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I often say that when you can measure what you are speaking about, and express it in numbers, you know something about it, but when you cannot measure it, when you cannot express it in numbers, your knowledge is of a meagre and unsatisfactory kind...

— Sir William Thomson, Lord Kelvin (1824–1907)
FOREWORD

Over the years, businesses have seen a fundamental shift in the sources of value creation from their tangible assets to their intangible assets: their intellectual property. In today’s knowledge-based economy, intangible assets, including brands, are recognized as highly valuable properties, contributing to revenue and growth, and propelling a significant share of the value of a business. But just how much? How should brands be valued? These questions are taking on increasing significance with financial, legal, and marketing professionals. More importantly, with changing consumer behavior resulting from demographic, socio-economic, and technological developments, all brand professionals are faced with the question of how to measure consumer interactions with brands and how this impacts an organization.

In 2018, the INTA Board of Directors approved the creation of a Brand Value Special Task Force (“Task Force”), composed of fourteen INTA members and non-members:

- Safir Anand (Anand and Anand), India
- Amandine Bavent (BrandZ), United States
- Bobby Calder (Kellogg School of Management at Northwestern University), United States
- Bryce Coughlin (Netflix, Inc), United States
- Thomas Gounel (Formerly, Deloitte), France
- Gustavo Giay (Marval, O’Farrell & Mairal), Argentina
- David Haigh (Brand Finance), United Kingdom
- Andy Harington (The Brattle Group), Canada
- Debra Hughes (Blue Cross Blue Shield Association), United States
- Sara Perry (Netflix, Inc), United States
- Michael Rocha (Interbrand), United Kingdom
- Melody Schottle (Exxon Mobil Corporation), United States
- Jennifer Severns (American Marketing Association), United States
- Doug de Villiers (Deloitte Consulting Africa), South Africa

Over the last twenty-two months, the Task Force has engaged in focused research and dialogues designed to provide a set of recommendations for INTA. In addition to clarifying the complex concepts and definitions borne out of the different brand valuation methodologies, the Brand Value Special Task Force Report (“Task Force Report”) also discusses ISO 20671: 2019 Brand Evaluation-Principles and Fundamentals which was issued in March 2019.

Section 7 of the Task Force Report highlights seven Expert Insights providing readers an in-depth look into concepts of brand value, brand equity, brand valuation, and brand evaluation from the perspective of financial, legal, and marketing professionals. Additionally, another unique feature of the Task Force Report is that it features an Expert Insight on changing trends in consumer behavior resulting from demographic, socio-economic, and technological developments.

The Task Force members have also developed a checklist of questions for brand professionals to consider when involved in brand valuation and brand evaluation dialogues with stakeholders within and outside of their organization. The Executive Summary of this Task Force Report will be available publicly. The full Task Force Report will be accessible only to INTA members.

In addition to providing a roadmap for INTA on how to advance the Association’s work around brand value, brand equity, brand valuation, and evaluation, we are confident that this Task Force Report demonstrates the critical role that trademark professionals play in valuation and brand evaluation exercises alongside finance and marketing professionals, and provides the basis for formulating and developing practical applications of these developing concepts.

We thank the Task Force leaders, members, and staff for their hard work on this initiative.

Tish Berard
2018 INTA President

David Lossignol
2019 INTA President
ACKNOWLEDGMENTS

The Brand Value Special Task Force leaders and members would like to express their gratitude to the following individuals for their contributions in the development of this Task Force Report:

- Frank Findley, Marketing Accountability Standards Board
- Sheila Francis, International Trademark Association
- Renee Garrahan, International Trademark Association
- Erich Decker Hoppen, Marketing Accountability Standards Board
- Dr. Gerhard Hrebicek, European Brand Institute
- Twinky Rampal, Anand and Anand
- Amy Rand, Brand Finance
- Catherine Shen, International Trademark Association
- Heather Steinmeyer, Anthem, Inc.
- Sophie Usiskin, Interbrand
The Brand Value Special Task Force (“Task Force”) was established in March 2018 to provide a set of recommendations to the INTA Board of Directors (“Board”) on how to activate essential aspects of INTA’s 2018–2021 Strategic Plan with regard to the business value of brands (including brand valuation) and brand equity.

The Task Force membership was designed to include both INTA and non-INTA members from various disciplines including but not limited to marketing, finance, economics, and accounting. The Task Force Co-Chairs created two Project Teams, namely The Harmonization Opportunities Team and The Future Team, to explore the complex concepts of brand value, brand equity, and brand valuation. The issuance of the ISO1 20671: 2019 Brand Evaluation — Principles and fundamentals (ISO 20671) in March 2019 expanded the original scope of work of the Task Force.

Numerous conference calls, emails, and an in-person meeting during the 2018 INTA Leadership Meeting have facilitated the Task Force’s work. Additionally, the Task Force liaised with various stakeholders within and outside of INTA to inform the work that resulted in this Task Force Report.

Key Findings and Recommendations

Section 5 of this Task Force Report sets out 20 findings and corresponding recommendations by the Task Force. For ease of reference, the specific finding numbers and related recommendations within the main Task Force Report are provided in brackets below. The top 10 key findings and recommendations of the Task Force are that there are:

Opportunities for definitional harmonization between the finance, legal, and marketing professionals.  [Finding 1]

INTA’s definition of brands is problematic for financial and marketing professionals because it does not refer to brands as intangible assets that generate economic benefit or value. For ease of reference, INTA’s current definition of brands is as follows:

“Brand” means the total identity of a product or service, which a current or prospective consumer relates to and connects with intellectually, psychologically, and/or emotionally. “Brand” is a complex, multi-layered promise of what will be delivered to and experienced by the consumer.

The Task Force recommends that INTA revisits its current definition of brands and expands it to include that brands are intangible assets capable of generating economic benefits. To assist in refining its definition of brands, INTA can reference the Task Force’s research in Annex D and particularly consider the definition of brands provided within ISO 10668: 2010 Brand Valuation (ISO 10668)— Requirements for monetary brand valuation because both marketing and financial professionals within the Task Force accepted this definition.

Opportunities for definitional clarity within INTA for terms such as brand value and brand equity.  [Finding 2]

INTA does not have a working definition for the terms brand value and brand equity, even though these terms are used in INTA’s 2018–2021 Strategic Plan.

The Task Force, through desktop research, found various definitions for the term brand value and brand equity, which can be found in Annex D. After reviewing the definitions for brand value, the two definitions that stood out to the Task Force were the definitions provided by ISO 10668 and ISO 20671 (Standards) which are set out below:

- ISO 10668 defines brand value as the total economic value of a brand in transferable monetary units.
- ISO 20671 defines brand value as the worth of a brand as an asset for an entity.

Both of these Standards were developed by the International Organization for Standardization (ISO).

The Task Force could not agree on the definition to adopt, because the definition provided by ISO 10668 was provided from an accounting perspective while the definition provided by ISO 20671 was written from a marketing perspective. As a result of this, both definitions were maintained in the Task Force Report.

For the term brand equity, both ISO Standards mentioned above did not define the term. The Task Force adopted the American Marketing Association’s (AMA’s) definition of brand equity, which is:

“The value of the brand. From a consumer perspective, brand equity is based on consumer attitudes about positive brand attributes and favorable consequences of brand use.”

1. ISO refers to the International Standards Organization. ISO is an independent, non-governmental international organization with a membership of 164 national standards bodies. Through its members, it brings together experts to share knowledge and develop voluntary, consensus-based, market relevant International Standards that support innovation and provide solutions to global challenges.
The Task Force recommends that INTA appoints an INTA committee to update the research compiled in Annex D and propose interim working definitions for brand value and brand equity for use by the Association.

Opportunities for INTA to engage with the ISO to support the development of “legal considerations” and “legal dimensions” as aspects of the ISO Standards dealing with brand valuation and brand evaluation. [Findings 3, 8, 11, and 13]

At the outset, the Task Force members recognized that tax legislation, banking regulations, accounting standards, and valuation standards all come into play when valuing intangible assets. So, the Task Force members focused on some of the international and national accounting standards and valuation standards related to intangible assets that would be beneficial for legal practitioners. Specifically, there are only two standards globally that focus on brands. These standards are ISO 10668 and ISO 20671 (Standards).

ISO 20671 defines brand valuation as the measurement of monetary brand value at a point-in-time, while it defines brand evaluation as the measurement of brand strength, brand performance, and financial results using relevant elements and dimensions.

The interplay between brand valuation and brand evaluation is schematically represented in this graphic:

Source: © ISO. This material is reproduced from ISO 31000:2009, with permission of the American National Standards Institute (ANSI) on behalf of the International Organization for Standardization. All rights reserved.
“Legal considerations” and “legal dimensions” feature in the ISO 10668 and ISO 20671, as they are essential segments in brand valuation and brand evaluation exercises. However, it is unclear to Task Force members to what extent legal practitioners have been involved in the development of these aspects of the Standards.

During the review of both Standards, the Task Force identified several definitional inconsistencies and gaps in ISO 10668 and ISO 20671, that could merit review in terms of definitional harmonization. It was also unclear to the Task Force members whether the provisions of ISO 10668 were wholly incorporated into ISO 20671.

The Task Force recommends that INTA should appoint an INTA committee to conduct a robust definitional review of both Standards and share completed findings with the ISO. The foundation for the engagement with the ISO has already been set through the participation of Dr. Bobby Calder, Chair of Technical Committee 289 of the ISO (the Technical Committee responsible for developing ISO 20671) in the Task Force, and introductions that Professor Calder has facilitated to INTA.

Opportunities for INTA to be a resource for financial and marketing professionals on the “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises. [Findings 4, 5, 6, 10, and 20]

During the Task Force dialogues, it was clear that the treatment of homegrown brands by accounting professionals has been met with creative tensions between the accounting and legal and marketing professionals. While there were several other situations where Task Force members were not always in complete agreement, they (especially financial professionals) were unanimous on the role INTA could play in being a facilitator for dialogues and a central repository on information related to “legal considerations” and “legal dimensions” in brand valuation and brand evaluation respectively. Apart from some of the definitional harmonization opportunities identified above, the Task Force members were interested to know about case law developments around the topic of damages in litigation related to brands, and the approaches that countries were taking towards standardization of valuation practices.

On the other hand, marketing professionals within the Task Force shared that technological developments are outpacing the development of tools to measure ever-changing consumer behavior and by extension, consumer interactions with brands. For example, net promoter score (NPS) is a common way for marketing teams to measure a customer’s willingness to recommend a product, and this sometimes is used as a quick and dirty measure of brand value. However, NPS cannot be measured in real-time.

If there are more robust tools to measure changing consumer behavior in real-time, the Task Force members speculated that there could be more interest in using the market approach when it comes to brand valuation. Additionally, the Task Force members thought that the measurement of consumer interactions could directly impact the implementation and use of ISO 20671, particularly around the topic of brand strength.

INTA should continue discussions with marketing professionals through organizations like the AMA to determine what types of tools are available in the marketplace and whether there are opportunities to jointly develop tools that could assist in measuring some of these consumer interactions.

The Task Force recommends that INTA appoints an INTA committee to provide a proposal on the above-mentioned items (joint events, online repository, and potentials tools to measure consumer interactions).

Opportunities for INTA to engage with accounting, auditing, banking, insurance, and related associations, as well as other institutions that develop certification programs on the “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises. [Findings 4, 5, 6, 8, 9, 10, and 12]

The current 2018–2021 Strategic Plan emphasizes the importance of INTA building bridges with other professional organizations to remain part of the brand equity conversation. The finance community is a large part of this dialogue and, currently, INTA does not engage with such organizations. The Task Force recommends that INTA should also seek out bridge-building opportunities with accounting, auditing, banking, insurance, and other related associations.

The Task Force also recommends that it is vital for INTA to build bridges with organizations that develop certification programs on IP or brand valuation for finance (accounting) professionals. This will position INTA to support the development of a robust “legal considerations” segment in these programs so that accountants are more equipped to understand some of the brand-related legal issues in brand valuation and brand evaluation exercises. Similarly, the Task Force also recommends that it is essential for INTA to build bridges with organizations that develop brand evaluation certification programs.

Opportunities for in-house practitioners to be stronger strategic partners with their finance and marketing teams in brand valuation and brand evaluation exercises. [Findings 4, 5, 6, 7, 10, 14, and 15]

In 2019, INTA in-house practitioners were invited to participate in World Trademark Review’s (WTR’s) 2019 In-house benchmarking research. The research included a new section on brand strategy.
WTR’s report released on May 1, 2019, found that “it is still too often the case that companies do not fully appreciate the value of the brands on which they have built their business and use to extend market reach for their products. This suspicion is backed up by the finding that less than one-third of responding companies had their brands valued by a valuation firm. While an additional 17 percent said that their company was considering a valuation exercise, more than half (53 percent) were not.”

The same WTR survey also shed some light on the interplay between the finance and trademark functions, with just half the respondents getting involved in tax-related matters and less than 40 percent charging intra-group license fees. Additionally, more than half of the respondents (51.7%) did not know whether any company trademarks or brands were included as an asset on the corporate balance sheet. For many, this would be the case only when a transaction has occurred, triggering reporting requirements.

The Task Force members had several recommendations to support in-house practitioners in this area:

- Legal, marketing, and finance teams should meet annually or at an appropriate interval to determine:
  - the brand(s) to be valued and evaluated;
  - how the value of brands is captured within their organization;
  - the purpose of the valuation or evaluation;
  - how the valuation or evaluation would be used (internal to business stakeholders, to share with licensees or affiliated companies, for an acquisition or divestiture consideration, or other purposes).

- Legal, marketing, and finance teams should work together to develop routine brand valuation and evaluation programs (for the latter, once ISO 20671 is further refined).

- In-house practitioners should have a series of educational sessions with finance and marketing professionals on the following:
  - Presentation from brand professionals about “what is a brand” and the inventory of legal rights related to brands and/or the portfolio of brands. The Task Force has developed a list of questions for trademark professionals to consider when determining the scope of brand assets and related rights in the valuation in Annex G, which can be shared during these types of presentations.
  - Presentation from marketing about consumer perception related to core brand(s) and perhaps the strategic direction for these brands, such as areas of growth, licensing opportunities, and the tools in place to measure consumer interactions.
  - Presentation from finance professionals on how brand value is captured within the organization.
  - Presentation from brand valuers on various valuation approaches and methods and which approaches would be best suited to which transactions.

- Legal teams should read reports by various brand consultancies and understand the brand valuation approaches that they utilize.

Opportunities for law firm practitioners to be stronger strategic partners with their clients in brand valuation and brand evaluation exercises. [Finding 16]

The Task Force did not find any recent benchmarking research analyzing the changes to the trademark practice in law firms resulting from topics related to brand valuation and brand evaluation. However, the 2019 Citi Hildebrandt Client Advisory indicated that law firm leaders identified mergers & acquisitions/transactional work as the primary driver for practice growth opportunities, particularly in the United States, closely followed by general litigation and financial/capital markets work. The Task Force inferred from this that there could correspondingly be growth in demand for valuation expertise based on these practice growth areas.

Given the close strategic partnership that law firms share with their in-house clients and growth in M&A/transactional work, it is essential for law firms to increase competencies in the areas of brand value, brand equity, brand valuation, and brand evaluation so that they can advise and support their clients appropriately.

The Task Force encourages law firm leaders to:

- Analyze the possibility of incorporating brand valuation-related services to the current offer of services.
- Take brand valuation courses. Examples of courses cited by Task Force members include the Valuation Program conducted by the NYU Stern School of Business. This type of education would enable a lawyer to understand how value is created, measured, eroded, or destroyed, with some illustrative case studies. Even if lawyers are unable to sign a valuation report, they will be able to articulate thoughts around the topic confidently.
- Take a course in economics and behavioral science to understand how value is created, how it migrates, and how it scales or gets eroded.
- Read reports by various brand consultancies and understand the brand valuation approaches that they utilize.
- Attend and participate in seminars hosted by brand valuers.
- Host educational sessions with team members who do not understand the concepts of brand value, brand equity, brand valuation, and brand evaluation by using easy examples to explain how value is created and eroded.
• Invite their accountants to host educational sessions on law firm economics or the business and financial aspects of operating a law firm.

• Promote discussions with their clients on brand value and how this is captured within their organization.

• Maintain a pre-approved list of brand valuation experts so that law firms can work with them if required/necessary if the firm itself does not do brand valuation work. As brand valuation and evaluation exercises are borderless, it is crucial to develop a network of peers around the world that can support global brand valuation and evaluation exercises.

• Partner with PR agencies to proactively offer contingency and remediation plans as part of the firm’s services to be applied during times of crisis, as a way to provide quick answers for actions that may erode the value of a brand.

• Encourage learning programs among the clients regarding the creation and preservation of a brand value within the digital context (i.e., social media).

• Promote more interaction and awareness of these matters among the corporate and tax law partners and professionals, if working in a general practice firm.

Opportunities for INTA to be a resource for members on the topic of brand valuation and evaluation.  [Finding 19]

Since the inception of INTA’s 2018–2021 Strategic Plan, INTA has strived to educate and communicate to INTA membership on the topics of brand value, brand equity, and brand valuation.  Details of these initiatives can be found in Annexes A, B, and C.

The Task Force recommends that INTA:

• Continue its emphasis on the topics of the business value of brands (including brand valuation) and brand equity in the forthcoming 2022–2025 Strategic Plan by expressly stating the importance of INTA continuing the brand value and brand equity dialogue with marketing and financial professionals.

• Include/reference to brand evaluation when considering the concept of brand equity in future Strategic Plans.

• Encourage continued development of additional educational programming on the topic of brand valuation, building off the excellent work INTA’s Programming Advisory Council and Education Department has done in 2019.

• Encourage new focus on the topic of brand evaluation given that it is new and has not been explored within INTA’s educational programming.  Apart from the topic of brand evaluation, set out below are other topics that could merit continued exploration:
  • Brand development, valuation, and evaluation in the M&A process.
  • Brand development, valuation, and evaluation in litigation matters.
  • What do all the various brand rankings mean? How are they different? How can they be utilized, and when?
  • What are the different brand valuation approaches and methods, and which transactions are they typically used for?

• Appoint an INTA committee to develop a proposal to update and expand INTA’s current online resources on the topics of brand value, brand equity, brand valuation, and brand evaluation.  To assist with this process, the Task Force has in Annex A identified a non-exhaustive list of current INTA online resources on these topics.

• Seek content from marketing, accounting, and finance professionals to support the development of the above-mentioned resources.  These contributions can come in the form of sponsored content or content swaps with the relevant trade associations.

• Continue to contribute to third party IP and non-IP publications (financial and marketing) on the topic of “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises.

• Publish articles together with financial and marketing professionals on “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises.

Opportunities for INTA to be a resource to IP Offices on the topic of brand valuation and evaluation.  [Finding 17]

IP Offices have different approaches to the topic of brand valuation but have not explored the topic of brand evaluation as it is very new.  Given that the Task Force’s membership did not include representatives from IP Offices, the Task Force does not provide any recommendations on the role IP Offices should play on brand valuation and evaluation.  Instead, the Task Force recommends that this question be considered by the Think Tank focused on the Future of IP Offices.  This Think Tank is one of three that was launched during the 2019 INTA Annual Meeting in Boston, Massachusetts.

The Task Force, however, recommends that IP Offices regard INTA as a potential resource for information on speakers for the topics of brand valuation and evaluation, where appropriate.  Related to this recommendation, INTA should also consider creating and maintaining a repository of speakers on these topics.
Opportunities for legal educational institutions to incorporate IP and specifically brand valuation and brand evaluation as part of their curriculum.  [Finding 18]

Given the importance of this topic to brand owners and all professionals that support their work, the Task Force members determined that it was important for law schools and paralegal educational institutions to provide some foundational education on the topic of valuation and, more specifically, brand valuation and brand evaluation.

Implementation Considerations

The Task Force endorses the constitution of the new Commercialization of Brands Committee in the 2020–2021 Committee term. For recommendations identified above, the Task Force proposes that this new Committee take the lead on some of these activities by setting up a subcommittee dedicated to Brand Valuation and Evaluation. For all remaining findings, the Task Force has also suggested potential implementation options. Along with each recommendation, the Task Force has recommended an implementation timeline.

Conclusion

The Task Force leadership and members thank INTA for the opportunity to contribute to this Task Force Report and remain at the disposal of the Board, CEO, or future teams to answer any questions and provide any further insights about the above-mentioned findings and recommendations.
SECTION 1: BACKGROUND INFORMATION

Origins of the Brand Value Special Task Force

INTA’s members and non-members are interested in the topic of brand value, brand equity, and brand valuation. Based on a search on INTA’s Association Management System, Impexium, a total of 4,555 individuals list having expertise in licensing, franchising, and IP valuation. Out of these individuals, 3,468 are members, and 1,087 are non-members. Out of the individuals that are members, 418 are in-house practitioners, and 3,041 are law firm practitioners. Additionally, in the recent 2020–2021 INTA Committee Selection Application process, close to 300 INTA member volunteers applied to be part of the new Commercialization of Brands Committee.

Since the inception of INTA’s 2018–2021 Strategic Plan, INTA has strived to educate and communicate to INTA membership on the topics of brand value, brand equity, and brand valuation. Details of these initiatives can be found in Annexes A, B, and C.

In October 2017, INTA constituted a seven-person Project Team led by Heather Steinmeyer to develop a high-level work plan for a future Project Team that would be charged with helping INTA identify ways to pursue the new Strategic Direction focusing on the business value of brands (including brand valuation) and brand equity. Excerpts of the 2018–2021 Strategic Plan that reference these topics are as follows:

Strategic Direction I (d): Promote the Value of Trademarks and Brands

The business value of brands. Brands determine the people companies recruit, the products and services they put onto the market, the messages they convey to their customers, and the channels they use. To become part of this holistic approach to brands, trademark and IP professionals should understand and advance the value of brands, as well as their potential as communication, marketing, and financial assets. INTA will provide its members with the tools to demonstrate the value of brands and how the work they do impacts brand value.

Strategic Direction II (c): Reinforce Consumer Trust

Brand equity. Companies or individuals own their trademarks and related IP. Consumers influence, in more ways than ever before, how a brand and its equity evolve. INTA will build bridges with consumer associations, professional organizations, and academia to be part of the brand equity conversation.

Some of the key insights shared by the Project Team members are reported verbatim below:

- Intangible assets are recognized as highly valued properties. Arguably the most valuable but least understood intangible assets are brands.
- The 2018–2021 Strategic Plan paves the way for INTA to delve further into this critical topic of the business value of brands.
- To gain a proper understanding of the topic and provide actionable feedback to INTA, it is necessary for future team members to come from various disciplines including but not limited to law, finance, economics, marketing, tax, or a combination thereof.
- The Project Team should not be limited to INTA members.
- It is also critical to consider whether the term “Project Team” would attract the right candidates both within and outside of INTA to participate in this initiative.
- The Project Team agreed that a Task Force would lend the right level of gravitas to the vital work of a future team.
- The Project Team also compiled a list of potential candidates, associations, and literature that a future team could utilize.

2. The search on INTA’s Association Management System was conducted on Tuesday, August 20, 2019.
3. The remaining individuals come from other Membership Categories.
4. Heather Steinmeyer is the Vice President & Counsel, Legal—Corporate Enterprise Operations Lead, Legal, Public Affairs, Compliance & Corporate Development at Anthem. Ms. Steinmeyer is a Past President of INTA.
6. Ibid.
In March 2018, it was proposed that a Task Force, consisting of approximately 12 to 14 members, be constituted to undertake the work identified above. In determining potential Task Force members, special attention was given to various criteria including but not limited to the ones set out here:

- Expertise in disciplines including but not limited to brand and IP valuation, finance, economics, marketing, tax, or a combination thereof.
- Representation of mature and newer brand perspectives.
- Thought leadership in the field of brand value, brand equity, and brand valuation.
- Involvement in the development of ISO 106689.
- Geographical diversity.
- Continuity from the 2017 Brand Value Project Team.
- Knowledge of INTA (current and previous Board Members).
- Representation of a marketing association.

In March 2018, the Board approved the constitution of a Special Task Force, and it was expected that the work of the Task Force would span over 2018–2019. The Board appointed Heather Steinnmeyer and Doug de Villiers10 to co-chair the Task Force. Due to new work commitments, in August 2018, Heather Steinmeyer stepped down as Co-Chair of the Task Force. In October 2018, Melody Schottle11 stepped up as Co-Chair of the Task Force.

Objectives of the Brand Value Special Task Force and Project Teams

The Board constituted the Task Force to provide a set of recommendations to the Association on how to activate essential aspects of the 2018–2021 Strategic Plan on the topics of the business value of brands (including brand valuation) and brand equity by 2019. To assist with the work of the Task Force, the Co-Chairs created two Project Teams, namely The Harmonization Opportunities Team and The Future Team. Debra Hughes12 led the Harmonization Opportunities Project Team, and Bryce Coughlin13 led the Future Project Team. The goals of the two Project Teams are set out below:

- Harmonization Opportunities Project Team:
  - Explore and identify the various standards, concepts, brand valuation methods, and types of professionals involved in the dialogue of brand value, brand equity, and brand valuation.
  - Identify challenges and opportunities based on the above-mentioned exploration for INTA and its members.

- The Future Project Team
  - Describe changes in consumer behavior and their interaction with brands.
  - Describe how consumer behavior impacts brand value and how to measure that impact.
  - Discuss how brands can react to changes in consumer behavior (to enhance their brand value).

9. ISO10668 is the first standard focused on brand valuation. Details about this Standard are discussed in Section 4 of this Task Force Report.
10. See Section 2 of this Task Force Report for Mr. de Villiers’ biography.
11. See Section 2 of this Task Force Report for Ms. Schottle’s biography.
12. See Section 2 of this Task Force Report for Ms. Hughes’ biography.
13. See Section 2 of this Task Force Report for Mr. Coughlin’s biography.
SECTION 2: THE BRAND VALUE SPECIAL TASK FORCE MEMBERSHIP, EXPERIENCE, AND STRUCTURE

Brand Value Special Task Force Leadership

**Melody Schottle - Task Force Co-Chair**
*Exxon Mobil Corporation*

Melody is a Trademark Counsel for Exxon Mobil Corporation concentrating on global anti-counterfeiting strategies, brand enforcement issues, licensing, global portfolio management, copyright and domain name issues, and client counseling. She is an experienced lawyer with hands-on practical in-house experience with all aspects of trademark and brand management, brand protection, and anti-counterfeiting strategies. Melody has been involved with INTA since 1994.

Melody is a current member of the Board.

**Doug de Villiers - Task Force Co-Chair**
*Deloitte Consulting, Africa*

With over 20 years of international business and marketing experience, Doug has traveled the world extensively living and working in many countries across Africa, Asia, and Europe. With multiple projects and consulting secondments, he has experience across Europe, the United States, Canada, Africa, Australia, India, and the sub-continent. Previously the CEO of Interbrand Africa, and more recently, the Vice Chairman for WPP’s Superunion in Africa, Doug is now the Advertising, Marketing & Commerce Offerings Leader for Consulting Africa of Deloitte. Doug is an Associate Professor of Practice at the Johannesburg Business School.

Doug was a 2017-2019 Advisory Director of the Board.
Harmonization Opportunities Project Team

Debra Hughes - Project Team Lead
Blue Cross Blue Shield Association

Debra is the Assistant General Counsel at Blue Cross Blue Shield Association (BCBSA). Debra is responsible for the protection of the Blue Brands by managing their portfolio of trademark registrations and applications, and the enforcement of their rights against infringement. She is also responsible for approving communications materials, developing and negotiating international license agreements, other special product license agreements, and providing legal advice to BCBSA clients regarding the provisions in the License Agreements and Brand Regulations.

Debra is a long-time INTA member and previous member of the Board.

Safir Anand
Anand and Anand

Safir is the Senior Partner and Head of the Trademarks, Contractual and Commercial IP Department at Anand and Anand. He advises and acts for clients from diverse industries. He works as an IP advisor, providing inputs towards strategy, business models, marketing, and commercial insights. Safir has an astute understanding of IP law that covers: protection, enforcement (civil and criminal), and contractual IP (agreements, licensing, franchising, monetization, strategic advisory, and due diligence).

Safir is a long-time INTA member and was a member of the 2017 Brand Value Project Team.

Bobby Calder
Kellogg School of Management at Northwestern University

Bobby is Professor Emeritus of Marketing at the Kellogg School of Management. He has taught marketing, organizational behavior, behavioral science, consumer psychology, and social psychology. His research focuses on the analysis of consumer behavior, media consumption, and marketing strategy. Bobby serves the International Standards Organization (ISO) as chairperson of the Technical Committee 289 Brand Evaluation and is a member of the Brand Evaluation Standards Project Team of the Marketing Accountability Standards Board (MASB)14.

14. MASB brings together marketers, measurement and media providers, industry associations and business academics for the common goal of increasing the contribution of the marketing function through the development of accountable marketing standards and practices that drive business growth. Historically, each marketing association in the United States was trying to create its own standards on measures of success. For information about MASB, visit www.themasb.org.
Thomas Gounel  
Formerly Deloitte

Thomas was previously a Partner in the Valuation & Business Modeling practice of Deloitte Finance. He has almost 20 years of experience in transaction advisory practice both in France and the United States. Thomas focuses on valuing companies and assets for various purposes, including mergers and acquisitions, legal and tax reorganizations, disputes, and litigation between shareholders or partners, and financial reporting. Thomas has had the opportunity to develop strong insights into transactions (strategy, corporate finance, and tax aspects), working across various geographies and industries.

David Haigh  
Brand Finance

David is the founder and CEO of Brand Finance PLC. Brand Finance helps clients solve brand challenges using financial valuation techniques and advanced market research analysis to deliver robust, value-based insight and recommendations to assist with strategic decision making. David has represented the British Standards Institute on the International Standards Organization, Technical Committee 289, working on the standardization of brand valuation methods and practices.

Andy Harington  
The Brattle Group

Andy, a Principal at The Brattle Group, has over 25 years of diverse experience in business consulting, M&A transaction advisory practice, and general financial consulting to companies in a variety of industries and ranging in size from large, multi-national public companies to local, privately-owned companies. His practice focuses on the quantification of loss and accounting of profits in IP and commercial litigation disputes, the valuation of IP and commercial businesses, and financial aspects of Canadian competition law.
The Future Project Team

Bryce Coughlin - Project Team Lead
Netflix, Inc.

Based in Los Angeles, Bryce is a Senior Counsel of Intellectual Property for Netflix, Inc. Bryce’s team is responsible for Netflix’s global content, with several core responsibilities that include complex media rights transactions, managing Netflix’s trademark portfolio, title clearance, production clearance, IP litigation, content localization, supporting government relations and marketing legal teams on IP issues, and others.

Bryce is a long-time INTA member.

Amandine Bavent
BrandZ

Amandine is the Valuation Director for BrandZ, the world’s largest brand equity database, created in 1998 and continually updated. BrandZ covers over 100,000 brands across 45 countries and is the only brand valuation ranking that measures the contribution of the brand that is validated in market sales. Amandine and her team produce several brand value-based rankings, from category landscape to drivers analysis, they provide a measurement, the value, and insights.

Gustavo Giay
Marval, O’Farrell & Mairal

Gustavo Giay is a Partner at Marval, O’Farrell & Mairal, where he specializes in Intellectual Property Litigation. His practice has focused on trademark litigation, and he has extensive experience in advising businesses and individuals on matters related to managing IP portfolios, including contract and licensing agreements. He also offers advice on Internet Law issues and assessment on legal and contractual questions in new and developing technologies.

Gustavo is a long-time INTA member and was a member of the 2017 Brand Value Project Team.
Sara Perry  
Netflix, Inc

Sara is the Director and Senior Counsel at Netflix, Inc. Prior to joining Netflix, she was the Vice President and Head of Marketing Business & Legal Affairs at NBCUniversal, where she oversaw all legal issues relating to marketing, branding, promotion, and publicity, including digital and social media for the Universal Filmed Entertainment Group including Universal Studios, Focus Features, and DreamWorks Animation Film and Television. Before becoming a lawyer, Sara worked in advertising.

Sara is a long-time INTA member.

Michael Rocha  
Interbrand

Based in London, Michael is the Global Director of Brand Valuation for Interbrand, where he leads its valuation practice globally, providing overall strategy, thought leadership, and consistency across their network. He has led strategic valuation assignments globally, advising on a wide range of branding issues (positioning, architecture, portfolio analysis, brand extension, budget allocation, dashboards, and return on investment analysis) and also for commercial purposes such as shareholder negotiations, licensing, financial reporting, tax, litigation, pension planning, and M&A.

Jennifer Severns  
American Marketing Association

Jennifer is the Chief Experience Officer at the American Marketing Association (AMA), an association for marketing professionals. She oversees marketing, insights, innovation, customer service, and live experience at the AMA. Jennifer has experience with producing unique storytelling platforms, agile communications systems, trailblazing digital content, powerful creative departments, and industry-disruptive strategies.
SECTION 3: METHODOLOGY

Why is This Topic Important to Trademark Professionals?

Since the 1900s, the economic investment in intangible assets (such as R&D, technology, brands, etc.) has exceeded that of tangible assets. More details can be seen in Diagram 1, below.

INTANGIBLES TO MARKET CAP RATIO IN SELECTED ADVANCED ECONOMIES (APRIL 2019)

<table>
<thead>
<tr>
<th>Country</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States (S&amp;P 500)</td>
<td>91%</td>
</tr>
<tr>
<td>Europe (Euro Stoxx 50)</td>
<td>77%</td>
</tr>
<tr>
<td>United Kingdom (FTSE 100)</td>
<td>77%</td>
</tr>
<tr>
<td>France (CAC 40)</td>
<td>77%</td>
</tr>
<tr>
<td>Germany (DAX)</td>
<td>75%</td>
</tr>
<tr>
<td>Canada (S&amp;P/TSX)</td>
<td>70%</td>
</tr>
<tr>
<td>Japan (Nikkei)</td>
<td>55%</td>
</tr>
<tr>
<td>Spain (IBEX 35)</td>
<td>54%</td>
</tr>
<tr>
<td>Italy (FTSE MIB)</td>
<td>54%</td>
</tr>
</tbody>
</table>


Intangible assets are vital to driving economic growth and enterprise value. However, historically, it has been challenging to attribute value to intangible assets, particularly brands.

Unlike most other intangible assets, one significant component of brands is the consumer’s perception of a brand, and as a result of this, there is a great degree of subjectivity when it comes to assessing the value of brands. The primary question for most companies is how monetary value is attributed to brands when elements of brands exist in the consumer’s mind.

As accounting standards and principles are aimed to provide an objective and transparent assessment of a company’s financial performance, the creative tensions are self-evident. Brand valuation Standards discussed in greater detail in this Task Force Report aim to mitigate the subjectivity when it comes to brand valuation. Trademark professionals need to recognize these creative tensions and know how brand value is calculated and attributed within their organization and whether the valuation of brands is conducted in a routine and consistent manner.

Brand value is vital during the different phases of a typical product life cycle. A company may require cash injection at various stages during the product’s life cycle, and the appraised value of a brand would be important to different stakeholders. For example, in the market development phase, the company may require cash from investors while in the maturity phase, the company may be looking to divest its product line. Similarly, in the growth phase of a product, the company could also be faced with expansion opportunities or litigation from infringers due to the popularity of the product. In each of these instances, it would be critical for the company to assess the monetary value of the brand linked to the product. Given that trademark professionals are involved in every step of a typical product life cycle from the legal perspective, it is essential to know the same from a financial standpoint as well.

16. Ibid.
Sources Consulted

Since April 2018, numerous conference calls, emails, and an in-person meeting during the 2018 INTA Leadership Meeting have facilitated the Task Force’s work. Additionally, the Task Force also liaised with various stakeholders within and outside of INTA to inform the work that resulted in this Task Force Report.

These stakeholders include but are not limited to:

- INTA’s Board of Directors
- INTA’s Executive Team
- The European Brand Institute (EBI)\(^{17}\)
- INTA’s CEO
- Task Force Members’ peer networks
- The Marketing Accountability Standards Board (MASB)

In March 2019, the Task Force Co-chairs provided a progress report to the Board and discussed some of the topics covered by the Task Force. Coincidentally, during this time, the Task Force Leaders also advised the Board that on March 22, 2019, the new ISO 20671\(^{18}\) was issued. Given this, the Task Force Co-Chairs also informed the Board that the Task Force would be looking more closely at the new Standard. Some questions from the Board included what considerations were given for not-for-profit organizations and B2B brands when it comes to brand valuation and the treatment of house brands.

Since the March Board update, the Task Force has been working on compiling this Task Force Report. In parallel, dialogues are underway between INTA and MASB on how INTA can support the implementation of the new ISO 20671, especially when it comes to the legal dimensions of brand evaluation. A similar dialogue is also underway with the European Brand Institute.

Apart from the internal and external stakeholders mentioned above, the following relevant survey research and previous Presidential Task Force Reports were also considered:

- 2019 World Trade Review (WTR) in-house practitioners benchmarking research.
- 2019 Citi Hildebrandt Client Advisory.

All other literature considered has been identified in the footnotes of this Task Force Report and the relevant Annexes.

Working Definitions Adopted

At the outset, the Task Force recognized the lack of definitional harmonization around the concept of brands. The Task Force conducted preliminary research to identify the various definitions around brands\(^{19}\) and narrowed its considerations to the definitions provided by the AMA\(^{20}\), INTA, and the ISO. The three definitions of brands adopted by these different organizations are set out in Diagram 2, below:

\(^{17}\) The European Brand Institute is a for profit organization that provides brand (e)valuation and certification. For more information about EBI, visit www.europeanbrandinstitute.com

\(^{18}\) ISO 20671 is a new standard on brand evaluation discussed in greater detail later in this Task Force Report.

**Diagram 2**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Definition of Brands</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMA</td>
<td>A name, term, design, symbol, or any other feature that identifies one seller’s good or service as distinct from those of other sellers.</td>
</tr>
<tr>
<td>INTA</td>
<td>The total identity of a product or service, which a current or prospective customer relates to and connects with intellectually, psychologically, and/or emotionally. “Brand” is a complex, multi-layered promise of what will be delivered to and experienced by the consumer.</td>
</tr>
<tr>
<td>ISO</td>
<td>“Brand” is a marketing-related intangible asset including, but not limited to, names, terms, signs, symbols, logos and designs, or a combination of these, intended to identify goods, services or entities, or a combination of these, creating distinctive images and associations in the minds of stakeholders, thereby generating economic benefits/values.</td>
</tr>
</tbody>
</table>
After much debate, the Task Force adopted the working definition of brands as provided by the ISO because all Task Force members agreed that it was necessary to work from a definition of brands that emphasized the function of brands as a generator of economic benefits/values, among other things. The rationale was that if brands are generators of economic benefits/values then, arguably, they contribute directly to business value²¹.

The concept of cash-generating units also helped the Task Force reconcile any distinction made between brands as single entities or as part of a portfolio. In either case, the brands are cash-generating units. For example, companies such as motor vehicle manufacturers might have a single brand name (e.g., BMW) under which all of its models are marketed. In this case, the value is the total of all the models/sub-brands that fall under the parent brand name. This total portfolio value contributes to enterprise value²².

Alternatively, a company such as Proctor & Gamble does not use its corporate name to market its goods and services directly but has a variety of brands with different names that are collectively sold in category portfolios (e.g., snack foods or haircare)²³. In this case, the category portfolio contributes to enterprise value. In both cases, the brand or brands within a portfolio are cash-generating units that, in aggregate, add to enterprise value²⁴.

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19. See Annex D for research on various definitions on the brands, brand value and brand equity.
20. The AMA strives to be the most relevant force and voice shaping marketing around the world and is an essential community for marketers. For more information about the AMA, visit www.ama.org.
22. Ibid.
23. Ibid.
24. Ibid.
Commonly Used Terms and Concepts

Several terms and concepts often arise when discussing the business of brands. These commonly used terms and concepts are tackled below. Where possible, the Task Force members utilized definitions from the ISO Standards.

**Entity:** ISO 20671 defines entity to be an “individual or group of people structured as a sole-trader, corporation, company, joint venture, not-for-profit organization, firm, enterprise, authority, partnership, charity or institution or part or combination thereof, whether incorporated or not, public or private, that owns and/or has the legal ownership or legally/contractually authorized rights to use and/or promote the brand in the category for some economic or societal benefit.”

**Assets:** ISO 10668 defines an asset as a “legal right or organizational resource which is controllable by an entity and can generate economic benefits.”

**Intangible assets:** ISO 10668 defines intangible assets as an “identifiable non-financial asset with no physical substance.” ISO 20671 does not define intangible assets.

**Brand:** Based on ISO 10668, a brand is a “marketing-related intangible asset including, but not limited to, names, terms, signs, symbols, logos and designs, or a combination of these, intended to identify goods, services or entities, or a combination of these, creating distinctive images and associations in the minds of stakeholders, thereby generating economic benefits/values.”

**Brand value:** ISO 10668 defines brand value as the total “economic value of a brand in transferable monetary units.” ISO 20671 defines brand value as the worth of a brand as an asset for an entity.

**Brand equity:** The term brand equity is not defined in both Standards. Many online resources attribute the term to marketing professionals who wish to value brand strength from the consumer’s perspective. Based on this, Task Force members adopted the AMA definition of brand equity: “The value of the brand. From a consumer perspective, brand equity is based on consumer attitudes about positive brand attributes and favorable consequences of brand use.”

**Brand valuation:** ISO 20671 defines brand valuation as the “measurement of monetary brand value at a point-in-time.”

**Brand evaluation:** ISO 20671 defines brand evaluation as the measurement of brand strength, brand performance, and financial results using relevant elements and dimensions.

**Financial Professionals:** The Task Force used this term to refer to accounting, tax, and audit professionals collectively. Where this is not the case, the Task Force refers explicitly to the relevant professionals’ group.

**Goodwill:** Goodwill is a measurable asset for which a purchaser is willing to give an additional value and it is the benefit derived from all the intangible positive characteristics that attract customers which include but are not limited to reputation, contact networks, intellectual property, brand value, customer lists, unique market position, knowledge of new technology, good location, special skills, operating methods, successful enforcement of trademarks, anti-dilution protection of trademarks, employee morale, competitive advantage, credible ratings, endorsements, quality certifications, reliability and authenticity, ethics of the owner and succession plan of the company. The items in italics were not mentioned in online dictionaries reviewed by the Task Force, but Task Force members thought it was essential to consider these factors as well when considering goodwill. Additionally, it is vital to note that “trademark goodwill” refers to the value tied to a particular trademark. For example, trademarks associated with higher quality products tend to enjoy more goodwill. A company’s “financial goodwill” includes its trademark goodwill, but its trademark goodwill does not include financial goodwill. Neither of the ISO Standards defines the term goodwill.

**Legal Practitioners:** The term legal practitioners refers to trademark practitioners unless otherwise, stated.

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25. ISO 20671 defines brand strength as a non-monetary, point-in-time calculation of relevant dimensions and indicators of a brand, which illustrates the perceived competitive strength, compared to its competitors among stakeholders.

26. ISO 20671 defines brand performance as evaluation of the brand’s impact in the category as established by a market test of its brand strength.

27. ISO 20671 defines elements as discernible components of a brand comprised of tangible, intangible, quality, service and innovation components.

28. ISO 20671 brand evaluation defines dimensions as a consistent group of validated indicator categories or indicators that make up a component of brand strength.

29. This definition was provided by Mr. Safir Anand, a Task Force member. It is important to note that the definition of goodwill may differ by jurisdiction depending on the differences in laws and accounting standards. It is possible that jurisdictions have specifically defined “goodwill” in statutes and, sometimes, the actual goodwill may be higher than what is calculated as per the definition. For example, a company that is the first mover in the market or has innovative products would have a higher goodwill.
Legislation, Regulations, and Standards Relating to Brand Valuation

At the outset, Task Force members recognized that there are various tax legislation, banking regulations, accounting standards, and valuation standards that come into play when valuing intangible assets. The Task Force members agreed that it would be impossible to exhaustively review all of these legislations, regulations, and standards during the duration of the Task Force. Instead, the Task Force members focused on some of the national and international accounting standards and valuation standards related to intangible assets that would be beneficial for trademark professionals.

The International Financial Reporting Standards developed and published by the International Accounting Standards Board (IASB) and International Valuation Standards (IVS) developed and published by the International Valuation Standards Council (IVSC) deal with the valuation of intangible property. In the United States, accounting standards are developed by the Financial Accounting Standards Board (FASB). However, there are only two standards globally that focus on brand valuation. These standards are ISO 10668 and ISO 20671. The interplay between IASB, IVS, FASB, and the ISO Standards are schematically represented in Diagram 3 below. The focus of the Task Force was on the two ISO Standards because these Standards, specifically, deal with brands.

![Diagram 3](https://via.placeholder.com/150)

Note: All organizations referred to in Diagram 3 are international except for FASB, which is highlighted in grey.

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30. Many aspects of the Task Force Report on the Overview of Legislation, Regulations, and Standards were developed with the kind support of Task Force Members Thomas Gounel and David Haigh.

31. The Task Force notes that these legislation, banking regulations, accounting, and valuation standards can be both national and international.

32. The International Accounting Standards Board came into existence on April 1, 2001. The IASB can be seen as the successor of the International Accounting Standards Committee. The IASB deals with the development of International Financial Reporting Standards and promoting the application of these standards. The IASB is based in London and is funded privately. For more information about IASB, visit www.iasplus.com.

33. The FASB is based in the United States and came into existence in 1973. It replaced the Accounting Principles Board (APB) and the Committee on Accounting Procedure (CAP). The FASB is a non-profit organization that caters to the development of Generally Accepted Accounting Principles (GAAP) in the interest of the public. For more information on FASB, visit www.fasb.org.
ISO 10668 sets out the procedures and methods of measuring the value of a brand. This Standard was developed by ISO Technical Committee ISO/TC 289. ISO 10668 was published for the first time in September 2010 after work commenced in 2007. This Standard was developed to provide a consistent framework for the valuation of local, national, and international brands, from both large and small organizations, in a transparent, consistent, and independent way.

Under ISO 10668, the brand valuer must declare the purpose of the valuation as this affects the premise or basis of value, the valuation assumptions used, and the ultimate valuation opinion, all of which need to be transparent to a user of the final brand valuation report.

Every brand valuation report must clearly state the following:

- The position and status of the valuer.
- The purpose of the valuation.
- Clear identification of the subject brand.
- The specific brand assets to be valued.
- The addressed audience/addressees (the audience the valuation report is intended for).
- The premise of value (any valuation assumptions made).
- The approaches and methods used.
- The valuation date (the date on which the valuation opinion was finalized).
- The value date (the date which the valuation opinion is valid).
- The result of the monetary brand valuation.
- All data sources used.
- An overview of legal rights, behavioral aspects, and financial analysis.
- All key assumptions and sensitivities.
- Any limitations or caveats.

Purpose of Brand Valuations

The most commonly cited reasons/purpose for conducting a brand valuation are:

- Management information
- Accounting
- Licensing
- Taxation planning and compliance
- Strategic planning
- Liquidation
- Litigation support
- Loan and equity financing
- Value reporting
- Legal transactions
- Dispute resolution

Requirements for an ISO 10668-Compliant Brand Valuation

ISO 10668 specifies that when conducting a brand valuation, the brand valuer must do three types of analysis before providing an opinion on the brand’s value. These are:

- Legal analysis
- Behavioral analysis
- Financial analysis

All three types of analysis are required in order to arrive at a thorough brand valuation opinion. This requirement applies to valuations of existing brands, new brands, and brand extensions.

The first requirement is to define what is meant by “brand” and which intangible assets should be included in the brand valuation opinion; this is the legal analysis. The second requirement when valuing brands under ISO 10668 is a thorough behavioral analysis. The brand valuer must understand and form an opinion on likely stakeholder behavior in each of the geographical, product, and customer segments in which the subject brand operates. The third requirement when valuing brands under ISO 10668 is a thorough financial analysis.

Brand Valuation Approaches and Methods

Regarding financial analysis, ISO 10668 identifies these brand valuation approaches:

- Cost
- Market
- Income

Each of the approaches is described below. However, the most commonly used brand valuation approach is the income approach.35

Cost Approach
The cost approach measures value by reference to the cost invested in creating, replacing, or reproducing the brand. This approach is based on the premise that a prudent investor would not pay more for a brand than the cost to recreate, replace, or reproduce an asset of similar utility. As the value of brands seldom equates to the costs invested in creating them (or hypothetically replacing or reproducing them), this is not a widely used approach.

Market Approach
The market approach measures value by reference to what other purchasers in the market have paid for similar assets to those being valued. The application of a market approach results in an estimate of the price expected to be realized if the brand were to be sold in the open market. Data on the price paid for comparable brands is collected. As brands are unique, and it is often hard to find relevant comparables, this is not a widely used approach.

Income Approach
The income approach measures value by reference to the economic benefits expected to be received over the remaining useful economic life of the brand. This involves estimating the expected future and after-tax cash flows attributable to the brand and then discounting them to a present value using an appropriate discount rate. Under the income approach, risks that are not already reflected in future cash flows must be considered in the discount rate. The discount rate used for discounting future expected cash flows attributable to a brand is usually derived from the Weighted Average Cost of Capital (WACC) of the business.

As the value of brands stems from their ability to generate higher profits for either their existing or potential new owners, this is the most widely accepted and used brand valuation approach. When conducting a brand valuation utilizing the income approach, various methods are suggested by ISO 10668 to determine future cash flows, which are broadly classified as direct and indirect methods. The different brand valuation approaches and methods are schematically represented in Diagram 4 below.

For a detailed explanation of each of the income approach methods listed above, see the expert opinion in Section 7 titled “What Are Current Best Practice Brand Valuation Approaches and Methods?”

35. This aspect of the Task Force Report was developed with the kind support of Task Force Members Thomas Gounel and David Haigh.
Overview of ISO 20671

When ISO 10668 was published in 2010, limited detail was provided for the issue of what to measure from a marketer’s perspective. After the ISO 10668 was released, a second standard was commissioned, which was published in March 2019 as ISO 20671.

ISO 20671 was inspired by the Austrian Standard, ONR 16800 Method for the evaluation of the intangible asset brand, published in 2006. It was the first-ever standard on brand evaluation and was developed by Austrian Standards, ISO’s member for Austria.

Dr. Gerhard Hrebicek, who was chair of the committee that developed ONR 16800, played a role in the development of ISO 20671. He was consulted by the ISO Technical Committee 289, Brand Evaluation, the Secretariat of which is held by the Standardized Administration of China (SAC), ISO’s member for China36.

This new Standard explores in greater detail the measurement of market factors and the elements37, dimensions38, and indicators39 of brand equity as a key factor in determining monetary brand valuation.

The fundamentals of brand evaluation focus on evaluating brand value using both elements and dimensions, thereby determining brand strength40, brand performance41, and financial results. Elements determine the input or resources that an organization allocates to the brand, while dimensions measure the external reactions to the brand.

Relevant indicators are determined, e.g., according to company size, a particular type of brand, the purpose of the brand evaluation, and different external regulating environments. Each of them may require a different kind of analysis. They are compared with major competitors or alternative brands.

Lists of indicators for elements and dimensions for different types of brands are provided in ISO 2067142.

37. See footnote 27.
38. See footnote 28.
39. ISO 20671 defines indicators as validated metrics that are measurable as part of the market test and inform the brand strength, brand performance or brand valuation exercise.
40. See footnote 25.
41. See footnote 26.
42. ISO 20671 provides a list of indicators for elements and dimension in Annex A of the Standard.
Schematically, the ISO 20671 approach can be summarized in Diagram 5, below:

**Focus of ISO 20671 Brand Valuation -
“What to Measure from Marketers Perspective”**

**Focus of ISO 10668
“What to Measure from a Financial Perspective”**

“Accountable marketers are going to love ISO 20671 BRAND EVALUATION because to comply, they will have to value their brands regularly,” said the MASB’s President and CEO Tony Pace when the ISO 20671 Brand Evaluation was first issued. “That will be marketers’ Golden Ticket—not only to fund measurable brand value growth initiatives but also to measure the marketing contribution to enterprise value.”

The new Standard is said to be a CMO’s best friend because it elevates brand strength to a board-level review item. CEOs and CFOs will benefit from having systemic information to answer analyst and shareholder questions regarding this area of sustainability.
Comparing ISO 10668 and ISO 20671

In simpler terms, the first ISO 10668 speaks to the needs of financial professionals while the second ISO 20671 speaks to the needs of marketing professionals. Some of the key conceptual differences between the two Standards are presented in Diagram 6, below:

**Diagram 6**

<table>
<thead>
<tr>
<th>Item</th>
<th>ISO 10668 Brand Valuation</th>
<th>ISO 20671 Brand Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity Type</td>
<td>Brand Valuation</td>
<td>Brand Evaluation</td>
</tr>
<tr>
<td>Scope of Review</td>
<td>External Review</td>
<td>Internal and External Review</td>
</tr>
<tr>
<td>Responsible Stakeholder within an Entity</td>
<td>Financial Professional</td>
<td>Marketing Professional</td>
</tr>
<tr>
<td>Time Frame of Review</td>
<td>Future</td>
<td>Present and Past</td>
</tr>
<tr>
<td></td>
<td>(more beneficial for acquisition or licensing purposes (value of the deal))</td>
<td>(more useful for trademark enforcement/litigation purposes)</td>
</tr>
<tr>
<td>Type of Measures</td>
<td>Financial</td>
<td>Non-Financial</td>
</tr>
<tr>
<td>Purpose of Review</td>
<td>Acquisition or Commercialization</td>
<td>Enforcement, Litigation, and Internal Management</td>
</tr>
</tbody>
</table>
There are various stakeholders involved in brand valuation and brand evaluation activities. Diagram 7 provides a schematic reference of a non-exhaustive list of stakeholders that could be interested in this subject matter.
Diagram 8 summarizes some of the critical considerations for these stakeholders on the topics of brand value, brand equity, brand valuation, and brand evaluation.

### DIAGRAM 8

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Considerations</th>
</tr>
</thead>
</table>
| Financial (Accounting) Professionals | ✓ Look to the past for financial reporting.  
  ✓ Provide business with factual, precise, objective, and comparable information.  
  ✓ Minimize or avoid speculative information on financial reporting.                   |
| Investors                            | ✓ Focus on current financial performance but keen on the future growth of the company, which is usually determined by various factors including but not limited to the development and growth of the company's intangible assets.  
  ✓ Focus on risks/rewards of investments.  
  ✓ Prefer predictability and certainty in investments rather than volatility.            |
| Marketing Professionals              | ✓ Develop brands that drive company sales.  
  ✓ Develop brands that create new customers and retain loyal ones.  
  ✓ Preserve and enhance a positive consumer experience.                                  |
| Tax Professionals                    | ✓ Reduce the company's taxable income.  
  ✓ Identify transactions that could trigger new tax considerations.                      |
| Trademark (Legal) Professionals      | ✓ Secure, protect, maintain, and commercialize rights emerging from brands.  
  ✓ Minimize the risk of litigation for and against the company/client.  
  ✓ Minimize/eradicate the sale of unauthorized goods.  
  ✓ Identify transactions that could trigger tax implications.                           |
| Valuation Professionals (Accountants)| ✓ Tend to focus on future performance.                                                                                                         |
| Consumers                            | ✓ Look at price, quality, experience.  
  ✓ Share experiences with peers.                                                        |
Changing Consumer Behavior

Based on the definition adopted by the Task Force for brand equity as outlined earlier, the Task Force members determined that it was necessary to identify several current and future trends in consumer behavior based on demographic, socio-economic, and technological developments as this could impact brand valuation and/or brand evaluation.

While the Task Force members aimed to be visionary, they recognized that this was not without limitation, specifically when referring to technological development. A recent PwC report stated that it is “impossible to give a precise vision of how the next ten—much less five—years will unfold.” This does not just apply to the leaps being made in technology; the current pace of change across a range of issues meant that the Task Force members could not accurately identify all future changes in consumer behavior. However, the Task Force looked at recent changes in consumer behavior and the implications these have for brands and also identified a few areas where it seems likely that there will be significant disruption in the upcoming years:

Changes in consumer behavior:

- The next generation of consumers, specifically, Millennials and Gen Zers.
- The dominance of social media and consumer expectation.
- The desire for brands to take a social stand.
- The impact of the subscription-model and the sharing-economy.
- Changing consumer loyalty.

Impact of technology:

- The impact of AI on consumer expectations
- The role of AR and VR going forward
- The impact of voice activation
- Moving towards a net-zero carbon economy

A detailed Expert Insight on changing consumer behavior with regard to the above-mentioned topics can be found in Section 7 of this Task Force Report. The Task Force's findings on the impact of changing consumer behavior on brand valuation and/or brand evaluation can be found in Section 5 of this Task Force report.

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46. This section of the Task Force Report was developed by the kind support of Michael Rocha. See Section 7 for more information.
SECTION 5: KEY FINDINGS AND RELATED RECOMMENDATIONS

The Task Force collectively identified 20 findings, and each of the findings is supported with recommendations, along with the suggested implementation timeline (Now=2020; Mid=2021; Later=Beyond 2021). For ease of reference, the Task Force's findings are organized according to the topics discussed in Section 4 of this Task Force Report.

Findings Related to Commonly-Used Terms and Concepts

Finding 1: INTA’s definition of brands is problematic for financial and marketing professionals because it does not refer to brands as an intangible asset that generates economic benefit or value.

INTA’s working definition for brands48 (provided in italics below) does not refer to brands as intangible assets that can generate economic benefits and value.

“Brand” means the total identity of a product or service, which a current or prospective consumer relates to and connects with intellectually, psychologically, and/or emotionally. “Brand” is a complex, multi-layered promise of what will be delivered to and experienced by the consumer.

As noted in Section 3 of this Task Force Report, INTA’s definition of brands was a sticking point for Task Force members because, by not emphasizing the economic value of brands, INTA’s definition does not demonstrate the financial contributions of brands to businesses.

Recommendations for Finding 1

• INTA should revisit its current definition of brands and expand it to include that brands are intangible assets capable of generating economic benefits. [Now]
• To assist in refining its definition of brands, INTA can reference the Task Force’s research in Annex D and particularly consider the definition of brands by ISO 10668, because both marketing and financial professionals accept the ISO definition. [Now]
• INTA should appoint an INTA committee to pursue this initiative. [Now]

Aligning INTA’s definition of brands to the ISO definition of brands provides a definitional harmonization opportunity between financial, legal, and marketing professionals.

Finding 2: INTA does not have a working definition for the terms brand value and brand equity, even though these terms are used in INTA’s 2018–2021 Strategic Plan.

The Task Force, through desktop research, found various definitions for the terms “brand value” and “brand equity,” which can be found in Annex D.

After reviewing the various definitions for “brand value,” the two definitions that stood out to the Task Force members were the definitions provided by ISO 10668 and ISO 20671 which are set out below:

• ISO 10668 defines brand value as the total economic value of a brand in transferable monetary units.
• ISO 20671 defines brand value as the worth of a brand as an asset for an entity.

The Task Force could not agree on the definition to adopt because the definition provided by ISO 10668 was provided from an accounting perspective while the definition provided by ISO 20671 was written from a marketing perspective. As a result of this, both definitions are provided in Section 4, under “Commonly Used Terms and Concepts.”

48. This working definition was provided by the 2016–2017 Brands and Innovation Committee and presented at the March 2017 Board Meeting.
The ISO Standards mentioned above do not define the term “brand equity.” The Task Force members adopted the AMA definition of brand equity which reads as follows:

“The value of the brand. From a consumer perspective, brand equity is based on consumer attitudes about positive brand attributes and favorable consequences of brand use.”

Recommendations for Finding 2

- INTA should engage with the ISO and share these findings concerning the need for definitional harmonization for the term “brand value” within both ISO 10668 and ISO 20671 and seek clarity for definition of “brand equity.” [Mid]
- Where possible, the Task Force encourages INTA to align itself with definitions for “brand value” and “brand equity” that are acceptable to financial, marketing, and legal practitioners. [Mid, Later]
- INTA should appoint an INTA committee to update Annex D and propose interim working definitions for “brand value” and “brand equity” for the Association’s use. [Now]

Finding 3: There are several other definitional harmonization opportunities for the two ISO Standards

Apart from Finding 2, the Task Force also identified in Diagram 9, below, several other terms in ISO 10668 and ISO 20671 that could merit review in terms of definitional harmonization. Please note that the list below is non-exhaustive.

**DIAGRAM 9**

<table>
<thead>
<tr>
<th>Term</th>
<th>Defined in ISO 10668 Brand Valuation?</th>
<th>Defined in ISO 20671 Brand Evaluation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entity</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Assets</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Intangible Assets</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Goodwill</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Brand Valuation</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Brand Strength</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Recommendations for Finding 3

- INTA should appoint an INTA committee to conduct a robust definitional review of both ISO Standards closely and update Diagram 9 with any other inconsistencies. [Now]
- Once this activity is completed, INTA should engage with the ISO and share these findings concerning the need for definitional harmonization for the above-mentioned terms within both ISO 10668 and ISO 20671. [Mid]
Findings Related to Legislation, Regulations, and Standards Relating to Brand Valuation

Finding 4: Accounting standards follow the principle of recording business items at their price in a commercial transaction to provide businesses with factual, precise, objective, and comparable information. While this approach has its merits from an accounting and financial reporting perspectives, it is tough to give monetary credit to homegrown brands.

Current accounting standards (national or international) follow the paradigm of recording business items at their price in a commercial transaction. Otherwise, these items cannot be on a balance sheet.

For brands, this means that only brands that are licensed or sold or purchased or acquired through a merger can be reflected on a balance sheet. This means that homegrown brands are regarded as an expense within a business even though from the legal and marketing perspectives, potentially more resources in terms of time and money have been invested in developing them.

For example, on March 20, 2019, The Walt Disney Company acquired 20th Century Fox for the US $71 billion\(^49\). The 20th Century Fox company became an asset on Disney’s financial statements. Unfortunately, brands of divisions created within Disney (such as brands associated with the theme parks, hotels, etc.), are not separately recognized as individual brand assets on the balance sheet. The Disney brand is not separately recognized as an asset because it was internally created and will likely never be sold\(^50\).

Finding 5: Homegrown brands are typically left off the balance sheet because there could be a risk of double accounting, i.e., the costs of developing intangible assets could already be accounted for in the costs of tangible assets.

The resources utilized to develop homegrown brands are closely linked to tangible assets, and it is often very challenging to isolate that portion that has not yet been counted towards brand value. For example, the quality of inventory sold may contribute to customers’ perceptions of the brand’s quality; expenses to train employees may contribute to customer service and, in turn, more positive views of the brand; and, similarly, improved office and building maintenance would provide employees and customers with a more inviting and enjoyable experience while working (employees) and when visiting stores (customers), which would cause all involved to view the company and brand more positively. All of these things (inventory, training expenses, and buildings) are already reflected in the financial statements and potentially contribute to the brand’s value. So, to add the brand’s value to the balance sheet without subtracting the contributing assets and expenses would be to double count many of these factors\(^51\). Additionally, as there is no accurate way to apportion the costs on what applies to capital improvement and what applies to the brand value, this exercise is not a case of simple subtraction.

Finding 6: There are several options for treating homegrown brands in financial statements; however, these options are not perfect.

Referring back to Diagrams 7 and 8 in Section 4 of this Task Force Report, different stakeholders have different reasons why they may or may not wish to include homegrown brands in financial statements. For professionals involved in the development and protection of brands, including homegrown brands on financial statements could assist in drawing the attention of the C-suite to brands. However, this may not make sense from an accounting perspective based on the points raised in Finding 5. Nevertheless, during the Task Force dialogues, it was clear that the treatment of homegrown brands by accounting professionals has met with creative tensions between the accounting and legal and marketing professionals.

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The Task Force identified three potential ways the value of homegrown brands can be recognized:

- In principle, the “purchase” and “sale” of homegrown brands to and from the parent company to and from a subsidiary is one way of recognizing the value of the homegrown brand on the balance sheet on the basis that a transaction has taken place; or
- Brands could be valued regularly and recorded on the balance sheet; or
- A separate statement on brand values of homegrown brands can be included in company annual reports, separate from the balance sheet.

Each of the approaches has its limitations, which are discussed below.

Under current accounting standards, companies could, in principle, create subsidiaries that can, virtually, “purchase” and “sell” brands to and from the parent company. This approach would enable the brands to be accounted for in financial statements. However, this method raises several ethical questions: is the brand genuinely being sold, or is it just being transferred to a subsidiary to recognize the value? Can a company time its purchases and sales to suit its purposes? Would companies set selling prices at certain levels to affect what is reflected in financial statements, regardless of the brands’ actual worth for tax purposes? There are also international tax implications if the parent and subsidiary companies are in different countries.

Alternatively, brands could be valued regularly and recorded on the balance sheet. But this method is not foolproof either. While the principles guiding the valuation of brands could be compliant with the ISO 10668, the results of the valuation could be different depending on the valuation approach that is utilized.

For example, three main brand consultancies produce annual brand rankings:

- Brand Finance produces a list of the World’s 500 Most Valuable Brands.
- Interbrand produces a list of the Best Global Brands.
- Kantar Millward Brown produces a Top 100 List.

All three consultancies use the income approach to value brands. However, Interbrand and Kantar Millward Brown use the earnings split approach while Brand Finance uses the royalty-relief approach. The results of the top-five most valuable brands in 2019 and their related values, as assessed by the three brand consultancies mentioned above, are listed in Diagram 10.

**DIAGRAM 10: ISO 10668-compliant Brand Valuations Yield Different Results**

<table>
<thead>
<tr>
<th>Brand</th>
<th>Brand Finance 2019 Rankings</th>
<th>Interbrand 2019 Rankings</th>
<th>Kantar Millward Brown 2019 Rankings</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Value in million (US $)</td>
<td>Value in million (US $)</td>
<td>Value in million (US $)</td>
</tr>
<tr>
<td>Apple</td>
<td>153,634 (2)</td>
<td>234,241 (1)</td>
<td>309,527 (2)</td>
</tr>
<tr>
<td>Amazon</td>
<td>187,907 (1)</td>
<td>125,263 (3)</td>
<td>315,505 (1)</td>
</tr>
<tr>
<td>Google</td>
<td>142,755 (3)</td>
<td>167,713 (2)</td>
<td>309,000 (3)</td>
</tr>
<tr>
<td>Microsoft</td>
<td>119,595 (4)</td>
<td>108,847 (4)</td>
<td>251,244 (4)</td>
</tr>
</tbody>
</table>

52. Ibid.
54. Ibid.
The top brands are mostly similar, but there are differences in how they are ranked, and the brand value attributed to each brand. The primary question that arises is which value should accountants utilize if they choose to record the value of brands on the balance sheet? Adding the actual brand value to balance sheets could also have significant tax implications, which also need to be considered carefully. Equally, how do accountants mitigate the risk of double counting, as discussed in Finding 5?

The third option is a report of brand values on a company’s annual report, separate from the balance sheet. For example, in the United States some companies would designate a value to their brands; then, auditors would check the procedures used to value the brands. It would be required that the 10-K\textsuperscript{55} report provide a section outlining the procedures used to value the brand and give the brand value estimate. The brand value calculation would be available for any interested reader of the financial statement, but it would not be included in the consolidated balance sheet. Besides, the report would consist of expectations for and causes of future brand growth or regression. It would outline how the company is or is not working to improve upon its brand. This supplemental information would provide readers with an understanding of the company’s views on branding and a means to comprehend the brand’s value\textsuperscript{56}.

Based on the Task Force members’ experience, the most utilized approach to reflect the value of homegrown brands is to provide a separate report within the annual reports of companies, separate from the balance sheet.

### Recommendations for Findings 4, 5 and 6

- The Task Force recommends that it is essential for trademark professionals to understand how brand value is recorded within their own companies. Depending on the approach chosen, trademark professionals must be aware of the limitations of the selected approach.  [Now]
- To learn more about how brand value is recorded within their own companies, in-house practitioners need to engage with their accounting and tax professionals regularly.  [Now]. This recommendation should be read together with recommendations for Findings 14 and 15, below.
- The Task Force recommends that INTA supports trademark-professionals with the development of resources such as fact sheets that provides more in-depth information on the above-mentioned approaches and their pros and cons. [Now, Mid]
- The Task Force recommends that the development of these fact sheets be led by an INTA committee. [Now]
- The Task Force at this stage is not recommending how brand value should be recorded within a company. Instead, the Task Force recommends that through an INTA committee more in-depth research be conducted. [Now, Mid]

### Findings Related to the Purposes of Brand Valuations

**Finding 7:** It is essential to know the purposes of the brand valuation, the intended audience of the valuation, and the applicable legislation, regulations, and standards.

As mentioned in Section 4 of this Task Force Report, the most commonly cited reasons/purpose for conducting a brand valuation are:

- management information
- liquidation
- dispute resolution
- strategic planning
- legal transactions
- taxation planning and compliance
- value reporting
- licensing
- loan and equity financing
- accounting
- litigation support

Through desktop research, the Task Force found Diagram 11, which highlights some of the transactions mentioned above; the stakeholder or audience that would be most interested in the brand valuation; and the legislation, regulations, standards, or case law that must be considered. The cases that the Task Force discovered (at least in the United States) were related to patent infringement and invalidation\textsuperscript{57}.

\textsuperscript{55} A 10-K is a comprehensive report filed annually by a publicly traded company about its financial performance and is required by the U.S. Securities and Exchange Commission (SEC). The report contains much more detail than a company’s annual report, which is sent to its shareholders before an annual meeting to elect company directors.


\textsuperscript{57} "Federal Circuit: Georgia Pacific is not a rule (and never will be)," BVR, Business Valuation Resources, 5 December 2012, https://www.bvresources.com/blogs/business-valuation-law-news/2012/12/05/federal-circuit-georgia-pacific-is-not-a-rule-and-never-will-be. Diagram 12 provides a United States perspective on various transactions, the intended audience, and the related legislation or regulations.
Recommendations for Finding 7

- The Task Force submits that in all of the above-mentioned transactions, the brand valuer would need to be ISO 10668-compliant as well.
- The Task Force recommends that INTA develops similar member resources that cover other key jurisdictions with the aim that members have a high-level summary of the different transactions, their audiences, and the applicable laws, regulations, standards, and case law, where appropriate. [Now, Mid, Later]
- The Task Force also recommends reviewing the case law by jurisdiction on the topic of damages as related to brands. [Now, Mid, Later]
- The Task Force recommends that these initiatives be led by an INTA committee in collaboration with brand valuers and accounting professionals. [Now, Mid, Later]
Findings Related to Requirements for an ISO-Compliant Brand Valuation

Finding 8: Legal considerations feature in ISO 10668. However, it is unclear to Task Force members to what extent legal practitioners have been involved in the development of this Standard, even though brand valuation has a direct impact on their work.

The Task Force endorses and commends the ISO for the inclusion of legal considerations in ISO 10668. It states that a brand appraisal should include an assessment of the legal protection afforded to the brand, identifying:

- each of the legal rights that protect the brand,
- the legal owner of each of those legal rights, and
- the legal parameters that negatively or positively influence the value of the brand.

In terms of legal parameters affecting the value of the brand, appraisers are asked to consider the following factors including:

- distinctiveness;
- scope of use/scoped registration (territory, goods, and services);
- the extent of use;
- notoriety/extent to which brand is well-known;
- risk of cancellation, priority, dilution and the ability, or willingness, or both, of the owner to enforce legal rights.

ISO 10668 does not provide guidance on how the above mentioned assessment should be made and who should be consulted to evaluate legal considerations. This led to several questions within the Task Force, including how one measures distinctiveness positively or negatively for a registered mark because, once registered, a trademark is presumed to be prima facie distinctive.

Recommendations for Finding 8

- As ISO Standards are updated every five years, the Task Force recommends that INTA engages with the ISO and make itself available to support the development of the legal considerations within ISO 10668 during the next review period. [Mid]
- The Task Force also recommends that to support this activity in a meaningful way, it would be necessary for an INTA committee to review the portion on legal considerations within ISO 10668 carefully and identify further areas of improvement that INTA is proposing. [Now]

Finding 9: There are certification programs related to brand valuation. But it is not clear to the Task Force the extent to which legal considerations are part of these certification programs.

During the discussions with Task Force members, financial professionals were in agreement that they struggle with identifying and developing the appropriate inventory of legal rights involved in brand valuations. Based on desktop research, the Task Force found several valuation professional certification programs for financial professionals within the marketplace. One example of a valuation certification program is the Certified in Entity and Intangible Valuations credential managed by the Corporate and Intangibles Valuation Organization, LLC, in collaboration with the American Institute of Certified Public Accountants (AICPA), American Society of Appraisers (ASA), and the Royal Institution of Chartered Surveyors (RICS). However, it was unclear to the Task Force to what extent this certification program includes education on legal considerations when it comes to brand valuation.
Recommendations for Finding 9

- The Task Force recommends that INTA builds bridges with organizations that develop certification programs on IP or brand valuation for finance (accounting) professionals. [Mid, Later]
- INTA could support the development of a robust legal considerations segment for these certifications programs so that accountants are more equipped to understand some of the brand-related legal issues. [Mid, Later]
- The Task Force recommends that an INTA committee conduct research to determine the top 10 IP or brand valuation certification programs globally and draft a proposal on how to engage with these educational providers about the potential support that INTA can offer on the topic of legal considerations when it comes to brand valuation. [Now]

Findings Related to the Requirements for Brand Valuation Approaches and Methods

**Finding 10:** Even though ISO-compliant, valuation of the same brand by different valuation firms can have different results.

This was discussed in-depth in Finding 6 and, therefore, not repeated here.

Recommendations for Finding 10

- In addition to the recommendations provided for Finding 6, the Task Force also recommends that an INTA committee develop, or update INTA resources related to brand valuation approaches and provide examples of which approaches are better suited to some of the transactions identified in Finding 7. A non-exhaustive list of INTA online resources can be found in Annex A. [Now, Mid]
- The Task Force endorses INTA's Business Transactions Webcast Series as an excellent resource, particularly Segment 4, Economic Aspects of Trademark Transactions—Valuation, Taxes and Financial Planning, for in-house trademark professionals to gather more information on different valuation approaches. [Now, Mid, Later]

Findings Related to ISO 20671

**Finding 11:** ISO 20671 is new, and more work needs to be done to refine it and its applicability.

The Foreword of ISO 20671 states that this Standard “is a meta-standard, [and] it is anticipated that further development will result in greater precision in defining terms, measures, and processes.” The Task Force found that it is to be expected as the Standard was only issued in March of 2019.

Like ISO 10668, the new Standard also refers to legal considerations but refers to them as legal "dimensions":

“Legal dimension refers notably to the brand's status of protection and the scope of brand rights and their ownership. Indicators of this dimension include, e.g., assessments of trademarks, trade names, copyrights, patents, Internet domains, and other intellectual property-related aspects.”

No other explanation on legal dimensions is provided within ISO 20671.
Recommendations for Finding 11

• The new ISO is in its nascent stages, and the Task Force recommends that INTA engages with the ISO to support the development of the topic of “legal dimensions.” [Now]
• As with the recommendations identified for Findings 1 and 2, the Task Force recommends that an INTA Committee work in partnership with INTA staff to move this discussion forward. [Now]

Finding 12: There is one certification program related to brand evaluation. But it is not clear to the Task Force the extent to which legal considerations are part of this certification program.

The Task Force found that The European Brand Institute has, in cooperation with Austrian Standards International, developed the Certified Brand program, through which the Certified Brand Seal of Quality may be awarded based on compliance with International Brand Evaluation Standard 20671. It is unclear to the Task Force to what extent this certification program for brand evaluation includes education on legal dimensions.

Recommendations for Finding 12

• The Task Force recommends that INTA engages with the above-mentioned entities and assesses what the brand evaluation certification program is about and how it can benefit trademark professionals. [Now]
• The Task Force also recommends that INTA assesses the robustness of the discussions on legal dimensions and considers what support INTA can provide. [Now]
• INTA should appoint an INTA committee to pursue this initiative. [Now]

Findings related to comparisons between ISO 10668 and ISO 20671

Finding 13: There is a disconnect between ISO 10668 and ISO 20671.

In Diagrams 6 and 9, the Task Force has provided some comparisons between the two ISO Standards. Apart from some of the definitional inconsistencies and gaps identified in Findings 2 and 3, there are some areas of disconnect between ISO 10668 and ISO 20671. For example, it was unclear to the Task Force members whether the provisions of the ISO 10668 are wholly incorporated into the ISO 20671.

Recommendations for Finding 13

• The recommendations provided for Findings 2, 3, 8 and 11 related to engagement with the ISO also apply here. [Mid]
Findings Related to Stakeholders Involved in the Brand Valuation and Brand Evaluation Ecosystem

Referring to Diagram 7, the Task Force members delved more deeply into three of the stakeholders, namely, trademark in-house practitioners, trademark outside counsel, and IP Offices in the findings set out below. Additionally, the Task Force also considered other recommendations applicable to:

- legal academic institutions; and
- INTA as an association that has not already been identified in earlier findings and recommendations.

Finding 14: Brand owners do not regularly value their brands

In 2019, INTA in-house practitioners were invited to participate in WTR's 2019 in-house benchmarking research. An e-mail was sent on behalf of WTR to all in-house practitioners through INTA's e-mail marketing system. The Task Force does not have any data on the number of INTA in-house practitioners that participated in the survey.

The research included a new section on brand strategy. WTR's report released on May 1, 2019, found that “it is still too often the case that companies do not fully appreciate the value of the brands on which they have built their business and use to extend market reach for their products. This suspicion is backed up by the finding that less than one-third of responding companies had had their brands valued by a valuation firm. While an additional 17 percent said that their company was considering a valuation exercise, more than half (53 percent) were not.”

Recommendations for Finding 14

- Legal, marketing, and finance teams could meet annually or at an appropriate interval to determine:
  - how the value of brands is captured within their organization;
  - the brand(s) to be valued and evaluated;
  - the purpose of the valuation or evaluation; and
  - how the valuation or evaluation would be used (internal to business stakeholders, to share with licensees or affiliated companies, for an acquisition or divestiture consideration, or other purposes).
- Legal, marketing, and finance teams should work together to develop routine brand valuation and evaluation programs (for the latter, once ISO 20671 is more refined).
- In-house practitioners should have a series of educational sessions with finance and marketing professionals:
  - Presentation from brand professionals about “what is a brand” and the inventory of legal rights related to brands and/or the portfolio of brands.
  - Presentation from marketing about consumer perception related to core brand(s) and perhaps the strategic direction for these brands, such as areas of growth, licensing opportunities, and the tools in place to measure consumer interactions.
  - Presentation from finance professionals on how brand value is captured within the organization.
  - Presentation from brand valuers on various valuation approaches and methods, and which transactions are better suited to these approaches.
- Finding 9 presents a significant opportunity for trademark professionals to be strategic partners for brand valuers to identify the scope of the brand assets that need to be valued along with related rights.
- The Task Force strongly recommends that in-house practitioners familiarize themselves with the concepts of brand value, brand equity, brand valuation, and brand evaluation. To assist with this process, the Task Force recommends that in-house practitioners review Sections 4 and 5 of this Task Force Report. Additionally, Annexes A and B provide a list of resources that could be useful for in-house practitioners.
- To assist with the internal dialogues mentioned above, the Task Force has prepared a checklist of questions that are important for trademark professionals to consider when determining the scope of brand assets and related rights in the valuation process in Annex G.
Finding 15: In-house trademark practitioners do not interact with their tax counterparts as much as they should.

The same WTR survey mentioned above also shed some light on the interplay between the finance and trademark functions, with just half the respondents getting involved in tax-related matters and less than 40 percent charging intra-group license fees. Additionally, more than half of the respondents (51.7 percent) did not know whether any company trademarks or brands were included as an asset on the corporate balance sheet. For many, this would be the case only when a transaction has occurred, triggering reporting requirements.

Tax and trademark practitioners talk about trademark “ownership” (beneficial/economic vs. legal/registered ownership of trademarks) and “goodwill” (trademark goodwill vs. financial goodwill) in different ways because the legal owner can differ from the economic owner of a trademark. The legal owner is the entity that is recognized in law as the proprietor of the trademark. At the same time, an economic owner is the entity that exercises control over the trademark on an operational basis and ultimately benefits from its use.

Due to this difference, taxation of intangibles is a controversial issue in many jurisdictions. For example, what happens when a United States entity is the legal owner of the brand and the Indian entity is the economic owner. The question then is whether the advertisement, marketing, and promotional expenses incurred concerning a brand would benefit the Indian entity only, or would ultimately benefit the United States entity, i.e., the legal owner. In India, although there are cases where it has been held that the concept of economic ownership is not relevant for taxation and it is ultimately the United States entity that would reap the benefit of the brand, a clear answer is complicated, and this could differ from jurisdiction to jurisdiction. Additional research can be found in Annex H.

Recommendations for Finding 15

- Legal and tax teams should meet annually or at an appropriate interval to identify the different transactions that tax teams are working which impact brands. [Now]
- To assist in-house practitioners with these types of interactions, INTA’s In-house Practitioners Committee is working on a fact sheet related to IP and Taxation.

Finding 16: In 2019, law firm leaders identified M&A/transactional work as the primary driver for practice growth, particularly in the United States.

The Task Force did not find any recent benchmarking research analyzing the changes to law firm trademark practice resulting from brand valuation and brand evaluation activities. However, the 2019 Citi Hildebrandt Client Advisory\(^{59}\) indicated that law firm leaders identified M&A/transactional work as the primary driver for practice growth opportunities, particularly in the United States, closely followed by general litigation and financial/capital markets work. The Task Force inferred from this that there could correspondingly be growth in demand for valuation expertise based on these practice growth areas.

\(^{59}\) This report is produced annually. The analyses and projections are based on data collected from a sampling of primarily US-headquartered law firms by Citi Private Bank, as well as conversations with law firm leaders. For third-party providers of legal services, our information is mostly anecdotal. Sources include the “Citi Annual Survey Database” of 191 US-headquartered firms, including 45 Am Law 1-50 firms, 33 Am Law 51-100 firms, 45 Am Law Second Hundred firms, and 68 additional firms; the “Citi Flash Survey,” including 41 Am Law 1-50 firms, 29 Am Law 51-100 firms, 48 Am Law Second Hundred firms and 49 additional firms; the “Citi Law Firm Leaders Survey” of 59 large firms headquartered in the US, UK, Australia, China and India; and the “Law Firm Leaders Confidence Index” which reports the forward-looking opinions of law firm leaders from 156 firms. For the detailed report, visit https://www.privatebank.citibank.com/ivc/docs/2019CitiHildebrandtClientAdvisory.pdf.
Recommendations for Finding 16

- Given both the close strategic partnership that law firms share with their in-house clients and the growth in M&A/transactional work, it is essential for law firms to increase competencies in the areas of brand value, brand equity, brand valuation, and brand evaluation so that they can advise and support their clients appropriately. The Task Force encourages law firm leaders to:
  - Analyze the possibility of incorporating brand valuation-related services to the current offer of services. [Now, Mid]
  - Take brand valuation courses. Examples of courses cited by Task Force members include the Valuation Program conducted by NYU Stern Business School. This type of training would enable a lawyer to understand how value is created, measured, eroded, or destroyed with some illustrative case studies. Even if lawyers are unable to sign a valuation report, they will be able to articulate thoughts around the topic confidently. [Now, Mid]
  - Take a course in economics and behavioral science to understand how value is created, how it migrates, and how it scales or gets eroded. [Now, Mid]
  - Read reports by various brand consultancies and understand the brand valuation approaches that they utilize. [Now]
  - Attend and participate in seminars hosted by brand valuers. [Now]
  - Host educational sessions with team members who do not understand the concepts of brand value, brand equity, brand valuation, and brand evaluation by using easy examples to explain how value is created and eroded. The Task Force members discussed various examples including the recent controversy between Thomas Cook, India and its parent company. Basically, the financial problems of Thomas Cook, UK have led to an impact on the brand value of Thomas Cook, India. [Now]
  - Invite their accountants to host “lunch and learn” sessions on law firm economics. [Now]
  - Promote discussions with the clients on brand value and how this is captured within their organization. [Now]
  - Maintain a pre-approved list of brand valuation experts so that law firms can work with them if needed, and if the firm does not do brand valuation work. As brand valuation and evaluation exercises are borderless, it is crucial to develop a network of professionals around the world that can support global brand valuation and evaluation exercises. [Now, Mid, Later]
  - Partner with PR agencies to proactively offer contingency and remediation plans as part of the firm’s services to be applied during times of crisis, as a way to provide quick answers for actions that may erode the value of a brand. [Now]
  - Encourage learning programs among clients, regarding the creation and preservation of a brand valuation within the digital context (i.e., social media). [Now]
  - Promote more interaction and awareness of these matters among the corporate and tax law partners and professionals, if working in a general practice firm. [Now]

Finding 17: IP Offices have different approaches to the topic of brand valuation.

Based on various high-level delegation visits by the INTA Presidents, CEO and External Relations staff in 2018 and 2019, the Task Force has found that:

- Some IP Offices are looking to INTA as a resource for information and a potential partner to host seminars on brand valuation60.
- Other IP Offices have independent resources available on their website on the topic of IP valuation. For example, the UKIPO has dedicated information on IP valuation and supporting checklists. However, there is no dedicated information on brand evaluation61. Similarly, the EUIPO has some information on the topic of brand valuation62.
- Other IP offices are organizing forums to engage various stakeholders on the topic. For example, INTA worked with the Vietnam Ministry of Science Technology, Vietnam IP Association, Vietnam Chamber of Commerce and Industry, and WIPO to organize the second in a seminar series on brand value for Vietnamese companies in Ho Chi Minh City. One hundred attendees from 50 local companies attended the event. Similarly, the Hungarian IP Office was considering a workshop for small- to medium-sized enterprises on how to monetize IP63. Additionally, the United States Patent and Trademark Office (USPTO) has hosted events related to this topic64.

60. Hélène Nicora, INTA Chief Representative of Europe, e-mail, October 2, 2018.
63. Hélène Nicora, INTA Chief Representative of Europe, e-mail, October 2, 2018.
• The Intellectual Property Office of Singapore (IPOS) has taken a step further. IPOS, through a public and private alliance, provides strategic intellectual property and intangible asset advisory services through the IP ValueLab, the enterprise engagement arm of IPOS.\(^{65}\)

• The Japan Patent Office (JPO) has sponsored/published a few research pieces about valuation, particularly concerning patents.
  • In 2016, they published a report entitled Valuation of Intellectual Property. It was co-published with the Asia-Pacific Industrial Property Center and the Japan Institute for Promoting Invention and Innovation:
  • In 2016, they published Intellectual Property Utilization and Support for Intellectual Property Management in Japan’s Small and Medium Enterprises – Experience for Vietnam:
  • In 2016, they published a Guide to Licensing Negotiation Involving Standard Essential Patents:
• The Korean Intellectual Property Office (KIPO) partnered with WIPO to develop IP PANORAMA.
  • IP PANORAMA was designed to help small and medium-sized enterprises (SMEs) utilize and manage intellectual property (IP) in their business strategy.\(^{66}\) It includes information on IP valuation. In 2017, KIPO and the Financial Services Commission announced that “the South Korean government will ease the criteria for intellectual property-backed lending.”\(^{67}\)

For more information about INTA’s initiatives with IP Offices on this subject, see Annex E.

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**Recommendations for Finding 17**

• Given that the Task Force membership did not include representatives from IP Offices, the Task Force does not provide any recommendations on the role IP Offices could or should play on these topics.
  
• Instead, the Task Force recommends that this question be considered in the Think Tank focused on the Future of IP Offices. This Think Tank is one of three that was launched by INTA CEO Etienne Sanz de Acedo during INTA’s 2019 Annual Meeting in Boston, Massachusetts. [Now]
  
• The Task Force, however, recommends that IP offices regard INTA as a potential resource for information or speakers on the topic, where appropriate.

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**Finding 18:** Legal educational institutions should incorporate IP and specifically brand valuation as part of their curriculum.

Given the importance of this topic to brand owners and those that support them, the Task Force members determined that it was important for law schools and paralegal educational institutions to provide some foundational education on the topic of valuation and, more specifically, brand valuation.

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**Recommendations for Finding 18**

• INTA should survey INTA’s Academic, Trademark Administrators’ and Young Practitioners Committees to determine the law schools or paralegal educational institutes that offer some foundational education for young practitioners on the topic of valuation and more specifically brand valuation. [Now]
  
• INTA should appoint an INTA committee to develop a proposal on how to encourage schools that are not offering such courses to consider offering them. [Now, Mid]

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Finding 19: INTA has strived to communicate to and educate INTA membership on the topics of brand value, brand equity, and brand evaluation.

Since the inception of INTA’s 2018–2021 Strategic Plan, INTA has strived to communicate to and educate INTA membership on the topics of brand value, brand equity, and brand evaluation. Details of these initiatives can be found in Annexes A, B, and C.

Recommendations for Finding 19

• Continue its emphasis on the topics of the business value of brands (including brand valuation) and brand equity in the Strategic Plan of 2022–2025 by expressly stating the importance of INTA continuing the brand value and brand equity dialogue with marketing and financial professionals. [Now, Mid]

• Also include/reference brand evaluation when considering the business value of brands in future Strategic Plans. [Now, Mid]

• Encourage continued development of additional educational programming on the topic of brand valuation, building off of the excellent work INTA’s Programming Advisory Council and Education Department has done in 2019. [Now, Mid, Later]

• Encourage new focus on the topic of brand evaluation, given that it is new and has not been explored within INTA’s educational programming. [Now]

• Apart from the topic of brand evaluation, the following topics would merit continued exploration [Now, Mid]:
  • Brand development, valuation, and evaluation in the M&A Process.
  • Brand development, valuation, and evaluation in litigation matters.
  • What are the different brand valuation approaches and methods and which transactions are they typically used for?
  • What do all the various brand rankings mean, how are they different, and how can they be utilized and when?

• Appoint an INTA committee to develop a proposal to update and expand INTA’s current online resources on the topics of brand value, brand valuation, and brand evaluation. To assist with this process, the Task Force has identified a non-exhaustive list of current INTA online resources on these topics in Annex A. [Now]

• Seek content from marketing, accounting, and finance professionals to support the development of the above-mentioned resources. These contributions can come in the form of sponsored content or content swaps with the relevant trade associations. [Now, Mid]

• Continue to contribute to third party IP and non-IP publications (financial and marketing) on the topic of “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises. [Now, Mid, Later]

• Publish articles together with financial and marketing professionals on this topic. [Now, Mid, Later]

• Seek out bridge-building opportunities with accounting, auditing, banking, insurance, and other related associations. The Task Force has compiled a list of these potential bridge building opportunities in Annex F. [Now, Mid, Later]

• Facilitate discussions on “legal considerations” (ISO 10668) and “legal dimensions” (ISO 20671) between financial, legal, and marketing professionals through:
  • joint events.
  • the development of a repository for the sharing of information between these professionals. [Mid, Later]
Findings Related to Changing Consumer Behavior

**Finding 20:** Changing consumer behavior could impact brand valuation and evaluation approaches.

Marketing professionals within the Task Force shared that technological developments are outpacing the development of tools to measure ever-changing consumer behavior and by extension, consumer interactions with brands. For example, net promoter score (NPS) is a common way for marketing teams to measure a customer’s willingness to recommend a product, and this sometimes is used as a quick and dirty measure of brand value. However, NPS cannot be measured in real-time.

If there are more robust tools to measure changing consumer behavior in real-time, the Task Force members speculated that there could be more interest in using the market approach when it comes to brand valuation. Additionally, the Task Force members thought that the measurement of consumer interactions could directly impact the implementation and use of ISO 20671, particularly around the topic of brand strength.

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**Recommendations for Finding 20**

- INTA should continue discussions with marketing professionals through organizations like the AMA to determine what types of tools are available in the marketplace, how they are being utilized, and whether there are opportunities to jointly develop tools that could assist in measuring some consumer interactions with brands. [Now]
- INTA should consider more deeply the implications of some of the technological developments mentioned above and how they impact brand loyalty, consumer choices, future marketing, pricing strategies, and brand valuation and evaluation approaches. [Now]
- INTA should appoint an INTA committee to review the above-mentioned activities further. [Now]
In this section of the Task Force Report, the Task Force sets out some additional considerations for the implementation of some of the recommendations set out in Section 5, above.

- The Task Force endorses the constitution of the new Commercialization of Brands Committee in the 2020–2021 committee term. For recommendations 1 to 13 and 18, the Task Force proposes that this new Committee take the lead on these activities by setting up a subcommittee dedicated to Brand Valuation and Evaluation.

- A review of the new Commercialization of Brands Committee description indicates that the Committee is well suited for this role as one of the aims of the Committee is to explore the concepts of brand valuation and brand evaluation. For easy reference, the description of this Committee is set out here:
  - “Develops resources, including educational programs and best practice guidelines relating to the in-market commercialization of brand offerings. This Committee will consider such issues as marketing and advertising regulatory issues, agreements including licenses, distribution, supply and agency agreements, tax, brand valuation, brand evaluation, and related issues to support the commercial success of product and service offerings.”

- For bridge-building activities with the organizations listed in Section 5 (ISO, MASB, and EBI), accounting, auditing, banking, insurance, and other related associations identified in Recommendation 19, the Task Force suggests that this activity also be pursued through this new Committee, in partnership with INTA staff liaison for the Commercialization of Brands Committee.

- To support the setup of this bridge-building function, the Committee can utilize the foundational documents (Building Bridges Request Form and Building Bridges Prioritization Committee) and processes that have been set up by the 2018–2019 Building Bridges Committee.

- During the 2018–2019 Committee term, the Building Bridges Committee has built bridges with the AMA, and therefore the Task Force would recommend that any discussions about potential tools to measure consumer interactions be conducted through the Building Bridges Committees.

- The foundation for the engagement with the ISO has already been set through the participation of Professor Bobby Calder, Chair of the Technical Committee 289 of the ISO (the Technical Committee responsible for developing ISO 20671) in the work of the Task Force and introductions that Professor Calder has made to INTA staff.

- It is important to note that INTA cannot engage directly with the ISO because engagement at the ISO is through member countries.

- As such, the Task Force recommends that engagement with the ISO be conducted through MASB, which in turn, represents the United States under the auspices of the American National Standards Institute (ANSI) in discussions within the ISO on brand evaluation standards.
SECTION 7: EXPERT INSIGHTS

A unique feature of the Task Force Report is this Section on Expert Insights. Six of the Task Force members provided their insights on the topic of brand value, brand equity, brand valuation, and brand evaluation.

Business Environment Trends

by Safir Anand

Safir is the Senior Partner and Head of the Trademarks, Contractual and Commercial IP Department at Anand and Anand. He advises and acts for clients from diverse industries. He works as an IP advisor, providing inputs towards strategy, business models, marketing, and commercial insights. Safir has an astute understanding of IP law that covers: Protection, Enforcement (Civil and Criminal), and Contractual IP (Agreements, Licensing, Franchising, Monetization, Strategic Advisory, and Due Diligence).

Traditionally, businesses were bought and sold as a whole, and every intangible asset of the business was bundled as a part of a composite transaction, with goodwill generated. No separate value was attributed to the quality of a mark (for example, invented or well known) or to factors such as its exclusivity, enforceability, trans-border, future threats through cancellations partial cancellation, consents to use granted or denied, infringement or passing off, dilution, etc. At best, the future potential that was penned down on excel sheets as potential cash flow was taken as a basis to compute a current value.

The task was also complicated by the lack of any uniform definitions of “brands” with definitions ranging from Trademark Acts to common law to marketing and accounting to tax. Accounting standards did not define how a brand value could be consistently pegged/stated/evaluated, nor was there any consistency in the methods or methodologies followed. Each transaction was thus subject to a negotiated value “approximated” and “accepted” as fair between a buyer and a seller. Most of the valuation was, therefore, only for transaction purposes and in some occasions for brand pledge than for capturing the intrinsic value of the business symbolized by the brand.

In today's world, where start-up escalated to huge valuations and become top brands/businesses, aided by fund flows that measure much beyond the obvious, it has become necessary to look at few legal factors that may aid or dilute brand value.

Trademarks today are beyond just names and encompass product recognitions like never before. They can be enforced and monetized against even unrelated goods, have been subject to huge licensing, are co-promoted, have an alliance with governance, and have an impact attributed almost instantly to a market capitalization of listed entities making the case study more interesting.

Until some years ago, it would have also been acceptable to assume that the valuation of a business and its corresponding brand would go hand in hand and that the valuation of a brand may be derived from a calculation of the goods sold or likely to be sold by the company that owned the brand. The definition of a trademark itself assumed control on the quality of goods that were either manufactured by the owner or produced under quality standards approved through license as a part of the total valuation. While conceptually, the same may be true today, the manner and parameters of traditional thought have radically changed. For instance, Uber and Airbnb are examples of the new age disruptive method of valuation. The brands are used on tangible properties that do not even belong to the respective companies that own the brands, i.e., the cars and the houses, through which services are offered to consumers are not owned respectively by Uber and Airbnb. In fact, the house I rent or the car I lease may differ/vary at an individual level of consumption and yet falls within one definition of “Airbnb” or “Uber.” Despite the lack of uniformity, a phenomenal Brand Value is attributed to them.

Similarly, Steve Jobs is a brand in his own right. In the past, Steve Jobs’ departure led to a decline in the valuation of the company, whereas, upon his return, Apple’s market capitalization jumped higher, making it a complex case of in-building brand value of a company to promoter value in terms of the extent of involvement.

There are many businesses today where the promoter value has become associated with the brand value of the company so much that a change in promoter could itself impact brand value. Such situations have forced companies and businesses to re-evaluate the position of branding and attracted eyeballs towards the large numbers it has the ability to attract.

Due to the above, there is a need to measure brands independent of the businesses, although this has given impetus to complexity in the valuation methods.

68. With exception of the Expert Insight by Amandine Bawer, the views, thoughts and opinions expressed in the text belong solely to the authors in this Section, and not necessarily to the author’s employer, organization, the Task Force or INTA.
While a separate note of the Task Force deals with the methods that are being deployed for the valuation of brands and businesses embedding brands, this note seeks to summarize certain trends in the market that are impacting Brand Valuation.

Ownership issues

There are several issues that can emanate within the header of ownership. The most typical example is when a company has a listed arm and has a holding company in which ownership of the intellectual property resides. If this existence has been there for a while, it may not raise any impact on Brand Valuation, but where the arrangement is new or proposed, there are several issues that are examined or are likely to be examined.

The first and foremost of this would be why the promoters of a company are choosing to keep their most valuable asset in a holding company and whether the cost of development of the brand including the advertisement cost, brand promotion cost, etc. is being met through the holding company or being compensated or is being spent by an operative company which does not have such ownership. In such cases, it is believed that the operative company has not been given due consideration but has undergone the effort to create and enhance the brand for the benefit of the holding company. For example, there are cases involving foreign companies and their subsidiaries in other countries. Just for the sake of the study, let us assume a foreign company that is incorporated in the United Kingdom and its subsidiary incorporated in India. The Indian company may be spending a huge amount of money on advertising and promotion of a brand and that the activities of the Indian company may be a substantial part of the revenue that is generated by the brand.

Similarly, there may be times when a brand may be small but is scaled up and commensurate to the scaling up, there is a significant increase in the brand promotion and advertisement cost of the brand. Similarly, high salaries are paid to brand development managers or marketing people or advertisement agencies for enhancement of brand value in which money is spent from the operative company and treated as an expense but is not compensated by the holding company. In many examples, the holding company also charges a royalty for allowing the use of the mark by the operative company and this, in several valuation examples, raises a concern where,

• a royalty is being paid to the holding company;
• the expense for enhancement of value, which actually inures to the holding company, is being incurred by the operative company without compensation.

The Stock Markets, for example, do not take favorably to such issues and believe that there is a conflict of interest between the listed company and the unlisted company. Similarly, from a future projection of brand value, it is believed that the promoters' interest is not aligned to its shareholders.

It is also believed that at any point in time, if the business sees an impact of earnings, there would be no ability or flexibility of the business to sell the trademark or brand as an asset as that would lie with the holding company.

The issue of ownership of intellectual property also assumes importance when rights are conferred to a company for a particular territory or a particular product and not in sync with a larger bundle. For example, a company may have the right to use a trademark for confectionery and may have registrations and ownership of the same, but the owner decides to use the same trademark for unrelated goods in another company. Often, this is explained as an effort to minimize the risk of brand failure, but in some cases, it is believed that,

• there is a lack of focus on the extension of a brand;
• if the promoter believes that the activity of expansion was not likely to succeed then there was no need to experiment in the first place as any failure could impact the brand value;
• if the attempt was believed to be successful then there was no reason to do this in a second company; and
• how would rights be enforced against third parties violation when the instances of violation are centric around goods that may not be specific to any one of the two categories.

Issues such as sharing of costs, efforts towards the maintenance of the mark, etc. may arise here, and in terms of valuations, diversified companies always have a lesser valuation ascribed to them than concentrated businesses. For example, in the metrics of brand value, some of the top brands of the world are specific to a single company and are wholly-owned for all categories of goods and services rather than conglomerates that may not have single ownership and may use the brand in a more loose sense across different companies doing different businesses. The issue of Brand Valuation vis-à-vis ownership also factors in geographies. For example, a company has rights to a brand in the United States of America, but another company has rights to the mark in the United Kingdom, even if they belong to the same management, it becomes difficult to integrate a brand value as,

• for the American company, the potential of expansion is limited just as it is limited to the UK company to enter America;
• the brand value has already been split into two companies, and the benefits of synergy are not available;
if one company was to find a brand dilution erosion, then the impact of that could be global, particularly in a world where rights are also asserted based upon trans-border reputation and goodwill.

Similarly, any company’s reluctance to take action against an identical or deceptively similar mark for identical or similar or even dissimilar goods in some cases can also impact Brand Valuation at a composite level. There is hardly an example of top brands in the world being diluted by ownership structures based upon geographies, for example, there is only one owner of Amazon or Coca Cola, but this may not be true for many other categories of brands.

One of the other issues that emanate in the ownership of brands is an issue of bundling. There can be intellectual property rights in a mark such as Coke and separate intellectual property rights in the shape of the Coke bottle. There can also be intellectual property rights in colors, sounds, etc. When the bundle is owned by a single entity, the ability to have a higher Brand Valuation is more likely. On the other hand, let us assume that a pizza chain in America owns a trademark Pizza Hut and some variants of the mark such as Pizza Hut, Supreme Pizza, Pizza Hut Margherita, Pizza Hut Vegetable Bonanza in the United States of America. Now assume that in India a new flavour of the pizza is created by the Indian arm that then chooses to own the brand either for the purpose of satisfying its shareholders and justifying the cost or to create separate brand equity so that if the product is not successful at the initial stage, it does not impair the brand equity of Pizza Hut in the United States of America. Let us assume that they evolve a pizza in India called Pizza Hut India King, and the product becomes a subsequent hit. Because it is owned by two separate entities, there is always going to be an issue of how Brand Valuation will be measured now for the Pizza Hut part of the mark as opposed to the India King part of the mark. Similarly, if India’s arm decides to charge a royalty for the use of India King when the mark is introduced in the international markets, then the question of what part of the royalty or brand recall of the product is attributed to India King versus Pizza Hut will arise.

An issue relating to the value of a brand when it serves as a house mark versus when it serves as a trademark has also started arising. There are some entities that have house mark such as Tata in India or Nestle in Switzerland, where, because of the diversified nature of the business itself, the house mark becomes more and more symbolic of goods emanating from an identified group, and the benefit of expanded use reaches a global level. For example, if Tata were to expand into the US market with a new product, they will still be able to leverage the goodwill and reputation of Tata as a house mark. They may also be able to claim the mark as well-known, and in Courts that the mark has been subject to diversified use and thus to consumers and members of the trade, is much more acknowledged than a more limited use mark for specific goods.

Today to say that Amazon has a brand value that is limited only to books and not to electronics or electronics and not to shoes will come difficult because of the very nature of the mark having transited from an individual mark into a house mark. Another interesting aspect of valuation is being created by new market places such as Amazon, eBay, or even Netflix. To give an example, it may be possible that on Amazon, I am buying stationery from Faber Castell. However, from a consumer perspective, I find ease in shopping at Amazon either because of the display or the logistics or the convenience or price or other factors. In such circumstances, it becomes difficult to ascribe for a bifurcation of the enhancement of brand value in the hands of Amazon versus the individual components or brands that may have contributed to it. If I like the product, I will like Amazon more than I may like Faber Castell, and if I dislike the product, I may dislike Amazon more than I dislike Faber Castell. The fact that Amazon also has a return policy, generally for all its goods and services or the delivery mechanism which is faster and can be tracked, will enhance the brand value of everything sold through Amazon, even if the sale was not of goods under its own mark. Thus, the element of trust, convenience, etc. which are also equally important in the enhancement of brand value, will be attributed in such an example through Amazon’s business model and brand, and for that reason, perhaps Amazon chose a logo that symbolizes A to Z of everything.

Protection of rights

There are a large number of cases where companies have started giving intimations to stock exchanges about the grant of or challenge to trademark rights. Similarly, now there are regulatory requirements particularly under Red Herring’s where companies have to disclose any conflict that exists in their brands, whether by litigation or by oppositions or by notice or in any material form which may impact brand value. They also have to quantify what could be the likely impact in monetary terms, if a trademark was successfully challenged or diluted or secured. The valuation agencies in calculating cash flows have to factor in all the effects on the cash flow that may arise if the exclusivity of a brand was to be threatened or if its market share cannot be protected. Consequently, the need to disclose information as to ownership - whether absolute, relative, or challenged makes it necessary to have systems in place to bring consistency in Brand Valuation. Companies that similarly are able to successfully enforce rights and restrain third parties from using identical marks or deceptively similar marks for any category of goods are perceived to be protecting their market share. Consequently, from a future perspective, it is believed that they will be able to enhance their market share and profitability, while if they have an unfavorable decision, then it is believed that there would be a dilution of their market share and consequently brand value. (Glenmark case, Colgate is trying to enforce its rights against Anchor). The recent issue that has come up is a divorce between Jeff Bezos and MacKenzie Bezos, where it is believed that the Brand Valuation of Amazon in its future projects where there is joint interest may suffer.

Dilution

In the area of dilution, if a mark has not been enforced aggressively and there are third parties that have adopted the marks for their concerned goods, the ability of the brand to expand in the future gets impacted. To explain, let us assume that a Steel Company protects its marks in relation to steel products but does not think of protecting it in relation to construction, plastics, rubber ware, etc. After a few years, it decides to expand its business into these goods but finds that the mark is not available. There is no element of dishonesty because the nature of the mark is not invented, and at that point, when it was used for
steel, it did not have brand equity across the other verticals. Subsequently, the brand has acquired a greater recognition initially through steel, and thereafter, the perception has changed from a product into more esoteric terms such as trust, faith, efficiency, etc. of the mark. The company’s ability to diversify gets impaired because it now needs to spend either a cost to acquire the mark for the other categories and the expenditure on acquisition impairs the Brand Valuation until certainty sets in that the acquisition is completed or because the company cannot use its own brand through extensions, the Brand Valuation becomes more fixed and not expansive.

In the same light of things, Brand Valuation issues also assume importance given that the nature of the trademark itself is changing. For example, in today’s world, there are collaborative brands. Gucci has recently done a product line that incorporates Disney characters on the products. Let us assume that the collection is a huge success. To attribute whether the collection was a success because of the use of Disney or because of Gucci’s innovative thinking of combining the character with luxury becomes a point of contention. While it may be easy to measure the royalty that may have been paid to Disney, it is difficult to measure the brand enhancement that Gucci may have or Disney may have as a result of the collaboration. There is also this very interesting world of social media. In a typical sense, brand value is created by the effort of the management to increase brand visibility. This may happen by promotion, advertisement, provision of samples, quality of products, after-sales service, etc. But all control on the brand is with the management. Social media, however, is a completely different game. In social media, unknown people who may not have even genuine social media handles and a large part of influencers who may just have a high fan following and in that sense of social celebrities may impact a brand value either by saying good things or bad. For example, I may tweet about a bad experience with the brand of car that I have used or of service, and because I have a brand value on social media, it influences others to believe me as a genuine endorsement and impairs the brand value by making other people reluctant to avail of the brand's utility.

Similarly, unlike the past, because the reaction time to brands is extremely fast today, there may be decisions taken by the management, which can have a huge negative ramifications due to social media influence. For example, Burberry has recently decided to burn some luxury goods rather than to offer them for sale at a discount or distribute them to the employees. This decision met with a brand outrage from a large part of the community for multiple reasons including the fact that a large part of people in the world do not have clothes to wear to issues that the benefit of cheaper prices should have gone to the consumer rather than to burn the goods.

Commercialization of rights

Brands that are capable of licensing have got higher brand potential. People view these more like annuity brands that are capable of encashment of revenues even from unrelated goods or services. Disney is a clear example. There is a case study that suggests that the price paid by Disney for the acquisition of rights from Lucas Films was initially pegged on the cost of the films that Disney was likely to produce and monetize. Disney, however, went a step further and used the characters of Lucas in a licensing activity by merchandising. The revenue collection on merchandising far exceeded the movie collection and was time-wise a much more widespread activity since it could be continued even post the movie coming off the cinema halls.

Consistency of use (of the mark or the goods on which mark is used)

This is another very interesting aspect where brands may be uniform, for example, a Coca Cola trademark and Coca Cola bottle may be similar all over the world and will have a brand value that will all add up. On the other hand, in some countries, either because of language or because of legislation or because of joint ventures or because the rights were not available, the brand ends up being in a more hybrid form. In India, for example, until liberalization set-in in 1992, Pepsi had to be sold as Lehar Pepsi. Wall’s ice-cream of Unilever was not consistent globally in terms of its use. Therefore, when a consumer saw the product in two different countries, sometimes he was confused about whether the product was the same or was copied. Also, he was not able to carry memories of one good consumption to another country for multiple reasons. This also included the overall characteristic of the product itself. For example, a Nestle Kit Kat bar may not be the same in the United Kingdom and India because milk content may not be the same. Now to say that Nestle Kit Kat UK has a higher brand value than Nestle Kit Kat India means that the Brand Valuation would be impaired through an impact on sales. It may be possible that more people like to consume imported Kit Kat in India than the local Kit Kat. This even becomes more interesting considering that Nestle India may be spending a lot of money to promote Kit Kat, but the effect of promotion is going into purchasing the foreign product. Therefore, consistency of the mark and of the goods that it characterizes becomes critical for a higher Brand Valuation.

There is also another benefit of consistency, which is the legacy effect. This is to say that certain brands are able to claim that they have been in business for decades. For example, in the United Kingdom itself, almost every good brand says that it has been in business since, for example, 1895. Many brands even say By Appointment to Her Majesty. This legacy effect makes people create a greater demand for brands.

Interestingly, brands that have even gone out of circulation but had a huge nostalgia are being purchased for huge consideration. A company by the name of Eicher Motors in India adopted the trademark BULLET for motorcycles several years after BULLET had gone out of fashion. People remembered their BULLET motorcycles and wanted to acquire the new bikes because of nostalgia. Mahindra & Mahindra, which is one of India’s top companies, recently launched JAWA motorcycles while JAWA had been out of circulation for many years. As per newspaper reports, all bikes of JAWA were sold immediately on launch. There might be huge brand equity for marks such as East India Company if it was to be used today because many people would perceive the brand value to be associated with the quality of products that were offered during the British Raj in India. Interestingly, certain brand owners also enhance brand value by claiming that they have no branches. While they may cater to the availability of the product globally through e-commerce and using logistics, the fact that they have no branches enhances the brand value since it is believed that if you do not consume or try the product, you are not likely to get it in another place.
Issues of corporate governance

An interesting area of law that is developing is corporate governance. This becomes even more critical today as minority shareholders have greater rights, there are proxy advisory firms and whistleblowers all around. Thus, which part of the decision taken by a board can be attributed to good governance versus bad governance becomes material. In a world where valuation is shifting from tangibles into intangibles, the ability of the board to interpret whether protection of a brand was to be undertaken or foregone or whether limited protection or extended protection was to be done, etc. could be taken as issues of corporate governance. For example, an adverse judgment that impairs shareholder value will be judged whether it was taken with due competence or through negligence. In today’s world, for example, the historic transaction where Rolls-Royce had sold its rights to Volkswagen could be perceived as an issue of corporate governance. For example, an interesting case that is going on in India involves Daiichi’s acquisition by Ranbaxy, which is one of India’s foremost pharmaceutical companies, where certain disclosures were not made by the Indian promoters at the time of selling. The matter has now escalated into a full-fledged battle with huge claims on damages and issues of corporate governance. The same may also be attributed in today’s world to product recalls. This has become common in pharmaceuticals, foods, and sometimes even in automobiles, and these issues of product recall may impact Brand Valuation.

The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”) were recently amended and notified on June 09, 2017 vide which the following activities have become mandatory:

- Disclosure of outstanding litigations, pending disputes, non-payment of statutory dues, over dues to banks or financial institutions, defaults against banks or financial institutions, contingent liabilities not provided for, the details of proceedings initiated for economic offenses or civil offenses, etc.
- Disclosure of new IP registrations secured by the proprietor.

As a best practice, conscientious companies, from time to time, keep on updating The Securities and Exchange Board of India with the new IP for which registrations have been secured.

Evidence and IP valuation

It is very clear that the ability of a company to enforce rights in Courts, Tribunals or when they are passing on rights to a third party, merger or acquisition, buy-out, etc. would be higher, if there is evidence to support the longevity of use, extent of use, geographical expansion of use, etc. For example, if I were to buy a company which claims the use of the mark since the 1950s and has documents, I would be far more comforted even in terms of insuring myself against a third party challenge or invalidation versus the company that may have genuinely used the mark since 1950s but not maintained adequate evidence.

Taxation and IP valuation

There are also issues that have started impacting brand value from a taxation perspective on the transfer of marks. For example, typically, a foreign company may have protected certain marks in the local jurisdiction in the name of a local entity. That local entity could have been a 100% subsidiary. Subsequently, to consolidate ownership rights, the company decides to transfer the marks to the parent company at a nominal consideration through a deed of assignment. Earlier, this was never a problem. In today’s world, issues such as whether the transaction is being done at an arm’s length and fair valuation and whether there is any impact of related party transactions have set in. In some cases, thus, if a mark is being transferred for a nominal consideration of say US$ 10 from the subsidiary to the parent where there is no change even in the ownership of the mark, the taxation authorities may raise issues relating to the fact that the transfer, if it were done to an outside entity, would have been done at a higher consideration and thus the transaction is not happening at an arms lengths. Similarly, when one company is benefiting by getting a high price asset at a nominal cost is now perceived to be an impact through related party transaction.

There have been cases in India, such as Fosters and Vodafone, which have created huge contests as to demands from Tax Authorities on Transfer Pricing. Examples also include Microsoft, Google Adwords.

Recently there was an article in the newspaper regarding the acquisition by Unilever Plc of the brand Horlicks from GlaxoSmithKline for consideration through an equity swap where Unilever is to allot shares to the shareholders of GlaxoSmithKline in return for the acquisition of the brand and its business. This transaction, supposed to be conducted in the United Kingdom, even before the transaction has been completed, has met with articles in the paper of likely tax implications that would arise within India. The basis of this thought process was that the Indian Government/Tax Authorities believed that a substantial transaction, supposed to be conducted in the United Kingdom, even before the transaction has been completed, has met with articles in the paper of likely tax implications that would arise within India. Of course, it is believed that there was significant value enhancement of the brand in India and accordingly, a large part of the profit generated by the sale of the brand should be subject to taxation in India.

Non-use and IP valuation

Reputation, goodwill, and quality may be primarily acquired in a brand through its use, which leads to exposure, creation of an identity, and a comfort factor of the brand with its consumers. Generally, brands which have been in use for years consistently and with a well-thought-out strategy behind such use, do end up amassing a higher reputation and have better chances at a higher Brand Valuation as opposed to brands which have had erratic activities over the years and eventually may turn into a case of fading into oblivion. The concept of ‘out of sight, out of mind’ does impact the valuation of a brand very highly.
Non-use of the brand which negatively affects valuation or provides a lower valuation should have been such that just before the brand went off the shelves, it was not being spoken of or the product quality/marketing/production/service levels were also on the decline. In such cases, the non-use of a brand would certainly affect its valuation negatively. The legal existence of a brand does not imply that it should have a commensurate economic value to its owner.

There may be an exception to this where the non-use of the brand may not have been a direct result of the issues of production, bad quality, bad service levels of the company owning the brand but due to unanticipated issues, such as a policy change which may make the availability of a brand in a particular country difficult or the product is such that it caters to a very niche population. In such cases, non-use, albeit forced non-use of the brand, may even lead to a higher aspirational quotient amongst the public.
Amandine is the Valuation Director for BrandZ, the world’s largest brand equity database, created in 1998 and continually updated. BrandZ covers over 100,000 brands across 45 countries and is the only brand valuation ranking that measures the contribution of the brand that is validated in market sales. Amandine and her team produce several brand value-based rankings, from category landscape to drivers analysis, they provide a measurement, the value, and insights.

We live in a world that is being shaken as changes happen at high speed. A world where situations are volatile, outcomes are uncertain and unpredictable, systems have become more interdependent and complex, and definitions are blurring to become ambiguous. The marketing environment presents even more challenges for brand owners to navigate. Building strong brands become even more important.

**Brand as a Capital Asset**

A brand is an intangible and powerful corporate asset. Like any asset, a brand needs to be maintained and invested in. Brand valuation quantifies the worth of this asset and enables the investment community and others to evaluate, compare brands as well as make faster and better-informed decisions.

A few years ago, brand value represented about 37% of the total enterprise value. It is now 41% of the total business value that almost doubled in 5 years. Brand is an essential lever to drive business value.
Brand Strength Leads To Superior Shareholder Returns

All leading brand valuation practices have been measuring the shareholder return of the strongest brands in the world. They all end up with the same conclusion: strong brands help to deliver higher shareholder returns (see below the chart from BrandZTM). In this chart you can see two important learnings:

- BrandZ Strong Brands portfolio outperforms the two leading indexes S&P 500 and MSCI World Index
- While the share price of all companies dropped during the economic downturn, it took the companies which own strong brands about a year to recover – while it took about three years for the two indexes. Brand building also brings resilience in challenging times.

Brand Equity is the Key

Looking at the top global brands, the most successful brands have one thing in common – they have stronger Brand Equity. In 10 years, brands with strong brand equity grew more than three times faster than the brands with low brand equity.
Trademarks and the Evaluation and Valuation of Brands

by Bobby J. Calder

Bobby J. Calder is the Kellstadt Professor of Marketing, Kellogg School of Management, Northwestern University. He is also a Professor in the Medill School of Journalism, Media and Integrated Marketing Communications. Currently, he chairs the International Standards Organization's (ISO) committee on Brand Evaluation.

The International Trademark Association (INTA) defines a trademark as a combination of words, names, symbols, or other devices that identifies and distinguishes the source of one party’s product or service from that of others. The traditional issues around trademarks primarily concern the rendering of a mark, legally registering a mark, and protecting a mark. It is becoming increasingly clear, however, that trademarks need to be viewed in the broader context of branding. INTA’s definition of a brand is inclusive of trademark: “Brand” means the total identity of a product or service, which a current or prospective consumer relates to and connects with intellectually, psychologically, and/or emotionally. “Brand” is a complex, multi-layered promise of what will be delivered to and experienced by the consumer. Trademarks should be seen as integral to the business-level process of brand value creation.

Everyone realizes that trademarks are intimately linked to brands. Indeed, trademarks are what consumers use to recognize brands and distinguish them from brands of competing products or services69. But a brand is not merely a trademarked product.

Brands are a means of creating value in the mind of a customer. A consumer who buys a bottle of wine obtains a product of a given objective quality. If in that consumer’s mind, the wine is a brand subjectively associated with the qualities of a certain place, or any other positive perception, the wine is valued more than it might be otherwise. For instance, take a wine that is branded as “Australian wine, linked to enjoying life, free of pretension.” In this case, the company marketing the wine has created additional value for the consumer by virtue of its branding activities. This brand value is distinct from the value of the product per se (it’s objective “quality”), and the wine’s trademark, say “yellowtail,” comes to mark this value as distinct from that of competitors.

In fact, the words, names, symbols, and other devices that constitute a trademark can themselves contribute to the process of brand value creation. The name “yellowtail,” as well as the wallaby illustration on the bottle, leads the consumer to associate the wine with a laidback, unpretentious Australian vibe showing that it is an approachable wine that anyone can enjoy.

Trademarks are thus part of a brand design process70 that allows consumers to recognize the brand value, and trademarks can directly contribute to this value creation. From this perspective, it is important to recognize that managing trademarks as part of a brand design process is an important part of internal business decision making. As depicted in Figure 1, Box (1), brands are used to create brand value for consumers.

Paradoxically, organizations have struggled to recognize and account for the creation of brand value from an internal management point-of-view. Trademarks, as such, are subject to market valuation and can be stated as financial assets. But the larger, holistic value created by brands, to which trademarks contribute, is typically undervalued and even regarded with skepticism outside of the marketing function.

Managing Trademarks and Brands

Marketers use a variety of metrics and key performance indicators (KPIs) at different stages of consumer decision-making (awareness, knowledge, etc.) to measure the level of value created by a brand. These methods are for internal use. It is important to note, however, that they are not monetary. The goal is to monitor the value of the brand to consumers in consumer terms. Whatever the metrics used, the goal is to assess the strength of the brand in the consumer’s mind. However, these marketing measures of brand strength do not readily connect to the financial concepts used to run a business. In deciding how much to invest in different activities, businesses use the language of finance. It has been difficult to translate marketing measures of brand strength into this language. In most cases, brand activities have been treated as expenses for which it is difficult to measure the financial return.

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69. For simplicity the discussion here is couched in business-to-consumer terms, but the underlying logic is the same for business-to-business situations.
Although most branding activities are conventionally treated as expenses (costs) by the finance function in a business, there is a growing movement to treat brands as financial assets. An asset is defined by accounting bodies as a resource controlled by a company from which economic benefits are expected to flow. Properly viewed, a brand is such a resource. A strong brand that is controlled at least in large part by a company’s marketing activities, including trademark protection, may be expected to benefit the company over a period of time. The brand exists in the mind of the consumer, but its value to the consumer creates a valuable financial asset for the company.

For balance sheet purposes, current accounting standards allow for the treatment of brand value as an asset only in the case of a brand being acquired from another company through purchase or merger. As indicated in Figure 1, Box (2), however, from a business process point-of-view it is entirely reasonable to see brand value as an intangible financial asset created by the value of the brand to consumers. Doing this allows for better internal business decision making. Investment in marketing activities can be tied to increases (or decreases) in the intangible asset value of the brand, as can investments in trademark and IP protection activities. Corporate governance is thereby enhanced because boards can better assess the underlying viability of a business. Moreover, investors can be provided with information that is more relevant to stock prices than are quarterly earnings reports.

### Brand Evaluations versus Valuations

The utility of treating the brand value as an intangible financial asset depends, of course, on being able to evaluate the contribution of the brand to cash flows generated by the business. The International Standards Organization (ISO) Technical Committee (TC) 289 has been working on an overarching framework for such brand evaluations\(^ {71}\). Regardless of the specific method used for brand evaluation, trademarks, and other aspects of the brand should not be treated as separable elements. It is the overall contribution of the brand to business results that should be evaluated. Trademark decisions should thus be incorporated into the brand decision-making process and evaluated accordingly.

Trademarks are necessarily included in a brand evaluation as they are an important way of creating and protecting brand value from the standpoint of ongoing internal management. The financial value of the intangible asset should be used to guide investments in rendering and updating the mark and protecting it. These investments should be part of the overall resource allocation process aimed at strengthening the brand and reviewed at the highest levels of corporate governance.

It is necessary to draw a sharp distinction between a “brand evaluation” and the more developed area of “brand valuation.” Most common brand valuation methods rely to a greater or lesser extent on market information. Value is ascribed based on prices that have been paid in the past or what might reasonably

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be paid in the future. It should be clear that this market value is, in principle, different from evaluating the contribution of the brand to an ongoing business. It is possible that a brand evaluation and a brand valuation could diverge considerably.

From the point-of-view of operating a business, a brand, including related trademarks, is a financial asset created by investments in activities that add value to the consumption of a product by consumers. The goal is a continuing increase in the company’s returns from the consumer market based on this added value. But companies also participate in financial and business markets. Here, what is important is the value of the brand to other outside entities. As a consequence, companies must make any number of externally facing business decisions.

As depicted in Figure 1, Box (3), companies can decide to sell or buy a brand (separately or as part of a company). Other decisions involve securitization using the brand, licensing the brand, and even using the value of the brand to publicize the company. Tax and other regulatory issues also arise. Brand valuation methods are most relevant to these activities in that they assess market value. Market value is the relevant criterion for these externally facing decisions. Sometimes these decisions may call for treating the brand as a single entity, but often it is preferable to arrive at a valuation by separately considering the value of different components of the brand.

In some cases, parts of the brand should clearly be isolated. A licensing agreement might entail the use of a trademark for a particular product category that the licensing company has not entered. In this case, the valuation of the trademark should obviously be based on external market forces. Considering investments in the brand for other product categories or such things as customer lists or patents would only confuse the licensing valuation.

Conclusion

Trademarks can be viewed either through the lens of brand evaluation or brand valuation. If the focus is on creating brand value as an integral part of managing a business, brand evaluation is the appropriate perspective. The issue is the brand’s contribution, as an entity that includes related trademarks, to ongoing cash flow results from operating the business. If the focus is on market value, brand valuation is the appropriate perspective. The issue is the price separable brand assets might command in an external business transaction. It is important to view trademarks from both perspectives.
Perspectives in Valuing Intangible Assets

by Andy Harington

Andy, a Principal at The Brattle Group, has over 25 years of diverse experience in business consulting, M&A transaction advisory, and general financial consulting to companies in a variety of industries and ranging in size from large, multi-national public companies to local, privately-owned companies. His practice focuses on the quantification of loss and accounting of profits in intellectual property and commercial litigation disputes, the valuation of intellectual property and commercial businesses, and financial aspects of Canadian competition law.

When a valuator is asked to value something, the first question they ask in return is the purpose of which the valuation is to be used. The reason is that there are various definitions of value that are applicable both to the valuation of tangible and non-tangible assets. For example, the International Valuation Standards defines six bases of value: market value, market rent, equitable value, investment value/worth, synergistic value, and liquidation value, as well as a discussion of the highest and best use concept.

For purposes of this section, I'm going to classify these definitions into two groups:

- Those that contemplate a continuation of current use - investment value, specifically investment value in the hands of the current owner.
- Those that contemplate a sale or a change in use - market value (often referred to as fair market value), market rent, equitable value, synergistic value, or liquidation value, including the highest and best use concepts.

Reflecting these two groups, there are two key perspectives in valuing non-tangible assets:

- The value in use perspective - this assumes the existing business will continue to operate in the ordinary course (i.e., as a going concern) and will continue to comprise the asset under consideration in conjunction with all other complementary assets. This is generally the perspective of management and analysts and, for ease of reference, I will refer to these parties collectively as “management”; and
- The break-up perspective - in contrast to the value in use perspective, the break-up perspective assumes that the business will be broken up such that the value of the asset under consideration needs to be considered without the benefit of any other complementary asset. For ease of reference, as discussed later, I will refer to parties that adopt the break-up perspective collectively as “regulators”.

Each of these perspectives will be discussed in more detail below.

The value in use perspective

As previously stated, those with the value in use perspective assume that the existing business will continue to operate in the ordinary course. The value of a going concern business is a function of all the tangible and intangible assets that, individually and in combination, contribute to the aggregate value. The objective of management is to maximize that value, and the resulting financial return to shareholders, both in the form of distributions to shareholders by way of dividends, and increase in the value of the underlying shares.

This maximization of value can occur in one or both of two ways:

- Increase the cash flows generated by the business; and/or
- Keep the cash flows constant but reduce the uncertainty (and the resulting discount rate) of those future cash flows. The less uncertain future cash flows are, the lower the appropriate discount rate needs to be when valuing those cash flows. For example, interest and principle distributions from government bonds are highly predictable and therefore reflect a low discount rate. By contrast, early-stage companies with high uncertainty as to the predictability of cash flows will demand a higher discount rate, even if the expected average annual cash flows are the same as for the government bonds.

Management use all tools at their disposal to both maximize cash flows and reduce the uncertainty of those cash flows. Depending on the business, intangible assets are a key tool in achieving this objective.
In understanding how management uses intangible assets, it is important to remember that, for the most part, management develop intangible assets with the intention of using them in the business. Specifically, while intangible (and tangible) assets may be sold, this is only intended to occur when those assets are no longer considered necessary for the provision of the core business.\(^\text{74}\)

Rather, management anticipates that all tangible and intangible assets will continue to work together and complement the value of the other tangible and intangible assets. In fact, the investment value of each asset specifically presumes the existence of all the other tangible and intangible assets of the corporation.

For example, assume the company produces a product that both embodies a patent and is also sold under its own unique trade-mark. Management would not expect to separate the product from the trade-mark or the patent, other than, of course, the fact that patents have a finite life. Accordingly, in the hands of the company, the product, the product trade-mark, and the patented features will remain synonymous with one another, and each will contribute value to the other such that the whole will be worth more than the sum of the values of each component.

**Accordingly, if this connection is broken, then the significant value may be lost. Specifically:**

If the patent were sold without a license back to the seller, the product would need to be either discontinued or change so as to not embody the features of the patent. This would have a significant effect on the trade-mark value which is no longer associated with that patented feature; or

If the trade-mark was sold, customers may be easily identify the product with the patented feature, and sales would decline, thereby reducing the value of the patent.

In the event of a sale, to fully realize the values of the trade-mark and the patent, they would have to be sold together, as a package, rather than separately.

Similarly, if the brand represents a combination of assets that are intended to create "distinctive images and associations in the minds of stakeholders\(^\text{75}\)\," then it will be necessary for the trade-mark to be included in conjunction with the product features, product quality, and any service or other aspects of the customer experience that would be associated with that product "in the minds of the stakeholders."

It is this intention to preserve and continue to operate the portfolio of tangible and intangible assets that differentiates the value in use perspective from the break-up perspective.

Accordingly, the value of any individual intangible asset in the context of value in use contemplates that the intangible assets, and tangible assets, of the business, are available to contribute to the value of the intangible asset(s) being valued in the hands of its current owner. Note that there may be circumstances where there are certain intangible assets that are inseparable and, consequently, need to be valued together. In the early days of the internet, for example, website URLs were considered to be inseparable from the related trade-marks and were generally valued together.

**This value is best considered as the difference between:**

- The entire value of the business with all assets; and
- The entire value of the business with all assets other than the intangible asset(s) being valued.

Referring back to the previous example, if the company lost a patent, it could have an adverse impact on the value of trade-marks, or if the company lost a trademark it could have an adverse impact on the value of a patent. Accordingly, the aggregate sum of the value of all intangible assets under the value in use perspective (together with the value of the tangible assets) could exceed the aggregate value of the business due to double counting and is therefore not meaningful in this regard.

However, it has a significant benefit to management in that the value in use perspective allows management to identify those intangible assets that contribute most to the value to the business or, put another way, would have the most significant adverse effect on the business if those intangible assets were lost.

Implicit in the above is that in the value in use perspective, other assets can contribute to an increase in the value of an intangible asset such that its resulting value may exceed fair market value (discussed further below). Conversely, in some circumstances, an intangible asset may be used sub-optimally by a company, and its fair market value would exceed its value to the company. In such a situation, the optimal outcome would be the sale of that intangible asset, but management may consider the asset to be strategically significant for other reasons.

**The break-up perspective**

In contrast to the value in use perspective, the break-up perspective considers the corporation as a collection of individual assets, each of which has a value that can be separately realized if it were sold in isolation on the open market separate from the remainder of the assets of the business.

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\(^{74}\) Note that some companies may consciously develop and manage intangible asset with the intention of licensing them out to third parties rather than using them in the business, this is generally the exception and is beyond the scope of this discussion.

The advantages of this perspective are as follows:

- It provides information as to downside risk to shareholders and other stakeholders in the event of a company’s financial failure in the same way that the extent of tangible asset backing value provided downside protection in the event that a manufacturing company were to fail; and
- For regulated activities, such as sales of intangible assets in non-arm’s length transactions between tax jurisdictions, the break-up perspective provides a more meaningful benchmark value. While investment value, used in the value in use perspective, is meaningful to the company, each company is likely to have different investment value. Conversely, there is only one fair market value for an asset.\(^{76}\)

The following are examples of those that typically employ the break-up perspective:

- In-house counsel - who considers what can be done, legally, to protect those assets that are capable of protecting. These assets can comprise, amongst others, intellectual property rights (including patents, trade-marks and copyright), contractual rights (including both contracts with third parties through, for example, exclusive supply agreements, exclusive distribution agreements, and non-disclosure agreements as well as internal through, for example, non-compete agreements, non-disclosure agreements (regarding trade secrets for example), employment agreements and fiduciary obligations) and other forms of property rights;
- Tax authorities – who generally consider each individual asset and, for example, when those assets are transferred across borders, will require that a fair market value be assigned to the asset being transferred\(^ {77}\); and
- Accountants and valuators – who consider each separable asset when determining the value to be assigned to assets acquired as part of a transaction under the accounting rules governing purchase price allocation.

By contrast, the disadvantage of the break-up perspective is that, as implicit in the definition of fair market value, it anticipates a transaction – a sale – of the asset being valued. Accordingly, for it to be applicable, the asset being valued needs to be saleable. Specifically, it needs to be legally identifiable and transferable.

For certain intangible assets, this presents no issue. A patent can be valued in the hands of its current owner, can be legally identified, and can be sold.

For a brand, however, this can present an issue. Recall that a brand is defined as an “intangible asset, including but not limited to, names, terms, signs, symbols, logos, and designs, or a combination of these, intended to identify goods, services or entities, or a combination of these, creating distinctive images and associations in the minds of stakeholders.” While certain legally identifiable and saleable components of a brand exist, such as a trade-mark, for many companies the brand is embodied in so many aspects of product manufacture, quality, customer sales experience, after-sales service and customer expectations, that a brand typically cannot be fully transferred without a complete sale of the company. Accordingly, even if it is possible, it is very difficult to determine the fair market value of a brand.

What do the courts consider?

While the precise remedies will vary in each legal jurisdiction, generally, where a court finds that there has been an infringement of the legal rights of a plaintiff, the court usually seeks to award financial remedies to put the plaintiff back in the same economic position that it would have been in had the infringement not occurred.

To do so requires a specific emphasis on the use that the plaintiff actually did, and would have, made of the asset in question and how that use was adversely affected by the infringement. Accordingly, the appropriate consideration is the value in use perspective to identify how the investment value of the plaintiff was affected by the infringement.

In certain cases\(^ {78}\), however, it may have been possible for the plaintiff to have mitigated its losses through an open market transaction to acquire another a replacement asset that would have allowed it to continue to operate and achieve the same level of profits. If the court finds it could have, and should have, done so, then it is the fair market value (cost) of this alternative mitigation action that would be appropriate to consider in the mitigation action.

To illustrate, the loss of Company A on the sales of its single patented product is available for compensation from Company B (value in use perspective).

By reference to the August 2019 ruling of the Ninth Circuit in Amazon.com Inc. & Subsidiaries v. Costco Wholesale Corporation, the compensable value of intangible assets was limited to the value of “independently transferable assets” and was not intended to embrace “residual-business assets” such as goodwill and going concern value.

\(^ {76}\) Fair market value is defined as “the highest price, an an open and unrestricted market, between willing and knowledgeable parties, acting at arm’s length and under no compulsion to act, expressed in cash or cash equivalents.” While, in reality, valuators will determine a range of fair market value, the principles underlying fair market value are agnostic to who the seller and buyer are and provide a more consistent basis for value.

\(^ {77}\) Readers are referred to the August 2019 ruling of the Ninth Circuit in Amazon.com Inc. & Subsidiaries v. Costco Wholesale Corporation which highlights the issue that, in the matter at issue, the compensable value of intangible assets was limited to the value of “independently transferable assets” and was not intended to embrace “residual-business assets” such as goodwill and going concern value.

\(^ {78}\) Note that this paragraph is included for completeness as it applies in principle. However, for intangible assets this will likely only apply in very specific circumstances.
What Are Current Best Practice Brand Valuation Approaches and Methods?

by Thomas Gounel and David Haigh

Background

The first brand valuations were conducted in the late 1980s, at which point there were no recognized standards for either conducting brand valuations or for reporting the resulting brand values. The valuation of RHM’s brand portfolio in 1988, for use as a defense in a contested takeover bid, was controversial because neither the asset definition, the brand valuation methodology nor the accounting treatment was acceptable to the financial profession. The intervening four decades have seen a gradual formalization of brand definitions, brand valuation methods, reporting regulations and requirements, the accreditation of brand valuers, and the applications of brand valuation.

Key Definitions

**Asset**...a resource controlled by an entity as a result of past events and from which future economic benefits are expected to flow to the entity (IASB Framework).

In terms of accounting treatment, an ‘Asset’ may only be accounted for as a separate balance sheet asset if it is defined and protected by legal rights, is separable from the entity, can be demonstrated to produce future economic benefits, and can be reliably and consistently valued.

**Intangible Asset**...an identifiable non-monetary asset without physical substance (IASB Framework).

**Trademark**... a legally protectable sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings (ISO 10668).

**Brand**...a marketing-related intangible asset including, but not limited to, names, terms, signs, symbols, logos and designs, or a combination of these, intended to identify goods, services or entities, or a combination of these, creating distinctive images and associations in the minds of stakeholders, thereby generating economic benefits/values (ISO 10668).

**Branded Business**...a business trading under a specific Brand (Brand Finance plc).

It is critical at the outset of any ‘brand’ valuation exercise that the valuer identifies and defines exactly what is being valued. The word ‘brand’ is sometimes used imprecisely, and a ‘brand’ valuation may be of a ‘Branded Business,’ a bundle of intangible assets loosely referred to as a ‘Brand’ as defined above, or just a single Trademark. Many brand valuations are insufficiently clear as to exactly what the subject asset is that is being valued. Lawyers need to play a role in ensuring that the assets subject to valuation are clearly defined at the outset.

International Standards

International Financial Reporting Standards (IFRS) are developed and published by the International Accounting Standards Board (IASB).

The relevant standards are as follows:

- IAS 38 - Intangible Assets (which sets out the accounting treatment and disclosures to be applied to the recognition and measurement of intangible assets).
• IAS 36 - Impairments (which sets out the requirements to account for and report impairment of most non-financial assets, including intangible assets).
• IFRS 3 - Business Combinations (which provides guidance on the accounting treatment on the acquisition of a business, including the treatment of intangible assets and goodwill).
• IFRS 13 - Fair Value Measurement (which defines fair value, sets out in a single IFRS framework for measuring fair value, and requires disclosures about fair value).

International Valuation Standards (IVS) are developed and published by the International Valuation Standards Council (IVSC). The relevant standards are as follows:

There are five general IVS standards (IVS 101, 102, 103, 104, and 105) that apply to all valuations and six specific asset standards (IVS 200, 210, 300, 400, 410, and 500) that apply to depend upon the type of asset being valued.

IVS 101 - Scope of Work
• This standard covers the Scope of Work (SOW) for any valuation and encompasses not only the work to be conducted in developing the valuation results but also all matters that should be disclosed to the client at the start of the valuation and must be disclosed before the valuation is completed.

IVS 102 - Investigations and Compliance
• This standard describes requirements for investigations conducted by the valuer, reliance upon the information provided by others, requirements to maintain a work file, and compliance with other standards.

IVS 103 - Reporting
• This standard states that the valuation report should be sufficient for an appropriately experienced valuation professional with no prior involvement with the valuation engagement to review and understand the report.

IVS 104 - Bases of Value
• This standard includes the IVS definitions of six bases of value: Market Value; Market Rent; Equitable Value; Investment Value/Worth; Synergistic Value and Liquidation Value and a discussion of the Highest and Best Use concept, and discusses the nature and choice of valuation Assumptions and Special Assumptions.

IVS 105 - Valuation Approaches and Methods
• This standard refers to six asset-specific standards that provide guidance and requirements specific to different assets being valued: 1. IVS 200 Business and Business Interests 2. IVS 210 Intangible Assets 3. IVS 300 Plant and Equipment 4. IVS 400, Real Property Interests 5. IVS 410 Development Property 6. IVS 500 Financial Instruments. The most relevant of these to brand valuation is IVS 210.

IVS 210 - Intangible Assets

There are many intangible assets, but they are often considered to fall into one of the following five categories (with goodwill as a residual general intangible):

• marketing-related: marketing-related intangible assets are used primarily in the marketing or promotion of products or services. Examples include trademarks, trade names, unique trade design, and internet domain names,
• customer-related: customer-related intangible assets include customer lists, backlog, customer contracts, and contractual and non-contractual customer relationships,
• artistic-related: artistic-related intangible assets arise from the right to benefits such as royalties from artistic works such as plays, books, films, and music, and from non-contractual copyright protection,
• contract-related: contract-related intangible assets represent the value of rights that arise from contractual agreements. Examples include licensing and royalty agreements, service or supply contracts, lease agreements, permits, broadcast rights, servicing contracts, non-competition agreements and natural resource rights, and
• technology-based: technology related intangible assets arise from contractual or non-contractual rights to use patented technology, unpatented technology, databases, formulae, designs, software, processes, or recipes.
IVS 210 outlines three general Approaches to the valuation of each intangible asset class and within the Approaches, a number of recommended Methods for doing so.

The specified Approaches are Market, Cost, and Income.

According to IVS 210 the Market approach should be used as the primary basis for valuing intangible assets only if the following criteria are met: (a) information is available on arm's length transactions involving identical or similar intangible assets on or near the valuation date, and (b) sufficient information is available to allow the valuer to adjust for all significant differences between the subject intangible asset and those involved in the transactions. The heterogeneous nature of intangible assets means that it is rarely possible to find market evidence of transactions involving identical assets. If there is market evidence at all, it is usually in respect of assets that are similar, but not identical. Consequently, it is unusual for brands to be valued in this way due to the lack of suitable identical, comparable transactions.

According to IVS 210 the Cost approach should be used as the primary basis for the valuation of intangible assets only if the following criteria are met: (a) it would be possible for market participants to recreate an intangible asset of similar utility to the subject asset, (b) there are no legal protections (e.g., patents, trademarks) or other barriers to entry (e.g., trade secrets) preventing market participants from recreating an asset of similar utility or profiting from such a recreated asset, and (c) the intangible asset could be recreated quickly enough that a market participant would not be willing to pay a significant premium for the ability to use the subject asset immediately. It is unusual for brands to meet these criteria to be valued this way due to the unique and protected nature of brands. This approach may only be considered for brands with no/limited history.

As a result of the practical problems associated with the Market and Cost approaches, the most widely used brand valuation Approach under IVS 210 is the Income approach. While there are many Income methods, five are explained in detail in IVS 210:

- Excess Earnings method (also referred to as the Multi-Period Excess Earnings method).
- Relief from Royalty method (also referred to as the Royalty Relief method).
- Premium Profit method (also referred to as the Incremental Cash Flow method).
- Greenfield method (a variant of the Excess Earnings method).
- Distributor method (a variant of the Excess Earnings method).

None of the specified methods are exclusively recommended, and the choice of method is at the discretion of the valuer. It mostly depends on the context and purpose of the valuation and whether the brand is the main asset of the business or not. All these methods value the subject asset by considering the flow of excess earnings or revenue associated with the asset in all future periods, discounted back to net present value.

IVS 210 also discusses and makes recommendations on tax, discount rate, and useful economic life assumptions, which are required in producing a net present value using Discounted Cash Flow (DCF) techniques.

International Standards Organisation (ISO) Standards are developed by the ISO on a wide variety of technical subjects. The relevant standards are as follows:


ISO 10668 is the only global standard that specifically outlines the requirements for conducting a monetary brand valuation alone, rather than an array of intangible assets, as covered by IVS. It specifies certain requirements of brand valuation as:

**Transparency**

Monetary brand valuation processes must be transparent, including disclosure and quantification of valuation inputs, assumptions, and risks as well as sensitivity analysis of the brand value to the main parameters used in the valuation.

**Validity**

A valuation must be based on valid and relevant inputs and assumptions as of the value date.

**Reliability**

If a valuation is repeated, it must reliably provide a comparable and reconcilable result.

**Sufficiency**

Brand valuations must be based on sufficient data and analysis to form a reliable conclusion.
Objectivity
The brand valuer shall conduct the valuation free from any form of biased judgment.

Financial, behavioral and legal parameters
When performing a monetary brand valuation, financial, behavioral, and legal parameters must all be taken into account.

Prerequisites of an ISO-compliant brand valuation
Every brand valuation report must clearly state the following:

- the position and status of the valuer
- clear identification of the subject brand
- the addressed audience/addressees
- the approaches and methods used
- the result of the monetary brand valuation
- all data sources used
- all key assumptions and sensitivities
- the purpose of the valuation
- the specific brand assets to be valued
- the premise of value
- the valuation date (the date on which the valuation opinion was finalized)
- the value date (the date on which the valuation opinion is valid)
- an overview of legal rights, behavioral aspects, and financial analysis
- any limitations or caveats

Valuation Approaches and Methods
As with the IVSC standards ISO 10668 also refers to the Market, Cost and Income Approaches to valuation but for the same reasons as IVS 210 focuses on the Income Approach, in particular, the use of DCF analysis to determine the value of the brand

Description of the income approach
According to the ISO, the Income approach measures the value of the brand by reference to the present value of the economic benefits expected to be received over the remaining useful economic life of the brand.

The steps followed in applying the Income approach must include an estimation of the expected after-tax cash flows attributable to the asset over its remaining useful economic life, and converting these after-tax cash flows into a present value through discounting with an appropriate discount rate, taking into account the time value of money and the risk of the asset. Estimating an appropriate discount rate requires an assessment of the brand’s strength and ability to secure future cash flows.

Determination of cash flows
The cash flows (or an alternative measure of brand earnings) used in a brand valuation must be those cash flows reasonably attributable to the brand. As with IVS, various methods are allowed to determine the relevant brand cash flows.

DIRECT METHODS

Royalty relief method
This method is based on the following principle: “A third party would be willing to pay a fee for the use of a trademark that it does not have.”

The royalty relief method measures the value of the brand as the present value of notional, expected future royalty payments paid by an operating entity, assuming that the brand is not owned but licensed from a third party brand owning entity. The value calculated through the royalty relief method thus constitutes the present value of the after-tax royalty payments saved through the ownership of the brand.

The royalty rate applied in the valuation is determined after an in-depth analysis of available data from licensing arrangements for comparable brands and an appropriate split of brand earnings between licensor and licensee and must be as close as possible to brands with the same characteristics and size as the brand subject to valuation.

This method is commonly used in brand valuation.
Price premium method

The price premium method estimates the value of a brand by reference to the price premium that it generates.

The price charged for goods or services marketed with a certain brand should be compared with the price charged for a generic product or unbranded product.

In order to arrive at the additional cash flow attributable to the subject brand, the valuer must first identify the portion of this excess price allocated specifically to the brand, i.e. identify and eliminate non-brand factors that make it possible for the owner of the brand to charge a higher price for the goods or services in question.

Additional and extra costs incurred in order to be able to charge a premium price must be deducted from any price premium charged.

This method is often used in industries where a company produces branded and unbranded goods as this excess profit can be directly observed. However, in many industries, identifying an unbranded or generic product for comparison with a branded product can be difficult, and the price premium should then be assessed by reference to the brand with the lowest brand strength in the market.

According to the ISO standard, the price premium method should also take into account the volume premium method and any cost-saving benefits resulting from ownership of the brand.

Volume premium method

The volume premium method estimates the value of a brand by reference to the volume premium that it generates.

In order to determine the cash flow generated by the brand, the volume premium method can be applied. In this method, additional cash flows generated through a volume premium should be determined based on an analysis of expected market shares.

The additional cash flow generated by the brand is the operating cash profit related to any excess market share over an expected level.

The valuation should pay attention to the fact that there may be other factors explaining a specific market share. Market imperfection or monopoly is one factor. When valuing a brand with a significant market position, the valuation should identify the effect of any market imperfections on cash flows and exclude this effect from the cash flows attributed to the brand.

As with the premium price method, consideration should be given to additional costs incurred in order to hold a larger market share or faster growth in market share.

The volume premium method should also take into account the price premium method and cost-saving benefits resulting from ownership of the brand.

Because the ISO standard requires that the Price Premium and Volume Premium methods should be applied together, recognizing the impact that a brand has on demand, but also should take into consideration cost synergies, the combined method is very similar to the Incremental Cash Flow method noted below.

INDIRECT METHODS

Multi-period excess earnings method

The multi-period excess earnings method values the brand as the present value of the future residual cash flows after deducting returns for all other assets required to operate the business. The intangible asset being valued is attributed to all the excess earnings flowing from the subject business after all other assets have been rewarded with a fair return.

The other assets are often referred to as Contributory Assets, and the charge for their use is referred to as the Contributory Asset Charge (CAC).

When there are several assets (tangible and intangible) generating cash flows in the business, this method requires a valuation of each individual group of assets in order to be able to calculate the cost of capital related to each of them.

This method is often used when the brand is a key intangible asset of the subject company.
Income-split method

- The income-split method values the brand as the present value of the portion of the economic profit attributable to the brand. The economic profit corresponds to the net operating profit after a charge for capital employed in the business expressed at market value. The results of behavioral research are then used to identify the contribution of the brand to increasing earnings or reducing costs. The value of the brand then corresponds to the present value of the portion of the economic profit over the brand’s remaining useful economic life.

- Incremental cash flow method

The incremental cash flow method identifies the cash flows generated by a brand in an entity by comparison with a business with no brand. In practice, there are few entities with no brand. It is more common to compare entities with brands of differing strengths. Comparisons are often made between branded businesses with weak or generic brands and the same branded businesses operating with the benefit of a strong brand. The enhanced cash flows arising from the latter reflects the incremental brand value of a strong over a weak or generic brand. This method is frequently used for making the brand transition and brand portfolio decisions by reference to the enhanced financial value arising from the application of a stronger or more effective brand.

Cash flows are not only generated through increased revenues but also through reduced costs, including lower cost of capital, staff, and distribution. Such cost efficiencies are identified and considered when valuing the incremental value attributable to a specific brand.

Comparison of IVS and ISO methods.

It will be seen that the IVS and ISO methods are similar but slightly different, reflecting the fact that there are many methods available to valuation practitioners.

However, the IVS standard focuses on three methods:

- the Excess Earnings method (referred to by ISO as the Multi-Period Excess Earnings method),
- the Relief from Royalty method (referred to by ISO as the Royalty Relief method), and
- the Premium Profit method (referred to by ISO as the Incremental Cash Flow method).

The Premium Price and Premium Volume methods are very similar in aggregate to the Premium Profit or Incremental Cash Flow method, leaving only the Income Split method, which relies upon market research to determine the proportion of earnings for the brand. This method is generally considered by financial professionals to be less reliable than the first three methods and tends to be used as a secondary or corroborative method only.

A robust brand valuation often implies the use of several methods to corroborate the conclusion. Consideration should also be given to excluded methods and the reasons why.

Although there is no clear market practice/guidance, the Multi-Period Excess Earnings Method and the Royalty Relief Method tend to be used for valuing single intangibles, in particular for Balance Sheet and Tax Valuation purposes, while the Premium Profit Method tends to be used for branded business valuations and when making strategic decisions.

Applications of monetary brand valuation

According to the ISO 10668, the most commonly cited reasons for conducting a brand valuation are for:

- management information
- strategic planning
- value reporting
- accounting
- liquidation
- legal transactions
- licensing
- litigation support
- dispute resolution
- taxation planning and compliance
- loan and equity financing

When ISO 10668 was published in 2010, limited detail was provided for the issue of brand equity evaluation. Subsequent to the ISO 10668 standard, a second standard was commissioned, which was published in January 2019 as ISO 20671. This new standard explores in greater detail the measurement of market factors and the elements, dimensions, and indicators of brand equity as a key factor in determining monetary brand valuation. Schematically the ISO 20671 approach can be summarized as follows:

**BRAND EVALUATION**

| Brand Development | Brand Strength & Brand Performance |

**INPUTS**
- Tangible
- Quality
- Service
- Intangible
- Innovation

**OUTPUTS**
- Legal
- Customer / Stakeholder
- Market
- Economic
- Political
- Financial

**BRAND VALUATION**
- Brand Strength
- Brand Performance
- Financial Results

**Continuous Improvement**
- Brand Support
- Brand Activities

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**Conclusion**

The process of brand valuation continues to develop, but we now have IVS standards which set overall rules for the valuation of all asset types, and we also have two ISO standards which specify in greater detail the parameters for valuing a brand distinct from other intangibles. A lot of progress has been observed in the implementation of more robust and documented approaches to support the value conclusion.
Changing Consumer Behavior

by Michael Rocha

Based in London, Michael is the Global Director of Brand Valuation for Interbrand, where he leads its valuation practice globally, providing overall strategy, thought leadership and consistency across their network. He has led strategic valuation assignments globally, advising on a wide range of branding issues (positioning, architecture, portfolio analysis, brand extension, budget allocation, dashboards and return on investment analysis) and also for commercial purposes such as shareholder negotiations, licensing, financial reporting, tax, litigation, pension planning and M&A.

The Task Force identified several current and future trends in consumer behavior based on demographic, socio-economic, and technological developments based on demographic, socio-economic, and technological developments. Specifically, when referring to technological development, a recent PwC report has stated that it is “impossible to give precise vision of how the next ten – much less five – years will unfold.” However, this does not just apply to the leaps being made in technology. The current pace of change across a range of issues means that the Task Force cannot accurately identify all future changes in consumer behavior. However, the Task Force has looked at recent changes in consumer behavior and the implications this has for brands and also identified a few areas where it seems likely that there will be significant disruption in the upcoming years:

Changes in consumer behavior:
- The next generation of consumers
- The desire for brands to take a social stand
- Changing consumer loyalty
- The dominance of social media and consumer expectation
- The impact of the subscription-model and the sharing-economy

Impact of technology:
- The impact of AI on consumer expectations
- The role of AR and VR going forward
- The impact of voice activation
- Moving towards a net-zero carbon economy

The next generation of consumers

Gen Z and Millennials will make up 40% of consumers by 2020, and with this demographic shift, there have come inherent changes in consumer behavior. The next generation of consumers is “digital natives.” This presents an increased opportunity for marketers around the use of AI, data, and social media (and its tools such as influencers). However, the group also sees authenticity as a top priority; this will have implications for brands as they try to master technologies such as AI. Brands will have to ensure that the messages they put in front of their customers are fully personalized. Gen Z, in particular, will fully expect brands to understand who they are and what they want, and the marketing message they receive should be just for them.

Gen Zers are also overwhelmingly unified in their social and political opinions, 43% of Gen Zers trust long-established brands, but they also expect these brands to have a social purpose outside of a financial one. This is a generation that has grown up post-race, post-gender, and who passionately believes in gender and racial equality. Regarding Millennials, 76% regard business as a force for social positive impact, and 9/10 believe that the success of a business should be measured in terms of more than just financial performance.

The dominance of social media and consumer expectation

Changing algorithms and consumers’ expectations for authentic interactions means that brands need to invest more in high-quality content that consumers want to see and engage with (particularly video, the average website visitor spends 88% more time on a website that contains video content). As organic reach becomes more difficult, and traditional channels less useful, brand owners need to think even deeper about how stories are going to come to life online. So not surprisingly, in 2018, online advertisers outsold TV advertisers by $40 billion.

Social media also creates an indelible record of consumption online: goods which used to be consumed in private are increasingly providing content for an individual’s social media profiles. For example, this year, there were over 1.2 million posts on Instagram with #shelfie, as consumers shared images of the aesthetic of their bathroom shelves. This willingness to share consumption habits online means that the aesthetic and design value of brands is going to become more and more decisive, as the most beautiful brands will become part of consumers’ feeds.

Finally, as the number of online channels used by brands continues to increase, the role that brand protection plays in brand value does the same. Business environments are fraught with risk from counterfeiting, cybersquatting, infringement, and brand abuse. In practice, what this often means is things like fraudulent accounts posting counterfeit goods on social media platforms, which reappear under a different name as soon as they are shut down. It requires a larger amount of diligence from brand to ensure that their partners, in the form of both influencers and platforms, are not subsequently engaging or promoting content that undermines or contradicts brand values.

The desire for brands to take a social stand

Increasingly consumers expect brands to play a formative role in the positive development of society. The 2018 Edelman Earned Brand Report has revealed that 64% of consumers globally will buy or boycott a brand solely because of its position on a social or political issue. Brands have two options regarding how they can make a positive impact, on the one hand, they can take a public stand on a controversial issue, or they try and pursue ‘inclusive growth’: businesses are entering a whole new paradigm for management, one that considers positive social outcomes as increasingly important.

Since the global financial crisis, consumers have lost faith in governments to deliver the change they want to see, and instead, they are endowing this faith in brands. Nearly 46% of all consumers believe that brands have better ideas for solving problems than the government (in America this was even lower, only 33% have trust in their government to solve social problems). This sentiment is even more prevalent amongst Gen Z and Millennials.

This presents brands with quite a heavy burden of responsibility. Associations made with a brand can on social issues potentially be very damaging, and risks such as these are only heightened through the use of sharing platforms and problems with brand protection online. However, there is also the opportunity for brands to garner loyalty if they take action. When Nike’s recent #JustDoIt campaign with currently unsigned NFL player and outspoken activist Colin Kaepernick was released twitter was full of calls to boycott the brand, but as sports industry analyst Matt Powell noted in a tweet: “Old angry white guys are not a core demographic for Nike.” He was right; the campaign led to record engagement and a “real uptake” in traffic and engagement both socially and commercially.

Despite the risks, brands that can adopt ‘social enterprise’ style initiatives internally or take a public stance on social issues are going to be far more effective at engaging customers long term.

The impact of the subscription-model and the sharing-economy

The move to a subscription-based pricing model is becoming increasingly important for consumers. In a recent Economist survey, 80% of companies reported that they were seeing a change in how their customers wanted to access and pay for goods. PwC has estimated that the value of the global sharing economy will reach $335 billion by 2025.

The move to a subscription-based pricing model is becoming increasingly important for consumers: where traditional pay-per-product (or service) companies are moving towards subscription-based business models. For brands, rather than being solely product-focused, efforts have to go into monetizing long-term relationships, and this means becoming more customer-centric, collecting and analyzing consumer data, and consistently delivering value to their users through updated services and utility.

Regarding the sharing-economy, there are several reasons for its growing prevalence: first, younger people particularly embrace the core ideas of eschewing individual ownership, and it’s accompanying higher costs. Second is the opportunity for sustainability and the environmental benefits of the sharing economy. Finally, as AI and data collection have become more sophisticated, sharing has become more viable and convenient.

However, there are potentially severe implications of these changes for brand value. Consumers’ perceptions are made up from all its interactions with a brand, a bad experience that a consumer has with a participant of a sharing platform (for example, an Airbnb host whose property falls short of expectations) will have a negative impact on that customer’s perception of the brand. Therefore, there is a question around how brands protect and increase their brand value. The move to a subscription-based pricing model is becoming increasingly important for consumers: where traditional pay-per-product (or service) companies are moving towards subscription-based business models. For brands, rather than being solely product-focused, efforts have to go into monetizing long-term relationships, and this means becoming more customer-centric, collecting and analyzing consumer data, and consistently delivering value to their users through updated services and utility.

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Consumers want personalization that works for them

Artificial Intelligence (AI) is going to increase consumers’ expectations for a personalized experience. Products that use AI technology collect data over long periods, enabling AI-based products to detect the slightest change of pace of preference and adapt to these behaviors quickly. As AI develops there will be fully ‘cognitive’ websites which offer consumers a completely personalized experience, for example, based on previous buying patterns, these websites will know when your toothpaste is running low or when your next dinner party is likely to be and prompt you to buy at the exact time products are needed. Given that 91% of consumers are more likely to buy from a retailer that recognizes them by name recommends options based on past purchase, or knows their purchase history, this level of personalization is going to set the bar, and brands with fail to give consumers a fully personalized experience will suffer.

At the same time, consumer expectations around privacy standards are also changing. Consumers are increasingly aware of what types of data they are sharing and what they expect in return. However, a survey by Colombia Business School showed that though respondents clearly understood which of their data was the most sensitive, 75% were still willing to share it with companies in exchange for a product or service they value and a brand they trust. Further, 80% of consumers were positively influenced by sharing personal data with companies when they received special offers or data-enabled benefits. Brands must, therefore, deliver a personalized service that drives utility for consumers as they become increasingly aware of the economic value that their data is creating for brands.

The impact of voice technology

Voice recognition accuracy is predicted to reach 99% soon. Once this happens, the voice will become the first filter and the main point of brand-consumer contact.

Within the next two years, 50% of all search forecast is predicted to be voice-based. This presents a plethora of challenges. As a whole, voice technology is going to have huge implications for SEO practices; brand names are going to have to consider ease of memorability and pronounceability in a new way.

Similarly, voice-activated assistants such as Alexa and Google Assistant are going to become more adept at learning buying patterns and will automatically manage consumer purchases based on what they have already bought. ‘Alexa, buy me more dishwasher tablets,’ is going to result in repeat buying. Brands are going to have to work hard to ensure that they are still chosen by consumers rather than merely negotiated with a platform and picked by an algorithm. As a paradox, technology may turn back the clock to the time when brands were merely identifiers.
However, with the development of voice technology and as voice synthesis becomes indistinguishable from the real alternative, so does the opportunity to communicate with consumers more personally. Brands can engender the right reactions, especially through voice, allowing for the humanizing of interactions across all channels\textsuperscript{105}. Imagine George Clooney (the face of Nespresso) talking directly to you, in your kitchen!

Voice search is a hugely popular emergent technology that will only keep getting bigger, done right. It will improve customer experience and drive interactions.

The role of augmented and virtual reality going forward

Augmented Reality (AR) adds digital elements to live view using the camera on a smartphone, for example, Snapchat lenses, while Virtual Reality (VR) is a completely immersive experience. At the moment, brands are using AR and VR for heightened shopping experiences, product trials, and consumer interactive dialogues, interactive adverts, and events\textsuperscript{106}. As competition for consumer’s attention increases, AR and VR present new opportunities for the way that brands can tell stories to consumers.

Currently, video content already captures the consumer’s attention more than anything else, but AR and VR have the potential to further increase the recall value of communications. VR viewers are emotionally engaged for 34% longer when they viewed the same content in 2D\textsuperscript{107}. For example, in 2015, The North Face launched several VR experiences at store locations in San Francisco, New York, and London. It’s “The North Face: Climb” experience took users to new heights in Yosemite National Park and Moab, while “The North Face: Nepal” allowed users to experience winter in Nepal. The brand garnered lots of recognition as a leader in VR for the retail market\textsuperscript{108}.

As the scope of the hardware used for AR and VR extends to include mobile devices, screen-based solutions and gaming consoles not only does the scope of using AR/VR to build campaigns increase, but it becomes more likely that it will become part of the overall product/brand experience, not just the path to purchase.

Moving towards a net-zero carbon economy

Following a recent report on climate change by the UN Intergovernmental Panel on Climate Change, it is looking increasingly likely that net-zero carbon emissions will become a mandated requirement\textsuperscript{109}. Although this will primarily involve government-led initiatives, clearly, it will have a huge impact on businesses, both in the way they manage the change to carbon net-zero and how they communicate this to consumers.

The UK, for example, has a statutory target to reduce its greenhouse gas emissions by 80%\textsuperscript{110}. However, these initiatives are starting to take the form of more specific laws, and at the end of October 2018, climate minister Clare Perry said the UK would begin to legislate for a net-zero emissions target. This is happening elsewhere too, for example, petrol cars will be banned from Paris by 2030. This type of legislation is going to impact brands significantly both in terms of operations and how they communicate their sustainability efforts. In terms of consumer perception, according to Bain, over the next five years, customer loyalty and revenue generation will replace public reputation and cost savings as the primary drivers for sustainability action. They predict the share of companies that will have adopted a truly transformative sustainability aspiration will nearly triple over the next five years, from 9%-26%\textsuperscript{111}.

As with AI, voice technology, and AR/VR, it is impossible to predict the extent of the impact that pressure to have a net-zero carbon output is going to have on consumer behavior and brand value. What is clear, though, is that the issue is only going to become more prescient.

\textsuperscript{105} Clapp, Zoe, AI will not replace us, it will allow us to focus on what matters, https://www.marketingweek.com/2018/07/04/zoe-clapp-ai-focus-on-what-matters/
Depth and Dynamism: The Future of Brand Value

by Michael Rocha

Based in London, Michael is the Global Director of Brand Valuation for Interbrand, where he leads its valuation practice globally, providing overall strategy, thought leadership and consistency across their network. He has led strategic valuation assignments globally, advising on a wide range of branding issues (positioning, architecture, portfolio analysis, brand extension, budget allocation, dashboards and return on investment analysis) and also for commercial purposes such as shareholder negotiations, licensing, financial reporting, tax, litigation, pension planning and M&A.

When the internet moved into our pockets in 2007, culture shifted.

According to Wharton Professor Patti Williams, we’ve moved from a world in which the mass media shaped a tightly controlled arena of cultural oligopolies to a world of cultural democracies.

We’ve seen the rise of networks of so-called ‘niche’ communities that have had a great impact on culture. And from a business perspective, what we’re really seeing is that emerging customer behaviors, enabled by new technologies, are changing the culture of categories and, therefore the dynamics of brand value.

Interbrand’s Best Global Brands data shows that as we enter The Age of You, the most valuable brands are those that over-index on relevance and responsiveness: factors that highlight how much a company can understand and deliver to rapidly evolving customer’s needs, wants and decision criteria.

The challenge is that customer expectations and behaviors are more nuanced and complicated than ever before - and evolve faster than the faster businesses. Brands have always said something about us and who we aspire to be but, today, what we want to say about ourselves is more complicated; we feel more entitled to say it and digital technology empowers us to do so.

The challenge for brands looking to build value, therefore, is that relevance is dynamic and can shift rapidly. In a world where customers determine and control what’s relevant, where everyone is unique, the paths to reaching cult or mass or Best Global Brand status are increasingly complex. Maintaining it even more so.

Let’s look at some examples.

You’ll have heard of the unboxing phenomenon. Children flock to YouTube to watch influencers unboxing toys – the Christmas-like joy of opening a present against a backdrop of attention-grabbing saturated colors almost too much to resist.

Previously the success of a new toy launch was determined by TV commercials, “I’ve been in the toy business for 37 years,” MGA Entertainment CEO Isaac Larian told Forbes earlier this year. “There was a time you put the toy in a television commercial and that sold the toy. Those days are over.” Now, brands look to YouTube to launch their toys.

This change has inspired a new wave of product development, such as L.O.L Surprise! dolls – a toy that was created specifically to appeal to the unboxing community – with layers of brightly colored packaging designed to make a child feel like they’re starring in their own unboxing video. Last year, they sold over $4 billion worth of dolls, twice as many as Barbie dolls - stealing market share from industry behemoth, Mattel. In the same timeframe, Best Global Brand, LEGO, after making a comeback in the top 100 in 2015, lost brand value (down from $7bn in 2017 to $6.5bn in 2018). Commentators argued that LEGO’s stagnation was in large part due to its failure to fully capitalize on the emerging digital culture among kids and, to a great extent, unboxing.

Let’s take an example from a completely different sector: wellness.

In 1988, Oprah Winfrey wheeled out a small red wagon containing 67 pounds of animal fat and declared, “that’s how much weight I’ve lost.” This surged interest in weight loss and diet programs and the now famous keto diet. The keto diet is a low-carb, high-fat diet that people around the world have adopted and has become a phenomenon in digital culture. But how did it become so?

After Oprah brought it to the masses, it was kept alive by the bodybuilding community. When a paper in Science Magazine revived wider interest in the early 2000s, American entrepreneur Tim Ferriss blew it up when he aired a podcast episode with top keto researcher Dom D’Agostino entitled: “Dom D’Agostino on Fasting, Ketosis, and the End of Cancer.”

Google searches for ‘keto diet’ doubled immediately. Membership of the ‘r/keto’ subreddit surged to 1.5 million members. The community soon moved to Instagram and converged with the trend of sharing photos of meals. Soon, people began sharing images of how they stay keto en masse.

This mass niche has now permeated mainstream culture. Yet there are no brands currently leveraging it. This is an untapped opportunity for brands, who are
already 2 years behind their customers – many of whom share their self-made drinks and blends on social media. Who could win in this space? Starbucks? McDonald’s? Nike?

KFC is another Best Global Brand whose ranking has fallen. It lost market share to emerging competitors like Chick-fil-A and saw the number of their locations decline. Simultaneously, fried chicken as a niche aspect of culture – on and offline – emerged. This culture is perhaps best exemplified by digital sensation, Chicken Connoisseur, and his viral YouTube show, The Pengest Munch, who says: “Chicken shops ARE culture,” [they are] "essential spaces for teenagers to hang out. As well integrated into communities as a launderette or a dry cleaners.”

In the UK, a supply chain disaster saw KFC close 400 stores for days on end. But while this was terrible for the company’s short-term sales, it revealed the company’s place in digital culture. Helped by a swift and irreverent apology from the company (the adverts were headlined “FCK – we’re sorry”), people flooded social media to joke that KFC running out of chicken was worse than Trump or an early warning of the apocalypse. The Metropolitan police issued a statement imploring people not to contact the emergency services.

Relevant and responsive activations such as these are thanks to the work of new CMOs who have reconnected the brand with the customer. Talking exclusively of this monumental turnaround to brandchannel magazine, KFC CMO Andrea Zahumensky said:

“We are being incredibly deliberate about making the KFC brand relevant. There’s two big ways that we’re doing that, in the context of our industry: and that is through bold marketing activations and bold menu innovation. It’s all about making the brand that we have - and the product that we have really relevant. We do this in a way that’s grounded in who we are as a brand but dynamic enough to push out those boundaries to really stay unexpected and be wherever our customers are. We are very agile, we’re looking out for trends and try to be there in the moment when those trends are happening.”

After a spell of declining brand value, the 2019 brand valuation will be telling. The new rules of engagement require businesses to become responsive, constantly in touch and in tune with customers, re-thinking operational models to unlock new ways of designing brands into people’s lives.

Emerging technologies in themselves are just more noise. Voice, AI, 5G – whatever they might be, the most valuable brands will use human insight to seamlessly integrate into people’s lives in ways that create value and make sense. It comes as no surprise that the world’s best brands have been the first to leverage these new technologies in the most relevant ways. Relevance is in their DNA.

Traditionally, brands have operated in an “indirect brand economy.” Competitive advantage was won through efficiencies in manufacturing, logistics, supply chains and distribution. Brands were defined in an ivory tower, brought to life in ad shops, and broadcast through publishers.

The most successful modern brands connect customers to their businesses. Competitive advantage exists in leveraging customer data to help create relevance and optimize attention. It helps identify the relevant niches, locate leading indicators of customer change, test new ways to engage, new propositions and products and connect with them deeply enough to drive action.

The old principles of building brand value still matter – but in this new world they have evolved to require more dynamism and a deeper connection. What we traditionally have thought of as brand attributes is better articulated as personality, brand promise becomes relationship, mass becomes personalized, and awareness becomes meaning. In this world, your brand enables a business trajectory in lockstep with what your customer believes you can deliver.
CONCLUSION

The Task Force Leadership and Members thank INTA for the opportunity to contribute to this Task Force Report and remain at the disposal of the INTA Board of Directors, CEO, or future teams to answer any questions and provide any further insights about the above-mentioned findings and recommendations.
ANNEXES

Annex A: INTA’s Online Resources

INTA has a small collection of online resources on this subject matter. A non-exhaustive list of these resources is set out here:

<table>
<thead>
<tr>
<th>Resource Type</th>
<th>Date (if applicable)</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fact Sheet</td>
<td>Updated March 2019</td>
<td>Assignment, Licensing, and Valuation of Trademarks</td>
</tr>
<tr>
<td>Fact Sheet</td>
<td>Updated November 2016</td>
<td>Brand Valuation</td>
</tr>
<tr>
<td>Fact Sheet</td>
<td>Updated November 2016</td>
<td>Trademark Assignments</td>
</tr>
<tr>
<td>Fact Sheet</td>
<td>Updated November 2016</td>
<td>Trademark Licensing</td>
</tr>
<tr>
<td>Member Resource</td>
<td>December 2018</td>
<td>Trademarks in Business Transactions</td>
</tr>
<tr>
<td>Checklist</td>
<td>2014</td>
<td>Trademark Assignment Agreement Checklist</td>
</tr>
<tr>
<td>TMR Article</td>
<td>October 2007</td>
<td>Trademark Valuation: Preserving Brand Equity</td>
</tr>
</tbody>
</table>

Annex B: INTA’s Communications Initiatives

INTA has communicated to its membership and media on the topics of brand value and brand equity. INTA has also been featured in third-party literature on the topic of brand value, brand equity, and brand valuation through third-party articles written by INTA Presidents, the CEO, and senior staff. Additionally, INTA has shared through social media the publication of ISO 20671 and the new concept of brand evaluation. Set out below is a sampling of INTA communications around this subject matter:

<table>
<thead>
<tr>
<th>Event/Written Communication</th>
<th>Date</th>
<th>Initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018 Annual Meeting Opening Ceremony</td>
<td>May 2018</td>
<td>Speech by 2018 President Tish Berard on brand value.</td>
</tr>
<tr>
<td>2018 Leadership Meeting Opening Ceremony</td>
<td>November 2018</td>
<td>Speech by 2018 President Tish Berard on brand value.</td>
</tr>
<tr>
<td>Article titled Implementing INTA’s Strategic Plan 2018-2021</td>
<td>August 2018</td>
<td>Article by 2018 President Tish Berard submitted to IPPro Magazine on brand value.</td>
</tr>
<tr>
<td>Article titled Getting to the heart of brand value</td>
<td>May 2018</td>
<td>Article by 2018 President Tish Berard submitted to World IP Review (WIPR).</td>
</tr>
<tr>
<td>Article titled Key Trends for Brand Professionals to Watch in 2019 – An INTA Perspective</td>
<td>January 2019</td>
<td>Article by 2019 President David Lossignol submitted to World Trademark Review (WTR).</td>
</tr>
</tbody>
</table>
Annex C: INTA Events

There has been a systematic and conscious inclusion of educational programming on the subject of brand value, brand equity, and brand valuation in INTA’s meetings, conferences, roundtables, and webcasts. The educational programming culminated with a two-day conference titled “The Business of Brands” in New York in March 2019. For a detailed non-exhaustive list of other INTA events on these topics, please see below:

<table>
<thead>
<tr>
<th>Event Type</th>
<th>Date</th>
<th>Meeting/Conference Title</th>
<th>Session Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workshop</td>
<td>March 2006</td>
<td>In-House Trademark Counsel’s Workshop</td>
<td>Role of trademark Lawyers in Transactional Work</td>
</tr>
<tr>
<td>Roundtable</td>
<td>April 2011</td>
<td>N/A</td>
<td>Roundtable on brand valuation according to UNI/ISO 10668 BRAND VALUATION</td>
</tr>
<tr>
<td>Conference Session</td>
<td>February 2012</td>
<td>Building Mega Trademarks</td>
<td>Expanding the Model: Using Licensing and Franchising to Grow Your Business</td>
</tr>
<tr>
<td>Conference Session</td>
<td>October 2012</td>
<td>Trademarks in Transactions</td>
<td>Legal, Business and Tax Issues Involving Related-Party Transactions</td>
</tr>
<tr>
<td>Roundtable</td>
<td>January 2013</td>
<td>N/A</td>
<td>Trademarks in M&amp;A and other Commercial Transactions</td>
</tr>
<tr>
<td>Conference Session</td>
<td>October 2013</td>
<td>Branding and Social Media</td>
<td>Branding and Monetization: Brand Extensions and Building Brand Value</td>
</tr>
<tr>
<td>Roundtable</td>
<td>November 2013</td>
<td>N/A</td>
<td>Brand Valuation Roundtable</td>
</tr>
<tr>
<td>Roundtable</td>
<td>October 2015</td>
<td>N/A</td>
<td>“What is it worth to you?”—Valuation of Brands Roundtable</td>
</tr>
<tr>
<td>Conference Session</td>
<td>September 2016</td>
<td>Building Africa with Brands</td>
<td>Leveraging Your Brand as a Corporate Performance Asset</td>
</tr>
<tr>
<td>Conference Session</td>
<td>November 2017</td>
<td>Brand Authenticity</td>
<td>Investment Opportunities: The Value of CSR and Sustainability</td>
</tr>
<tr>
<td>Conference Session</td>
<td>March 2018</td>
<td>Brands and Innovation</td>
<td>The Link Between Brand Value and Innovation—Concepts and Implications</td>
</tr>
<tr>
<td>Conference Session</td>
<td>March 2019</td>
<td>Business of Brands</td>
<td>Brand Value: How Do You Measure a Feeling?</td>
</tr>
<tr>
<td>Conference Session</td>
<td>October 2019</td>
<td>Brands in Changing Times</td>
<td>Brand Value: Tips and Tools</td>
</tr>
<tr>
<td>Webcast</td>
<td>N/A</td>
<td></td>
<td>Business Transactions Webcast Series</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td><strong>Definition</strong></td>
<td><strong>Source</strong></td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>----------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>Brand</td>
<td>A name, term, design, symbol, or any other feature that identifies one seller’s good or service as distinct from those of other sellers.</td>
<td>American Marketing Association</td>
<td></td>
</tr>
<tr>
<td>Brand</td>
<td>The total identity of a product or service, which a current or prospective customer relates to and connects with intellectually, psychologically, and/or emotionally. “Brand” is a complex, multi-layered promise of what will be delivered to and experienced by the consumer.</td>
<td>INTA</td>
<td></td>
</tr>
<tr>
<td>Brand</td>
<td>A brand is the intangible sum of a product’s attributes: its name, packaging, and price, its history, its reputation, and the way its advertised.</td>
<td>David Ogilvy</td>
<td></td>
</tr>
<tr>
<td>Brand</td>
<td>A brand is the set of expectations, memories, stories, and relationships that, taken together, account for a consumer’s decisions to choose one product or service over another.</td>
<td>Seth Godin</td>
<td></td>
</tr>
<tr>
<td>Brand</td>
<td>Intangible asset, including but not limited to, names, terms, signs, symbols, logos, and designs, or a combination of these, intended to identify goods, services or entities, or a combination of these, creating distinctive images and associations in the minds of stakeholders, thereby generating economic benefit/values.</td>
<td>ISO</td>
<td></td>
</tr>
<tr>
<td>Brand</td>
<td>A name, term, sign, symbol, or design, or combination of them, which is intended to identify the goods and services of one seller or a group of sellers and to differentiate them from those of competitors.</td>
<td>See the article “Brand Valuation Fundamentals” in Annex F</td>
<td></td>
</tr>
<tr>
<td>Brand Evaluation</td>
<td>Measurement of brand strength, brand performance, and financial results using relevant elements and dimensions.</td>
<td>ISO</td>
<td></td>
</tr>
<tr>
<td>Brand Equity</td>
<td>The value of a brand. From a consumer perspective, brand equity is based on consumer attitudes about positive brand attributes and the favorable consequences of brand use.</td>
<td>American Marketing Association</td>
<td></td>
</tr>
<tr>
<td>Brand Equity</td>
<td>Brand Equity refers to the intangible value that accrues to a business as a result of its successful efforts to establish a strong brand for a particular 1) trademark, 2) branded product or service, or 3) the entire branded business. It originates from customers and only indicates the customer side of value towards a brand and does not provide a complete picture of the value of the business.</td>
<td>Brand Finance</td>
<td></td>
</tr>
<tr>
<td>Brand Equity</td>
<td>Brand equity is a set of assets or liabilities in the form of brand visibility, brand associations, and customer loyalty that add or subtract from the value of a current or potential product or service driven by the brand.</td>
<td>David Aaker</td>
<td></td>
</tr>
<tr>
<td>Brand Valuation</td>
<td>Measurement of monetary brand value at a point-in-time.</td>
<td>ISO</td>
<td></td>
</tr>
<tr>
<td>Brand Valuation</td>
<td>Brand Valuation refers to the activity of estimating the total financial value of the 1) trademark, 2) branded product or service, or 3) the entire branded business.</td>
<td>Brand Finance</td>
<td></td>
</tr>
<tr>
<td>Brand Valuation</td>
<td>“Brand Valuation can be defined as the process used to calculate the value of a brand or the amount of money another party is willing to pay for it or the financial value of the brand.”</td>
<td>Mondaq</td>
<td></td>
</tr>
<tr>
<td>Brand Value</td>
<td>The estimated quantity of financial assets for which the brand changes hands between willing and informed parties in an arm’s length transaction on the date of valuation.</td>
<td>“Brand Value Fundamentals” (See Annex F)</td>
<td></td>
</tr>
</tbody>
</table>

Annex D, continued on page 76.
Annex D: Definitions (continued)

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brand Value</td>
<td>“Brand value refers to the price (premium) a consumer is willing to pay for a specific brand, over and above a baseline. For example, &quot;when people are asked in brand value surveys to place a monetary value on a car (the same car is used in the photographs, but different badges are superimposed on the bonnet to suggest it is a different brand) the Volkswagen brand is seen to be worth more than that the Ford while the Mercedes brand has a value above both.”</td>
<td>American Marketing Association</td>
</tr>
<tr>
<td>Brand Value</td>
<td>Worth of a brand as an asset for an entity.</td>
<td>ISO</td>
</tr>
<tr>
<td>Brand Value</td>
<td>The concept of Brand Value, although similarly constructed to that of Brand Equity, is distinct. To put it simply, while brand equity deals with a consumer-based perspective, brand value is more of a company-based perspective.</td>
<td>Mondaq</td>
</tr>
</tbody>
</table>

Annex E: INTA’s Initiatives with Other Government Organizations and Non-Governmental Agencies

This is a non-exhaustive list of INTA’s initiatives with IP Offices focusing on this subject matter:

<table>
<thead>
<tr>
<th>Organizations</th>
<th>Date</th>
<th>Initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td>China Trademark Association and INTA</td>
<td>2018</td>
<td>Panel Session on Trademark Finance and Valuation</td>
</tr>
<tr>
<td>Vietnam Chamber of Commerce and Industry; Vietnam Intellectual Property Association; INTA; Inspectorate Ministry of Science and Technology</td>
<td>2019</td>
<td>Seminar on Brand in relation to strategies of enterprise development</td>
</tr>
<tr>
<td>Department of Industrial Policy and Promotion (India)</td>
<td>2020</td>
<td>Sharing of this Task Force Report (or an excerpt) when finalized and approved by the INTA Board for publication</td>
</tr>
<tr>
<td>IP Office of Singapore</td>
<td>February 2018</td>
<td>Speech by 2018 President Tish Berard on brand value</td>
</tr>
<tr>
<td>Estonian IP Office</td>
<td>October 2018</td>
<td>Expressed interest in INTA’s work on brand valuation</td>
</tr>
</tbody>
</table>
Annex F: Bridge-Building Opportunities

As mentioned in Section 3 of this Task Force Report, INTA has been building bridges with the MASB, which represents the United States under the auspices of the American National Standards Institute (ANSI) in discussions within the ISO on brand valuation standards, and has invited INTA to participate in the discussions around the implementation of ISO 20671.

Additionally, INTA has also begun building bridges with the European Brand Institute (EBI), which works closely with the United Nations Industrial Development Organization (UNIDO) through a joint program, known as the Brand Global Summit, to promote the economic and societal value of brands.

Set out below is a non-exhaustive list compiled by the Task Force members on bridge-building opportunities:

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Recommended by</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Institute of Certified Public Accountants (AICPA)</td>
<td>INTA staff</td>
</tr>
<tr>
<td>American Society of Appraisers (ASA)</td>
<td>INTA staff</td>
</tr>
<tr>
<td>Bank for International Settlements (BIS)</td>
<td>INTA staff</td>
</tr>
<tr>
<td>Brand Global Council</td>
<td>Bobby Calder</td>
</tr>
<tr>
<td>Europe Brand Institute (EBI)</td>
<td>Bobby Calder</td>
</tr>
<tr>
<td>The Financial Accounting Standards Board</td>
<td>INTA staff</td>
</tr>
<tr>
<td>International Valuation Standards Council</td>
<td>INTA staff</td>
</tr>
<tr>
<td>International Standardization Organization (ISO)</td>
<td>Bobby Calder</td>
</tr>
<tr>
<td>Note: INTA cannot build relationships directly with ISO but instead can do this through their country representatives.</td>
<td></td>
</tr>
<tr>
<td>Marketing Accountability Standards Board (MASB)</td>
<td>Bobby Calder</td>
</tr>
<tr>
<td>Royal Institution of Chartered Surveyors (RICS)</td>
<td>INTA staff</td>
</tr>
<tr>
<td>United Nations Industrial Development Organization</td>
<td>Representative from EBI</td>
</tr>
</tbody>
</table>
Annex G: Checklist of Legal Considerations for Brand Valuation

The following are questions for trademark professionals to consider when determining the scope of brand assets and related rights in the valuation. These questions were developed by the Task Force members.

- Creation and Acquisition of Rights
  - Bundling of IP rights and IP valuation
    » What registered IP rights should be considered?
      » Trademark (remaining analysis is focused on trademarks)
      » Product packaging/product design/trade dress
      » Copyright
      » Patents
      » The right of publicity/rights of persona/personality rights
      » Geographical indications
    » What other rights should be considered?
      » Domain names
      » Trade names
    » What constitutes trademarks?
      » Words
      » Names
      » Devices
      » Certain three-dimensional shapes
      » Colors
      » Slogans
      » Sound
      » Trade dress/getup/packaging
      » Holograms
      » Motion marks
      » Shapes
      » Texture
      » Smell
    » In addition to the above, what other registerable trademarks should be considered?
      » Collective trademarks
      » Certification trademarks
      » Well-known marks (see discussion on dilution)
      » Service marks
    » Should rights pending registration be also considered?
    » Are there any other unregistered rights to be considered?
      » Use of unregistered trademarks
      » Trade name
      » Trade secrets
      » Goodwill
    » What product/service categories does the trademark registration cover?
    » In which countries is the trademark protected through trademark registrations?
- Ownership and IP valuation
  » Who owns the trademark rights?
    » Individual
    » Company: parent, subsidiary or joint venture
» Trust
» Association
» Partnerships

» How did the trademark originate?
   » Are the trademarks developed within the company or have they been acquired?
   » Did the trademarks originate from a joint venture?

• House brands and IP valuation
   » Is the trademark used on its own or with its house brand?
   » Is the trademark used only as a trading name and not on actual products or for services?
   » Are there any different uses of the trademark that need to be considered?

» Translations
» Transliterations

• Protection of Rights
• Civil and criminal enforcement and IP valuation
   » Is there any misleading use of marking that could make the company susceptible to litigation, based on unfair competition laws?
   » Are there any potential bases to cancel the trademark registration on the grounds that:
      » The trademark is descriptive
      » The trademark is not distinctive
      » The trademark is misleading or disparaging
      » The trademark is functional
      » The trademark relates to armorial bearings, flags and other state emblems
      » The trademark is generic
      » The trademark consists of a geographical indicator
      » The trademark is against public policy or principles of morality
      » The trademark includes a badge or emblem of particular public interest
      » The trademark is protected by statute or local law/regulation
      » The trademark is prohibited in this jurisdiction
      » The trademark application was made in bad faith
      » The trademark infringes prior rights
      » The trademark is not in use anymore

   » What steps are taken by the company to ensure that the trademark does not become generic?
      » Is there employee and customer training or literature on the proper use of the trademark?
      » Does the company perform quality assurance audits of its use of its trademarks?
      » Does the company have a specific Trade Mark Usage Policy that defines the manner and standards of use of the trademark?

   » What steps are taken by the company to ensure that the trademark is not being infringed?
      » Are they using a watch service to monitor trademark applications by third parties?
      » Are they opposing pending trademark applications by third parties (see also Oppositions) that are similar to their trademarks?
      » Are they filing cancellation actions against third-party registrations that are deemed to be infringing?
      » Are they issuing cease-and-desist letters?
      » Are they doing periodic market surveys to identify possible infringers?
      » Are they maintaining a database of actions taken against third parties so that future habitual infringers can be identified?

• Counterfeits and IP valuation
   » What steps has the company taken to reduce the incidence of counterfeiting of their products, if any?
      » Are there valid trademark registrations in countries where counterfeiting is experienced?
      » Are there customs records?
      » Are there regular audits of their supply chains?
      » What security measures have been put in place to ensure that there is no leakage?
> Are there education/awareness plans in motion for customers, traders, intermediaries, customs authorities, or any other authority involved, such as the police, etc.?

> Are there regular market surveys conducted by the company to ensure the early identification of third parties selling infringing articles or manufacturing infringing articles?

**Dilution and IP valuation**

> Is there prima facie evidence that the trademark is a well-known mark?

> Court decisions?

> Declaration that the mark is well-known through the filing of petitions, wherever applicable?

> Registration on a register for well-known marks?

**Commercialization of Rights**

**Transfer of trademarks and IP valuation**

> Is the trademark assigned or licensed?

> Is the trademark assignment for some or all the goods and services?

> Is goodwill included in the assignment?

> Is there a requirement to record the assignment in the territory of assignment?

> If licensed, please see Section on Licensing and IP valuation below.

**Licensing and IP valuation**

> Is the license for a portion of the territory covered by the trademark or the whole territory?

> Is the license for some or all of the goods and services?

> Is the license exclusive?

> Are there any limitations to the license (such as, for example, the duration of the license)?

> Is there a requirement to record the license in the territory of the license?

> Are there pending trademark applications that are being assigned or licensed?

> Does the company perform quality assurance audits of licensees?

**Maintenance of Rights**

**Competitive environment and IP valuation**

**Disruptive innovation and IP valuation**

**Corporate governance and IP valuation**

**Evidence and IP valuation**

**Non-use and IP valuation**

> Is an attack on the grounds of non-use possible?

**Mergers & Acquisitions**

**Factors that increase the brand value**

**Factors that decrease the brand value**
<table>
<thead>
<tr>
<th>Study Name &amp; URL</th>
<th>Publisher</th>
<th>Year</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Measuring Brand Value in an Equilibrium Framework</td>
<td>INFORMS</td>
<td>2009</td>
<td>The authors propose a structural approach to measuring brand and subbrand value using observational data. Brand value is defined as the difference in equilibrium profit between the brand in question and its counterfactual unbranded equivalent on search attributes. Their model allows them to make this computation rigorously, taking into account competitors’ and retailers’ reactions in the real and counterfactual situations. They illustrate their method using quarterly city-level data on ready-to-eat breakfast cereals and compare their brand value estimates with those obtained from previously used reduced-form methods. A key advantage of their methodology is that it provides estimates of the value of brands to firms—manufacturers and retailers—taking into account the brand’s value to consumers as well as its impact on firm decisions.</td>
</tr>
<tr>
<td>A Conjoint Approach for Consumer-and Firm-Level Brand Valuation</td>
<td>Sage Publications, Inc.</td>
<td>2009</td>
<td>This article develops and tests a reduced-form, conjoint methodology for measuring brand equity. The proposed approach (1) provides objective dollar-metric values for brand equity without the need to collect perceptual or brand association data, (2) captures the effects of awareness and availability in the marketplace as sources of brand equity, (3) accounts for competitive reaction, (4) allows the mix of branded and unbranded firms to affect industry size, and (5) uses consideration set theory to project market share estimates from the conjoint experiment to the marketplace. Managers can use the approach to develop customized strategies for targeting customers, monitoring brand ‘health,’ allocating resources, and determining the values of brands in a merger or acquisition. The empirical results suggest that the proposed metric for measuring consumer-level brand equity has convergent validity; in addition, the magnitudes and strengths of brand equity vary considerably across consumers and brands. At the firm level, the results show that previous methods are likely to overstate brand equity, especially for products with low market shares. Finally, the results show that the external validity for proposed brand equity measures is high.</td>
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<tr>
<td>Brand Valuation Fundamentals</td>
<td>Nomos Verlagsgesellschaft mbH</td>
<td>2012</td>
<td>This provides an overview of brand valuation, including definitions, the difference between trademarks and brands, brand function, licensing, and accounting related to brand value.</td>
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<tr>
<td>Brand Valuation – State of the Art</td>
<td>Nomos Verlagsgesellschaft mbH</td>
<td>2012</td>
<td>This chapter provides both an overview of current brand valuation trends and issues and a discussion of brand valuation tools enjoying practical popularity at present. The systematization of brand valuation tools into groups, as well as the merits and disadvantages of present brand valuation techniques set out in this chapter, serve as reference points throughout this work in the course of the discussions of the issue of how an ideal brand and IP valuation methodology should look like.</td>
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Annex H, continued on page 82.
### Annex H: Third-Party Research (Continued)

<table>
<thead>
<tr>
<th>Study Name &amp; URL</th>
<th>Publisher</th>
<th>Year</th>
<th>Summary</th>
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<tbody>
<tr>
<td>Brand Value and Stock Markets: Evidence from Trademark Litigations</td>
<td>Kellogg School of Management</td>
<td>2014</td>
<td>The paper investigates whether equity markets incorporate the value of an important category of intangible assets, namely, the brand value of a firm. Using a novel dataset of trademark infringement lawsuits filed in US district courts from 2000-2012, this paper analyzes whether shocks to a firm's brand value in the form of public announcements of filings and verdicts of trademark infringement lawsuits are priced in the market. Using an event study framework, we find that an announcement of the filing of a complaint results in a statistically significant 0.34% mean abnormal return for the plaintiff firm and statistically insignificant returns for the defendant firm on the day of the announcement. An announcement of a verdict in favor of the plaintiff results in 0.57% mean abnormal return for plaintiff firms and, -1.76% abnormal returns for the defendant firms. Also, consistent with the literature on the use of trademark infringement lawsuits as complementary advertisement, the results show that litigation news provides a larger hype effect and demand rotation for smaller brands. We find that abnormal returns around complaints are higher for plaintiff firms with worse brand rankings, and abnormal returns around favorable verdicts for plaintiff firms are higher for firms with worse brand rankings.</td>
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<tr>
<td>A Review of Brand Valuation Method</td>
<td>Journal of Service Science and Management</td>
<td>2015</td>
<td>The object of this study is to clarify the method of brand value evaluation and provide references for Chinese corporates. The paper is organized as follows. Following this introduction, it explains the dimensions of brand value. And then, it provides an overview of the literature related to the method of brand valuation. Finally, the enlightenment to brand value evaluation practice of Chinese enterprise is discussed.</td>
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