

SMARTER PERSPECTIVE: INTELLECTUAL PROPERTY

Understanding Brand IP Valuation in Disputes: Its Significance and Application

By Jarrod Anderson and Jordan Donsky

This article addresses the critical role of brand valuation professionals in providing highly accurate and contemporaneous third-party valuations, assessments of other expert opinions, and perspectives on prior valuations in a variety of disputed matters.

Introduction

Brands are among the most valuable assets companies own. Branded products and services command a premium that buyers pay for above and beyond that of similar unbranded products and services. This premium represents the intrinsic value of the brand. Despite the importance of brand assets, in many cases, the asset is off the balance sheet without a value assigned, even for accounting purposes. Often, when the asset is represented on the balance sheet, the appraised value varies substantially from the reported value.

Expert valuation services play a pivotal role when the determination of a brand asset's economic worth, including marks, designs, or other brand-related intangible assets, becomes a matter

of contention. This specialized field employs the expertise of valuation professionals who are called upon by clients, including attorneys, company management, stakeholders, and other professionals, to provide brand valuation services.

Producing a proper brand valuation opinion, resulting in an expert valuation report, reflects the application of best practices, including comprehensive procedures and analytical methods, presented using terminology specifically tailored for use in brand litigation, arbitration, mediation and resolution of disputed matters. The ultimate outcome is often backed up with expert testimony provided by the brand valuation specialist.

When a Brand Valuation Specialist Should be Engaged

Brand valuation practitioners are engaged in a wide range of scenarios. They are often called upon to handle valuation-related disputes that arise in the context of transactions. The disputes typically involve purchase price disagreements, bankruptcy and solvency

analyses, tax controversies, and high-net worth marital disputes to name a few. Such situations frequently involve multiple valuations for a single disputed matter.

In brand value disputes, specialists may be tasked with the review of "contemporaneous valuations," which are valuations conducted during the general time period leading up to the dispute. Practitioners may also be called upon to assess, comment, or rebut prior historical valuations or valuations performed by opposing experts within the same disputed matter. In certain instances, practitioners are tasked to assist counsel in drafting questions regarding the work of other valuation experts for use in depositions or trial testimony.

Brand valuation analysis, particularly when dealing with past events, often poses unique challenges. Examples involve utilizing information available at the time of the valuation date, accounting for multiple measurement dates, reconciling differing data provided by various fact witnesses or other experts, reviewing depositions, managing conflicting data and terminology, and



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navigating the complexities of legal discovery and strategies. Hilco brand valuation specialists were recently engaged on a case where the nature of the licensing revenue streams, as well as the appropriate costs associated with the brand, were at issue. The analysis included the deciphering of specialized terminology. An example of such specialized terminology involved whether costs discussed in fact witness testimony were “landed costs” or potentially involved additional shipping and handling costs.

The Critical Roles of a Brand Valuation Specialist

Brand Valuation practitioners may serve as consultants, expert witnesses, or both. In many cases, specialists are initially engaged as consultants and later designated as expert witnesses. While attorneys often take the lead in retaining brand valuation professionals, many other parties, such as lenders, trustees, company management, or

board members, may also engage these experts.

A brand valuation engagement typically involves the gathering and presentation of relevant data and opinions. This information is critical in forming an expert opinion to assist clients or counsel to reach a conclusion on the merits of the valuations under scrutiny. Brand valuation practitioners aim to identify the valuation methods used and pinpoint the extent of differences between separate valuation opinions, whether produced contemporaneously or at a later date and involved in an ongoing dispute.

This process may involve forming an expert valuation opinion on previous or opposing valuations and assessing the factual basis of known differences in values. It is important to note that each valuation analysis is a distinctly unique endeavor, and not all valuation methods are suitable under all circumstances. Brand valuation is ultimately the process of determining the financial value or

amount of money that a third party is willing to pay to own or license a brand. This process involves the brand’s current ability to generate value as well as its future prospects, underscoring the significance of brand valuation.

Conditions Enabling a Brand Valuation Specialist to Serve as an Expert Witness

In some cases, a brand valuation practitioner may be asked to serve as an expert witness in a court proceeding. To qualify for this role, the practitioner must possess specialized valuation skills, substantial knowledge, education, experience, and training.

Once designated as an expert witness in a court proceeding, a brand valuation practitioner’s experience, education, reputation, published work, prior testimony, and opinions are all subject to intense scrutiny by opposing counsel. Because this scrutiny aims to challenge qualifications or potentially discredit





expert testimony, the practitioner must be beyond reproach. It is also crucial for brand valuation practitioners to maintain an unbiased, fact-finding stance, emphasizing a role as neutral contributors to the court's understanding rather than an advocate for a particular party.

The Importance of Selecting a Qualified Brand Valuation Partner

Qualified brand specialists recognize this area of practice is constantly evolving. Value accretion for brand assets has typically been long and slow, relying on gradual accumulation over decades of carefully managed customer experiences, advertising, and other business practices. More recently, valuable brands are being created quickly with celebrity influencers and social media, among other avenues.

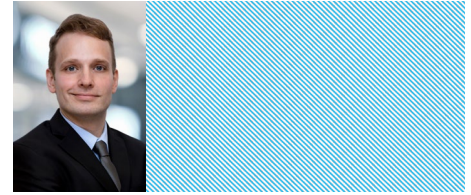
The meticulous vetting of expert candidates is a crucial step in the application of brand valuation practices. This process ensures that the most qualified and capable individuals are selected to determine the assets' value, including marks, designs, and other brand-related intangible assets. By engaging in this careful selection process, attorneys and other professionals will best serve their client's

interests in the realm of brand valuation.

About Hilco Enterprise Valuation Services

The Hilco Brand Valuations Team is a part of Hilco Enterprise Valuation Services (EVS), a leading provider of valuation opinions for lenders, investment firms, advisors, and corporations on the realizable value of going concerns, distressed companies, intangible assets, and other specialized business assets. Our brand valuation team is comprised of professionals who have served clients by delivering highly accurate valuation assessments across a wide range of businesses. The team possesses credentials including ABV, ASA, CPA, and CIRA designations and extensive expertise in data collection, analysis, and reconciliation. Unlike many firms, our partners and senior management team members are actively involved in each engagement and are accessible to clients at every step along the forensic valuations journey.

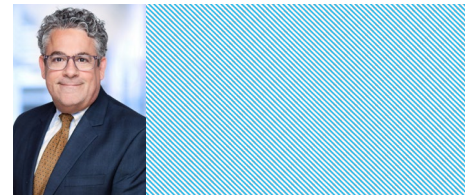
We encourage you to reach out to our team today to discuss how our brand valuations experts and tailored solutions can assist your or a client's business in analyzing and addressing a wide range of complex financial disputes and other matters. We are here to help.



JARROD ANDERSON IS SENIOR VICE PRESIDENT AT HILCO ENTERPRISE VALUATION SERVICES

Jarrod Anderson is a Senior Vice President in Valuation Advisory at Hilco Enterprise Valuation Services. Jarrod has 20 years of financial consulting experience, specializing in brand valuation and advisory services. Jarrod provides valuation opinions for collateral and lending purposes, disputes, as well as testimony on brand valuation. He is also a speaker on the topic of brand valuation.

Contact Jarrod at janderson@hilcoglobal.com or 847.313.4707.



JORDAN DONSKY IS DIRECTOR AT HILCO ENTERPRISE VALUATION SERVICES

Jordan Donsky is a Director in Disputes Advisory at Hilco Enterprise Valuation Services. He has extensive financial consulting experience, specializing in valuation and dispute advisory, including financial forensics.

Contact Jordan at jdonsky@hilcoglobal.com or 847.504.3284.