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**Barriers to
Internationalization
of Italian SMEs:**
Intellectual Properties
Infringement Cases

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Introduction

Researchers findings suggest that the internationalization of small and medium family business is a common problem. Reasons are manifold: firstly, it is really difficult to define with standard criteria, small enterprises and family business; secondly, the choice of the internationalization strategy suitable for the size of the business; thirdly, it is known that small firms work under resources environment constraints. A barrier that may hinder the internationalization of small and medium family business may be the infringement of intellectual property. In fact, recently, much concern has been given to the concept of intellectual property and the relative protection across the world. Such issue is reported mostly when considering the development of economies, including the Chinese one.

This thesis examines deeply issues related to both the internationalization of small business and problems of the intellectual property infringement. Then, in the last part, emphasizes specific cases of Italian SMEs facing the infringement of intellectual property in China.

The objective of the first chapter is to outline the definition and dilemma of small and medium enterprises (SMEs) and family businesses (FBs). One of the main problems in analysing small and medium-sized enterprises and family business is that they belong to a heterogeneous environment and there is no standard definition.

Then, in the second chapter, it is highlighted the internationalization of SMEs and FBs, its state of the art, the barriers and opportunities that small family businesses encounter when developing an internationalization strategies and differences in the entry modes. As a matter of fact, firms have entered in foreign markets, they have hired thousands and thousands of people and traded in international fields. But how can internationalization be described? The internationalization concept has blurred definitions since it covers a wide range of characteristics.

The third chapter lays out an overview of intellectual property issue, by stating the differences in intellectual property kinds, the existent agreements on the issue and, in detail, the trademark and its relative infringement problems. In today's world the

development of new technologies, innovations, new products and services and new concepts are thought to have economic value. As a matter of fact, they are considered assets and such assets are intellectual property. The economic value is generated through their cost of creation, the likelihood of being used and craved for by hypothetical costumers and its legal rights granting the control of the owner of the intellectual property. These legal rights are called intellectual property rights. Intellectual property comes from original ideas of the human mind and their results are protected by the law.

The fourth chapter introduces the specificity of intellectual property problems in the People's Republic of China, the procedures to submit a registration of intellectual properties in China. It is clearly recognized that China went through a surprisingly fast economic expansion in these past three decades and is also addressed as the principal country of IP infringements.

The last chapter focuses on specific cases of Italian small businesses, who faced intellectual property infringement in China, the actions taken to cope with the problem and solve it. Intellectual properties are important elements to consider when a small business is planning to take on internationalization, especially if the target foreign market is China. The process of internationalization of small and medium-sized business in China may be hindered by the fact that China has been considered as country in which there is a high level of infringement cases.

In conclusion, the latest goal of this thesis is to explain the difficulties that a small business faces when entering in the Chinese market, since intellectual property infringement is one of the main problems.

前言

该领域的研究人员承认中小型家族企业的国际化是一个共同的问题。原因是多方面的：首先，小企业和家族企业没有一个标准的界定；第二，找到一个适合的国际化战略切入市场；第三，如同大家所知，小企业资源是有限的。最可能阻碍中小型家族企业国际化的障碍是侵犯智慧财产权。事实上，近几年来，全世界各国开始对智慧财产权的概念以及相对保护给予了极大的重视，尤其是在研究中国经济发展时，引起了各方面很大的关注。

本文深入探讨了小企业与家庭企业国际化相关的问题以及学者们对智慧财产权侵权问题的关注。在本研究中也提出意大利中小企业侵犯知识产权的具体案例。

第一章的目的是概述中小企业和家族企业的定义和困境。如何定义中小型企业的主要问题是没有一个国际性的标准，尽管中小企业有许多特征可供描述但各行各业的经营方式，所供应的市场，所生产的产品，所在地方，各国政策都各有不同。

尽管如此，全球政府和机构普遍认为中小企业是“经济的支柱”，中小企业在提供就业机会能力，研发和创新方面发挥着重要作用。它们是人们生活中不可或缺的一面，因为它们不尽提供当地生活所需，也提供社会或国家层面所需要的产品和服务。另一方面，对家族企业的定义也是相当不一至的，目前使用最普遍的是从以下四个方面来看，第一企业管理方式，第二经营方式，第三企业所有权，第四家族参与人。尽管家族企业的定义含糊不清，但全世界都认识到家族企业在世界经济中占据的中心地位。

第二章 讨论焦点转向中小企业和家族企业的国际化，相关研究人员的研究，中小企业和家族企业在国际发展上可有的有优势和他们在制定国际化战略时遇到的障碍以及进入模式的差异。

在过去三十年中，国际贸易和运营受到了很多关注。在国际化文献中所提到的早期阶段，各方注意力集中在跨国企业或外国投资上。在公司已经扩散到原产国之外，已经雇用了成千上万员工，并在全球范围内销售和购买的同时，国际化概念的定义依然是模糊不清的，因为它涵盖了广泛的特征。在国际化过程中，企业首先必须了解其竞争优势，然后了解其目标市场对产品是否有相关的限制。从实际的角度来看，进入国外市场可以有许多的模式：例如，直接出口产品是一种

低成本进入战略；或者将生产线直接转移到国外（比出口更高的成本进入战略）。了解进入模式的内部和外部因素非常重要，影响进入模式决策的外部因素有：所在国政府的政策，欲进入国家市场风险，市场潜力，但公司内部决策，战略目标，人员能力和投资时机也是不可忽视的。

随着公司增扩张其规模，所需的资金量随着增加，公司所需要承担的风险也跟着提高。有三种主要的进入模式：A. 出口：通常是国际化进程的第一步。它可以是间接或直接的；B. 国际合作关系：要求较高的投资成本；C, 海外子公司成立或者公司并购：企业必须投入国外市场的相当高的成本。在选择策略之前，每家公司都必须考虑风险和本身所有的资源。因此，中小企业的特殊性影响了他们的进入模式：财务能力，控制，管理和所有权。

第三章通过阐述智慧财产权种类和差异，现有的问题协议以及商标和侵权问题，对智慧财产权领域进行了概述。智慧财产权是一种独特的资产类别，它不是一种有形资产，而是属于无形资产。在当今世界，所有新技术的发展，新的做事方式，新产品和服务以及新概念都被认为具有经济价值。因此它们被视为资产，这些资产就是所谓的智慧财产。智慧财产的经济价值来自消费者对它的使用和渴望的可能性，由于它的创造是来自人类思想的原始观念及其结果，在创造过程中也会产生所谓的成本，所以需要透过法律保护智慧财产所有者的合法权力，以及授予智慧财产所有者对其的控制权力。智慧财产权可以是个人或一群人共有的权利，适当的保护使他们能够在固定的期限内不必担心竞争的情况下使用自己的想法。智慧财产权具有许多重要作用，例如，在智慧财产权受到保护的情况下，任何新产品的所有者是唯一拥有使用权和复制权的人，未经所有者授权，其他人是不可以复制或仿造该产品；智慧财产权保护了商品或服务的质量和来源，这对致力于新产品或服务开发的公司是一个相当的保障，因为商品和服务由国际组织检查和控制；研发的公司不仅可以使用智慧财产权，还可以通过所谓的国际协议将产品或服务借给他人使用来赚取利益。有几种形式的知识产权：专利，商业秘密，版权，地理标志和商标。由公司制造或执行的产品和服务很容易识别，这要归功于它们的标志，也称为商标。商标的相关特征是它们可以毫不费力地被识别，不能与其他商品相比较。事实上，他们的名称，符号，标识，标语，包装设计，文字或设备只能标注一家公司，在某些情况下，声音，气味，颜色和形状可能被认为是商标。事实

上，商标保护规定了所有者在交换付款时使用产品或服务或由其他方授权的专有权。商标被认为是长期资产，它们有助于防止不公平竞争，如果商标在世界范围内广为人知，则无论其语言，字母或文化如何，都可以被认可。在中小企业和家族企业方面，智慧财产权对于创新和经济增长至关重要，但是他们常常没有认识到应该对自己的智慧财产做保护。中小企业和家族企业需要了解智慧财产在提高利润方面的潜力，这样的认知又会促进公司内部进一步创新和发展。基于商标的独特性，顾客可用来辨别自家产品，因此商标法的目的是保护其独特性，避免顾客的困惑。

第四章介绍了中华民国智慧财产权问题的特殊性，中国智慧财产权注册程序以及中意关于此问题的关系。人们清楚地意识到，在过去三十年中，中国经历了惊人的快速经济扩张。然而，中国被认为是智慧财产权侵权的主要国家。据估计，由于侵权和仿冒，中国的合法业务必须承受 250-750 美元的损失。中国系统属于一个遵循“首先提交”规则的国家，即智慧财产的使用权是属于第一个注册它的人而不是属于发明它的人。外国公司在进入中国前，一旦有计划要进入中国，公司就应注意本身商标的注册问题，涵盖领域，因为注册必须涵盖广泛的智慧财产领域。对于意大利的中小企业而言，限于资金和人力的不足，他们常常成为这些智慧财产权侵权者的受害人，因为仿造和抢先注册商标是有利可图的业务，让他们不惜违法侵权。此外，中小企业在能力和资源有限的情况下，无法制止和针对这种情况采取应有的行动。

最后一章重点介绍了遭受中国智慧财产权侵权的意大利小企业的具体案例，他们对该问题所采取面对方式和相关预防的行动。智慧财产权的保护是小企业计划国际化时需要考虑的重要因素，特别如果国外目标市场是中国。中国被视为高侵权案件的国家，这会阻碍意大利中小企业进入中国市场的国际化进程。在第一种情况下，A 公司发现其在中国的经销商已在中国注册了其商标，并要求意大利本部付出高昂的代价才能购回该商标。在这种情况下，意大利公司可以：要求取消商标自家商标在中国的注册；申请宣告中国境内所注册的商标无效；要求行使拥有者的先前权利。第二种情况是，B 公司没有对软件进行保护，也没有重视其转让的专有技术，因为没有签署任何隐私协议。这导致中国公司能够自由使用其专有技术。在这种情况下，采取的行动是：制定利用智慧财产权的战略；制定准确的隐私协议；寻

找合适的合作伙伴。第三种情况，C 公司的错误在没有在中国注册任何商标。建议采取的措施是：注册包装的版权和徽标；通知商店；考虑反不正当竞争和食品安全问题。第四，D 公司试图在中国注册其产品的商标，但遭中国商标局拒绝注册申请，因为已经存在类似的注册。在这个情况下应对步骤是：确定注册商标的中国公司与意大利公司之间的任何关系；检查中国公司是否注册了与文字商标不同的商标，确认侵犯意大利商标的中国商标是否已侵犯其他智慧产权。第五个案例，E 公司发现中国的竞争对手正在销售包装，设计和颜色非常相似的产品。可能因为该公司没有提交专利以保证其产品的整体外观，也没有任何许可证涵盖产品的容量。该公司选择通过其法律顾问发送通知书，而不是采取法律途径，该通知书认为侵犯了产品的形状。最后一个案例，面食工厂 Zaffiri 有限公司，发现自己的商标在中国已经被注册。建议的行动是：立即在中国境内用拉丁字母传递传统名称注册；提交 Zaffiri 的中文名称；提交 Zaffiri 在中国的标识版权；使被侵权商标无效。

总之，很明显，中小企业针对侵犯其商标所采取的所有行动都需要许多资源和人力，而且如前所述，它们在资源有限的环境中工作。因此，有限的资源是影响他们国际化的最大绊脚石。但是不论如何大家应该记得，保护和执行其在中国境内或与中国有关的智慧财产权（IPR）对所有类型的企业都是至关重要，有必要加强对智慧财产权的重视，中小企业之间的合作以促进稳固智慧财产权和商业关系。国家，省政府和其他重要组织，更应该好地保护企业，人员和中小企业的智慧产权需求。

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1 Small and family business

1.1 Definition of small and medium enterprises

One of the main problems in analysing small and medium-sized enterprises (SMEs) is that they belong to a heterogeneous environment and there is no common instruction on how to define them. There are many characteristics used to describe the SMEs, based on the industry in which they operate, the market they supply, what they produce, where they are located and the institution which supports the SMEs (Ardic, O. P.; Mylenko, N.; Saltane, V.; 2011). In fact, many sources have attempted to define small business according to profitability, sales turnover, net profit, number of employees etc., amongst them, the European Commission.

Table 1 defines the small and medium-sized enterprises¹ conforming to staff headcount, turnover and total balance sheet.

Company category	Staff headcount	Turnover	or	Total balance sheet
Medium-sized	< 250	≤ € 50 m		≤ € 43 m
Small	< 50	≤ € 10 m		≤ € 10 m
Micro	< 10	≤ € 2 m		≤ € 2 m

Table 1: Definition of SME according to the EU.

<http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition-it>

The International Monetary Fund (IMF) defines SME on the maximum number of employees, maximum sales and maximum loan size, as analysed in the Financial Access 2010 survey.

As reported by the International Finance Corporation (IFC) in the whole world the number of SMEs is between 420 and 510 million of formal and informal Micro, Small and Medium Enterprises (MSMEs), as well as high-income OECD² countries (North, K.; Varvakis, G.; 2016). In addition to these institutional regulators, The Bolton Committee³(1971) published a report whose main subject was Small Business (Hutchinson, K; 2018). It analyses how SME influenced the English economy, the available services directed to small business and the relative problems. The central part

¹ See: EU recommendation 2003/361.

² Organization for Economic Co-operation and Development.

³ Also known as the 'Committee of Inquiry on Small Firm'.

of the aforementioned work was to give a definition of small business by dividing its meaning into two definitions: an 'economic' and 'statistical' one. The 'economic' definition was based on a small share of the market; not administrated by a formalised management structure, they are independent in the sense that no other enterprise has participation in it and it has no participation in other enterprises. While, the 'statistical' definition was characterized by the size of the small firm sector and the consequent contribution to the national economic aggregates; a comparison with former and present contribution over time along with a further comparison with small firms of different countries. Afterwards, there has been much criticism about the 'economic' and 'statistical' definition. For this reason, the EU was considered to be more precise, and it was established that the SME sector included those enterprises that have (Storey David James, 1994):

- micro-enterprises: 0-9 employees;
- small enterprises: 10-99 employees;
- medium-enterprises: 100-499 employees.

Despite of the fact that there is no standard or unified agreement on the small business definition, the small business sector is considered to be the "Backbone of the economy" as latterly outlined by Prime Minister Teresa May.

It is generally recognised by worldwide governments and institutions that small businesses play a major role in the employability, creation and innovation of jobs⁴. They are the central key in people's life because they provide products and services required by local needs as well as those at a public or national level. In everyday life, everyone counts on small business: markets, the legal firms that operate locally, banks established in a small city, that try to improve the income generation by hiring local people (Hutchinson, K; 2018).

1.1.1 Characteristics

The Small Business structure is made up of the owner or founder of the firm, its internal resources and the market exchange. It can vary greatly, and in order to better understand it, it is needed to go through the analysis of Davis et al. (1985), the differences between small and large firms: small firms develop their strategies in a

⁴ See: Hutchinson, K; 2018

resource scarcity environment; they have a shortage of expertise and have problems in acquiring expertise; they have weaker objectives than larger companies. It is remarkable to highlight that most small firms are founded upon a product or special skill of the owner. The decision-making is often a top-down process, but the founders make sure that employees fully understand the strategies and perform in accordance with such strategy. It is generally agreed that small firms often have to deal with resources constraint and uncertain situations. The small structure of the firm allows informal and cooperative relations, good communication and flexibility, but the personality of the owner plays a bigger role, as it can lead to conflict and problems inside the organization (Hutchinson, K; 2018).

Generally speaking, a small business is a privately owned and operated organization, though public organizations also exist. There are different common types of organizations: the sole trader is an organization in which the sole trader has the right of the decision-making process, but he/she is personally responsible for the debt of the company. Partnership, in which society is managed and owned by two or more people, its advantage is that the responsibility is shared but the decision-making process is more difficult. Limited company, that can be divided in: private limited company and public limited company⁵. They have their own legal rights and obligations, usually the private limited companies are small businesses that do not trade on the stock exchange. Women ownership is part of the heterogeneity of the small business category. In fact, the U.S. Census Bureau reports that the 35.8 percent of businesses are owned by women. But it has been found that they face problems in financing their business. Regardless of the resource scarcity, women ownership business does not seem to run the business in a poorer way than others. A well-known business contributor to the world economy is the family owned business. It must be clear that the family owned business does not just embody small firms, but also large ones. Furthermore, it does not always lead to positive outcomes, in fact, family relationship and values end up to hijack the current business operation (Hutchinson, K; 2018).

1.2 Family business state of the art

According to Chua et al. (1999), the revision of more than 250 papers regarding family business literature revealed 21 definitions of family business, except for those papers

⁵ See: "Leadership and Small Business" (Hutchinson, K; 2018).

whose discussion did not involve directly family business or did not make a distinction between family and non-family business. It is evident that there are main themes that have been used in order to define a family business:

1. Family owned and family managed;
2. Family owned but not family managed; and
3. Family managed but not family owned.

It seems to be clear that researchers have used four key features to describe family business (Fletcher, D. E.; 2002):

1. whether more than 50 per cent of the shares in the business are owned by a prevalent family group;
2. whether members of an 'emotional kinship group' perceive their firm as being a family business;
3. whether a prevalent family group manage the firm;
4. whether inside the company an inter-generational succession of members of the predominant family group had already occurred.

According to Westhead and Crowling (1998) the foregoing criteria are used to delineate manifold definition of family business⁶ (Fletcher, D. E.; 2002).

With reference to the claims of Ramirez and López-Delgado (2015), several authors, through the application of different criteria, attempted to solve the problem of the family business definition. The core of a FB resides in a coalition dominated by members of the family (Chua et al., 1999); Habbershon and Williams (1999) claim that the centre of the firm involve the notion of "familiness", i.e., synergy between family members and business operations. In addition, according to Gomez-Mejia et al. (2007) the difference between NFBs and FBs stays in the fact that FBs share socioemotional wealth⁷. The current re-elaborated international definitions of family businesses are incorporated in Table 2.

⁶ See: "Understanding the Small Family Business" (Fletcher, D. E.; 2002).

⁷ The stock of affect-related value which the family links to the business.

Criteria	Definition	References
Ownership	It is called family firm when: one or more family member owns the firm, more than one member are major owners, a considerable size of share is held by family	Heck and Scannell (1999); Gomez-Mejia et al. (2007); Bona-Sanchez et al. (2007)
Control	It is called family firm when: the family has a certain degree of control over its strategic direction;	Astrachan and Shanker (2003); McAdam et al. (2010)
Board of directors	It is called family firm when: directors of the firm are two or more family members or have a family relationship;	Gomez-Mejia et al. (2003); Villalonga and Amit (2006)
Management	It is called family firm when: management activities are held by family members, business operations are controlled by one or more family members, major executive charges are held by more than one family members, the CEO is the founder or co-founder, the founding family manages the company	McConaughy et al. (1998); Heck and Scannell (1999); Villalonga and Amit (2006); Miller et al. (2007); Kellemeranns et al. (2012)
Trans-generational succession	It is called family firm when: there must be an intention to share and transfer control and ownership of the business to the next generations	Handler (1989); Litz (1995); Chua et al. (1999); Chrisman et al. (2002); Astrachan and Shanker (2003)

Multiple generations	It is called family firm when: Astrachan and Shanker ownership control is held by (2003); Kellemarnns et al. different generations of the (2012) family. Multiple generations have considerable influence on the business
Family and business values	It is called family firm when: Gallo (2000); Kellemarnns et al. (2012) the firm share values and assumptions of the family and vice versa, and there is willingness of the family to be part of the firm, to help running the activities of the firm

Table 2: Re-elaborated criteria and definition used to define family business, (Diéguez-Soto, J; 2015)⁸

As indicated by an influential work (Handler, 1989; Sharma et al., 1996; Winter et al., 1998), four different methodologies can be gathered to reveal the prerequisites of the family business' impact: management, ownership and governance: although no conformity exists to the intensity of the responsibility addressed to family members in either management⁹, governance¹⁰ or ownership¹¹, power is the essence of family business definition and is translated into ownership and involvement in management. Family firm can be identified as a firm controlled by a family, but either the number of the family members or the percentage of equity held by the family should be influential factors. Researchers suggested that on one hand the family business can be defined as family if the family possess the total ownership of the firm with one or more family members participating in the running of the business. On the other hand, there are differences in theories regarding the fact that

⁸ Refer to: "Identifying and classifying family businesses" (Diéguez-Soto, J; 2015).

⁹ Coordination of activities in a business to attain an established target.

¹⁰ Implementation of practices and codes, persistent checking of their legitimate usage, by individuals from the administrative body of an organization. It incorporates the instruments required to adjust the power of the members (with the related responsibility), and their essential obligation of upgrading the success and feasibility of the organization.

¹¹ A definitive and elite right given by a legitimate claim or title, and subject to specific limitations to appreciate, involve, have, lease, sell, use, give away, or even crush a thing of property. It can be corporeal (tangible object) or incorporeal (intangible object).

the family holds ownership but not management power or vice versa; generational transfer: what is important to highlight is the intergenerational transfer because it is the critical element that proves the difference between family and non-family business. In fact, the typical feature of family business is the survival and continuity of the business; interdependence between subsystems: the interdependence between subsystems means that the firm and the family are two separate but interdependent sub-systems¹².

Researchers have suggested overlapping areas, such as the family, the founder, the business and the board of directors; others have proposed the assets, the business and the family. This method reveals some constraints, the lack of objectivity and precision to make a unique sample; existence of multiple conditions: last but not least, experts mentioned that merge together miscellaneous criteria¹³ to subjective¹⁴ phenomena. Even supposing the mixture of conditions, this method still does not lead to the definition of family business (Di Toma, P; Montanari, S; 2010).

In accordance with the work of Astrachan and Shanker (1996), the definition of family business is difficult to achieve because of the shortage of quantitative studies and the absence of standard criteria. They attempted to define family business by the degree of involvement of the family, according to the most significant and most used standards: ownership, management, inter-generations shift, etc. The threefold diagram the “Bull’s Eye” varies from:

¹² See: “The Definitional Dilemma in Family Business Research: Outlines of an Ongoing Debate” (Di Toma, P; Montanari, S; 2010).

¹³ Generally indicated as ownership and management.

¹⁴ Often described as behavioural features: identification, perception or the intentions of the people involved.

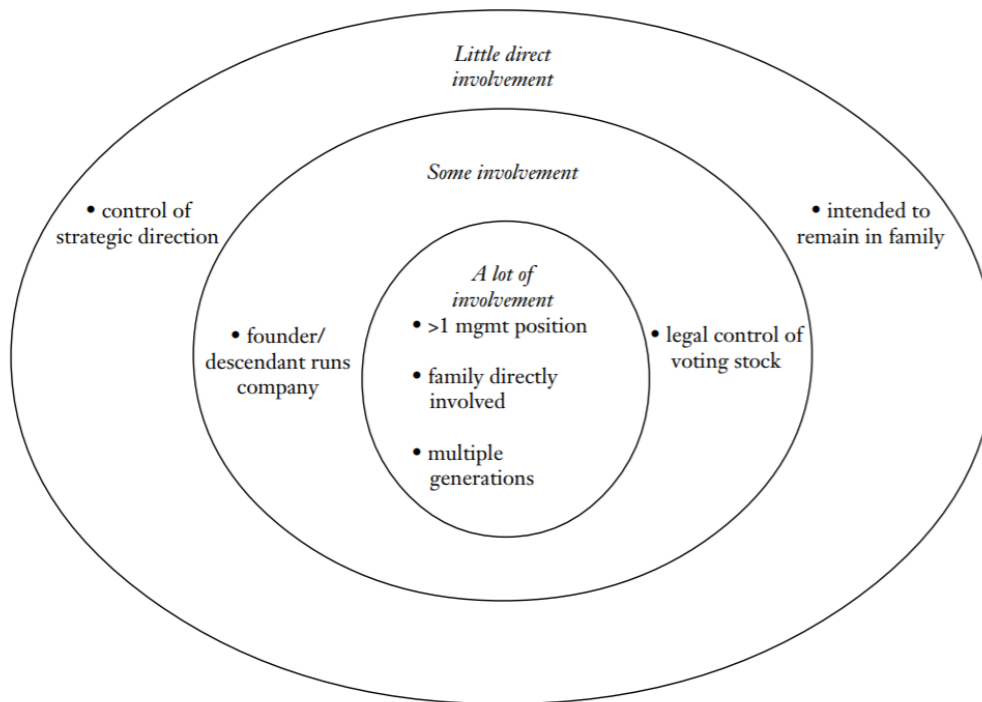


Figure 1: “The Family Universe Bull’s Eye” Astrachan and Shanker (1996), p.109¹⁵

little involvement (the broadest circle), meaning that at least one family member influences the decision but has no direct contact; to some involvement (the middle division), where only one member of the family has direct control and contact in everyday operations; finally, a lot of involvement (the narrowest division), more than one family member and one or more generations lead management operations. Thereafter, Astrachan et al. (2005) drew the attention on the trouble related with this methodology, which is the fact that diverse parts of family contribution are legitimately found on the continuum itself. For this reason, the degree and manner of family contribution in and impact on the business became central. In the aforementioned analysis the researchers proposed three dimensions of family influence: culture, power and experience, which altogether create the F-PEC model, an index, measured by a questionnaire, describing family influence in the business, implementing correlations across business with degree of family involvement and its impact on business practices. Power embraces the concept of control, both direct and indirect, and ownership, management and governance. Experience attracts family involvement through the inter-generational transfer. Lastly, culture is measured by the principles and values shared

¹⁵ See: “Myths and Realities: Family Businesses’ Contribution to the US Economy— A Framework for Assessing Family Business Statistics” Astrachan and Shanker (1996), p.109

both by family and, as a consequence, in business activities. The F-PEC model has been treated as a solution for the definition of family business, because it provides a better understanding of the family business criteria used to describe it. Nevertheless, ambiguities still exist. The alleged ambiguities are the subjectivity in the measurement of the extent of the family involvement in the business, the absence of division of variables regarding the familiness value and the reflecting effect on the behaviour over time. In conclusion, the F-PEC model is an effective instrument for the definition of family business, but has its limitation (Di Toma, P; Montanari, S.; 2010).

1.3 Problems in defining family business

How can Family Business (FB) be defined? Is it possible to compare a Family Business and a Non-Family Business (NFB)? The analysis on FB are copious and sometimes opposed to each other, which does not entail the incorrectness of such analysis, but implies the different application of classification methods for family business¹⁶. The difficulty to answer the above-mentioned questions lies in the fact that there is no general agreement on the standard definition of family business (López-Delgado, P.; Ramirez, A. A. R.; 2015).

Management, governance, succession and ownership have a huge impact on delineating the formulation of the family firm's strategies, structure and its ultimate goals. In fact, the dynamics inside a family business will influence every decision and action, both in then family and in the firm's operation. Certainly, family dynamics are different from a non-family ownership or family managed but not family owned. In accordance with the thesis of Chua et al. (1999) the definition of FB depends on ownership, sometimes succession and management. Is it possible to include in the family business sector all those firms that are family owned but not managed firm or family managed but not owned firm? ¹⁷ Or is wholly owned by a family or wholly managed by a family a clear definition? Furthermore, to make things worse, there is no clarification regarding the amount of ownership and management directed by a family member in order to entitle the firm as family business. Hence, Chua et al. (1999) claim that the theoretical definition, depend on conceptual foundation of the differences in the concept of entity, phenomenon and object, while operational definitions, is built upon the quantifiable

¹⁶ See: "Identifying and classifying family businesses" (López-Delgado, P.; Ramirez, A. A. R.; 2015).

¹⁷ Refer to: "Defining the Family Business by Behavior" (Chua, Chrisman, Sharma; 1999).

features that vary upon the phenomenon, object or entity, are effective criteria in order to try to explain the family business.

Researchers have discussed the central focus of some criteria and their role in the definition of family business: family side definition and individuals, i.e., the founder/s of the firm and members of the family, and the related relationship between work and family, between family and non-family employees, the handling of resolution of conflict, etc. (Di Toma, P; Montanari, S; 2010). Some other analysts consider the aforementioned subjects too specific criteria to create the family business definition upon¹⁸.

In accordance with Chua et al. (2012), the first who issued the family business problem was Lanberg et al.'s (1988) 24 years ago, and today no researcher has still found a standard definition. At first, authors highlighted the ownership and management to differentiate family firms and non-family firms. But this method introduced bias because of the definition of the firm itself, that means a family firm with the same extent of family concentration may not consider themselves family firms. These definitions are contained in the operational definitions of family business. Whereas, theoretical definitions focused on the synergy emanated from the family cooperation, Habbershon et al. (2003). Moreover, there is also the family-centred approach and the firm-centred approach. The firm-centred approach consists in defining the family business according to the family's functions and their influence in the firm. Whilst, the family-centred approach is concerned with the essence of both the family and their role in the business. Lately, authors have started to consider family firms as heterogeneous entities, because the centrality has fallen into the criteria that allow a distinction between family business and non-family business. Finally, it is obvious that the debate is still open but some improvements are evident since some methods used to distinguish the family and non-family business are becoming more accurate¹⁹.

As stated by Fletcher E. D. (2002), there are some point²⁰ of distinction between family business and non-family business, demographically speaking. It seems evident from the Stoy Hayward (1992) survey that family business was older than the non-family

¹⁸ See: "The Definitional Dilemma in Family Business Research: Outlines of an Ongoing Debate" (Di Toma, P; Montanari, S; 2010).

¹⁹ Refer to: "A Resource-Based Framework for Assessing the Strategic Advantages of Family Firms" (Habbershon, Timothy G.; Williams., Mary L.; 1999).

²⁰ The authors are referring to family businesses located in the United Kingdom.

business. Regarding the location of the business, Westhead and Cowling (1998) observed that rural areas and urban areas were the location where family enterprises were greatly situated. The activities of family business were more represented in the agriculture, distribution, hotels fields, while less represented in the financing, insurance and business category. Then, the business size of family firms depends on the country. In fact, as reported by Donckels and Fröhlich's (1991) the concentration of family firms in small-sized enterprises was quite high in Europe.²¹

1.4 Family Business Problems

Despite the ambiguity of the definition of family business, the whole world recognized the central position that the family firms occupy in the world economy. They can be entities that exist for more than a century or can close the business after few months. Even though a hundred-years firm has accomplished its routine and organized its activity, does not mean that it is easier to run the business. Truthfully, running a family firm is always a complex task. In line with the survey of Devecchi and Fraquelli (2008), three elements²² prove to be essential in the definition of family business: family influence on the business operations; the continuity of the business through the family's generations; family ownership and control of the business. The study of Devecchi and Fraquelli (2008) examines, among other subjects, the problems related to family firms. They grouped those problems that are considered to be in the *familiness*²³ idea, in four macro areas: business-family relationship, problems related with the complete cooperation between family and business activities, e.g., corporate governance's mechanism and model, organizational structure, business family history, etc.; Business Model, problems that come from the implementation of the business model throughout the business evolution, for example, leadership, family name continuity, organization, access to foreign markets, etc.; Risk Level, situations able to jeopardize the existence and continuity of the organization, such as country risk, successor's incapability, family rivalry, family and extra-family emotions, etc.;²⁴ Shareholding-economic system²⁵, problems that originate from the financial and economic management, for instance, re-organization of corporate structure, shares evaluation, mixture of family-business assets,

²¹ See: "Are Family Businesses Really Different? European Experiences from STRATOS" Donckels and Fröhlich's (1991).

²² More elements for defining family business have been previously presented.

²³ Habbershon and Williams (1999).

²⁴ See: "Dinamiche di sviluppo e internazionalizzazione del family business" Devecchi and Fraquelli (2008).

²⁵ Translation from assetto economico-patrimoniale (Aep).

etc.. These macro areas shape questions likely to come across when running a family firm, throughout their life. Thence, forthwith it is worth to mention the business cycle of the family organization because the aforementioned problems are strictly interconnected with time and business growth. The business cycle is divided into 5 types:

1. exclusively family-run business, where family and work are one essence, no one has a precise role;
2. enlarged family-run business, is characterised by the presence of some non-family members, with the amount of work increasing and some delegation;
3. pseudo managerial family-run business, the problem here is the intensification of the complexity of the organization, more proxies, as the business keeps on growing, financial needs grow, some family crisis come up;
4. evolutionary managerial business, are those business that constantly and rapidly continue to grow, there is the presence of multiple delegations, the founder starts to retrieve, it becomes a multifamily propriety and the originating company has converted into a group;
5. sophisticated managerial business, it is often a multinational company, the founder family has almost disappeared. To sum up, each of these phases has its proportioned problem (Devecchi and Fraquelli, 2008)²⁶.

1.5 Performance and advantages

The Resource-Based View²⁷ (RBV) is a theory that seeks to explain the competitive advantage of family business achieved by firm's resources. Basically, it suggests that organizations should search for their internal competitive advantages rather than looking for competitive environment²⁸. But what is a competitive advantage? Michael E. Porter sustained that a competitive advantage is the superiority gained by an organization's product or service; the central keys are benefit, target market and competition. The RBV determines a model in which a firm's internal features,

²⁶ Refer to: "Dinamiche di sviluppo e internazionalizzazione del family business" (Devecchi and Fraquelli, 2008).

²⁷ The RBV theory appeared between the '80s and 90's, after Prahalad and Hamel ("The Core Competence of The Corporation"), Barney, J. ("Firm resources and sustained competitive advantage") and others master pieces have been published. It undergone an evolution of research program: industrial organization, strategy research and organizational economics.

²⁸ See: "A Resource-Based Framework for Assessing the Strategic Advantages of Family Firms" (Habbershon, Williams, 1999).

mechanisms and its performance are interconnected (Habbershon, Williams, 1999). In fact, researchers argue that those businesses of a specific industry are heterogeneous, as for the relevance of the different types of resources that these firms possess. For this reason, it is pertinent to mention the different types of resources, according to the literature: *physical capital resources* (plant, location, capital and intellectual property, etc.), *human capital resources* (skills, relationships, knowledge, etc.), *organizational capital resources* (policies, culture, technology, competencies, etc.) and *process capital resources* (commitment, leadership, team, etc.)²⁹. After an evaluation of the existent resources inside the family business and their consequent appraisal, only then a firm is able to individuate their competitive advantage. Additionally, Barney (1991) claims that a resource in order to be able to obtain a competitive advantage has to be valuable, rare, hard to imitate and an equivalent substitute should not exist³⁰.

The problem of the RBV model is to explain the unique concept of the family business. Once this process has come to an end, the RBV helps to better understand the advantages of a family business. Some argue that family firms have a unique working environment, flexibility and efficiency of the work processes, which are some of the advantages of family firms. Family businesses have also been told to be more productive, they have a “family language”, informal decision-making, working relationship are based on loyalty, credible reputation. Moreover, parts of the costs are lower compared to the nonfamily business, e.g., agency costs³¹ (Mitnick, 2006), lower recruitment costs and human resources costs. There is a considerable sense of commitment, strong sense of mission, long-term goals and inside the business, family members underline personal and family values rather than organizational ones (Zellweger et al, 2010).

In the literature, researchers have described family firms as having performance advantages over non-family firms because of the attribute of *familiness*, described as: the involvement of family in the firm lead to the idiosyncrasy of internal resources (Habbershon, Williams, 1999). According to the study of Stanley and McDowell (2013), in which they investigate on triggers of family firm performance, it is considerable

²⁹ See: “A Resource-Based Framework for Assessing the Strategic Advantages of Family Firms” (Habbershon, Williams, 1999).

³⁰ Refer to: “The Resource-Based View of the Firm” Barney (1991).

³¹ Stephen Ross and Barry Mitnick created the agency theory. The agency theory explains and resolves disputes between firms’ owners and their agents. It is said that in family firms agency costs are lower, because of the coinciding figures of owner/principles and manager/agent relationships.

fundamental to analyse the elements of firm social capital³²: organizational efficacy³³ and inter-organizational trust³⁴. Organizational efficacy is based on an individual level, such as self-efficacy in term of individual awareness of one owns competencies; while, trust has been connected more with flexibility, greater stewardship and cooperation. Huybrechts et al. (2011) claim that there are four categories of intangible resources that may lead to better performance, compared to nonfamily business: reputation, human capital, networks and organizational culture. Researchers suggest that a higher level of organizational efficacy and inter-organizational trust positively affect the family firm performance. Chua et al. (2005) identified the “*components of involvement*”, meant as the family influence in ownership, management or control, and “*essence*”, in terms of behaviour of the family and its characteristics of uniqueness and synergy in the processes with a trans-generational perspective, the approaches useful to explain the difference between family and non-family business. To sum up, the components of involvement maintain an objective evaluation of the firm, while the essence approach is based on the family behaviour transmitted to the firm³⁵.

Furthermore, another theory considered in the family business field is the organizational one, in which the organizational identity is the main subject of discussion. Organizational identity outlines how organizational culture and internal processes influence people, strategy and change (Ravasi and Schultz, 2006). For this reason, it can help to provide those elements of distinctiveness of family business. It is claimed by many authors that the identity of the family is created in many ways: dedication and responsibility to the business (Cabrera-Suárez, Saá-Pérez, & García-Almeida, 2001); kinship, family name and common history are strong elements to develop family identity inside a business, creating a sense of community (Sundaramurthy and Kreiner, 2008). As a consequence of family strong identity, the business is more likely to benefit from open communication and participation, sharing values and goals that may facilitate conflicts, the sharing of ideas, which may lead to success. As far as the external environment is concerned, it is important for a family firm to thrive external relationships according to the same values and goals of internal ones, because the perception of the brand from an

³² Broadly indicates the network of relationship created inside the organization, enabling the success of the society.

³³ The firm’s confidence in performing well.

³⁴ The assumption that the partner firm will be trustworthy and honest.

³⁵ See: “Trends and Directions in the Development of a Strategic Management Theory of the Family Firm” Chua et al. (2005).

outside view is a fundamental element. In fact, the family identity is so unique that some firms create a competitive advantage on that, for example with the use of eponyms³⁶, which try to illustrate public family values, practices and norms. Being perceived as a family firm is regarded as a positive attribute, because clients, shareholders, etc. feel them as trustworthy, customer-centred and quality-focused (Craig et al., 2008; Ward & Aronoff, 1995). Community-level social capital is another family firm identity that may lead to benefits. The sense of community is central in the social capital, it creates ways of sharing information and reciprocity³⁷.

Nevertheless, not all family firms want to sustain the idea of familiness. In point of fact, some families do not have strong relationships, so there are different degrees of family involvement, essence and organizational identity. Therefore, when assessing a family firm, all of these three components should be considered (Zellweger et al., 2009).

1.6 Conflict, succession and commitment

In the family business discussions, conflicts and behaviours are crucial elements of the composition in the family organizations. Confusion is easily conceived by the overlapping of business and family and can lead to poor role performances and decisions. Task burden is intensified when family and work are fundamental concepts. Substantially, stress associated to the work involve also the family, that can lead to business dissatisfaction, work-to-household disputes. Researchers argue that on the one hand, the relationship family-work is able to ease the pressure of the dispute since family can intermediate (Greenhaus and Beutell, 1985); on the other hand, Frone et al. (1997) claim that family-work relations affect negatively the family, spouse and family distress (Fletcher, E. D., 2002). Moreover, Chua et al. (2012) state that conflict is more likely to occur when high organizational roles are held by many close affiliated family members, non-family members have great power in the decision making of the firm. It must be added, however, that conflicts are not always dangerous for family firms. In fact, Kellermanns and Eddleston (2004) affirm that assignment and process conflicts affect positively the results³⁸. But, considering the topic of the Professor John A. Davis, conflicts need to be managed in family-business relationship. For this reason, Davis

³⁶ The use of family name in the firm's name.

³⁷ See: "Strategy in family business: Toward a multidimensional research agenda" H.Astrachan (2010).

³⁸ Refer to: "Feuding Families: When Conflict Does a Family Firm Good" Kellermanns and Eddleston (2004).

created a model composed by four types, in increasing order of criticality, of business family conflict: minor disagreement³⁹; serious dispute⁴⁰; destabilizing conflict⁴¹; warfare⁴².

Besides, conflicts can arise also for the succession cause. A significant argument in the succession topic is the fact that many researchers in the field mean intra-family succession Chua et al. (2012). Generational turnover is a very thorny situation due to the fact that the firm has been built upon the founder's know-how. In fact, behind the selection of the subject, who will lead the business, risks and decisions are manifold, e.g., appoint one member of the family unable to manage the firm or has no spirit of enterprise. Undoubtedly, if prospective successors reject the task or the administrative board reject the successors, no succession will occur. As a matter of fact, the attractiveness of the business, completeness and commitment of the successor are keystones in the succession of a family firm⁴³. It is important to add that new generations of the family may not long for leading the organization, maybe because of restricted opportunities or the absence of a stimulating environment. For this reason, if the business has a certain degree of attractiveness and more opportunity, conflicts may rise due to the poor amount of available opportunities, resulting in a family competition (Devecchi and Fraquelli 2008). While, completeness and commitment are factors measured by goal attainment, which lead board of directors to select one member over another (Chua et al., 2012). As reported by Sharma and Irving (2002) family business' commitment is considered the core element in the next generation of family members. Many characteristics must be considered when considering the potential successor, e.g., experience, ability, external connections etc. Sharma et al. identified four *shades of commitment*, depending on different motivators⁴⁴: *affective commitment*, is characterized by a strong connection with the organization and ambition to maintain his/her role inside the organization; *normative commitment*, is identified with the feeling of obligation in being part of the family business; *calculative commitment*, is based on the feeling of loss of investment or value if she/he was not to pursue a career in the organization; *imperative commitment*, is based on the impression of being unable to be

³⁹ Appear when there is a different point of view, easily to come to compromise.

⁴⁰ Emerge when ideological differences exist, need to be worked through fast.

⁴¹ Establishment of factions, harder to find resolutions.

⁴² Families and companies can be involved in and destroyed by the dispute.

⁴³ See: "Family business studies: an annotated bibliography" Chua et al. (2012)

⁴⁴ For example: career, socialization, interests and opportunities, etc.

successful outside the family firm⁴⁵. In conclusion, it seems clear that focal behaviour (willingness to cooperate in the family business) and discretionary behaviours (efforts beyond the feeling of duty) encompass the four shades of commitment, and each commitment mode lead to particular type of bond with the organization (Sharma and Irving, 2002).

⁴⁵ See: "Four shades of family business successor commitment: Motivating factors and expected outcomes" organization (Sharma and Irving, 2002).

2 Internationalization

Over the last three decades much concern has been given to international trade and operations. In the early stages of the internationalization literature, the starting point was reckoned as the multinational level or foreign investment. Later, the interest shifted also to the size of the firm and the different decisions of going abroad, according to its size (Welch, 1988). As a matter of fact, firms have spread outside their country of origin, they have employed thousands and thousands of people, and sold and bought all around the globe (Lasserre, 2012). How can internationalization be described? The internationalization concept has blurred definitions since it covers a wide range of possibilities Koury, S.J.,(1984), Huszagh, S.M. and Huszagh F.W. (1986) suggest that the growth of involvement in international trade is an effective way to define internationalization, but Welch (1988) affirms that it is not so pertinent because it highlights the outward side of the international involvement of a firm more than the connection between the outward and inward sides. In addition, the degree of internationalization has been discussed through the proportion of export sales on total sales, but also this method has critical¹ judgements². Therefore, researchers found different elements in order to evaluate the degree of internationalization of a firm, such as: the operational method, which answers the question “How can a firm internationalize?”; sales object, “What is it selling?”; Target markets “Where does it internationalize?; and then, the focus shifts on the internal organisational capacity, i.e. organisational structure³, finance⁴ and personnel⁵ (Welch, 1988).

When discussing internationalization, special attention must be given to the *liability of foreignness*. The term liability of foreignness stands for the additional costs that companies encounter while operating outside their national borders. This expression refers to the costs incurred when obtaining local knowledge, dealing with complexities in host-countries, absent in home-country. Basically, the idea is that foreign firms, at least in principle, are more disadvantaged than local firms (Nachum, L; 2015).

¹ International operations' nature is not detailed.

² See: “Internationalization: Evolution of a Concept” (Welch, 1988).

³ Organisational structure needs to keep the pace with the incremental growth and complexity of the internationalization strategies.

⁴ The expansion of international activities translated necessarily into the increase of financial support.

⁵ The realization of internationalization deeply depends on people involved in the process.

Regardless the proper definition of internationalization, what is important to assess is “Why internationalization?”, “How is the internationalization initiated and sustained?” and “Which are the most proper strategies adapted in the international market?”. As far as the reason why to internationalize is concerned, the literature legitimizes the division between a firm that already has a competitive advantage and a company that is willing to obtain the competitive advantage⁶. Furthermore, a firm may internationalize because it wants to expand its business so as to increase sales: national market is very limited, ideally the global market is limitless. Engaging in international business can increase the chances to expand a firm’s national market. It is not only a matter of being willing to go abroad and to expand national market. Firms can decide to go abroad because national market is declining: if economic conditions in one country are very bad and firms in that country are very healthy companies that want to sell their products abroad, it is a very good opportunity to sustain international business. Moreover, national market can also be in a situation of stagnation: it is stable and nobody wants to buy another new kind of product in that industry. For this reason, firms decide to go abroad to collocate these products on the market. Firms want to acquire resources which cannot be found in their home country, because in foreign countries raw materials or in general the components of products cost less. So, this is a matter of being more efficient, of reducing costs. It is also a matter of additional knowledge, of better quality of resources available in other countries⁷. Abroad better technology can easily be found, and there are more chances to not only acquire physical resources, but also technological competence, which may not be available in the home-country of the firm. It is also possible that firm want to internationalize to minimize risk: it is a very critical issue for companies. If a firm concentrates their business in a single country, and later on this country goes to recession, basically the company is going to reduce sales because nationals cannot afford the firm’s products. So, it is better to enter more foreign countries in order to avoid this situation. Another reason for going international is to exploit proprietary assets: if firms have a strong asset, for instance a strong brand or maybe very successful product technologies, it is wise to sell the product everywhere, not only in one country, in order to exploit that asset everywhere (Lasserre, 2012).

⁶ See: “Internationalization of Firms: The Role of Institutional Distance on Location and Entry mode” Vanoli Parietti (2017).

⁷ Refer to: “Internationalization: Evolution of a Concept” (Welch, 1988).

Regarding the process of internationalization, a company first has to understand its competitive advantage and then it has to find out if its product in the target market has some restrictions⁸.

As an ultimate step, the firm needs to realize if it wants to provide its services/products globally, locally or other strategies (Nanut, Tracogna,; 2003).

2.1.1 Globalization versus Internationalization

What is the difference between globalization and internationalization? Are they the same concept? Globalization is the reality of the movement of people, ideas, goods, services across borders. Basically, is the integration of manifold country's economies into one global economic, where free trades and movements are characteristics. Internationalization, on the other hand, indicates the importance of international trades, relations and so on⁹. Therefore, the common field is the union, the integration of nations (Daly, 1999).

It must be added that world's economy lived three phases of globalization: the first one goes 1890-1945, and was characterised by technology and transportation innovation¹⁰ in industrialisation, migration of workers to wealth countries, the great depression and two world wars; the second one from 1945 to 1980, economic growth, numerous agreements enacted by two main organization GATT and EU¹¹, in order to push towards the development of free trade, are the events that defined this period; the third phase starts with the end of the twentieth century and is still on going, is defined by the growth of international trades, investments and migration flows (Bertoli, 2014).

Furthermore, the globalization lead to a convergence of consumer tastes all around the world, through the influences leveraged by the integration of international lifestyles. It is related at some extent with standardization of goods, services and processes. Undoubtedly, there are some elements that work against globalization, meant as coordination, integration and standardization: cultural, commercial, technical and legal factors, named as localization push (Lasserre, 2012).

⁸ See: "PROCESSI DI INTERNAZIONALIZZAZIONE: DELLE IMPRESE: VECCHI E NUOVI PARADIGMI" (Nanut, Tracogna,; 2003).

⁹ Refer to: "Globalization versus internationalization — some implications" (Daly, 1999).

¹⁰ Opening of Suez Canal (1896), launch of transatlantic telegraph cable (1866), etc.

¹¹ E.g. The General Agreement on Tariffs and Trade (GATT), replaced by the World Trade Organization (WTO) and the European Union (EU).

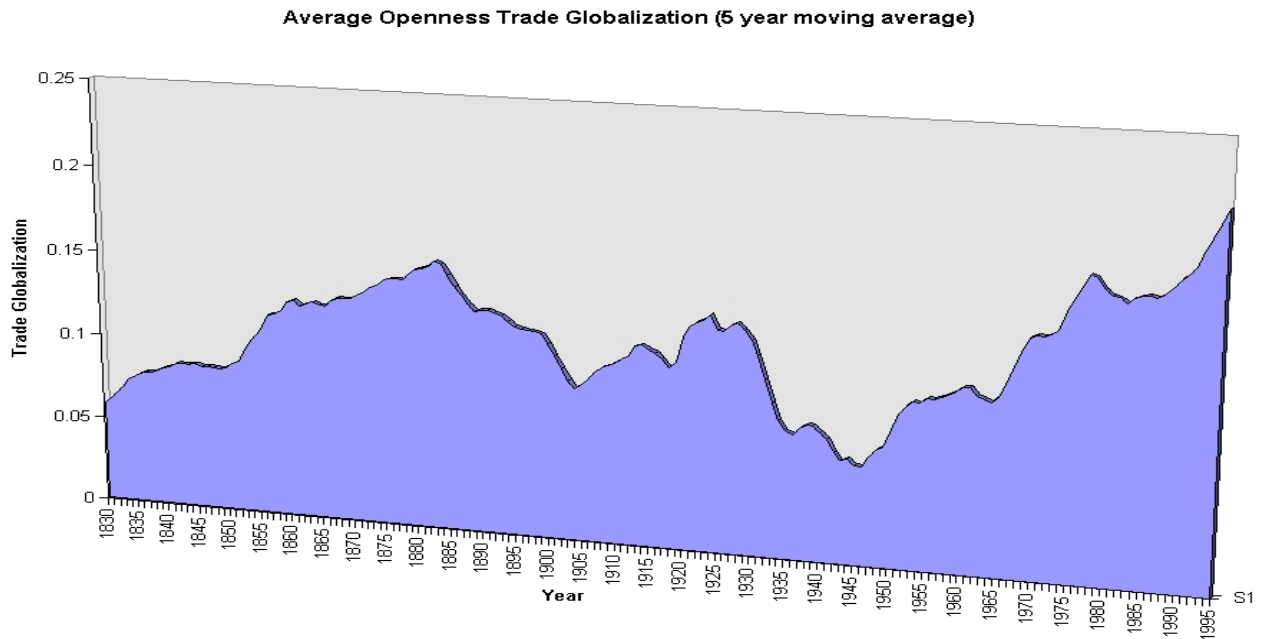


Figure 2: Trade of Globalization <https://wsarch.ucr.edu/archive/papers/c-d&hall/isa99b/isa99b.htm>¹²

2.2 When do companies engage in international market?

Companies can decide to be the first to enter a foreign market, that is the choice of gaining the “first mover advantages”: entry choices enable companies to build also competitive advantages. A company, which first introduces an innovation or a new product in a market has first mover advantages because they accumulate market experience before anyone else¹³. As firms increase their sales, they are usually able to reduce costs because they are able to spread fixed cost on a bigger number of outputs. As they reduce the cost, they can reduce the price, and if the price is reduced, there will be an increasing number of consumers who want to buy the product. When firms are the first to bring a brand and to associate a brand to a specific type product in the mind of foreign consumers, it is very likely that that brand will be immediately associated to the quality of the product. Finally, being the first mover provides companies with the advantages of creating switching costs (they are not financial costs)¹⁴. The advantages of being a later-mover are: exploiting the experience accumulated by first movers; avoiding all the investments/costs first movers had to bear by using their infrastructure; avoiding

¹² Refer to <https://wsarch.ucr.edu/archive/papers/c-d&hall/isa99b/isa99b.htm>

¹³ See: “Marketing internazionale” Bertoli(2014).

¹⁴ Refer to: “Global strategic management” (Lasserre, 2012).

consumers' education costs. Usually first movers are big companies, while later movers are small companies (Lasserre, 2012).

Also, the scale of entry¹⁵ is a very critical issue. The large scale is when firms commit a lot of resources to a foreign market, of course they are going to have a long-term commitment. With a great amount of investments, consumers will be more aware of the brand. It is a very difficult decision to reverse because the amount of money and effort committed to enter in that market is huge. Then, of course, there are competitive considerations: if one firm enters a country market with a very big investment, long-term commitment may cause foreign rivals to rethink market entry. On the other hand, small scale is more reversible decision, a firm has time to learn about the market, in this case risk is lower. The money spent is an intransitive factor of the risk the firm perceives. The speed of the internalization process is related to the amount of money firms want to invest abroad (Depperu, 1993).

2.3 Internationalization Theories

Theories of internationalization try to understand why companies engage abroad and discuss about competitive advantages, which firms possess through the specialization in a certain business. Firms then change their high-specialization products with services (Hollensen, 2016).

At first, general marketing theories were the inspiration of the state of the art of internationalization. Then, the focus shifted to the difference between exporting and FDI (foreign direct investment)¹⁶.

Now, firm's networks are central for internationalization theories. As said before, the traditional marketing approach suggest that the firm owns an advantage able to compensate the 'cost of foreignness' (Kindleberger,1969).

Vernon's work 'product cycle hypothesis' rotates around the fact that companies have different phases before the internationalization phase. He introduced five different stages, divided the product into three categories, according to the stages. The five stages

¹⁵ It means the size of investment.

¹⁶ See: "Global Marketing" (Hollensen, 2016).

are: introduction¹⁷, growth¹⁸, maturity¹⁹, saturation²⁰ and decline²¹. While the three categories are: new product, maturing product and standardized product. Standardization and 'Economies of Scale'²² are important factors in the stages



Figure 3: Vernon's Product Life Cycle https://www.researchgate.net/publication/317030940_Lusophone-African_Multinational_Enterprises_Internationalization_Mode_A_Case_Analysis_of_Angolan_And_Mozambican_Enterprises/figures²³

Vernon suggested that in the early stage of the life cycle of the product,²⁴ the elements and activities of the product are worked and combined in the area where the product was invented. Later, the product has been sold and used across the world, facilities of the firms move to other countries. So, the location depends on the phase of the product (Lasserre, 2012).

¹⁷ The product has just been presented to the market; customers are unfamiliar with the product. Low revenues.

¹⁸ This stage is characterized by an increment of the demand of the product and growth in sales. For this reason, production costs start to decline and profit start to increase.

¹⁹ In this stage, consumers are completely familiar with the product, demand and profit grow but at a slower rate. It is evident the presence of several competitors but demand from foreign countries increase.

²⁰ The saturation phase is identified with the stability of the sales, in fact there is no growth nor decrease of sales. Competitors may have become more attractive.

²¹ There is fully awareness of the product and its production processes. In the end, revenues decrease while labour costs increase. So, the product either is discontinued or sold to other companies.

²² Is defined as gaining cost advantages while companies production becomes more efficient, i.e., increasing production but decreasing costs. The reason is that costs are spread across a huge number of products.

²³ Refer to https://www.researchgate.net/publication/317030940_Lusophone-African_Multinational_Enterprises_Internationalization_Mode_A_Case_Analysis_of_Angolan_And_Mozambican_Enterprises/figures

²⁴ See: "Marketing internazionale" Bertoli(2014).

The Uppsala model gives dynamic approach to international business to a firm level. This theory is influenced by the international product life cycle model. This model looks at the process that brings a company from being local to be increasingly global²⁵. Considering the behaviour of firms when they go international, it is possible to observe that this is a very gradual and incremental process, because learning is very important. For firms it is very difficult to enter a foreign market, so they move forward in the internationalization process very slowly. Obviously, learning is related to the experience, because of this dynamic, firms tend to follow an evolutionary approach: there is a sort of pattern of internationalization, which they call establishment chain. Firms trying to go global follow the same steps, starting from the lowest commitment entry mode to gradually increasing their commitment to foreign market. The establishment chain has 4 steps: irregular export activities; export via independent sales representative; establishment of overseas sales subsidiary; establishment of foreign manufacturing subsidiaries²⁶. What the scholars say is that firms more or less follow the same process when they go international and they do so because they perceive a high level of uncertainty. They realize that in a foreign country the operating business conditions are very different, they feel the so-called psychic distance²⁷ (language, regulations, culture etc.). All these differences make the company perceive the psychic distance (Lasserre, 2012).

²⁵ See: "Global Marketing" (Hollensen, 2016).

²⁶ Refer to: "Marketing internazionale" Bertoli(2014).

²⁷ Refer to: "Global strategic management" (Lasserre, 2012).

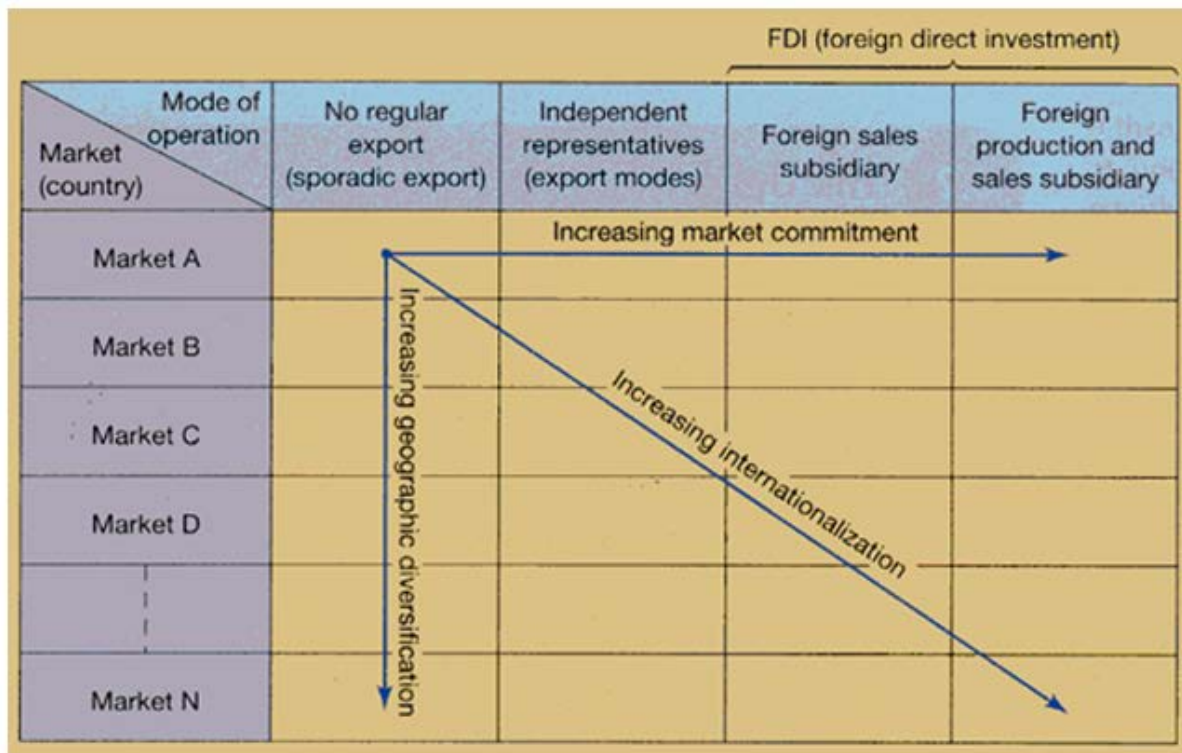


Figure 4: Internationalization of the firm. Adapted from Forsgren and Johanson, 1975, p.16. ²⁸

The characteristics of the Uppsala model are basically two: it is a learning-oriented process and it is an incremental process: firms internationalize step by step. The market commitment concept illustrated in the above figure 4, includes the amount of resources committed²⁹ and the degree of commitment³⁰. Furthermore, general knowledge and market-specific knowledge are important factors in international activities, because they refer to the experience gained in the market and in the operations.³¹ It is evident that market knowledge and market commitment are interconnected. In fact, the better the firm knows the market, the more relevant are the resources and the stronger is the commitment to the market, but with small incremental steps (Hollensen, 2016).

²⁸ See: "The Role of Knowledge in Firms' internationalization Process: Wherefrom and Whereto" (Sharma, Pedersen, Petersen; 2001).

²⁹ Specified as the investment size in the market (organization, human resources, financing, etc.).

³⁰ Meant as finding alternative use of the resources.

³¹ See: "Global Marketing" (Hollensen, 2016).

Another key theory is the eclectic³² theory or Ownership-location-internationalization (OLI) theory, which stand for the three advantage that a firm is willing to gain. Ownership advantage refers to the competitive advantage of one firm over another. Location advantage indicated where the firm wants to locate. Internationalization advantage address the matter of how the firm chooses to operate in a foreign country. Dunning (1988) claimed that if these three advantages are satisfied, the tendency of being international increases (Hollensen, 2016).

As far as the resource-based view is concerned (see chapter 1 Performance and advantages), according to Barney et al. (2001), in the field of international commerce the RBV is a key-argument since it provides the types of resources needed to overcome problems related with the liability of foreignness (see chapter 2, Internationalization). It has also been proved with the RBV that the affiliates of HQ promote the flow of information and knowledge in the whole corporation. The literature about the RBV has highlighted that local firms in order to gain an advantage over their competitors operated with foreign alliances. However, Peng (2001) asserts that there is still the need for more clarifications and research, especially in emerging countries³³.

2.4 Foreign market entry modes

In agreement with Sharma and Erramilli (2004), entry modes are perceived as ‘deals’ which grant the firm to furnish the host country with its products, though export or in partnership with other firms (Pongelli et al., 2016). There are many different foreign market entry modes from a practical point of view: for instance, export is a low commitment entry strategy; or move the production abroad (higher commitment entry strategy than export). External factors affect the decision of entry modes, i.e. government policies, country risks, market attractiveness, but internal markets affect firms’ decision too, i.e. strategic objectives, internal capabilities and timing. It is very important to know internal and external factors of entry modes³⁴.

³² The word eclectic refers to a description of international processes of businesses and tries to put the focus on different economic theories.

³³ See: “The resource-based view and international business” Peng (2001).

³⁴ See: “Internationalization of Firms: The Role of Institutional Distance on Location and Entry mode” Vanoli Parietti (2017).

As a firm increase the size of its commitment, also the amount of money required increases, and the level of risk the firm perceives will be higher. There are three main entry modes (Lasserre, 2012):

- A. export: usually it is the first step of the internationalization process. It can be indirect³⁵ or direct³⁶. When you go indirect there are some people that do not belong to your firms and that intermediates the export process, usually are local people or local organizations. It requires the lowest commitment.
- B. partnership: involves a higher level of commitment. Mainly refers to joint ventures, which are a very frequent arrangement that firms use to enter the foreign market. There are two companies that want to enter a foreign market, so they create a third company, that they both own;
- C. foreign direct investment FDI: highest commitment that firms can devote to a foreign market. Basically, MNCs establish their own subsidiary abroad and usually the subsidiaries are 100% owned by the MNC.

There are two dimensions to understand entry modes: which activities are performed abroad and are “external” actors involved?



Figure 5: Porter’s generic value chain. ³⁷

https://www.mindtools.com/pages/article/newSTR_66.htm

³⁵ Is the most common, and usually firms use some sort of distributor.

³⁶ Firms use their own agent and their distributors.

³⁷ See: “Global strategic management” (Lasserre, 2012).

It is useful to refer to a very important concept of the activities that can be performed abroad, which is a value chain. The value chain is a model that describes the activities of firms in a theoretical way. Not all the firms perfectly match with this model. In this model there are 2 categories, primary activities³⁸ and secondary activities³⁹. All those activities that are between inbound logistics and outbound logistics are the operations, i.e. they could be performed by the firm itself. In an international management prospective the value chain is important because in the past, was commonly imagined as a single facility located in a single country, in a specific region⁴⁰. So, all the activities involved created value performed in the same place simultaneously. Inputs arrived and then company in the same location has the role to care for the distribution of the sales channel. Now all the activities, which participate to the creation of value for the consumers, could be performed in a higher geographical distribution. It is clear that the value chain can be performed in a variety of locations. Usually firms started to offshore and localize activities abroad where they are most standardized. The first activity that usually goes abroad is manufacturing. Furthermore, firms tend to maintain in their own country some activities that create more value, usually marketing and technological activities. Technological knowledge and marketing knowledge increasingly become the basic of a firm's competitive advantage⁴¹. Nowadays firms have these competitive advantages because of their strong brand or because of their strong innovation. So, the firms tend to go abroad manufacturing, because it is very standardized, every country is able to realize these activities, but not every country is able to innovate the value of a strong brand (Hollensen, 2016).

The second dimension of entry mode is the external actors. Sometimes when a firm wants to enter in a foreign market it does not wish to enter alone, basically the firm wants to share the risks to go abroad, and usually the partner can be very similar to the firm, it has the same products and capabilities and interest to the same country. A firm is more successful in going abroad when it has a partner or some companies

³⁸ Firms receive some inputs, that are used to develop the final product. The final product is ready to purchase on the market.

³⁹ Help the companies to realize the primary activities, i.e. transforms input in output products that can be purchase in the market, there are all other activities like human resource management that are equally important, because they theoretical participate in this production process.

⁴⁰ Refer to: "Global strategic management" (Lasserre, 2012).

⁴¹ See: "Global Marketing" (Hollensen, 2016).

that have a different class, that complement its capabilities and have something that it lacks. Its partners are always competitors. In this case the firm that goes abroad has strong manufacturing activities but a low distribution network in a foreign market, so it chooses another company that has a stronger distribution in a foreign market, many types of activities to go abroad⁴². If a firm wants to go abroad in a foreign market alone, it uses a direct export. But if it enters with another company it can choose indirect export or alliances⁴³. There are three different implications of choosing entry modes (Lasserre, 2012):

1. Degree of control over the foreign operations. Control is the power to manage different types of operations: marketing, productions etc. are some kinds of share power, someone has higher power than others. In the specific case of FDI, export and alliances: FDI has the highest control, while export usually has the lowest control. Pulling of subsidiaries means that part of firm's organization moves in other countries and is managed to someone else.

2. Resource commitment to the foreign operations. The amount of money that a company invests to enter in a foreign country is limited for a specific country. If the company wants to reverse the investment from a country to another, it will lose a lot of money, and this is the same for human resources. The highest amount of resources related to the case of FDI and lower resources is to export.

Dissemination risks⁴⁴:

- Risk that firm-specific advantages in know-how will be expropriated by competitors during the process of foreign entry;
- technological and marketing know-how⁴⁵;
- lowest in the case of wholly owned subsidiary and highest in the case of non-equity contractual ventures.

When a firm goes abroad it loses its specific capabilities because it shares them with other firms. The best way to lose knowledge is to go abroad through export because it is not known how the product is sold abroad, and firms do not have a real contact with the

⁴² Commercialization, products and development of new knowledge.

⁴³ Refer to: "Global strategic management" (Lasserre, 2012).

⁴⁴ Refers to the degree by which a firm know-how will be expropriated by a contractual partner.

⁴⁵ Which constitute the basis of the competitive advantage of many MNCs

foreign market. Ideally FDI is again the best way to avoid the risk, i.e. to build subsidiaries in the foreign country. The most dangerous entry mode is alliances, because you have to share capabilities with partners, the problem is that even though both parties have signed agreements, they can still steal knowledge. Foreign investment is called Internalization mode, i.e. the safest mode to go abroad (Lasserre, 2012).

2.4.1 Export

The sale of goods or services produced by a company based in one country to a foreign country⁴⁶. There are different levels of commitment, such as occasional transactions, long terms contracts, foreign agent/distributor. There is the process of export, which is the process of a firm to start going abroad. Usually export starts like indirect export and then becomes direct export. The advantages of export are: low initial investment and resource commitment, distribution is fast, control over production and knowledge of foreign countries, minimize risks, in order to reach the distributor quickly. The disadvantages are: a limited control over commercialization, limited knowledge about costumers or the foreign market. At first, when exporting firms may face barriers, like values and transportation costs, sometimes it is more convenient to produce in a foreign country than export. Furthermore, the difference between direct and indirect is that indirect is somebody or some organizations, that are not part of the firm and are responsible for penetrating the foreign market, while with direct export, firms have higher resource commitment and higher control⁴⁷.

There are some indirect export intermediates: the buyer can be either individual people or small organizations, interested in purchasing products of the buyer's country⁴⁸; the Broker's main function is to create a linkage between a domestic company that wants to sell and a foreign company that wants to buy. Export management companies and export trading companies are not interested in a single because of their size, which is quite big (Valdani, Bertoli, 2014).

⁴⁶ See: "Marketing internazionale" (Valdani, Bertoli, 2014).

⁴⁷ See: "Internationalization of Firms: The Role of Institutional Distance on Location and Entry mode" Vanoli Parietti (2017).

⁴⁸ For example, the presence of a buyer that represents different Chinese firms in Italy, that want to buy Italian products and resell them in China.

Export management company	Export company	trading	Consortium	Piggy back
international sales specialist that functions as the exclusive export department for several allied but non-competing manufacturer	a large, independent firm that buys products from manufacturers and sells them into foreign markets on its own account		structure for the internationalization of small firms	an agreement through which one manufacturer (the "carrier") uses its foreign distribution facilities to sell another manufacturer's (the "rider") products.
it has a formal agreement to manage the manufacturing firms' exports	it also performs a whole set of functional activities to enable international transactions, such as transportation, storage, insurance, bill, etc		its function is to aggregate an appropriate number of firms that are willing to export their products but are unable to go by themselves because they are too small	best condition is that companies are allied, and not competitors
it conducts business in the name of each manufactures it represents	it is demand-driven, i.e. it identifies demand or needs in the foreign markets prior to approaching manufacturers		these firms outsource to the consortium a whole set of activities that are instrumental for the entry into foreign markets	
it is supply-driven, i.e. it represents one or more manufacturers for which it manages sales, advertising and promotion in foreign markets			mono-business or multi-business	

Table 3: Adapted data of indirect export intermediates (Lasserre, 2012).⁴⁹

In order to evaluate the efficiency of the export strategy, it has to satisfy the following requests:

- homogeneous demand across countries or knowledge of local demand are not influential factors;
- inexpensive transportation and the absence of barriers when importing;

⁴⁹ Refer to: "Global strategic management" (Lasserre, 2012).

- if the country has strong political risk and uncertainty, it requires smaller fixed investment;
- giving much concern on the importance of economies of scale⁵⁰.

2.4.2 Strategic alliances

Strategic alliances can be defined as an arrangement where companies combine resources and capabilities, and usually, the objective is the business. A company has to decide to share its capabilities with a partner. Basically, from a collaboration point of view, an alliance is something that stands in the two extreme managing activities, because the firm's aim does not just involve the entrance to the market to buy resources, but is neither a full internationalization; the combination of capabilities between two or more companies to enhance their competitive advantage and/or to create new business without losing their respective strategic autonomy. "Strategic" because most of the cases these alliances imply the sharing of strategic capabilities, and this is a very sensitive choice, such as R&D, manufacturing or marketing. Both parties are independent but at the same time have to share their capabilities⁵¹. The complexity of alliances is the idea of being something between the contract and the internationalization. The alliance does not include a specific contract, so the difficulty is to define every single problem and find solutions. The consequence of this is that partners have to trust each other. There are different types of alliance:

1. Coalition: is more specific than other types of alliances. It is usually composed by a group of partners belonging to the same industry. These partners are willing to improve and to expand to the global markets or wish to establish a common standard. Groups of firms in the same industry realize that they would be able to satisfy the customers if they collaborate. In this way they are able to give the costumers' better performances' services.

2. Co-specialization Partners: have very specific capabilities, and want to put these capabilities together, they do not want to develop other capabilities by themselves because is more expensive.

3. Learning Partners: want to learn their respective know-how.

⁵⁰ See: "Marketing internazionale" (Valdani, Bertoli, 2014).

⁵¹ See: "Global Marketing" (Hollensen, 2016).

It must be added that there are some steps of strategic alliance. First of all, firms have to focus on the strategic characteristics of the alliance, in order to figure out the potential value of the alliance. Secondly, firms have to focus on the partners' fit, which are: strategic fit, capabilities fit, cultural fit, organizational fit. Thirdly, every phase must be planned and organized, including the negotiation and design: the design of the organizational scope, the structure and the governance of the alliance. Last but not least, firms have to decide how to work together: they know each other, cooperation and finally start the alliance. This is what is called a partners analysis that involves strategic, cultural, organizational and capabilities fit⁵².

The strategic fit deals with the objective; it is the first one that determines the degree of compatibility among the partners. There are 3 aspects to consider: criticality is basically the extent to which the firm needs to achieve the partners' objective. If one of the two partners depends on the other, there will be a strong unbalance, one is higher commitment and the other is lower commitment; competitive position of partners: partners can both be leaders or both laggards, i.e. less competitive. Leaders are the most competitive, the challengers are a firm that usually is in the second position. A small firm, for instance, is very flexible and innovative, and wants to innovate very quickly. While big companies are very slow because they are already strong, and sometimes it is dangerous for a competitive position because they want to keep the situation as it is. What is important for the partners is gaining synergy. The alliances can be different in expectation (different objectives) and has different types of strategic agendas or objective: venturing agendas are characterized by partners that want to create new business, wish to venture to new business opportunities. Extractive agendas: learn each other's capabilities. Sharing agendas: partners that have more or less capabilities and put them together⁵³. Option agendas: share the risk with another to enter a market.

Capabilities fit is the ability of the parties to contribute to the critical resources, assets and competencies needed for competitive success.

Organizational fit is the control mechanisms used by the parties, which leads to good communication and effective monitoring of the joint venture, and the performances of the organization.

⁵² Refer to: "Global strategic management" (Lasserre, 2012).

⁵³ See: "Global Marketing" (Hollensen, 2016).

Cultural fit is the communication and the understanding of the parties, decide how to share the capabilities and technologies. There are three differences that matter between the two firms: corporate culture; industry culture: there are some specific characteristics of industry and national culture⁵⁴.

Furthermore, legal structure is a central key when discussing alliances. There are equity agreements, agreements in which either company exchange their stocks, or also can be unilateral. Another type of equity agreement is joint venture: the two companies share their products with organization, they are more formalized. Non-equity agreements are more strategic. Joint venture is a new actor between the parties. Overall, the emerging countries commonly use joint venture. Managing the joint venture is very difficult when there are more than 2 owners involved (Lasserre, 2012).

2.4.3 Non-equity contractual agreement

The two most common non-equity contractual agreements are international licensing and international franchising. They both involve the transfer of intellectual property. International licensing is a type of agreement in which one firm enables the other firm to use its intangible assets. The licensor sells the right to use some intangible assets to another company, which is the licensee. By this way, the licensor, through this kind of agreement, can enter foreign markets quickly without investing too much. Licensing can be exclusive or non-exclusive⁵⁵. It can grant the use of one firm intellectual property to only one company (exclusive), or can give the right to different companies (non-exclusive). Another kind of licensing is the cross-licensing. It involves the exchange of technological capabilities among different companies. It is a licensing typical of equity agreements. Franchising enables to transfer the entire business model to a different country. The franchising agreement grants a third party the right to use the whole business ideas that characterizes a company's own operations at home. The right is limited to a specific geographical area. The difference between licensing and franchising is that in licensing the licensor keeps the right to control the way the licensee uses its intellectual property but it cannot order the licensee how to conduct its activities. On the contrary, in franchising there is a high level of control of the franchiser on the franchisee. The franchiser has two ways to create a worldwide franchise network: it can create a

⁵⁴ ⁵⁴ See: "Marketing internazionale" (Valdani, Bertoli, 2014).

⁵⁵ Refer to: "Global strategic management" (Lasserre, 2012).

master franchiser, that is the boss of all the franchisees in a single country, has the responsibility to find individuals who want to start a franchising in that country. It is a sort of intermediary between the head-quarter and all the franchisees; it directly deals with the franchisees (Lasserre, 2012).

2.4.4 Foreign Direct Investment (FDI)

It is the last type of entry mode and has the highest level of commitment. FDI means multinational corporations. In MNCs there is a head-quarter (HQ) and a group of subsidiaries, which receive the strategic directions from the HQ. To establish an FDI, the HQ has a controlling ownership in a foreign firm in a foreign country, which is called subsidiary⁵⁶. A subsidiary can be wholly owned, with a 100% of shareholding possessed by the HD or partially owned. Usually, a subsidiary is considered to be part of the multinational when its ownership is mainly held by the HQ. Owning a subsidiary in a given country means that the HD can adapt its products to the specificities of that country. There are 4 reasons for engaging in an FDI: natural resource seeking, raw materials which can be find only in a specific location, market seeking, efficiency seeking: for example, abroad there are lower labour costs. strategic asset seeking: to obtain strategic (intangible) assets (typically knowledge).

FDI: forms FDI can be performed either as the start-up of a new company in a foreign country or as the acquisition of an already existing local company. FDI is identified with two forms: greenfield and brownfield investments. Greenfield investments occur when a parent company establishes a headquarter in a new-built facility in another country; while brownfield investments occur when the parent company establishes a headquarter in an existing facility⁵⁷.

Furthermore, FDI can be differentiated in: horizontal and vertical. Horizontal FDI are investments that belong to the same industry of the ones that the HQ makes at home. It means that the subsidiary will perform the exactly same activities that the HQ performs at home⁵⁸. Vertical FDI are investments that involve other functions of the value chain. Vertical FDI can be distinguished in backward and forward. The former involves

⁵⁶ See: "Global Marketing" (Hollensen, 2016).

⁵⁷ Refer to: "Marketing internazionale" (Valdani, Bertoli, 2014).

⁵⁸ Refer to: "Global strategic management" (Lasserre, 2012).

activities that come before those activities that the HQ does at home; the latter involves activities that come later (Lasserre, 2012).

2.5 Internationalization of Family Business

It is commonly accepted by internationalization literature that internationalization is a hard and complex process, because it involves a huge amount of financing, human and logistical resources and, also, a well-planned entry mode and strategy (Calabrò et al., 2016). Many have suggested that family firms are less likely to go through internationalization because of influential factors as the constraint of resources, the resolution and inflexibility of family leadership inside the company or conflicts among members of the family working in the business (Fernández and Nieto, 2005). Many SMEs, including FBs, are limited in their local environment and do not have possibilities or resources to enter in foreign markets (Autio et al., 2000; Bloodgood et al., 1996). According to Gomes-Mejia et al. (2011) FBs when evaluating foreign markets' entry modes, consider two key things, i.e. the long-term orientation, the equity or non-equity decision⁵⁹ and the dominance of the family, cooperative or non-cooperative decision⁶⁰, in implanting the strategy; the above-mentioned decisions are related to the SEW (see chapter 1.2). Pongelli et al. (2016), suggest that the strategic decisions of entry modes in international market are influenced by family control, because they have ascertained that family businesses prefer equity modes over non-equity modes and are not willing to opt for cooperation with external actors. Some other researchers indicate that going international for a family business could positively affect the FB's performance and reinvigorate the business⁶¹. However, two important factors can hinder the internationalization of the business: the willingness to explore and examine foreign markets against the establishment, security and balance of the local market, without any risk (Calabrò et al., 2016). Furthermore, Fernández and Nieto (2005) claim that family SMEs are in disadvantage because of the resource constraint environment, they are

⁵⁹ The equity mode may affect the diligence and time of resources, it entails direct investment in companies, while the non-equity mode does not involve the establishment of a company.

⁶⁰ The cooperative or non-cooperative entry, may influences the consent of involving third parties (non-family), specifically the contractual agreement and export (non-equity mode) or joint venture and wholly owned subsidiary (equity mode), meaning that the firm is willing to cooperate with external parties, in relation with the degree of control over the venture or its complete control.

⁶¹ See: "What does really matter in the internationalization of small and medium-sized family businesses?" (Calabrò et al., 2016).

more respectful of the tradition and tend to be risk adverse⁶², therefore their risk appetite for risky foreign investments is almost equal to zero. Moreover, internationalization is not considered as a certain process and may take to unpredictable results not suitable with the FB condition. However, Fernández and Nieto (2005) have verified, through export propensity and intensity, that a family business negatively affects internationalization process. Briefly, it means that the amount of family SMEs that export is small. Cerrato and Piva (2012) agree with the fact that family control influences negatively the success of internationalization of SMEs because of the resource commitment required in the process of going abroad, i.e., export, and overcome a foreign country's barriers. They affirm also that there may be a lack of professionalism inside the FB since the great number of family members in managerial position. Lastly, they argue that on the one hand family culture is an advantage because it creates strength, stability and values commitment in the operations of FB, but, on the other hand, the limitation of family members only in managerial position may restrict the success of internationalization, while opening to non-family actors may positively influence the capability of response quickly and efficiently to the requests and challenges of the foreign market⁶³.

In conclusion, the annual report (2013) of ISTAT outlined that more than one third of family businesses adopted a defensive strategy, i.e., maintaining market share or downsizing, other 30% pursued a 'complex' strategy⁶⁴.

2.6 Italian SMEs

If there is the necessity to analyse the Italian small and medium enterprises, one should recognize the deep connection of Italian culture and economic with the manufacturing ages (Middle Ages). Mattiacci et al. (2008) examine four key elements to consider the internationalization of Italian SMEs: production, which indicates the modality of manufacturing decisions, and shows how Italy is the weakest, among others, in Europe in investing in foreign countries; countries, the geographic elements, meant as implementing the delocalization of either production or trading, now preferring closest

⁶² Risk exposure is the impact of the risk on company's performance; risk tolerance is the dimension of the risk that a firm can bear without any problem; risk appetite is the level of the risk that a company is willing to take and to avoid (Bertinetti, 2017).

⁶³ See: "The internationalization of Small and Medium-Sized Enterprises: The Effect of Family Management, Human Capital and Foreign Ownership" Cerrato and Piva (2012).

⁶⁴ i.a. increase sales, innovation, development of new product and so on.

areas; marketing, it illustrates how Italian SMEs penetrate international market with their brands; values, valid statistics describing SMEs' internationalization⁶⁵.

Porter sustains that the image of the nation can influence the creation of competitive advantage of its firms. In fact, the brand of 'Made in Italy' seems to embody from fashion industries to food industries, stressing a unique result of ability, innovations and skills. Italy has still a major role in some industries, but its brand is losing competitiveness. It is possible to explain it through the elements of the 'diamond' of national advantage of Porter⁶⁶ (1980, 1998):

1. Factors: two important situations have put strains on Italian economy, the high exchange rate (re-evaluation of EU/\$) and huge investments in infrastructures.
2. Demand: the demand has decreased due to decline of consumption per capita, the increase of substitute goods, decline of exports in favour of an increase of imports.
3. Connected industries: tourism sales in Italy have fallen and this may have led to the decrease of sales of Italian products.
4. Competition and strategies of companies: enterprises are searching for innovation on qualitative⁶⁷ and quantitative⁶⁸ side.
5. Governments: Italian institutions have been inefficient to protect Italian companies in international markets, and since government and Italian firms seem to be unable to collaborate, this may favour fracture and inefficiency.

It must be added that Italy has displayed on its territory around 200 industrial districts, most of them consist of small and medium-sized companies (Fortis, 2004). There are some particular features in internationalization of Italian SMEs, such as the prominence of indirect export strategies⁶⁹, 'passive internationalization' has low presence because of the small number of large companies in such districts that lead to a reduction of competitiveness of districts' SMEs, since there is no learning process, and a different 'active internationalization', or FDIs⁷⁰ due to the fact that (a) big international firms do

⁶⁵ Refer to: "21 Italian SME international strategies: state of the art and some empirical evidences" Mattiacci et al. (2008).

⁶⁶ Indicates a framework whose aim is to help clarify the competitive advantage of a nation or more nations, because of their possession of factor and help governments to exploit such factors to improve their position in the global economic competition.

⁶⁷ i.e. restructuration of main business decisions.

⁶⁸ i.e. fortify business resources.

⁶⁹ More than 60% of the production of fashion business was exported (Menghiello, 2003).

⁷⁰ The North of Italy has high presence of industrial districts with active internationalization.

not promote horizontal or vertical integration competencies, (b) knowledge is transmitted by international foreign companies to global network, (c) competition is stimulated by the correlation between internationalization and innovation and between investments' nature and exports⁷¹.

Furthermore, it is generally accepted the fact that now SMEs are important factors of globalization and Audretsch (2003) sustains that globalization made international trades for SMEs easier and made their size disadvantage into an element to benefit from. However, it is evident that Italian SMEs have problems with international activities. Their internationalization strategies are based on the 'do-it-alone' strategy, firms that possess high capability, or collaborating with market leader strategy, companies that are not adequate in terms of capability. Latterly, Italian firms have had to struggle because of globalization. In fact, the competitiveness coming from developing countries has put strain on Italian activities, but they managed the situation with the 'do-it-alone' strategy or the 'allying' strategy.

As reported in the annual report (2013) of ISTAT, latterly Italian firms' strategies were inclined towards the defensive one. In fact, 64% of small companies attempted to maintain their market share; 35% of them explored new markets and 20% drove for product diversification. According to this report, Italian companies can be distinguished into five groups, basing on three characteristics: *dynamism*, *external projection* and *complexity of governance*. Dynamism indicates the readiness to explore new markets and innovation. The five categories are:

- 1) "*Small cabotage*": overall the three quarters of the firms belong to this category. The main elements are these firms are simple and weak, unsteady innovation, stuck in local environment and poorly dynamic. In this type falls the 60% of small-size enterprises.
- 2) "*Conservative*": represent the 8% of the enterprises, they show little dynamism and external projection, but own a complex business organization. They are one sixth of the small companies.
- 3) "*Pocket dynamics*": in this category belong those firms that operate abroad, through innovation and low complexity of the business organization. It

⁷¹ See: " The internationalization of small and medium-sized enterprises: the effect of family management, human capital and foreign ownership" (Cerrato, Piva; 2012).

encompasses one-sixth of small business, and usually belongs to machinery, fashion industries. About the 8% of all size enterprises are represented here.

- 4) “*Challenging dynamics*”: almost the 4% of the total companies, firms belonging to this type of firms are really innovative, regarding the processes, products and organizational factors. Their structure is non-complex organization, they are said to be the best employment performance. They belong to the manufacturing industries, such as food, metal and machinery sector. It includes the 10% of small-sized companies.
- 5) “*Complex units*”: this category is represented by less than 1% of the total, medium-sized and large-sized enterprises. They are characterised by dynamism, complex organizational structure, labour productivity is really high. They usually belong to the high-tech industries⁷².

2.7 Strategies of SMEs

As abovementioned, when internationalize entry choices are the main features. Firms can exploit many ways of entering into a foreign market: greenfield investments, JV or exporting. Choosing an entry strategy for SMEs is not simple, they have to consider two key elements: the market commitment and the institutional context. Market commitment is regarded as the commitment of firms to other countries’ markets, while institutional context is considered attractive depending on five characteristics: (1) the effect of local regulation on foreign companies’ operation in the host country; (2) the control of the state on competition; (3) the constraint on government’s investments; (4) the authorities, financial policy and the level of protection from government; (5) the cultural distance and psychological distance (Cannavale and Laurenza, 2017). The market commitment is regarded as the internal dimension while institutional context as the external dimension. Every firm has to consider the uncertainty and resources capability before adopting a strategy. For this reason, SMES peculiarities affect their entry modes: financial capability, control, management and ownership, but are internal factors⁷³. There are many external variables that are able to influence the strategy. In

⁷² Refer : “Chapter 2. The system of Italian enterprises:competitiveness and growth potential” ISTAT (2013).

⁷³ See: “The international entry choices of Italian SMEs in emerging markets: a case-based analysis” (Cannavale and Laurenza, 2017).

fact, internationalization is the combining of internal and external variables. The external ones cannot be controlled, and need to be considered (Krikštulytė, R.; Korsakienė, R., 2012).

Cannavale and Laurenza (2017) proposed a framework able to differentiate hostile and welcome context basing on the market commitment. They suggest that hostile countries are those that have rigid regulations, are not open to foreign entrance, most of the time are high-context cultures. Whilst, welcome countries are those that promote the entrance of foreign investments and tax regulation and governments are moderated, collaboration with foreign partners is seen as an opportunity, the culture is open to foreignness.

Market Commitment	High	Joint Ventures- Partnerships I	FDI/Wholly owned subsidiary II
	Low	Indirect Export III	Trade Internationalization IV
		Hostile	Welcome
Institutional Context			

Figure 6: Framework of hostile ad welcome context (Cannavale and Laurenza, 2017, p.109)⁷⁴

High market commitment refers to the willingness of firms to invest abroad, they are disposed to collaborate. While low market commitment stands for firms that block foreign investments, these firms usually internationalize for commercial purposes or increase sales. As a matter of fact, hostile context means low commitment because firms attempt to avoid institutional uncertainty and risks, and the strategy adopted is a low-involvement of resources, one. On the other hand, welcome context and high market commitment make firms keep on investing in foreign markets and their strategy will be long-term oriented. Then, when market commitment is high but there is a hostile institutional context, they have high experience in the field, hence enter in the market safely but less resources involvement modes. Last, if the context is welcome but market commitment low, firms are willing to get experience and try to consolidate in the market.

⁷⁴ See: “The international entry choices of Italian SMEs in emerging markets: a case-based analysis” (Cannavale and Laurenza, 2017).

Certainly, there must be an accepted consideration on the fact that there are other relevant criteria, for example, firms wish to export because of customer taste's closeness or when government implement regulation that promote foreign investments (Cannavale and Laurenza, 2017).

According to Depperu (1993) the Porter's Five Forces Framework⁷⁵ (1980) it is useful to analyse the SMEs internationalization because it defines the field where companies will compete. Furthermore, Depperu stresses the importance of environment variables, or external variables, because they can either foster or hinder a company's internationalization. When evaluating competition systems, a company should refer to Porter's Five Forces Framework (1980).

⁷⁵ It is a framework used to study competitiveness in a business. Competitiveness is made not only by direct competitors, but also by customers, potential entrants, substitute products and suppliers. If these forces are intense, it is not worth to establish in the potential market, while if forces are weak it is profitable for companies to explore target market. New entrants are attracted by profitable markets, the more the number of new entrants the less profitable the market is. The buyer power indicates the facility for a buyer to drive the prices down, meaning that if there are few powerful buyers in one market, they command on the market. If in one market there are many substitute products, they reduce the power of suppliers and the attractiveness of one country. The power of suppliers is the assessment of the facility of driving up the prices for suppliers. Competitive rivalry means the number and capability of competitors in one market (Porter, 1996).

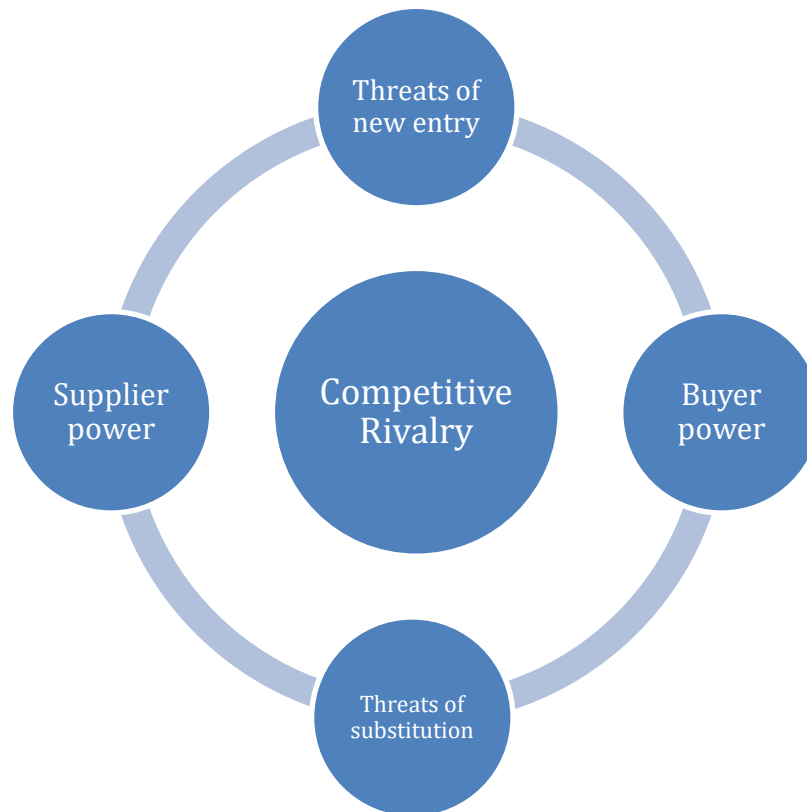


Figure 7: Porter Five Forces Framework, Porter, 1996, p. 27⁷⁶

In line with this, purchasing behaviours, tastes and life styles of different countries can affect company internationalization, or even stop the process.

Other essential factors in choosing internationalization strategy are the political and economic systems of the home and host country. As a matter of fact, they can hamper or encourage internationalization depending on their norms, economic and monetary policies, infrastructure investments and political activities able to support business operations. It is important to highlight that technological development plays a big role because it is one of the main reasons to go abroad.

The size of national market, national demand growth rate, raw material availability and geography configuration must also be taken into account.

Considering business variables, a company first has to decide where, why and how to begin its operation, and then analyse the three variables: institutional set-up, meaning

⁷⁶ See: "L'internazionalizzazione delle piccole e medie imprese" Depperu (1993).

the mixture of people inside the company, the aims and the ways to achieve such aims. It is deeply analysed that there are different considerations of internationalization. Depperu (1993) discusses about: new markets; supply markets; capital markets; competition; production; business partners; outsourcing; social partners of company. There are many companies able to internationalize with all of these variables, and companies that internationalize with only one of the above-mentioned variables. For example, a huge number of SMEs internationalize only through the sale of the product, meaning that their products reach foreign market, but their buildings remain in home-country, some other SMEs internationalize through the producing process, in the sense of moving production abroad, because of the low-wages workers. Furthermore, SMEs motives for internationalize are different, in fact some small firms internationalize because of the competitive environment where they operate, for some others companies internationalization is not necessary, but since the presence of certain environmental and internal conditions, is beneficial, and there are other firms that implement the internationalization process because of companies' business variables, such as the objective goal⁷⁷. For this reason, it is pointed up that there is no obligation for internationalization, mostly with SMEs. In fact, most of the time small firms' home-country market is enough for them to develop, but they are not so competitive in national field, and hence establish communication with foreign countries. Depperu (1993) claims, then, that some firms internationalize because of an external occasional incentive and do not sustain financially their internationalization process, as should be. Substantially, it begins a circle by starting with weak internationalization motivations, which do not lead the company to really focus on internationalization process and invest on it, and since poor investments results are unsatisfying, it may make the companies invest more on the internationalization process. Essentially, companies enter in a vicious circle and the only way to overcome it, is to adopt a determined and straightforward internationalization strategy (Depperu, D.; 1993). As a matter of fact, Dunning (1994) divided SMEs internationalization motives into four categories: the resources motives⁷⁸, the market motives⁷⁹, strategy motives⁸⁰, effectiveness motives⁸¹. However, Dunning was not the only one who listed the motives for internationalization.

⁷⁷ See: "L'internazionalizzazione delle piccole e medie imprese" Depperu (1993).

⁷⁸ I.e. labour costs, raw material, technological capabilities, etc..

⁷⁹ I.e. attractiveness of markets and capability of exploitation of markets.

⁸⁰ I.e. willingness to develop a strong brand image, increase production, etc.

⁸¹ I.e. capability of developing the economies of scale and risk diversification.

Other researchers identified the aggressive and defensive motives named then proactive and reactive motives. The proactive reasons⁸² are those strategies that companies implement in order to act in advance, anticipate and plan a situation. While the reactive reasons mean that companies react to the pressure and threats of the markets and adapt to these new situations passively⁸³ (Krikštulytė, R.; Korsakienė, R., 2012).

2.8 Barriers

It seems like a contradiction the fact that small and medium enterprises are considered to be the main force of economic and employment growth but cannot have a central role in home-country market (PietrasieŃski, P.; Œelusarczyk, B., 2015). In fact, the most difficult hurdles to internationalization are regulatory barriers because they make foreign entrances more expensive (Depperu, 1993). In detail, SMEs have to face strong barriers when penetrating into a foreign market. *“Removing Barriers to SME Access to International Markets”* is an essential framework of APEC and OECD in exploring the barriers encountered by SMEs when internationalizing. From the paper, it is evident that SMEs consider internal capabilities as the most difficult barriers, rather than external ones. However, there are some external barriers ranked in a high position, i.e., high tariff barriers, the poor protection of property rights, disadvantages of foreign rules and regulations. Import tariff has still an important place in exporting as well, because as reported by the work of the OECD, SMEs exporting in developing countries, barriers cost is three times higher than the one in the developed ones. Additionally, barriers are not equal in countries and business sectors⁸⁴, on the contrary they differ completely from countries and from sectors. Regarding the non-tariffs barriers (NTBs), sometimes they are considered even more critical than tariff ones. Some NTBs may constitute an obstacle for international trade, such as domestic regulations⁸⁵, health and phytosanitary regulation⁸⁶, procedures and custom rules, taxes, limitations on competition and even security of intellectual property are of main concern for companies. Besides, in the OECD Trade Policy Papers No.45 it is underlined that

⁸² E.g. economies of scale, profit advantage, unique products, etc.

⁸³ E.g. competitive pressure, small and saturated domestic market, excess of production, psychological distance, etc.

⁸⁴ It was highlighted that in many Asian business sectors, Asian exporters face higher tariffs than the European and NAFTA markets.

⁸⁵ Can be intentional when countries aim to be a hurdle for import/export, or unintentional.

⁸⁶ Are agreements that lay down rules for food safety and animal and plant health standard. Countries can set out their own rules.

procedural barriers may affect the entry of companies in markets, as well. The procedural barriers are said to be policy procedures in the sense of documentation needed, public and governmental acts towards international trade, administrative operations or domestic institution.

It is also stressed that SMEs are more influenced of trade barriers' result than larger firms, because of their resources constraint environment they cannot avoid risks related to barriers. In fact, when they have to deal with trade barriers, they⁸⁷:

- *“may have to bypass a market completely, forgoing an opportunity to grow their business, hence becoming more susceptible to increasing import pressure in their home market”;*
- *“have limited capabilities to influence the trade policy process”;*
- *“may find it difficult to make production changes in response to fixed-cost barriers”;*
- *“incur additional variable costs that could impair their competitiveness”;*
- *“may be unable to benefit from participating in global value chains”* (Fliess, B. and C. Busquets, 2006, p.12).

However, it is also possible for small and medium-sized companies to attempt to overcome the above-mentioned barriers, through the host and home-country's government assistance. They are able to reduce the burden of trade barriers with bilateral or multilateral agreements, international legal procedures and trade advocacy. International negotiations try to reduce or eliminate the barriers with some agreements between trading partners, who may be also in the private sector. Regarding the legal proceedings, it is useful to add that countries can rise issues before the WTO Dispute Settlement Body (DSB), after each countries' diplomacy has failed, but usually these are major cases. Finally, trade advocacy refers to the willing of the government itself to remove trade barriers and proactively sustain home-countries exporters in foreign countries. It is conceivable that firms, whatever their size, may seek to affect a country's trade barriers by proactively getting involved. Certainly, being limited on resources it is

⁸⁷ See: “The Role of Trade Barriers in SME Internationalisation” (Fliess, B. and C. Busquets, 2006)

harder for SMEs to have a real influence on this process, but a framework has been introduced⁸⁸ that helps SMEs to overcome this problem (Fliess, B.; Busquets, C., 2006).

There is general agreement that governments use every possibility to try to sustain its country's SMEs, in fact the project *"Removing Barriers to SME Access to International Markets"* states 4 categories of government support: *financial instruments*, allow companies to be assisted with sufficient financial support⁸⁹; *business surroundings*, grants small firms to be competitive enough to be on an international field⁹⁰; *abilities*, government promotes an enhancement of SMEs internal capabilities⁹¹; *access to markets*, procedures to give assistance and aid in international markets ⁹².

Considering all of these, the OECD proposed a framework⁹³ in which are incorporated the barriers of access of the SME to international markets, from the point of view both of OECD companies and OECD states (Pietrasieński, P.; Œlusarczyk, B., 2015):

Relevance of barrier	Support category	Description of export barrier for the SME
1	Access to market	Limited information connected with the identification and the analysis of the foreign markets
2	Capabilities	Problems in contacts with potential clients abroad
3	Access to market	Identification of business chances connected with conducting activity on international markets
4	Capabilities	Difficulties in the adaptation to the level of prices of the competitors/offering prices acceptable for purchasers

⁸⁸ Government and private sectors created a sort of cooperation by the participation SMEs in governmental operations and government implementation of acts able to sustain SMEs to overcome trade barriers.

⁸⁹ International transactions need risk insurances and warranties, i.e., export and guarantees and insurance for exchange rates.

⁹⁰ Fiscal incentives, cooperation initiatives between companies, etc.

⁹¹ Refers to intangible resources, while financial instrument refers to tangible ones.

⁹² E.g. Disclose information about countries, help to connect with other countries' companies or assistance with foreign governments.

⁹³ Are listed 10 of the 40 barriers analysed.

5	Financial instruments	High costs connected with transport and insurance
6	Capabilities	Diversified habits and ways of operation of foreign purchasers
7	Business surroundings	Bad/deteriorating economic conditions on international markets
8	Business surroundings	Political instability in states of target foreign expansion
9	Access to market	Possibilities of the access of export distribution passages
10	Access to market	Obtaining reliable foreign agent

Table 4: Primary barriers of internationalization of SMEs basing on 32 empirical findings (Leonidou, 2004, p.286)⁹⁴

Furthermore, alongside with the OECD framework, Ojasalo J. and Ojasalo K. (2011) proposed a differentiation of barriers, that is specific and general barriers. The specific barriers are those related to the difficulty of the foreign legal system or the implementation of national regulations, the struggle of psychological distance and local language, cultural barriers, and so on. Whereas, general barriers are divided into the *barriers to entry*, i.a., governmental and/or financial requirements, restrictions etc., and the *barriers of business operations*, discrimination and refusal, difficulty of documentation, etc. In line with the aforementioned barriers, Krikštulytė and Korsakienė (2012) proposed a list of internal and external barriers of SMEs internationalization (Table 5).

Internal barriers	External barriers
<i>Inadequacy of knowledge:</i> size of company; settlement in marketplaces; inefficiency of business operation.	<i>Legal:</i> bureaucratic control and limitations; inadequacy of procedures system.
<i>Financial sources:</i> shortage of available resources.	<i>Political:</i> weakness of political system.
<i>Non-financial sources:</i> incapacity of obtaining and weakness of information; insufficiency of human capital; deficiency in innovation.	Economic: insecurity of economy.
	<i>Market conditions:</i> customer tastes; competition; size of market.

⁹⁴ See: "Internationalization Of Small And Medium Enterprises – Empirical Research Review On Barriers To Entry Into Foreign Markets" Leonidou (2004).

Geographical: diverse geographical characteristics.

Cultural: different languages; cultural distances; different customer tastes.

Specific: specification of foreign countries.

Table 5: re-elaboration of the internal and external barriers of SMEs internationalization (Sekliuckienė 2013)⁹⁵.

⁹⁵ Refer to: “The barriers and motives of SMEs internationalization: the insights into the theory development” (Sekliuckienė 2013).

3 Intellectual property

3.1 What is intellectual property?

Intellectual property (IP) is presented as a unique class of assets, not physically tangible, which falls into the subdivision of intangible assets. According to the IAS 38 of the IFRS¹, intangible assets are those assets that are separable, i.e., the possibility to move such asset from one party to another, are not physically tangible and are non-monetary goods (Vidraşcu, P. A.; 2014). In today's world the development of new technologies, new ways of doing things, new products and services and new concepts are thought to have economic value. As a matter of fact, they are considered assets and such assets are intellectual property². The economic value is generated through their cost of creation, the likelihood of being used and craved for by hypothetical costumers and its legal rights granting the control of the owner of the intellectual property. These legal rights are called intellectual property rights (Maskus, K. E.; 2007). Intellectual property comes from original ideas of the human mind and their results are protected by the law (Vidraşcu, P. A.; 2014).

According to Maskus (2007), the intellectual property is strictly connected with three views:

1. The *natural-rights* approach articulates that the creator and also mental creator possess the ownership of the invention and the non-observance of it automatically translate in theft of their invention. Furthermore, since the generation of new invention, the owner or creator should be rewarded.
2. The *public-rights* view stresses the importance of the public sharing of innovation. It states that private intellectual property to information is unacceptable since socialist systems provide the complete sharing of information.
3. The *utilitarian* approach is situated in between the above-mentioned approaches, since it stands for invention and innovation on one side and sharing of information on the other³.

¹ International Financing Reporting Standards.

² See: "Debates on Intellectual Property Rights" (Vidraşcu, P. A.; 2014).

³ See: "INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY" Maskus (2007).

Therefore, intellectual property is considered to be creations of human intellect, as new concepts, artistic pieces, images, logos and names. Intellectual property has two main divisions: the industrial property and the copyright. Industrial property is connected with the notions of patents of concepts, trademarks, industrial designs under national and international laws. Industrial property rights are also subdivided into three classes: the right aimed at controlling the safeguard of inventors, inventions, plant varieties and animal species, geographical sections and secrets of industry; the presence of trademarks, geographical sections, names and marks; and, last but not least, hallmarks. Copyright, on the other hand, involves the protection under national and international laws of author’s works, literature pieces, films, music and architectural structure and designs. Under copyright definition also includes the artistic or producer performances of the work (WIPO, 2004)⁴.

Vidraşcu (2014) provides some example according to the notion of ownership, usage and disposal. In fact, the right of applying a concept, the right of being able to claim patents, trademarks, copyrights, know-how and trade secrets are intellectual property’s examples; the owner of such right may or may not exploit, sell, rent, donate or exercise it. It must be said that intellectual property is a theoretical concept, which is included in copyrights and industrial property rights. Vidraşcu (2014) provides also a table of intangible assets of companies (Tab. 5):

	TECHNOLOGICAL INTANGIBLE ASSETS	MARKETING INTANGIBLE ASSETS
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⁴ See: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

UNDERLYING ASSET		<ul style="list-style-type: none"> • Technology • Product knowledge • The ability of employees • Management ability • Management system • Information system • Computer programs 	<ul style="list-style-type: none"> • Reputation • Credibility • Bank standing • Customer lists • Distribution network • Contracts • Relations - partnership
INTELLECTUAL PROPERTY RIGHTS	Registered	<ul style="list-style-type: none"> • Patents • Models, drawings • Copyright 	<ul style="list-style-type: none"> • Brands • Trade name • Franchise
	Unregistered	<ul style="list-style-type: none"> • Know-how information • Manufacturing secrets • Improvement projects 	<ul style="list-style-type: none"> • Market information • Information about clients • Commercial strategies

Table 6: source Ion Anghel, 1998⁵

Basically, intellectual property takes into account the trade-off, between the fact that it is *non-rival* and *non-excludable*. Non-rival address to the possibility of use it multiple times, therefore enables many people to exploit the right to use the intellectual property, and this condition makes the society quite static because of the granting of free usage of

⁵ See: "Debates on Intellectual Property Rights" Vidraşcu, 2014, p.76,

intellectual property⁶. While non-excludable indicates the inability of preventing people to exploit the information, even without authorization. Hence, the society is dynamic since it does not wish the disappearance of incentive cost, since intellectual property is smoothly copied. The trade-off is constituted on the free access to information for everyone with low marginal social cost⁷ and a society able to safeguard investment for new information (Maskus, K. E.; 2007). In line with the statements of the economists, the above-mentioned trade-off of intellectual property right is situated in the enter of the dynamic and static market distortion. Static society fuel weak IP translating into poor investment to create intellectual property's incentives, and, in this case, value of product quality, economic growth and culture are in downward. Whilst, the dynamism of the society benefits strong IPRs meaning that society is favouring for insufficient access to information, and as a consequence, the economy experiences insufficient sharing of information. In other words, there is a generation of monopoly through which there is a cut down of consumer welfare in exchange with incentives for innovation, which may lead to welfare for future customers (Maskus, K. E.; 2007) ⁸.

However, regarding the average person, intellectual property is important because it favours protection of films, publishing, recording industries; if patents would not exist, then creators would have not been driven to produce innovation because inefficiently awarded; and, because, customers would not rely on goods or services because not protected by international system from counterfeiting and piracy.

In conclusion, the relevance of protecting and promoting intellectual property lies in the fact that, firstly, the creation of new information and technology is basically the welfare and evolution of human kind; secondly, incentives for innovations are favoured by legal commitment; thirdly, the protection and promotion of intellectual property may boost economy, creation of jobs and improve the quality of life. A powerful system may push economic, social and cultural development, which tries to balance the public interest of

⁶ For example, computer programs are not physically present but can be used by a big number of people at the same time, the marginal cost of providing them are low or zero, unlike the situation of tangible property that may increase congestion costs. Cost of congestion is a system used to cut down traffic congestion by overcharging customer of the service or good in the excess of demand's condition. This is a strategy able to controls demand without increasing supply.

⁷ It is the cost of producing another unit or taking other actions, whose payment is charged to the society. They are costs that involve stakeholders and environment.

⁸ See: "INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY" Maskus (2007).

wide access to information and interests of innovators, developing the prosperity of invention and creativity (WIPO, 2004)⁹.

3.1.1 The importance of international system in intellectual property

WIPO¹⁰ is an organization constituted of 15 United Nation's agencies. It was created in the 1967, its aim is to encourage the protection of intellectual property across the world. Its predecessors were the 'Paris Convention for the Protection of Industrial Property'; signing the beginning of the protection of intellectual property, it embraced the trademarks, patents and industrial design; in 1886, there was the 'Berne Convention for the Protection of Literary and Artistic Works', whose purpose was to set out the basis for the right of payment of artistic works; the 'Madrid Agreement' in 1891 made it possible to register and protect marks in certain countries; in 1893 the establishment of 'BIRPI' or the United International Bureaux for the Protection of Intellectual Property, which in 1970 became the WIPO, the 'World Intellectual Property Organization'. Other important facts are that WIPO in 1974 joins the UN; in 1978 the biggest data system of the WIPO, the 'PCT System' was launched ¹¹; 1994 was the year of the founding of the 'WIPO Arbitration and Mediation Centre', whose aim is to solve international disputes; the institution of the 'WIPO Academy' was in 1998, which provides courses on intellectual property; ultimately, the WIPO 'Development Agenda', whose purpose is to grant the regular implementation of the issues in the whole organization (WIPO, 2004).

The purpose of the establishment of WIPO is to assure the owners and creators of intellectual property safeguard and recognition throughout the world. With its international issues, the WIPO promotes solid and reliable conditions for commercial transactions. The organization tries to set out balanced rules, its systems are always analysed and updated in order to keep the pace with technological innovations. Moreover, many countries have their system of protection of intellectual property, but the position of WIPO still remains central because it provides assistance in developing negotiation and enforcement. The World Intellectual Property Organization cooperates

⁹ See: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

¹⁰ World Intellectual Property Organization.

¹¹ Patent Cooperation Treaty, granting patent protection.

with its members in order to create and share intellectual property notions all over the world¹².

Apart from the relevant position of the WIPO, the TRIPS¹³ Agreement are also essential in the intellectual property matter, as the most exhaustive international tool in IPR (Correa, C. M.; 2002)¹⁴. The Agreement ranges from: patents to trademarks, from copyrights and related rights to trade secrets, and so on. It is not a convention as a whole, but rather an integrative tool in the other conventions on IPRs. TRIPS Agreement claims that members state must totally observe the rules of the Agreement, meaning that countries cannot modify the requirement as states wish, there is requirement for providing proofs, penalties, losses and so on. Moreover, the minimum standards of the TRIPS Agreement accorded that there must be compliance with Dispute Settlement Understanding (DSU)¹⁵. Developing countries hardly ever negotiate under the GATT agreement, in fact they are compelled by developed countries to pursue their dispute with the TRIPS Agreement, in order to normalize standards on intellectual property protection. It is important to define standardization of an intellectual property system across the world, because of the crescent relevance of different elements, like technology, especially for the manufacturing of technological goods and services, which are deeply connected with international trade, alongside with the growth of R&D in developed countries since the 1970s; externalization of knowledge in the production process, always related to the innovation in technologies and united with the protection of intellectual property; the reduction or elimination of trade barriers in developing countries, translating into a constantly growing power of protection of patents or know-how of local enterprises¹⁶.

3.2 Intellectual property rights

Intellectual property rights refer to rights owned by a person or a group of people, which allow them to use their own ideas without the concern of competition for a

¹² Refer to: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

¹³ Trade-related intellectual property rights.

¹⁴ See: "Intellectual property rights, the WTO and developing countries: the TRIPS agreement and policy options" (Correa, C. M.; 2002).

¹⁵ It is the system that control the regulations and methods of the WTO and it is directed by the Dispute Settlement Body (DSB) of the members of the WTO. When there is an infraction of rules, members need to provide the agreements of the WTO that has been breached. The DSU establishes a very effective system able to combine the different members' disputes on the same issue together, aiming at making them cooperate on the same issue (WTO).

¹⁶ See: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

certain period of time. IPRs set out the rules for legal authorization to use the owner or creator's intangible property (Maskus, K. E.; 2007)¹⁷. According to the EU, intellectual property rights has numerous important roles, for instance if under protection, the owner of a new product is the only one that possesses the right to use it or reproduce it, and without the authorization of the owner others cannot copy or reproduce the product; the IPRs protection guarantees the quality and the origin of the goods or services, this may favour companies under protection, since goods and services are checked and controlled by international organizations; it makes it possible to earn not only for the direct use of IP, but also through what is called the licensing contract, i.e., the owner authorized another party to use the IP protected for a period of time; sometimes, it is not necessary to enable formalisation to have IP protected because it is automatic; this is the case of copyright and unregistered design; it is more profitable to have patent or trademark because it may add value to the product permitting it to be easier to find investors and investments (EU, 2018). There are several forms of IPRs: Patents, Trade secrets, Copyrights, Geographic indications and Trademarks.

3.2.1 Patents

A patent ensures a restrictive appropriate for a creation, another great or administration, new procedure, new method or new answer for an issue. In this way, patent anticipate, except if different orders from the proprietor, others to sell, convey, import or utilize the item or administration under the assurance of the patent, for a restricted timeframe (Maskus, K. E.; 2007). Patents grant recognition of creativity and it is very powerful since it may offer material reward for the author or creator (WIPO, 2004). The patent owner may give a permit or authorization to another gathering to create the innovation shielded by the patent, against a payment or expense; the proprietor may sell the privilege of the development, too. There are a few licenses that are actualized so as to fulfil explicit industry guideline or specialized arrangement, named standard essential patents (SEPs)¹⁸. (European Commission, 2018; WIPO, 2004)¹⁹. The expiration of the patent implies that the data or advancement and so forth ensured by the patent become open, at the end of the day the select rights held by the proprietor don't longer exist. Be that as it may, the proprietor of the patent needs to

¹⁷ See: "INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY" Maskus (2007).

¹⁸ E.g. Wifi and 4G are SEPs because are technologies used to connect telephone or computer in internet.

¹⁹ Refer to: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

distribute the advancement so as to have the security of the patent, since it gives an improvement of development and imagination. The method to guarantee security of patent to document it in universal framework must incorporate the name and specialized depiction and field of the creation, in point by point unequivocal language, here and there went with pictures of the development. Moreover, inside the technique there are the few cases that the patent ought to be ensured by the rights. So as to be patentable, the creation must be down to earth and imaginative, yet in certain nations, revelations, for example, numerical or logical hypotheses or plants, etc., cannot be patentable. The creator of the invention may apply for the procedure to file the patent in as many countries as needed, countries choose to protect or not to protect the invention of the applicant in their boundaries.²⁰ There are regional and international regulators, national and regional offices, such as the European Patent Office (EPO), and the WIPO-administered Patent Cooperation Treaty (PCT) for international systems (WIPO, 2004). Usually, there are three types of patents: *invention patents*, whose feature is the innovation improvements and their duration of protection is the longest; second, the *utility models*, which are patents related to mechanical invention and are described as development of innovation, rather than pure and solely innovation, and have a shorter term than invention patents (Maskus, K. E.; 2007); lastly, *industrial design*, which is characterized by three-dimensional or two-dimensional elements, like surface, shape, colour, lines and so on. They are present on industrial products and handicrafts²¹. The most pertinent element of industrial design is the way that it is of aesthetic function, and of any specialized components. The assurance of modern structure demonstrates the protection from non-endorsed replicating or impersonation of the design. The design help reasonable challenge, advances national and worldwide business exchanges, may enhance the great or administration. So as to be enrolled, the structure must be new, implying that no indistinguishable plan as of now exists. Generally, the term of the assurance is of five years and it is conceivable to restore it as long as 15 years. There are a few ambiguities in light of the fact that modern structure might be under the assurance of copyright, subsequently their terms' length keep going for over 15 years. (WIPO, 2004)²².

²⁰ See: "INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY" Maskus (2007).

²¹ E.g. Jewelry, medical tools, watches, dresses, cars, etc.

²² Refer to: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

3.2.2 Copyrights

The rights that protect literary and artistic works and performances are the so-called copyrights. Therefore, the idea and its disposition in colours, music, words, dance, etc. is protected by copyrights. Poetry, narrative stories, comedies, papers, magazines, commercials, computer system and programs, films, music, paintings, ballet, photos, architecture, maps, sculpture and others are included in the copyrights. However, copyrights are different from patents because of their impossibility in being applicable in industry boundaries, for example the idea of a landscape drawing from others cannot be prevented, but what is to be protected is the distinctive version of the artist (Maskus, K. E.; 2007). Copyrights do not need the formal application, but there is the possibility, to file them in a system in order to be safeguarded, in fact, there is just the need to put the date on the work. The duration of the copyrights is usually the lifetime of the creator and additional 50-70 years, but it cannot be renewed, hence, then it becomes public. The owner of the copyright may prevent others from reproduction in every kind of replication²³, performances, broadcasting, translation and adaptation.

There is a relevant special case, called "*fair use doctrine*", which allow countries to use the protected ideas or works with educational or technical development's purposes²⁴, terms are not equal across states (Maskus, K. E.; 2007) ²⁵.

Besides, the copyrights also include the "related rights", rights connected with copyrights, i.e. their concern is complementary to those of copyrights, but what changes is their terms, because they may be more limited or shorter than copyrights.

It is also relevant to mention that the divulgation of copyrights leads to success for some works, e.g. films, books, songs, for this reason, there is often a transfer of rights from the owner to other companies who are better able to take financial advantages.

The utility of copyrights and related rights protection is the enhancement of talent and innovation, which encourages incentives of creators with economic compensation (WIPO, 2004)²⁶.

²³ Musical, visual or printed replication.

²⁴ Citation and quotation are allowed under such doctrine.

²⁵ See: "INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY" Maskus (2007).

²⁶ See: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

3.2.3 Trade secrets

Trade secrets are considered to be information, such as formulas, processes or devices that have business value and give companies a business advantage. Trade secrets are protected under fixed laws, which are not specific for trade secrets, and in a certain way different from IPRs. The difference lies in the fact that trade secrets are protected by such laws to prevent unfair commercial competition, but the information fairly disclosed may become of public domain without any repercussions. The reason is that trade secrets do not have exclusive rights, and cannot be safeguarded from fair educational purposes or autonomous innovation. Computer algorithms, analysis outcomes, soda formulas, know-how or consumers lists are considered trade secrets.

As long as the information contained in the trade secret remains secrets, there is the protection of the information (Maskus, K. E.; 2007) ²⁷. As a consequence, companies that may wish to maintain their secrets should create policies on information security, inform all of their employees on information security issues, carefully hire and dismiss employees, write contracts which include clauses on secrecy disclosure, limit the access only to trusted employees, safeguard the document of trade secrets, keep secrecy with computer programs and inform third parties and shareholders of the confidentiality of the information disclosed (Charles, S. S.; 2011) ²⁸.

3.2.4 Geographical Indications

An important class of intellectual property named geographical indication, assures the quality of wines, food and spirits products that most of the times are associated with their geographical provenance (Maskus, K. E.; 2007). Therefore, geographical indication indicates the name of the place where the good has its origins. The most common products that are deeply affected by their geographical origin, since the quality generated from, for example, field and meteorological conditions of the territory, are gastronomic products. However, geographical indications do not include just agricultural goods, but draw the attention also on specific qualities of a region, i.e. production skills or culture²⁹.

²⁷ See: "INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY" Maskus (2007).

²⁸ Refer to: "summary of PATENT, TRADEMARK, COPYRIGHT, TRADE DRESS & TRADE SECRET" (Charles, S. S.; 2011).

²⁹ For instance, watches manufactured in Switzerland have particular value, hence protected by geographical indications.

Additionally, a particular division of geographical indication, called appellation of origin also exists. Appellation of origin, defined also as Designation of Origin or Protected Designation of Origin (PDO), is related to a geographical name or a traditional designation, which have explicit characteristics or highlights getting legitimately from the region of creation. The distinction with the geographical sign lies on the way that the association with the starting point, every one of the procedures included, thusly from crude material to the completed great, is more felt with the appellation of origin³⁰ (Addor and Grazioli; 2002) ³¹ and the appellation of origin is a subdivision of geographical indications.

Truly, geographical indications are quality and origin proof for clients. The non-supervision of the control of geographical indications may speak to a misfortune for organizations and clients also, since geographical indications may have picked up value and reputation. Actually, if an item is erroneously portrayed as unique from one region, buyers are brought to accept that the item protected from geographical indications is described by explicit and solitary characteristics, which similar items unique from various topographical region may not have, thus, the genuine item may lose reputation and its uniqueness. National guidelines and laws secure geographical indications, for example utilizing the idea of unfair competition or insurance of customers, of necessity of explicit affirmation. Generously, parties cannot utilize geographical indications without approvals, since it might distort the real origin of the product. On account of unapproved application, the punishment ranges from payment to detainment.³² Certainly, national governments are not the only authority to regulate geographical indications. Indeed, also the WIPO protects partially or entirely the geographical indications with agreements. Importance must be given to the fact that if the name of place refers to the product and not to the place of origin, then it does not indicate geographical indications.

Furthermore, it exists an essential difference between trademarks and geographical indications. While a geographical indication defines the characteristics of the place of origin of the products, trademarks generally indicate the different products of different

³⁰ Example of appellation of origin are "Prosciutto di Parma", ham produced in Parma's province in Italy or "Bordeaux" wine from the Bordeaux region of France.

³¹ See: "Geographical Indications beyond Wines and Spirits: a roadmap for a better protection for Geographical Indications in the WTO TRIPS Agreement" (Addor and Grazioli; 2002).

³² Refer to: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

companies. Geographical indication may be shared in the description of different manufacturers of the territory, whilst trademark is identifiable with only one producer (WIPO, 2004)³³.

3.3 Trademarks

Products and services manufactured or performed by a firm are easily recognisable thanks to the sign upon them, also known as trademark. The relevant characteristics of trademark is the fact that they are recognisable with no effort and cannot be compared with others³⁴. In fact, their name, symbol, logo, slogan, packaging design, word or device³⁵ enable to label just one single company, and in some cases, sound, smell, colour and shape may be acknowledged as trademarks (International Trademark Association, 2019). It must not be thought as a globalization result; trademark has a long story behind its back. Indeed, in the past artisans put their signatures on their creations, may it have been either for practical or aesthetic reasons; as global innovation moved forward, it became a system to record and safeguard trademarks evolved (WIPO, 2004). According to Çela (2015), trademarks allow firms to gain reputation, counting on the fact of the diversity of the goods and loyalty of consumers, hence these are inestimable assets for companies and among the most important intellectual property's forms. Trademarks are not only used by firms to provide funds for R&D, like other intellectual properties, but also and mostly to draw the attention of the customers on quality and good will, which may lead to lower search costs³⁶ (Davies & Davie, 2011).

Furthermore, the concept of trademark is divided into three aspects: the *substance*, referring to the *sign* itself, hence:

letters, denominations, combinations of colours, or any combination of these elements;

the *function*, the uniqueness of the *sign*, this characteristic is able to avoid consumers to be deceived about the origin or quality of the goods or services; the *legal terms*, related to the fact of the exclusive right that the owner of the trademark possesses and their usage in recognising the product or service or allow another actor to use their

³³ Refer to: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

³⁴ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

³⁵ They can even be merged with each other.

³⁶ They are costs related to the effort, time and money spend to search what a consumer wants. Search costs cover opportunity costs, which refer to the choice and its consequent benefit over another, and the energies, meaning time, energy and money, invested in the searching.

trademark in exchange of payment. Trademarks are the combination of all these aspects (Çela; 2015; p.126)³⁷.

As a matter of facts trademark protection established an exclusive right for the proprietor to utilize the items or authorization or the approval of different gatherings by the proprietor in return of payment. The time of protection can be renewed indefinite times and its execution is lawfully defended by courts, both global and national ones (Çela; 2015). However, there is a distinction in trademarks, in some countries, in fact, subclasses of trademarks aiming to determining the commercial source exist. There are “collective marks” and “certification marks”. Collective marks indicate that the trademark is possessed by members of a group, who are allowed to use them to show that the quality and origin of the product is controlled by an association³⁸. While, the certification marks refer to the fact that the quality and origin of a product meet particular requirements and so are certified, but are not certified by an association like the collective marks³⁹(WIPO, 2004; International Trademark Association, 2019) ⁴⁰.

Fliekkama, De Man and Wolters (2010) considered four reasons of the importance of the registration of trademark:

1. The capability of influence on other companies’ assets, referring to the fact that trademarks are able to increase a company’s value;
2. Innovation in product and market, since innovation is seen as something new has arrived;
3. Enhance a firm’s marketability, in order to avoid counterfeit;
4. Common trend in using trademarks, as a result of development in management, because of imitation of competitors (Çela; 2015).

It is worth noting that choosing a proper trademark is a very important step for a company. In practical terms, the singularity and intensity of the power of the trademark may or may not, depending on countries, avoid counterfeiting. By the same token, it is recommended to check with an expert if the chosen trademark has already been

³⁷ See: “The importance of Trademarks and a review of empirical studies” (Çela; 2015; p.126).

³⁸ Example of collective may be AAA as the American Automobile Association.

³⁹ For instance, the CE as the European conformity.

⁴⁰ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

registered. As a matter of fact, trademarks are classified due to their uniqueness and strength: there are the

*descriptive marks*⁴¹

meaning that there are terms used as description of the products or services, which are not under protection of trademarks, because it does not identify with the origin but with a common term, unless the word has gained “distinctiveness” or “secondary meaning”⁴², for example geographical indications, family name or commendatory words⁴³;

*fanciful or coined marks*⁴⁴

which are invented terms and their meaning is just the one of the trademark, they are safeguarded by the trademark protection⁴⁵;

*arbitrary marks*⁴⁶

which refer to terms that are commonly used but not in connection with products⁴⁷; lastly, the *suggestive marks*, which stress some peculiarities of the product or service but they do not refer to the product or service itself⁴⁸ (International Trademark Association, 2019).

Anyway, it should be pointed out that the magnitude of trademarks affects the purchasing decision of customers. It is easy for consumers to identify companies with trademarks, because trademarks are distinctive from each other, define quality and origins, can spread awareness of a company's product⁴⁹. They also avoid disorder in commerce because if the product is damaged the consumer has the producer's information and can return it or trademarks encourage companies to offer a qualified product since trademarks allow customers to discern a company's products they like and dislike, or help consumer to quickly pick a company's products over another because of reputation. Trademarks are considered long-term assets, they are powerful

⁴¹ See: Çela; 2015; p.126.

⁴² Advertisement is a very helpful way to share the “secondary meaning”.

⁴³ For instance, last name like FORD for cars or BLUE RIBBON for beer.

⁴⁴ See: Çela; 2015; p.126.

⁴⁵ E.g. XEROX as copiers.

⁴⁶ See: Çela; 2015; p.126.

⁴⁷ Like APPLE for computers.

⁴⁸ For example, MICROSOFT for micro-computers.

⁴⁹ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

to prevent unfair competition and if trademarks are known across the world, they can be recognized no matter of the different languages or alphabet or cultures (Lombard & Geliebter, 2009).

Signs like ®, Reg., ™ or SM are frequently applied on marks to communicate that such mark is under trademark protection. Each of the previous symbol has its own meaning. The ® or Reg. stand for the registration of the mark in one or more countries and in case of infringement it is possible for a party who possesses the trademark to demand for monetary damages. With regards to the SM (Service Mark) and ™ (Trademark), they are in contrast with ® or Reg., and are used to explain that marks are not formally registered but the owner's purpose is to demand for registration of the mark, but there is no certainty that the owner will demand for the registration. In other words, ™ is applied to indicate that the mark of the product is a trademark but it is not registered ; the SM (SM), is the same as ™ but used to describe service unregistered but under trademark; ® or Reg. define the approval of registration of the trademark⁵⁰ (Trademark Learning Centre, 2019; International Trademark Association, 2019). In conclusion, it should be mentioned that trademark rights are different across countries, hence verification of the application of trademarks, requirements and laws before starting a business is essential, then one should carefully use local language on trademarks so that the product or service to be sold has meaning for local people, lastly, it is important to hire a local qualified attorney (International Trademark Association, 2019)⁵¹.

3.3.1 International agreement on Trademark

As explained by Marshall A. Leaffer (1998), in past years the Trademark law was not given so much consideration compared to copyright and patent law, in fact, it was combined with them as "industrial property" (Dinwoedie et al., 2011). However, as time passed by, people started to recognize its relevance when globalization accepted them with international agreements.

⁵⁰ There is also the symbol ©, which stands for the copyright symbol and is applied with registered and unregistered works, and the sign Patent Pending referring to the filing of a patent that has not been registered yet. Furthermore, it is worth noting that the symbol ® does not refer to the patent but to the sound recording copyright symbol (Trademark Learning Centre, 2019). In addition, some countries such as Spain or France have other symbol like MR or MD meaning "Marca Registrada", "Marque Déposée" (International Trademark Association, 2019).

⁵¹ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

Each country has its own system to register trademarks. However, international treaties for the purpose of a stabilization of the processes and also to facilitate such processes have been set up. In the chapter *The importance of international system in intellectual property* there is already the description of the Paris Convention and the TRIPS Agreement (Çela; 2015). As far as trademarks are concerned, the most notable international agreement is the Madrid Protocol. Only countries members of the Madrid Protocol are safeguarded by an international system which files only one application for trademark. However, the Madrid Protocol is included in the Madrid system, which also covers the Madrid Agreement. Some of the articles of the MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS are focused on the “Territorial limitation” in Article 3bis, “Period of Validity of International Registration. Independence of International Registration”⁵².

The Madrid system is an executive base for the registration of trademarks and is controlled by the International Bureau of WIPO. If a company needs to file a Madrid international application, it first has to request a trademark registration in home IP office that is part of the Madrid system, then it has to apply for an international registration with its home IP office. Besides the Madrid system, the Community Trademark (CTM) system applicable in the European Community exists, as well. The purpose of the CTM is to protect trademarks all over the European countries and is pursued through the registration in the Office for Harmonization in the Internal Market⁵³(Çela; 2015). Trademarks are not just protected by the CTM in Europe, but they are also protected by domestic trademark registration and national laws. In fact, there are numerous international treaties and agreements, but these systems try to standardize and cooperate with each other⁵⁴.

3.3.2 Trademark and SMEs

Intellectual property is crucial for innovation and economic growth, even though SMEs do not often recognize their capability or do not have the possibility to afford intellectual property protection. There is a connection between the IP and SMEs because they both actively contribute for innovation and economic expansion. Small businesses need to understand the IP’s potential in improving their profit, which in turn leads to the

⁵² Refer to: https://www.wipo.int/edocs/lexdocs/treaties/en/madrid-gp/trt_madrid_gp_001en.pdf

⁵³ Also known as OHIM, it is the trademark registration office of Europe.

⁵⁴ See: “The importance of Trademarks and a review of empirical studies” (Çela; 2015).

development of further innovation inside the company. But how is Intellectual property able to sustain a small business's activity?⁵⁵ IPs raise income through licensing, availability in the markets of goods and services, which may strengthen a SME's market share. There is also room for improvement of the value of the SME by the application of the IP. Conventionally, the value of a business is raised with its material assets, however, now times have changed thanks to technological innovation, and IPs are able to generate value in the marketplace (Sukarmijan and De Vega Sapong, 2014). In fact, in more specific cases, such as the application of trademarks, they can generate value both for consumers and for businesses.

Concerning value for consumers, there may be the chance that the customers, through the visualization of a well-known trademark, are able to make some connections with ideas and feelings (Collins and Loftus, 1975). Furthermore, the brand name is exploited to evoke, recognize and make a distinction of many attributes, for example memories. Apart from this view, the public has the right to be informed of and protected against frauds, spurious and ambiguous information⁵⁶. Therefore, trademarks help in this function, because they support customers in choosing a company's product over another due to their past experience, word-of-mouth⁵⁷ and company's promotions (Jacoby and Morrin, 1998).

Concerning the incentive for organizations, one could contend that trademarks are the most advantageous resources ⁵⁸. Often, well-known trademarks, i.e. brand names have the possibility to add a price premium thanks to their moment of notoriety because it happens that they are preferred over other trademarks for a period of time (Zaichkowsky, 1995). There is also the customer-based brand equity that refers to the linkage and connection that costumers associate their memory with the products. It varies in times, until the amount of equity associated is decreased, and this phenomenon is known as brand dilution (Simonson, 1993; Jacoby and Morrin, 1998). In fact, IP are

⁵⁵ See: "The importance of intellectual property for SMEs; Challenges and moving forward" (Sukarmijan and De Vega Sapong, 2014).

⁵⁶ See: "'Not Manufactured or Authorized by ...': Recent Federal Cases Involving Trademark Disclaimers" (Jacoby and Morrin, 1998).

⁵⁷ It refers to promotion or discouragement through oral and written communication by a satisfied or unsatisfied customer to use a company's product or service (INTERNATIONAL MARKETING TO CHINA, 2018).

⁵⁸ It may be proven by their monetary value, i.e. the huge amount of acquisitions and mergers of well-known brands names or trademarks (Swann and Davis, 1994).

able to promote trust, loyalty, image and reputation (Sukarmijan and De Vega Sapong, 2014).

It is worth to note the difficulties of SMEs to implement the IP's protection (Sukarmijan and De Vega Sapong, 2014). For this reason, Blind et al. (2006) have tried to list reasons why small firms file their intellectual properties. The first one is the

*marketing motive*⁵⁹

it stresses the importance of the image from a customer view. As a matter of fact, trademarks have the role of communicating the quality of the product and its differentiation, they are used to sharing information and discouraging information asymmetry⁶⁰ and are also able to decrease the search costs. Therefore, trademarks are important because they help to sustain a company's marketing strategy, considering brand, developing of customers loyalty and differentiating strategies. Consequently, marketing strategies are central for filing trademarks in SMEs since they cannot develop cost leadership strategies, because of their size and financial capabilities, but may pursue the differentiation and niche strategies (McDougall and Robinson, 1990; Carter et al., 1994; Lee et al., 1999).

The second motive is the

*protection*⁶¹

one, and it seems to be the most obvious motive for filing an intellectual motive. As previously said, brand and trademarks are the most valuable assets of the company, therefore trademarks need to be filed.

The third one is the

*Exchange*⁶²

motive, which refers to the willingness of a company to exceed competitors in the market field, taking into account cooperation, licensing and access to capital. Thus, small

⁵⁹ See: "The importance of intellectual property for SMEs; Challenges and moving forward" (Sukarmijan and De Vega Sapong, 2014).

⁶⁰ It is when one party is in possess of more information than the other party in one transaction (Lasserre, 2012).

⁶¹ Sukarmijan and De Vega Sapong, 2014

⁶² Sukarmijan and De Vega Sapong, 2014

firms transmit their innovation through the filing of trademarks, since they are symbols of innovation. Furthermore, since SMEs often lack of financial capabilities to sustain innovation, they may file IP in order to obtain income through licensing⁶³. Then, Blind et al. (2006) add two other motives for filing IP, but do not involve the application of trademarks only patents (Sukarmijan and De Vega Sapong, 2014).

However, sometimes it is not just fault of SMEs insufficiency of internal capabilities to protect IPs. It may happen that SMEs search for protection but time requested to register trademark is quite long and this may lead to delay or uncertainty in getting a licensing contract (Sukarmijan and De Vega Sapong, 2014).

3.3.3 Trademark protection

For any extraordinary sign or word or logo and so on of the products, trademark protection is reachable. As a matter of fact, trademark insurance's area has a fundamental job in trademark law . Be that as it may, how is the security of trademarks settled? Without a doubt, every nation law has its own centrality, regardless of the way that they are generally settled by use or registration, firstly in the national or territorial trademark office (WIPO, 2004). The requestor must attach in the demand the name and address, a representation of the sign, even colours, shapes. They should give a list of items or services ensured by the registration and the application charge . In the event that the requestor is not an European native, they need to find an operator in the Member States (International Trademark Association, 2019). At that point there is a verification of absolute ground, which indicates the absence of uniqueness and descriptiveness, or relative ground when the mark is linked with other signs that have already been registered, hence prior rights⁶⁴, and other obligations of the request. It is worth noting that the owner of the prior right has the possibility to object to the registration of the challenging mark by providing proof of their use of the marks, but has

⁶³ Then, Blind et al. (2006) add two other motives for filing IP, but do not involve the application of trademarks just patents. These two are incentive motives, which refers to the inactive inside a firm to reward employees for their innovative ideas and blocking motives, indicates the willingness to block competitors from copying a company's products and ideas.

⁶⁴ In Europe exist 11 office that conduct prior rights search.

a time limit which is of three months⁶⁵. If no objection or the objection has been denied⁶⁶, the challenging mark is registered (Bardehle, 2018). Therefore, with the application and then the registration of the mark the owner is entitled to the exclusive right to use the trademark. A trademark registration may be valid forever, with the renewals⁶⁷. Some countries also give the opportunity to third parties to demand the cancellation if the registered mark is not used for a period of inactivity⁶⁸ (International Trademark Association, 2019).

However, it is possible not to obtain or to lose protection. When signs lack of distinctiveness or are misleading or immoral or when there is a mark conflict. There are also three-dimensional shapes, for which there is no possibility to obtain trademark protection due to the nature of the product or service, for technical result of shapes of the product and for the shapes giving *substantial value* to the product. They are also identified as “absolute ground” for rejection, because of the type of the sign⁶⁹; the shape of the request⁷⁰. There are also “relative grounds” of refusal, referring to the uniqueness of the mark in comparison with other registered marks (Bardehle, 2018). Furthermore, it is possible to lose the right on the trademark, which may be for intentionally or unintentionally reasons⁷¹. It usually is because of the intention of the owner of the right to stop the use of the mark. But it may be also likely that the owner of the right agrees with another party to sign a license agreement, but the licensor does not check the nature or quality of the product under the mark of the licensor, as a consequence the owner loses the right of the mark. This situation is called “naked licensing”. An additional situation in which the owner loses the right of the trademark is when they or another party misuses the mark, leading to denote a generic word⁷² (International Trademark Association, 2019).

⁶⁵ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

⁶⁶ There is the opportunity to proceed with an appeal against the refusal by the OHIM’s Boards of Appeal, or even General Court or the Court of Justice of the European Union (Bardehle, 2018).

⁶⁷ Some countries require periodical proof of the use of the trademarks in order to continue to have the trademark registration.

⁶⁸ Usually this period goes from three years to five years.

⁶⁹ If it is not representative, there is no possibility to be registered.

⁷⁰ Examining if the standard obligations have been followed.

⁷¹ See: <https://www.bardehle.com/fileadmin/Webdata/contentdocuments/broschures/Trademark-Protection-in-Europe BARDEHLE PAGENBERG IP-brochure 2018-09.pdf>

⁷² For example, at the beginning cellophane and escalators were trademarks but then consumers thought them as generic words.

Additionally, it must be remembered that a company dealing with trademarks should be accustomed to some terms, like assignment, dilution, trade dress and name, gray market goods, licensing, goodwill, infringement and counterfeit.

- *Goodwill*⁷³: trademark give value and that is the goodwill, like reputation and the costumers' connection between the product and the trademark, it may be thought as an intangible asset of the company, which should be secured.
- An *assignment*⁷⁴ it is shift of trademark ownership from party A to party B⁷⁵.
- *Licensing* is a type of contract between two or more parties, in which one party (licensor) allows another actor (licensee) to use the trademark with the authorization of the trademark proprietor (licensor). The licensee has to provide payments in exchange for the trademark to the licensor, and cannot give third parties the right to use the trademark under licensing contract⁷⁶.
- *Gray Market Good* are products under the protection of trademark that are subject to distribution in some specific countries and to sales in some others. It is a quite controversial matter because they may or may not be materially different.
- *Trade Dress*, describes the packaging or the design of the good. It has a certain role because it may mislead consumers, who do not pay attention to the name, words, logo, etc. on it. Hence, it is safeguarded as trademark⁷⁷.
- *Trade Name* refers to the name of the company which may be the same in its corporate name. i.e. "commercial name" and may or may not be employed in the trademark⁷⁸.
- *Infringement* is the application of a mark that is very alike to another mark for the equal or affiliated good, that may create misunderstandings or deception. There

⁷³ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

⁷⁴ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

⁷⁵ Goodwill in the assignment must be incorporated otherwise the assignment annulled.

⁷⁶ In some countries this agreement is not valid, unless the licensor control the licensor's products with the trademark.

⁷⁷ Some countries may offer direct protection and registration of trade dress, but, usually, after an exclusive use and promotion.

⁷⁸ A corporate name may be applied on official documents, but may infringes another's trademark (in all its forms) and cannot be applied in business.

are legal procedures for this type of matters⁷⁹ (International Trademark Association, 2019).

- *Counterfeit* is the use of fake indistinguishable image/form of a registered mark or genuine good/service. There are heavy criminal and civil judicial cases under counterfeit circumstances (International Trademark Association, 2019)⁸⁰.

3.4 Infringement

The unauthorized application of trademark is called infringement, the exclusive owner of the right is in the position to claim legal action because the act of infringement may lead to confusion and misunderstanding for consumers. As previously mentioned, trademarks characteristic is that they are distinctive from each other⁸¹. Therefore, trademark law purpose is to protect their distinctiveness avoiding customers' confusion (Cosgrove, Marsh, Klemchuk Kubasta, Cosgrove, Sean; 2011). Accordingly, confusion is caused by the existence of two identical marks: the infringing one (junior mark) and the original one (senior mark), which bring about consumers' confusion because these last cannot recognize the real and original product or service from the spurious one.

Trademark infringement and the Likelihood of confusion are two faces of the same coin. In fact, the Lanham act⁸² in section 32 and 43 (a), brings to the attention the importance of the likelihood of confusion. Overall, it has been agreed that there are three circumstances of likelihood of confusion:

The first case happens when an unintentionally mistake and entangles packages and names that are so similar that will occur confusion⁸³ occur.

A second case of confusion is when there is no mistake involved, and consumers understand the difference between the products but some similarities drive consumers to assume that the origin of the similar products is the same.

⁷⁹ The outcome from judicial processes are different, it goes from the compensation of damages to destruction of the infringed goods.

⁸⁰ See: <https://www.inta.org/trademarkbasics/Pages/TMBasics.aspx>

⁸¹ Refer to: "Case Study: Trademark Infringement Issues" (Cosgrove, Marsh, Klemchuk Kubasta, Cosgrove, Sean; 2011).

⁸² The act in the United States forbids trademark infringement, trademark dilution. It is a federal trademark statute law.

⁸³ An example may be the name PINE-SOL and PINE-SOLL for a similar product.

The third and last case of confusion is when consumers assume that the “other” product is somehow allowed or sponsored by the original company. (ĆEMALLOVIĆ, 2015).

In re E. I. Du Pont de Nemours & Co (1973)⁸⁴ a generally agreed most extensive causes of likelihood of confusion have been listed:

“(a) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

(b) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use. [..]

(e) The fame of the prior mark (sales, advertising, length of use).

(f) The number and nature of similar marks in use on similar goods.

(g) The nature and extent of any actual confusion.

(h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.

(i) The variety of goods on which a mark is or is not used (house mark, “family” mark, product mark).

(l) The market interface between applicant and the owner of a prior mark [..]

(m) The extent to which applicant has a right to exclude others from use of its mark on its goods.” (Partridge, 2004, p.12)⁸⁵.

Anyway, if the junior mark is indistinguishable from the senior mark then the likelihood of confusion occurs. There is the possibility not to claim the likelihood of confusion if the conditions, expressed in the Article 8(1)(b) of the CTMR (Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008) are not met. In addition, it is stated in Article 8(1)(b) of the CTMR and Article 4(1)(b) of the First Council Directive 89/104/EEC of December 21, 1988, that the concept of likelihood of confusion also

⁸⁴ 476 F.2d 1357, 1361 (C.C.P.A. 1973)

⁸⁵ See: “Likelihood of Confusion: Understanding Trademark Law’s Key Principle” Partridge, 2004, p.12.

takes into account the idea of likelihood of association⁸⁶ (Maeyaert and Muyltermans, 2013).

Finally, it is worth noting that each rule has its own exception, especially when taking into consideration a subjective argument as the likelihood of confusion, created in the mind of the consumers (Maeyaert and Muyltermans, 2013)⁸⁷.

⁸⁶ Refers to the possibility to associate the junior trademark with the senior trademark.

⁸⁷ See: "LIKELIHOOD OF CONFUSION IN TRADEMARK LAW: A PRACTICAL GUIDE BASED ON THE CASE LAW IN COMMUNITY TRADE MARK OPPOSITIONS FROM 2002 TO 2012*" (Maeyaert and Muyltermans, 2013).

4 Intellectual property problems in China

It is clearly recognized that China has gone through a surprisingly fast economic expansion in these past three decades. As a matter of fact, its success was due to its change in an open-policy towards foreigners: numerous Foreign Direct Investments (FDI), labour costs and control policies have made this possible. However, it seems that many countries consider China as a low-quality manufacturing country, in addition to “exploiter of labourers”. Furthermore, among these reviews, China is also addressed as the principal country of IP infringements¹ (Mercurio, 2012). It is assessed that legal businesses in China have to sustain losses between 250-750 US\$ because of infringement and counterfeit². In the last decade, with the innovation of the e-commerce the problem has worsened. In fact, it has been estimated that pirated made in China product constitute of 15-20% of all the products and 90% of software, and 85% represent the products that are sent abroad and have been sized at customs.

China	Europe
IPRs registered are protected: if not adequately registered are not protected	IPRs even if not registered are protected: in some cases, it is possible to bring as evidence a previous use.
IPRs have territorial value: protected just in China, not in Europe	IPRs have territorial value: protected just in Europe, not in China
IPRs’ protection start from the formal registration day	IPRs’ protection may start from the presenting/filing of the request day
Patents and trademarks may be broadened internationally: because of the participation of China to WIPO and Madrid Agreement.	Patents and trademarks may be broadened internationally: because of the participation of European countries to WIPO and Madrid Agreement.

¹ It is estimated that in China there is the 80% of the world’s counterfeit.

² See: “The Protection and Enforcement of Intellectual Property in China since Accession to the WTO: Progress and Retreat” (Mercurio, 2012).

<p>Registration: IP can be filed to the State Intellectual Property Office (SIPO)</p> <ul style="list-style-type: none"> -Trademarks also filed to China Trademark Office (CTMO) -Copyright to National Copyright Administration of China (NCAC) -Geographical Indications to General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). 	<p>Registration: IP can be registered separately in all the UE countries. National offices' list hereby: http://www.innovaccess.eu/</p> <ul style="list-style-type: none"> -Some UE countries have direct offices for copyright registration -Trademarks and designs to Office for Harmonization in the Internal Market (OHIM) -Patents to European Patent Office (EPO) -Geographical Indication to UE
<p>Just Visual Marks are subjected to the protection</p> <p>The registration procedure of trademarks may last for 2 years</p> <p>In the event of registration of trademark for different classes, it is requested to file the registration for each of the classes</p>	<p>Visual, sound and olfactory marks are protected</p> <p>The registration procedure of trademarks may last for 3 years</p> <p>In the event of registration of trademark for different classes, it is possible to file one registration valid for all the different classes</p>
<p>Geographical indications are not protected in China: however, they may be protected as collective or certificated marks</p>	<p>Geographical indications are protected in Europe</p>
<p>Designs must have their own request to file them and to have protection</p>	<p>Designs may be automatically or filed in order to be protected</p>
<p>Designs are protected for 10 years</p>	<p>Designs are protected for 25 years</p>
<p>Copyright is protected from the creation date</p> <p>Registration is necessary at customs</p>	<p>Copyright is protected from the creation date</p> <p>Registration is not requested at customs</p>
<p>The owner of the IP right must prove the infringement</p>	<p>The IP infringer, if asked, must provide information</p>
<p>All the evidences must be provided at the beginning of the process</p>	<p>It is possible to furnish evidence in the whole duration of the process</p>

Table 7: Re-elaborated table of the main difference in IPRs between China and Europe (Mercurio, 2012)³.

4.1 Cultural values and IPR in China

Be that as it may, a more profound examination in writing and history is essential, because as reported by Berrell and Wrathall (2006) it seems pretty obvious that there are some Confucian values that are embedded in the culture and affect the enforcement

³ See: "The Protection and Enforcement of Intellectual Property in China since Accession to the WTO: Progress and Retreat" (Mercurio, 2012).

of IPRs. Moreover, Martin Dimotrov (2002) proposed a three-phases model ready to explain and seek after an incredible enforcement of IPRs in China: the first stage is centred around the spreading of data on Intellectual Property; the second step organization need to focus on the consideration of Chinese individuals on the benefits of implementing the IPRs; the last advance is the institutionalization of the usage since the Chinese have turned out to be accustomed to follow the IPRs. Berrell and Wrathall (2006) suggested an understanding of Chinese culture and its attributes. Indeed, just with an enormous portion of resolution and steadiness can a nation bear the cost of the economic development that China embraced these years. China has always aimed to its internal development, but also development and implementation of IPRs, though it is a really arduous task, since China is divided into further, continuous modernization and respect of the Marxism and capitalism values⁴.

From an historical point of view, there were two main opposing perspectives relating to the law. The Legalist⁵ were promoter of the rule by law⁶, punishments and sanctions while Confucians encouraged rule of law⁷, the value of family and education, therefore Confucians did not want the involvement of judicial cases, thus they informally resolved the situations by mediation and compromises. Consequently, this method had some repercussions on the implementation of IPRs. Nevertheless, Confucians were not the only who are involved in the influence of enforcement of IPRs. In fact, Mao had his part too, since 1949 the Chinese Communist Party stopped the sustainment of the building of the legal system, and ceased all the concerns about intellectual properties. Only after Mao's death did China start to consider the legal system and IPR again, because of the Open-Door policy implemented by Deng Xiaoping. Another important circumstance was the Cultural Revolution, which declared illegal to foster creation and therefore IPR.

⁴ See: "Between Chinese culture and the rule of law: What foreign managers in China should know about intellectual property rights" Berrell and Wrathall (2006).

⁵ People who followed the Legalism philosophy, whose rules were publicized of rules, management methods and manipulation of political life (<https://www.britannica.com/topic/Legalism>).

⁶ In Mao's era and even before, the key concept was to put individual rights after common needs and targets. This concept is called rule by law, because law and formal rules are used to pursue objectives, for example economic development (Warren and He, 2011).

⁷ In the late '70s had started a difficult process called Rule of Law and had huge consequences. From ideological point of view because is about individuals and rights, political because it restrains the elite power, social because it reframes relations among people and economic point of view because it opens up trade (Warren and He, 2011).

Cultural values are incorporated in the society and in the behaviours in China. In this manner, there must be a distinction between China and Western financial aspects, since the last are an increasingly individualistic culture, subsequently safeguarding individual rights is major, while China is comprehensively a collectivistic culture and the supporting of improvement must be sought after, as indicated by the social qualities, hence more practical than moral ways⁸.

When considering the non-legal factor regarding the implementation of IPRs, one may indicate also the administrative and enforcement procedures. It is worth to highlight that in order to foster development, in the 70's the Party spread a background of obscurity in administration and implementation of the law so as to obtain the goals planned in the economic development. A great example is the enforcement of the Special Economic Zones to promote foreigners' companies to invest and establish companies there, where there was high decentralisation⁹ of power and where IPR were not the central focus. In fact, local corruption of officials was a big problem (Berrell, 2006).

The value of collectivism in China has huge repercussion also in the implementation of IPRs, also considering the fact that inside the Constitution there is the detailed specification that individual rights can be abolished (Fung, 1996). According to this view, IPR, that attempt to protect the individual, seems useless since the collectivistic nature is the important concept. Important differences as the role of *guanxi* (关系) and the high-power distance are useful to explain the difficulties in implementing the IPR. *Guanxi* refers to the relationship between people, may it be a personal or business relationship, and it can influence legal practices in China. Furthermore, high power distance and implementation of IPR is distorted by the fact that leadership is legitimated in wielding the law and high class is not obliged to follow it¹⁰.

The Chinese consider, for instance, copyright infringement as a notion of social sharing and this may be a positive contribution. In this view, also in the technological field, the

⁸ See: "Between Chinese culture and the rule of law: What foreign managers in China should know about intellectual property rights" Berrell and Wrathall (2006).

⁹ This was a serious problem for Chinese Government because they underestimated the problem of decentralisation of power, that led to a progressive reduction of the central administrative and enforcement's power.

¹⁰ In fact, in judicial processes officials of the Government can defeat any processes.

Chinese consider the replication as an accepted improvement, hence, trademark, patents, industrial designs and so on are under risk for being copied in software.

For the above-mentioned reasons, IPR do not have the same meaning as in Western countries, because of the influences coming from Chinese culture (Berrell, 2006).

Considering the historical path, the Sino-US Trade Agreement (1979) was important because, the US had already seen that the IPR was a critical point for Chinese business, hence the US specifically outlined that inside the Agreement IP protection was of main concern. Thereafter, China was hesitant, but the US made pressure on the question and forced China to take part in the important agreement on IPR like the Paris Convention (1985), Madrid Agreement (1989) and China implemented its own office State Intellectual Property Office (SIPO) and took judicial decisions regarding the issue. Then, in 1992 China joined the Berne Convention on copyright and came to terms with the US to adopt effective measures to overcome the IPR problem. In the following years, China undertook many revisions of laws, including injunctions and criminal liability, and four major agreements with the US, as well as signing of the TRIPS Agreement. What is clear is that China's problem is not the absence of laws but rather the absence of willingness in enforcing them, because it seems that the Chinese government is powerless¹¹. However, an analysis revealed that even if the infringers are identified, they are not concern and penalties are useless¹². In fact, the analysis revealed that of 22,001 cases of infringement registered in 2000 only 45 had criminal prosecution, those 45 had a penalty fine of \$794 and the compensation to the suffering party \$19. But it is worth noting that IP infringement does not only involve foreign companies, but also Chinese ones. (Mercurio, 2012).

4.2 IPR Law enforcement

Cox and Sepetys (2009), show that there are two ways of IPR enforcement in China: The Administrative and Judicial enforcement.

Administrative enforcement is most used when considering trademark and copyright disputes, but in case of adjudicating a dispute there is no financial compensation. Broadly speaking, the IP owner who sustained to suffer from infringement claims the

¹¹ A saying is "the mountains are high and the emperor is far away" 山高皇帝远.

¹² See: "The Protection and Enforcement of Intellectual Property in China since Accession to the WTO: Progress and Retreat" (Mercurio, 2012).

matter by providing evidence¹³. Such evidence is displayed in front of the local office of IPR. If the court accepts, the investigation is carried on and further evidence is brought and it is also asked to the possible infringer to stop production. This office does not have the possibility to award a compensation but they can force the infringer to pay for the act and confiscate the products. Usually these processes are not public, therefore it is almost impossible to ascertain its effectiveness.

Recently, an expansion in judicial enforcement with such issues have happened, because of the adjustment in implementation of law requiring more court activity and transparency. The aftereffect of detainment in China is conceivable, yet it is not normal. The way requires to acquire the case front of neighborhood or provincial court, in the event that it is an enormous case to the high's people court. Each court is given a specialist in IPR, if not there are committed boards. If there should arise an occurrence of disappointment of the first instance, it is conceivable to engage a higher court, however the second choice is irreversible. The payment is determined through simple estimations, upon the unfair infringement enrichment. In any case, it is hard to compute since some infringers erase their transaction records. Thus, it is conceivable to give the court a chance to choose the award. It is important to find a harmony between a too low pay compensation award and a too high compensation damage.

IPR Cases in China: calculate losses			
IPR:	Patents	Trademarks	Copyrights
Administrative			
Basis for Damage Award	No more than 3x earnings from passing off ¹⁴ only.	3xvolume of illegal business.	3xvolume of illegal business.
Award when undefined infringement enrichment	Less than \$6000 for passing off only.	Less than \$12000.	Less than \$12000.
Judicial			

¹³ It is common to engage private investigator.
¹⁴ False inducement of letting people believe that the good or service is produced by another company.

Basis for Damage Award	Based on damages of the patentee or the enrichment from infringement.		
Award when undefined infringement enrichment	Lost sales of patent owner or multiplied the infringer enrichment for each product or one to three times.	Infringer profit or profit margin.	Lost sales or infringer enrichment. In case of absence of both, compensation more than \$60,000.
	Absence of reasonable license, compensation minimum \$605 maximum \$60,500.	In case of the absence of infringer profit or profit margin, payment of damages more than \$60,000.	

Table 8: Re-elaborated table of Patent, trademark, and copyright infringement fine and penalty assessment and damage calculations in China (Cox and Sepetys, 2009¹⁵).

4.3 How to file a registration in China

The Chinese system belongs to those countries who follow the rule “first to file”, i.e. the exclusive right of the IP use is claimed by the first claimer who registers it and not by the one who invented it. When entering China, a company should give much attention to registration according to time, as soon as one plans to enter China, and width, because registration should cover a broad area of IP. Furthermore, it is useful to have a general awareness of the Chinese institution: SIPO - State Intellectual Property Office, which has now changed its name into CNIPA (China National Intellectual Property Administration); CTO - China Trademark Office, which is now called CNIPA (China National Intellectual Property Administration); Copyright Protection Centre of China (Zullo, 2019).

4.3.1 Patent

Regarding the filing of a patent, there are some qualifications: it requires to be a new, original and of practical implementation. Some patents cannot be registered in China:

¹⁵ See: “Intellectual Property Rights Protection in China: Trends in Litigation and Economic Damages” Cox and Sepetys, 2009, p.9

- activities against public interest,
- scientific discovery,
- methods or rules of mental activities,
- diseases treatments,
- animals or plants breeds,
- atomic diagnosis of diseases,
- transformation's substances,
- immoral activities.

Certainly, the extension of the period of duration changes from the different type of intellectual property: Patents last 20 years, under Chinese regulation: Patent Law of the People's Republic of China and Implementing Regulations of the Patent Law of the People's Republic of China, while the international treaties are TRIPS Agreement, Convention Establishing the World Intellectual Property Organization, Patent Cooperation Treaty (PCT) and Paris Convention for the Protection of Industrial Property.

Foreign applicants who do not have the residence or registered office of their business in China must submit the PATENT registration applications through a local legal agent. The procedure is the following¹⁶:

1. Filing of the patent application in China (the Chinese application)¹⁷;
2. Previous filing of the application in a foreign country (within 12 months) claiming the priority of the first application;
3. Filing of the International Patent Application according to the PCT procedure.

Consequently, the following documentation is required:

- Patent application indicating the name of the invention, the Applicant's data (and of the inventor, if different person) any priority date claimed;
- Technical description: clear and comprehensive explanation of the invention to allow a technician in the same sector of technology to be able to reconstruct the invention;
- Request for coverage: it must describe the technical characteristics of the invention and the coverage for which protection is requested;
- Abstract of the technical description that synthetically defines the technical points of the invention;

¹⁶ See: "La protezione della Proprietà Intellettuale in Cina: strumenti a supporto delle PMI" (Zullo, 2019).

¹⁷ In Chinese language.

- Designs;
- Power of attorney authorizing the agent to manage the registration procedures.

The advantages of the registration of the patent are that: it can grant a monopoly position, in a limited period of time, because of the exclusive right on the market; it can grant the possibility to engage in licensing contracts, giving the licensee the right to use the invention and its know-how; licensing contracts revenue can depreciate the developmental costs; it increases the overall value of the business; strengthens market position and bargaining power; it can increase competencies, image and technological competitive advantage (Zullo, 2019).

4.3.2 Copyright

In China it is possible to automatically register the copyright, by simply showing evidences of ownership¹⁸. It is heavily suggested and is inexpensive. But it is always possible not to register the copyright, and in this case, it is useful to have evidence of the ownership. It is important to write the author's name, the date of the creation and the usage of the symbol © (Delegation of the European Union to China).

4.3.3 Technological Transfer

It is a process that involves more parties, for example party A that grants and exchanges technological knowledge or know-how and party B that receives this technological knowledge in order to exploit it and promote further development (this technology transfer can also be the licensing contract). The protection of the technological transfer depends on the method used; therefore, the disposition and wording of the contract should be clear and without misunderstandings. In fact, the contract must manage the collaboration between the parties and specify the reciprocal obligations (Delegation of the European Union to China).

4.3.4 Trademark

There are two ways to register a trademark in China: national and international registration¹⁹. National body authorized to receive requests for registration CNIPA - China National Intellectual Property Administration²⁰. Trademarks registered in Italy do not enjoy protection in China unless they have been registered in that country, following the national procedure (filing of the application with the CTO) or the

¹⁸ See: https://ec.europa.eu/research/iscp/pdf/sfic/ipr-in-china-guidelines_en.pdf

¹⁹ WIPO filing with specific claim in China.

²⁰ Before known as CTO - China Trademark Office.

international one (Madrid Protocol for the International Brand). As in patent filing, foreign applicants who do not have the residence or registered office of their business in China must submit trademark registration applications through a local legal agent, and it is still under the rule first to file. Since the Chinese system applies the first to file system, the principle of the "previous registration" applies, i.e. the first to register has the right to use the trademark²¹.

Special qualifications are required in order to file a trademark²²:

- Address and denomination of the claimer and photocopy of the inscription certificate of the register of the business, in Chinese language as well;
- If there is a coloured trademark, present eight copies of the coloured trademark;
- If it is a black and white trademark, just one copy is required;
- According to Nice classification²³ of products and services, the requirement of highlighting the class of the product or service of the trademark. It is useful to note that the Chinese system uses also sub-classes, inexistent in Europe. For this reason, one should be very careful when registering in one sub-classes because it does not avoid competitors from registering the same trademark in other sub-classes. Therefore, it is worth to register the trademarks under more sub-classes or one whole class²⁴;
- Power of attorney to the legal representative;
- Priority: if there is a claim for registration of the same trademark in other countries, he/she is entitled to claim the priority right²⁵ (Zullo, 2019).

Something that really covers a crucial position is the translation of the trademark and brand, because it incorporates the product's information, value offer, reputation and positioning in a business. Pontiggia and Vescovi (2015), note that the European MMNEs do not enjoy of great reputation and recognition in China, therefore should pursue some conditions: the adaptation of the product that needs to enter the Chinese market, due to its functional (shape, dimension) and symbolic aspects (colours); the necessity to

²¹ Therefore, it is useful to conduct a research before applying for trademark filing.

²² See: "La protezione della Proprietà Intellettuale in Cina: strumenti a supporto delle PMI" (Zullo, 2019).

²³ Nice Agreement (1957), international classification of goods and services for registration of trademarks (WIPO).

²⁴ It does not require more registration; everything can be pursued through one application.

²⁵ Within 6 months.

explain the functional and daily use in the social context²⁶, and do not give anything for granted; the necessity to show the value elements of the category of the products and the specific products. However, it is noted that building a product culture is easier for upper classes, while more efforts are required with the medium-low classes²⁷.

Broadly speaking, four different brand strategies are to be pursued in China:

1. Value elements of the products for Chinese consumer: the strength of a brand is based upon three elements that are the value, the history of the reputation and cultural context. It may seem logical to think that European business enjoys all of these elements because of its market tradition, but in China it is not so clear. Many MMNEs give for granted the knowledge that already exists in the home-market which is considered the same as the one present in China, though it is not. It is useful for them to clearly explain the brand, the history behind the brand²⁸ and the cultural context from where the brand was born. Therefore, MMNEs should deeply emphasize cultural context and join them with positive value of the Chinese culture;
2. Translation of the brand according to Chinese language and culture: in China the cultural context occupies a main role, and as a matter of fact the translation of the brand must be relevant with the local culture. For this reason, it is useful to carefully translate the brand, by focusing on the cultural context, because even though it exists the sound similarity may not mean anything. The translation of the brand concerns some product characteristics, like the benefit of the product, the desired positioning and the cultural context of the brand. There are different types of possible translations of a brand (Pontiggia and Vescovi, 2015):
 - a. Sound similarity: the choice of translating the brand according to the original sound, but companies should be very carefully in not giving a negative connotation ²⁹;
 - b. The creation of meaning, leaving aside the sound similarity, but the logo, colours, etc. remain the same³⁰;

²⁶ Referring to the health benefits, for instance.

²⁷ See: "Panni stesi a Pechino" (Pontiggia and Vescovi, 2015).

²⁸ The storytelling of the brand, affective in appreciating and make people curious of the brand. Furthermore, the story of the brand provides a value because of its durability.

²⁹ An example is the translation of the brand Audi (奧迪), which it is not related to a meaning therefore here is stressed the western products.

- c. The building of cultural synchrony which refers to the fact that the brand name is translated with positive meaning for Chinese culture. In fact, in China the culture is deeply embedded in the society, and this may help to gain a local positioning³¹;
 - d. The possibility of building a translation upon all of these above-mentioned elements, hence a mixture³². However, one should note that it is not always possible;
 - e. It is also possible not to translate the brand name, but one should also consider the fact that in case of quotation, the translation would be casual therefore would not express the benefit of the product or the expected positioning of the brand or even a negative connotation³³.
3. Necessity of experience, reassurance and visualization of the brand: these are important factors in the Chinese market. In fact, in China there is the necessity to reassure the customer with the brand reputation³⁴. It is useful to understand the Country of Origin Image (COO), psychological process in non-acquainted market³⁵, when consumers link a country image to a category of product. If there is a positive link, MMNEs may exploit this factor because it may foster that product category. However, the Chinese are not ready to build an exact image of the country or its know-how yet. As a matter of fact, Chinese consumers tend to build a simplified image of the country, e.g. Italy because incorporate Italy in a macro area, Western countries, then with little knowledge begin to understand Europe and after a learning process they acquire Italian know-how and position. Furthermore, the Chinese tend to build this COO according to their recent experience, therefore the first entrant (MNEs) that builds the market and shapes knowledge³⁶
4. Leadership importance: in China there is also a syndrome called number one syndrome, meaning that Chinese consumers among different and identical

³⁰ For instance, the beer Heineken, translated into (喜力), played on the fact that it means strong power that has positive meaning.

³¹ An example is the Red Bull (红牛) “red cow” because the Bull in China it is not seen as a positive element, while the cow is even in the horoscope.

³² E.g. Ikea (宜家) “suitable home”, so upon the different elements.

³³ See: “Panni stesi a Pechino” (Pontiggia and Vescovi, 2015).

³⁴ Involve many elements like graphic components of brand and packaging.

³⁵ Therefore, market not able to differentiate MMNEs’ products and MNEs’ products.

³⁶ This fact is clear since the homeland of pizza and coffee is America instead of Italy, because of the big MNEs Starbucks and Pizzahut.

products choose the leader brand, because they want to be sure to buy a valuable product, according to price and quality and also to reduce the perceived risk in purchasing it (Pontiggia and Vescovi, 2015).

However, the advantage of having a translation of the trademark is that it is more difficult to have infringements and consumers may better understand the product.

Nevertheless, the procedure to file a trademark in China, usually takes from 16-24 months and the period of the exclusive right extends to 10 years, with the possibility to renew it for another 10 years. There is a specific characteristic in China, which highlights the difference between collective marks and certification marks. Collective marks are registered by groups, associations or other organizations used by their members, to clarify the belonging to such entities. It is requested by a juridical person and not a physical person. It can be used only by subjects belonging to the titular organization. On the other hand, the certification marks are the marks that refer only to some characteristics of the product (place of production, method, raw material). The organization guarantees the conformity of the products with that brand to the use regulation. It is not necessary for the users to be members of the owner organization³⁷.

In addition, companies may decide to file the trademark to the General Administration of Customs (GAC), whose main function is to control the imported and exported goods. Customs, even if there is no registration to the GAC, can confiscate goods within three days, but only in the case in which the trademark owner has already presented a claim with the specific information needed and has to decide within 20 days if to sue or not³⁸. In case there is no registration the customs cannot seize the counterfeited goods (Zullo, 2019).

³⁷ See: "Panni stesi a Pechino" (Pontiggia and Vescovi, 2015).

³⁸ Refer to: "La protezione della Proprietà Intellettuale in Cina: strumenti a supporto delle PMI" (Zullo, 2019).

商 标 代 理 委 托 书

GENERAL POWER OF ATTORNEY FOR TRADEMARK PROSECUTION

我/我们, _____ 是 意大利 国家或地区的公民/法人, 现委托 上海申新知识产权代理有限公司 代理在中华人民共和国申请如下“✓”商标事宜:

注册申请、驳回复审、变更商标申请人/注册人名称、变更商标申请人/注册人地址、转让、异议、异议答辩、无效宣告、续展、补发商标注册证等手续。

I/we, PASTIFICIO TOMMASO ZAFFIRI S.R.L. a citizen /legal entity organized and existing under the laws of ITALY, hereby entrust with CHINA IPWELL INTERNATIONAL LAW FIRM applying in the People's Republic of China in relation to my/our trademark(s) for:

Application for registration, Review against Refusals, Recordal of change of name of the applicant/registrant, Recordal of change of address of the applicant/registrant, Recordal of assignment, Opposition, Answering opposition, Invalidation actions, Renewal of registration, Re-issuance of registration certificate of trademarks.

I/we authorize to make Chinese translation for my/our name and address.

申请人名称: _____

Name of Applicant: PASTIFICIO TOMMASO ZAFFIRI S.R.L.

申请人地址: _____

Address of Applicant: Via Giulio Caccini, 1, I-00198 ROMA (RM) (IT)

授权签字:

Signor's Name and Job/Position Title:

→

(authorized signature)

2019 年 1 月 25 日

On January 25, 2019 .

Figure 8: Example of application of registration of Trademark from the CTMO, Zaffiri.

4.4 Italy and China IP infringement

Recently a meeting has been conducted by the ITA³⁹, whose main focus was to assure a smooth path for internationalization of SMEs, identify prospective problems, educate SMEs due to the Intellectual property issues. According to Zullo (2019), from 2014 to 2019 the ITA and ICE have supported 2251 SMEs, among those 493 SMEs were provided with assistance in infringement cases, in different parts of the world: Istanbul with 83 cases, Moscow 90 cases, New York 45 and, last but not least, China with 173 cases (Zullo,2019).

It is further advised that before entering the Chinese market, Italian SMEs should, according to the different type of IP, protect themselves by: registering and filing the IP before entering the market, therefore before the first exhibition or meeting with a potential customer/partner; controlling competitors, so market surveillance, internet surveillance (e-commerce) and investigation; quickly and efficiently act on injunction, technical blocking of website, legal action, corporate communication⁴⁰.

However, from the OECD survey “Trade in counterfeit goods and the Italian economy” it is possible to evaluate the seriousness of the counterfeit problem in Italy. In fact, one must understand the fact that Italy is a high IPR presence country, it is well integrated in the global economy and that is one of the reasons why its products are often subjected to counterfeit (OECD, 2018)⁴¹.

³⁹ Italian Trade Agency

⁴⁰ See: “La protezione della Proprietà Intellettuale in Cina: strumenti a supporto delle PMI” (Zullo, 2019).

⁴¹ Refer to: “Trade in Counterfeit Goods and the Italian Economy Protecting Italy’s Intellectual Property” (OECD, 2018).

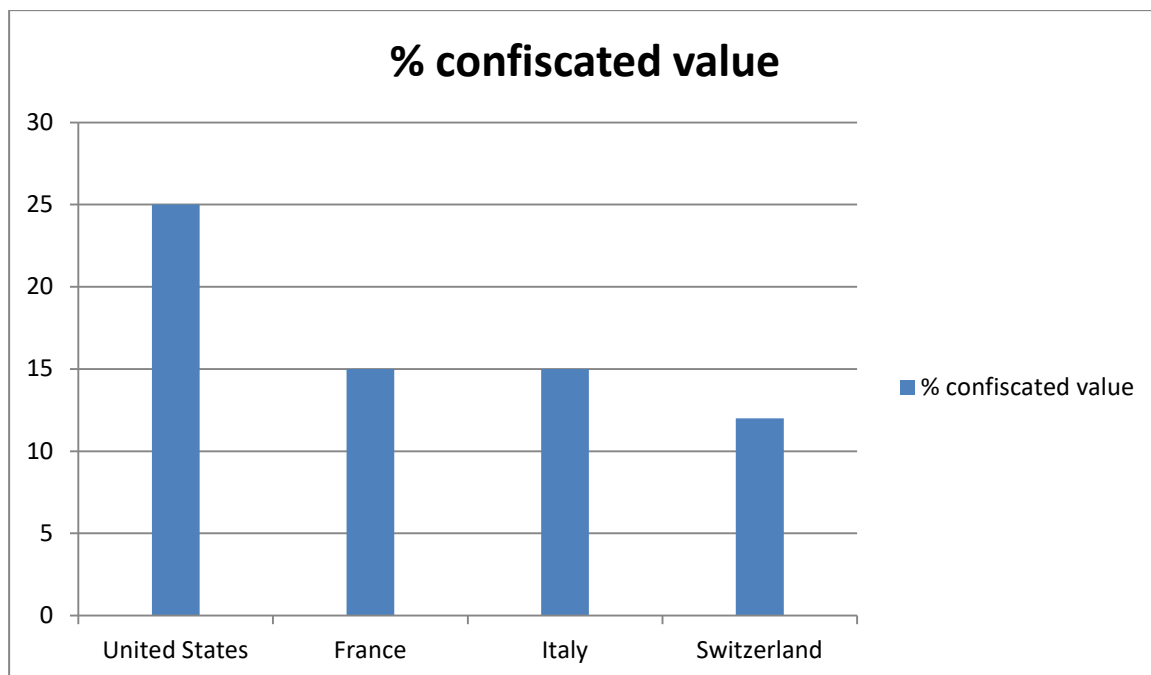


Figure 9: Re-elaborated Top four countries of IP owners exposed to infringement (OECD, 2018)⁴².

There two different ways to evaluate the global counterfeit goods on the Italian economy: from the consumer side, industries and government and from the side of the IP owner. It is worth to note the impact of counterfeited goods imported in Italy on:

- the industries, and specifically on retailer and wholesaler side, meaning in decreasing the amount of sale and profit of the secondary market, which in turn translate into workforce reduction;
- Government, reduce the VAT, SSC and PIT⁴³, corporate taxes and retailer taxes (considering the secondary market)⁴⁴;
- Consumers, decrease the consumer surplus⁴⁵.

The impact of Italian IP infringements in global trade on the IP owner on:

- The industries, which means a decrease in sales and profits (both in primary and secondary market), workforce reduction, decrease of improvement and development of innovation and brand deletion;

⁴² Refer to: "Trade in Counterfeit Goods and the Italian Economy Protecting Italy's Intellectual Property" (OECD, 2018).

⁴³ VAT Value-added taxes, SSC social security contributions and PIT personal income taxes.

⁴⁴ Here, the difference between the primary and secondary market for counterfeit goods, the primary market is where there is consumer's deception of goods, and the secondary where the goods are sold as fake.

⁴⁵ The difference between the price of the market and value of the product.

- Government, reduce the VAT, SSC and PIT⁴⁶, corporate taxes and retailer taxes⁴⁷(taking into account the primary and secondary market.).

However, the real focus is on the infringement of Italian IPRs across the world, which affect the Italian IP owners and Italian government (OECD, 2018). The Italian IP owners are considered as the industries, and the impact of infringement for them is huge in terms of sales because infringement lower bulk of sale, which means decreasing of profit, that of course leads to a workforce reduction, and speaking more on long-term the brand will be deleted due to the unfair competition of the IP infringement⁴⁸. On the other hand, for the Italian government the impact of Italian IP infringement is on tax revenues, because the decreasing of bulk of sale and profit of Italian industries has direct effect on the corporate income taxes. Additionally, some sales in home markets are not registered, which translate in lower sales and reduced VAT. Furthermore, the workforce reduction caused by the infringement decrease payroll taxes, SSC and PIT (OECD, 2018).

It is useful to look at the places where Italian IP infringement⁴⁹ is more likely to occur, using a GTRIC-e index (General Trade-Related Index for destination economies)⁵⁰.

⁴⁶ VAT Value-added taxes, SSC social security contributions and PIT personal income taxes.

⁴⁷ It involves also some socio-economic costs, such as: the increasing of unemployment, the rate of development and implementing innovation decreases, criminal cases and corruption arise etc.

⁴⁸ Refer to: "Trade in Counterfeit Goods and the Italian Economy Protecting Italy's Intellectual Property" (OECD, 2018).

⁴⁹ The data is collected by the confiscation in customs and their comparison with non-infringed Italian products and Italian manufacturing sales.

⁵⁰ It compares the confiscation of Italian goods subjected to IP infringed in the customs and sold in an economy and the share of this economy in the Italian sales (export plus domestic sales) (OECD, 2018).

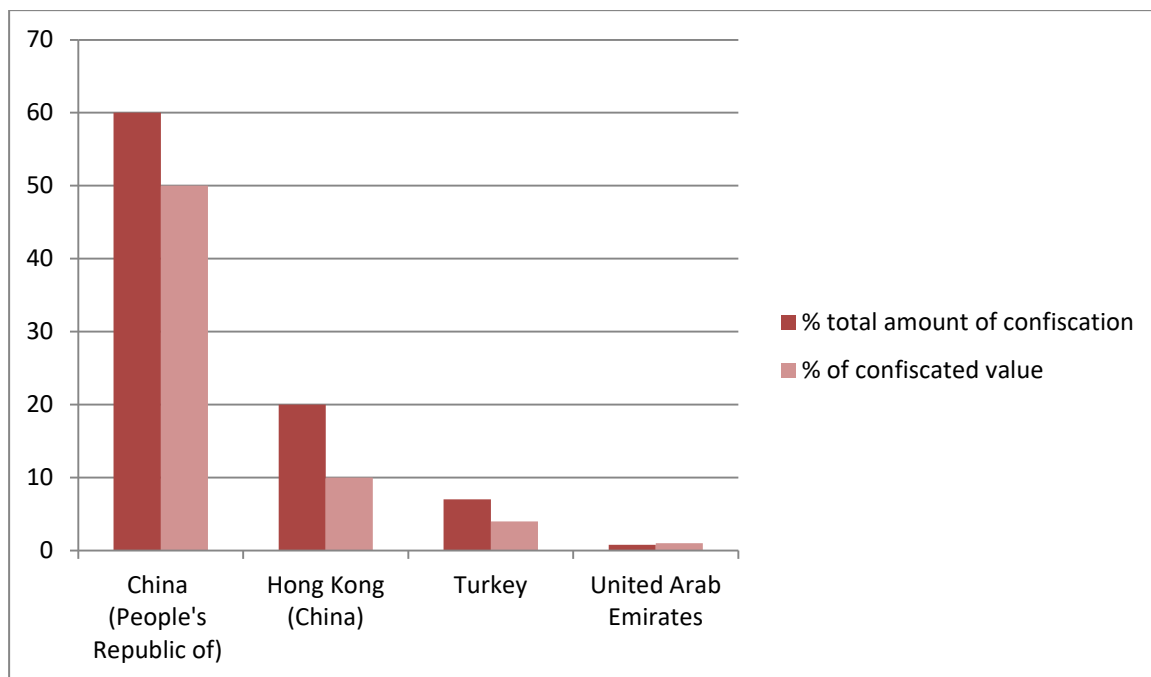


Figure 10: Re-elaborated Top four countries in which occurs Italian IP Infringement (OECD, 2018)⁵¹.

4.5 Food sector in Italy and China

China has undertaken a real and fast internal development, which encompasses all business trade, including the food sector. In fact, in 2013 China's food sector total amount was about 365 US billions, every year increasing around the 15%, this is due to the increasing urbanization, increasing of disposable income, international influences etc. (Rosenthal and Rossi, 2014). One important focus that international companies should take into consideration when entering the Chinese market is the health benefit of the product and the packaging⁵².

Regarding specific food sectors, the confectionery market in China survives because of the sale of snacks, usually eaten between meals; alcoholic drinks are receiving more attention in the Chinese market and will increase their presence; as far as the meat sector is concerned, this was subject to an increase of export of 3 billion of euros.

⁵¹ Refer to: "Trade in Counterfeit Goods and the Italian Economy Protecting Italy's Intellectual Property" (OECD, 2018).

⁵² Chinese consumers do not buy international products with big packaging because they do not know the quality of the product and want to try them first. Therefore, it is helpful to deliver the product in China in small packaging in order to give the Chinese the first trial of the product (Vescovi, 2018).

However, Europe has its concern regarding problems with some product categories in China⁵³.

With regard to the Italian food sector in China, it was the 28th exporter country in China (in August 2013). The most exported Italian food products are chocolate with a market share of 33%, the second one is pasta 11,5%, mineral water 7,3% and olive oil 21,2%, coffee 7,3%, kiwi 8,4%, wine 6,5% and cheese 3,1% (Rosenthal and Rossi, 2014).

As for “Trade in counterfeit goods and the Italian economy”, the OECD analysis explains that also Italian products are more likely to be subjected to IP infringement. This survey involves a period of two years, from 2014 to 2016

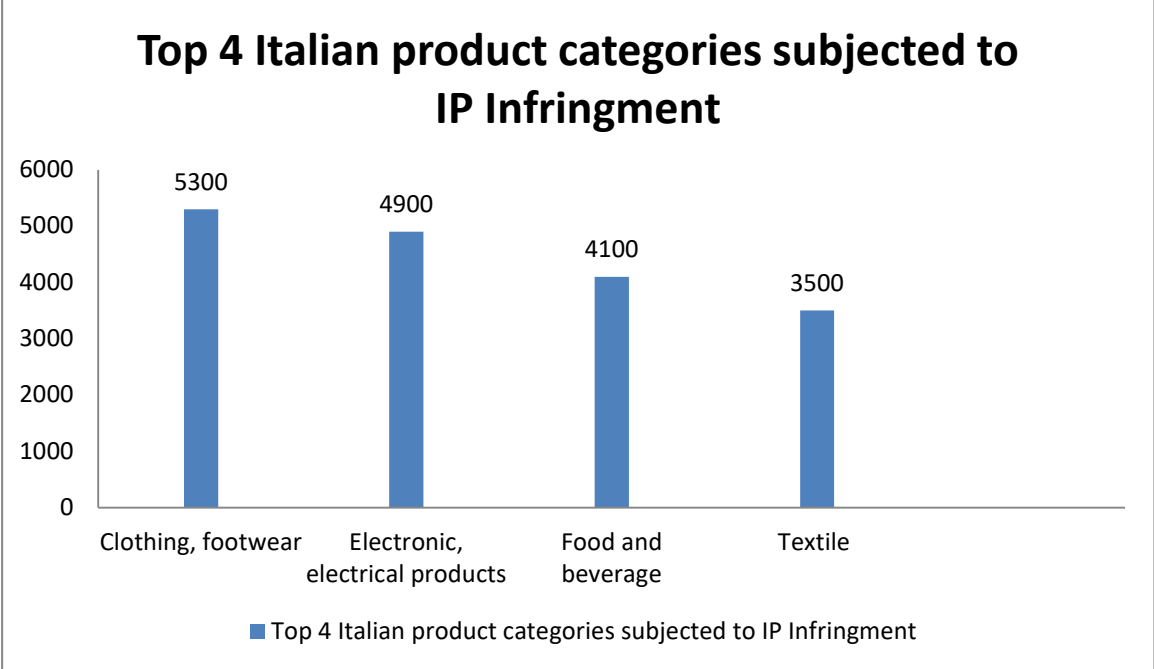


Figure 11: Re-elaborated Top 4 Italian product category subjected to IP Infringement across the world, value in EUR million (OECD, 2018)⁵⁴.

In 2016 the global amount of counterfeit of Italian product exceeded 31.7 billion, which is 3.6% of the total volume of Italian exports of the manufacturing industries (OECD, 2018). Therefore, 86% of Italian Infringers of the food sector come from China and Hong Kong.

⁵³ An example is beef, because of the disease BSE (mad cow disease).

⁵⁴ Refer to: “Trade in Counterfeit Goods and the Italian Economy Protecting Italy’s Intellectual Property” (OECD, 2018).

Italian products are in a tough spot because they enjoy a high reputation, also thanks to the COO⁵⁵, which enables consumers to avoid risk perception in the purchasing moment. In fact, the “Made in Italy” products are heavily exposed to counterfeiters, because they are viewed as elegant products, since they supply not only a functional value, but also a cultural one⁵⁶. Elegance is an element that is deeply embedded in the Italian culture and history, this is why “Made in Italy” products are so esteemed (Vescovi, 2016). Furthermore, there is another phenomenon, the Country Sound Branding, which refers to the fact that some brands sound belonging to one country that enjoy a high reputation, though they are not. It is thought to be negative, but may also be positive because it may foster the country-image of the country, hence help promoting MMNEs products to enter the foreign market. Moreover, a country sound branding may be promoted by businesses that do not belong to the country⁵⁷. Therefore, a country sound branding may be positive, at first, but then, when the consumers realize that the quality and price are lower than the real product coming from the country that enjoy high reputation on that product category, customers may be disappointed and from their first premium positioning they decrease their position. This phenomenon may be also exploited by infringers and counterfeiters (Pontiggia and Vescovi, 2015).

This phenomenon has bad repercussions on the Italian economy and mostly Italian SMEs, because the infringement of Italian IP owners leads to a total lost sold of 24 billion of euros, meaning the 3,2% of total sale⁵⁸.

In this picture, Italian SMEs are more likely to be targeted by this circumstance, because even though they have limited production and sales in these international areas, they do offer qualitative products, which are really appreciated. For this reason, they become the victim of this infringers, because it is a very profitable business, since the infringement of their IP may be more remunerative. Moreover, SMEs capability and resources are limited, hence cannot control and develop actions against this situation.

⁵⁵ Explanation at page 84.

⁵⁶ There are three sources of value that a product deliver: the use value, therefore its ability to meet a need; social value, its ability to be product of social relationship; psychological value, its ability enhances one-self (Vescovi, 2016).

⁵⁷ For example, an Italian Sound Branding may be the Pronto Caffè, that is Japanese brand, not Italian one.

⁵⁸ Refer to: “Trade in Counterfeit Goods and the Italian Economy Protecting Italy’s Intellectual Property” (OECD, 2018).

5 Case study

Intellectual Properties are important elements to consider when a small business is planning to internationalize, especially if the target foreign market is China. This thesis aims to demonstrate that the process of internationalization of small and medium-sized businesses, in particular Italian small-medium sized business, and in some cases family enterprises, in China may be hindered by the fact that China has been considered as a country in which there is a high level of infringement cases. This is a theme, not only current, but that ends up affecting the trajectories of the internationalization of many companies: it absorbs resources, requires actions, which often cannot be implemented by small companies because they do not have the capabilities and resources.

The purpose of this thesis is not representing what generally happens across the world in case of SMEs' internationalization, there is no ambition to arrive at general results, but rather to emphasize the fact that through the description of different cases and their specificity, other players may be able to capture these events and avoid similar situations¹.

5.1 Case 1

Company A, an Italian business operating in the food industry, was subjected to the infringement of the trademark. This company found out that its distributor in China registered the trademark in China of the Italian company, therefore turning into the owner of the trademark. This event led to bring the matter before the court and the Italian company lost the case, in addition the Chinese distributor asked for a high price to the Italian company in order to buy the trademark back.

Consequently, the Italian company requested the help of Confindustria², and proposed the following solutions:

- I. The possibility to eliminate the trademark, which is possible if there is evidence that the trademark had not been used in 3 years. In this case, it is useful to

¹ Refer to: "Trade in Counterfeit Goods and the Italian Economy Protecting Italy's Intellectual Property" (OECD, 2018).

² Italian Manufacturers' Association.

understand the date when the Chinese distributor registered the trademark. Moreover, if the Chinese distributor is willing to keep the registration, proof and evidence of the employment of such trademark must be provided.

- II. When there is not the possibility to eliminate the trademark, it is possible to file an appeal for invalidity of the trademark due to its infringement from the Chinese distributor referring to the articles 15³ and 32⁴ of the law of the People's Republic of China.
- III. In the event of the infringement of the symbol of the trademark or a part of the symbol, it is possible to ask for the prior of the owner right.⁵

5.2 Case 2

Company B, an Italian company in the business of the purification of water and air designs, is the owner of some patents, including in China. The know-how is the centre of the activities of the company, in addition the company has developed a special proprietary software to control the operation of the system.

In order to obtain liquidity quickly, the company has decided to explore the possibility of granting its own technology based on Chinese companies, however, the result was that the company decided to implement an exclusive license with a Chinese company. Both parties signed a privacy agreement, but during successive agreement the negotiations stop because the royalty's agreement could not be found.

Company B found another Chinese partner, and in order to accelerate the negotiations, they did not sign a privacy agreement and decided for a supply contract. Company B keeps the design in Italy, however one year later finds out that the Chinese company was bringing into the market similar products that did not reach the same efficiency levels. Therefore, an IP infringement case occurred.

³ It refers to the possibility to face a case of registration of bad faith, in the case of the prior registration and filing of the business relation. It is requested to provide evidences about the prior purchasing of the Chinese party.

⁴ It refers to the registration of a trademark that has already been used and enjoys a certain reputation in the market. Evidences of employment of the trademark before the registration of the Chinese party are therefore requested.

⁵ See: <http://www.china-iprhelpdesk.eu/it/content/case-studies>

Company B surely did not protect adequately the software and had given little importance to the know-how it was transferring. Therefore, the Chinese company was able to freely use its know-how.

What is worth to note is the fact that the company should have: firstly, develop a strategy of exploitation of intellectual property in the medium to long term, integrated with the commercial strategy; secondly, develop accurate privacy agreement; thirdly, search for a partner who has no conflicting interests and offers guarantees of respect for intellectual property.

The organization did not have a patent to secure the general appearance of their product, nor were there any licenses covering the item's capacity, so attempting to guarantee the Chinese organization submitted patent infringement was legitimately conceivable yet amazingly hard to do. The main legitimate response the organization had was to contend copyright infringement of the specialized manual.

Rather than taking the legal path, the organization chose to send a notice letter through their legal advisors that supposed infringement of the product's shape—despite the fact that they were not on solid legitimate ground—and copyright. The letter inferred that the organization would prosecute the issue. The law office, and delegates from the Italian organization, lined up the letter and met with the Chinese organization. The Italian company contended that a claim would be exercised in futility for the two gatherings and that regardless of whether they were not effective in court, the Chinese contender's impersonation of the Italian good would hurt their corporate picture over the long haul. Accordingly, the encroaching organization chose to change various outside highlights of the item and produce new manuals and pamphlets which extraordinarily decreased the likenesses to the Italian product item.

Despite the fact that the Italian company did not have a solid lawful case to make, in this occasion, a notice letter pursued by a series of arrangements had the option to create a tasteful outcome⁶.

⁶ See: <http://www.china-iprhelpdesk.eu/it/content/case-studies>

5.3 Case 3

An Italian tourist entered a big supermarket in Beijing, and saw the product of the small Italian company C. He took many pictures and then told an employee of company C of the event. That is how the company C heard of their trademark infringement in Beijing.

The company had not registered any trademark in China where there is the first-file system, therefore the trademark enforcement was discarded. Company C discovered that the Chinese counterfeited also the packaging and the logo. As a consequence, Company C was advised to:

- register the copyright of the packaging and the logo, in order to provide evidence for the prior usage and because the copyright certificate is extremely helpful by authorities to proceed with enforcement.
- Inform the stores in order to prove the infringement, which is necessary to lodge a litigation case based on copyright infringement.
- Consider the Anti-unfair competition and food safety issues for this matter – reaching out legal counsel.

Anyway, the important part is that even if there is no direct operation in China, it is better to go along with the registration of the trademark, because of the first-to-file system present in China.⁷

5.4 Case 4

Company D is an Italian manufacturer of skin products. It has happened that company D tried to register the trademark of his products in China, but the registration filing was denied by the Chinese Trade Mark Bureau, since a similar registration already existed.

Hence, the action to take was to identify if there was any relationship between the Chinese company that registered the trade mark and the Italian company. Consequently, it was found that they did not have commercial relationship, therefore unfortunately registration based upon the principle of bad faith with regard to known associate would not work. Furthermore, it is important to check if the Chinese company had registered a logo different from a word mark, yet the Chinese company did not register any part of the trademark, which translates into the impossibility to use copyright as a prior right to

⁷ Source: <http://www.china-iprhelpdesk.eu/it/content/case-studies>

a logo in order to invalidate the Chinese trademark. Thirdly, it was useful to verify if the Chinese part that infringed the Italian trademark, had already infringed other Intellectual properties. Indeed, from the Chinese Trade Mark Office online Chinese database it turned out that the company had more than fifty registrations of names similar to those of already registered trademarks of European Union and USA companies.

Lately, a practice that allows an invalidation of the trademark in bad faith has been introduced if a company has registered thirty or more trademarks of other companies in the EU or the USA etc., because this fact proves that the Chinese company knew about the Italian company (or the others) and intentionally targeted the Italian business by registering its trademark, in order to make the Italian company pay them in exchange of the trademark and enter the Chinese market without any trouble⁸.

5.5 Case 5

An Italian organization, Company E, in the dental instruments area was selling their product in China through a Chinese distributor. Company E found out that a rival in China was selling a very similar product, however worked to differentiate on some particulars, but utilized an indistinguishable outside structure, design, colour and control interface. The specialized manual, graphs and parts of their business brochure seemed, by all accounts, to be straightforwardly duplicated from the Italian dental instrumental organization. By and large, the contender's product left the impression of being comparable in capacity and functions to that of the Italian company, although its price and quality were lower.⁹

The organization did not have a patent to secure the general appearance of their product, nor were there any licenses covering the item's capacity, so attempting to guarantee the Chinese organization submitted patent infringement was legitimately conceivable yet amazingly hard to do. The main legitimate response the organization had was to contend copyright infringement of the specialized manual.

Rather than taking the legal path, the organization chose to send a notice letter through their legal advisors that supposed infringement of the product's shape—despite the fact that they were not on solid legitimate ground—and copyright. The letter inferred that

⁸ See: <https://www.wipo.int/portal/en/>

⁹ See: <https://www.wipo.int/portal/en/>

the organization would prosecute the issue. The law office, and delegates from the Italian organization, lined up the letter and met with the Chinese organization. The Italian company contended that a claim would be exercised in futility for the two gatherings and that regardless of whether they were not effective in court, the Chinese contender's impersonation of the Italian good would hurt their corporate picture over the long haul. Accordingly, the encroaching organization chose to change various outside highlights of the item and produce new manuals and pamphlets which extraordinarily decreased the likenesses to the Italian product item.

Despite the fact that the Italian company did not have a solid lawful case to make, in this occasion, a notice letter pursued by a series of arrangements had the option to create a tasteful outcome¹⁰.

5.6 Case 6

Italian company Zaffiri Ltd., an Italian family business in the pasta sector, found out that their trademark had already been registered, when the company was trying to register it in China. After some analysis, it was discovered that its trademark had been registered by a Chinese company.

One important factor is that the Italian company, being of small dimension, had some importers in China, who on its own translated the name in “达菲丽” and started another brand, which was not only used for pasta but also potato chips products.

The company asked for legal help, both in Italy and China. The actions suggested were:

- I. File immediately the traditional name in Latin characters, in order to avoid additional registrations in bad faith, without any logo in order to avoid the case of first-to-file issue, i.e. in the case the Chinese company also infringed the logo.
- II. File, when possible, the Chinese name of Zaffiri, therefore “达菲丽”, in order to avoid counterfeits.
- III. File the copyright for the logo of Zaffiri in China.
- IV. Take actions against the Chinese company, by invalidating the infringed trademark because of bad faith or eliminating the trademark infringed because of absence of proof of the implementing of such trademark.

¹⁰ See: <https://www.wipo.int/portal/en/>

trademark details		Trademark procedure	
		Goods/services	(意大利式)烘焙饼; (意式)面食; 调味品; 酱油; 咖啡调味香料(调味品); 面包屑; 食用淀粉; 食用面粉; 糖果; 意大利面条; show details
		Similar group	3001;3004;3006;3007;3008;3009;3012;3015;3016;
Application No./registration No.	9142611	Date of application	2011/02/23
International Classification	30		
Name of applicant(Chinese)	东莞市御豪食品有限公司		
Name of applicant(English)			
Applicant address(Chinese)	广东省东莞市寮步镇华南工业园塘唇东区A19号		
Applicant address(English)			
Public announcement number of first trial	1289	Public announcement number of registration	1301
Community marks	No		
Public announcement Date of first trial	2011/11/27	Public announcement Date of registration	2012/02/28
Type of trademark	一般		
Exclusive right duration	2012/02/28 to 2022/02/27		Form of trademarks
Date of International Registration		Date of late formulation	Date of priority
Agents name/receiving organization	东莞市中智知识产权事务所		
Trademark procedure	Click to view		
Trademark status icon	LIVE/REGISTRATION/Issued and Active 注册		

Figure 12: Example of procedure and visualization of registration of trademarks in China on the CTMO.

FOOD INDUSTRY

<i>CASE n.</i>	<i>POSSIBLE ACTIONS</i>
1. Company A: Trademark Infringement	<ul style="list-style-type: none">• Eliminate the trademark;• Appeal for invalidity of the trademark;• Prior owner right.
3. Company C: Trademark Infringement	<ul style="list-style-type: none">• Register copyright of the packaging or logo;• Inform the stores• Anti-unfair competition and food-safety issue.
6. ZAFFIRI: Trademark Infringement	<ul style="list-style-type: none">• File Latin characters;• File Chinese characters;• Invalidate the infringed trademark.

Table 9: Cases and actions to be taken in the Food industry, in case of Trademark Infringement.

MECHANICAL, COSMETIC AND FOOTWEAR INDUSTRIES

<i>CASE n.</i>	<i>POSSIBLE ACTIONS</i>
2. Company B: Patent Infringement	<ul style="list-style-type: none">• Develop better IP protection's strategy;• Privacy agreement;• Individuate adequate Chinese partner.
4. Company D: Trademark Infringement	<ul style="list-style-type: none">• Identify business relation with Chinese party;• Check if Chinese company registered other part of the trademark;• Check if the Chinese company has already infringed other trademarks;
5. Company E: Patent Infringement	<ul style="list-style-type: none">• notice letter through their legal advisors;

Table 10: Cases and actions to be taken in different Industries, in case of intellectual Properties infringement.

Conclusion

The purpose of the thesis is to present the intellectual property infringement of small Italian businesses in China, through an introduction of different IP infringement cases. Even though the gathering of information resulted difficult due to privacy reasons, six cases are taken into consideration to explain and demonstrate the obstacle of small Italian business in China.

In the first case, the company found out that its distributor in China registered its trademark in China and asked the Italian company a high price in order to buy the trademark back. Under these circumstances, the Italian company has different options: change its trademark or suspend the current one; file an appeal for invalidity of the trademark; ask for the prior right as actual owner.

The second case, company B did not protect the software and had given little importance to the know-how it was transferring, since did not have a patent to secure the general appearance of their product. This led to the fact that the Chinese company was able to freely use its know-how. In this event, the company has several choices: develop a strategy of exploitation of intellectual property; develop accurate privacy agreement; search for a proper partner.

The third case, the error of company C was not having registered any trademark in China. The advised measures to take are: register the copyright of the packaging and the logo; inform the stores; consider the Anti-unfair competition and food safety issues.

The fourth, company D tried to register the trademark of its products in China, but the registration filing was denied by the Chinese Trade Mark Bureau since a similar registration already existed. Hence, the steps are: identify any relationship between the Chinese company that registered the trademark and the Italian company; check if the Chinese company had registered a logo different from a word mark, verify if the Chinese part that infringed the Italian trademark, had already infringed other Intellectual properties.

The fifth case, company E found out that a rival in China was selling very similar products. The organization's mistake was to not file patent to secure the general appearance of their product, nor were there any licenses covering the product's capacity.

Rather than taking the legal path, the organization chose to send a notice letter through their legal advisors that supposed infringement of the product's shape.

The last case, Pasta factory Zaffiri Ltd., found out the previous presence of the registration of its trademark. The actions suggested were: file immediately the traditional name in Latin characters; file the Chinese name of Zaffiri; file the copyright for the logo of Zaffiri in China; invalidate the infringed trademark.

In conclusion, it is evident, that all the actions taken by the SMEs against the infringement of their trademarks require many resources and capabilities, and as already seen, they work in a resource-scarcity environment. Therefore, this may require effort, time and money intended for the internationalization steps, and sometimes may hinder the process. However, it should be recalled that protecting and enforcing their Intellectual Property Rights (IPR), in or relating to China, is essential for all types of businesses and there is the necessity to foster the knowledge of IPRs, cooperation between SMEs in order to promote a solid basis for the establishments of IP, business affiliations, national, provincial governments and other important organizations so as to better protect the IP needs of business.

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