

# *Trademark, the marketing name of the business*

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## **Abstract**

*Any sign which is „capable of distinguishing“ the products or services of one business from the products or services of another business is capable of constituting a trademark. As the essential function of a trademark is to exclusively identify the commercial origin of products or services, any sign which fulfills this purpose may be registrable as a trademark. The symbol (™) is a symbol to indicate that the preceding mark is a trademark. It is usually used for unregistered trademarks, as opposed to the registered trademark symbol (®) which is reserved for trademarks registered with the appropriate government agency. Trademarks and the rights they grant, are seen as one of the most important issues in the strategic management of the business organizations. Under this general framework, it is important for us to understand the role of mark in the marketing of product/service,*

*the level of importance of the trademarks and their rights management, in business organizations in Albania. So, the purpose of this research is to investigate the role of mark in the marketing of product/service in business organizations in Albania, as well as to find out if a relationship between role of mark in the marketing of product/service and other specified managerial issues, is present in such organizations. The research is based on the testing of the main Hypothesis, expressed as: H0. Trademark does not play an important role in the marketing of product/service in the business organizations in Albania; and on the testing of six other Sub-Hypotheses, trying to find out if a relationship, between role of mark in the marketing of product/service and other specified variables, is present in such organizations. The research is based on primary and secondary data collection. Some conclusions are also specified at the end of this paper.*

**Key words:** *Trademark, Role of mark in the marketing of product/service, Management of Trademark, Business Organizations in Albania*

## **Introduction**

In the second half of the 19<sup>th</sup> century, the demand for international protection of marks and inventions began to be felt. In fact, foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries. This incident resulted in the birth of the Paris Convention for the Protection of Industrial Property in 1883, the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations. Such protection took the form of marks, patents (invention), and industrial designs.

The crux of the convention was the principle of national treatment, that is, equal protection between nationals and foreigners. This principle is best defined, in the original text of the Paris Convention, by the provision on national treatment in Article 2.

In the first one hundred years since the establishment of the Paris Convention, we have seen growth in the protection of marks, inventions, and other objects of industrial property at the international level. In these first hundred years, we have also seen the early development of cooperation among states in the field of industrial property.

A man named McDonald is wondering why he can not open a restaurant called McDonald (Stim, 2016). Whereas a trademark is a registered brand or trade name, a brand name identifies a specific product or name of a company. A brand is an offering from a known source (Kotler & Keller, 2012). Because of a brand

name's importance, many companies want to protect it through trademark. For example, the Nike Swoosh is a registered trademark.

The <sup>TM</sup> symbol may be used when trademark rights are claimed in relation to a mark, but the mark has not been registered with the government trademarks office of a particular country, while the ® is used to indicate that the mark has been registered. It is not mandatory to use either symbol, although the force of convention is such that the symbols are widely used around the world. However, in various jurisdictions it is unlawful to use the ® symbol in association with a mark when that mark is not registered.

## **Mark management as a marketing concept**

A trademark, trade mark, <sup>TM</sup> or ®, is a distinctive sign of some kind which is used by an organization to uniquely identify itself and its products and services to consumers, and to distinguish the organization and its products or services from those of other organizations.

Conventionally, a trademark comprises a name, word, phrase, logo, symbol, design, image, or a combination of these elements. A trademark is any device (name, word, phrase, logo, symbol, design, image) that is being used to identify a business's goods or services in the marketplace and that has not been registered with a state government or Trademark Office (Fishman, 2016). There is also a range of non-conventional trademarks comprising marks which do not fall into these standard categories.

The term *trademark* is also used informally to refer to any distinguishing attribute by which an individual is readily identified, particularly the well known characteristics of celebrities. Such trademarks can be a style of haircut (Elvis Presley's distinctive ducktail), articles of clothing or accessories (Elton John's oversized sunglasses), facial hair (Groucho Marx's mustache), or even breast size (Pamela Anderson).

Trademark law protects marketing signifiers such as the name of a product or service, or the symbols, logos, shapes, designs, sounds, or smells, used to identify it. This protection can last as long as the company uses the trademark in commerce (Stim, 2016).

According to TRIPs (Agreement on Trade-Related Aspects of Intellectual Property Rights), any sign which is „capable of distinguishing“ the products or services of one business from the products or services of another business is capable of constituting a trademark. Under this definition, trademarks such as Microsoft's slogan „Where do you want to go today?“ are generally considered registrable.

Furthermore, as the essential function of a trademark is to exclusively identify the commercial origin of products or services, any sign which fulfills this purpose may be registrable as a trademark. However, as this concept converges with the increasing use of non-conventional trademarks in the marketplace, harmonisation may not amount to a fundamental expansion of the trademark concept.

Mark management is a key set of concepts, methods, and processes designed for aligning the marks of the firm with its business strategies and objectives. In most cases the individual trademarks and other protected assets are intended to generate near-term income. Trademark management involves much more than merely filing applications. It has greatly expanded and involves areas such as trade dress, domain names, famous marks, marketing, packaging, and unfair advertising (Chadirjian, 2018).

Trademark strategies are particularly helpful when they outline the strategic objectives of the firm and its related mark activity. Lacking the foundation of a mark management system, firms typically do not extract the degree of value from all of their marks (intellectual capital) they otherwise would be capable of.

Because of the increased value of marks in particular, companies must ask themselves whether they are using these valuable assets to their best advantage. How are these assets being managed? How are they being exploited to improve the firm's position in the marketplace? How are they being used to improve the firm's position in relation to that of its competitors? The management of a complex series of activities, requires a system and a systematic approach. Anything less leads to chaos, misunderstanding, and wasted effort.

The extent to which a trademark owner may prevent unauthorized use of trademarks which are the same as or similar to its trademark depends on various factors such as whether its trademark is registered, the similarity of the trademarks involved, the similarity of the products and/or services involved, and whether the owner's trademark is *well known*.

If a trademark has not been registered, some jurisdictions (especially Common Law countries) offer protection for the business reputation or goodwill which attaches to unregistered trademarks through the tort of passing off. Passing off may provide a remedy in a scenario where a business has been trading under an unregistered trademark for many years, and a rival business starts using the same or a similar mark.

If a trademark has been registered, then it is much easier for the trademark owner to demonstrate its trademark rights and to enforce these rights through an infringement action. Unauthorised use of a registered trademark need not be intentional in order for infringement to occur, although damages in an infringement lawsuit will generally be greater if there was an intention to deceive.

For trademarks which are considered to be well known, infringing use may occur where the use occurs in relation to products or services which are not the same as or similar to the products or services in relation to which the owner's mark is registered.

## Methodology of the research

Marks and the rights they grant, are seen as one of the most important issues in the strategic management of the business organizations. Under this general framework, it is important for us to understand the role of mark in the marketing of product/service, the level of importance of the marks and their rights management, in business organizations in Albania.

The purpose of this research is: *to investigate the role of mark in the marketing of product/service in business organizations in Albania, as well as to find out if a relationship between role of mark in the marketing of product/service and other specified managerial issues, is present in such organizations.*

The objectives of the research are:

- To indicate the role the mark plays in the marketing of product/service in the business organizations in Albania
- To indicate the level of importance of the mark as an asset of business organizations
- To indicate the level of management of the mark within companies
- To indicate any presence of relationship between *role of mark in the marketing of product/service* and other specified variables like: change in the attention of company management, policy of the company to manage mark, strategy of the company to manage mark, formal structure of the company to manage mark, application for protection (registration) of the mark.

The research is based on the testing of the main Hypothesis, expressed as:

*H<sub>0</sub>*: Trademark does not play an important role in the marketing of product/service in the business organizations in Albania.

*H<sub>a</sub>*: Trademark plays an important role in the marketing of product/service in the business organizations in Albania.

and on the testing of six other Sub-Hypotheses, trying to find out if a relationship, between role of mark in the marketing of product/service and other specified variables, is present in such organizations.

*H<sub>1</sub>*: There is a positive correlation between "role of mark in the marketing of product/service" and "level of importance of mark as an asset for the business".

H2: There is a positive correlation between “role of mark in the marketing of product/service“ and “change in attention of company management“.

H3: There is a positive correlation between “role of mark in the marketing of product/service“ and “existence of policy to manage mark“.

H4: There is a positive correlation between “role of mark in the marketing of product/service“ and “development of strategy to manage mark“.

H5: There is a positive correlation between “role of mark in the marketing of product/service“ and “creation of formal structure to manage mark“.

H6: There is a positive correlation between “role of mark in the marketing of product/service“ and “application for protection (registration) of the mark“.

The methodology used for the research has its own dimensions like: *specification of the research subjects, tools used for the research, sampling, implementation plan, ethical issues and presentation of the research findings*. The research is based on primary and secondary data collection.

## **Specification of the research subjects**

After defining the hypotheses, we started out the work about specification of the subjects that could be compatible to the purpose of this research. After distinguishing a number of companies of interest (big businesses in the Tirana-Durres region of Albania), we started to collect the required information from the managers of these companies. The data for the study were collected from business organizations with activity in areas like: manufacturing, service, construction, trade, etc. The respondents were senior managers. This category was considered to be the best to target, because these individuals have the tendency to be closely associated with the practice of the application for protection (registration) of the mark, and its respective managerial decision making.

## **Tools used for the research**

In order to collect the necessary information, analyze the data, and draw conclusions, a questionnaire composed of some basic questions were developed and delivered. The questionnaire was prepared to collect important data on different aspects of mark management practice. The analyses of the collected information would give us the necessary level of understanding about the issue in discussion. Data are analysed using SPSS program.

## **Sampling**

Our original sampling consisted of 42 managers, in 42 companies, in the Tirana-Durres region of Albania. 42 questionnaires were delivered, and the questionnaires' return rate was 83.3%, or 35 collected questionnaires. However, the collected data could be considered as being representative.

## **Implementation plan**

The way we were organized helped us in reducing the time and costs required to perform the interviews. Data were collected during the year 2018, comprising a period of five years. Collected data were processed in order to prepare the findings and draw conclusions. There were not present any difficulties in distributing and collecting the questionnaire.

## **Ethical issues**

The information collected from the respondents was very important for analyzing and interpreting the findings. The names of the respondents (companies' managers) due to ethical obligations were not disclosed in this paper.

## **Results. Presentation of the research findings**

In this section research findings are presented.

### **Role of the mark in marketing of the product/service (Univariate analysis)**

In order to test Hypothesis 0, Descriptive analysis is used. In regard with the role of the mark in the marketing products and services, the results of the analysis are as following:

To the question "Are you aware of the concept of mark", 100% of respondents answered "yes", clearly indicating that all companies are aware of the concept of mark.

To the question "Do you know how to gain legal protection of the mark", 100% of respondents answered "yes", clearly indicating that all companies know how to gain legal protection of their mark/s.



To the question “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“, 80% of respondents answered “yes“, 17.1% of respondents answered “no“, 2.9% of respondents answered “do not know“, indicating that many companies see the mark as an important factor in the marketing of their products and services.

To the question “What is the level you think that the mark is an important asset for your business“, 88.6% of respondents answered “very important“, 11.4% of respondents answered “important“, and only 0% of respondents answered “not important“, indicating that most of the companies are aware of the importance of their marks as business assets.

To the question “How did the attention of company management in regard with mark (mark mangement), change over last five years“, 82.9% of respondents answered “increased“, 11.4% of respondents answered “did not change“, 5.7% of respondents aswered “decreased“, indicating that in most companies management is continuously being focused on mark/s (mark/s mangement).

To the question “Are there any policies of your company (management) to manage its mark, over the last five years“, 40% of respondents answered “yes“, 51.4% of respondents answered “no“, 8.6% of respondents answered “do not know“, indicating that most of the companies do not own any policies to manage their mark/s.

To the question “Did your company (management) develop any strategies to manage its mark, over the last five years“, 42.9% of respondents answered “yes“, 45.7% of respondents answered “no“, 11.4% of respondents answered “do not know“, indicating that in many companies mark is becoming part of their business strategies.

To the question “ Did your company (management) create any formal structures to manage (that is, to identify, to protect, to promote or to comercialize) its mark/s, over the last five years“, 34.3% of respondents answered “yes“, 60% of respondents answered “no“, 5.7% of respondents answered “do not know“, indicating that a few companies own formal structures envolved in the mangement of their mark/s.

To the question “How many applications for registration of the mark/s has your company filed, over last five years“, 71.4% of respondents answered “zero“, 25.7% of respondents answered “one“, 2.9% of respondents answered “two“, indicating that not all the companies applied for registering their mark/s during the specified period.

By using Arithmetic Mean, Standart Deviation and Variation Coefficient (CV) (as a standardized measure of dispersion of the above answers‘ frequency distribution, expressed as a percentage, and defined as the ratio of the standard deviation $\{\displaystyle \sigma\}$  to the mean) of the results above, based on a scale of three values, “positive“, “indifferent“ and “negative“ (indicating the relativity of



answers above), we see that the lowest value of the CV corresponds to the scale “positive“, with 63.5% of the business organizations. The results of the analysis above clearly indicate that hypothesis *H0: Trademark does not play an important role in the marketing of product/service in the business organizations in Albania*, is invalidated, that is, alternative hypothesis *Ha: Trademark plays an important role in the marketing of product/service in the business organizations in Albania.*, is validated.

### Relationship between “role of mark in the marketing of product/ service” and “other variables” (Bivariate analysis)

In order to test Hypothesis 1-6, Chi-squared test is used. First the Crosstabulations between the variables are computed in order to quantitatively analyze the relationship between variables, and than Chi-square test is used in order to attempt rejection that the data (variables) are independent.

**TABLE 1.** Variables to be crossed.

No	Variable 1	Variable 2
H1	role of mark in the marketing of product/service	level of importance of mark as an asset
H2	role of mark in the marketing of product/service	change in attention of company management
H3	role of mark in the marketing of product/service	existence of policy to manage mark
H4	role of mark in the marketing of product/service	development of strategy to manage mark
H5	role of mark in the marketing of product/service	creation of formal structure to manage mark
H6	role of mark in the marketing of product/service	application for protection (registration) of the mark

For the crosstabulation “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“ and “What is the level you think that the mark is an important asset for your business“, values of the table below show that significance of the chi square value is greater than  $(0,762 > 0.05)$  accepted error value, indicating that there is a significant association between the two. The value of the correlation is 0.522, indicating a (semi-strong) positive relationship between the two. Hence hypothesis *H1: There is a positive correlation between “role of mark in the marketing of product/service“, and “level of importance of mark as an asset for the business“, is validated. That is, since mark plays a role in the marketing of product/service, it has been seen as an important asset for the business.*

**TABLE 2.** Chi-Square test for H1.

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	,481	2	,762
Likelihood Ratio	,772	2	,672
Linear-by-Linear Association	,379	1	,522
N of Valid Cases	35		

For the crosstabulation “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“, and “How did the attention of company management in regard with mark (mark mangement), change over last five years“, values of the table below show that significance of the chi square value is greater than  $(0,371 > 0.05)$  accepted error value, indicating that there is a significant association between the two. The value of the correlation is 0.813, indicating a (strong) positive relationship between the two. Hence hypothesis *H2*: There is a positive correlation between “role of mark in the marketing of product/service“ and “change in attention of company management“, is validated. That is, since mark plays a role in the marketing of product/service, it has caused a change in the attention the company management pays on it.

**TABLE 3.** Chi-Square test for H2.

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	4,333	4	,371
Likelihood Ratio	4,511	4	,355
Linear-by-Linear Association	,060	1	,813
N of Valid Cases	35		

For the crosstabulation “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“, and “Are there any policies of your company (management) to manage its mark, over the last five years“, values of the table below show that significance of the chi square value is greater than  $(0,125 > 0.05)$  accepted error value, indicating that there is a significant association between the two. The value of the correlation is 0.136,

indicating a (week) positive relationship between the two. Hence hypothesis *H3*: There is a positive correlation between “role of mark in the marketing of product/service“ and “existence of policy to manage mark“, is validated. That is, since mark plays a role in the marketing of product/service, it has required the existence of a policy to manage it, in the company.

**TABLE 4.** Chi-Square test for H3.

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	4,058	2	,125
Likelihood Ratio	5,580	2	,055
Linear-by-Linear Association	2,391	1	,136
N of Valid Cases	35		

For the crosstabulation “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“, and “Did your company (management) develop any strategies to manage its mark, over the last five years“, values of the table below show that significance of the chi square value is greater than ( $0,517 > 0.05$ ) accepted error value, indicating that there is a significant association between the two. The value of the correlation is 0.484, indicating a (semi-strong) positive relationship between the two. Hence hypothesis *H4*: There is a positive correlation between “role of mark in the marketing of product/service“ and “development of strategy to manage mark“, is validated. That is, since mark plays a role in the marketing of product/service, it has required the development of a strategy to manage it, in the company.

**TABLE 5.** Chi-Square test for H4.

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1,376	2	,517
Likelihood Ratio	1,760	2	,401
Linear-by-Linear Association	,477	1	,484
N of Valid Cases	35		

For the crosstabulation “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“, and “Did

your company (management) create any formal structures to manage (that is, to identify, to protect, to promote or to commercialize) its mark, over the last five years“, values of the table below show that significance of the chi square value is greater than  $(0,283 > 0.05)$  accepted error value, indicating that there is a significant association between the two. The value of the correlation is 0.149, indicating a (week) positive relationship between the two. Hence hypothesis *H5*: There is a positive correlation between “role of mark in the marketing of product/service“ and “creation of formal structure to manage mark“, is validated. That is, since mark plays a role in the marketing of product/service, it has required the creation of a formal structure to manage it, in the company.

**TABLE 6.** Chi-Square test for H5.

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2,568	2	,283
Likelihood Ratio	3,683	2	,147
Linear-by-Linear Association	2,020	1	,149
N of Valid Cases	35		

For the crosstabulation “Do you think that your mark has played an important role in the marketing your products and services, over the last five years“, and “How many applications for registration of the marks has your company filed, over last five years“, values of the table below show that significance of the chi square value is greater than  $(0,0.828 > 0.05)$  accepted error value, indicating that there is a significant association between the two. The value of the correlation is 0.615, indicating a (strong) positive relationship between the two. Hence hypothesis *H6*: There is a positive correlation between “role of mark in the marketing of product/service“ and “application for protection (registration) of the mark“, is validated. That is, since mark plays a role in the marketing of product/service, it has required the application for protection (registration), in the company.

**TABLE 7.** Chi-Square test for H6.

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	,364	2	,828
Likelihood Ratio	,605	2	,725
Linear-by-Linear Association	,274	1	,615
N of Valid Cases	35		

## Conclusions

Many companies in Albania are aware of the concept of mark and they know how to gain legal protection of their mark/s. Almost all the companies see their mark/s as an important factor in the marketing of their products and services, and most of them time after time have been applying for protection (registration) of the mark. Most companies see their mark/s as very important for their businesses and in these companies management is continuously being focused on mark/s and mark/s' management. Despite the fact that many companies see their mark/s as very important, many of them do not own any policies to manage their mark/s. Despite the fact that in many companies mark is becoming part of their business strategies, some of them own or created formal structures involved in the management of their mark/s.

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