

# Caution: A trademark can't be valued as a brand



**Gelb Consulting Group, Inc.**

1011 Highway 6 South  
Suite 120  
Houston, Texas 77077

P + 281.759.3600  
F + 281.759.3607  
[www.gelbconsulting.com](http://www.gelbconsulting.com)

# Gelb

## Caution: A trademark can't be valued as a brand

One of the most vexing issues facing intellectual property attorneys is establishing a value after a trademark has been infringed or diluted or sold, or when an organization wishes to arrange a licensing fee. Yes, a brand may be the most valuable asset of a company. But what is the trademark worth?

The central point to be made is that, contrary to widespread use of both terms as synonyms, a trademark is an identifier or "face" of the brand, not the brand itself. The American Heritage Dictionary, Second College Edition, made this mistake when it gave as the first definition of the term brand, the following: "A trademark or distinctive name identifying a product or a manufacturer."

Many use the terms brand and trademark interchangeably. As a writer on trademark valuation notes in an e-mail to me, "I find both businesspeople and attorneys conflate the terms brand and trademarks" (Michael J. Freno, Kenyon and Kenyon LLP, author of "Trademark Valuation: Preserving Brand Equity," The Trademark Reporter, September-October 2007. However, they should not make that mistake. The value of a trademark is a fraction of the value of a brand, and both the total brand value and the trademark's proportional value must be estimated when legal issues arise.

Skeptics may ask, what is the brand if not its trademark? The answer is, the product itself and its entire range of attendant attributes. Without the product, there is no brand -- and no enterprise, one might add.

In today's world almost everything is branded, starting from the original use as a simple branding iron to much more expansive applications, such as the following: "The Olympics are branding Canada to the world, but they are also branding Canada to the Canadians," said Michael Ignatieff, leader of the Liberal Party of Canada, quoted in *The New York Times*. What might a brand be worth? The president of Coca-Cola, the most valuable brand in the world (valued at \$68.7 billion) once famously said that if all their buildings and equipment burned down, he could get a loan to rebuild based on the value on the brand alone. But if the brand was taken away, the company couldn't recover. On the negative side of brand value, the estimated value of Citi's brand went from \$20.1 billion in 2008 to \$10.2 billion, according to an article in Business Week, "100 Best Global Brands."

But how much is the *trademark* of Coca-Cola or Citi worth? Certainly not as much as the brand because the trademark can be changed without necessarily diminishing the value of the brand. It is not rare for marketers to tweak the product name and even more common for them to change some facet of their trade dress, a brand signal that can be a logo, color, sound, or "look and feel" of a tangible product.

Perhaps here it is worthwhile to define the meaning of these two intangibles, recognizing because they are intangible, honest folks may differ. But it is important to offer a starting point because of a nascent movement to require companies to value their brands on their balance sheets. Today relatively new accounting standards require brand evaluation only

## Caution: A trademark can't be valued as a brand

when a company is merged, bought, or sold (Financial Accounting Standards Board rules 157 and 159.) However, given this precedent, new rules may be promulgated to value a company's brands routinely.

Basically, a brand can be defined as the sum of its product's or service's attributes, its history, reputation and all the ways it's been experienced by whatever buyers it targets. So of course that includes its trademark, whether expressed as a corporate or product name or logo, as a component of the brand. Whether it is 15% component or a 50% component or something in between depends on its specific situation.

The balance of this article points to ways the trademark itself can comprise a smaller or larger component of the value of the brand.

For example, consider the longevity of the Coca-Cola brand and its worldwide distribution. But distinguish that coverage from a 3-year-old restaurant famous for its menu in a certain part of a city. In addition to geographic reach, the value of a brand is modified by its uniqueness and/or distinctiveness vis a vis its competition, its trade dress, how it is promoted, whether its business model is business-to-consumer or business-to-business, and many other factors. For example, for an industrial product, the quality of its sales force is consequential; for a consumer product, the quantity and quality of its advertising matters greatly, and for a service, a major issue is the quality of personnel. Following are three broad factors to consider in valuing a trademark.

### **1. Valuing the trademark**

If, in valuing a brand, one removes the concept of its trademark, what is left? As stated above, what remains is the product, which may be distinctive in and of itself—the McDonald French fries come to mind—or it may not be distinctive vis a vis its competitors—milk in a carton comes to mind.

So if one is valuing the trademark of a brand of milk, and if the milk itself has no perceived distinctiveness compared to competing brands of milk, then the value of the trademark and the value of the brand are equal. However, if one is valuing the first toothpaste brand that contains a whitening agent, then that distinctive brand attribute justifies a higher price point against its competitors. Once that difference based on a product characteristic is calculated, it can be subtracted from the total brand value, with the remainder the value attributed to the trademark.

In short, trademark value can be calculated by measuring the value of the product itself against like competing products and subtracting its incremental value from the total value of the brand, leaving the remainder for the trademark.

## Caution: A trademark can't be valued as a brand

### 2. Consumer or business product or service

As a general rule, a trademark of a consumer product comprises a higher proportion of a brand's value than does the trademark of an industrial product. The major reason for this is that consumers are likely to be introduced to a branded product by advertising, which is not the case with a business-to-business product. In the latter case, the price points are higher and the introduction is accomplished through a sales force. Thus, name recognition is most important as a consumer breezes by supermarket shelves.

In the much higher ticket price of a business-to-business product, the buyer is heavily influenced by previous experience with the brand and possibly with other brands from the same company. Obviously, the decision in a business-purchasing situation may involve a committee on the customer side and the depth of technical expertise on the seller's side. Here, advertising is less consequential.

### 3. A simple trademark valuation research design

Given the increasing attention to placing intangibles on a company's balance sheet, a number of consulting firms are available, many of which offer their own approach—often somewhat complicated—to valuing a brand, thereby providing a ceiling for the value of its trademark. For those not in a Coca-Cola or Intel financial realm, one relatively inexpensive way to measure the value of a trademark is by placing your product in a lineup with competing products and asking consumers how much they would reasonable pay to buy your product if a standard product sold for X.

This is known as a price premium approach to valuing a brand, as compared to more highly technical accounting methods, or those that value brand as a proportion of market capitalization.

An actual, although somewhat disguised, assignment by the author was to calculate the trademark value of an automobile tire. The design called for showing a lineup of four tires where the Goodyear tire was priced as the price anchor at \$125 and the consumer was asked what he or she might pay for the test tire and the two others included as controls. One interesting finding was that the test tire's perceived value was different depending on geographic location: it was higher where it maintained a higher market share. In the New York metropolitan area, where the test tire had a 9% market share, its expected retail price averaged \$109, as was the case in other geographic areas with similar market shares. By contrast, in most Western states, where the test tire's market share was only 5%, the price consumers expected to pay was \$94. Presumably, then the value of the trademark would vary as the brand value varied.

The same test could be employed for toothpaste, packaged bread, branded clothing or any other widely available standardized consumer products. Because many industrial products may not be standardized, it is not clear if such a test would be worthwhile. However, it might be employed for services such as hospital stays, eye examinations, oil changes, or package delivery.

## Caution: A trademark can't be valued as a brand

### **About Gelb**

Felling pressure to increase volume and grow revenues? Gelb Consulting Group, Inc. is a strategic marketing firm that merges analysis, strategy and technology to help clients build and sustain revenue growth.

Gelb is here to help you understand the complexities of your market to develop and implement the right strategies. We use advanced research techniques to understand your market, strategic decision frameworks to determine the best deployment of your resources, and technology to monitor your successes.

For over 40 years, we have worked with marketing leaders on:

- Strategic Marketing
- Brand Building
- Customer Experience Management
- Go to Market
- Product Innovation
- Trademark/Trade Dress Protection