

Master's Thesis

Brand protection on Chinese e-commerce platforms.

A qualitative study of how Swedish SMEs within the design and retail industries in China optimally can prevent their business from IPR infringements on Chinese e-commerce platforms.

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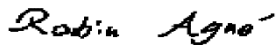
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LIST OF ABBREVIATIONS

IPR	Intellectual Property Rights
R&D	Research & Development
FDI	Foreign Direct Investment
RBV	Resource-Based View
KBV	Knowledge-Based view
IT	Institutional Theory
SME	Small and Medium-sized Enterprise
MNC	Multinational Corporation
B2B	Business to Business
B2C	Business to Consumer
C2C	Consumer to Consumer

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ABSTRACT

The era of globalization has led to an increased integration of world markets across all fields of international business. Firms operating in any country today are able to achieve increased growth and revenue by investing and selling their products in markets outside of their country of origin. The People's Republic of China (hereafter China) has been among the world's fastest growing economies during recent decades with GDP growth figures constantly around double-digits.

As China's economy is currently undergoing a transition towards a more service- and consumption-driven economy, the Chinese e-commerce market is already the world's largest, displaying vast market potential and development opportunities for investing firms. However, due to China's underdeveloped institutional framework, potential risks of infringements of a firm's Intellectual Property Rights (hereafter IPR), remain an obstacle.

Thus, one important aspect to consider when investing in the Chinese market today, is how to optimally protect the firm's IPR on Chinese e-commerce platforms. As a consequence, this paper aims to analyze how Swedish SMEs within the design and retail industries in China are preventing their business from IPR infringements and if it is in accordance with *current optimal practices*. With "optimal practices", our intention is to investigate how SMEs optimally can protect their IPR against infringements found on e-commerce platforms in China today. This leads us to the research question of this paper:

- How can Swedish SMEs within the design and retail industries in China optimally prevent their business from IPR Infringements on Chinese e-commerce platforms?

Our study provide several guidelines for Swedish SMEs on how to optimally protect their brand from IPR infringements on Chinese e-commerce platforms today, namely: (1) register the firm's trademarks and copyrights in China, (2) understand the characteristics of China's trademark law, (3) appoint a person in charge of IPR management, (4) segment the Chinese e-commerce market, and (5) cooperate with Chinese e-commerce platforms.

Keywords: IPR, China, E-commerce, Brand Protection, Alibaba Group, Infringement, Enforcement SMEs, Institutional Theory, Transaction Economies, Porter's Five Forces, RBV, TCT and Risk Management.

1. INTRODUCTION

The aim of the introduction part of this paper is to give the reader an overview of the background and the development of China's IPR legislation, the counterfeit market and the challenges it brings to many SMEs in China today.

Developing countries and emerging markets are believed to be the key engines of global economic growth in the 21st century. China has been among the fastest growing economies in the World during the last decades and only recently experienced a slowdown in terms of the Gross Domestic Product (GDP) rate at 6.9 per cent in 2015 (National Bureau of Statistics of China, 2016).

Nevertheless, even with the recent slowdown in the Chinese economy, the shift in economic policy to a service- and consumption-driven growth model, along with a growing Chinese middle class, fast urbanization and increasing consumer spending, all creates vast opportunities for firms investing in China today (Brødsgaard, 2014).

As an illustration, by 2018, China is expected to be the largest retail market in the world (Chee et al., 2014). At present, China already has the most internet users of any country in the world, and the Chinese e-commerce market is the world's largest and fastest growing, exceeding the U.S. online market with an estimated 80 % (Wang, Lau & Gong, 2016). In 2000, China had a total of 2.1 million internet users compared with 600 million in 2013, displaying the fast development of China's expanding e-commerce market today (Stanley & Ritacca, 2014).

However, developing countries and emerging markets often differ considerably from developed markets with regards to formal and informal institutions and market entry barriers. As a consequence, market entry barriers along with transaction costs and institutional voids presented to Western firms are often immense (Khanna & Palepu, 2010; Singh, 2009). Thus, being able to overcome the different institutional barriers and consequently successfully enter and operate in emerging markets and developing countries, is growing in importance (Hansen et al., 2010; Khanna & Palepu, 1997; Luo, 2007; Peng et al., 2008).

China joined the World Trade Organization in 2001 and as a member is acknowledging the laws of IPR to be applied in accordance with international established customs. However, with China's institutional framework being under development, IPR laws are not completely applied and enforced in practice (Zhang, 2005).

IPR is especially relevant for Small and Medium-sized Enterprises (hereafter SMEs) (WIPO, 2015), and notwithstanding a country's development as SMEs compose the backbone of a country's economy (Ekonomifakta.se, 2016). IPR protection is thus important since all SMEs aims to get the best possible commercial outcome of its products, trademarks, design, business information and so forth. As a

consequence, SMEs benefit from a strong IPR system that can protect their innovations and allow them to assure a return on their investment (WIPO, 2015). Furthermore, it is of particular importance to prevent IPR infringements on the Chinese e-commerce market (China IPR Helpdesk, 2013). Not only does the e-commerce market constitutes 13.5 % of the total retail market in China (Wang et al., 2016), it is also one of the major channels for infringers to sell counterfeited goods (China IPR Helpdesk, 2013).

Hence, this thesis aims to analyze how Swedish SMEs within the design and retail industries in China can prevent their business from IPR infringements on Chinese e-commerce platforms today.

1.1 The Emergence and Development of IPR Legislation in China

Intellectual Property (IP) can most simply be described as something anyone can create provided that it has a commercial value (Shippey, 2002). IP is used as a method to assure a return on investment for innovation (China IPR SME Helpdesk, 2015).

The general understanding of the term IP include the traditional concepts such as trademarks, copyrights and patents. Inventors and their innovations are often recalled to as being the foundation for social advancement and economic development. However, when an invention gets commercialized, it also gets accessible to the general public, in which, some may unlawfully exploit the invention (Shippey, 2002).

In order to counter this development, a society needs to have a comprehensive IPR framework that not only gives the inventor the right to capitalize on their own invention but also enforce those rights when necessary. The quality of a government's management of IPR protection is to a large extent based on the process of adapting and upholding IPR laws in accordance with those managed by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). As a consequence, a country can vary in their ability to uphold liable IPR protection (Khoury et al., 2014).

In the middle of the 19th century, in sequence to the Industrial Revolution, the first modern configuration of IPR took place in the developed world. In China, IPR had its recent take-off in the last two decades (Godinho & Ferreira, 2012) in which China made great efforts in developing a comprehensive system of IPR legislations. China has over time accepted different international obligations for their protection of IPR. In 1980, China joined the World Intellectual Property Organization (WIPO), in 1985 the Paris Convention for the Protection of Industrial Property and in 1989 the Madrid Agreement concerning the International Registration of Marks and the Integrated Circuits Treaty (Zhang, 2005). China is also a member of the Berne convention since 1992, an international agreement securing and governing a minimum standard of copyright protection (WIPO, 2016).

Furthermore, in 2001, China became a member of the World Trade Organization (WTO), in which China had to establish IPR laws in line with the minimum standards of IPR protection (Intellectual Property Office UK, 2013), a set of standards known as the Trade-Related Aspects of IPR (TRIPS). After joining the WTO, China has undergone vast improvements in their IPR laws and regulations. However, concerns still exist about China's enforcement of IPR protection, a problem faced by both Chinese and foreign stakeholders (Zhang, 2005).

As the private sector in China is driving the next stages of growth, enforcing IPR will become more critical since research has shown that there is a positive correlation between strong IPR protection and Research and Development (R&D) investments, as private firms tend to invest more in regions with higher IPR protection standards. Investment in R&D from Multinational Corporations (MNC) has been one of the most important factors behind China's economic growth. Despite not having as strong institutions as many developed countries, China is still ranked in the top worldwide in terms of R&D expenditure and patent applications (Fang et al., 2015). A strong IPR system is thus not only crucial to attract future Foreign Direct Investment (FDI) but also for improving China's own innovation capability (Zhang, 2005). A factor also acknowledged by the recent third plenum of the Chinese communist Party in November 2013 (Brødsgaard, 2014).

Furthermore, in order for China to transform into a consumption-driven economy with increasing services and innovation, China needs to develop its ability to profit from and protect their IPR protection. However, despite the efforts made, IPR protection in China are still relatively weak compared to many developed countries (Fang et al., 2015).

According to the institution-based view, governments, firms, and managers pursue their interests rationally. Historically, in China, there has been a little rationale behind protecting foreign IPR since it would only have benefited foreign firms. As time changes, however, IPR protection becomes more relevant in China as domestic firms are developing their brands and experiencing their own IPR being abused. The rationale for a stronger IPR system in China is therefore increasing. A change that we currently are seeing, exemplified by the fact that during the Beijing Olympics in 2008, not a single case of IPR violation of Olympic logos and mascots was reported (Peng, 2013). After China joined the WTO their IPR framework has been brought into closer alignment with those operated in many OECD countries. However, even if China is taking different actions on enforcing their IPR not only by adopting a National Intellectual Property Strategy in 2008, foreign and domestic firms are still concerned when it comes to infringement and production of counterfeit goods (OECD, 2015).

1.2 China's Counterfeit Market

Counterfeiting can be described as the: *"Unauthorized use of brand name or trademark, an intentional resemblance of the brand name product and unauthorized sale of unauthorized production or overstock"* (Lin, 2011:6).

In 2007, the OECD estimated the global market for internationally traded counterfeit goods to be worth \$250 billion. The International Chamber of Commerce (ICC) estimated it to be worth around \$770–960 billion in 2015 – an estimate based on the data from the OECD study (The Confederation of Swedish Enterprise, 2015).

Furthermore, since a big part of China's economic growth is created by overseas companies taking advantage of China's high productivity and low costs (UNODC, 2010) the market-oriented economy has contributed towards the production of counterfeited goods (Yang, 2015).

A major reason for this is that most of the retail value in the manufacturing-led model is realized in the foreign company that is doing the outsourcing. Therefore, instead of manufacturing products and receive a low cut of the share, the counterfeiter can receive higher profits from circumventing costs involved in research, design and marketing by producing their own fake-products. Additional costs can be reduced in the production phase by employing sweatshop labor, adopt unsound manufacturing processes and using inferior-grade materials. Furthermore, costs can also be reduced by avoiding taxes by smuggling, fraud and through informal retailing. The final result is a product that assembles the original product but is sold for a fraction of the price (Yang, 2015).

Counterfeiting is clearly not limited to China and the Chinese government is taking different actions on addressing the problem. However, the Chinese market still constitutes a global issue and in 2007, the World Customs Organization estimated based on data from 121 countries, that 65 % of the world's counterfeit shipments departed from China (UNODC, 2010). At present, the Chinese counterfeit market has expanded in scope and size. As a result, it is not uncommon to even find counterfeit markets operating openly in daylight as they occupy a "gray zone" between the formal and informal economy (Yang, 2015). Wadleigh et al (2015) found that when conducting inquiries online, searching for different brands in China, 32 % of the search-results directed one to a website selling fake-goods.

1.3 Problem

In the light of an emerging middle class in China and slower growth rates, the Chinese government has engaged in implementing a new service- and innovation-based model aimed to stimulate the domestic consumption (KPMG China Outlook, 2015). The golden years might thus be over for certain industrial

companies in China, while sales of consumer goods, professional services and medical equipment will hold up better (Hähnel & Wang, 2015). China is a growing market for many Swedish companies, especially for consumer goods companies providing solutions for Chinese consumers. However, Swedish firms are facing substantial obstacles to trade regarding IPR protection as well as unpredictable policy processes in China (Embassy of Sweden, 2013; 2012). In a study conducted by The Confederation of Swedish Enterprise (2015) the result showed that a majority of the Swedish participating companies listed on the NASDAQ OMX 30 Stockholm index suffered from counterfeiting and piracy. China was identified to be the largest source of counterfeit products by all companies and the majority stated the IP theft had increased over the past 5 years and that governments are doing too little to prevent it. In addition, it is estimated that $\frac{2}{3}$ of the captures counterfeit goods in China stems out of shipment from e-commerce platforms (The Economist, 2016).

Counterfeiting is thus clearly a problem in China and is contributing to huge additional transaction costs to the affected companies (The Confederation of Swedish Enterprise, 2015). Thus, protection of IPR is a major concern for Swedish companies, exemplified by the fact that almost one-third of the participating companies in Embassy of Sweden's study (2012), reported having been negatively affected by IPR infringements in China and perceived the IPR protection to be weak.

On the other hand, many studies have also pointed out that China's IPR protection is improving and that there are for example clear methods on how companies can proceed in taking down and report infringements (China IPR helpdesk, 2015; Devonshire-Ellis et al., 2011; Corbin, 2002; Trademark Review, 2016). In this study, we therefore intend to investigate how a few selected Swedish firms within the retail and design sectors are preventing infringements of their IPR found on Chinese e-commerce platforms and if these firms are following optimal practices when doing so. The aim of the thesis is thus to provide guidance in relation to IPR issues for Swedish SMEs investing and operating in the design and retail sectors on Chinese e-commerce platforms.

1.4 Research Question

- How can Swedish SMEs within the design and retail industries in China optimally prevent their business from IPR Infringements on Chinese e-commerce platforms?

1.5 Delimitation

For our research, we define the Chinese market as Mainland China, thus excluding the other Chinese speaking regions of Hong Kong, Macau, Taiwan and Singapore.

This thesis will focus primarily on Swedish SMEs with an already established presence and accumulated market experience in the design and retail industries in the Chinese market. Through the experience of the interviewed, we aim to research and gain a deeper understanding of the main obstacles of protecting IPR on the Chinese market today. In addition, we aim to study and provide a guideline on how Swedish SMEs present on the Chinese market today, optimally can work to prevent IPR infringements on Chinese e-commerce platforms. Furthermore, by interviewing IPR experts with a special focus on the Chinese market, we aim to provide guidance in relation to IPR issues for Swedish SMEs investing and operating in the design and retail sectors on Chinese e-commerce platforms.

This paper acknowledges the European Union's definition of an SME as a firm consisting of fewer than 250 employees, has an annual turnover of less than 50 million euros and a balance sheet total of less than 43 million euros a year (The European Commission, 2016). Thus, only SMEs in accordance with the EU's definition will be considered and researched upon.

In regards to the Chinese e-commerce market, Alibaba's Taobao.com (Customer to Customer - C2C) and Tmall.com (Business to Customer - B2C) together with its biggest competitor, JingDong.com (B2C), comprise 80 % of the total retail e-commerce market in China today (Chu & Wong, 2015). However, even though JD.com is one of the most popular Business-to-Customer e-commerce platforms in China, the company mostly sells consumer electronics, making up 85 % of the revenues of the company (Jackson, 2014). In addition, JD.com is an e-commerce platform aimed at branded products only. Therefore, companies wishing to sell online are required to provide a guarantee of the ownership of the brand or the actual authorization to sell it (Sampi, 2014). As a consequence, based on Jingdong.com already established authorization and security procedures along with the company's relatively smaller share of the market and focus on consumer electronics, in this paper, we choose not to include an analysis focusing on JD.com.

Thus, this thesis will focus on the analysis of the Alibaba Group and the company's several e-commerce platforms in China, since it comprises a larger market share and a potentially bigger problem in regards to protecting IPR for investing Swedish SMEs within the retail and design sectors in China today.

Lastly, this thesis will focus mainly on trademark and copyright protection, thus, patent protection will be left out to a large extent. The reason for this is namely that the patent protection would require a more comprehensive thesis with a greater focus on the actual laws as a subject rather than on international

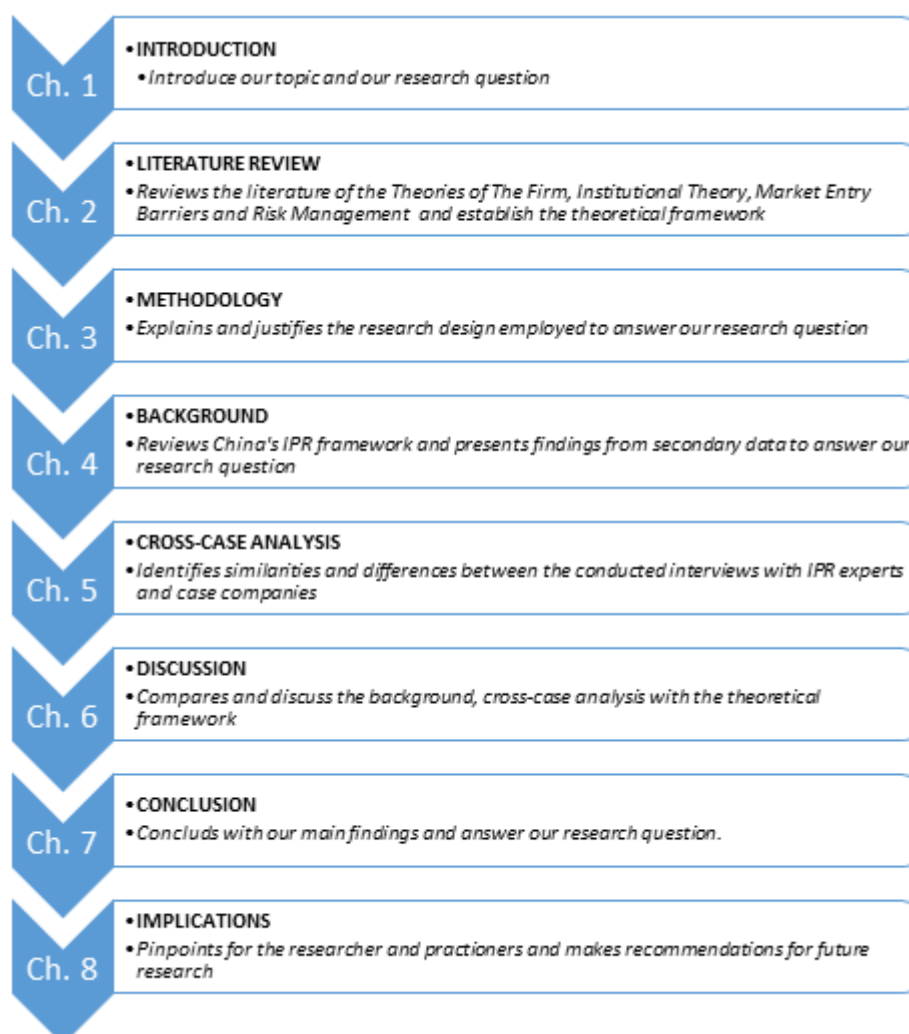
business. In addition, this master thesis will not handle the practice of using Chinese customs for protective measures regarding firms IPR on the Chinese market. Furthermore, the paper will not consider potential solutions going through litigation and civil enforcement since the main aim of the thesis is to focus on cost efficient protective procedures for Swedish SMEs present on Chinese e-commerce platforms.

1.6 Purpose

The purpose of this study is to provide guidance in relation to IPR issues for Swedish SMEs investing and operating in the design and retail sectors on Chinese e-commerce platforms.

1.7 Structure of the Thesis

Figure 1: Structure of the thesis



To answer the set-out research question of this thesis, this paper proceeds with the literature review comprising the main theories of the firm, institutional development and the transition economy literature. Furthermore, a framework is developed on how the institutional context of a transitional economy shapes the strategy of an investing firm in the marketplace. In addition, the paper stresses the need for an investing firm to establish a risk management strategy.

In the methodology section, we provide the data collection and research choices made in this paper, justifying the research design employed to answer our research question.

The paper then proceeds to the background section, consisting of secondary sources describing the Chinese e-commerce market, China's IPR laws along with the protection practices on Alibaba Group's e-commerce platforms. The empirical data, gathered from interviewing experts working with IPR issues in the Chinese market today and the case firms, is presented in the following cross-case analysis.

Based on the information from both the IPR experts and the experiences from Swedish SMEs in China together with the secondary sources, this paper proceeds with the discussion section including an analysis set out in relation to the firm-, institutional-, transitional theories and risk management strategy framework in the literature review.

By combining the recommendations of IPR lawyers, actual experiences from investing SMEs, secondary sources and the theoretical framework, this paper provides a conclusion answering how Swedish SMEs optimally can protect their IPR from infringements on Chinese e-commerce platforms today.

Lastly, we present this paper's theoretical and practical implications along with suggestions for further research.

2. LITERATURE REVIEW

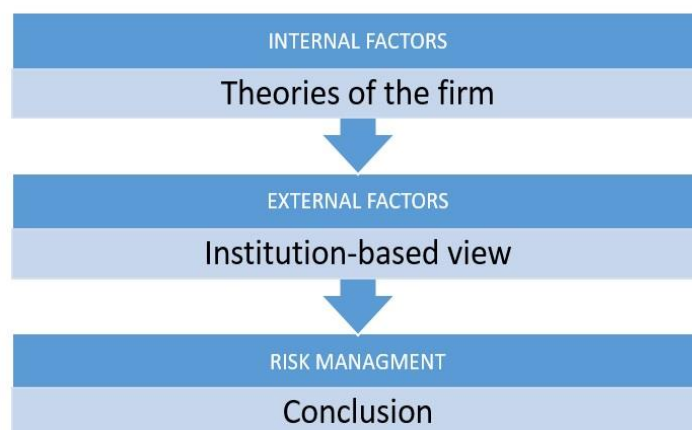
2.1 Introduction

The literature review will focus on the most relevant literature in order to be able to answer the research question outlined at the beginning of this paper. In addition, this part of the paper aims to provide a comprehensive picture of the research topic. As a consequence, we will divide this section of the thesis into three parts focusing on the various areas influencing an investing SMEs performance in China today.

Since the industry conditions largely determine the performance of a firm in a country, this literature review will start off by introducing the industry-based view on business strategy. Subsequently, based on the fact that a firm's IPR are highly connected to the internal resources and the competitive advantage of a company, the fundamentals of the Resource-Based View and the Knowledge-Based View are presented below. Furthermore, as the legal framework in a country is associated with the amount of costs of transactions in the marketplace, this section proceeds with an introduction to the Transaction Cost framework. In addition, since the degree of IPR protection are highly connected to the development of the institutions, the literature review will proceed with the Institutional- and Transition Economy theories, highlighting the market failures and institutional voids presented to firms when investing and operating in countries during economic transition. Moreover, an account of the main market entry barriers is presented along with the need for a Risk Management strategy. Finally, we will highlight the research gap in the literature along with this paper's contribution to the research area.

- How can Swedish SMEs within the design and retail industries in China optimally prevent their business from IPR infringements on Chinese e-commerce platforms?

Figure 2: Structure of the Literature Review

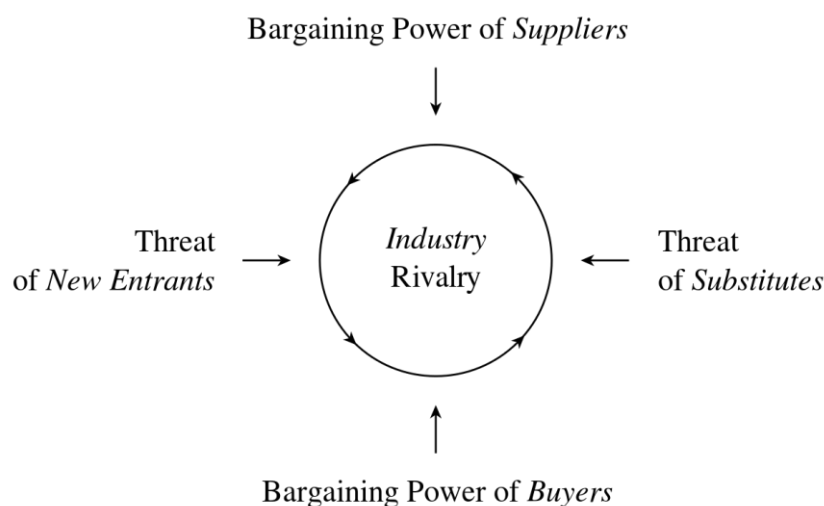


2.2 Theories of the Firm

2.2.1 Porter's Five Forces

Acknowledging the particular industry conditions is important for any firm when investing in a foreign market (Porter, 1979). In the article “How competitive forces shape strategy”, Porter claims that five different types of forces are influencing an industry, a theory that has been known as the industry-based view (Porter, 1979). According to the industry-based view, the particular industry conditions determine the choice of strategy of the enterprise and the industry rivalry (Ibid).

Figure 3: Porter's five forces



Source: Porter's Five Forces based on an image from Porter M. E., Competitive Advantage: Creating and Sustaining Superior Performance (New York: Free Press, 1985:5).

The rivalry in a particular industry has a major effect on the investing firm's ability and performance of conducting business (Ibid). Furthermore, the industry conditions are mostly determined by the existing laws and regulations protecting IPR, conditioning the rivalry and “level playing field” in an industry (Narayanan and Fahey, 2005). As a consequence, the threat of new entrants and substitutes by unfair competition is to a large degree determined through a firm's use of IPR protection in a market (Ibid). In addition, an underdeveloped institutional framework increases the uncertainty of the bargaining power of the buyers and suppliers (Ibid). Thus, through the use of IPR, a firm can make use and protect its competitive advantage in an industry (Frey, 2013). However, Porter's industry framework only describes the main characteristics present in an industry and fails to consider a firm's internal resources as a

competitive advantage, which are better measures at explaining a firm's performance in volatile environments (Narayanan and Fahey, 2005). Therefore, we need to complement the industry-based view with a focus on the firm's internal resources.

2.2.2 The Resource Based View

According to the Resource-Based View (hereafter RBV) (Barney, 1991), a firm's internal tangible and intangible resources are the unique assets of a firm and are the reasons behind a firm's competitive advantage in a market. In order for a firm's internal ownership advantages to be sustainable, it can be analyzed with the VRIO framework. The VRIO framework claims that a resource needs to be valuable, rare, inimitable and exploited by the organization in order to be sustainable. This framework can be used by a firm to analyze its internal resources and capabilities to achieve a sustainable competitive advantage (Barney & Hesterly 2010).

IP assets such as copyrights, trademarks and trade secrets can be seen as intangible assets of the firm (Ichrakie, 2013) and firms need to protect their IPR to obtain exclusivity on their inventions and thus make their assets in-imitable. From a RBV perspective, this means that when a firm can protect their IPR either through patents, trademark or copyright registrations, it obtains a competitive advantage since their resource becomes imitable. Having an imitable resource helps the firm to increase its performance and to block out competitors. Therefore, for the survival of the firm, it is essential to be able to protect the internal resources successfully to achieve a sustained competitive advantage (Frey, 2013).

A firm's IPR is thus connected to the internal tangible and intangible resources and tacit knowledge and serves as the competitive advantage for a firm in the marketplace. In relation to the RBV, Grant (2000), expected the traditional sources of a firm's competitive advantage such as access to finance, labor or markets to become less important and thus further developed this field of thinking when the unique assets are knowledge intensive. The Knowledge-Based View (hereafter KBV) argues that a company's competitive advantage is its ability to access, develop, integrate and deploy the knowledge embedded in the organization (Ibid).

However, scholars argue that the theories of a firm's internal resources as competitive advantage are static and does not explain how the resources are actually created and how they change over time, essential features in today's integrated and dynamic international markets (Contractor, Kumar, Kundu, & Pedersen, 2010; Doh, 2005). Even though some research exists about a firm's dynamic capabilities, notably Eisenhardt & Martin (2000), Teece, Pisano, & Shuen (1997). However, critics argue that the focus

on a firm's possession of internal resources lies more in line with protecting and making use of the existing resources rather than about how to create new resources (Ørberg, 2012).

However, challenges arise when trying to determine a firm's competitive advantage in a transition environment (Meyer et al. 2005). In such a context, resources coupled to the specific environment may be more important (Ibid). For instance, Dyer and Singh (1998) claimed that successful relationships established with other firms can also be regarded as a resource itself, a possibility often overlooked by the RBV focusing only on the firm's internal resources.

Subsequently, scholars have criticized the RBV for not taking the external environment into sufficient consideration (Brouthers, 2013). The reason behind this critique is that the RBV merely focus on the internal resources of the firm and largely ignores the external factors which might have an actual impact on the value of these resources (Ibid). Peng (2008) explains that the lack of focus on the external environment by the RBV, is linked to the fact that it was developed primarily out of research on the U.S. market with an already established and functioning surrounding institutional framework (Peng et al., 2008). However, to be able to study the competition in markets around the world, it is important to include the institutional surroundings since markets are different (Ibid). As a consequence, the RBV needs to be complemented with a focus on the external environment, in particular for firms operating in developing countries (Ibid).

Furthermore, in regards to the applicability of the RBV, Barney (2002) claims that it is only relevant when the “rules of the game” in an industry are fixed and the firm operates in a predictable and stable environment (Kraaijenbrink et al., 2009). Therefore, when firms are operating in environments with drastic changes where the value of a company's internal resources might alter quickly, it is necessary to go beyond the RBV in order to explain a firm's sustainable competitive advantage (Ibid).

2.2.3 The Transaction Cost Theory

The Transaction Cost Theory (TCT) stems from Ronald Coase (1937) and his text “The Nature of the Firm”, where Coase (1937) explains the very essence of a firm's existence by relating it to the external transaction costs present in the marketplace. Coase (1959) further argued that what firms trade in the marketplace are actually rights and not commodities and the rights with its duties and privileges are established by the legal system (Coase, 1959).

The TCT was further developed by Williamson (1981) and Hennart (1991) by using transactions as the main unit of analysis. The extra costs for making transactions in the market are known as market

transaction- and control costs (Williamson, 1985; Hennart, 1989; Williamson & Ouchi, 1981). The TCT thus seeks to address the reason behind the mode and organization of economic transactions (Hennart, 1991). The TCT argues that the additional costs of gathering information and the enforcement of contracts present in a market are due to market failures (Hennart, 1991).

In short, transactions costs are the costs of participating in the marketplace. As a consequence of the additional costs of making transactions in the marketplace, MNCs often use Foreign Direct Investment as a method to internalize the economic activities to decrease the amount of transaction costs (Hennart, 1991; Buckley and Casson, 2009). However, with the scarce resources and scale of SMEs, the potential for internalization is often not an option and SMEs need to rely on non-equity modes and the legal framework to a larger extent (Maekelburger et al., 2012).

According to Williamson (1985), the typical features and causes of transaction costs are asset specificity, behavioral- and environmental uncertainty.

The asset specificity of a firm's resources influences the cost of transactions (Brouthers, 2004). A firm's asset specificity can be comprised of its technology, marketing, human resource, goodwill or know-how aspects (Brouthers, 2013). For a firm to protect its asset specificity when operating in a market, it needs to implement additional measures in protecting the asset from competitors (Brouthers, 2004). Thus, asset specificity can be protected against opportunism through the use of IPR such as patents and copyrights (Maekelburger et al., 2012). The potential risk of opportunism is typically higher when a firm's asset specificity is high (Maekelburger et al., 2012).

The behavioral uncertainties related to transaction costs are due to the potential of opportunistic behavior in the marketplace (Brouthers et al., 2004). As a consequence, a firm need to implement control mechanisms, which increases the costs of transactions for the firm (Ibid). Thus, the potential for opportunistic behavior raises the transaction costs since monitoring needs to be put in place. This is an especially important aspect to consider for SMEs, since they often target niche markets, building their competitive advantage on protecting their IPR (Brouthers, 2004; Maekelburger et al., 2012).

The environmental uncertainty in a market is connected to the ability to enforce contracts along with the political and legal risks associated with investing in a foreign country (Brouthers et al., 2004). The institutional volatility in a country thus contributes to the uncertainty in regards to IPR protection and creates external transaction costs in terms of monitoring and enforcement for an investing firm (Oxley,

1999). In addition, SMEs are also more sensitive and easily influenced by the external institutional surroundings and institutional change (Maekelburger et al., 2012).

As a result of the low degree of IPR protection in a market, additional uncertainty and opportunistic behavior coupled to the assets specificity are often the consequences for an investing firm (Maekelburger et al., 2012). Therefore, the external costs of doing business in a market, the transaction costs, are particularly high in developing countries and emerging markets due to the deficiencies in formal institutions.

However, the TCT has been criticized for not being able to make accurate predictions as well as a general lack of focus on the surrounding environment and how the impact from different institutional backgrounds influence a firm's asset specificity and behavioral uncertainty (Brouthers, 2013). Since TCT was developed mainly from research in developed countries, it is thus harder to apply in countries with institutions under development with present market failures and institutional voids (Meyer & Peng, 2005).

In addition, scholars have put forward criticism of the TCTs mere focus on cost minimization (Meyer, Wright & Pruthi, 2009). Therefore, when operating in developing countries, a larger focus on the external institutional environment is needed. Thus, the TCE needs to be complemented with the institutional framework. Nevertheless, it is not until recently scholars have looked beyond the focus of economic variables and technology change to describe the interaction among institutions (Peng et al., 2008)

In summary, to be able to control and enforce the legal rights and contracts for the protection of a firm's asset specificity against opportunistic behavior, a solid understanding of a country's external institutional environment is needed. The Institution-Based View, therefore, complements the industry and firm level conditions by including the influences of the institutions in a market (Peng et al., 2008). In addition, as described by Khanna & Palepu (1997), treating institutions simply as background will not advance strategy in emerging markets very far. Hence, the institutional context cannot be excluded (Peng et al., 2008).

2.4 The Institution-Based View

The amount of transaction costs is largely determined by the degree of development of the formal institutions, influencing the market conditions in a country. As a consequence, a growing number of scholars agree that institutions matter for a firm's operation and development in a market. However, less research has been conducted on exactly *how* the institutions matter (Peng et al. 2008).

Institutions constitute an important factor influencing a firm's performance of doing business in developing countries and emerging markets. Thus, it is important to consider the particular institutional factors and the degree of development of the institutions present in a country (Ibid).

According to the Institutional Theory (North, 1990), institutions comprise "the rules of the game", consisting of both formal and informal institutions in the social, political and legal spheres. The formal institutions are connected to the regulative framework in a country and thus consist of the laws, regulations and rules applied. The informal institutions are the norms, cultures and ethics prevalent in a society or marketplace (Ibid). Scott (1995), further developed the institutional view into three supportive pillars consisting of regulative (coercive), normative and cognitive factors.

Figure 4: Dimensions of institutions

<i>Degree of Formality (North, 1990)</i>	<i>Examples</i>	<i>Supportive Pillars (Scott, 1995)</i>
Formal institutions	● Laws	● Regulative (coercive)
	● Regulations	
	● Rules	
Informal institutions	● Norms	● Normative
	● Cultures	● Cognitive
	● Ethics	

Source: "The Institution-Based View as a Third Leg for a Strategy Tripod" Peng et al. (2009).

According to Peng (2002), the established formal institutions in a country help to reduce uncertainty and thus lower the costs of transactions in a market. Khanna & Palepu (1997) further explain, in similar lines with Scott (1995), that formal institutions in developing countries and emerging markets tend to fall short due to a lack of a credible legal framework, a stable political structure and a functioning market.

As a result, the informal institutions in developing and emerging markets are often more prevalent and usually established from interpersonal relations, connections with key stakeholders and through reputation on the market (Khanna & Palepu, 1997; Peng, 2002). The lack or underdevelopment of formal institutions in developing countries and emerging markets thus makes state business relations more important. In addition, Khanna & Palepu (1997) claims that personal ties with government officials usually have a strong impact on the firm's performance.

Due to the difference in formal and informal institutions, institutional voids and the lack of rigid and systematic regulative procedures, developing countries and emerging markets differ substantially from developed markets. Thus, the absence of formal institutions and an uncertain institutional context facing investing firms, creates market entry barriers along with high external costs, greatly influencing a firm operating in the country. Furthermore, the formal institutions enforcing IPR in developing countries and emerging markets, are often deficient or perhaps even not established (Hansen et al. 2010).

Institutions thus constitute a major factor influencing a firm's performance of conducting business in developing countries and emerging markets and it is consequently important to consider the particular institutional factors and the degree of development of the institutions present in a country (Peng et al., 2008).

However, even though the institutional theory accurately highlights the underlying causes influencing a firm's performance in a market, the theory fails to describe the characteristics influencing the moment of institutional change in a society (Kingston & Caballero, 2008). Furthermore, in developing countries under transition, the institutional theory does not accurately explain why the applied formal rules in a market are often ignored and not followed in practice (Ibid). North (1990) claimed that institutional change in an economy happens gradually and incrementally, since the beliefs and conventions in a society are coupled to the institutions, which are normally slow to alter (Klein, 1999).

Nevertheless, North (1990) further acknowledged that institutional change at times happens rapidly due to sudden policy choices coupled to the formal institutions in a society. Moreover, the institutional framework does not explain how the informal rules in the society and the formal institutional environment interact and change along with the established power relationships and bounded rationality in institutional inertia (Kingston & Caballero, 2008). For instance, according to research conducted in developed countries, firms in the market actively aim to alter "the rules of the game" in an economy for it to be more advantageous (Peng et al., 2008). Since the institutional transitions in formerly centrally planned economies, such as China, especially constitute profound changes of the economy (Peng, 2003). Therefore, it is necessary to go beyond the study of institutional theory to a deeper analysis of the period of institutional transitions in emerging markets (ibid).

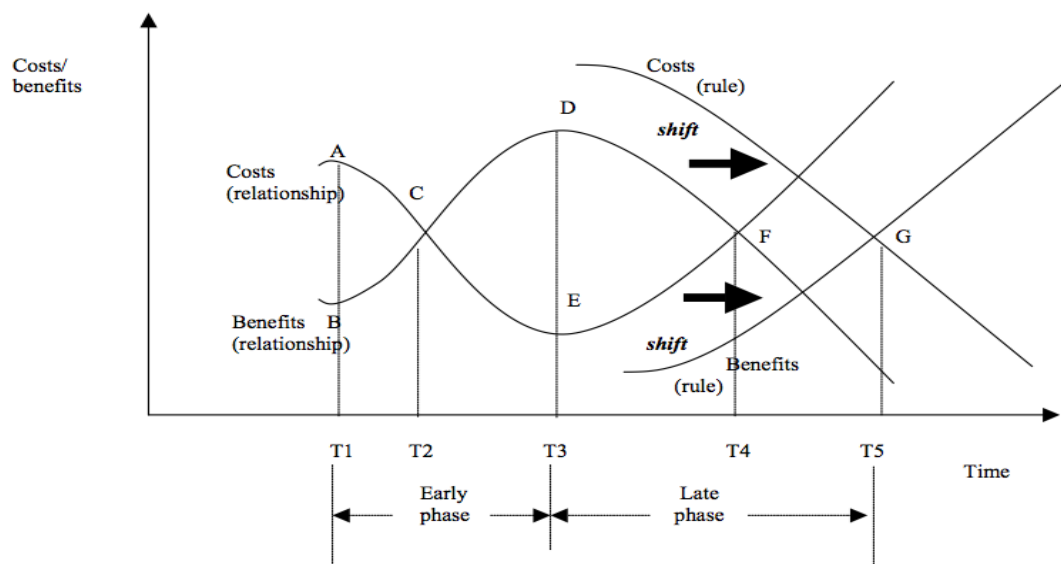
2.4.1 Institutional Change

Powell (1996:297) raised the need to "*tackle the harder and more interesting issues of how they [institutions] matter, under what circumstances, to what extent, and in what ways*" (Peng, 2003). In some of the previously centrally planned emerging economies such as China, Hungary and Russia, the

undergoing institutional development to a capitalist-based system has been so substantial that these economies have become known as “transition economies” (Peng et al., 2008). As a result of this development, Peng et al. (2008:924) put forward the question of “*How to play the game, when the rules of the game are changing and not completely known?*”.

As a consequence, Peng (2003) aimed to investigate the period of institutional transitions in emerging economies and when the benefits of a relationship-based economy change into a rule-based economy. In his research, Peng (2003) argues that emerging economies undergo five institutional transitions, from a relationship-based network strategy to a rule-based impersonal exchange economy.

Figure 5: A two-phase model of institutional transitions



Source:

Peng M. W. 2003, “*Institutional Transitions and Strategic Choices*”.

In the early stages of the model of an institutional transition, informal relationships are the foundation of the institutional framework in a country. During this period, firms use network-based strategies to operate in the market. However, in the later stages of an institutional transition, a formal institutional framework is established consisting of laws and a rule-based economy leading firms to set up market-based strategies (Peng, 2003). Nevertheless, a majority of the emerging economies struggle with the transition and are still in the early stages of the transition process. Furthermore, the time for the institutional transition has been shown to be disordered and turbulent (Peng, 2000; Peng & Ruban, 2003).

In addition, in many markets, the boundaries between personal relationships and business operations are often not completely clear. This is particularly the case in many Asian economies where a firm's boundaries between business and personal relationships are often blurry. As a result, personal relationships are often embedded in the organizations (Peng, 2006).

In addition, scholars have argued that the presence of these informal relationships in China, called “guanxi”, are typically common features for the Chinese culture and thus successfully serves as a substitute for the lack of formal institutions in the market (Peng et al., 2008). However, the characteristics of this kind of network-based strategies have been evident in several different countries during an economic transition and is thus a sign of the common deficiencies in formal market institutions rather than coupled to a country's inherent culture (Peng, 2003).

On the other hand, even in many economies at the later stages of institutional development, some aspects of a relationship-based economy still persist. Forsgren (2008) explains how MNCs subsidiaries use business networks to overcome and circumvent the lack of formal institutions and the barriers present in developing countries and emerging markets. Johanson & Vahlne (2009), assert that foreign market knowledge is essential and MNCs can gain and use foreign market knowledge by engaging in business networks.

Meyer (2001) researched how the process of change in a centrally planned economy to a market-based economy affects firm's investment decision and the business environment. In his research, Meyer (2001) found that the economic transition creates an unstable institutional context not yet fully reformed. The underdeveloped institutions and undergoing institutional development thus highly influence the amount of, as well as the characteristics, of the transaction costs, thus profoundly affecting a firm's performance.

2.4.2 Institutional Voids

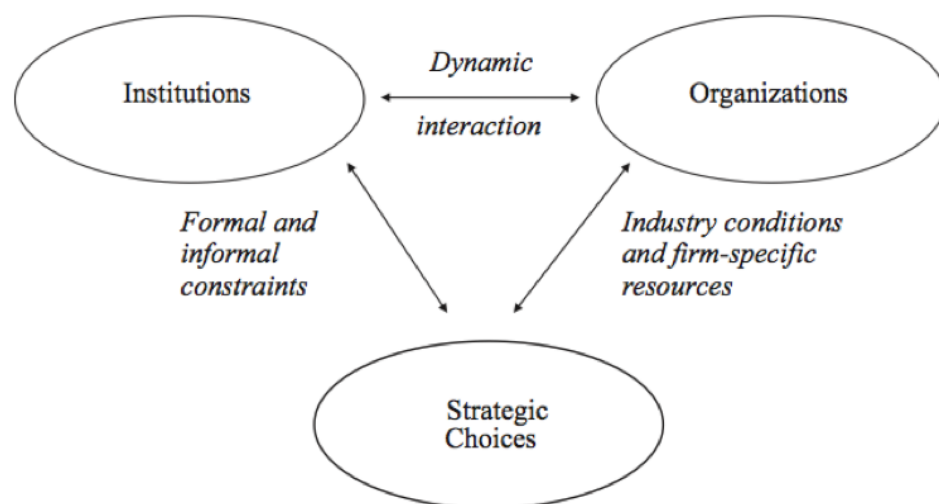
Khanna & Palepu, (2010) further acknowledge the importance of institutional factors in emerging markets. The authors provide a framework for how MNCs operating in emerging markets and developing countries with deficient market infrastructure might respond to these institutional voids present. The authors stress that each specific location has its unique features of institutional voids connected to the institutional factors of politics, culture, infrastructure and supporting services.

In addition, companies investing in foreign markets also face the “Liability of Foreignness” (Hymer, 1976), regarding the differences in political, social and cultural factors faced by foreign firms in the country. The “Liability of Foreignness” is thus the external costs a firm acquire when investing abroad (Petersen and Pedersen, 2002). However, Gruca and Sudharshan (1995) argues that most of the existing market-entry barriers facing foreign companies are created by incumbent firms trying to deter investment and establishment of foreign firms on the local market. Khanna & Palepu, (2010) further claims that the local firms have gained a reduced cost structure and unique capabilities to successfully operate in these markets.

As a consequence, even with institutional voids and high transaction costs present in developing countries and emerging markets, incumbent firms have learned to operate successfully in this market context (Luo, 2007). Luo (2007) discovered that local Chinese firms have developed unique assets and skills to operate through the inefficiencies present in the Chinese market. Furthermore, that in order for foreign MNCs to compete in China's new regulative landscape, they need to turn into strategic insiders through alliance building with local firms (Luo, 2007).

Thus, in establishing a presence and formulating a strategy in developing countries, an investing firm must take the specific industry, firm resources and the formal and informal institutional conditions and development into account (Peng, 2006). The Institution-based view of business strategy thus serves as a complement by relating the macro-level institutional aspects and development to the existing micro-level industry and firm level theories of the Resource-Based View, Knowledge-Based View and the Transaction Cost Framework. In addition, the Institution-based view is also relevant in relation to the literature on the coevolution of how firms evolve with their surrounding environment (Peng, 2002; Peng et al., 2008).

Figure 6: Institutions, organizations and strategic choices



Source: Peng (2002) "Towards an Institution-Based View of Business Strategy".

2.4.3 Market Entry Barriers in Developing Countries

The market entry barriers presented to investing foreign firms in developing countries and emerging markets are thus plentiful. Karakaya and Stahl (1991) presented 25 market entry barriers in their research and divided the different types of market entry barriers into controllable and uncontrollable barriers to entry for an investing firm. The controllable market entry factors are the barriers to entry created by the already established firms on a market.

According to Halling & Nömmik (2008), the controllable market entry factors in China are:

- Capital
- Access to distribution channels
- Economies of scale
- Product adaption
- Relations
- Cultural differences
- Language
- Problem finding local partners

The uncontrollable market entry barriers are, however, created by the institutions in a market, affecting the external environment of a firm. According to Halling & Nömmik (2008), the uncontrollable market entry factors in China are:

- Control of economies of scale
- The government's policies
- Nationalism
- Corruption
- Infrastructure deficiencies
- Protection of local markets
- Limited transparency
- Bureaucracy
- IPR

Furthermore, Karakaya and Stahl (1991) show in their research that the hardest barriers for a company to overcome are the uncontrollable factors concerning the policies of the government and political instability of the market in a country. IPR infringements are thus among the largest uncontrollable factors for firms investing in China (Hallin & Nömmik, 2008).

Thus, the research findings of Hallin and Nömmiks (2008) study, investigating the main entry barriers for Swedish enterprises on the Chinese market, shows IPR being among the main entry barriers for successfully conducting business in China. In addition, a majority of the respondents of their research acknowledge the issue of IPR to be a major barrier in operating a business in China today (Ibid). Wang (2004) points out that even though the Chinese laws of IPR are well established and following international standards, the actual enforcement of the legal framework in practice remains deficient. Hallin and Nömmik (2008) concludes by summarizing that the IPR infringements eventually might deter potential firms from investing in China.

Zimmerman (2013) among other scholars argue that because of the Chinese culture, people is especially prone to copying, thus making IPR infringements more common in China. However, since culture and politics are both closely coupled to institutions, it is the development of a country's formal institutions that better reflects and determines the amount of IPR infringements in a country (Peng, 2013).

Moreover, China's various regions have different levels of development of the formal institutions, making a harmonious and regulative framework particularly hard to establish in practice. In addition, local politicians in China's different administrative regions still have a substantial impact on the practical enforcement of IPR laws (Randal et al., 2015). The enforcement problems are thus due to the fact that there are often rather opposite and conflicting interests present where local politicians benefit more from supporting local companies by achieving increased economic growth figures regardless of any potential IPR infringements (Lejeune 2014).

This finding is also supported in a study by the International Monetary Fund (IMF) where scholars argue that a country might be able to benefit more from having a weak IPR enforcement strategy up until a certain level of economic development is reached. With the sheer size of China being a country of more than 1.3 billion inhabitants, a harmonious enforcement strategy for the various areas with different level of economic and institutional development, is being hard to implement in practice (Lejeune 2014).

This problem can be illustrated with an example of a principal-agent problem that Beijing is facing relating to the question of IPR enforcement strategy in China today, where local officials lack the incentive of investigating for potential infringements and also have the power to resist the directives from the central government (Lejeune 2014).

In addition, judges and politicians in many of the administrative regions in China often also lack the actual juridical knowledge to handle the complex IPR issues and for the laws to be enforced properly.

The practical enforcement of IPR is thus a complex and a rather difficult issue with different regions showing varying levels of development (Devonshire-Ellis et al., 2011).

Peng (2013), predicts that first when we see Chinese companies experience their products being pirated abroad, we will see an equally strong IPR framework in China as the ones established in developed countries. However as China is growing and the manufacturing is advancing into more R&D intensive productions, Chinese products are becoming a victim of IPR theft as well (Peng, 2013).

In an effort to combine all the different explanations of the weak enforcement of China's IPR laws, Lejeune (2014) provided an integrated framework consisting of the political, cultural and structural factors. Lejeune (2014) concludes, in similar lines with Peng (2013), that the cultural factors have been overestimated in explaining China's weak enforcement of IPR and reach the conclusion that protectionism in China's different regions along with bureaucratic ineffectiveness weakens the enforcement of the country's established IPR laws.

These obstacles of weak enforcement of IPR laws are typical features of any transitional economy. Nevertheless, the development in China has led to a path-dependency which is difficult to change. Therefore, it will be hard for the Chinese government to see an improvement in the enforcement of the IPR laws on the Chinese market in the near future (Lejeune 2014).

In addition, the vast size and population of the China make it a much bigger challenge, requiring larger reforms and a longer time span compared to other transitional economies in order to be effective (Lejeune 2014). As a result, the problems with enforcing IPR in China remain significant and a major hurdle for foreign firms when investing and conducting business in the Chinese market today.

2.5 Risk Management

The liberalization of markets and advancement of communication technologies have made it possible to sell goods and services overseas. However, internationalization has also led to different risks, such as economic, financial, geopolitical, man-made and strategic risk (Andersen, 2006). In today's business climate, companies have been accustomed to live with threats that could disrupt their operations and even destroy their business, thus, risk management has become an important area in today's globalized business world (KPMG International, 2010). As a result, Andersen (2006) stresses that these risks require active management in order to mitigate unnecessary losses to the firm.

According to Claessens (1993), modern risk management techniques have developed over the past 20 years. This development has largely been driven by MNCs whose revenues have been affected by volatile

interest rates, exchange rates and commodity prices, and as a result, has developed risk management to bring certainty into ironing out these fluctuations (ibid).

In addition, risk management has been widely recognized in developed countries, but as for the developing world, the application has been limited (Claessens, 1993). However, Liu, Meng & Fellows (2015) explain that implanting projects in foreign countries are asserted to higher risks. As many factors can pose challenges, such as above mentioned differences in legal, social and cultural systems that might be unfamiliar to the investing company.

Thus, it is important to be able to manage risks, since managing risks correlate positively with the performance of the firm (Andersen & Schrøder, 2010). The positive outcome is often related to that the company can identify, assess and manage risks to minimize potential downsides. However, risk management is not only about avoiding risks, but also about being innovative and responsive to ideas that can help the company to gain insights that ultimately lead to finding new opportunities and the mitigation of future risks (Andersen & Schrøder, 2010).

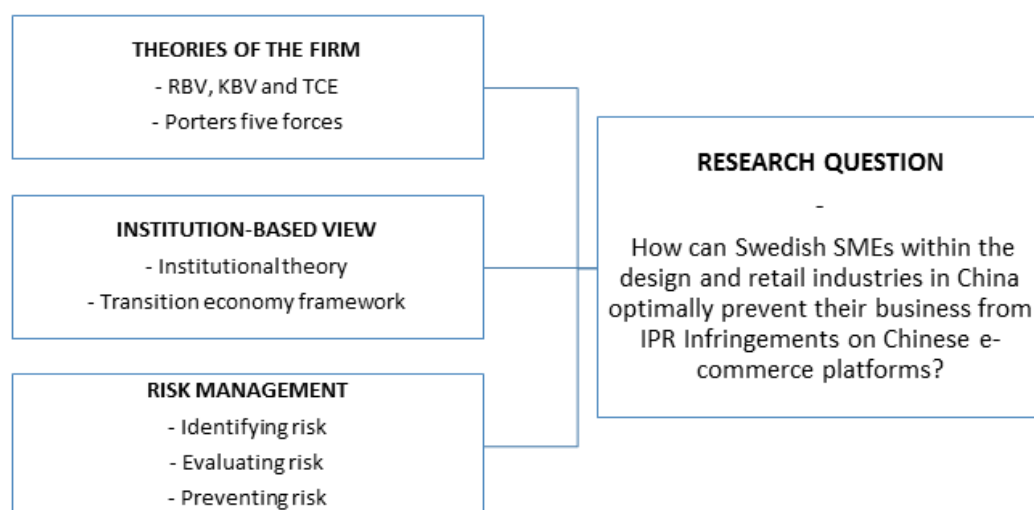
Andersen & Torben (2006) define risk management as the identification of factors that might expose business activities to risk. Once these factors are identified, the vulnerability to the various risks can be analyzed and effort can be made to avoid these risks. Another definition of risk management is taken from Mahendra, Pitroda & Bhavsar (2013) who define risk management as a process of identification of risks, valuation of these risks and finding suitable methods for handling these risks by controlling and monitoring. However, Hubbard (2009) explains that there are numerous definitions of risk management and that the term is often used too narrowly. In essence, it all depends on how you define the terms risk and management. In this study, risk management is therefore defined as the process of identifying, evaluating and preventing risks.

Corbin (2002) argues that there are three steps that the top management of a company should take in order to mitigate risks related to IPR infringements. First, it is important to measure the value of the IP, through a real market audit, for instance, looking at the reputation, the actual monetary value, and the brand it brings to the company. Secondly, to institutionalize monitoring processes within the firm that cover marketplaces across the world. Lastly, to develop a strategy with agile procedures on how to mitigate risk, theft and abuse of IPR when it occurs.

2.6 Conclusion

While a lot of literature describe the underlying causes related to the institutional development and obstacles for firms in developing countries, less research has been conducted about *how* firms best can protect themselves against these present market failures during volatile economic transitions. Furthermore, particularly in regards to protecting IPR when established laws that are following international agreements already but are sometimes unable to s protect firms' IPR sufficiently in practice. In addition, a lot of the literature about institutional factors and economies during transition focus on the effect of MNCs. Consequently, less research has been undertaken focusing on how SMEs with less resources and ability to influence policy, might overcome the institutional voids faced when operating and entering developing countries. Therefore, for investing SMEs it is of great importance to understand how to protect its competitive advantage through IPR protection in accordance with the firm- and industry-specific theories. However, a deficient legal framework failing to protect a firm's IPR creates further transactions costs for an investing firm, and it is therefore important to include the institutional factors taking the legal system into account. As the Chinese economy currently is being in transition, problems with enforcement regarding the IPR laws in China are expected to continue. As a result, a further analysis of how Swedish SMEs optimally can protect their IPR on Chinese e-commerce platforms is needed. This updated research investigating how SMEs operates in an environment with institutions under transition, will thus contribute to the existing literature in the research area.

Figure 7: Summary of the Literature Review

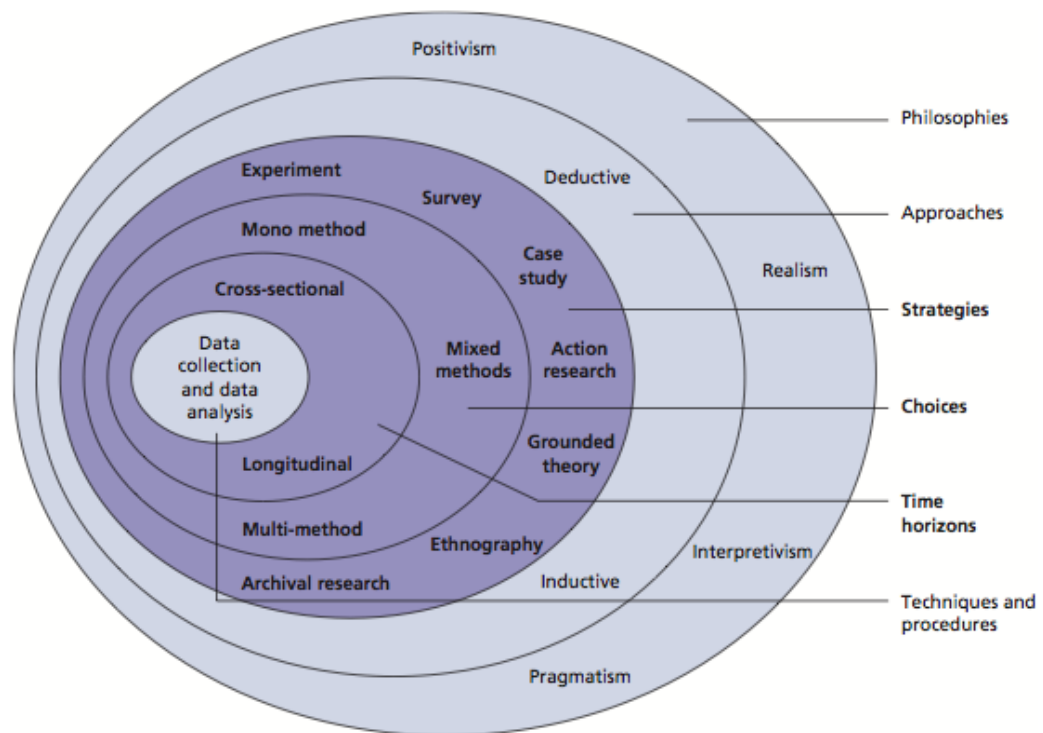


3. METHODOLOGY

The purpose of the methodology chapter is to explain in detail the chosen methodology and research methods, in addition, we will justify and explain the research design applied in this paper.

This is important since a paper should be guided by a clearly defined research methodology (Saunders et al, 2009). The outline of this part of the paper will to some extent be based on Saunders et al's (2009), "Research onion model", a model that covers the most essential aspects when it comes to the development of a methodological section in a paper.

Figure 8: The research onion.



Source: The research onion (Saunders et al., 2009)

3.1 The Philosophy of Science

When conducting a study, it is important as a researcher to choose the research philosophy. The philosophy of science involves the most basic question about the nature and development of knowledge. Thus, it seeks to answer the question of what knowledge is and how it is accessed and developed. In essence, when conducting research of any kind, it is by nature developing new knowledge (Saunders et al., 2009).

Furthermore, the kind of research philosophy the researcher conduct is naturally influenced by the researcher's own assumptions about the world. As a consequence, it is thus important to understand the philosophical stance taken by the choice of research strategy and the implications this has on how the research that is conducted and the understanding of what it really is that is being studied (Saunders et al., 2009).

As argued by Saunders et al (2006), it is crucial to be able to reflect on the philosophical choices made and being able to advocate the choices about the alternative options that could have been used for the research. The different research philosophies thus distinguish at explaining various causes. As a result, which one of the research philosophies being the optimal choice for the study all depends on the research question. Thus, having an understanding of the different research philosophies and the related attributed assumptions is important when embarking on research of any kind. The four different research philosophies that are highlighted by Saunders et al. (2009) are pragmatism, interpretivism, realism and positivism. Furthermore, a research philosophy can broadly be categorized into three additional views regarding how the researcher sees and affects the research. Firstly, the philosophical study of ontology regards the nature of being or reality. Thus, it is referred to as the researcher's view of the perspective and nature of reality in a study. In essence, it regards if the study is to be objective and external from social actors or subjective and dependent on human actors. Secondly, epistemology is based on what the researcher regards to be adequate knowledge in a particular field of study. This implies, if the researcher is to focus on observable phenomenon or the subjective meanings by social actors. Thirdly, axiology concerns the role of and judgments about the researcher's own values and how it affects the results of the study. Thus, this is important to consider for the results to be credible (ibid).

However, the first of the four different research philosophies highlighted by Saunders, et al (2009) is pragmatist philosophy. According to the pragmatist philosophy, the most important determinant when designing your research method is to answer the research question. The pragmatist philosophy claims that it is unrealistic just to choose one of the research philosophies in practice. As a result, the different research philosophies may all help in answering particular questions of the research and, it is thus possible to work with variations. Tashakkori and Teddlie (1998) further argues that it is better to regard the research philosophy used by the researcher as a continuum instead of as different contrary perspectives. Furthermore, Tashakkori and Teddlie (1998) claims that by using a pragmatist philosophy, the researcher does not have to take a stand in the, by the authors view, somewhat meaningless debate between truth and reality.

When using the philosophy of positivism the research method is more about natural science in the sense that it deals with objects possible to observe and facts rather than emotions. Therefore, only objects

possible to observe by the researcher will be considered and generate the reliable data. As a consequence, the researcher often uses existing theories to form a hypothesis before collecting the data. The data will then be tested against the theories and hypotheses which eventually may lead to the development of a new theory or redefining of the existing, which then will be tested again etc. This is often referred to as working with an “observable social reality” (Saunders et al., 2009).

In addition, when using the research method of positivism the research is also undertaken as much as possible in a value-free way. The researcher is considered independent and does not influence the collection of data and the research itself, nor is affected by it. After all, the researcher cannot affect the fact that there are a specific number of research objects or facts. However, it might be argued that a complete lack of the inclusion of the researcher's values when conducting research is impossible. As it could also be argued that even just by taking the value-free position as a research method, is indeed a choice by itself influenced by the researcher's value position (Saunders et al., 2009).

The philosophy of realism as a research method regards the question of reality. According to the concept of realism, objects have an existence independent of the human mind. As a consequence, realism claims that reality is rather autonomous from the mind. The philosophy of realism is thus opposite to the philosophy of idealism. Idealism claims that only the mind and the concepts of the mind exist.

The philosophy of interpretivism as a research method asserts that it is crucial for the researcher to have an understanding of the differences between humans as social actors, hence the differences between people and their acting. In addition, one important aspect in using interpretivism philosophy as a research method is that the researcher has to employ an empathic standpoint when undertaking the research. The goal is to create an understanding of the investigated subjects view from their perspective. According to Saunders et al. (2009) the challenge here is to enter the social world of the research objects, however, it is a highly appropriate research philosophy in business cases, since businesses situations are often unique and complex (ibid).

This thesis is to a large degree based on the research philosophy of interpretivism, since the research aims to provide a guideline for investing SMEs, on how a firm optimally can protect their IPR on Chinese e-commerce platforms, by interviewing case firms and IPR experts. Thus, by utilizing the means of case firms and IPR experts, we are as researchers part of what is being researched. Furthermore, as this research also clearly focus on the details of the situation faced by many SMEs investing on Chinese e-commerce platforms, it most clearly belongs to the interpretivist research approach. Hence, the data collection of this paper will be qualitative in nature from a small sample and in-depth interviews of two case firms representing four companies in total and three IPR experts. However, due to the nature of the

research question, this paper will also include parts of the positivistic research approach. Since, in order to formulate optimal practices, we need to focus on observing, analyzing and interpreting the reality of Swedish SMEs experiences related to how they optimally can protect their IPR on Chinese e-commerce platforms, and understand how experts in the field are observing, analyzing and interpreting the reality of the SMEs within this research area. As a result, part of the data collection will also stem from secondary sources from already conducted research on the topic. The analysis is therefore also based upon observable figures and information collected through secondary data about IPR in China. By combining the two research philosophies, interpretivism and positivism, our aim is to first through a positivistic stance create a comprehensive understanding of the scope of the topic connected to IPR infringements on the Chinese market today. Secondly, through an interpretivist method, we aim to add the perspective of the case firms and IPR experts through the collected primary data.

Thus, in line with the pragmatist philosophy, we advocate that it is unrealistic just to choose one of the research philosophies in practice. The most important aspect is to adequately be able to answer the outlined research question of this thesis. Therefore, this paper will combine the research philosophies of interpretivism, positivism and pragmatism.

3.2 Research Approach

The two main research approaches are deduction and induction, describing the different ways of relating theory to the data collected (Saunders et al. 2009). The deductive research approach stems from the natural sciences and its cause-effect thinking. As a result, the deduction research approach uses existing theory to form a hypothesis to test against the data. In a deductive research approach, the aim is to explain the causal relationships between different variables. As a consequence, the focus is mainly on testing theory and deduction as a research approach does not permit alternative explanations (ibid).

Furthermore, the different concepts used in a deductive research approach needs to be operationalized in the study to be able to measure the outcome quantitatively. In a deductive research approach, a large sample size needs to be adopted in the research to be able to generalize statistically about the findings. Thus, the use of a deduction research method involves the collection of quantitative data and the researcher is considered independent of the subject of the research (Saunders et al. 2009).

The inductive research approach, on the contrary, involves the building of the theory concept from the data collected. Therefore, the data is first collected and analyzed to form theories from the existing information subsequently. The use of an induction research method involves the collection of qualitative data and the researcher is itself part of the research process and subject studied (Easterby-Smith et al. 2008).

The inductive research approach is more concerned with the context and as a consequence, small samples of the research subjects are often more appropriate. Furthermore, researchers using an inductive research approach often adopt a variety of modes to collect the qualitative data. The goal is to acquire an understanding and different perspectives of a particular subject (Easterby-Smith et al. 2008). In essence, an inductive research approach explains why something is happening instead of what is happening.

However, it is also possible to combine a deductive and an inductive research approach and a combination is also often *more favorable* to the research outcome. Depending on the amount of literature and theory available about the subject of the study, the available literature will itself lead the research approach in a direction of either deduction or induction. For instance, if a lot of literature and theory is already developed in a certain research area, then a deductive research approach will be more suitable. Nevertheless, if the research involves a relatively new subject area with little research available, then an inductive research approach will be more appropriate for the study (Saunders et al. 2009). As a consequence, the different research methods of deduction and induction are thus better at different things depending on where the research emphasis lies (Saunders et al. 2009).

This thesis research question of how Swedish SMEs within the design and retail industries in China optimally can prevent their business from IPR Infringements on Chinese e-commerce platforms, mostly adheres to the inductive research approach. The building of theory and concepts will be based mostly on the collected primary data consisting of a small sample size of two case firms and three IPR experts. However, in the beginning of this paper, a deductive research approach is used in order to gain a comprehensive understanding of the literature regarding the research topic subsequently to form the basis of the questions for the interviews. In addition to the collected primary data from interviews, data will also be gathered through the use of secondary sources. As argued by Saunders et al. (2009) among others, a combination of inductive and deductive research approach is often more favorable to the research outcome. As a consequence, the empirical data from the various interviews from the case studies and IPR experts will be tested against the theories outlined in the literature review section of this paper.

Thus, in this thesis, we aim to combine a deductive research method with an inductive to form a hybrid research approach. Since the data from the case studies and IPR experts will be used and served as a means of testing theory to form the subsequent guideline to build theory. The concept of combining the two methods is also recommended by Yin (2009), as a means of increasing the quality of the research in a study.

3.3 Research Design and Strategy

The research design of a study establishes the general guideline of how the researcher will approach and answer the set-out research question. It involves the formulation of the research strategy and making research choices while acknowledging the different time horizons needed for each step. The justification for each of the different choices during the process should all be made in regards to the research question of the study and in line with the chosen research philosophy. Thus, the research strategies adopted in a study can be used for exploratory, descriptive and explanatory research (Yin, 2003).

Some of the research strategies are in line with an inductive approach while others belong to a deductive approach. Furthermore, the classification of a study can be threefold, namely: exploratory, descriptive and explanatory. Since our research question regards how Swedish SMEs within the design and retail industries in China optimally can prevent their business from IPR Infringements on Chinese e-commerce platforms, an exploratory study is preferred. Thus, we will follow the characteristics of an exploratory study, which are to find out what is happening, seeking new insights and shedding new light on the research area of the paper. Exploratory research usually constitutes of three areas, namely: *“search of the literature; interviewing “experts” in the subject; and conducting focus group interviews”* (Saunders et al. 2009:140). The advantages of exploratory research are thus flexible and adaptable (Colin, 2002). As the main goal of this thesis is to provide a guideline for investing Swedish SMEs with the main target to inquire “how” a firm optimally can protect their IPR on Chinese e-commerce platforms along with “what” can be improved, an exploratory study is well suited.

In addition, we need to choose our research strategies coupled with the exploratory study (Saunders et al. 2009). Since the aim of the research is to understand the situation faced by SMEs together with the understandings of the experts in the field, we have chosen to conduct a case study approach.

The case study approach is of particular importance if the researcher wants to answer the questions of “why”, “what” and “how”. According to Saunders et al. (2009), a case study can provide the researcher with a deeper understanding of the context. However, since we will interview three experts and two representatives of four case firms, we will conduct a multiple case study. This research strategy has been selected to answer the set-out research question for this paper. This choice was also made in order to improve the interpretative aspect of the research, since a single case study would have been less robust in its interpretation possibilities. In this aspect, a multiple case study is preferred (Yin, 2003).

Furthermore, there are different methods of data collection employed in a case study and the different techniques can be used in a combination. Therefore, there is often a need to use and triangulate the different sources of data. In this paper, we will triangulate the data by using different data collection

techniques within this study. The triangulation of data is done with the purpose to ensure validity, meaning that the collected data for this paper tells us what we believe it is telling us (Saunders et al., 2009).

3.4 Methodological Choice

Quantitative and qualitative research

Saunders et al. (2009), provides two different research choices, quantitative and qualitative. The quantitative and qualitative terms are used to differentiate the data-collection techniques and data-analysis procedures. Quantitative data is often referred to as numerical data and is analyzed through statistical methods. On the contrary, qualitative data is collected through interviews, observations and reviewing of documents. These two types of data are not exclusive from each other and is thus possible to be used in a combination. However, the two choices are important to differentiate since it is helpful for the study when analyzing the data (ibid).

Since this paper seeks to answer the question of how Swedish SMEs optimally can protect their IPR on Chinese e-commerce platforms, this paper mostly makes use of qualitative data. The collection of qualitative data will be made through interviews with the case firms and IPR experts in combination with reviewing professional research on the topic, academic literature, online articles and industry reports. Since qualitative data is characterized by its richness and fullness, it could have implications for the analysis. Especially if the researcher does not have a clear method on how to analyze the information from the beginning. Moreover, as Saunders et al. (2009) emphasizes, when one have completed the stages of: *“clarifying the research topic, reviewing appropriate literature, deciding on the research design, considering access and ethical issues and negotiating the former, and collecting the data”* (Saunders et al., 2009:484). It is important to have a method of analyzing the data, since, without a clear method, there is a risk it will affect the validity of the data presented in the paper (ibid).

In this paper, we have therefore defined a clear method on how to analyze the collected data. First of all, since we will conduct qualitative semi-structured interviews. It is important to transcribe the interviews as the interviews will be rich of information. In order to keep the data in its original form, we will ask the interviewees for the permission to record the interviews. The recordings will later be transcribed and saved into separate word documents. When transcribing the interviews, it is also important to consider the way the interviewee actually express their answer of the question. Furthermore, since the case companies expressed a desire to be kept anonymous, we codified them in order to be able to recognize

them easily. When transcribing the interviews, we also made sure that the transcription was correct by searching for any errors (Saunders et al., 2009).

Furthermore, due to the interactive nature of our data collection, it is important to recognize important themes, patterns and relationships among the collected data. This allows one to categorize and see if there are gaps in the research. When conducting this kind of analytic approach with an exploratory purpose, it is important to analyze the data as you collect it since it could guide your subsequent work. In this study, besides of developing a theoretical framework with the aim of understanding the internal resources of a firm and how the business environment in a developing country could affect their current situation. We collected secondary data in order to get a comprehensive understanding of the research area. Through analyzing professional research on the topic such as academic literature, online articles and industry reports, we developed categories guided with the purpose of our research question. By doing this, we were able to derive different categories from the data. This also allowed us to develop our interview questions on the knowledge collected, and thus support and fill out the gaps in our research. After we had categorized the secondary data and conducted and transcribed our interviews, we decided to present our primary data in a cross-case analysis. The cross-case analysis presents the primary data of this paper. The data in the cross-case analysis is presented in a non-interpretive manner consisting of both the data collected from the case interviews and the IPR experts. The aim of using a non-interpretive manner is to find similarities as well as differences in the collected data (Yin, 2009). This was done to keep an objectivity but also in order to recognize relationships between the experts and the case firms and further develop the categories made with the secondary data for the subsequent analysis of the paper (Saunders et al., 2009). Saunders et al. (2009) explains that is important to create categories based on actual terms used by the participants and literature, *“(1) you utilize terms that emerge from your data; (2) they are based on the actual terms used by your participants (‘in vivo’ codes); or (3) they are derived from terms used in existing theory and the literature”* (Saunders et al., 2009:493). By applying this approach to our research we combined themes from the literature framework together with the secondary- and the primary data, resulting in a well-structured analysis. This further allowed us to draw definite conclusions with the purpose of answering our research question in the final part of our paper.

3.5 Time Horizons

When considering the time horizons of research, a study can be either cross-sectional or longitudinal. The concept of cross-sectional regards a study in a specific period of time, while the longitudinal is in connection to a series of studies over a period of time. Since the research of this paper focus on how Swedish SMEs optimally can protect their IPR on Chinese e-commerce platforms, the research question

adheres to a cross-sectional study approach. Furthermore, a cross-sectional approach is also related to the time-constraints of this study (Saunders et al., 2009). As a consequence, the interviews for this paper were all conducted during a period of two months. However, an aspect of the longitudinal study is included in this research since parts of the analysis are based on secondary data published during different periods of time. In summary, the research conducted for this paper is thus cross-sectional since it does not focus specifically on doing research over time. However, since the research is conducted in an environment of economic transition, time inevitably does play a role in the research (Ibid).

3.6 Techniques and Procedures

The collection of empirical data

As mentioned above, this study aims to conduct a hybrid approach of deductive and inductive research. Thus, this paper has been utilizing a collection of both primary and secondary sources. In addition, this is also in line with the case study approach since the methods of data collection may be various and also combined. The collection of data from multiple sources is also due to the need of triangulating the data when using a case study approach, as mentioned above.

Primary empirical data

Primary data for this thesis has been collected through interviews with three IPR experts with experience of helping clients in the Chinese market. In addition, this paper also includes interviews with two case firms representing a total of four companies. The benefits of collecting primary data when conducting research are that the data can result in new insights as well as lead to a higher degree of certainty regarding the study's objectives and quality (Easterby-Smith et al., 2015).

Secondary empirical data

Secondary data stems from already published sources and is frequently used when the researcher face time- and resource-constraints. Furthermore, secondary data is mostly used when conducting case studies and it can be both qualitative and quantitative.

The secondary data collected for this study has been collected through professional research on the topic, academic literature, online articles and industry reports. The reason for collecting secondary data has been to gain a comprehensive understanding of our research area, not only to develop our interview questions from a well-informed knowledge of the topic, but also to be able to find relationships and gaps between already existing research and our added primary data. As described earlier, combining numerous sources is advantageous since it enables triangulation (Yin, 2009).

One of the disadvantages concerning the collection of secondary data is that the research might have been collected a long time ago with a different aim than the present research, making it inappropriate to use for analysis (Saunders et al., 2009). However, by combining the collected secondary data to the primary data, this will provide a longitudinal scope to the research and thus facilitate the analysis. In addition, we have throughout the study had the aim at combining both previous and new research on the topic.

Semi-structured interviews

Qualitative interviews are important to conduct if the aim of the research is to understand why and to explore the reasons behind the decisions the participants have taken. The most important aspect when deciding upon the choice of a structured, semi-structured or unstructured mode of the interview to be utilized in the thesis, is on gaining the proper kind of information to answer the outlined research question of the paper (Saunders et al., 2009). Since we are undertaking exploratory research in this paper investigating how SMEs optimally can protect their IPR on Chinese e-commerce platforms, it is necessary to include elements of non-standardized qualitative research (ibid). A semi-structured method of interview gives the researcher the ability to investigate the provided answers further (Saunders et al., 2009). In addition, by answering the questions of “what”, “how” and “why”, semi-structured and in-depth interviews are particularly suitable for case studies (Saunders et al., 2009). As the aim of the thesis is to gain a deeper knowledge and understanding of the main problems regarding IPR issues in China, semi-structured interviews were considered appropriate.

A total number of five interviews has been conducted for this thesis. The interviews were conducted during the period of March to April, 2016. The interviews were in general about 25-35 minutes long and carried out through the use of Skype’s or Wechat’s online-call functions. An exception is the interview with Reinout van Malenstein, which was conducted face-to-face at the Four Season hotel in Shanghai. A few of the interviewees were later followed up with additional questions through email in order to provide a clearer understanding of the answers provided during the initial interviews. Furthermore, all the interviews were conducted in English. Before the interviews, a document with a list of relevant themes and questions was prepared for the interview. However, following the semi-structured interview format, the order of questions was at times varied and additional questions were sometimes asked to follow-up on specific subjects raised by the participants (Saunders et al., 2009). Based on our research question, primary research and the theoretical framework, we outlined three main themes along with specific questions. Thus, the interviews were based on the following components:

- 1) Questions related to IPR infringements in China.

- 2) Questions related to SMEs protection and prevention of IPR infringements on e-commerce platforms in China.
- 3) Questions related to the development of China's IPR framework and a retrospective view by SMEs for potential modifications regarding optimal protection.

For an example of a transcribed interview and the specific questions, please refer to the appendix A.

3.7 Criterion of Choice of Firms and Selection of IPR experts

The interviews with the IPR experts were achieved through contacts and by participating in IPR seminars. When selecting the case studies for the interviews, we focused on targeting Swedish SMEs within the design and retail sectors having less than 250 employees and actual experience of IPR infringements on Chinese e-commerce platforms. The aspect of the actual experience was also confirmed by the interviewees. Furthermore, the case study firms were selected and contacted both by email inquiries and by personal contact. Another question to consider when designing the research is the question of ethics regarding the participants. Hence, due to the sensitivity of the topic of IPR infringements in China, the case study firms requested to be anonymous in this paper. Thus, the ethical dilemma faced in this study was solved by making the case study firms anonymous (Saunders et al., 2009).

Interviewed experts

For this study, we have interviewed three experts with vast experience of working with protection against IPR infringements on the Chinese market. For a detailed description of the IPR experts interviewed for this paper, please see the following section below.

- **Reinout van Malenstein**

Reinout van Malenstein works as an expert on IPR at the China IPR SME Helpdesk in Beijing, China.

China IPR SME Helpdesk is an organization which is co-founded by the European Union and established to help European SME with the problems regarding IPR protection in China. Furthermore, the China IPR SME Helpdesk works proactively to raise awareness by providing information, services and seminars to European SMEs present in China today.

Reinout van Malenstein holds a Master of Law in Chinese Law from Beijing University along with a Master of Dutch Law in Civil Law with specialization in IP law at Utrecht University, the Netherlands. In addition, Reinout van Malenstein has previous experience working as an IP lawyer in the Netherlands, as the head of the China desk at a Dutch law firm and as a delegate at the EU and China Co-Reach IPR project. Reinout van Malenstein has also been involved as a researcher and lecturer at both Utrecht

University and as a guest lecturer of several of the most prestigious Chinese and European universities and institutions (China IPR Helpdesk, 2016).

The interview with Reinout van Malenstein was conducted on the 15th of March 2016 at the Four Seasons hotel at 500 Weihai Road, Jing'an district in Shanghai, China.

- **Kenneth L Ng**

Kenneth L Ng has a long and extensive background in managing IP issues in mergers and acquisitions, domain-name disputes, budgeting, and IP enforcement and much more. Kenneth L Ng was formerly the deputy IP counsel of Illinois Tool Works Inc (ITW) an American Fortune 500 company. Kenneth L Ng now serves as a US-based partner of the award-winning full-service Chinese law firm Chang Tsi & Partners.

Chang Tsi & Partners is headquartered in Beijing, with branches in Shanghai and Guangzhou, the firm now has 150 attorneys and other professionals. Chang Tsi & Partners is one of the top ten leading Chinese law firms in the field of IP Protection, also recognized as the “Leading Trademark Agency of the Year” from the Chinese Trademark Association (Changtsi, 2016).

The interview with Kenneth L Ng was conducted on the 17th of March 2016 over an online-call function on the social Chinese online platform Wechat.

- **Bonnie Chen**

Bonnie Chen has an extensive background in trademark protection, copyright protection, patent protection, online IPR protection and, is currently working as a partner at one of China's leading full-service law firms, Hylands Law.

Hylands Law Firm is headquartered in Beijing with branches in Shanghai, Guangzhou, Hong Kong, Nanjing, Hangzhou, Wenzhou, Shenyang and Changsha. The firm has nearly 70 partners and upwards of 300 practicing lawyers, paralegals and other professional legal staff. Hylands Law Firm has consistently been regarded as an industry leader in IPR litigation and non-litigation business in China. Furthermore, rewarded with various honors and awards within Chinese Business Law earning them an excellent reputation in the industry (Hylandslaw, 2016).

The interview with Bonnie Chen was conducted on the 17th of March 2016 over an online-call function on the social Chinese online platform Wechat.

3.8 Methodological Quality

According to Yin (2003), it is important to define different criteria for judging the overall quality of the research design. The concept of validity refers to if the findings of the research actually are what they appear to be. In essence, if it exists a causal relationship between the variables. Thus, the quality of the research design should be defined according to four criteria, namely: *(a) construct validity, (b) internal validity, (c) external validity, and (d) reliability* (Yin, 2003:53). Furthermore, Yin (2003) recommend giving an example of each type of the criteria on how it was achieved in the case study.

Construct validity

Construct validity refers to the degree that a test measure actually tests what it is intended to measure. This is especially important when measuring data such as attitude scales and personal tests that have a quantitative nature (Saunders et al., 2009). However, since we have conducted qualitative research, the necessity of construct validity is arguably less important since we have not had any aim at measuring any of the constructs in our collected data. Furthermore, Golafshani (2003) explains the concept of construct validity as used in quantitative research and since qualitative researchers view reliability and validity differently, the concept is inadequate in a qualitative paper.

Internal validity

Merriam (2009), presents six methods to assure the internal validity of a study, namely: triangulation, member-checks, long-term orientation, peer examination, participatory and collaborative modes and researchers' bias.

To begin with, triangulation was assured through the use of multiple sources of data collection for this paper. Thus, primary data was gathered by the use of case firms and IPR experts combined with secondary data largely collected through the use of well-known and reputable sources. In addition, regarding the specific information of the Chinese legislation, this paper has taken its findings from China's official governmental websites. Nevertheless, the findings have also been combined with the use of additional secondary sources from reputable organizations in order to ensure the reliability of the findings. The collected primary and secondary data were then coupled to the existing research as outlined in the literature review of this paper.

Member-checks were performed from the researchers by confirming that we sufficiently understood the points raised by the interviewee after each statement. By given the respondent a chance to clarify and correct potential errors, an equal understanding was assured thus raising the internal validity. In addition, by having all interviews conducted in English, this also decreased the possibility of misinterpretations.

However, a long-term orientation was not possible considering the time constraints of this thesis. Furthermore, peer examination was utilized by frequently discussing the topics with peer students and the supervisors of this thesis. This study incorporated participatory and collaborative modes of research since the interviewees were contacted at an early stage of the research process to have the possibility of providing feedback and follow-up questions.

As regards to the researcher's bias of this paper, the limited understanding of the topic could be looked upon as bias in itself since a limited understanding would arguably lead to a higher degree of acceptance of what the IPR experts and the case firms are stating as true. However, in order to minimize this bias we started with conducting research based on secondary sources in order to gain a better understanding of the topic.

External validity

The external validity, or the generalizability, of the research, is of particular concern when conducting a case study approach. The generalization of the empirical data regards the question of whether it is possible or not to make generalizations of the collected empirical findings. In addition, the question of generalization is of the particular essence when conducting research based on a small sample of case study firms. Since a total number of two companies representing four firms were interviewed for this study, it naturally influences the possibility to generalize the results. As a consequence, the main goal when conducting research involving a small sample size is not so much to be able to make generalizations for larger populations, but it is more concerned with trying to explain *what* is happening in a specific research context. Thus, when using a case study approach, it is not possible to produce a theory that is *statistically* generalizable for all populations. However, as this paper, in particular, is focusing on how SMEs optimally can protect their IPR on Alibaba Group's e-commerce platforms, the emphasis is thus on providing an analytical generalization by focusing on the collected empirical data to provide and build theory (Saunders et al., 2009).

Reliability

The concept of reliability refers to the consistency of the results in the findings. Generally, there are four different types of threats to reliability in a study (Colin, 2002). The threats to reliability in a study are the subject or participant error, subject or participant bias, observer error and observer bias. Subject or participant error can be avoided by focusing on ensuring neutral circumstances when performing the research. Thus, by conducting the interviews in a similar mode and around the same period in time, the risk of subject or participant error have been reduced.

Subject or participant bias regards the possibility of the participants of being influenced by third-parties when providing the answers, thus not providing genuine results. In order to minimize potential bias among the participants of the study, we have used the method of triangulation in order to compare what the research states as important compared to the findings of what the various interviews are stating. This arguably leads to a higher objectivity of the study since it provides a more honest picture of the problem-areas and thus avoids the potentially vested interest present. This is especially the case since the IPR experts might have vested interest as it is part of their job to help investing SMEs to prevent and overcome obstacles related to IPR in China. Therefore, the potential vested interest among the interviewed IPR experts for this paper was avoided through the combination of secondary data and collected experiences from investing SMEs. Furthermore, a triangulation of the data allows us to present a more comprehensive picture of what problems SMEs might be facing on the Chinese market, as the problems with IPR protection could be sensitive to explain comprehensively by the interviewed case firms. However, by interviewing managers with vast experience working with IPR in China, this paper has reduced the subject and the participant bias. Observer error concerns the different ways of conducting interviews etc. However, by having a clearly defined structure and framework of questions set out before the interviews, the observer error of this paper was decreased. Observer bias regards the way of interpreting the replies from the interviews. However, since we have conducted several interviews with both experts and case firms with a similar structure, the observer bias has also been decreased significantly.

Based on the information provided above, we are confident that this thesis provides satisfactory results in regards to the reliability and validity of the researched topic area.

4. BACKGROUND

In this part of the paper, based on secondary data, we provide an introduction to the Chinese e-commerce market and development with a particular focus on Alibaba's various online platforms. In addition, this section proceeds with China's IPR legislation and development, with a focus on trademarks and copyrights. Lastly, we present Alibaba Group's reporting system of IPR infringements along with the current state of IPR enforcement in China today.

4.1 China's E-commerce Market

By using e-commerce platforms in a developing country, it is possible to circumvent the potential logistics and distribution obstacles coupled to the underdeveloped formal institutions and market failures present in China today (Chee et al., 2014). The Chinese government's goal to make China a global e-commerce leader has already come true with an estimated e-commerce market consisting of around 668 million internet users at present, constituting the world's largest and twice the size of the whole population of the USA (Wang et al., 2016).

In addition, e-commerce events such as Alibaba's Singles Day phenomenon, already being the world's largest online shopping day event, further illustrate the importance and fast development of e-commerce in China today (Davidson, 2015). At present, Alibaba's Taobao and Tmall along with its biggest competitor JD.com, together make up 80 per cent of the total retail e-commerce market in China, thus making it crucial to establish a presence on these specific e-commerce platforms (Chu et al., 2015).

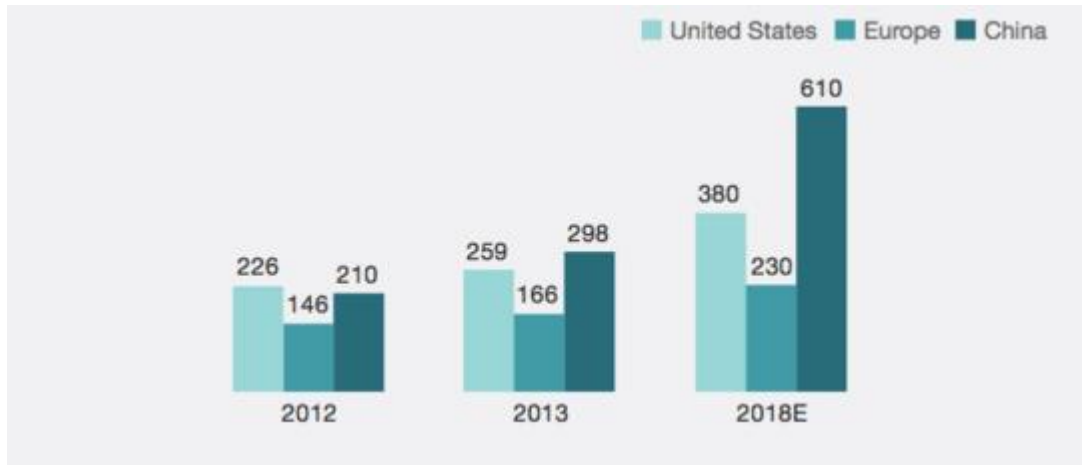
Furthermore, Chinese consumers mainly use smartphones to purchase online and are also more comfortable making online payments compared with other countries. As a result, China has the world's largest amount of e-commerce transactions from mobile platforms today. The e-commerce market in China is dominated by fashion and accessory transactions with a market share of around 40 per cent (Stanley & Ritacca, 2014).

Before making any purchase, Chinese consumers also more frequently browse and make comparisons online for both for online and offline purchases (Hoffman, 2013). In addition, recent estimates suggest that by 2025 another 265 million people will have gained Internet access in China, thus making up a total of 75 % of the Chinese population being online (The Demand Institute, 2015).

At present, the e-commerce share of the total retail sales in China is expected to amount to 13,5 % in 2016, a share higher than many large economies in Europe except the UK. (Wang et al., 2016). In addition, based on the current trends and development, e-commerce is believed to continue to grow

rapidly in the coming years (Statista, 2014). As a result, China's annual online retail sales is estimated to surpass that of both the US and Europe combined by 2018 (Chiu et al., 2015).

Figure 9: Online-retail merchandise value, USD billion.



Source: eMarketer; Forrester Research; iResearch Services (Chiu et al., 2015)

As a result, using e-commerce as a means of investment and entry strategy opens up a possibility for SMEs to enter the Chinese market in a more cost efficient way (Clover, 2015). The development of the e-commerce market in China along with online events such as Alibaba's Singles Day, display the vast growth opportunities existing on the Chinese online retail market. However, as the e-commerce market is developing very fast it is naturally changing at a very fast pace as well (Doland, 2015).

China's underdeveloped institutions together with rapidly changing regulations and policies, also pose possible threats for companies to navigate in this fast changing and uncertain market environment. Furthermore, the development and expansion of e-commerce have simplified the act of infringement and selling of counterfeits (Economist, 2016). As a result, nearly 2/3s of the captured fake products today are found in postal shipments stemming from e-commerce. The products most severely affected by copying are footwear, clothing, leather goods, electronics and watches. Hence, companies today frequently experience forfeiting products due to online platforms and as a result, protecting a firm's IPR on the Chinese market is growing in importance (Ibid).

Thus, companies increasingly need to work together with the digital platforms to not only understand Chinese consumers better but also to set up efficient strategies for protection of IPR infringements (Chiu et al., 2015). In summary, e-commerce in China represents both the biggest opportunity and threat to investing foreign firms today. As a result, it is important to investigate how Swedish SMEs within the

retail and design industries optimally can protect their IPR while at the same time taking advantage of China's vast and growing e-commerce market today.

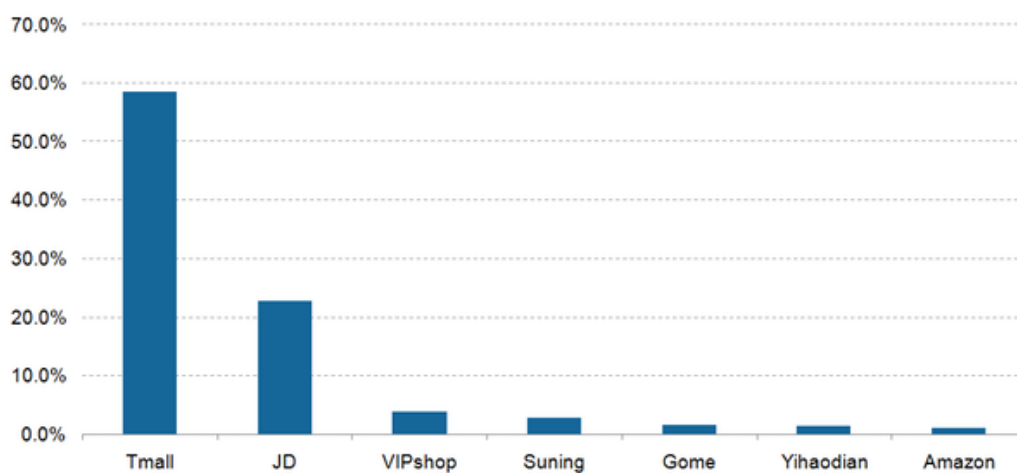
4.1.1 About Alibaba Group

Alibaba Group was founded in 1999 and is today, in terms of gross merchandise volume, the largest online and mobile commerce company in the world. Through the use of Alibaba Group's businesses, a company can reach hundreds of millions of consumers and other businesses in China. The Alibaba Group with its various e-commerce platforms has established good relations with the Chinese government (Foley, 2015). As an example, the executive chairman and founder of Alibaba, Jack Ma, was one out of 11 private sector leaders chosen to give input to China's 13th five-year plan, which is to be carried out between 2016-2020 (Reeves, 2015). A well established and beneficial relationship with the government is of particularly importance in China since the government set the rules and regulations of the marketplace (Jackson, 2014).

At present, Alibaba Group consists of the following businesses, namely: Taobao.com, China's largest online marketplace, Tmall.com, China's largest site for retailers, Alitrip.com, a travel booking platform, Aliexpress.com, a global marketplace for products, Alibaba.com, global marketplace for wholesalers, 1688.com, wholesale marketplace in China and Aliyun.com, a provider of cloud services (Alibaba Group, 2015).

Alibaba Group has the largest market share in the Business-to-Consumer (B2C) segment (Tmall) with almost 59 % of the Chinese market, compared to JD.com with a total market share of nearly 23 % (Chu et al., 2015).

Figure 10: Retail B2C e-commerce in China



Source: *The Market realist "Alibaba China's customer to customer e-commerce leader"* (James, 2015).

In regards to the Customer-to-Customer (C2C) segment, Alibaba Group's e-commerce platform Taobao.com dominates the market with a market share of around 95 % in China (Bjergvang & Jayaruben, 2015). Alibaba.com, the company's Business-to-Business (B2B) e-commerce platform, has a registered market share of close to 40 % (China Internet Watch, 2016). In addition, in regards to the total market share of mobile e-commerce in China today, Alibaba comprises more than 85 % of the market (Gilbert, 2015). In summary, Alibaba Groups various e-commerce platforms of Alibaba.com (B2B), Tmall.com (B2C) and Taobao.com (C2C) made up more than 80 % of the total online retail sales in China in 2014 (Broad, 2014). As a consequence, this paper will have a focus on Alibaba Group's e-commerce platforms.

4.2 The Development of China's IPR Laws

The protection of IPR serves as a securement of investment and it is a necessity for most SMEs to have in order to stay competitive in today's global marketplace. China's IPR framework is under development and counterfeits constitute a major problem in the Chinese market. As a result, it is of great importance for SMEs as they are entering or doing business in China, being able to protect and enforce their IPR. The impact of potential infringements can be substantial, for instance with a loss of revenue, reputation and competitive advantages (China IPR Helpdesk, 2014).

China has a long and rich history dating 5000 years back as being in the forefront of scientific and technological invention. However, despite many early innovations such as papermaking, gunpowder and the compass, China's modern system of IPR law is a relatively young institution. It was not until the end of the Mao Zedong era in the 1980s that China began to implement new regulations and started to improve their IPR laws (Chang, 2014).

The modern IPR legislation in China started with the implementation of a new patent law in 1984 (Randau et al., 2015). However, since then, China has revised their legal system and implemented new regulations and trademark laws. In 1995, different international treaties and non-binding international standards played a key role in shaping China's IPR legislation (Chang, 2014).

China's entry into the World Trade Organization (WTO) in 2001 implied that China had to follow international laws regarding IPR in accordance with the international established customs. China has in addition to being a member of the WTO also acknowledged the following international treaties in relation to IPR, namely: The Paris Convention, The Berne Convention, The Madrid Protocol and The Patent cooperation treaty (China IPR helpdesk, 2014). The foundation of China's IPR law system, namely: the Patent Law, Copyright Law and the Trademark Law, were all revised and enacted in preparing to join

the WTO in 2001. At the time, many observers believed that these improvements were made in order for the Chinese IPR law system to comply with the international standards set up by the WTO (Chang, 2014). However, since the beginning of the 21st century, the Chinese government has increasingly put a greater focus on turning China into an innovation- and knowledge- based driven economy. This development has led China to take even greater steps in improving and managing their IPR laws. In June 2008, China released the Outline of the National Intellectual Property Strategy, a strategy which provided a comprehensive plan on how to develop the IPR laws of the country. An additional step was taken just a few months later when China adopted the Third Amendment to the Patent Law, a change resulting in an enhancement of the Chinese patent law (Yu, 2016).

Furthermore, as a result of the Chinese government's explicit goal of creating a more innovation-driven economy. The government has set one of their key objectives of China's 12th Five-Year Plan on March 14th 2011 (2011-2015) to support regulatory frameworks to foster innovation for indigenous companies. In essence, the government wishes to go from "Made in China" to "Created in China" by supporting domestic enterprises with subsidies and policies promoting innovation. As a consequence, China's objective of strengthening their IPR framework might positively affect foreign firms operating in China in regards to enforcing their IPR (Randau et al., 2015). In addition, following the 18th National Congress of the Communist party of China on November 18th 2012, the government stressed an enhanced focus on the implementation of IPR on the Chinese market. The aim is to develop the governance further in China to promote innovation and development of domestic Chinese enterprises (IPKey, 2015).

The development of China's IPR legislation seen during recent years signals that China is working on improving their legal system and the country's IPR laws. The most recent development of China's IPR laws was discussed in the 2013 Amendment to China's Trademark Law (Chang, 2014). However, the process of completing the third amendment of the law is still in progress (Yu, 2016). The third amendment of the Trademark law proposes several changes. For instance, it proposes that applicants for trademarks only need to submit one application for multiple classes which would simplify the current application process and serve as a further protection against trademark squatters trying to file for trademarks in classes the original owner did not file a separate application for. In addition, the amendment proposes a principle of bad faith in trademark registration, which aims to support the process of litigation of registration of trademarks that have been done in bad faith from third parties. Furthermore, it proposes that registrations will not be granted for trademarks that assemble a well-known brand in a different classification among many other changes (Chang, 2014).

In addition, with the goal of creating a more harmonious and effective handling of IPR issues in China today, the Chinese government decided to establish three new courts for managing IPR specifically, with offices in Beijing, Shanghai and Guangdong on the 31st of August 2014 (Growth Analysis, 2015). At present, China is actually the driving force of the growth of IP registration in the world. For instance, patent applications in China registered an increased rate of 12.5 % from the years between 2013 and 2014, along with trademark applications, which registered an increased rate of 18,2 % during the same time period (World Intellectual Property Indicators, 2015). However, only a small proportion of the applications for patent protection in China are also filed for internationally, a potential sign of the Chinese applications' low quality. As China wants to transform into an innovation- and service-driven economy, the Chinese government has acknowledged the problem with the low quality of Chinese applications and the lack of enforcement of the country's established IPR laws (Growth Analysis, 2013).

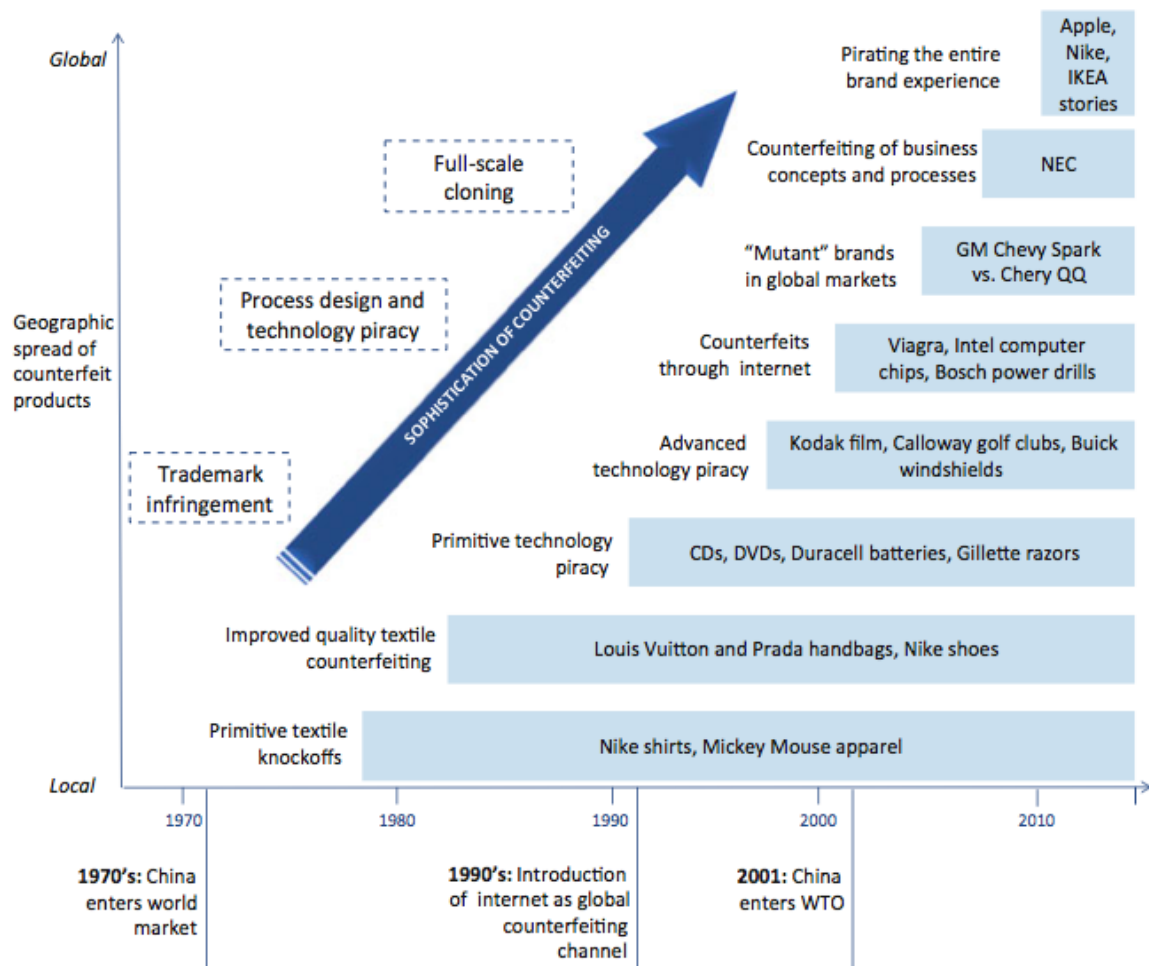
However, despite the recent set of amendments and proposed improvements, the level of protection and enforcement of the established IPR laws in practice, remains unsatisfactory (Yu, 2016; Chang, 2014; Randau et al., 2015; China IPR helpdesk, 2014). Furthermore, the problem with counterfeits has led to the introduction of new international IPR policies such as the Anti-Counterfeiting Trade Agreement and the intellectual property chapter in the Trans-Pacific Partnership Agreement, all projected to target the problems with weak IPR protection in China (Yu, 2016).

The Chinese government has been increasingly supportive in working with strengthening IP owner's rights during recent years. However, effective enforcement of the IPR laws is still of great concern for investing companies. Some of the pointed out reasons for this, are for instance, that a lot of Chinese people are unaware of the fact that product counterfeiting and infringements are indeed illegal. Instead, most people tend to focus on the economic benefits that the copying of products provides. As a consequence, in many of China's various regions, counterfeiting has become an integral part of the economy, even with some of the State Owned Enterprises (SOE) shown to be taking an advantage (Randau et al., 2015). In addition, among other possible explanations that have been pointed out includes the low average incomes in China, the fact that China is a net importer of goods and services and that a large part of the Chinese population lack the cultural recognition of IPR (Chang, 2014).

The discussion above suggests that due to China's vast size and prevalent corruption and protectionism practices in the country's various regions, a comprehensive enforcement policy of IPR laws is hard to establish in practice (Randau et al., 2015). As a way of strengthening the enforcement of the country's IPR laws, the Chinese government has put in place a larger number of authorities in order to manage the grants and enforcement practices of IPR. However, even though the recent changes benefit the allocation procedures of the Chinese government's IPR policies throughout the country, at the same time,

the increased number of authorities also brings a further complexity to the entire system (ibid). In addition, although several improvements have been made regarding China's IPR law system, the sophistication of the laws and the advancement of China's economy have also led to a further sophistication of the counterfeits (ibid).

Figure 11: The evolution of counterfeiting in China



Source: "China Business 2.0" (Randau et al., 2015).

4.3 IPR Protection in China

The most common types of IPR protection in China includes copyrights, patents, design and trademarks. The different types of IPR can be either registered (have to apply for legal protection) or unregistered (instantly receiving legal rights over the design or item when created) (China IPR Helpdesk, 2014). It is however recommended to combine the different modes of IPR in China for optimal protection (Devonshire-Ellis et al., 2011).

4.3.1 Trademark

A trademark is a sign that distinguishes goods and services from one another. A trademark can contain letters, symbols, devices, shapes and colors and so forth. However, in general, a trademark is often referred to as the brand and is an intangible resource to the company (China IPR Helpdesk, 2014).

4.3.1.1 Trademark Registration

According to the Chinese trademark law, trademarks are registered based on a “first-to-file” system, meaning whoever file the application of the trademark first will gain the right to use it, regardless of how long the trademark has been used internationally (Randau et al., 2015). Thus, in order to enforce IPR for trademarks in China, a trademark registration is essential (China IPR Helpdesk, 2014). In addition, it is important to register the trademark directly in order to avoid the risk of “bad-faith” claims (Randau et al., 2015). This is especially important for lesser-known brands since it can be hard for smaller companies to prove their ownership of a trademark as it is generally easier for large companies to cancel a “bad-faith” claim. A smaller company might have to go engage in a long and difficult legal process involving high costs. It is, therefore, a recommendation to register the trademark as early as possible with the China TradeMark Office (CTMO) (ibid).

The cost for registering a trademark exclusive of any legal representation fees, is currently 600 RMB covering one class and including ten items of goods or services. Furthermore, an amount of 60 RMB is charged for any additional items¹ (China IPR Helpdesk, 2016). Based on the amendments made in the Trademark Law in 2014, the examination period for trademark registrations is nine months followed by a three months opposition period where the application is published in the Trademark Gazette. It is important to notice that a firm has no legal protection up until the trademark has been officially registered (China IPR Helpdesk, 2015). As a result, the process of trademark registration can take up to 12 months in total (China IPR Helpdesk, 2016).

Since China is a member of the Madrid Protocol, this entitles a foreign firm to choose to register the trademark either locally in China or internationally (Randau et al., 2015). As a consequence, trademark registrations in China can also be done through the WIPO (China IPR Helpdesk, 2014).

¹ For the latest pricing please refer directly to CTMO’s webpage: www.chinatrade-markoffice.com

4.3.1.2 Characteristics of China's Trademark Law

4.3.1.2.1 China's first-to-File system

China has a “first-to-file” system for trademark registration in contrast to the “first-to-use” system applied in the West. Unlike, for instance, the US, where a business entity needs to have a proof of using the trademark in order to register it. In China, there is no such need. The current regulations of the trademark law in China specify that if there are two identical applications of the same trademark, that first applicant will be approved. Furthermore, in case the two applications are received during the same period of time, the trademark office will draw lots to determine which one of the applications to register. Thus, the Chinese system of trademark registration does not need a proof of ownership. As a result, this leaves the registrations open for third parties, providing potential opportunities for trademark squatting (Chang, 2014).

In addition, well-known brands in China are given privilege under the Chinese trademark law such as the ability to exclude others from registering and translating the mark across all categories of the trademark. However, for foreign trademarks that have not entered China yet, it can prove difficult to be categorized as a well-known brand since the trademark has to be known by the greater Chinese population. Furthermore, the Chinese courts are known for not to be willing to accept evidence of reputation overseas (Chang, 2014). In addition, the Chinese language further complicates the procedures of filing for a trademark since a typical western trademark could have three different trademarks registrations in China, namely: the original brand name, the direct translation and the “sound-a-like” version. Therefore, it is not uncommon that the public gives Western brands new names. These “word-of-mouth names” are later registered by a third party before the Western companies have time to realize that their brand is referred to differently than was anticipated and registered for in the first place (Chang, 2014; World Trademark Review, 2016).

4.3.1.2.1 China's sub-class system

In most countries, the legal system requires the applications of trademarks to be grouped according to the different classes. These classes often follow the outline of the “International Classification of Goods and Service for the purpose of the Registrations of Marks (the Nice Classification)”. According to the Nice classification system, products are divided according to their function and material composition while services are divided to the nature of the service performed. The Nice system has 34 classes of goods and 11 classes for services. The Nice system, which is applied in most countries in the West, provides a multi-file system allowing an applicant to apply for their trademark in more than one class in a single application (Chang, 2014). Furthermore, there is no division into subclasses and the trademark will be

covering all the products in the class (China IPR Helpdesk, 2016; China IPR Helpdesk 2015). China has, on the whole, implemented most parts of the Nice Classification System (Randau et al., 2015). Nevertheless, in China, each of the classes are further divided into subclasses (China IPR Helpdesk, 2016). Therefore, for each of the different classes and respective subclasses where protection is necessary, the trademark owner has to apply and register separately (Devonshire-Ellis et al. 2011).

Thus, in contrast to what we are used to in the West, in China an applicant must register separately for each of the subclasses within the class in order to protect their trademark in the particular subclass (Chang, 2015). As a result, identical marks can co-exist in the same class as long as it is not specified in the same goods or service in the same subclass, a difference often overlooked by many foreign filers (World Trademark Review, 2016). For an example, in the West, class 25 covers clothing, footwear and headgear and so forth. However, in China, the system further divides the trademark into subclasses. For example, class 25 subclass 01 covers clothing and class 25 subclass 10 covers gloves (China IPR Helpdesk 2012). In practice, this means that an applicant will have to file for protection for the subclasses as well, subclasses that otherwise would have been covered with the Nice Classification system in the West (Chang, 2015). As an illustration, in 2002, Apple applied for the Iphone trademark with the Chinese Trademark Office (CTMO). However, the company only filed for the subclass “computers and computer software” and as a result, a Chinese company named Hanwang Technology applied for the subclass “phones and mobile phones”. This registration subsequently led to that Apple had to pay 3.66 million USD for the rights of the trademark (Chang, 2014). Hence, for maximum protection, a firm should apply to as many classes and subclasses as possible (Randau et al 2015). Furthermore, it is recommended to register the trademark in Chinese and the original language in order to prevent it from being registered by a Chinese local company (Devonshire-Ellis et al., 2011).

4.4.1 Copyright

A copyright is a tangible expression of an idea. This could, for instance, be translated to pictures, books, music, speeches, fabric designs and so forth (Devonshire-Ellis et al., 2011). In China, the basic principle of a copyright is that the work is original and reproducible (China IPR helpdesk, 2014).

4.4.1.1 Copyright registration

Most types of copyrights in Europe are also protectable in China (China IPR helpdesk, 2014). Since China is a member of the Berne convention, a copyright is an automatic right and protection is immediately recognized at the moment of creation. As a consequence, a copyright registration is not obligatory and it is not necessary to register in China (Devonshire-Ellis et al., 2011). Hence, there are no requirements to register a copyright in China and a copyright holder can thus enforce their rights without having to

register it (ibid). Furthermore, with a copyright registration, the original work is protected as long as the creator of the work lives plus another 50 years (ibid).

However, in China, a copyright ownership for logos and stylized word marks can prove to be very useful when opposing infringements of IPR in China. It is especially important in cases where the right holder does not have a registration for their logo or stylized mark. Therefore, it is strongly recommended to register valuable copyrights voluntarily to obtain a Chinese copyright registration certificate (China IPR Helpdesk, 2014; World Trademark Review, 2016). In addition, it usually only takes 30 days for the Copyright Protection Centre of China (CPCC) to complete the application. The copyright registration is a rather simple process and the fees are generally low (China IPR Helpdesk, 2014).

4.5 IPR Protection on Alibaba's E-commerce Platforms

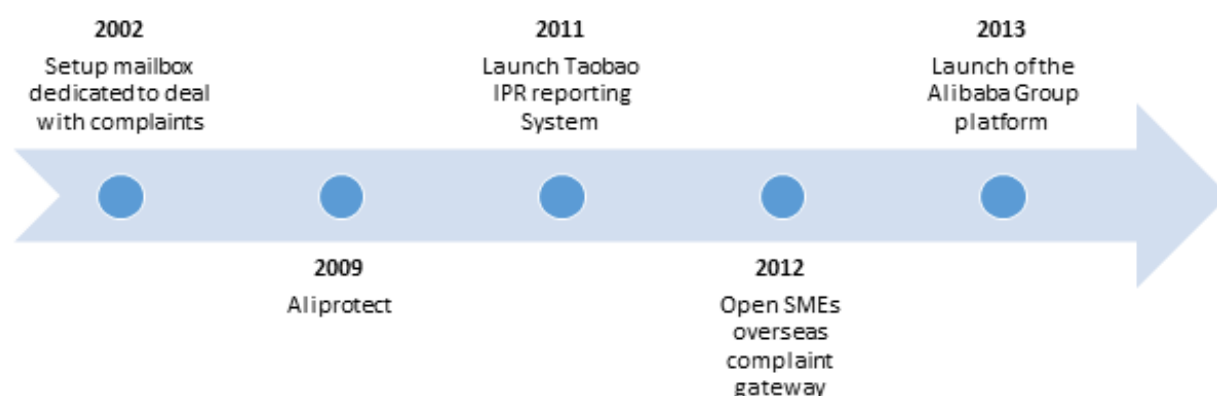
Despite China's recent improvements of the country's enforcement activities, it is still not in line with the rapid growth of web-based counterfeiting. Thus to reduce the risk of counterfeits, it is recommended that IPR owners pursue a take-down² program aimed at targeting e-commerce platforms that might feature counterfeit goods (World Trademark Review, 2016).

In the guide from China IPR Helpdesk (2013) on "How to remove counterfeits on Chinese marketplaces", it is emphasized that China provides a similar legal protection of IPR protection including trademarks, copyrights and patents, as many European countries. On the internet, for instance, an IP-protected material should not be uploaded without the owner's consent (ibid). Reviewing Alibaba's IPR protection policies, it strictly prohibits trademark and copyright violations. Upon receiving a valid take-down notice from an IPR holder, Alibaba will remove the listing, notify the member responsible and in some cases suspend the member from using their services (Alibaba Group, 2015). Alibaba has developed a platform policy that penalizes IPR offenders, where the offenders will be warned and repeating offenders will be banned from the platform (Liang, 2014). In addition, since a seller on Alibaba's platforms needs to upload their business license along with their ID card and in some cases a deposit when registering, the sellers are often responsive on removing infringing products upon receiving a complaint. The reasons for this is that the seller risks losing their deposit and lose their ratings of the store in case of ignoring the complaint (Laurijssen, 2015).

² Requesting a removal of infringement from the internet is often described as a "notice and take-down" (China IPR Helpdesk, 2013).

Furthermore, Alibaba Group works extensively on keeping their platforms free from counterfeits and infringements and as of June 24th, 2015, Alibaba Group and China's International Publishers Copyright Protection (IPCC) strengthened their cooperation. The two parties both agreed on combating copyright infringements, especially on Aliexpress and on Taobao, which are China's largest online marketplaces. IPCC will, among many other things, assist Alibaba Group in monitoring and reporting infringing products (Alibaba Group, 2015). In addition, the founder and chairman of Alibaba Group, Jack Ma, further expressed a strengthen focus and implementation on working against counterfeits and infringements of IPR on the company's e-commerce platforms. The new policy will not only embrace the platforms managed by the Alibaba Group, but also include competitors' websites such as JD.com and Wechat (Tencent). Alibaba Group's new strategy is to make use of big data technology and to work more preventively to give the potential counterfeiters no place to exist (Custer, 2016). In addition, on April 13th 2016 Alibaba Group signed a partnership agreement with the International AntiCounterfeiting Coalition (IACC), a nonprofit organization based in Washington working with combating counterfeiting and piracy around the world. This new cooperation is the first of its kind between the IACC and an online retailer (Economist, 2016).

Figure 12: Development of Alibaba Group's online IPR protection system



Source: "Alibaba's Practice on IPR protection as ISP" (Liang, 2014)

4.5.1 TaoProtect and AliProtect

Alibaba Group provides two different online counterfeit reporting systems for their websites, AliProtect³ and TaoProtect⁴. AliProtect covers the global wholesale marketplace Alibaba.com (B2B, International market), global shopping marketplace Aliexpress.com (B2C, International market) and the wholesale marketplace 1688.com (B2B, Domestic market). Since last year, Alibaba translated its second reporting

³ AliProtect can be accessed from the following link: <http://legal.alibaba.com/index.htm>

⁴ TaoProtect can be accessed from the following link: <http://qinquan.taobao.com/>

system TaoProtect into English. TaoProtect covers China's largest online marketplace Taobao.com (C2C, Domestic market) and China's largest site for retailers Tmall.com (B2C, Domestic market).

Figure 13: Illustration of Alibaba Group's online counterfeit protection systems



Source: Illustration of the coverage of TaoProtect and AliProtect (Qinquan, 2016).

Thus, TaoProtect and AliProtect are two systems that allow IPR owners to report infringing content on Alibaba's most popular e-commerce sites. An IPR owner can therefore in a short period of time, report infringing listings and have it taken down almost directly upon reporting (Qinquan.taobao, 2016; Legal.alibaba, 2008; China IPR Helpdesk, 2013). The reporting dashboard on both systems requires an IPR owner to complete three steps: First, the owner needs to upload a valid identification such as a passport, driving license a company or business registrations. Second, the owner needs to upload a valid IPR registration or document that can demonstrate the ownership of their IPR. Third, the owner needs to mark the infringing content that one would want to remove and submit the listings to Alibaba's investigations team (Qinquan.taobao, 2016; Legal.alibaba, 2008; China IPR Helpdesk, 2013).

If the IPR owner has their IPR protected in China, the takedown procedure goes relatively easy, however, if your IPR are protected outside of China, a firm can remove infringing content but it might not always be successful. For instance, AliProtect approves some IPR protection from outside China while TaoProtect does not (China IPR helpdesk, 2013).

In addition, companies that are reporting numerous cases of infringing listings on Alibaba Group's e-commerce sites can apply for a "good faith policy" at Alibaba Group. The requirement for a good faith

policy is that the enforcement history contains hundreds of listings where the majority or all reporting's were infringing. This approval will lead to that future reported infringement will be reviewed less intensively and, therefore, removed quicker from the e-commerce platforms (Laurijssen, 2015).

4.6 Enforcement of IPR in China

To be able to enforce a firm's IPR in China, it is essential to prove the infringement (Randau et al., 2015). As a result, it is important that a firm registers their IPR comprising of trademarks, patents and copyrights in China before action against the infringers are taken. Furthermore, the relevant documentation of a firm's IPR process has to be available in the language of the company and in Mandarin Chinese. As a consequence, a firm possessing IPR abroad has no guarantee of enforcing them in China (Randau et al., 2015).

Devonshire-Ellis et al. (2011) recommend companies to constantly monitor the market as a means of preventing infringements of IPR and thereby gain an increased protection. Therefore, when dealing with infringements it is essential for a firm to define the strategic important aspects requiring instant action in protecting their IPR (Ibid). In terms of enforcing a firm's IPR in a cost-efficient manner, an optimal way to stop the infringements is simply to contact the online providers asking them to assist in removing the infringing content (Ibid). Furthermore, in order to identify infringing trademarks it is recommended to conduct regular searches in key classes in the Trademark Office Gazette, as well in the CTMO's online database (World Trademark Review, 2016).

However, according to Devonshire-Ellis, (2011), the best solution achievable is often to stop the attackers from infringing a company's IPR is by making them move on to another target (Devonshire-Ellis, 2011). Moreover, if a firm is not successful in this strategy and is still experiencing violations of its IPR in China, it has to proceed with legal actions. Nevertheless, through having an IPR strategy in China, involving monitoring and agile enforcement of the IPR, a firm can circumvent the costs related to legal procedures through Chinese courts. These legal costs are often higher than the administrative costs related to the monitoring and enforcement procedures (Devonshire-Ellis, 2011).

5. CROSS-CASE ANALYSIS

The empirical data for this paper comprise of three interviews with IPR experts in China and two interviews representing a total of 4 firms. This section of the paper seeks to demonstrate and answer the questions of the main problems and experiences of protecting IPR on the Chinese market today.

Due to the detailed description required and potential sensitivity of the topic, the appointed case firms have chosen to be anonymous, however the first representative is depicted as C1 and the second representative, representing 3 firms as C2. The IPR experts of this study are depicted as followed:

E1= Kenneth L Ng

E2= Reinout van Malenstein

E3= Bonnie Chen

5.1 Inadequate Understanding of China's Trademark Law

"Yes, China has signed the international agreements, but law is still national. So that means that you sign an international agreement agreeing, a minimum amount of protection. But, the implementation, how you do that, can still vary from country to country." (E2)

It was emphasized during the interviews by all three experts of IPR in China, that there is still not enough knowledge of Chinese law by many of the foreign firms investing in China today (E1;E2;E3). As E2 simply put it, *"if you want to be protected in China you have to adhere to Chinese law."* According to E2, as a result of the lack of knowledge of the Chinese legislation, many of the foreign firms investing in China from the EU are unable to understand and make proper use of the differences between the EU and Chinese system.

As a consequence, this often results in an insufficient protection of the EU firms' IPR on the Chinese market (E2). In addition, it was also pointed out that investing firms often choose the wrong proof of IPR when filing for an actual opposition act (E3). The reason for this being that many of the European firms believe that the laws in EU are also applicable in China (E2).

It was pointed out in the interview with C1 that there was a perceived problem with the actual enforcement of the IPR laws in China. However, as one of the experts (E1) expressed: *"Many companies, in terms of their protection in China, I would say that most of them have inadequate protection"*, illustrating a possible explanation for the perceived low enforcement of IPR rights in China. In addition,

expert E2 explained, *“there is still not enough knowledge about Chinese law, and that result in decisions making based on Danish and Swedish practices and as a result having no protection or limited protection in China, because there is a lack of knowledge on Chinese law”*. A statement that further sheds light on the limited understanding of China’s laws by foreign firms.

5.1.1 China’s subclass system

“Most have inadequate protection that they are exposed to infringers in China and the reason is because of the subclass system in China.” (E1)

According to the expert E1, one of the main areas where foreign firms lack the sufficient knowledge in regards to the legal framework in China, is about the country's sub-class system used when registering trademarks (E1). This results in firms having an inadequate protection of their IP and that their trademarks might not be filed in a comprehensive way (E1). Furthermore, it was also stressed that the class headings firms’ are used to in Europe does not correspond to the subclasses in the Chinese trademark registration system (E1).

In regards to registering through China's subclass system, it was pointed out by E1 that if another company file for the same trademark but in a slightly different subclass, the China trademark office (CTMO) will automatically accept the registration since it is regarded as in a different subclass. As a consequence, this creates problems for investing firms when trademark registrations in other subclasses appear too close to the company's trademark (E1).

However, unless a firm is able to prove that the infringing mark was registered in “bad faith” or that they have a well-known trademark, it has only 5 per cent chance of winning (E1). The reason behind this is that according to the different registrations in the subclass system in China, the CTMO sees no confusion. Thus, this example illustrates the importance of having a detailed and comprehensive understanding of the subclass system when filing for a trademark registration on the Chinese market (E1). As a consequence, it is recommended by E1 to file for protection in one of the subclasses in every subclass for the broadest coverage (E1). E1 further explains that the new amendments to the Chinese trademark law make it more aggressive due to a reduced time-frame. As a result, the CTMO do not have time to perform any kind of analysis likelihood of companies’ different subclasses (E1). Therefore, E1 recommends companies to file a trademark based on how the firm plan to oppose the mark in the future (E1). In addition, when designing a trademark defensive strategy, for optimal protection it is therefore important to think about how a firm sells their products in the marketplace, in order to prevent other

firms to file for a trademark in a product class similar to a firm's' own core products. Furthermore to file for protection for subclasses that the company might expand to in the future. (E1).

In regards to SMEs experience in China, E1 expressed that, *"my impression from those clients to is that trademarks are are not filed in a comprehensive way and this is just perhaps a nature of smaller businesses that they have limited funds so they only spend what they can afford..."* (E1). In addition, C3 had experience of "bad faith" registrations in China in both its core product categories but also in other categories the firm would not normally protect. Therefore, C3 has implemented a new strategy during the past five years, and as stated by C3: *"Yes we have always have registrations strategies China.....we are just trying to register now a bit deeper, so we are doing some more defensive registrations, registrations for product classes and for service classes for what we do not necessarily introduce our product in..."* (C3).

C3 also admitted that the firm should have done more registrations in subclasses from the beginning, even in the classes that later may become relevant (C3). Furthermore, C3 expressed that the company now have a strategy of doing more defensive registrations, with registrations in product or service classes not normally associated with the firm's products (C3). As illustrated above, their strategy of registering subclasses has expanded after gaining some experience on the Chinese market. As stated by C3: *"Yeah, I think we should have done more registrations, we should have had sort of a defense registration program, looking at registration our marks in all of the classes, that may eventually become relevant for us, when looking at clothing, could be relevant to consider glasses and sunglasses and perfume, things like that, which are all in the trademark class"* (C3).

As a possible solution to the problems associated with the differences of the subclass system in China, E1 recommended firms to build a zoning system in order to be able to better defend a company's IP rights properly (E1). By setting up a zoning system, a firm is able to create a more long-term effective strategy by creating zones of exclusion. For instance, by obtaining a trademark and a copyright, a firm can exclude even further compared to have only filed for the trademark in a subclass. The reason for this is that a copyright can be used in trademark oppositions as well, since it is an evidence of prior right, proceeding those of the third party. The prior rights proven in the copyright can then be used when opposing another subclass application made by a third party (E1).

This system of zones largely determines how aggressively a firm wants to defend its rights in regards to their IP (E1). According to E1, if a company is fighting numerous oppositions, it is a sign that the current

system the company is using is not secure enough since opposition applications are already being approved (E1).

E1 concluded by stating that *“it is tremendously important to have a detailed understanding of the subclass system in China”* (E1). E1 also emphasized that the class headings in Europe are not similar to the subclasses in China, meaning that although a firm might have filed for full class headings in Europe, the portfolio would still be deficient in China. In summary, it was emphasized during the interviews, in particular with expert E1, that a deep understanding and implementation of the subclass system in China is necessary in order to protect a firm's IPR in China today.

5.1.2 China's first-to-file system

“And another problem here is first to file, like I said so whoever files the trademark first has the right, this is one of the biggest problem that I see at the moment” (E2).

In China, whoever files for the trademark first will gain the right to use it due to the country's “first-to-file” registration system (E2). As a consequence, if a local Chinese firm is the first one to file for a trademark registration of a foreign company's brand, it can then legally request any sum of money for the solution of that dispute since it is completely legal (E2). The only exception to this is if a firm has a well-known international or Chinese trademark (E2). As an illustration, E2 explained that oftentimes when there is a trade litigation coming to China, potential infringers are investigating the companies in the delegation, looking up their trademark registrations and then go to the website of the CTMO and see if their trademark is also registered in China. As stated by E2 *“If they don't have it they register it because it is very cheap for them and you only have to have one company that actually will do business here and can block them from doing business.”* Therefore, even if an EU company is not currently doing business in China, E2 recommends the firm to register their trademark as long as it thinks it might eventually develop its business into the Chinese market. By using this strategy, a firm can automatically block other potential firms from registering the trademark. The only requirement, however, is that a company have to use the trademark in China within 3 years since registration (E2).

For example, C3 acknowledged that “bad faith” registrations in China had cost the firm the most problems. However, C1 and C3 were aware of the potential problems with China's first-to-file system and registered locally through the China TradeMark Office before they entered the Chinese market. Nonetheless, many foreign companies in China have had experiences related to the first-to-file system in China, which in some cases resulted in “trademark squatting” done by Chinese infringers (C1; C4; E2; E3).

5.2 Recommended Practices by the IPR Experts

5.2.1 File for a trademark in China

“Infringers are not just taking an opportunity to attack, many of them are actually auditing the client's portfolios and looking for gaps, they are conducting analysis over a portfolio”(E1).

All three experts emphasized the importance of having a registered trademark in China (E1; E2; E3). Some of the main areas leading to the problem with trademark squatting were related to the “first-to-file” system and China's subclass system. C3 expressed that the company previously experienced obstacles with bad faith registrations in China. According to C3, one of the reasons for their problem was that before the new amendment of the Chinese trademark law, as stated by C3: *“since the Chinese trademark law before the new revision did not really have any means of protecting foreign companies against bad faith registrations, that has definitely been a huge issue for us”* (C3). The statement illustrates that “bad-faith” claims have constituted a problem for C3, this problem, even have led to that C3 had to spend financial resources to actually purchase their own trademark back (C3).

In addition, C1 had their products copied as well as a registration of the company's name in Chinese. In the interviews with the IPR experts, this was also mentioned as a common problem in China and a possible reason for the infringers to conduct a “trademark squat” was explained as: *“they are applying to register because the application is cheap and because in many cases fighting a validation is far more expensive than just paying the infringer”* (E1). A statement that illustrates that trademark squatters in China are trying to make money on foreign firms “non-existing” or “in-complete” trademark registrations. Furthermore, it proves the importance to register the trademark as early as possible in China, which is also emphasized and regarded as very important by all the experts (E1; E2; E3).

An additional potential explanation to the problem with “trademark squatting” is the inadequate understanding of China’s subclass system, as discussed earlier and as stated by C3 *“the Chinese trademark registration system is slightly different from the one with Europe. Each of the trademark classes is divided in number of subclasses and the subclass system, is difficult to cover and taking into account if you registering through the international registrations system, they don't apply similarly”* (C3).

Furthermore, when filing for a trademark registration, E1 emphasized that it is also important to consider how the firm is about to sell the products in the marketplace in order to sufficiently protect their IPR, a strategy that C3 had incorporated to their registrations strategy lately. In addition, C3 also

stated that they are only registering locally nowadays, and try to the biggest extent possible to cover as many subclasses as possible in China, even some that does not seem relevant for the company (C3).

In addition, E2 points out that as long as it is not a well-known international or Chinese trademark, anyone can register it in China (E2).

5.2.2 File for a copyright in China

“it only takes about 2-4 months to get a registration and you can use it in trademark oppositions, you can use it in online take-downs you can use it in litigation and what it gives you is evidence of prior right” - E1

Even though a copyright registration should not be a necessary step, since China is a member of the Berne convention, that automatically provides copyright protection at the moment of creation. However, it was recommended by all three experts for all firms to register a copyright in China (E1; E2; E3).

The reason behind this is that without a registration of copyright in China, it is harder to provide evidence of a firm as the proper copyright holder (E2). In addition, as pointed out by E1, the application is rather fast and a copyright in China is also possible to use in trademark oppositions. As a result, E1 referred to a copyright as a “super-trademark” in China. The reason for this is because the potential to use copyrights in trademark oppositions (E1). For instance, a logo mark consisting of a logo or a wordmark with letters in a logo format, would not always be possible to register as a copyright in the West. In China, however, a copyright is easier to file for and can be used as an evidence of prior rights against a third-party (E1). This copyright registration is then possible to use in trademark oppositions, online take-downs and litigation.

Thus, filing for copyright protection on the Chinese market was further recommended as a convenient and cheap way instead of filing for all subclasses (E1). As expressed by E1: *“Because of the Berne convention we have rights going back 5 years 10 years maybe even 15 years whenever the logo was created, this give us prior rights to then defeat the subclass application. So for SME in China or elsewhere, this is a convenient and inexpensive way compared to filing in all 45 classes for every subclass”* (E1).

Another good way as recommended by E3, is to apply for a copyright for a pamphlet, this way you could include a firm's different logos, texts and pictures which is a cheap way to get a protection over a lot of things (E3). Since it is possible to use a copyright in addition to a trademark to fight oppositions in

subclasses. It was recommended to register a copyright in China despite the country's membership of the Berne Convention (E1; E2; E3).

5.2.3 Set up an online enforcement strategy of IPR

“Online infringement is not going to go away ... especially if you are successful in China.” - E1

In regards to the protection and enforcement of a firm's IPR on China's various e-commerce platforms, the interviewed IPR experts recommended the following steps.

Segmentation of China's e-commerce market

First of all, it is important to do a segmentation exercise of the most important websites to focus on for a company in China (E1). According to E1, Alibaba, Tmall and Taobao are the websites that are the most popular and visible and thus these sites should be the top three (E1). C3 also explained that they focus on the biggest websites of Alibaba, Taobao and Tmall (C3). E1's advice to its clients is to perceive the online market in China as an entire country. Furthermore, it is possible to divide the Chinese e-commerce market into two different parts. The Chinese online platforms that are in English and Chinese online platforms that are in Mandarin Chinese (E1; E3). This is important to differentiate since, according to E3, one can have as a rule of thumb that when a site is targeting Chinese consumers, a company must have an IP registered in China. However if the site is targeting consumers outside of China, it is often sufficient with a proof of IP from WIPO. In addition, E2 emphasized that if a firm encounter IPR infringement on an e-commerce platform and notifies the owner of the platform, the online platform actually has a legal obligation to take it down (E2). The reason behind this is because if the online provider does not take down the infringing material, they are themselves responsible (E2). In regards to selecting and monitoring the e-commerce landscape, E2 recommended firms to focus on the websites where there are most infringement activities. Therefore, a segmentation of the Chinese e-commerce landscape is important in any IPR strategy in China to begin with.

Enforcement of a firm's IPR on e-commerce platforms with a reporting system

According to the three IPR experts, generally when finding an infringement on an e-commerce platform in China, a company needs to follow three steps:

First, the firm needs to contact the e-commerce platform and show that the company is actually the right holder of the IP such as with a trademark or a copyright certificate, preferably registered in China (E1; E2; E3).

Second, the firm that is filing the complaint needs to provide a valid identification such as their business license or a passport for instance (E2). Furthermore, it was mentioned by E3 that if the monitoring and enforcement process is outsourced to a third party, the third party needs to have a document stating that they are entrusted by the IP right holder.

Third, it is also necessary to provide the online platform with the listings with the actual information of the infringement material as well as an explanation of why this material is infringing the IPRs of the company (E2, E3).

Enforcement of a firm's IPR on e-commerce platforms without a reporting system

However, when an online platform in China do not provide a take-down function, a firm should set up a relationship and work together with the e-commerce operator to establish a real store of the brand (E1). The reason for this is because it is possible to establish a relationship which is beneficial for both parties by providing the customers with an option to buy the genuine products and at the same time providing revenue to the online portal (E1). E1 points out that one of the main benefits of this solution is that it does not require any legal expenditure from the firm.

As pointed out by E3, if the online platform is ignoring the information and will not alter the infringing information, it is also possible to file a complaint to the registrar of the domain name to ask for assistance. E3 points out that this has been a successful way of tackling the problem with infringements before. In addition, E3 points out that the e-commerce owners are becoming increasingly cooperative and more likely to protect IPR over time.

E2 recommends a firm to perform a trial purchase to collect evidence at first and then continue with administrative enforcement or civil enforcement if necessary. According to E1, when a firm has set up a strategy on how to protect and enforce their IPR from infringements, it should be very selective with doing take-downs and also perform trial purchases to eventually sue in court (E1).

According to E1, if a firm establishes an efficient enforcement strategy to protect its IPR, it will lead to a reduction in terms of counterfeits and push the actions of the infringers to other brands. The best strategy in terms of a firm's efforts of IP infringements, is thus to be able to push the attacks of infringements to other brands and make sure your firm is better protected than the next. In addition, setting up stores with genuine products was also recommended, first: if people buy counterfeits, there is

obviously a demand for the product, and secondly: by selling genuine products consumers will eventually notice the difference between the counterfeit good and the genuine product. This will also lead to relationship building with the e-commerce platform which can prove valuable in the process of removing counterfeits and infringements on their platform (E1).

Monitoring of e-commerce platforms

In addition, it was recommended to appoint a person working with monitoring of the platforms (E2).

E2 recommends a firm to appoint an intern or anyone who is low cost to the company to monitor the e-commerce platforms for infringing material. The person working with monitoring the e-commerce platforms should be an individual who is used to the websites different reporting systems. This person should work with constant notice and take-down procedures. According to E2, this is the best and most cost-efficient way to do it (E2).

Furthermore, it is important for a firm to appoint an IP manager who is responsible for the monitoring of the potential infringement and counterfeits of the company online and to manage the IP portfolio, consisting of the different IP that belongs to the firm (E2). A firm should set up an IP portfolio with the strategic objectives and goals of how to implement the monitoring in practice.

C1 did not have any measurements of their online enforcement procedures and neither any set targets. However, C1 perform monitoring of their IPR on the Chinese market in-house. On the contrary, C3 had outsourced their online enforcement procedures and received numbers of reported cases and numbers of cases removed from Chinese e-commerce stores each month. However, C3 did not have any specific target, on how many cases should be removed or specific requirement on the company who managed the process.

5.3 Conclusion

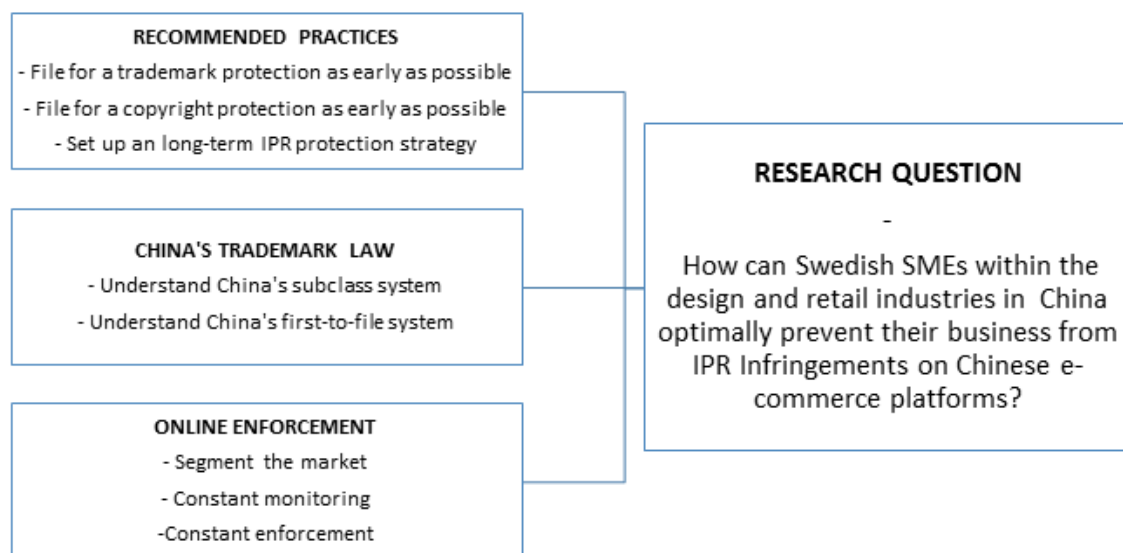
In summary, it was emphasized by all three IPR experts that is important to have a comprehensive understanding of China's IPR laws, in particular the characteristics of China's Trademark Law, namely: the subclass system and the first-to-file system. Furthermore, it is important for a firm to register their IPR in China as early as possible, both trademark and copyright and think ahead, what product categories they might be selling in the future. Without having any registered IPR it can prove tough and sometimes impossible to enforce the firm's IP rights. In addition, a firm should set up a long-term IPR protection strategy, such as building up a "zone-system" for opposition purposes and preventing trademark squatting. A copyright registration could be used as a complement when filing for trademark oppositions.

Furthermore, the best defensive strategy is often an aggressive strategy, in other words, enforce your IP rights, set up a store and build up a relationship with the e-commerce platform.

Firms should also segment the e-commerce market in order to understand where their efforts should be focused. When removing counterfeits and infringements through an e-commerce platform's reporting system, a firm should follow three steps. Nevertheless, if the e-commerce platform does not provide any reporting system, the firm should establish a relationship with the owner or contact the registrar for assistance.

Lastly, it is important for an investing firm to appoint employees responsible for working with the IPR management of the company. The employees should have a clear understanding of the firm's IPR strategy and its objectives and manage the IP portfolio of the company. The responsible should perform constant monitoring and enforcement of the company's IP rights on Chinese e-commerce platforms. Through constant monitoring and enforcement, it is possible to push infringers to attack other brands, and prevent unnecessary cost and brand dilution connected to infringements and counterfeits of the company's brand.

Figure 14: Summarization of the cross-case analysis



6. DISCUSSION

The aim of this section is to combine the empirical data from the first and secondary sources with the literature framework to answer the research question of this paper.

6.1 An Institution-Based View on China's E-commerce Market

The Chinese e-commerce market is the largest in the world with an estimated 668 million internet users at present, opening up vast opportunities for Swedish SMEs to invest in a cost-efficient way (Wang et al. 2016; Clover, 2015). A potential explanation of the rapid emergence of China's e-commerce market is not only because of the huge market potential but also because that the logistics and distributional challenges present on the Chinese market can be overcome by firms using e-commerce platforms (Chee et al., 2014).

However, the expansion of China's e-commerce market has also simplified and brought along an increased amount of infringements and counterfeits found online (Economist, 2016; China IPR Helpdesk, 2013; Wadleigh, 2015). A fact which was also highlighted during the interviews with the case firms and IPR experts (C1; C2; E1; E2; E3). According to Peng (2013), it is the development of a country's formal institutions that determine the amount of IPR infringements in a market. However, the formal institutions enforcing IPR in developing countries and emerging markets are often deficient in practice (Hansen et al. 2010; Randau et al., 2015; Devonshire-Ellis et al., 2011; Fang et al., 2015). This concern is also shared by other scholars, the IPR experts and the case companies interviewed for this paper (E1; E2; C2). In addition, Wang (2004), Zhang, (2005) and Lejeune (2014), all stated that China's IPR laws are not always enforced in practice. Thus, the problems of enforcement of China's IPR laws continue to exist. The findings from the empirical data are in line with the research of Karakaya and Stahl (1991), regarding IPR being among the hardest factors for a firm to control.

A reason for this is that China is currently undergoing an economic transition to a more service- and innovation-based economy (Brødsgaard, 2014). Therefore, from a theoretical perspective, firms are expected to be in a volatile and rapidly changing market context (Meyer 2001). Meyer (2001) further claimed that an economic transition creates an unstable institutional context not yet fully reformed. Thus, as China is currently undergoing an economic transition, parts of the informal economy not completely adhering to the country's applied IPR laws are continue to persist (Yang, 2015). Furthermore, the rapidly changing market context can be partly explained due to Chinese government's frequent amendments of its regulatory system and the current undergoing economic transition (Yu, 2016; Chang, 2014).

As a result of the rapidly changing laws and policies, foreign firms have an insufficient knowledge of China's IPR laws and how its regulations are to be applied in practice. The IPR experts also shared the concern of a lack of knowledge of China's IPR laws among investing firms (E1; E2). The fact that the recent third amendment of the Chinese trademark law is still in progress (Yu, 2016) further exemplifies that China's formal institutions are still under development. An example that aligns with North (1990), who explains that institutional change at times happens rapidly due to sudden policy choices coupled to the formal institutions in a society.

In addition, the results from the empirical data also support Hallin and Nömmiks (2008) findings that the deficient protection of IPR is among the largest barriers to entry and conducting business for Swedish companies in China today. Thus, not a surprising result, since developing countries and emerging markets often tend to fall short due to a credible legal framework (Khanna & Palepu, 1997; Scott, 1995).

Furthermore, as part of the explanation, various regions in China have different institutional development causing an in-harmonious effort of enforcement of the IPR practices across the country (Randau et al., 2015). In addition, even though efforts have been made to improve the formal institutions by the Chinese government such as the amendments to the trademark law and the increased number of authorities aimed to enhance the enforcement of the IPR laws (Chang, 2014). However, the proposed changes are still in process and an increased complexity has been developed through the entire system as a consequence of the added number of authorities (Yu, 2016).

Moreover, the principal-agent problem of the conflicting economic interest between the Chinese government and the local politicians in China's various administrative regions, further influences the practical enforcement of the IPR laws (Randau et al., 2015; Lejeune 2014). Lejeune (2014) and Peng (2013) ignores the cultural factors raised by Zimmerman (2013) among others and further attributes the weak enforcement of Chinese IPR to the practice of protectionism found in China's various regions together with the bureaucratic inertia of the entire system.

In summary, our findings align well with the research stating that the formal institutions in developing countries tend to fall short (Peng, 2002; Khanna & Palepu, 1997; Scott, 1995; North, 1990; Hansen et al., 2010). Furthermore, as China is currently in an economic transition and the institutional framework is under development, IPR is not always protected in a sufficient way and in accordance with the established laws. Therefore, foreign firms struggle to protect their IPR on Chinese e-commerce platforms today (IPR Helpdesk, 2014; E2; C1; C2). However, both the development of China's regulative framework (Godinho & Ferreira, 2012; Zhang, 2005; Chang, 2014; Yu, 2016; IPR Helpdesk, 2014; The Economist, 2016). Along with the efforts made by Alibaba Group on its various e-commerce platforms, and Alibaba

Group's clients' shared interest in removing counterfeits and infringements on their platforms (Alibaba Group, 2016; IPR Helpdesk, 2014; C2), show that the enforcement of IPR is becoming increasingly mature (Chang, 2014; Yu, 2016; IPR Helpdesk, 2014 E3; C2).

6.2 Applying Porter's Five Forces on China's E-commerce Industry

Based on Peng et al.'s (2008) proposition of less research has been conducted of exactly how institutions matter for firms operating in the marketplace. In this section, we seek to answer how the deficient formal institutions in China actually affect a firm's operations on Alibaba Group's e-commerce platforms by applying the industry-based view of Porter's five forces (1979). By utilizing Porter's five forces, we can thus further discuss the additional institutional barriers Swedish SMEs are facing in the Chinese e-commerce industry when selling through Alibaba Group's e-commerce platforms today.

Following Porter's five forces, the rivalry and industry conditions are to a large degree determined by the established laws and regulations of protecting IPR in a market (Narayanan and Fahey, 2005). Furthermore, since the potential consequences of infringements can be significant for a firm with a loss of revenue, reputation and competitive advantages, it is therefore crucial to be able to protect a firm's IPR on the online market (China IPR Helpdesk, 2014). In relation, Frey (2013) further states that through the use of IPR, a firm can utilize and protect its competitive advantage in an industry.

However, the inability of firms to make proper use of the established IPR laws on Chinese e-commerce platforms, thus increase the threat of new entrants and substitutes by unfair competition (Narayanan & Fahey, 2005). This result is also confirmed by the interviews, since all of the case companies in this study had problems with protecting their IPR on e-commerce platforms in China (C1; C2). In addition, the IPR experts also emphasized the problems related to firms protection of their brands online (E1; E2; E3). Hence, the lack of enforcement of Chinese IPR legislation has a direct effect on the rivalry in the Chinese e-commerce industry. As a result, this also influences the investing firm's ability and performance of conducting business online (Narayanan & Fahey, 2005).

In addition, the growing opportunities created for firms by the e-commerce industry in China today have also led to an increasing amount of new entrants and rising rivalry. This development further sheds light on the importance for a firm to be able to protect its IPR and thus secure a return on investment in China. However, the bargaining power of suppliers and buyers are often higher in a developing country context (Narayanan & Fahey, 2005). This is partly explained by the "liability of foreignness", regarding the lack of

knowledge of Chinese IPR laws by foreign firms and the external costs associated with the differences in China's political, social and cultural aspects (Hymer, 1979; Petersen and Pedersen, 2002; E1; E2).

Nevertheless, firms can overcome these barriers by turning into “strategic insiders” through building relationships and alliances with local firms (Luo, 2007). The proposition made by Luo (2007) also aligns with E1’s recommendation about establishing and building relationships with the various Chinese e-commerce platforms. Chiu et al (2015) also emphasize the importance of working together with digital platforms to understand the Chinese consumers better. This is important since knowledge about a foreign market has shown to be essential and can be acquired through participating in business networks (Johanson & Vahlne (2009). Furthermore, this is in line with the empirical data gathered from the interviews and from other scholars who recommended firms to gain a comprehensive understanding of China’s legal framework and its characteristics before doing business in China (E1; E2; E3; Chang, 2014, Yu, 2016; IPR Helpdesk, 2014; World Trademark Review, 2016).

Alibaba Group is the largest e-commerce supplier in China and has developed its IPR protection policies over time (Alibaba Group, 2016). The development of Alibaba Group's IPR protection policies has been facilitated due to China's acknowledgement of various international agreements. Agreements implying that China has to follow IPR laws in accordance with international established customs (China IPR Helpdesk, 2014), and the country's implementation of strategies aimed at fostering domestic innovation (Brødsgaard, 2014). Furthermore, Alibaba Group's good relationship with the Chinese government, illustrated through agreements such as the China's International Publishers Copyright Protection (IPCC) among others. Might also have had an effect on the company’s development of IPR protection in line with the government's overall goals (Jackson, 2014; Foley, 2015). The good relationship of Alibaba and the Chinese government was demonstrated as the company's founder and executive chairman, Jack Ma, was one of 11 private sectors leaders chosen to provide input to China's 13th five-year plan with policies to be implemented between 2016-2020 (Reeves, 2015).

As described by Khanna & Palepu (1997) among others, due to the underdeveloped formal institutions, government relations are of even greater importance in all developing countries. Moreover, since the Chinese government sets the rules and the new reforms of the market to a larger extent, a beneficial relationship is of particular importance in China (Jackson, 2014). However, along with the recent developments and improvements in enforcing China's IPR laws, this has also led to a further sophistication of the counterfeits found on the market (Randau et al., 2015, C1; E1; The Economist, 2016).

As Alibaba gains its revenue from the transactions being made by third-parties (Alibaba Group, 2016), it is in the interest of the company to reduce the uncertainty and amount of transaction costs present on its platforms. As a consequence, it can be argued that the Alibaba Group is trying to influence the “rules of the game” on the market to change it in their favor (Peng et al., 2008).

Thus, in the light of IPR protection in the Chinese e-commerce industry, the Alibaba Group will arguably not benefit from a low IPR protection standard. On the contrary, Alibaba Group would gain from having a stable IPR framework in China since it will help to prevent abusive behavior of IPR on their e-commerce platforms and thus increase their own liability and as a result gain more customers (Alibaba Group, 2016).

In addition, regarding buyers, SMEs need to be able to protect their IPR in order to stay competitive on the market (IPR Helpdesk, 2013; Frey, 2013; Ichrakie, 2013; WIPO, 2015). The reason being that protected IPR will lead to an increased revenue and reduce losses (China IPR helpdesk, 2014). This is especially important since SMEs tend to be more sensitive and easily affected by a volatile external institutional environment (Maekelburger et al., 2012; E1).

In similar veins, although several scholars argue that Chinese people lack an understanding and cultural recognition of IPR protection (Zimmerman, 2013; Chang, 2014). However, since the further development of the formal institutions is closely coupled to the culture in a country, this implies that the recognition of China's IPR laws is increasingly improving (Peng, 2013). In addition, with the rise of the Chinese middle class and attributed increase in purchasing power, Chinese consumers are becoming more interested in acquiring genuine goods (The Economist, 2016). Furthermore, the Chinese government's goal of the current economic transition to a service- and innovation-based economy along with Chinese firms continuous development of its brand and intangible resources, further put pressure on the industry to develop its IPR practices and protection (Brødsgaard, 2014; Chang, 2014, Zhang, 2005).

In summary, looking at the industry rivalry within Alibaba Group's various e-commerce platforms today, it is thus clear that almost all shareholders, besides a few exceptions, would gain from a stronger IPR protection. Furthermore, since the e-commerce market on Alibaba Group's platforms is characterized by an increasing rivalry and new entrants, protecting a firm's IPR is of great importance. However, with the continuous development of China's IPR laws and the shared interest among most of the shareholders within the e-commerce industry, the future outlook regarding IPR protection looks bright and already

provides an increasingly more comprehensive protection for investing foreign firms (China IPR helpdesk, 2015).

6.3. Characteristics of China's Trademark law

6.3.1 China's first-to-file system

One of the main differences in the system of trademark registration between China and the West is the “first-to-file” registration policy in China as opposed to “first-to-use” in the West (Randau et al., 2015; Chang, 2014; IPR Helpdesk, 2014; E1; E2; E3). This implies that whoever filed for the trademark registration first, will also gain the right to use it as long as the trademark is not well-known (Chang, 2014, IPR Helpdesk, 2014; E2). However, for foreign firms not yet fully established in China, it can prove difficult to be regarded as “well-known” on the Chinese market since it has to be known by the greater Chinese population (Chang, 2014). Since Swedish SMEs might be a leading brand in the Nordic countries but lesser known internationally, there is a risk that this would not apply to them. Thus, it might be hard to prove a claim of “bad-faith” for investing Swedish SMEs on the Chinese market (China IPR helpdesk, 2014). In addition, the Chinese courts handling the trademark applications has been known to be unwilling to accept evidence of reputation overseas (Ibid). This finding is surprising since China is a member of the Madrid Protocol, which allows registrations of trademarks to be filed either locally in China or Internationally (Randau et al., 2015). However, although China has adhered to various international agreements, a country can still vary in their ability to uphold the rules and regulations (Khoury et al., 2014).

Therefore, it is still common for firms to display an unsatisfactory level of protection regarding trademark registrations in China. This is mainly due to the differences in the systems of class headings between the West and China, which results in potential trademark gaps, opening up possibilities for registrations by third-parties (E1). The findings from the interviews also suggest that this is a problem that the case companies had experienced as well (C1; C2). C2 stated that the company first filed internationally through WIPO but later learned about the need to register through the China TradeMark Office as well. E2 stated that due to the lack of knowledge of the Chinese IPR legislation, investing European SMEs fail to make proper use of the differences between the two systems used in China and the West.

The regulations of the Chinese trademark law explicitly specify that if there are two identical applications with the same trademark, the first applicant to register will be approved (Chang, 2014). Trademark squatters are constantly monitoring brands IPR protection for potential gaps as registering a trademark is seen as a potential source of revenue by later selling it back to the true trademark owner (E1; E2). As a

result, a third party can legally request any sum of money for the solution of the potential dispute of “trademark squatting” (E2). As a consequence, the interviewed case study firms have experienced problems due to the “first-to-file” registration policy with “bad faith” claims and “trademark squatting”. Case firm C2 explained that the “bad faith” registrations of the firm in China had cost the most problems. In regards to the “first-to-file” system, C2 originally filed through WIPO but later registered locally and while C1 were aware of the potential problems and registered the English name locally through the China TradeMark Office before entering the Chinese market. However, many foreign companies in China have experienced problems related to the “first-to-file” system at times resulting in “trademark squatting” done by infringers (C1; C2; E2; E3). Moreover, since the Chinese language is built up by a similar pronunciation of many different Chinese characters, this makes the trademark registrations even more complex as a Western trademark can potentially have three different registrations (Chang, 2014; World Trademark Review, 2016; Devonshire-Ellis et al., 2011). This “liability of foreignness” of differences in political, social and cultural factors facing investing firms thus creates further external costs (Hymer, 1976; Petersen and Pedersen, 2002).

Although C1 registered their English trademark locally in China, they still had their company name registered in Chinese by others and eventually had to register their version of their Chinese name as well. However, the company chose to handle the Chinese name registration of the third-party by focusing more on promoting the firm's English name in China (C1). In addition, C1 work to actively display the differences between counterfeits and genuine products through their website and in the firm's marketing information (C1).

As a consequence of the “first-to-file” system in China, E2 recommended EU firms not yet established in China to register the firm's trademark as long as it thinks it might eventually develop its business on the Chinese market (E2). A registration of a firm's trademark on the Chinese market will thus automatically block other potential firms from registering it. The only requirement of a trademark registration is that the company have to use its trademark in China within 3 years (E2).

Since investing Swedish SMEs might have a reputable, well-known in the Nordic countries but less known internationally. It is recommended to file for a trademark registration in China as soon as possible in order to avoid the problems associated with “first-to-file” such as “bad faith” registrations and “trademark squatting” (E1; E2; E3). In addition, a trademark registration is also a necessity to have when enforcing any of a firm's IP rights in China (China IPR helpdesk, 2014; E1; E2; E3).

6.3.2 China's sub-class system

Another difference in regards to the trademark registration system used in China concerns the application and moderation of the Nice classification system used in the West. The Nice System consists of a multi-file system meaning that the registration of a trademark can be filed in a single application while covering several different classes (Chang, 2014). Thus, the Nice system does not require applicants to file for additional subclasses of its product or services and thus only requires to designate the territories of interest. As a result, a registered trademark covers all the product categories in the class (China IPR Helpdesk, 2016; China IPR Helpdesk 2015).

However, while the Chinese system of trademark registration has implemented most parts of the Nice system, there are some important moderations concerning the division by each of the classes into further subclasses (Randau et al., 2015; China IPR Helpdesk, 2016; E1; E2). As a result, the owner of the IPR filing for the trademark registration has to apply and register separately for each of the classes and subclasses where protection is necessary (Devonshire-Ellis et al. 2011; Chang, 2014; E1; E2). Therefore, as long as the trademarks are not registered in the exactly same subclass, an identical trademark can be registered by a third-party and co-exist in the same class (World Trademark Review, 2016; E1). This differentiation in specific subclasses of the Chinese trademark system is often neglected by many foreign firms by mistake (World Trademark Review, 2016; C1; C2; E1; E2). As a consequence, for optimal protection of IPR in China, a firm should register and apply for as many classes and subclasses as possible (Randau et al 2015).

The empirical findings confirm that the difference in the trademark registration systems of subclasses has created problems for the investing firms (E1; C1; C2). Furthermore, E1 claims that this is one of the main areas where foreign SMEs lack the sufficient knowledge in regards to the IPR framework in China. As a result, many foreign firms have an inadequate protection of their IP in China since the firm's trademark are not filed in a comprehensive way (E1). A possible explanation besides the lack of knowledge put forward by E1, was due to the SMEs potentially scarce resources often only spending what they can afford. As a result, filing for all subclasses is simply not possible due to the associated expenses for many firms (E1).

However, the third amendment of the Chinese trademark law proposes a principle of “bad-faith” and further include improvements related to the registration process of trademarks by allowing IPR owners to only submit one application for multiple class registration (Chang, 2014). This amendment would thus simplify the procedure of registering for trademarks and serve as a further protection against the

problem of “trademark squatters”, often experienced by investing firms today (Ibid; C1; C2). In addition, the new amendment supports the process of litigation of registration of trademarks that have been made in “bad-faith”. Thus, implying that a trademark registration could be denied if it is similar to a well-known trademark but filed in a different subclass (Chang, 2014). However, although the new amendments of the trademark law are aimed at strengthening China’s IPR system, it is still not fully implemented in practice (Yu, 2016). Furthermore, the establishment of the additional administrative authorities handling the IPR procedures by the Chinese government, has induced a further complexity and inertia to the whole system of the Chinese IPR enforcement (Yu, 2016).

Nevertheless, the changes that have been seen coupled to the third amendment of the Chinese trademark law was welcomed by C2, which stated that before the new revision, the firm did not have any means of protecting themselves against bad faith registrations. However, although some improvements of the litigation process of “bad-faith” registrations in China have been made (Chang, 2014), the problems with “bad-faith” registrations still exist. As pointed out by E1, unless a firm is considered to have a well-known trademark or can prove that the trademark was registered in “bad faith”, there is only a 5 per cent chance of winning an opposition in China (E1). The reason for this is due to the reduced time-frame of the new trademark law, where the China trademark office sees no confusion if the trademark is registered in a different subclass and as a consequence will accept the application of a third-party (E1). This was also illustrated by the experience from C2, which had to buy back their trademark in a “first to file” dispute with a Chinese firm (C2).

As a potential solution, E1 recommends an investing SME to first pick the firm's core class in the trademark subclass system and then to secure subclasses in each class to properly protect the trademark of the company (E1). By doing this, a firm can set up a type of “zone defense” system of the company's IPR (E1). As a result, a firm operating in China should thus work with setting up exclusionary zones of protection of the firm's IPR (E1). According to E1, this type of zone system created by the company is an effective long-term strategy and thereby largely determines how aggressively the firm seeks to protect its IPR in China. Therefore, by having an aggressive protection strategy, there is a big chance that the firm can push the attacks of infringements on to other less protected brands in the market (E1). This recommendation corresponds with the experiences regarding the subclass system by C2. C2 admitted that the company had changed its strategy of subclass registrations on the Chinese market and is now registering more deeply, covering subclasses that the company potentially will move into the future to prevent the infringers from filing in them. In retrospect, the interviewee from C2 further explained that the company probably should have created a defense system already from the beginning (C2).

The findings from the empirical data of C2, also align with the recommendation suggested by E1 for firms to file a trademark based on how the company plans to oppose the trademark in the future (E1). Therefore, a firm need to consider how the products are to be sold in the marketplace and how the company's product range might expand. Thus by filing for protection in the subclasses potentially relevant for the company in the future and by strategically assessing how the actual sales of the products might affect a firm's IPR, a trademark defensive strategy can be established. In essence, by creating a defensive strategy, it is possible to prevent third parties from filing for the firm's trademark in classes similar to the company's core products (E1).

In addition, E1 claimed that a copyright protection in China is referred to as a “super-trademark” because it is often used in a combination with a registered trademark in trademark oppositions (E1). Although a copyright protection should be automatically gained at the moment of creation according to the Berne convention signed by China (China IPR helpdesk, 2014; Devonshire-Ellis et al., 2011). However, due to institutional voids and market failures connected to China’s economic transition and institutional development (Peng, 2002; Khanna & Palepu, 1997; Scott, 1995; North, 1990; Hansen et al., 2010), all three experts emphasized the need for a copyright registration (E1; E2; E3). Furthermore, it was even recommended by E3 to apply for copyright for a pamphlet, including the firm’s logos, texts and pictures. The reason being that without a copyright registration in China, it is harder to prove a firm to be the right holder of its IPR (E2). This also aligns with other professionals recommendations of voluntarily register valuable copyrights on the Chinese market (China IPR Helpdesk, 2014; World Trademark Review, 2016). Thus, a copyright protection is important to have since it creates a broader IPR protection for the firm and is also possible to use in trademark oppositions, online take-downs and litigation. Therefore, with a copyright protection a firm can exclude even further compared to have only filed for the trademark in a subclass as it is an evidence of prior right. As a result, copyright in China is a convenient and cost-efficient way of protection instead of filing for all subclasses of the 45 classes (E1).

In summary, even though a firm might have filed for full class headings in Europe, because of the difference in the trademarks systems, the portfolio would still be deficient on the Chinese market (E1). Hence, due to the differences between the two trademark systems, the experts stressed the importance of the investing firms to have a detailed understanding of the subclass system in China, a fact also stressed by many scholars (IPR helpdesk, 2013; 2014; 2015; Yu; 2016; Chang, 2014; WIPO, 2015; World Trademark Review, 2016). In addition, the IPR experts (E1; E2) recommended firms to file for a copyright registration on the Chinese market. The reason being that a copyright registration both creates a broader

IPR coverage of a firm and is possible to use in combination with a trademark in trademark oppositions since it gives the owner evidence of a prior right.

6.4 A Resource-Based View on Intellectual Property Assets in China

According to the Resource Based View theoretical proposition, the internal resources of a firm comprise its competitive advantage (Barney, 1991). By using IPR, a firm can secure a return on the investment and protect its internal resources coupled to the company's competitive advantage, from threats on the market (China IPR Helpdesk, 2014). Thus, IP assets such as copyrights, trademarks and trade secrets can be seen as intangible assets of the firm (Ichrakie, 2013).

However, as predicted by Barney (2002) a firm's internal resources are only valid when the “rules of the game” in an industry are fixed (Kraaijenbrink, 2009). Based on the information provided by case firms and experts with regards to the IPR protection on the Chinese market, China's regulatory framework is still deficient in practice (C1; C2; E1; E2; E3). As an illustration, C1 acknowledged problems of protecting its competitive advantage from competitors as local firms had copied the outline and interior parts of its products (C1).

Moreover, for optimal protection, it was emphasized during the interviews by all three IPR experts that it is important for a firm to register their IPR locally in China (E1; E2; E3). Thus, for a firm's internal resources to be sustainable following the VRIO framework, a firm must protect its resources from being imitable on the market (Barney & Hesterly 2010). The local registration of IPR thus helps in keeping the firm's resources being inimitable and consequently to protect the firm's competitive advantage by blocking out competitors (E1; E2; E3). However, based on the interviews with the case firms this had only been done partially with insufficient trademark registrations and no registration of a copyright protection in China (C1; C2).

Furthermore, based on the fact that SMEs within the design and retail sectors often build their competitive advantage around marketing their heritage and superior know-how, it is of particular importance to be able to protect a firm's IPR sufficiently (C1;C2). In particular, since the case firms for this master thesis all belongs to the product categories being most severely affected by IPR infringements today (Economist, 2016; C1; C2), and as the potential impact of infringements of a firm's brand can be substantial with a loss of revenue, reputation and the competitive advantage of the firm itself (China IPR Helpdesk, 2014). Thus, it is essential for a firm to be able to protect its internal resources on the market for a sustained competitive advantage Frey (2013).

However, determining a firm's competitive advantage is more challenging in a context of economic transition since the resources coupled to the specific environment might be as important as the internal resources of the company (Meyer et al. 2005). While such a focus on the external environment is largely ignored by the Resource Based View (Barney, 1991). However, it supports Dyer and Singh's (1998) argument of considering the established relationships of a firm to be a resource in itself. Thus, relationships with key stakeholders are more important to establish for a firm in a context of economic transition with underdeveloped formal institutions (Forsgren, 2008; Peng 2008; Luo 2007).

Consequently, the findings from the interviews are in line with the critique put forward by Brouthers, (2013), Peng et al (2008) among other scholars that the RBV do not consider the environment's potential impact on the firm's internal resources. Therefore, the result of the findings illustrates the importance of a clear understanding of the market- and institutional context in securing a firm's internal resources and competitive advantage through the use of IPR and establishment of safeguarding measures.

In summary, firms need to be able to protect its IPR in order for the company's competitive advantage to be inimitable and remain sustainable (Ichrakie, 2013; Barney, 1991; Barney & Hesterly 2010). Which could be done by filing for trademarks and copyrights locally in China (E1; E2; E3). However, the protection of a firm's internal resources in the marketplace is costly due to the additional transaction costs required (Williamson 1981; Hennart, 1991, and the institutional barriers present in the marketplace (Peng, 2002; Khanna & Palepu, 1997; Scott, 1995; North, 1990; Hansen et al., 2010).

6.5 Enforcement of IPR on Alibaba Group's E-commerce Platforms

Despite China's recent improvements of the country's IPR laws and enforcement, it is still not in line with the rapid growth of web-based counterfeiting (World Trademark Review, 2016). As a result, the problems of counterfeits leads to substantial additional costs for firms operating in China today (The Confederation of Swedish Enterprise, 2015). In addition, several of the Swedish firms investing in China claimed to have been negatively affected by the weak enforcement of China's IPR laws (The Embassy of Sweden's study, 2012; 2013). This was also supported by the experience of the case firms which had faced additional costs due to the "bad-faith" claims and IPR infringements found online such as counterfeit goods (C1; C2). The transaction cost for SMEs in China is therefore particularly high, since there is a need for constant monitoring and enforcement procedures required to protect a firm's IPR on Chinese e-commerce platforms. However, the transaction costs and financial expenditure is a necessary step to protect a firm's internal resources and competitive advantage on Chinese e-commerce platforms

today (Barney, 1991). Thus, even though the Chinese legal framework is developing and becoming more advanced, the institutional voids and market failures coupled to IPR are expected to persist during the period of economic transition (Khanna & Palepu, 2010; Peng, 2000; 2003; Meyer, 2001).

As shown from the case studies, the behavioral and environmental uncertainty is particularly high in the Chinese e-commerce market due to the deficiency of the IPR legislation, creating a higher risk of opportunism for investing firms (C1; E1; Brouthers et al., 2004). Thus, the results from the empirical data largely confirm the proposition set out by Oxley (1999), regarding a country's institutional volatility and its effects on increased transaction costs for an investing firm. Furthermore, the findings confirms the general proposition made by the institution-based view, claiming that the transaction costs are high in China due the underdeveloped formal institutions (North, 1990; Peng, 2002; Khanna & Palepu, 1997; Scott, 1995).

As the Alibaba Group's e-commerce platforms together make up more than 80 per cent of the online retail sales in China (Broad, 2014), and as $\frac{3}{4}$ of the captures counterfeit goods stems out of shipment from e-commerce platforms. The various e-commerce platforms of Alibaba Group thus play a great part of the problem (Economist, 2016; IPR helpdesk, 2014; 2013). However, as a consequence of the deficiency in the formal institutions in enforcing the IPR laws in China, Alibaba Group has set up their own reporting systems to ease the procedure of taking down IPR infringements from their different platforms (Alibaba Group, 2016). Thus, by implementing its own reporting system, Alibaba is trying to influence "the rules of the game" of the marketplace in the Chinese e-commerce industry to be more advantageous to the firm (Peng et al., 2008).

Furthermore, a review of Alibaba Group's IPR protection policies strictly prohibits trademark and copyright violations (Alibaba Group, 2015). By implementing its own reporting systems of Taoprotect and Aliprotect, Alibaba Group managed to raise the effectiveness of IPR enforcement on its platforms. As a consequence, the reporting systems of Taoprotect and Aliprotect has shown to be effective when receiving infringement claims from firms, as long as the companies are complying with Alibaba Group's requirements (E1; E2; E3, IPR Helpdesk, 2013;2014;2015).

When filing a complaint through one of Alibaba Group's two reporting systems of Aliprotect and Taoprotect, the IPR experts and scholars recommend firms to follow three different steps (E1; E2; E3, IPR Helpdesk, 2013; 2014; 2015).

At first, a company needs to contact the e-commerce platform where the infringement material has been found and display evidence that the firm is the actual right holder of the IPR. This is being done by

providing the trademark and the copyright certificate, both preferably registered in China (Ibid). Second, a valid identification such as the business license or a passport need to be provided in the system when filing the complaint (Ibid). Moreover, in the case of a third-party handling the enforcement process of a firm, it needs to show the documents stating that the firm is entrusted to act on the original IPR holder's behalf (E3). Third, the firm filing for the complaint need to attach the discovered listenings with the actual infringing material along with an explanation of the why the material is infringing the IPR of the firm (Ibid).

As illustrated above, the procedure of reporting through Taoprotect and Aliprotect is rather simple (E1). In addition, if a firm is reporting numerous listing on Alibaba group's e-commerce sites, the company have the possibility to apply for a “good faith policy”, which simplifies the procedures even further (Laurijssen, 2015). E2 also emphasized that the online platforms have a legal obligation to take down the reported infringements today. Thus, providing an additional explanation of Alibaba Group’s extensive work on trying to prevent IPR infringements on its e-commerce platforms (Alibaba Group, 2015).

However, the environmental uncertainty facing firms operating in the Chinese e-commerce market is further increased with the risks coupled to the political and legal framework due to the current transition of China's economic system, creating a volatile and rapidly changing market environment (Brouthers et al., 2004; Brødsgaard, 2014; Meyer, 2001). Moreover, since many of the investing Swedish SMEs in the design and retail sectors build their brand on superior technology, know-how and marketing their heritage and good-will, the asset-specificity of these firms resources are unusually high (C1; C2; Brouthers, 2013). Therefore, it is particular importance for a firm within the design sector to apply for the rights of trademark and copyright in China and to work constantly on removing the infringements found on e-commerce platforms. Thus, an aggressive and well-structured enforcement processes utilized by the firms on the Chinese market is the optimal way of keeping infringements and counterfeits at bay (E1; E2).

In summary, we conclude that China’s inadequate IPR framework coupled with the development of China's formal institutions and current economic transition, makes the transaction costs regarding monitoring, protection and enforcement measures particularly high on the Chinese e-commerce market (Maekelburger et al., 2012). However, the constant monitoring, protection and enforcement procedures, are needed (E1; E2; E3, IPR Helpdesk, 2013;2014;2015) since it will protect a firm's intangible resources and competitive advantage in the marketplace (Ichrakie, 2013; Barney, 1991; Barney & Hesterly 2010).

6.6 Monitoring of Alibaba Group's E-commerce Platforms

According to the experts, it is important for companies operating in China to establish a long-term strategy for IPR protection (E1; E2; E3). This proposition was also further developed in the interviews by all three IPR experts who stressed the need for firms to implement monitoring and enforcement actions in the marketplace (E1; E2; E3). The recommendation is also supported by many other professionals working with IPR in China who emphasize the importance of pursuing a take-down program aimed at targeting online-platforms that might be featuring counterfeited goods (World Trademark Review, 2016; China IPR Helpdesk, 2013; 2014; 2015). This supports Devonshire-Ellis et al's (2011) recommendation to prevent infringements and achieve an increased protection of a firm's IPR by defining an IPR strategy involving monitoring and instant actions in the marketplace. Corbin (2002) also argues that the top management of a company should develop a strategy of agile processes on how to mitigate risk, theft and abuse of IPR when it occurs. A proposition which also aligns with the risk management literature, stating that the management of risks by the firm correlates positively with the performance of the company (Andersen & Schrøder, 2010). Therefore, it is thus important for a firm to be able to identify, assess and manage the risks in order to minimize the potential downfalls and mitigate potential future risks (Andersen & Schrøder, 2010; Mahendra, et al 2013; KPMG International, 2010; Claessens, 1993; Andersen & Torben, 2006).

In order to identify the risks related to IPR infringements, E2 recommended investing firms to appoint a person or an IP manager to work with the IPR management and monitoring of the company. This person should have a clear understanding of the firm's strategic IPR objectives and work with constant notice and take-down procedures to assess the risks of the infringements and manage them properly (E2). Furthermore, the person can be based either in-house or outsourced (E2). According to E2, a possible low-cost solution for a firm can be to appoint a Chinese intern to monitor the websites actively and work with the procedures of notice and takedown to perform enforcement actions on the marketplace (E2). The person working with the IPR management should be familiar with the reporting procedures to be able to protect the IP portfolio of the company (E2). By appointing a person with a solid understanding of China's IPR laws, language and culture, an investing SME could arguably reduce the "liability of foreignness" and the associated higher transaction costs related to an insufficient understanding of China's legal system.

Furthermore, it is recommended to conduct regular searches in key classes in the Trademark Office Gazette, as well in the CTMO's online database in order to identify potential infringing trademarks (World Trademark Review, 2016). Thus, appointing a person working with the IPR strategies of the firm

aligns with the propositions made by the knowledge-based view of developing knowledge embedded in the organization (Grant, 2000). According to the knowledge-based view, a firm's competitive advantage consists of its ability to access, develop, integrate and deploy knowledge embedded in the organization (Grant, 2000). Thus, creating an awareness and integration of the knowledge about IPR protection of the company in China, is increasingly important. Regarding the results from the case firms, C1 acknowledged that it currently employs a person in-house working with the management of IPR, while C2 is currently outsourcing the procedure of monitoring and enforcement of the websites to a consultancy agency.

Furthermore, it is important for a firm to conduct a segmentation exercise to focus on the websites in accordance with the firm's strategic goals and requirements (E1). A firm should thus focus its strategy on the websites which are the most popular and the most severe in terms of IPR infringement (E2). The most popular and visible websites are Alibaba, Tmall and Taobao and thus, these sites should be the top three (E1). Since, Alibaba Group's e-commerce platforms make up 80 % of the total online retail sales in China (Broad, 2014) it is thus crucial to monitor these websites. The Chinese online platforms can be further divided based on the language used in either English or Mandarin Chinese (E1; E3). According to E3, if an online platform is in Mandarin Chinese it is mainly focusing on the domestic market and an investing firm need to have its IPR registered in China. However, if an online platform is in English and is targeting customers primarily outside of China, a proof of IP from WIPO is often sufficient (E3).

As mentioned previously, the optimal procedure stated by many scholars and IPR experts to stop the infringers online in a cost-efficient way, is to simply contact the e-commerce platform and ask them to assist in removing the infringing material (Devonshire-Ellis et al., 2011; China IPR Helpdesk, 2013; 2014; 2015). In addition, according to Chinese law, an IP-protected material should not be uploaded without the IP owner's consent (China IPR Helpdesk, 2013). Therefore, yet another way is to contact the registrar of the website, asking for assistance (E3).

However, E1 went one step further by recommending firms to build a relationship with the online provider and set up a real store, thereby creating a mutually beneficial agreement of cooperation against the infringers. A cooperation between the e-commerce platform and the investing SME would therefore decrease the amount of counterfeits found on the platform (E1). This solution was recommended as optimal since it does not involve any legal fees and is targeted at already present customers interested in the firm's products (E1).

Thereby, SMEs could make use of building business networks with e-commerce platforms to protect themselves against the deficiencies in formal institutions present on the Chinese market today (Forsgren,

2008). While such a focus on the external environment is largely ignored by the RBV. However, it supports Dyer and Singh (1998) argument of an established relationship to be considered as a resource in itself. In addition, this finding is also supported by Meyer et al (2005), which claimed that a firm's resources are more coupled to the market context in a transition environment. Moreover, the feature of establishing informal relationships between business partners is not only a substitute for the lack of formal institutions, but also of particular importance in China due to the culture of “guanxi” (Peng et al., 2008). This finding is also in line with Khanna & Palepu (1997) and Peng (2002) research that the informal institutions established through reputation or interpersonal relations with key stakeholders are often more common in developing countries and emerging markets. Lastly, it is also coupled with the findings of Luo (2007) research about strategic insiders in China.

Hence, the findings from the empirical data correspond with the theoretical assumptions of the network-based theories. Consequently, the use of informal relationships due to the deficient formal institutions still seems to play a role in the marketplace in accordance with the institutional theory (Peng, 2002; Khanna & Palepu, 1997; Scott 1995). The result thus complies with Peng's (2003) model of institutional transition since a firm need to combine a network-based strategy with a market-based when operating in an increasingly rule-based market institutional context. The findings from the empirical data thus reveal the importance of the behavioral- and environmental uncertainties coupled to increased transaction costs of the monitoring and enforcement measures needed to protect IPR from opportunism on the Chinese market (Williamson, 1985).

In summary, since China's IPR laws are still deficient in practice, it is important to perform constant monitoring and enforcement procedures on Chinese e-commerce platforms to mitigate risks by identifying and removing infringement on the platforms (IPR Helpdesk, 2014; Corbin, 2002; E1; E2; E3). In addition, E2 proposed foreign firms to appoint an IP manager or a Chinese intern, since it might reduce the consequences of “liability of foreignness” and also reduce the associated transaction- and financial costs of the firm. Thus, constant monitoring and performing of notice and takedown procedures, is a cost-effective way and can ultimately push the attack from the infringers on to other brands on the market (E1; Devonshire-Ellis, 2011).

7. CONCLUSION

In this section of the paper, we provide the conclusion and final recommendations on how Swedish SMEs optimally can prevent their business from IPR infringements on Chinese e-commerce platforms today.

Guided by Peng's (2008:924) proposition of *"How to play the game, when the rules of the game are changing and not completely known?"*. By analyzing the secondary and primary data gathered for this thesis coupled to the theoretical framework provided in the literature review. We have set out to distinguish the "rules of the game", and how investing SMEs can respond to the obstacles of deficient IPR protection present on Chinese e-commerce platforms, with a particular focus on Alibaba Group's e-commerce platforms today. At the beginning of this paper, we set out to answer the following research question:

- How can Swedish SMEs within the design and retail industries in China optimally prevent their business from IPR Infringements on Chinese e-commerce platforms?

1) Register the firm's trademarks and copyrights in China

Due to China's undergoing economic transition and weak formal institutions, market failures and institutional voids are still prevalent on the marketplace. As a result, registering a firm's IPR, namely: trademarks and copyrights through the CTMO on the Chinese market are essential for a firm to be able to display evidence of prior right and protect its competitive advantage. Thus, by having a registered trademark the obstacles of "first to file", "bad faith" and "trademark squatting" can be better prevented. Furthermore, it will prove essential to have in the process of enforcement of IPR on Chinese e-commerce platforms, especially if the platforms is targeting a Chinese audience. Even though, a firm have not entered the Chinese market yet but plans to do so, the firm should still register its IPR in China. Furthermore, a copyright registration can be used in combination with a trademark for a broader protection in trademark oppositions, since it is a proof of prior right. Copyright is also a cost-efficient way to protect for trademarks logos, pictures and texts.

2) Understand the characteristics of China's trademark law

Even though recent amendments has been made to the Chinese trademark law, such as simplifying the procedure of registering multiple trademarks in one application and the litigation procedures against "bad-faith" claims. Problems related to the subclass system and the "first-to-file" system in China for foreign SMEs remain an obstacle. The "first-to-file" procedure applied in China, continue to present problems for investing Swedish SMEs, both in regards to the Chinese language and in relation the

Chinese division into subclasses that need separate protection. Furthermore, the “first-to-file” system presents problems since it sees the first applicant of the trademark to be the legal right holder, in contrast to the West, where it is often the “first-to-use” who is the legal right holder. In addition, in case, a company cannot prove that they are a well-known trademark, there is a little chance that they can oppose the “bad-faith”, “trademark squat”-registration since the Chinese court rarely accepts reputations from overseas, and often see no confusion if the trademark is filed in a separate subclass. Therefore, it is emphasized for investing firms to have a detailed understanding of China's trademark law. Especially about the importance of registering in separate subclasses and protect in subclasses that might prove relevant in the future, and the “first-to-file” system and its implications. In addition, it was recommended for SMEs to create a zone defensive system by strategically registering the trademark in different subclasses and file for copyright, as it can prove useful in trademark oppositions. This defensive system largely determines how aggressively a firm wishes to defend its IPR on the Chinese market.

3) Appoint a person in charge of the IPR management

Based on the problems with the inadequate enforcement of China's IPR laws, it is crucial for investing firms to create an IP portfolio outlining the most strategic important assets and objectives of the firm. In addition, an IP manager or any person working actively with IPR management should be appointed and follow the IPR strategy outlined by the management with the aim of protecting the firm's IP portfolio. This person will be working with overcoming the “liability of foreignness” and reduce the associated transaction costs and financial expenditure present on the Chinese e-commerce market. It is important that this person will work with the monitoring and the enforcement tasks of the company, thus to continuously perform notice and take-down actions of infringements found on Chinese e-commerce platforms. This is important since the outcome of a firm's business is related to the ability to identify, assess and manage risks. If a firm discovers infringements on one of Alibaba Group's e-commerce platforms, the firm should make use of one of the reporting systems, namely: Aliprotect or Taoprotect. Which system to use depends on what e-commerce platform the infringement was found. If a company is following the requirements set by Alibaba Group, the removing of the infringements found goes relatively easy, and a firm can also apply for a “good faith” policy, simplifying the procedures even further. In case infringements are found on an e-commerce platform that is not owned by the Alibaba Group and does not provide a reporting system, a firm can contact the registrar of the domain and ask for assistance. These enforcement procedures should be done proactively, to remove infringements and ultimately push the infringers on to other, less protected brands.

Furthermore, besides monitoring of e-commerce platforms, it is also recommended to monitor the CTMO trademark database, to find “bad-faith” registrations. Appointing a Chinese intern was further suggested as a low-cost solution. The work can be done in-house or outsourced, the importance is, however, on building knowledge in the company to facilitate the structure and instant procedures to keep the company's brand free from online infringements.

4) Segment the Chinese e-commerce market

A segmentation exercise of the e-commerce platforms should be implemented. In general, a firm should focus on Alibaba, Tmall and Taobao or the strategically most important e-commerce platforms for the company's products. In addition, the e-commerce platforms can be further divided based on the language used. For Mandarin Chinese, a registration of IPR in China is often required, while for e-commerce platforms in English, it is often sufficient with IPR registered internationally.

5) Cooperate with Chinese e-commerce platforms

A firm should build a mutually beneficial relationship with the e-commerce platform to increase the effectiveness of its protective IPR measures. If the firm is already experiencing counterfeits on the e-commerce platform, it implies there is already a market for the firm's products. Therefore, a firm should set up a store selling the genuine goods directly to the customers to decrease the amount of counterfeits found on the platform.

Concluding remarks

In summary, China's dynamic and fast developing e-commerce market will continue to create vast opportunities for Swedish SMEs. China's current economic transition into a service- and innovation-based economy will bring along an enhanced enforcement of the IPR laws. However, the deficiency of the IPR enforcement in China is likely to persist during the period of economic transition.

The conclusion of this paper is based on five components, namely: (1) register the firm's trademarks and copyrights in China, (2) understand the characteristics of China's trademark law, (3) appoint a person in charge of the IPR management, (4) segment the Chinese e-commerce market, and (5) cooperate with Chinese e-commerce platforms. By following the recommendations outlined in this paper, Swedish SMEs within the design and retail industries in China could prevent their business from IPR Infringements on Chinese e-commerce platforms today.

8. IMPLICATIONS

This section of the paper present the implications of the research provided as well as suggestions for further research based on the questions raised by this research.

8.1 Theoretical Implications

By protecting the firm's IP assets and thus secure a competitive advantage in line with the RBV, a firm can reduce many of the additional transaction costs coupled to the deficient IPR framework prevalent in China. For instance, this study stresses the importance of SMEs to implement protective measures of its competitive advantage and to mitigate the potential risks that the influences of the external environment might have on the value and use of a firm's resources.

Therefore, the findings indicate that Swedish SMEs investing on Chinese e-commerce platforms, need to be aware of, and learn how to overcome institutional voids and market failures related to IPR infringements present in the Chinese e-commerce industry. The RBV can thus not stand alone when it comes to analyzing and understand a firm's competitive advantages in a developing context since their resources within the firm will be profoundly affected by the institutional surroundings, a claim made by many scholars and also evident in our findings. Thus, the result of this research are in line with some of the criticisms raised by scholars against the theoretical propositions set out by the RBV.

In addition, the study also indicated the importance of learning how to work actively with risk management and adequately protect and enforce IPR on Chinese e-commerce platforms and thus facilitate learning of IPR within the firm, supporting the KBV. Moreover, since the findings of this study are based on the collected first and secondary data, this paper contributes to the literature on IPR protection in China by combining new explicit knowledge about IPR protection on e-commerce platforms with the existing literature on China's IPR framework. By analyzing the data along with the theoretical framework presented in this thesis, we were also able to confirm many of the theories outlined in this paper. As a consequence, our findings support the institutional theory's propositions of formal institutions in developing countries tend to fall short in connection with a deficient credible framework resulting in informal institutions being more prevalent in the marketplace. In addition, the findings are also in line with the literature on transition economies. The analysis confirms the previous research by illustrating the volatile and dynamic nature during the period of institutional transition with many parts of the economy not yet being fully reformed. The main contribution of this thesis is that it provides updated IPR practices primarily for Swedish SMEs on how to protect a firm's IPR when investing on Chinese e-commerce platforms today.

8.2 Implications for Practitioners

To a great extent, investing SMEs on Chinese e-commerce platforms are experiencing infringements of their IPR. Even though the Chinese enforcement of its IPR laws is showing sign of improvement also in practice. The vast size and growth of the Chinese economy coupled to the principal-agent problem and path-dependency, the problem of IPR infringement in China will remain for some time still. The main contribution of this paper for practitioners, is therefore, that it provides a guideline for Swedish SMEs on how to optimally protect the firms IPR when investing and operating on Chinese e-commerce platforms today. Therefore, by highlighting the important points of reference and the potential risks facing Swedish SMEs today, this paper wish to increase the knowledge of the Chinese IPR legislation needed to prevent IPR infringements found on Chinese e-commerce platforms. Inevitably, the laws and regulations in a country are in a constant change particularly in a period of economic transition. As a result, the main contribution of this paper to practitioners is to stress the importance for firms to appoint a person that has or will gain an understanding of the Chinese legal system, and thus be able to work with enforcement and monitoring of the firm's IPR, based on an IPR protection strategy outlined by the management of the firm.

8.3 Limitations

Due to the sensitivity of the topic of a firm's IPR management, all case firm for this study have been anonymous. Therefore, a detailed description and presentation of the interviewed case firms might have provided the research with a deeper understanding and resulting in further consequences. In addition, the small number of case firms applied for this study consisting of two firms representing four companies restrict the generalizability of the findings. Moreover, in a way to overcome potential vested interest from IPR experts, we decided to analyze their advice about what other IPR experts are saying and what scholars have found through their research. If a company decides to adhere to the recommendation provided in this paper, it is important to understand the limitations of the study. A more detailed description can be found in the methodology section of this paper.

8.4 Implications for Further Research

Although this paper makes several contributions to the outlined research area. However, the generalizability of the findings could have been improved by including more case firms. This is particular the case when using a case study approach, since it is associated with problems related to generalizability, a follow-up study would be thus necessary to ensure the robustness of the results. Therefore, in order to improve the findings, further research should focus on including a larger number of case firms for the research. Regarding the focus of this study, future research can expand the research

area and also include the process of litigation and action through courts. In addition, since this paper does not handle the procedures of protecting patent rights, this would enhance the understanding and scope of the problem area for investing SMEs. In addition, it would be interesting to perform a longitudinal study regarding the topic of IPR enforcement on Chinese e-commerce platforms since it would reveal the change and development of the obstacles facing SMEs in China today.

Although attempts of contacting different persons were made, both in English and in Mandarin Chinese, we were unable to include the Alibaba Group for an interview. However, it would have been valuable to this study to have their input on the topic as well. Therefore, we advise future research to include the view of the e-commerce platforms as well. In addition, since this thesis is aimed at understanding the situation surrounding SMEs doing business on Chinese platforms, it would have been equally interesting to conduct a study on the e-commerce platforms, on how they are working on preventing IPR infringements and on how they work on overcoming institutional voids present in the marketplace.

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Appendix A: Example Transcription

Extract of how the recorded interviews were transcribed

Selection of transcribed interview with Reinout van Malenstein IP Expert at China IPR SME Helpdesk.

Date: April 15th of March, 2016

Duration of the recording: 14 min 57 sec

Interviewer: *Alright, so the first question, how can small and medium-sized enterprises (SMEs), in China optimally protect their trademark and copyrights online?*

Respondent: Well, first they need to register it, right, so with trademark you are talking about registration. That means that, let's see, so you are doing this for Denmark or Nordic countries?

Interviewer: *Mostly Swedish and Danish companies.*

Respondent: That means that a Danish and Swedish trademark are not recognized in China. So you need to have a Chinese trademark. So either through the international roots, the company should apply for that, so through the, it is called, Madrid protocol roots through Alicante, they can apply for trademark for the EU but you can also do it for China, America those kind of things. That's one way, or you can do it separately, domestic registration for China, right. And then copyright, copyright is protected the moment it is created, that is due to an old convention called the Berne convention. But, I still recommend to register copyright in China, because the Chinese have these system with the China copyright protection center. Need to do...google the right name for that by the way for the thesis. But you can protect that, by putting in a registration if you have the registration you can prove that you are the copyright holder, if you don't do that registration it is very hard to prove that you are the copyright holder.

Interviewer: *Ah ok, so that is main reason that you have to prove that you are the copyright holder, on the Chinese side?*

Respondent: Exactly, if you talk about online enforcement you need to show three things generally to an online platform. 1 you are the right holder, so that means show them preferably the Chinese certificate of your trademark or the Chinese certificate of your copyright that is one, 2 if you are company, it is business license passport that you need to send to them. 3 you need to send the infringing links where

the products actually are, otherwise they do not know where they can be found, those are the three things you need to send. That's why you need the IPR protection for that.

Interviewer: *Ok, and so what are the most common mistakes you are seeing regarding SMEs work with preventing their IPR from infringements online?*

Respondent: What the common mistakes, let's rephrase the question, that the most common mistake with regards to Intellectual property rights in China that companies make. Is that they think that European intellectual copyright also protect them abroad.

Interviewer: *Because China has signed a lot of the international agreements?*

Respondent: Yes, China has signed the international agreements, but law is still national. So that means that you sign an international agreement agreeing, a minimum amount of protection. But, the implementation, how you do that that can still vary from country to country, so general in law you have differences between common law countries and civil law countries, but you also have differences between civil law countries among themselves, for example, Sweden, Denmark, Netherlands are all civil law countries, China is also a civil law country, but if you took for an example another mistake, design patent in China, needs to be registered in order to be protected and cannot be disclosed before you register them. Whereas in the EU you can you have an unregistered design-right, so you just have that for 3 years without putting in a registration so that shows that the systems are the same cause they both provide a protection for designs, but the implementation is different, because of the different implementation what happens in practice is that Swedish, Danish companies think that their design are protected in China for 3 years. But they are not, because China does not have these 3 years protection system.

Interviewer: *Ah ok, yes.*

Respondent: And another problem here is "first to file", like I said so whoever files the trademark first has the right, unless there is any kind of relationships between the companies, so that is another big problem that you see there.

Interviewer: *So what if a Chinese company applies for a successful Swedish company' trademark in China, will it be theirs?*

Respondent: And then it is theirs, and this is one of the biggest problem that I see at the moment. So whenever there is a trade ligation coming, for example with the Swedish king or with any other royal member or with the prime minister we see that there are actually Chinese people who look at what companies are in that delegation and google or Baido that company look where there trademark is, then go on the website of the Chinese trademark office, see if they have a trademark or not for China. If they don't have it they register because it is very cheap for them and you only have to have 1 company that actually will do business here and can block them from doing business. And then you are in situation where you can ask any kind of money for that, because it is completely legal.

Interviewer: *Is it similar to the example with new balance that you gave before during your presentation?*

Respondent: That is a different example, because that is the Chinese name, so it is a little bit different. But my example with the Italian handbag manufacture for example. Taken like a very old family name that has been used for more than 200 years in Italy. Which is completely legal, because there is no connection between the companies so you can register it. So if there is a Swedish company, as long as it is not an international or Chinese well-known trademark, then I can register it in China if it not yet registered.

Interviewer: *Okey, so it is important to register the trademark as soon as possible before entering the Chinese market?*

Respondent: Exactly, you don't have to do business here yet, you have to make sure that you are using your trademark in China within 3 years of registration. So that means that you can register at already if you think you in the future will do something in China, because it block other people from registering it.

Interviewer: *When a company encounters IPR infringement on an e-commerce platform, what are the optimal procedures having it taken down according to you?*

Respondent: Now, According to Chinese law, if you encounter any IPR infringement on an e-commerce platform, once you notify the e-commerce platform that there is an infringement and that you are the right holder and you tell where the infringement is they have the legal obligation to take it down, if they don't take it down they are liable themselves.

Interviewer: *Ah ok, the e-commerce platform?*

Respondent: Exactly, you need to prove that you are the right holder.

Interviewer: *In China.*

Respondent: In China, yes that you have showed the business license with your private party show passport and then give the links with the infringements. That is all you have to do. And some website has these reporting system, you can file through that, if a website doesn't have that, makes sure that you write them an email or letter in Chinese, saying the same thing, and they have the legal obligation to take it down. And if they then don't take it down you can start proceedings against them.

Interviewer: *Ah ok. I guess you already answered this question. In case, there isn't any reporting system on the e-commerce site, what can SMEs do in order to take down the infringements?*

Respondent: Yes that what I said, in regards to that letter or that email. If they really don't want to then take a law firm, because you have the right, they have the legal obligation to do it.

Interviewer: *And when you do this, what is actually achievable when taking down these infringements. What would be your recommendation, I mean you were mentioning before that, maybe after a week the infringements will be there again?*

Respondent: Yes that might happen, my recommendation to any company is to have an intern for example someone that is low cost to the company to do work that seeks out these infringer and that knows how to deal with these reporting mechanism and then constantly ask for notice and takedown procedures, the system will change there is already a blacklist in etc. for people that keep infringement, and only by keep doing this, keep reporting you can make sure that the infringement will not come back. Because when it comes back you just have to make it more difficult for people that has started to show up again and again and again if you constantly do that. That is the way, also you might get, get evidence through buying a sample and placing an order like that getting evidence that actually infringe, and Then you can actually start administrative enforcement or civil enforcement so you can go the administrative authorities try to seize the goods, and then they can get the penalty, they could close down, and if you want to have a long term solution then have to get through the litigation roots of civil law enforcement, get a lawyer, going into litigation and make it stop. Those are the long-term ways to stop it. But the

cheapest way to stop it is always to notice and takedown, that doesn't cost you money. Only cost the manpower of one person seeking out infringement and reporting,

Interviewer: *But, I mean it is a huge task I guess there is a lot of ecommerce platforms in China, should you focus on just a few or?*

Respondent: You should focus where there is the most infringement basically, but also Chinese consumers knows where they go and which one they wouldn't go. I would definitely try out the big ones, hey if you have a small one that seems to be successful you should go for that one to.

Interviewer: *Okay, so what do you recommend to SMEs, you said, place an intern, so do you recommend to have this in-house or outsource this to another firm?*

Respondent: I cannot make any recommendation about that, out of my job function, I cannot, European commission which is the party that fund China IPR cannot disrupt external market, so cannot say what the best things to do is. But I can say, get someone to do it and who does it doesn't matter,

Interviewer: *Ah but only focus on IPR infringement?*

Respondent: What I also said within the presentation if you have an IP manager within you company that is best, and that IP manager has an IP portfolio, so he knows exactly what kind of IP is in the company, and either that person or someone report to him does this, it's the ideal situation, he could also send it out to an external party to do that, that is all fine, it is all realistic ways to do it.

Interviewer: *Ok, what kind of changes are you seeing when it comes to IPR protection for SMEs in China today?*

Respondent: There is still not enough knowledge about Chinese law, and that result in decision making based on Danish and Swedish practices and as a result having no protection or limited protection in China, because there is a lack of knowledge on Chinese law, and if you want to be protected in China you have to adhere to Chinese law.

Interviewer: *And are Chinese laws also getting more protective in that sense or?*

Respondent: Chinese laws are good laws, they are very clear, they protect what they need to protect, and the biggest problem that I personally see here, is EU companies not taking advantage of it. Of the difference in the systems, and as a result just not being protected. if a company says like, let's not do any form of IPR protection because China cannot protect IPR if that what a company thinks, then they will have a really worse time in China, because they have 0 protection instead of apply for the trademark, apply for that patent, have that copyright registered have someone on top of it, it will be a complete different situation and there is actually a lot of companies that can do successful business like that.

Interviewer: *So yeah, I guess, you basically answered this question already. What would be your recommendation to a very good friend who is about to enter China and want to protect IPR online in the best possible way?*

Respondent: The best possible way is to get your IPR registered in China, get your certificate and monitor, keep monitoring and keep doing notice and takedown actions. That is the cheapest and the best way to do it.

Interviewer: *Thank you so much.*

Respondent: Ah my pleasure.