

and an identity, part of which – the brand achievements – comprise signage elements which may be protectable by trade mark law.

Even though trade mark law can – for reasons of clarity and certainty – only speak of trade marks, the implications of its practical application usually affect the brand as a whole, as it relates to freedom to operate the brand.³³⁶

Due to their nature as intangible assets, brands bring about characteristics such as scalability and nontradability, which may have a positive or negative effect on their value. In addition, brands specifically reduce transaction cost and various risks, which needs to be taken into account if a truly comprehensive evaluation is desired. As brands depend on and affect many divisions of a company, they need to be taken care of and valued with a holistic view on all such corporate contexts.

Brand value can be defined as the estimated quantity of financial assets for which an item changes hands “on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion”.³³⁷ As such an ideal market situation cannot be obtained in practice, especially with regard to intangible assets, one should try to simulate it as closely as possible, especially by reduction of information asymmetries and of risks.

Brand management and controlling (including a brand protection strategy), brand transactions and finance (in part) involve and necessitate estimates of a future value based on present data. Therefore, brands need to be valued, in such circumstances, by a strategic forecasting tool.

Now that the foundations of a comprehensive, integrated understanding of brands and their value have been laid, it is expedient, as a next step, to analyse currently applied brand valuation techniques.

336 By contrast, rules of accounting for intellectual property speak of assets such as trade marks and patents (not brands) since they are, contrary to the brand as a whole, defined and transferable legal rights. From an accounting perspective, the brand elements going beyond the trade mark(s) would be allocated to goodwill. This is due to the fact that the law does not treat items such as brand identity or distribution channels as specific independent and transferable rights.

337 *International Valuation Standards Committee*, International Valuation Standards, p. 27.

Chapter 3

Brand Valuation – State of the Art

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 systematisation 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 discussion of the issue how an ideal brand and IP valuation methodology should look like.

3.1 The Current Brand Valuation Landscape

Before attention will be turned to analysis of specific brand valuation approaches and methods, it is expedient to examine the brand valuation market as a whole. Hereby, the main emphasis will be put on the German market. Important general background information and issues will thus be worked out and illuminated.

3.1.1 General Issues and Trends

In many industry sectors, brands have become the central asset within companies' portfolios. With products and services often varying in mere nuances, it is the brands which ensure sufficient differentiation vis-à-vis competitors, build an important communication channel between buyer and seller and reduce risk, both on consumers' and proprietors' sides.

As highly complex as they are, brands demand in-depth and well-informed management. Since one can only manage what one can (and actually do) value, valuation must play a central role for brand management decision makers. A lot has been achieved after first publications on brand valuation were made in the early 1960s.³³⁸ New brand valuation tools were developed, old ones improved. Since the first major deals relying on brand valuation were concluded in the 1980s,³³⁹ the number of similar transactions has grown considerably.

However, even though the practical necessity of brand valuation has become generally accepted (and it seems to have been accepted earlier than in the patent field³⁴⁰), there exists considerable disagreement as to which factors drive and distract brand equity, what their functions and interrelations are in detail and how to manipulate these factors in one's favour.

This is mirrored by the fact that there are dozens, even hundreds of brand valuation methods available today. Brand consultancies, advertising agencies, consulting companies and market research institutes alike are trying to value and evaluate brands applying a plethora of different tools. According to a current study carried out by the German *Institut für Markenwert* (Institute for Brand Value), there are more than 300 such methods worldwide.³⁴¹ In the German-speaking area, there are approximately 30 proprietary techniques on offer.³⁴² Proprietary means that such methods have been developed company-internally and are, in essence, not publicly accessible. Such methods have been created specifically for purposes of brand valuation. In addition, there are a number of generic, i.e. freely accessible and usable, approaches and techniques in place. Many of them, such as the cost approach, have been

338 See above, fn. 200 (*Kern*).

339 Cf. 2.2.1.

340 The first brand valuation literature was publicised in the early 1960s (cf. fn. 200) whereas valuation of patents was not beginning to be discussed until the 1990s. Cf. e.g. *Smith/Parr*, Valuation of intellectual property and intangible assets (1989); *Simpson*, Valuation of Scandinavian patent rights across industries, nationalities, and time: analysis, estimates, and applications (1992); *Simensky*, The new role of intellectual property in commercial transactions. Recent trends in the valuation, exploitation and protection of intellectual property (1994); *Pitkethly*, The Valuation of Patents: A review of patent valuation methods with consideration of option based methods and the potential for further research (1997).

341 *Amirkhizi*, "Suche nach der Weltformel". Q.v. *Bentele/Buchele/Hoepfner/Liebert*, Markenwert und Markenwertermittlung, p. 36, who have found a three-digit number of brand valuation approaches and models.

342 *Schimansky*, Markenbewertungsverfahren aus Sicht der Marketingpraxis, p. 15.