significant in their respective fields and industries.⁶⁰ However, apart from allowing companies to use the award in their promotion activities, this organization does not provide any data on the value of the brands, nor any established parameters or standards on the basis of which companies could be granted the **super brand** status. In fact, such organizations themselves have more of an advertising function for companies.

The only company in the whole region that has done brand ranking for the Balkan region so far is the marketing company VALICON from Slovenia. However, even those reports cannot be considered sufficient since the latest report of this company dates to 2015 and is related to the strongest brands that exist in the territory of former Yugoslavia.⁶¹ At the top of the list are Milka and Coca Cola, and the first regional brand is Vegeta in third place. In the list of top 25 brands, 11 are international brands, whereas only 14 are regional brands. Of these 14 brands, six are from Serbia, four from Slovenia, and four from Croatia, and there is not a single brand from the Republic of North Macedonia. There are also no brands from Bosnia and Herzegovina, Montenegro, and Kosovo as members of former Yugoslavia.

⁶⁰ <http://superbrands.mk/?page_id=131> accessed 25 May 2021.

⁶¹ 'VALICON's Top 25 Brands: the return of 'local' brands among the top 10 brands in the region' (*Valicon*, 18 April 2016), <<https://www.valicon.net/2016/04/valicon-top25-brands-the-return-of-local-brands-among-the-top-ten-brands-in-the-region-milka-continues-to-be-the-leading-brand/>> accessed 1 June 2021.

Table 4 – Top 25 Brands in former Yugoslavia

#	Brand name	#	Brand name
1	Milka (CHE)	14	Aquafresh (UK)
2	Coca Cola (USA)	15	Jaffa Cakes (SRB)
3	Vegeta (CRO)	16	Fanta (USA)
4	Argeta (SLO)	17	Dorina (CRO)
5	Cedevita (CRO)	18	Lenor (USA)
6	Cokta (SLO)	19	Pepsi (USA)
7	Orbit (USA)	20	Kiki (SRB)
8	Nivea (GER)	21	Chipsy (SRB)
9	Smoki (SRB)	22	Nutella (ITA)
10	Fructal (SLO)	23	Ariel (UK)
11	Paloma (SLO)	24	Podravka (CRO)
12	Nescafe (CHE)	25	Dukat (SRB)
13	Plazma (SRB)		

Source: Valicon TOP 25 Brands⁶²

The same company also performs brand ranking on the territory of each of the republics of former Yugoslavia. Figure 1 shows the brand ranking for the Republic of North Macedonia.⁶³ Again, from the available data, it is evident that half of the listed brands are international, two are regional, and only three are domestic.

Figure 1 – List of top 10 brands in the Republic of North Macedonia

#	Brand name
1	Argeta (SLO)
2	Milka (CHE)
3	Stobi Flips (MKD)
4	Vegeta (CRO)
5	Coca Cola (USA)
6	Orbit (USA)
7	Bitolski Jogurt (MKD)
8	Pelisterka (MKD)
9	Nescafe (CHE)
10	Pepsi (USA)

Source: <www.marketing365.mk>

⁶² 'VALICON Top 25 Brands: Milka still on the top, Argeta the strongest Slovenian brand' (*Valicon*, 19 April 2016), <<https://www.valicon.net/2016/04/valicon-top25-brands-milka-still-on-top-argeta-the-strongest-slovenian-brand/>> accessed 1 June 2021.

⁶³ 'Which are the strongest brands in Macedonia for 2015' (*Marketing 365*, 23 May 2016) <<https://marketing365.mk/koi-se-najsilnite-brendovi-vo-makedonija-za-2015-godina2/>> accessed 1 June 2021.

Even though this is the single comprehensive research on trademarks within the region, it still has drawbacks. The research ranks brands based on an online survey and field survey conducted on a sample of 1,000 to 1,500 respondents from each country.⁶⁴ This research gives us an insight into what the perception of the consumers is about the brands, but it does not contain a financial aspect or financial formula, and consequently, there is no determination of the value of the brands. In addition, although not stated explicitly in the research, it is evident that the ranking is only in relation to trademarks for goods, and companies providing service activities are not taken into consideration.

In the absence of sufficient data on the value of domestic brands, we analysed the values of trademarks and IP rights of companies through their financial statements. As a sample, we included the companies listed on the Macedonian Stock Exchange. Due to the large number of companies listed on the stock exchange and the relatively low level of activities, only companies forming the index MBI10 were taken as a sample.⁶⁵

Table 5 – List of MBI10 companies as of the latest date of revision (15 December 2020)

#	Company's name	MSE Symbol	Number of stocks	Market capitalization (EUR)
1	Alkaloid Skopje	ALK	1,431,353	266,180,685
2	Stopanska Banka Skopje	STB	17,460,180	16,434,714
3	Granit Skopje	GRNT	3,071,377	42,897,870
4	Komercijalna Banka Skopje	KMB	2,279,067	226,013,873
5	Makeptero Skopje	MPT	112,382	82,250,220
6	TTK Banka Skopje	TTK	907,888	11,221,053
7	Makedonski Telekom	TEL	95,838,780	19,784,397
8	Makedonija-turist Skopje	MTUR	452,247	16,960,807

64 (n 62).

9	NLB Banka Skopje	TNB	854,061	32,932,870
10	Stopanska Banka Bitola	SBT	390.977	14,934,578

Source: <www.mse.mk>

We consider the MBI10 index companies primarily for several reasons. Firstly, all publicly listed companies have an ongoing obligation to publish quarterly and yearly consolidated financial reports, which enables access to intangible and IP assets of these companies. While there are other large companies in the market that would be relevant to this research since they are established as limited liability companies or are not listed on the stock exchange, access to their financial statements is limited, and consequently, they cannot be analysed. Secondly, the MBI10 index companies are the most liquid companies on the Stock Exchange Market. This means that people find these companies attractive for investment due to their successful business strategies. Considering this, the assumption is that the more successful the company is, the higher the brand value and trademark value are. These companies are also among the companies with the highest market value. It is noteworthy that half of the companies are banks, three are service companies in the field of telecommunications, tourism, and construction, and only two are companies dealing with concrete products which are in the petroleum and pharmaceutical industries.

Since it is not possible to calculate the ratio of the market value of the company to the value of the brand of the company, we will focus on calculating the ratio of total assets of companies and IP rights on getting some basic idea of their role and significance for some of the domestic companies.

The financial statements for the listed companies that are published on the website of the Macedonian Stock Exchange are prepared in accordance with International

65 'Structure of index MBI10' (Macedonian Stock Exchange) <<https://www.mse.mk/en/content/13/3/2010/structure-of-index-mbi10>> accessed 2 June 2021.

Accounting Standards.⁶⁶ International Accounting Standard 38 refers to intangible assets.⁶⁷ According to this standard, trademarks, licensing agreements, and franchise agreements are cited as examples of intangible assets, among others.⁶⁸ From the financial statements, only the aggregate value that the companies have recorded as intangible assets is available, without specifying the individual sections dedicated for IP rights. In any case, intangible assets represent value for the company arising directly or indirectly from IP rights. The second column of Table 6 shows the total assets from the 2020 financial statements of the companies that are part of the MBI10 index. The column next to it shows the intangible assets from the same financial statements. In the last column, the percentage of intangible assets in relation to the total assets of the companies is presented.

Table 6 – Comparison of total asset value and intangible asset value of MBI10 Companies for 2020

#	Company's name	Total assets value (MKD)	Intangible assets value (MKD)	% of intangible assets value in total asset value
1	Alkaloid Skopje	15,015,534	1,892,421	12.6%
2	Stopanska Banka Skopje	105,984,156	127,670	0.12%
3	Granit Skopje	3,607,243	21,549	0.59%
4	Komercijalna Banka Skopje	132,600,677	71,561	0.05%
5	Makepterol Skopje	8,207,759	5,805	0.07%
6	TTK Banka Skopje	8,844,455	16,63	0.18%
7	Makedonski Telekom	19,900,296	2,366,029	11.8 %
8	Makedonijaturist Skopje	2,532,932	342	0.01%
9	NLB Banka Skopje	96,545,213	278,154	0.28%
10	Stopanska Banka Bitola	11,015,113	71,467	0.64%

Source: calculated from consolidated financial reports⁶⁹

⁶⁶ International Accounting Standards (Official Gazette of Republic of North Macedonia No. 79/2010).

⁶⁷ International Accounting Standard 38 – Intangible Assets <<https://www.iasplus.com/en/standards/ias/ias38>> accessed 1 June 2021.

⁶⁸ *Ibid.*

There are several points that can be drawn from the table. Firstly, it is more than obvious that domestic companies invest more in tangible than intangible assets. Secondly, it is evident that in absolute numbers, almost half of the companies have recorded intangible assets that are even lower than the average Macedonian salary. Perhaps to some extent expected, Alkaloid and Telecom have the highest value of intangible assets. These are the only companies in which the percentage of intangible assets are reflected as more than 1% of the total assets – in Alkaloid the intangible assets are 12.6% of the total assets of the company, while in Telecom, 11.89%. These companies are the most internationalized because, in addition to the domestic markets, they are present in several foreign markets. Makedonski Telekom, as part of the Deutsche Telekom Group, is present in more than 30 countries, covering most of the significant markets throughout the world.⁷⁰ The Alkaloid, through its nineteen subsidiaries, is present in the entire Balkan region, in some EU countries, as well as Russia and the US.⁷¹ In Makedonijaturist, the intangible assets have the lowest value, representing only 0.01% of the total asset value.

Although the statistics refer to values taken from accounting and financial statements, and intangible assets cover more than just trademarks, it is obvious that domestic companies are lagging not only in comparison with the most successful companies on a global scale but also with companies from the region. The main disadvantage is, of course, the fact that most of the domestic companies, no matter how powerful they are nationally, operate only on the domestic market, or at most at, the regional Balkan market. Globally, these are very small markets, and consequently, the funds allocated for brand promotion are minor. It remains to be seen in the future whether some of the domestic

⁶⁹ <www.mse.mk>.

⁷⁰ Information on market presence of Deutsche Telekom, <<https://www.telekom.com/en/company/companyprofile/company-profile-625808>> accessed 6 June 2021.

⁷¹ Information on market presence of Alkaloid Skopje, <<https://alkaloid.com.mk/worldwide-en.nsp>> accessed 6 June 2021.

companies will expand to other regional or global markets and whether that would lead to an increase of investments in intangible assets such as trademark and other IP assets.

6. CONCLUSIONS

Today, trademarks have significant value for companies' worldwide success. In today's globalized world, conquering new commercialization of trademark and IP rights, in general, opens new opportunities for companies as a source of revenue. A significant part of the strategy for the growth and development of successful companies focuses on the strengthening and promotion of the company's brand and trademarks.

Today, there is an increasing trend of investment in intangible assets, and in certain markets, investment in intangible assets is greater than investment in tangible assets. Statistics show that the value of the brand of many of the world's most successful companies represents between 20-40% of the company's value. Unlike the rest of the world, Macedonian companies still devote insignificant resources in terms of intangible assets, traditionally relying on tangible assets such as production facilities, plants, equipment etc. Evidence for this is the fact that only in a small number of companies the value of intangible assets is more than 10% of the value of total assets of the company. This setup stems from the fact that many of these companies are established and operate mainly in the domestic market. As a recognizable domestic brand, most of the funds are directed to the production process to reduce costs and optimize production. Another reason for this might be that since these companies are embedded in the domestic market, they are not incentivized to reflect the true value of IP in their accounting and financial statements, or they lack interest and understanding of the strategic value of IP.

Those companies that are focused on conquering new markets, inevitably, must invest in promotion and strengthening of the brand, and consequently,

investments in intangible assets would have to be significantly higher. In light of the EU integration process occurring within the country, it is recommended that domestic companies, and in particular successful companies already established on the domestic market, orient themselves to new markets and increase investments in intangible assets and IP rights, thus creating recognizable brands which will be able to compete on the internal market of EU.

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