

Franchise Trade from the Aspect of Intellectual Property, Patents, Licenses and Related Rights "Know-How"

¹Ana Ćović, ²Aleksandra Daria Petrović and ³Andrijana Ćović Ilić

¹The Institute of Comparative Law, Terazije 41, 11000 Belgrade, Serbia

²Faculty of Business and Law of University Union-Nikola Tesla, KnezMihajlova 33, 11000 Belgrade, Serbia

³Metropolitan University, Faculty of Management, TadeusaKoscuska 63, 11000 Belgrade, Serbia

Abstract: Franchise industry has rapid growth in past decades. The franchise as a property becomes a commodity-knowledge that grows into an intellectual capital-knowledge, so such a knowledge-model appears as a commodity that has appeared in the market where its placement and trade are made. The great influence of franchises on the world economy is especially reflected in the wide applicability of franchises, as new products, methods and processes, both in the field of production, organization of work and ways of doing business. The paper analyses franchise trade from the aspect of intellectual property, patents, licenses and related rights "know-how".

Key words: Trade • Franchise • Patent • License • Franchisor • Franchisee • Intellectual Property • "Know-How"

INTRODUCTION

Globalization has accelerated the development of informational technology and with a new industrial revolution there has been a significant growth in technological innovation in all areas of human creativity. Science is rapidly advancing and there is a need for increasing investment in new scientific and technological solutions, both, in new products and in the performance of existing products by their further refinement and innovative upgrades. At the international market, this has been reflected in the emergence of great competition among all economic parties involved in the movement of goods and services, which is competing with the continuous improvement of existing products and the marketing of new products. All of this has led to rapid economic growth and consequently to the promotion of international trade. A huge role in the economic growth and promotion of international trade is the contribution of all forms of intellectual property, that is, industrial property. Patents and licenses defined in franchises have steadily accelerated the progress of the franchise business, which has led to a further significant new investment in creative development in the field of promoting new product creation and production in general. The franchise business gained importance as

significant investments were made in the development of new franchises. Countries that have recognized franchise opportunities in a timely manner have, through their institutional support, made successful investments in new franchises and this created important potential for their new economic development, as they have positioned themselves in the international market for goods and services traffic on the basis of franchises.

The great influence of franchises on the world economy is especially reflected in the wide applicability of franchises, as new products, methods and processes, both in the field of production, organization of work and ways of doing business. Eventually, this has led to a link between the legal and economic aspects of franchise sales promotion, as well as the development and emergence of new franchises. Especially since franchises in the field of information technology enabled a wide range of use, especially in the development of a new information society and their application in the production and provision of services, then in the creation of new economic processes and business activities [1].

The activities, processes of control and automatic data processing are automatically critical to improving production and service delivery. The rapid emergence of new products on the market has also led to the shortening of the life of one product on the market.

The lifetime of a product on the market is increasingly shortened and market survival is linked to the increasing importance of franchise sales, which provide and satisfy the need to innovate and improve the quality of products and services. Thus further led to further strengthening of franchisees turnover and further growth of franchise business. The trade of franchises in all its forms has become extremely intensified and has conditioned the need for further upgrading of the content of franchise rights. Franchise turnover contributes tremendously to the development of society, as reflected in:

- Improving the quality of products and services
- Production improvement
- Promote loyal competition and competition in the market
- Improve employment and accelerate economic development
- Improve and accelerate new creations and innovations
- Improve existing technical and technological development
- Improve existing technological and cultural advances
- Improve existing civilizational flows and development of society.

Improvement of franchise trade leads to further liberalization of international trade, which also created legal preconditions for further upgrading of international legal regulation of this trade, adopting a large number of new international conventions and agreements, which upgrade the legal position of franchises and legal regulation of franchise business. The aforementioned TRIPS agreement [2], which represents an extremely important legal arrangement and contract in the field of franchises, industrial and intellectual property, in fact provided a functional and effective system of protection of franchise rights and thereby, from the international legal point of view, initiated that national legislation with considerable attention to legal regulation between franchisors and franchisees. It is the interest of each country to regulate and legally protect franchisors and franchisees, to facilitate the acceleration of franchises and technology transfers, thereby ensuring the sustainable growth of their economic development, thereby gaining an effective advantage of being present on the international market and achieving the necessary competitiveness of their products and a favor. The re-design of the organization and the new style of management, a different approach and attitude to all

inputs and outputs is the product of a new requirement stemming from globalization and transition, which now through existing performance, strongly influence the organization with its programs to survive on the local and international market.

This adaptation process is not possible without the inclusion of all Total Quality Management tools, which should ensure that the organization adapts to the changes required and achieves the necessary level of competitiveness, which enable it to re-position itself in the market. That is why we can rightly say that Total Quality Management represents a well-designed intellectual creation of all necessary changes that integrate all aspects of business, from technical, market, economic, to organizational and ethical aspects of business. This can also be seen as a sublimation of the advanced management concept and the required quality improvement concept. That is why we say that Total Quality Management can also be seen as a requirement of connecting intellectual relationships and at the same time the ability of self-creation, starting from the offers of existing forms of franchises, as industrial property, patents and licenses, which are available on the international market of intellectual property as finished packages on which the Know-how is traded and exchanged, as well as the sale of franchises, licenses, patents, finished organizational models and patented capital-knowledge.

Franchise business imposes the need for specific management of the franchises in question, that is, a different approach to all management processes and an active approach to the relationship with the existing organization of work and production processes. Depending on the creative approach in the construction of all management processes by the management team, until engaging and preparing the necessary technology, its configuration in accordance with the required design, license content, then existing patent and trademark rights. That is why it is said that the process of franchise turnover from the international franchise market implies the transfer of the franchise package, which will be supported in all stages of realization of the franchise project.

That is why it is especially emphasized that there is no development of the organization, unless a specific organized approach is adequate to the engaged franchise, which primarily involves the relationship in recognizing the needs of customers, their motives and ways of enthusiasm for building a need and satisfying it. Re-engineering an organization to the engaged form of

the organization in question requires restructuring as a pre-built model that supports the franchise activity of the franchise in question. This implies a significant intellectual creation of the necessary re-organization with the adaptation of the methods of its work and business, as well as of all business processes in the realization and business of the franchise, which includes the transformation of all business processes to the requirements of the new age. Increasing productivity, achieving planned profits while reducing all business costs, is not possible without engaging those emerging forms of intellectual property that, with the transfer of knowledge and technology with automated production, contribute to the performance of new products and the innovation of existing ones.

All this is realized by franchising in the franchise business of the respective franchise. These processes are constantly and continuously taking place and they also contain that part of the intellectual efforts that lead to the change of the existing state and the development of the required level of quality as a precondition for the necessity of survival in the market. That is why re-engineering an organization in a franchise business is treated as a prerequisite for all the conditions of adapting an existing organization as its ability and willingness to self-re-design its own changes.

The significance and impact of franchise rights in world trade has grown significantly over the past 20 years and has grown by about 50%. The growth of franchise traffic in international trade has caused a significant impact on all market flows and a number of prominent authors in this field have particularly emphasized the impact of the effects of franchise business on observed flows of international trade [3]. These studies clearly show that national systems that have provided a higher level of protection for intellectual property and franchise rights have had an increasingly positive impact on bilateral commodity traffic, especially for imports into smaller developing countries.

Significant research has addressed the hypothesis of proving the effects of franchising on international trade [4]. The study used the method of gravity model of bilateral trade flows and the estimation of the effects of increased protection through cross-section analysis in a model of 89 x 88 countries. The research has unequivocally proved the extent of the impact with respect to the viewing parameters:

- Gravity model with two different types of aggregates: total fuel trade and high technology trade.
- The problem of zero trade flows between countries has been observed by adopting a bilateral distribution regression model.
- Measuring the strength of intellectual property regimes under national rights was measured with a carefully tuned index of national intellectual property rights, a method developed by Park and Ginarte [5].

The research showed a positive relationship between protection of franchise rights and trade flows for all observed franchise aggregates. However, this has not proven to be a major influence on trade flows in high technology trade, because high technology in itself is driving particular growth in international trade, primarily in terms of the need to modernize production and service delivery. The trade flows of franchisee traffic are interdependent and have reciprocal impact. As an example, one can observe the possible occurrence of piracy that automatically leads to a decrease in the export flows of the patent products in question in a particular market, accompanied by certain industrial licenses, which is further reflected in the profitability of the franchise program in question, primarily because it is not secured and provided in the observed market. An adequate level of protection of franchise rights, thereby jeopardizing the bilateral regime of trade between certain countries, which in turn have different levels of protection of franchise rights. Trade in intellectual property rights and related rights, in particular Know-How is the reverse effect on larger foreign direct investment, as well as technology transfer and investment in the domestic research and development sector. Globally, this trade in Intellectual Property Rights, especially patent and licensing rights, is also reflected in the re-location of production in countries with lower levels of legal protection due to lower production costs and cheaper labor, but in terms of the volume of trade balance with the source country disproportionately to the detriment of the recipient country, but nonetheless, it accelerates its economic growth and reduces unemployment.

On the other hand, such turnover leads to strengthening of new investments in innovations in the original country, thus accelerating the cycle of newly created values of intellectual capital. In this way, there is a new acceleration of trade flows, as the innovator countries provide new trade primacy with the

development of new technologies, by which the recipients of new technologies and Know-how, through franchising, only in the coming period are they expected to receive the expected benefits from the launch of new commodity production or services. There are no foreign direct investments [6] and technology transfers without intellectual property and a level of protection. Therefore, it is reasonable to assume that attracting foreign direct investment and technology is proportional to the development of the regime of intellectual property rights and related rights of Know-How and others. Bearing in mind that multinational corporations are the source and bearer of investment capital and the possible transfer of technology and Know-how, this is the reason why national economies in their development strategies pay special attention to stimulating foreign direct investment and regulating economic and trade flows, with particular attention to strengthen the legal protection and regulation that contributes to the security of this form of traffic, with the upgrading of regulations that ensure the further growth of franchising and franchising. The strategy of developing national economies must also include political security and stability clauses in order to continue the inflow of foreign direct investment.

Investing in research and project financing of new product ranges and new designs of existing products implies the need to constantly invest and finance innovation as the driving cycle of new technologies and Know-how. The strategy of economic development must also provide investment in the acquisition of new forms of industrial property, which will significantly contribute to the further growth of gross national income. International corporations and multinational companies have programs to invest in expanding their existing capital-knowledge fund, that is, innovation through new emerging forms of intellectual and industrial property, which will be implemented through the production of a new range of products or services or the improvement of the performance of existing products and services. Knowledge thus formed and Know-How, through the application of international conventions and national legislation in terms of intellectual property protection, as such, it is legally regulated as a new form of intellectual capital of knowledge so that it can then be marketed as technical and technological production knowledge in organizing production in various countries, all depending on the potential of the expected economic success, that is, profit.

In this way, these multinational companies and corporations make huge profits by selling their intellectual capital on the international market and Know-how, by selling intellectual property rights and by selling patents, trademarks, trade secrets and various copyrights.

Trade in industrial property rights can also be a source of knowledge-based investment. Recipients of these investments pay royalties, license fees, the assignment of a portion of finished products, or the sharing of profits. The interdependence of the relationship between franchise rights, industrial property rights, related rights Know-how, foreign direct investment rights arising from technology transfers, it can be stated that:

- In countries where Intellectual Property Rights, franchise rights and similar rights are stronger, the transfer of high-tech technologies is on the rise.
- Better legal protection also reduces licensing costs and other content that accompanies franchisees and franchise rights, such as Know - How, where foreign direct investment content is replaced by investment related to accelerating the turnover of licenses accompanying franchise content.
- Better protection of the aforementioned rights also increases the inflow of foreign direct investment in the complex technology sector, which is more accessible for copying.

Trade and transfer of franchises, industrial property rights, copyrights, Know-how of the methods and methods of production and performance of services, as well as the marketing of technologies, is done by various business arrangements, in particular:

- By concluding franchise agreements with all franchise contents.
- Trade of necessary equipment, knowledge and technologies.
- By concluding a foreign direct investment agreement, the contents of which are components of various components with the participation of various intellectual property rights, the right to know - as well as the franchise rights.
- By concluding contracts on special forms of commodity and intellectual exchange and trade and contracts on business and technical cooperation, domestic and foreign economic entities.

For franchise agreements, transfer of technology and rights involved Know-how is done within the content of the franchise agreement, whereby:

- At the same time as an integral part of the contract is made the purchase of equipment and other necessary contents, aggregates and components and rights related to Know-how
- Foreign direct investment contracts also open a separate space for the franchisees and all franchisees
- Various forms of franchising are agreed upon by the business cooperation agreements.

The turnover of the above rights, which have represented the business arrangements as the turnover of franchise arrangements and the possibility of franchising, certainly contribute to further economic development and accelerate the growth of existing businesses, which begin access to new business opportunities and thus sustainable business of their organization.

Franchise as Intellectual Capital in Function of Development of Industrial Property Corporations:

Franchising as a development concept involves changing the fundamental view of existing programs, starting with the idea that the existing franchise organization, whether in franchise production or franchising, should be promoted with certain innovations, which will not only be a tool but a lever in the new organization in order make the necessary changes [7]. Viewed from the point of view of the essence of business, that is, it is based on three key contents:

- Direct suppliers,
- Content production and service delivery and
- Channels distributes.

The need to improve these three essential contents should ensure the development and sustainable growth of the organization and this can only be done by introducing the necessary innovations, which thus become the capital of the organization's knowledge, which, by investing in innovations, as well as, franchises, patents and licenses, provides the necessary preconditions for its further development and sustainable growth.

Investing in company development is first and foremost an investment in new technologies, new knowledge, that is, Know-how, it represents a new

driver of company development if it wants to survive in the planned market. This further implies that the capital-knowledge that is acquired enables the company to redefine its organization and all existing business processes and activities in order to adapt to new market conditions and thereby maintain and enhance its market competitiveness. So when it comes to re-engineering an organization, it really means its ability to quickly and effectively adapt to new market challenges and needs and concentrating on finding new ideas, tools, procedures and forming new business teams, capable of preparing, organizing and presenting the necessary changes in the organization's re-engineering strategy.

That is why re-engineering refers to a fundamental turn in the organization, reconsideration and radical changes and a new design of all business processes, in order to achieve the desired goal, that is, a significant improvement of all the organization's performance. Business processes and activities are measured through performance that reflects existing prices, quality, service and speed.

These are the most important parameters for the future success of an organization, as a set goal. The hallmark of re-engineering is radicalism, from the roots, dramatic and process-oriented (integration of all basic operations). Without Total Quality Management, it is not possible to carry out the set strategy of the required re-engineering of an organization that has a key orientation: an organization that is ready to learn and which, in addition to financial capital, is based on capital-knowledge and end-user satisfaction.

This re-engineering strategy based on Total Management Quality must include another important segment that is based on changing the overall business system, ensuring new efficiency and effectiveness of the business. Through re-engineering, the existing financial capital of the organization receives new inputs, which now bases it on the capital of knowledge as well as on the total intellectual capital of the organization and gradually the intellectual capital becomes the dominant capital of the organization, which can no longer carry out its subject activity.

If the organization bases its strategy on intellectual capital, it also develops the ability to constantly learn, adopt and find innovation, customer care, quality of employees, but also the flexibility of an organization that is constantly improving.

Therefore, capital-knowledge as intellectual property capital, expressed through the appropriately adopted form of an accepted franchise, also becomes a required model

which through the Total Quality Management strategy permeates and sublimates into a new part of financial capital and ensures the further development and sustainable growth of the organization.

Intellectual Property Management in Conditions of the Formation of a Quality Management System:

Recognizing and defining all processes and their contents, as well as elements of activity content is a task of science, but designing a quality management system and a model of Total Quality Management is a task and intellectual property, not only in the field of patent law, but also other forms of intellectual property, that is, industrial property. There is no definition of quality criteria without first setting the quality as a requirement and designing a system and model that, based on the defined criteria, will make the recognition of quality factors as a requirement envisaged and elaborated by the concept of quality standards, which is already the domain of intellectual property. It is intellectual property that is a factor not only in recognizing and reviewing the content of quality, but also in providing answers to how to define the criteria so that the standard as a measure of the desired relationship can be recognized and satisfied.

The Effects of Franchise Law: The franchise as a property becomes a commodity-knowledge that grows into an intellectual capital-knowledge, so such a knowledge-model appears as a commodity that has appeared in the market where its placement and trade are made. That is why we say that knowledge as a commodity has become a specific form of capital, transformed into capital knowledge and is experiencing a rapid expansion in both the national and international markets.

Capital-knowledge as a commodity is characterized by essential characteristics and this knowledge cannot be consumed, because it is an intellectual capacity that is gaining innovation at an ever-increasing value. This knowledge exists even without its valorization expressed in its materialization, but it gets its meaning when it is transformed into a new product or an innovative technological process, which is then evaluated by its appearance on the market in question. Knowledge gains its economic value when a product or technological process is realized in trade, through the price of the goods in question, which is achieved in a competitive match.

The franchise contains Know-how, which, as a special form of intellectual property that is materialized by the franchise and in itself as a specific model-knowledge, has adequate value in the market.

The franchise defined in this way becomes, in its manifestation, subject to specific merchandise turnover, but can only be expressed as a property when it has undergone the appropriate recognition procedure regulated by national and international regulations. Institutionalization of franchise protection as a property right, both nationally and internationally, contains the relevant characteristic principles of legal protection, namely:

- The franchise may only be used and transferred legally with the permission of the right holder
- The franchise as a franchise right at the disposal of the rightholder does the same under the conditions and in the manner prescribed by the regulations, but the use of the same is possible only by the scope of the prescribed protection and regulations, the use is limited both temporally and territorially.
- The franchise must not be misused and protected by sanctions with an obligation to compensate for the damage sustained. That is - sanctioned misuse of the franchise by unauthorized use by an incorrect user [8].

The franchise has also become subject to specific standardization and European standardization bodies are seeking to:

- The franchise must also have its identification from the perspective of the right holder over the franchise in question.
- Franchising as a franchise right may be subject to standardization if, in the specific case, all contents of the franchise right have been identified and if these rights are expressed as subject to licenses.
- Franchising includes the definition of a fee for performing franchise activity.

CONCLUSION

Intellectual property represents the most important part of franchise, since protection of patent, license, trademark, Know-How etc., can be achieved only by Intellectual property laws.

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