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RISK MANAGEMENT AND ASSESSMENT OF THE MANUFACTURING AND MARKETING RISK-FACTORS WITHIN INDUSTRIAL COMPANIES

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Abstract: *This paper is consecrated to a study referring to the manufacturing and marketing risk factors, specific to intellectual property; an analysis has been conducted upon case studies, within some companies manufacturing spare parts for cars, tractors, trucks etc., in Romania. By means of this paper, an alarm signal is given, referring to the counterfeit or "industrial piracy" actions, as well as to their consequences, when the counterfeit amplifies and extends masswide. As a result of the study conducted upon the "recovery of the intellectual-property rights, upon the spare parts, at a national level" [5,8], the losses of the damaged companies become obvious, in terms of economic efficiency; just as the stipulations the law become relevant, in the case of the situations under analysis, within companies manufacturing spare parts for cars, tractors, trucks etc.*

Keywords: *intangible, assessment, mark, risk, counterfeit/fake, crime.*

1. INTRODUCTION

The economic efficiency of any industrial company may be diminished by whatsoever counterfeit or "piracy" action.

The industrial companies make great efforts, in order to reduce the counterfeiting of their products.

Hence the final cost of the product manufactured by the owner of rights is higher than the cost of a licensed product.

The licensee does not include, among others, the market tracking costs [5,8].

By this article, we intend to clarify the following aspects:

- how the counterfeit influences the economic efficiency of the industrial company;

- what says the law, in the case the counterfeit is masswide; and the one who should deal with the protection is negligent;
- which is the social impact, as a result of this counterfeit. [5]

2. ANALYSIS OF THE RISK FACTORS WITHIN A COMPANY

2.1. Risk Management. Risk management is the main component of any company's strategic management, ensuring an efficient administration of the possibilities and of the adverse effects generated by the various types of risks [5,8].

A highly performing risk-management supposes comprehending the factors that may

affect the smooth functioning of the organization [5,8].

The organizations have adapted a formal risk-management process, for each type of risk, under different circumstances [1,2,4,6].

2.2. Study of the risk factors within a company. We introduced the risks specific to intellectual property in a scheme (shown in table 1) wherein we systematized the general risks that may be run by an organization, as well as the main internal and external factors that determine them.

Table 1. Internal and external risk factors.

FACTORS	INTERNAL	EXTERNAL
INTELLECTUAL PROPERTY RISKS	-failure to supervise the market; - contracts; -unfair competition; - underestimation / overestimation; - copyright; -brand; - patents; - industrial design etc.	- failure to supervise the market ; - contracts; - unfair competition; - underestimation / overestimation ; - copyright; - brand; - patents; - industrial design etc.
FINANCIAL RISKS	- liquidities; - cash-flow.	- interest rates; - exchange rates; - credits.
STRATEGIC RISKS	-research-development;	- competition; - market; - demand.
OPERATIONAL RISKS	- financial control; - IT system; - recruitment; - logistics.	- regulations; - culture; - management.
HAZARD RISKS	- wage-earners; - properties; - products; - services.	- contracts; - suppliers; - environment.

There is a multitude of events, which may negatively influence the activity of an enterprise/organization, and which can be split into two categories, namely: [5,8]

1. External factors with negative influence:

a. Economic factors:

- competition;
- market;
- macroeconomic/ microeconomic conditions.

b. Natural factors:

- earthquakes, draught, natural disasters etc.;

c. Political factors:

- change of government, after the elections;

-implementation of new legislative regulations.

d. Social factors:

- increase/decrease in the living standard;
- demographic changes.

e. Technological factors:

- access to information;
- reduction of the infrastructure costs;
- evolution of technology.

2. Internal factors with negative influence:

a. Infrastructure:

- equipment noncompliant with the production demands;
- incurred repair costs, which have not been taken into account.

b. Staff:

- ever more frequent labour accidents;
- human errors;
- fraudulent behaviour.

c. Processes:

- qualitative errors;
- non-compliance with the deadlines afferent to the manufacture of the products;
- delays in service.

d. Technology:

- problems with the data integrity;
- update of the working technologies etc.

I showed these internal and external factors with negative influence in figure 1, as follows:

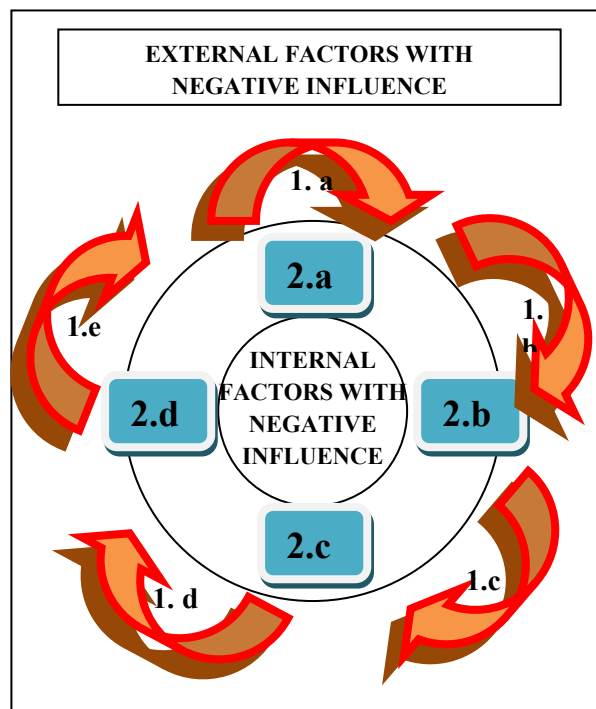


Figure 1. Internal / External factors with negative influence.



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2.3. Analysis of the manufacturing and marketing risks, specific to intellectual property. As a result of an analysis conducted within an industrial company, a series of production risks and marketing risks, specific to intellectual property resulted, such as:

A. Manufacturing risks specific to intellectual property: [5,8]

- Risk related to the inexistence of a highly-performing quality management;
- Risk related to the management's unresponsiveness towards the infringement of P.I. rights, for one's own products;
- Risk of inefficient promotion on the market of the P.I. (brand) for new products;
- Risk of unjustified expenditure on the promotion of old, outdated products;
- Risk of trademark production infringing the P.I. rights ;
- Risk of unfair competition in production;
- Risk related to the disclosure of know-how, production information, manufacturing secrets;
- Risk related to failure to promote the managerial skills;
- Risk related to failure to promote the employees' skills;
- Technological risk related to the lack of protection for inventions/patents;
- Technological risk related to the lack of protection for utility models;
- Technological risk related to the lack of protection for industrial drawings – models;
- Technological risk related to the lack of protection for integrated circuit topographies;
- Risk of product non-standardization etc.

B. Marketing risks specific to intellectual property: [5,8]

- Risk related to the unfair protection of the business name;
- Risk related to the abusive protection of a product by patent;

-Risk related to the abusive protection of a trademark vs. business name;

-Risk related to the abusive protection of a business name vs. trademark;

-Risk related to the abusive protection (confusion + association) of an industrial design/model vs. trademark;

-Risk related to the abusive protection (confusion + association) of a trademark vs. industrial design/model;

-Risk related to the abusive protection of a utility model;

-Risk related to the abusive protection of an integrated-circuit topography;

-Risk related to the abusive protection (confusion + association) of a field vs. business name;

- Risk related to the abusive protection (confusion + association) of a field vs. trademark;

-Risk related to the lack of protection of the client list and information;

-Risk related to the absence of market information;

-Risk related to the absence of marketing strategies;

-Risk related to the lack of protection for the distribution network;

-Risk related to the lack of protection for contracts;

-Risk of clinching non-protective contracts in PI;

-Risk related to the loss of reputation and credibility;

-Risk related to the lack of advertising / promotion;

-Risk related to the lack of protection for the database;

-Risk to commercialize goods infringing PI rights – [11] and others;

-Risk of unfair competition in trade – crime [14];

-Risk related to the lack of protection for the trademark of factory, commerce and services;

-Risk related to the lack of protection for the origin indications;

-Risk related to the lack of protection for the plant and animal species etc.

Regardless of the types of risks, the treatment thereof with negligence, by the organization's management, may lead to enormous losses, even bankruptcy.

In the following, we will analyze a case study referring to the "recovery of the intellectual-property rights upon the spare parts, at a national level", in the case of two companies, manufacturing spare parts for cars, tractors, trucks etc., in Romania.

In order to keep the data confidentiality, we named the former company "SIGMA" and the latter, "OMEGA".

3. ANALYSIS OF THE CASE STUDY UPON THE MANUFACTURING AND MARKETING RISK FACTORS, WITHIN THE INDUSTRIAL COMPANIES „S.C. SIGMA S.A.” AND „S.C. OMEGA S.A.”

At a national level, starting with the '90-ies, based on H.G. 1213 din 20.11.1990, the industrial plants were abolished; ad many joint stock companies were established, in order to "take over" their assets and liabilities. [5,8]

The "satellite" enterprises, set up in the '70-ies, with a view to producing spare parts for the internal market – as a result of the suffocation of the enterprises, to cover the external market – changed overnight into joint stock companies, detaching themselves from the parent undertaking. [5,8]

Besides, many influential people set up companies, which turned subsequently into basic pillars of the industry manufacturing spare parts for cars, tractors, trucks etc.

Currently, in our country, there are approximately 100 units manufacturing spare parts for cars, tractors, trucks etc.

In line with the imposed international legislation, referring to environment and quality, the Romanian Auto Registrar (RAR), homologated and certified all manufacturers of spare parts, throughout our counter, according to the legislation in force. [8,10,12,13].

After an analysis on the case study referring to the patrimonial evaluation of the first company manufacturing spare parts for cars, tractors and trucks, called S.C. SIGMA S.A., a drop in the value of the company and product brands was noticed, which could not be calculated, as this assessment of the trademarks, within the evaluation of the intangible assets, would not have been profitable, in economic terms.

The explanation would be the low volume of the sales and the economic inefficiency.

In this case, the tangible patrimonial assets were evaluated, with some connections to the intangible assets, by calculating the good-will.

In figure 2, we will present the graph of the total sales for the company S.C. SIGMA S.A. in the period 1990-2000, and in figure 3, the graph afferent to the evolution of the total spare-part sale, for the same company:

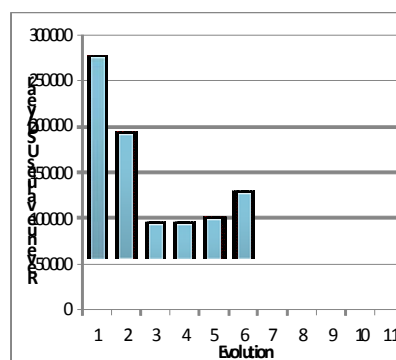


Figure 2. Graph of the sales evolution at S.C. SIGMA S.A.[5]

The analysis of the graph afferent to the evolution of the total sales at S.C. SIGMA S.A., shows a light drop in sales, during the years 3, 4; then an increase, in the years 5,6,7; afterwards a dramatic drop, in the years 8,9,10 which affected the entire company – consequences suffered after the penetration on the market, of the industrial "counterfeit", or "piracy" phenomenon.

According to [3], "there is counterfeit, if an element of the original work has been reproduced, even if there is no risk of confusion. The essential criterion of the counterfeit resides in the exemption from



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personal creative effort, represented by the loan."

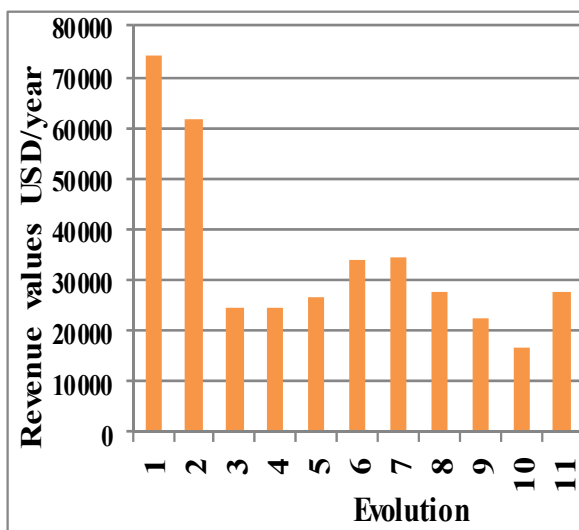


Figure 3. Graph afferent to the evolution of the total spare-part sale for S.C. SIGMA S.A.[5]

According to [7], "By reproduction, there is understood, a perpetration whereby the author... conveys or imitates something". The socially dangerous consequence of this crime is a concrete result, namely counterfeit products..."

Art.13/Law no. 8-96 stipulates: [9] "the use or the exploitation of a work engenders the author's distinct and exclusive rights to authorize:

a) the reproduction, either integral or partial, of the work; ... Art. 14. - (1) By reproduction, in the sense of this law, there is understood the achievement of one or several copies of the work, in any material form ..."

At the end of 1990, the latter company manufacturing spare parts for cars, trucks and tractors, called S.C. OMEGA S.A., requests a study referring to the "recovery of the intellectual-property right upon the spare parts, at a national level" [5,8], which study was

subsequently demanded also by S.C. SIGMA S.A. [5,8]

As a result of the two studies conducted at S.C. SIGMA S.A and S.C. OMEGA S.A., the following resulted:

- as a consequence of the great demand of spare parts, at a national level, 12 enterprises manufacturing spare-parts for trucks, cars and tractors were established, the design for the pieces being transmitted; yet no document of non-exclusive license assignment was ever signed. The manufacture was achieved at the level of the plant, after clear orders, according to the criterion part/ no. items;
- since the abolishment of the plant, so far, these companies have clinched no contract of non-exclusive cession;
- all production of spare parts for cars, tractors and trucks, at a national level, was counterfeited, excepting the pieces manufactured and sold by the right holders S.C. SIGMA S.A. and S.C. OMEGA S.A. [5,8]
- a few companies in the country were interested to become legal;
- a non-exclusive cession contract was negotiated, by law nr. 8/1996 as regards the copyright and related rights, which stands for the first contract clinched by the right owners S.C. SIGMA S.A. and S.C. OMEGA S.A. It was concluded and signed by the future beneficiary, the company S.C. X S.A. (called according to the confidentiality procedure); this contract being stopped by AGA.
- no knowledge exists of some summons to court for the recovery of the rights, as the expertise was not continued.

4. CONCLUSIONS & ACKNOWLEDGMENT

1. Unless the “pirate” companies existed, with a high production level, both S.C. SIGMA S.R.L. and S.C. OMEGA S.R.L. would have been the first companies manufacturing spare parts, at a national level.

2. If S.C. SIGMA S.R.L. and S.C. OMEGA S.R.L. recovered their copyright, the great value of their trademarks would be proven.

3. Laws were issued (Law no. 202/2000 as regards the intellectual-property in customs) which disadvantages the right holder (owner).

4. The efficiency of these enterprises enormously dropped; the market losing by intellectual theft; the right holder having not sued against the counterfeit.

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