

BRAND ASSESSMENT IN THE CASE OF TACIT LICENSE. CASE STUDY¹

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Abstract:

The evaluation of intellectual property assets which include industrial property assets uses some known methods. Of these assets, the brand can be evaluated both for the holder and the licensee; the relative rights and obligations of the parties, the extent and the license active period are stipulated in the contract. Within the known methods, the theory and practice allow special approaches. The notion of tacit license is recognized in the specialised literature, especially in the texts of law. However, if the effects can be found in the economic data of the owner and tacit brand user they cannot be detected in the financial ones. This paper presents: i) the results of an evaluation requested by a third party referring to some trademarks used without a contract by the respective third party, but with the tacit permission of the holder which cannot provide financial data; ii) to what extent the third party financial data, in conjunction with market data, can sufficiently accurately outline the participation of the tacit licensed trademarks in the value of the company.

Key words: intellectual property, tacit licensing, intangible assets evaluation, competition, economic fluctuations

JED Classification: D450, E320, K110, M200

Introduction

As provided for by the Paris Convention, the intellectual property must be construed in the widest sense possible and it must apply to industry and trade, to the agriculture and mining and to all natural or manufactured products.

Basically, the monopoly is considered to be a serious form of unfair competition. However, the intellectual property right which includes also the industrial property consecrates the principle of the exclusive right of the holder which, eventually, is a special form of monopoly. Even so, the international legislation and the harmonised legislations of states signatory of international treaties, such as the European Union, outline instructions and exceptions necessary for a controlled trade. To this end, the legislation and modern practice in the field of intellectual property have introduced certain notions that aim at limiting this monopoly: exhaustion of the right, mandatory licensing, tacit licensing.

As regards brands, for instance, the law stipulated that the holder of an anterior brand „who, knowingly tolerates for a continuous period of 5 years the use of an subsequently registered brand, may not request annulment nor oppose the use of the respective brand for products or services for which the it has been used except for the case when the ulterior brand registration was requested in ill fate” (the ROMANIAN PARLIAMENT, 2010), (the EUROPEAN PARLIAMENT 2008). In other words,

¹ Since the case study refers to actual confidential data the company and the brands are mentioned under fictitious names.

although the holder of the anterior brand would benefit by law from an exclusive usage right, under certain circumstances and by the effect of the law, the holder of an ulterior brand *is awarded* a non-exclusive license.

The tacit acceptance is to be found in the tacit approval procedure whereby an authorisation „is deemed as granted if the authority of the public administration fails to respond to the applicant within the term provided for by the law for the granting of such an authorisation” (Romanian Government, 2003), (Botomei & Cobaneanu, 2009), (Botomei, Cobaneanu & Rusu, 2010), (Botomei & Rusu, 2010). *The tacit license and the exhaustion of the exclusive right of the holder are* creations of the German doctrine which widened their scope by including brands beside patents (Eminescu, Y., 1996). ”Starting from the idea that the „use” of the branded products by the acquirers or subacquirers must be accepted by the brand holder, the doctrine formulated the principle of the so called „non-intervention” according to which „the holder of a brand cannot deny those who acquired its products the right to use the brand attached to the respective products or to refer to it since the circulation of branded products assumes that the intermediaries will sell the products under the respective brands (Eminescu, Y., 1996). From the legal point of view, this theory can be defined as a *tacit license*. On grounds of this theory it was considered that the first sale of the product assumes a tacit authorisation, without any disruption in the right to the brand – which exists independently from the priority of the branded object. Considering the above, the buyer of a product acquires the right to use the brand within set limits (such as the possibility to sell the product as a retailer but without the right to export the product)” (Iorga, I, 2011). The problems of the tacit license were also approached in the field of know-how and technology transfer including patented inventions (Ashish, A., 1995). Bhattacharya et al. (1990) quoted by Ashish, A. (1995), ”assume that all technological knowledge codified so that sharing (or transferring) such knowledge is costless and verifiable by third parties. Similar assumptions are made by Gallini and Wright (1990), Gallini and Winter (1985), and Katz and Shapiro (1986)”. Other authors (Gert Lück, 1997) consider that ”proprietary information, know-how and trade secrets” are part of the industrial property rights that cannot be registered. The technical literature (Lowe, A. R., 2006) and specialised dictionaries clearly differentiate between the tacit license of know-how and” tacit knowledge”, which shall be construed as „the knowledge that is contextspecific and deeply rooted in actions and skills. It is difficult to formalize, codify and therefore communicate to others”. Knowledge which is *tacit* or unidentified may only be transferable when embodied in individuals (Lowe & Taylor, 1998). This is the reason why the modern procedures for the assessment of company assets include the qualified personnel as one of the evaluable assets (Smith & Parr, 2008).

Brand assessment in the case of tacit license; Case study

SELENA SA is a Romanian company active in the field of „Leasing or subletting own or rented real estate” – CAEN 682. The company renders an impressive range of services: over 250 shops for car spare parts and accessories; Sunday fairs for goods sold for negotiable prices; 2,500 vehicles for sale; 50 stalls and shops for new and second hand tyres; tyre service shops; terraces and restaurants; car service stations; centres for the preparation of car and vehicle documents and insurance: car wash stations; retail outlets for the sale of traditional and organic products from the entire country.

Therefore, the several hectare premises are divided into four sectors: i) Car sales with a number of some 2,500 display places, indoor and outdoor access lanes; ii) Car and vehicle spare parts and accessories sector – modules and shops (tyres, car spare, paints,

cleaning materials, etc.); Services sector (vehicle documents, tyre service, restaurants, etc.); Household appliances and fair sector only on weekends.

According to the data processed by the Ministry of Finance (January 20 2015), the profitability of SELENA SA is given in Table 1.

Table 1
Financial data of SELENA SA

	2008	2009	2010	2011	2012	2013
Net turn over	15.662.361	14.795.861	13.740.908	14.335.758	14.042.194	12.302.235
Total income	17.926.560	15.734.982	14.521.929	15.275.521	14.519.272	12.736.229
Total expenditure	8.396.672	8.534.465	8.869.773	9.724.295	9.059.963	9.759.833
Gross profit (EBIT)	9.529.888	7.200.517	5.652.156	5.551.226	5.459.309	2.976.396
Net profit (RNE)	8.034.342	6.019.673	4.667.726	4.537.767	4.523.309	2.205.761
Net losses	0	0	0	0	0	0
Gross losses	0	0	0	0	0	0
Salaries	105	105	104	96	99	85
Total debt	2.674.860	2.032.904	10.962.734	7.110.342	4.827.556	3.981.628
Tied-up assets TOTAL	87.482.180	87.304.951	103.371.971	105.338.250	107.547.255	109.075.490
Circulating assets TOTAL	2.494.129	7.837.720	5.807.124	4.786.989	4.400.436	4.237.517
Stocks	81.310	78.595	70.941	39.228	28.572	25.709
Cash register and bank accounts/ Cash availabilities	2.156.566	7.424.839	3.507.424	4.003.908	3.102.993	2.843.863
Receivables	256.253	334.286	2.228.759	743.853	1.268.871	1.367.945
Advance expenses	138.228	230.069	419.661	335.175	359.105	352.505
Advance income	328.145	208.632	417.925	489.207	415.081	735.709
Equity	87.111.532	93.131.204	98.218.097	102.755.865	106.959.159	107.505.057
Patrimony of the state	0	0	0	0	0	0
Public patrimony	0	0	0	0	0	0
Margins for risks and expenses	0	0	0	105.000	105.000	1.443.118
Subscribed and paid capital	1.696.721	1.696.721	1.696.721	1.696.721	1.696.721	1.696.721

There are several brands bearing the same name as the brand of SELENA SA:

- i) SELENA BIG, M XXX0 04660 / 043932 / List of products and/or services, NISA classification: 35; Intermediary operations, retail with car spares and vehicles with the exception of those used with or in connection with the Internet and online services. Holder: Mr. ZZ, Bucharest
- ii) SELENA BIG, M XXX0 04660A / 043932A / List of products and/or services, NISA classification: 35; Intermediary operations sale/purchase of car spares and vehicles used with or in connection with Internet and online services. Holder: SC VS SRL, Bucharest
- iii) SELENA BIG, M XXX9 03219 / 102165 / List of products and/or services, NISA classification: 6;7;12;16;19;25;35;37;38;42;45. Holder: Mr. ZZ, Bucharest
- iv) SELENA BIG, M XXX9 03219A / 102165A / List of products and/or services, NISA classification: 38. Holder: SC VS SRL, Bucharest
- v) SELENA BIG.RO, M XX10 01870 / 109059 / List of products and/or services NISA classification: 35. Holder: SC VS SRL, Bucharest
- vi) SELENA BIG, M XX12 07583/ 126133 / List of products and/or services NISA classification: 35;39;42. Holder: SC VS SRL, Bucharest
- vii) SELENA BIG ALFA, M XX13 01566 / 125414 / List of products and/or services NISA classification: 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; 40; 41; 42;

43; 44; 45. Holder: Mr. ZZ, Bucharest vii) SELENA BIG, M xx13 01894 / - List of products and/or services NISA classification: 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; 40; 41; 42; 43; 44; 45. Holder: Mr. ZZ, Bucharest

SELENA SA of Bucharest, established by Mr. PF and Mr. ZZ, in which they hold the capacity of associates and owners, has used the brands SELENA BIG registered in year XXX0 by Mr. ZZ in his own name.

In XXX9, Mr. ZZ partially transferred the brand M XXX0 04660 / 043932 to SC VS SRL of Bucharest, namely the intermediation services, the sale/purchase of spare parts for cars and motor vehicles used with or in connection with the Internet or online services.

At this moment SELENA SA is requested by the Board of Administration of which Mr. ZZ is a member, to bring the use of the brand under the law by signing an exclusive license contract.

To do this, the used brand needs to be assessed.

Since the assessment shall be carried out with the Discounted Cash Flow method, a market and financial analysis of the company that has used and enhanced the value of the SELENA **trade name** and **brand** is necessary.

The fact that VS SRL uses the same brand for its online publicity thus obviously, benefiting SELENA SA is also interesting. The situation is reciprocal given the fact that SELENA SA is the only company in Romania and, probably one of the major companies in Europe, offering a full range of specific services.

The calculation of several financial indicators (Table 2, Table 3, Table 4, Table 5) reveals that SELENA SA is outstandingly profitable.

*Table 2
Indicators derived from the Balance Sheet of SELENA SA*

	2009	2010	2011	2012	2013
Total debts/Own equity	0,0218	0,1116	0,692	0,0451	0,037
Total debts/ Total assets	0,0233	0,1061	0,0675	0,0449	0,0365
Own equity/Total assets	1,0667	0,9501	0,9755	0,9945	0,9856
Patrimonial solvency = (CPR / AT) x 100 (%)	106,67	95,01	97,55	99,45	98,56
Financial leverage = Total assets/ Own equity	0,9374	1,0525	1,0251	1,0055	1,0146

*Table 3
Profitability indicators of SELENA SA*

	2009	2010	2011	2012	2013
Gross profit margin (%)	48,6658	41,1338	38,7229	38,8779	24,1939
Net profit margin (%)	40,6848	33,9696	31,6535	32,2122	17,9298
Efficiency of permanent equity (own equity before tax)	7,7316	5,7547	5,4023	5,1041	2,7686
Efficiency of total assets (ETA)	6,8950	4,5148	4,3070	4,2056	2,0222
Financial efficiency (of own equity after tax)	6,4636	4,7524	4,4161	4,229	2,0518

Table 4

Risk indicators / debts

	2009	2010	2011	2012	2013
Global debt rate	0,0214	0,1004	0,0646	0,0431	0,0351

*Table 5
Growth indicators*

%	2009/2008	2010/2009	2011/2010	2012/2011	2013/2012
Total income increase	87,77	92,29	105,19	95,05	87,71
Stock increase	96,66	55,30	39,228	72,83	89,98
Equity increase	106,91	105,46	104,58	104,09	100,51

With reference to the interpretation of the financial data and even more so to the profit related data it is important to make the following remarks:

- a) On July 01 2010 VAT was increased from 19% to 24%; the obvious consequence was a drop in the company income which could not be attributed to management or market failures;
- b) In 2012 the environment tax was suspended only to be reintroduced in 2013; still in 2013 the margin for land had to be paid; all these summed up effects led to a drop in the Net Profit (RNE) and, implicitly, to a drop in the Profit margin to 17,9% (from 32,2% in 2012)
- c) The crisis that impacted the world economy as of 2008 – 2009 had a delayed effect on the type of businesses of SELENA SA in 2011 and 2012.

Since the brands are not the property of SELENA SA, the assessment by means of the DCF method (Discounted Cash Flow) differentiates between the value of the intangible *commercial name* SELENA and the *brand* SELENA only by deducting the value of the trade name of the company from the total value of the summed up intangible assets (trade name + brands). We have shown that the holder ZZ partially transferred the brand M XXX0 04660/043932 in 2009, namely the part of class 35 referring to the *Intermediation services, sale/purchase of car and spare parts and motor vehicles used with or in connection with the Internet and online services* to SC VS SRL of Bucharest. Therefore, the publicity subsequently made by SELENA SA was focused only on the promotion of the company under the trade name of SELENA and its services.

Table 6 shows the capitalisation of the amounts invested in the promotion of company products and services since 2009 until now by applying (a) the inflation correction index and (b) a market fluctuation factor of 16%. The book values were offered by SELENA SA, and the inflation correction index is the Consumption Price Index (CPI) as communicated by the National Institute of Statistics.

*Table 6
Amounts invested by SELENA SA in advertising*

Year	RON	Inflation correction index	i0/i1 ratio	RON (current) with inflation	Market updating factor	
					12%	16%
2009	5000	121,56		6078	6807	7050

2010	52.951,47	114,21	1,064	60476	67733	70152
2011	100.465,77	109,57	1,042	110080	123290	127693
2012	120.645,00	105,75	1,072	127582	142892	147995
2013	163.349,87	102,25	1,034	167025	210404	227236
2014	246.817,56	100	1.023	246818	276436	286308
TOTAL	689.229,67			718059	804226	832949

Considering that holder ZZ partially transferred the brand M XXX0 04660/043932 in XXX9, namely the part of class 35 referring to the *Intermediation services, sale/purchase of car and spare parts and motor vehicles used with or in connection with the Internet and online services* to SC VS SRL of Bucharest, the subsequent advertising made by SELENA SA was focused only on the promotion of the company under the trade name of SELENA and its services.

The assessment by the DFC method (Discounted Cash Flow) cannot differentiate between the value of the *trade name* SELENA as an intangible asset, and the *brand/brands* SELENA, since the brands are nowhere to be found in the books of the company, them being used under the tacit license regime. Thus, the final value obtained by this method contains the *Value of the Trade Name* together with the *Value of the Brand/Brands*.

If the value of the trade name SELENA is given by the similar effect of the advertising expenses CAPITALISED in 2014 the value of the brand SELENA is given by the difference between the *Present net value of the cash-flow generated by the development expenditure* and the *Value of the trade name* calculated, in both variants, with the same updating factor and by applying the residual value which also includes an inflation effect of about 5% which is to be found - as an average value - in the Consumption Price Index communicated by the National Institute of Statistics. In formulas (1) and (2) the values of the brand SELENA were calculated for a market fluctuation factor of 12% and 16%, respectively.

$$\begin{aligned}
 \text{The value of SELENA brand}_{(12)} &= \text{Current net value of the net cash-flow generated} \\
 &\text{by development expenditure}_{(12)} - \text{Value of the trade name}_{(12)} = \\
 &= 13.926.509_{(12)} - 661.334_{(12)} = 13.265.175_{(12)} \quad (1)
 \end{aligned}$$

$$\begin{aligned}
 \text{The value of SELENA brand}_{(16)} &= \text{Current net value of the net cash-flow generated} \\
 &\text{by development expenditure}_{(16)} - \text{Value of the trade name}_{(16)} = \\
 &= 11.503.413_{(16)} - 684.953_{(16)} = 10.818.460_{(16)} \quad (2)
 \end{aligned}$$

Analysis of the competitors

Several local companies (Table 6), having approximately the same scope of activity, were selected for comparison purposes:

Table 6
Net profit margin (%) of the companies selected for comparison

	2010	2011	2012	2013	2014
SELENA	40,6848	33,9696	31,6535	32,2122	17,9298
German Top Trading	6,26			4,95	
BADSI Impex	negative	negative	negative	negative	
MULTIBRAND AUTO SHOP	negative	negative	negative	negative	
SASSI	29,88			16,88	

a) German Top Trading SRL (Fig.1), J40/8985/1995, of Bucharest, active in the field of „Car and motor vehicle repair and maintenance” (www.gttautorulate.ro)



Fig.1 – Turnover and Profit of German Top Trading SRL of Bucharest
Source: Firme.ro, 2015

b) BADSI Impex SRL (Fig.2), J40/8134/1992 of Bucharest active in the field of „Car and road motor vehicle trade” (www.nissan_bads.ro)



Fig.2 – Turnover and Profit of BADSI Impex SRL of Bucharest
Source: Firme.ro, 2015

c) MULTIBRAND AUTO SHOP SRL of Ilfov county, J23/18/2012, active in the field of „Car and road motor vehicle trade” (www.tiriacautorulate.ro)

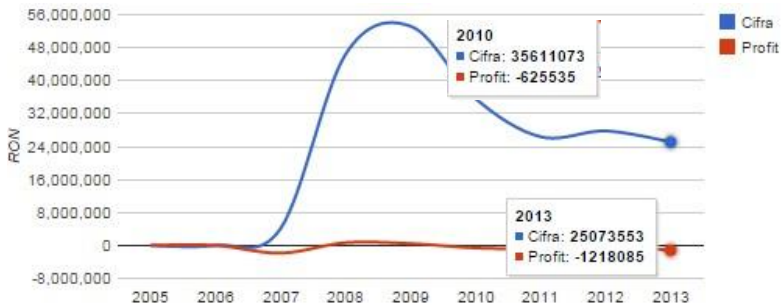


Fig.3 – Turnover and Profit of MULTIBRAND AUTO SHOP SRL
Source: Firme.ro, 2015

d) SASSI SRL (fig.4), J26/140/2001, of Tg. Mureş, active in the field of „Leasing or subletting own or rented real estate” (www.automureş.ro), the financial data of which were analysed and used in the final assessment.

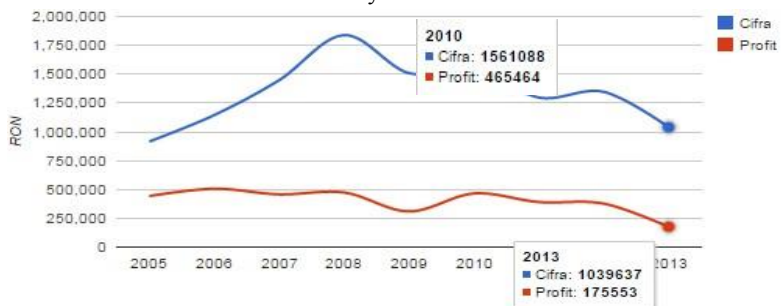


Fig.4 – Turnover and Profit of SASSI SRL
Source: Firme.ro, 2015

From the analysed data, it is obvious that none of these companies do not offer performing commercial floor or economic indicators as SELENA SA. Without having access to confidential economic data, the balance sheet data made public on the site of the Ministry of Finance are sufficient enough to allow us to appreciate the profit and losses of these companies.

The *Discounted Cash-Flow method* was used in a situation provided for by the bibliographical sources (Stan & Anghel, 1999) and by the speciality practice for an updating factor of 12% (Table 7), and 16%, respectively (Table 8).

The general formula is:

$$VM = \sum_{p=1}^n \frac{CF_n}{(1+t)^p} + \frac{VR}{(1+t)^n} \quad (3)$$

where:

p = the number of years for which a net profit can be estimated and calculated (in terms of net cash-flow) attributable to the brand; t = updating rate of the brand attributable net profit; n = the year which the formula is applied to (year 1, 2 a.s.o.)

Table 7
Basic data used for the assessment of SELENA SA. Updating factor of 12%

	2008	2013	2014	2015	2016	2017	2018
Net turn over	15.662.361	12.302.235	12.917.347	13.563.214	14.241.375	14.953.444	15.701.116
Annual growth CA		0,8761	1,05	1,05	1,05	1,05	1,05
Income from exploitation		12.482.212					
Financial income		254.017					
Outstanding income	0	0					
Total income	17.926.560	12.736.229	13.373.040	14.041.692	14.743.777	15.480.966	16.255.014
Annual growth income		0,8772	1,05	1,05	1,05	1,05	1,05
Running expenses		9.419.433	9.000.000	9.000.000	9.000.000	9.000.000	9.000.000
Financial expenses		340.400					
Outstanding expenses	0	0					
Total expenditure	8.396.672	9.759.833	9.000.000	9.000.000	9.000.000	9.000.000	9.000.000
Gross profit from exploitation	9.529.888	2.976.396	4.373.040	5.041.692	5.743.777	6.480.966	7.255.014
Gross profit margin	60,84579	24,19395	33,85401	37,17181	40,33162	43,34096	46,20700
Invested capital (80%*PBE)	7.623.910	2.381.117	3.498.432	4.033.354	4.595.022	5.184.773	5.804.011
Average gross profit on the market (20%)	1.524.782	476.223	699.686	806.671	919.004	1.036.955	1.160.802
Gross profit attributable to the brand	8.005.106	2.500.173	3.673.354	4.235.022	4.824.773	5.444.011	6.094.212
Tax on the brand attributable profit 16%	1.280.817	400.028	587.737	677.603	771.964	871.042	975.074
Brand attributable net profit	6.724.289	2.100.145	3.085.617	3.557.418	4.052.809	4.572.970	5.119.138
Updating factor for i=12%	1	1,12	1	0,89285	0,79719	0,711780	0,63551
Up-dated net cash flow	6.724.289	2.352.162	3.085.617	3.176.266	3.230.875	3.254.949	3.253.305
Residual value	4.264.419						
Current net cash-flow value generated by development expenditure	13.926.509						

Table 8
Basic data used for the assessment of SELENA SA. Updating factor of 16%

	2008	2013	2014	2015	2016	2017	2018
Net turn over	15.662.361	12.302.235	12.917.347	13.563.214	14.241.375	14.953.444	15.701.116
Annual growth CA		0,8761	1,05	1,05	1,05	1,05	1,05
Income from exploitation		12.482.212					
Financial income		254.017					
Outstanding income	0	0					

Total income	17.926.560	12.736.229	13.373.040	14.041.692	14.743.777	15.480.966	16.255.014
Annual growth income		0,8772	1,05	1,05	1,05	1,05	1,05
Running expenses		9.419.433	9.000.000	9.000.000	9.000.000	9.000.000	9.000.000
Financial expenses		340.400					
Outstanding expenses	0	0					
Total expenditure	8.396.672	9.759.833	9.000.000	9.000.000	9.000.000	9.000.000	9.000.000
Gross profit from exploitation	9.529.888	2.976.396	4.373.040	5.041.692	5.743.777	6.480.966	7.255.014
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Invested capital (80%*PBE)	7.623.910	2.381.117	3.498.432	4.033.354	4.595.022	5.184.773	5.804.011
Average gross profit on the market (20%)	2.287.173	714.335	1.049.530	1.210.006	1.378.507	1.555.432	1.741.203
Gross profit attributable to the brand	7.242.715	2.262.061	3.323.511	3.831.686	4.365.271	4.925.534	5.513.811
Tax on the brand attributable profit 16%	1.158.834	361.930	531.762	613.070	698.443	788.085	882.210
Brand attributable net profit	6.083.880	1.900.131	2.791.749	3.218.616	3.666.827	4.137.449	4.631.601
Updating factor for i=12%	2,43639	1,16	1	0,86206	0,74316	0,64065	0,55229
Up-dated net cash flow	14.822.744	2.204.152	2.791.749	2.774.669	2.725.050	2.650.688	2.557.992
Residual value	3.353.006						
Current net cash-flow value generated by development expenditure	11.503.413						

To assess the trend of the intangible assets the balance sheet date for years 2009, 2010, 2011, 2012, 2013, 2014 were taken into account.

To assess the values of the brand and trade name the forecast data for years 2015, 2016, 2017 and 2018 were taken into account. Thus:

The updating factor for the period the period 2015 – 2018 was calculated by means of the formula $y = x / (1+t)^n$, where $n=1,2,3,4$.

Conclusions

1. SELENA SA is profitable but, for market related reasons, it has been faced with a drop in profit over the last three years. In RON, the income of the company reached a peak value in 2009 then it remained in a relative steady plateau until 2012 while the income registered a 10% drop in 2013 as a result of the introduction of the mandatory payment of the environment duty. Although the company diminished the number of its personnel (by some 20 employees) and reduced its debt from 11 million RON to 4 million RON, the increase in tied-up assets and in risk margins as well as a reduced advertising impact led to a drop in the net profit. In 2010 SELENA SA took a loan to secure the finalisation of a real estate investment but successfully managed to reduce the debt during the following years through a negative evolution of the indebtedness rate of about 25% per year. Even though SELENA SA has got a mainly national recognition the fact that almost only imported products are traded on its premises directly subjected the company to the *contagious effect* specific of globalisation (Horobet & Ilie, 2007a), (Horobet & Ilie, 2007b). "The fluctuations in the exchange rate can have a significant bearing on the value of the company because they influence the competition circumstances, the input and output prices as well as the value of the assets and liabilities of the company expressed

in terms of foreign currencies” (Horobet & Ilie, 2007b). Considering the obvious fluctuation of the market as well as of the looming menace of a new international economic crisis as of 2015, we deem fit that SELENA S.A. should take proper measures to identify the correct and real conditions of risk and to avoid, at an early stage, the corroboration of the foreseeable risks with risks that cannot be anticipated (Ilie, 2010).

2. The paper brings to attention and details a real case in which the value of a brands used under the rule of tacit licensing cannot be directly identified in the company books but it can be found in the company economic data. The study demonstrates that the evolution of the microeconomic data of the company is strongly impacted by the macroeconomic changes (Jivan, 2013). Together they significantly affect the value of company brands, undoubtedly the most complex intangible assets of a company which can be distinctly assessed, on the one hand, and determines the managing bodies of the company to ensure a performing management of the intellectual property as a whole, on the other (Fantana & Gabor, 2013).

3. The paper uses the actual results to present a company, SELENA SA in this case, which has implemented a performing marketing policy: the image of the offer, a sound brand and trade mark policy, a correct attitude towards the customers and competitors, strict abidance by the law and respect for shareholders, a consistent and permanent policy of growing sales volume even in the hard times of economic crisis, investments in new business premises (Kysilka, 2013);

4. Last but not least, the paper presents: i) the results of an evaluation requested by a third party referring to some trademarks used by the third party without a contract but with the tacit permission of the holder who cannot provide financial data; ii) to what extent the third party financial data, in conjunction with market data, can sufficiently accurate outline the participation of the tacit licensed trademarks to company value.

References

1. Ashish, A., (1995), *Licensing tacit knowledge: intellectual property rights and the market for know-how*, Economics of Innovation and New Technology, Volume 4, Issue 1, pages 41-60.
2. Botomei, V., Cobaneanu, S., (2009), *Procedura aprobarii tacite*, Retrieved from Revista Națională de Drept – Editie Online, Editia nr. 1/2009, <http://revistad drept.com/procedura- aprobarii-tacite/>
3. Botomei, V., Cobaneanu, S., Rusu, G., (2010), *Metode de eficientizare a răspunderii administrative din Republica Moldova prin introducerea procedurii aprobării tacite*, Retrieved from Revista Națională de Drept – Ediție Online, Ediția nr. 2/2010, <http://revistad drept.com/procedura- aprobarii-tacite-ca-forma-de-sanctiuneadministrativa-si- metoda-simplificata-de-obtinere-de-acorduri-avize-licente-siautorizatii-de-la-autoritatile- administratiei-publice-in-lipsa-unui-r/>
4. Botomei, V., Rusu, G., (2010), *Procedura aprobării tacite ca formă de sancțiune administrativă și metodă simplificată de obținere de acorduri, avize, licențe și autorizații de la autoritățile administrației publice, în lipsa unui răspuns din partea autorității publice; practică aplicată*, Retrieved from Revista Națională de Drept – Editie Online, Editia nr. 3/2010, <http://revistad drept.com/procedura- aprobarii-tacite-caforma-de-sanctiune- administrativa-si-metoda-simplificata-de-obtinere-de-acorduriavize-licente-si-autorizatii- de-la-autoritatile-administratiei-publice-in-lipsa-unui-r/>
5. Eminescu, Y., (1996), *Regimul Juridic al Mărcilor*, Ed. Lumina Lex, Bucharest 6. Fântână, R.S., Gabor, S., (2013), *The intellectual property, strategic asset in the company management. Case study: France*, Annals. Economic Science series. Timisoara, Vol.XIX/2013, Ed. Eurostampa, Timisoara, p.270-281
7. Horobet, A., Ilie, L., (2007), *On The Dynamic Link Between Stock Prices And Exchange Rates: Evidence From Romania*, Munich Personal RePEc Archive, pag.1

8. Horobet, A., Ilie, L., (2007), *Real Exchange Rates And Stock Prices: Insights Into The Competitiveness Of Romanian Economy*, Studies in Business and Economics Journal, 2.10.2007, Lucian Blaga University of Sibiu, Faculty of Economic Sciences, p.30-40
9. Ilie, L., (2010), *Risk Management: Between Failures And New Approaches*, Revista economică, Nr. 6 (53), vol.1, pag.27-30
10. Iorga, I., (2011), *Sinteză teoretică privind teoria epuizării dreptului subiectiv la marcă*, Retrieved from "Drept Privat", <https://dreptprivat.wordpress.com/2011/03/14/sinteza-teoretica-privind-teoria-epuizarii-dreptului-subiectiv-la-marca/>
11. Jivan, A., (2013), *Levels of analyzing productivity. Theoretical settings*, Annals. Economic Science series. Timișoara, Vol.XIX/2013, Ed. Eurostampa, Timisoara, p.351358.
12. Kysilka, D., (2013), *Qualitative marketing in service business. A strategic approach*, Annals. Economic Science series. Timisoara, Vol.XIX/2013, Ed. Eurostampa, Timisoara, p.374-384
13. Lowe, J., Taylor, P., (1998), *R&D and technology purchase through licence agreements: complementary strategies and complementary assets*, R&D Management, Volume 28, Issue 4, pages 263–278, October 1998
14. Lowe, A. R., (2006), *Who develops a university invention/ The impact of tacit knowledge and licensing policies*, Journal of Technology Transfer, 31, 415-429.
15. Luck, G., (1997), *Parameters and methodologies for valuating industrial property assets (viewpoint of a right-holder)*, WIPO Regional Seminar on the Valuation of Industrial Property Assets, Kishinev, 13-14 of May, 1997
16. Smith, V.G., Parr, L.R., (2008), *Proprietatea intelectuală. Evaluare, exploatare și daune pentru contrafacere*, Editura IRECSON, p.17, 20-23, 37-38.
17. Stan, S., Anghel, I. (1999), *Evaluarea activelor necorporale*, IROVAL, Institutul Român de Cercetări în Evaluare, Bucharest
18. *Paris Convention for the Protection of Industrial Property of March 20, 1883*, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979
19. European Parliament, (2008), *Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks*, Official Journal of the European Union.
20. Guvernul României, (2003), *Ordonanță de Urgență nr. 27 din 18 aprilie 2003 (*actualizată*) privind procedura aprobării tacite*, publicat în Monitorul Oficial nr. 291 din 25 aprilie 2003.
21. Parlamentul României, (2010), *Lege nr. 84 din 15 aprilie 1998 (*republicată*) privind mărcile și indicațiile geografice*, publicat în Monitorul Oficial nr. 350 din 27 mai 2010.