

Business Decisions and Intellectual Property

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The intellectual property has become nowadays a topic, which is widely discussed as a business environment issue. The legal background of intellectual property rights has not any more so important significance and a decisive role. The reason for this development is to be found in the history of the trade liberalization.

In 1995, the World Trade Organization has been established as a first international organization covering multilateral trading system, which itself had been created in 1947 by the General Agreement on Tariffs and Trade. The WTO agreements, signed by the establishment of the organization, include also the TRIPS agreement (Agreement on Trade Related Aspects of Intellectual Property Rights). This agreement represents the first intellectual property agreement, which is binding for all members of the organization. It is an important difference from all the World Intellectual Property Organization (WIPO) agreements, which the WIPO members could decide to sign or not to sign (to accede/not to accede). Moreover, the TRIPS agreement for the first time covers also the intellectual property rights (IPRs) enforcement, whose lack could create serious problems for the IPRs holder.

Due to the transition periods in the implementation of the TRIPS agreement, only since 2005, the WTO members (except of least developed countries) should have implemented the TRIPS provisions into their national legislations. These provisions represent only minimum standards of the IPRs protection and enforcement and members are free to provide a legal basis for higher level of IPRs protection. Since that time, the world-wide discussion on IPRs is concentrated on positive and negative aspects of the IPRs protection and is very often associated to the discussion on development. The impacts of IPRs protection and enforcement are considered not only from the point of view of economical or trade related aspects, but also from the point of view of the society, its evolution, right on health, right on information, transfer of technology, etc.

The research takes into consideration only a part of trade-related aspects of IPRs and shows how the intellectual property enters into business decisions and where is its place in the basic business analyses. It is based on a presumption, that the lack of IPRs protection and enforcement represents a new kind of non-tariff barrier that impede the fair and free trade. The fair and liberalized trade, however, is only a possible future optimal stage. The business could not and will not wait for it. The business finds its way after all – its goal is to minimize lost and to maximize benefits and it is also the reason, why the intellectual property rights should be included into business decisions.

The IPRs – protection and enforcement of them - are taken into account by IPRs holders, who intend to enter into markets and who decide about forms of market entry and about investment. They choose among several possibilities: simply to export, to sell a license, to franchise its business, to create a joint venture, to enter with a considerable capital as a FDI, etc. For this decision, the PEST analysis is the appropriate method. The research conclusion proposes questions that should be considered from the point of IPRs view and that should be included into the complex decision.

The enterprise decides also how to promote its products or business. The IPRs, as a trademark (TM) or geographical indication (GI), could be and are used as an efficient marketing tool. Are there any advantages in branding by TM? How the use of a GI, if appropriate, could contribute to the success of the product? The SWOT analysis gives answers to these questions, while taking into account the nature and level of worldwide protection of a concrete IPR category (GI example). The use of GI is however interesting also for the business which free-rides on the reputation of a concrete GI. What are conclusions of its SWOT analysis? Do free-riders have completely different interest in the protection and enforcement of a GI as a IPRs category? The analysis proves that the interests of free-riders and genuine right holders could be the same at certain extent. The research is complemented by a simulation of the SWOT analysis on the GI categories from the society point of view and by an intuitive SWOT analysis of consumers.