It was not until the late 1980s that brand valuation became a concept which was increasingly used in business. Widespread takeover bids for and acquisitions of large brand-focussed companies sparked this process. Many businesses sought to enlarge their brand portfolios for reasons such as cost savings in production and distribution and the fact that the development and management of new brands is sumptuous.[202] As it was expressed in a 1985 *Los Angeles Times* article, “In recent weeks, the business world watched as almost $15 billion and about 400 brand names changed hands in rapid-fire sequence. Before the dust began to settle, Procter & Gamble owned Richardson-Vicks, Philip Morris Inc. had General Foods, R.J. Reynolds Industries consumed Nabisco Brands and Monsanto took G.D. Searle & Co. [...] The brand name suddenly has emerged as the most coveted corporate asset of all. Brands no longer are merely products competing for market share; they're annuities being plugged into the big-money equations of corporate acquisitions. It has become wiser to grab somebody else's established brands and extend the lines than spend $ 80 million or more trying to get a new name into the mix.”.[203]

Hence, the hidden value generated by brands began to be unveiled as large sums were paid for companies whose tangible assets' value was estimated to be far lower than the actually paid price. When *Philip Morris* bought *Kraft Foods* for US $ 12.9 billion in 1988, 11.6 billion US $ were estimated to account for the brand value.[204] [205] This was and still is due to the fact that internally generated brands may not be posted in the balance sheet. Another reason for increasing need of brand valuation was that every single merger and acquisition transaction necessarily involves a pricing process.

Furthermore, in the late 1980s, a number of British companies such as *Cadbury Schweppes* and *Guinness* sparked a brand accounting debate by including acquired brands as separate assets on the balance sheet (instead of leaving them as not recognisable parts of goodwill, which was widespread practice at that time).[206] The intensive discussions raised thereby contributed to an

202 It is estimated that the complete development of a new brand in the USA, Europe and the Middle East costs approximately one billion US $, cf. *Häusler/Stucky*, Markenmanagement und finanzielle Transaktionen, p. 6.

203 *Los Angeles Times*, 1985, as cited by *Tauber*, 16 Journal of Advertising Research, iss. 4, 26, 26 (1988).

204 *Farquhar/Han/Ijiri*, 1 Marketing Management, 16, 16-22 (1992).

205 This brand takeover spree was not just an American phenomenon but could be observed in virtually all developed economies. For instance, *Nestlé* acquired *Rowntree* and *Danone* took over *Nabisco*'s European business.

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increasing focus on brand value and its measurement.

In those days, globalisation, increased competition, the establishment of free trade zones, deregulation and privatisation, faster product life cycles, mergers & acquisitions as well as divestments, shortage of highly qualified personnel, public expectance of companies' social commitment and increased importance of external stakeholders for corporations started to form a changing economic framework which encouraged increased focus on brands and their valuation.[207] Common today yet novel at the time, businesses in developed economies, on a world-wide scale, aimed to live up to these requirements by not merely offering products or services, but also an additional offering in the form of brands which the consumer connects to the acquired product or service. Analogously, companies did not merely choose to acquire e.g. a sweets or biscuits manufacturer any more but *Rowntree* or *Nabisco* respectively.

The fact that acquired brands were able to attain high sums in merger and acquisition transactions was not without effect on internally generated brands. The first such brand valuation for balance sheet purposes made public was carried out by *Interbrand* for the UK pastries producer *Rank Hovis McDougall (RHM)* which in the year 1988 was under threat of a hostile takeover by the Australian food concern *Goodman Fielder Wattie*.[208] *RHM*'s management believed its assets, especially its brands, to be undervalued and hired the consultancy to put a price tag on their assets in order to be able to fight the takeover bid. This exercise succeeded in putting the worth of the company's brands as a figure on the balance sheet. With the brand value information, the *RHM* board was able to argue vis-à-vis investors that the bid was too low and eventually repel it.[209]

Today, since intangible assets have come to constitute the lion's share of many modern companies' value,[210] valuation of these assets is increasingly in

206 *Havenstein/Heiden*, BB 2003, 1272, 1273.

207 *Zednik/Strebinger*, Marken-Modelle in der Praxis. Darstellung, Analyse und kritische Würdigung, pp. 5-6.

208 *Häusler/Stucky*, Markenmanagement und finanzielle Transaktionen, p. 7; *Stucky*, Monetäre Markenbewertung nach dem Interbrand-Ansatz, p. 433.

209 *RHM* was eventually acquired in 1992 by the US conglomerate *Tomkins Plc.*, which sold it off to the UK company *Premier Foods* in March 2007; cf. http://www.answers.com/topic/ranks-hovis-mcdougall-limited and http://www.flexnews.com/pages/7813/Premier/RHM/premier_foods_completes_rhm_acquisition.html (both last accessed March 27, 2007).

210 Research carried out by *PricewaterhouseCoopers* shows that intangible assets and goodwill constituted up to 74% of the average purchase price of companies in the year

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focus. Branding has become the standard procedure in almost every branch of industry. Correspondingly, the number of trade marks and brands has been rising clearly for quite some time. For example, the number of Germany-only trade marks registered with the German Patent and Trade Mark Office rose from 0.57 million at the end of 1998 at averaged about 4.8% p.a. to 0.70 million at the end of 2003[211] and to almost 0.77 million by the end of 2007.[212] What is more, there have been and still are phases of strong Merger and Acquisition (M&A) activity, in which brands often play a key role.[213]

Given the increased popularity and economic prominence of brands, it is no surprise that brand valuation models have gained considerable attention since the late 1980s, both in science and practice. While it is generally agreed that brands are of utmost importance for the respective company and that brands constitute a major part of many companies' overall value, the actual determination of brand value is often being neglected.[214] Hence, it has not been possible to develop a generally or at least widely accepted brand valuation method. In fact, there exist a large number of different brand valuation methods which results both in an overly complex valuation market and in a missing comparability and significance of the established values.[215]

2.2.2 Definition and Origins of Brand Value

In order to be able to find the value of a specific object, it is indispensable for any valuator to understand what the term 'value' means. Inextricably linked to this issue is the question why a certain item is valuable or has the potential to become so.

2.2.2.1 Brand Value Defined

Being questioned what value of an intellectual property right is, a member of the audience at a conference on IP valuation[216] answered: "Value is what the

2003, see *Rugman/Hadjiloucas*, Valuing IP and determining the cost of capital, p. 1.

211 *Gerpott/Thomas*, WiSt 2004, 394, 394.

212 *Deutsches Patent- und Markenamt*, Jahresbericht 2007, pp. 11, 34.

213 According to *Thomson Financial*, European M&A activity reached US $ 1.29 billion by the end of July 2007, which is more than the total for 2006, cf. *Saigol*, Lights go down on the acquisition party.

214 *Wirtz/Göttgens/Dunz*, der markt 2001, 159, 159. Reasons for this abstinence from practical brand valuation are presented in chapter three at 3.1.1.

215 More on this below in chapter three at 3.1.1 et al.

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respective item sells for." This market-based approach to (financial) value is the most self-evident one. The value the sold item has in the eyes of each party is condensed in its (usually monetary) quid pro quo at the moment of transaction.[217]

The abovementioned market value related statement met with a divided response. Others defined value as the utility the respective IP right has for the proprietor. This reflects the fact that value is a relative concept. It always depends on the respective situation and lies in the eye of the beholder. What is more, utility is (as well as scarcity and title),[218] in a desired market situation and as just indicated, reflected by the attained price so that the market approach and the utility-based view are not separate but parts and expressions of the same construct.

Value, in general, can be financial or non-monetary. An old family photograph can, for instance, be very valuable to a person due to fond memories of times bygone. Such an affectionate value is very unlikely to be expressible in monetary terms and would almost certainly differ from value potentially recognised by a particular market or industry. Yet unless the person would want or have to alienate the photograph, he or she is not obliged to find a financial expression for its value. In other words, the utility the photograph has for the owner (plus scarcity and title)[219] do not mirror a financial value unless such value is needed.

Expressions of value in financial terms is needed for purposes of documentation and whenever transactions take place. Except for a situation of a simple barter, money is the currency of transactions. Transactions in this sense not only include company-external sales or licences, but also company-internal ones, e.g. for transfer pricing and portfolio management purposes.

Monetary value, of all assets including brands, can therefore be defined as

216 'Bewertung von IPRs', Königswinter, Germany, May 18-19, 2006.

217 Ideally, such transaction has been carried out in a transparent market as there is no more reliable and accurate reflection of value than in a transparent market transaction just carried out. In such a transparent market, the monetary quid pro quo for which an item changes hands reflects not only what the item is worth to each party in a certain setting but also value-related informational and volitional symmetry or consent between the parties. Pricing information arrived at in such a fashion could then be widely used for similar transactions by other market participants. In the case of IP and of brands especially, this faces difficulties as there are no sufficiently transparent markets and these assets are highly unique.

218 *Supra* at 1.3.

219 Cf. above at 1.3.

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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 arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion".[220]

The fact that this definition reflects an ideal market situation which will almost never be attained in practice mirrors the circumstance that valuation is not an exact art (except for those cases in which one deals with fixed, historic data only, e.g. in accounting situations). The economic concept of value refers to the price most likely to be agreed on by the respective parties to a transaction. Hence, instead of being a fact, future-related value is by definition an estimate.

This conclusion is valid for all types of asset, tangible and intangible. Therefore, as a basic rule, one should not subject the valuation of intangible assets to more demanding requirements than valuation of tangible assets. The (future-related) valuation of a house and of a brand are both, in essence, estimates, the major difference being that there will generally be more objectified market information available with respect to the house than the brand. This is due to the nontradable nature of brands and other intangible assets.[221] There are no markets for trade marks or brands which show an acceptable degree of minimum transparency.

However, this does not mean that the definition of value becomes futile or invalid. Rather, the logical consequence is that the diligent valuator will have to find a way to collect as much information as possible about the respective brand in order to fill information gaps existing compared to relatively frequently traded tangible or financial assets such as cars or company shares.

Hence, a valuation methodology suitable for future-related valuations should be capable of collecting such information in a systematic way, thereby enabling the valuator to carry out the value estimate as reliably as possible.[222]

The financial world, for the most part, sees brand value as the profit which can be attributed to the brand and which the brand owner could not attain without the brand.[223] In other words, a brand's value is said to be mirrored

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

221 Cf. 2.1.1.3.4, *supra*.

222 Cf. above, 1.4.1.6.

223 *Amirkhizi*, "Suche nach der Weltformel".

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