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Valuing Intangible Assets Using the Market Approach –

Comparative Analysis of Alternative Data Sources

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Whenever a valuator choses to apply a **market approach**, he or she has to establish **comparability** between observable market transactions and the valuation object. First level of comparability is close proximity of the business model, customer needs and customer benefits.

In the valuation of **intangible assets**, the **relief from royalty method** (RFRM) is the prevalent market approach. It requires the selection of comparable transactions involving the sale and/or licensing of a comparable intangible asset. The RFRM method is often criticized for the limited selection of observable market transactions, and for the difficulties in identifying comparable transactions.

Since 1997, data vendors have been providing access to **license agreements** which are filed as exhibits in the **SEC database** as „material contracts" according to Item 601(b)(10) of the Securities Act and Exchange Act. Various databases collect, populate and categorize such license agreement from the SEC database. It is the oldest and most popular source for market transactions and royalty rates related to intangible assets.

Since 2014, **MARKABLES** is an **alternative** data provider. MARKABLES provides access to intangible asset value data being part of corporate transactions (M&A). Such data on acquired intangible assets has to be reported in financial statements of listed companies since the adoption of IFRS / IAS back in 2004. MARKABLES claims to offer a broader selection of relevant cases, and to substantially improve comparability of observable market transactions for intangible assets.

Now, what are the differences between the traditional data sources – license agreements filed with the SEC – and the alternative data source used by MARKABLES – data on acquired intangibe assets in business combinations?

Below, we present **three** comparative **case studies** to demonstrate the difference in selection and results. All three case studies relate to the valuation of a trademark which is based on observable **license agreements** and peer group analysis, and which was published in the public domain. We juxtapose evidence „as if" the peer group and royalty rate analysis had been based on **MARKABLES** data.

Case 1: The underwear trademark

In 2012, Israel based Delta Galil Industries Ltd. acquired Schiesser AG, a traditional German underwear and lingerie business founded in 1875. For the accounting of the acquisition, the acquired trademarks had to be valued and recognized. The valuator adopted a market approach (RFRM) and selected seven comparable license transactions. The valuation report was disclosed by Delta Galil in the context of purchase accounting.

We assume that the valuator searched principally for underwear businesses. However, none of the seven cases involves a pure-play underwear business. While some of the license agreements might include underwear as a permitted product, their focus is still largely on apparel. Typically, suppliers of underwear and lingerie (innerwear) are separate from suppliers of outerwear. Sometimes, underwear is combined with socks and/or hosiery. Obviously, the identified comparable license transactions helped little to determine an appropriate royalty rate. The valuator concluded on a a pre-tax royalty rate of 2.6%, far below the median range found in the peer group.

License transactions - underwear and lingerie

Licensor / licensed brand	Licensee	Business, licensed field of use	Year	RR
anonymous	anonymous	apparel, socks	2007	6%
IC Isaacs & Company LP [Marithé & Francois Girbaud]	Western Glove Works	jeanswear (jeans, woven shirts, shorts and jackets)	2000	6.25% - 6.75%
Joe's Jeans Inc. [Joe's]	Itochu Corp.	men's and women's casual apparel	2003	3% - 6%
Tennman WR-T Inc. [William Rast]	William Rast Sourcing, LLC	apparel	2011	2.5% - 5%
Stone Corporation Inc. [Horiyoshi III]	Horiyoshi the Third Limited	apparel	2011	6%
Polo Ralph Lauren Corp. [Polo]	RL Childrenswear Company, LLC	childrenswear	2000	3.5% - 11.5%
Michael Caruso & Co., Inc. [Bongo]	Jenna Lane, Inc.	women's sportswear	1998	5% - 7%
			median	**5% - 6%** **5.7%**

In contrast, the MARKABLES database offers a much more specific selection within the underwear category, including

- 12 cases in men's underwear
- 11 cases in women's underwear
- 8 cases in women's lingerie
- 6 cases in swimwear

A peer group dataset of 12 underwear cases listed in MARKABLES finds

- a median royalty rate of 3.9%
- an interquartile range from 3% to 5.5%
- and a total range from 1.7% to 7%.

Trademark is the most important asset in this sector. Still, royalty rates are below the level in the apparel and fashion segment. It is obvious from the sample that sales multiples at enterprise level are rather low in this sector, on average less than 1.0x, reflecting moderate profitability and growth rates.

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Trademark Values - Peer Group Analysis			11/2022
Underwear and lingerie (includes knitted men's and women's underwear and women's lingerie)			
no. of observations: 12 period: 2011-2021 countries: 6	**Trademark royalty rate**	**Trademark profit split**	**Enterprise value**
	% of revenues	trademark value in % of enterprise value	revenue multiple
25% quartile	2.9%	22.7%	0.56x
median	3.9%	28.4%	0.70x
75% quartile	5.5%	52.6%	0.96x
mean	4.4%	41.9%	0.80x
Trademark life	- indefinite life: 92% - definite life: 8% with average useful life of 10 years		
Trademark revenues	from US$ 11 million to US$ 839 million		

Source: www.markables.net

The findings from **MARKABLES** are – on average - substantially lower (-33%) than from license agreements. And they are closer to the royalty rate conclusion in the Schiesser case.

Case 2: Trademark for windows and doors

Jeld-Wen is a leading global manufacturer of windows and doors, originally founded in Oregon and today operating from 120 manufacturing facilities in 19 countries. During the 90s, Jeld-Wen launchd internationally in Canada, Europe and Australia. Today, products are marketed globally under the JELD-WEN® brand, along with several market-leading regional brands such as Swedoor® and DANA® in Europe and Corinthian®, Stegbar®, and Trend® in Australia.

For transfer pricing purposes, Jeld-Wen had to determine the appropriate royalty rate for the use of its brand names by subsidiaries in Canada and Europe. The royalty rate analysis was disclosed as (anonymized) case study in the valuation textbook „Guide to Intangible Asset Valuation, 2014“ by Robert Reilly and Robert Schweihs, on page 492 (the „Omicron“ case study).

According to the authors, the valuator made a search in different license agreement databases and finally selected four comparable transactions. None of the four cases is anywhere close to a brand name used for windows and doors, even not for construction products in general. The selection seems to be random and illustrates the problems of the valuator to identify sufficiently similar market transactions.

The median royalty rate in the peer group of four was 3.0%. The valuator finally determined an arm's length royalty rate of 2.5% for the use of the brand name in Canada, and 1.5% for European countries. Based on the limited comparability, the royalty rate determination seems to have little substance.

License transactions - windows and doors

Licensor / licensed brand	Licensee	Business, licensed field of use	Year	RR
Century 21 Real Estate Corporation [Century 21 Home Improvements]	American Remodeling, Inc.	home improvement services; installation of siding, cabinet refacing, replacement windows, and exterior coatings	1995	3%
The Coleman Company, Inc. [Coleman]	Ranco Inc.	smoke alarms, carbon monoxide detectors, heat detectors, flammable gas detectors	1998	5%
Harnischfeger Technologies, Inc. [P&H, Magnetorque]	Morris Material Handling, Inc.	industrial cranes, hoists, winches	1998	0.75%
Norton Company [Speed-Lok]	Jore Corp.	drill bits, bit drivers	1999	3%
			median	**3%**

Having a look into the **MARKABLES** database, we find as many as 37 (!) specialised manufacturers of windows and/or doors (and their brand names). This makes a both large and specific selection of comparable data. The median royalty rate is 1.9%, the interquartile range is from 1.1% to 3.1%, and the maximum range goes from 0.3% to 5.5%.

Again, these rates are approximately one third lower compared to the (basically incomparable) license agreement sample above. They support the royalty rate conclusion in the Jeld-Wen case in principle.

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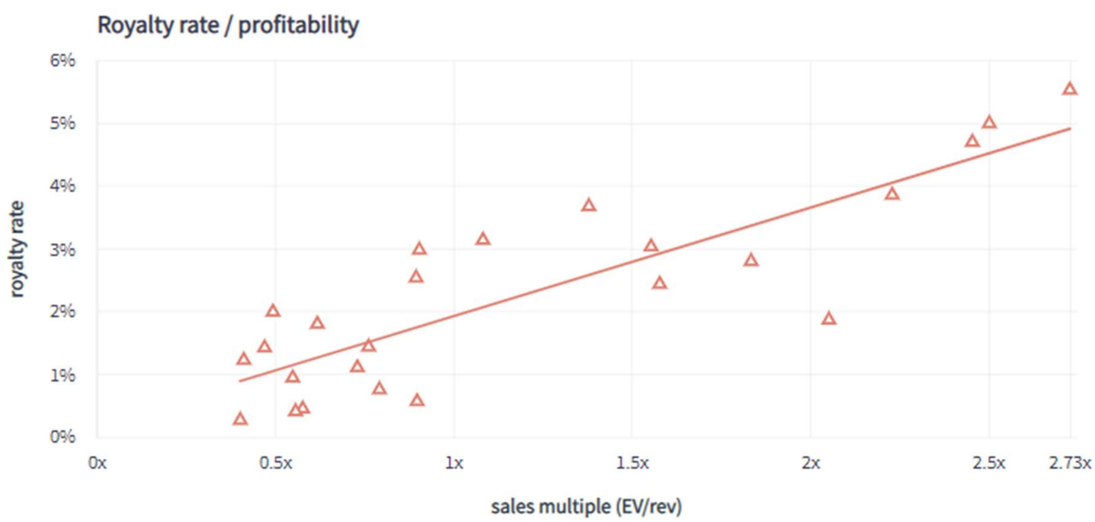
Trademark Values - Peer Group Analysis			11/2022

Windows and doors
(including vinyl, wooden and aluminum windows; interior and exterior doors)

no. of observations: 24 period: 2011-2021 countries: 5	Trademark royalty rate	Trademark profit split	Enterprise value
	% of revenues	trademark value in % of enterprise value	revenue multiple
25% quartile	1.1%	9.0%	0.57x
median	1.9%	15.5%	0.90x
75% quartile	3.1%	19.9%	1.64x
mean	2.3%	15.2%	1.19x
Trademark life	- indefinite life: 38% - definite life: 62% with average useful life of 10 years		
Trademark revenues	from US$ 20 million to US$ 3,034 million		

Source: www.markables.net

The **MARKABLES** dataset reveals another most relevant correlation: between royalty rates and profitability. As the chart demonstrates, royalty rates increase proportionally with increasing profitability.



Case 3: Trademark in online retailing

All of us know Amazon. Initially an online marketplace for books, it has expanded into a multitude of product categories. Also, we must not forget that Amazon's brand positioning was based not only on convenience, but also on low-price.

In 2005, Amazon transferred the ownership in its European trademarks and some technology to a European subsidiary based in Luxembourg. Some years later, the Internal Revenue Service (IRS) disputed the taxable value of the transfer as put forward by Amazon, and the matter was finally decided at the United Tax Court in 2017. Regarding the trademark element in this dispute, it must be considered as a landmark case in trademark litigation.

The case has been unfolded in documents released by the court, and by a journalist network called DocumentCloud. IRS had calculated the taxable value of the transferred trademarks at $ 3.125 million. Amazon in turn offered a value between $ 252 and $ 312 million. Both parties relied on valuation experts, and both parties suggested the royalty relief method and contributed a different set of what they said to be comparable trademark license transactions to determine the value oft he trademark. Amazon concluded on an appropriate royalty rate of 0.59%, IRS on 2%.

License transactions - online retailer

Licensor / licensed brand	Licensee	Business, licensed field of use	Year	RR	
Kmart Corp. [Kmart]	Kmart Australia Kmart New Zealand	general merchandise stores	1994	0.1875% 0.125%	Amazon Amazon
F.A.O. Schwarz Family Foundation [FAO Schwarz]	The Right Start, Inc.	toy stores	2002	0.4375%	Amazon
Rampage Clothing Company [Rampage]	Charlotte Russe, Inc.	multibrand fashion stores	2001	0.75%	Amazon
Merchandising Corp. of America [Field of Dreams sports movie]	Sports Archives, Inc.	retail stores for sports-related and celebrity-oriented merchandise, sports collectibles, memorabilia	1991	1%	Amazon
The Sports Authority Inc. [The Sports Authority]	Mega Sports Co. Ltd.	sports retail stores	2004	0.85% - 1.2%	Amazon IRS
Tandy Corp. [Tandy Electronics]	InterTan Australia Ltd.	retail stores for consumer electronics	1999	1%	IRS
Snap! LLC [SnapTV]	ValueVision International Inc.	home shopping TV channel	1999	2%	IRS
MacMark Corporation [MacGregor]	Equilink Licensing Corporation	direct mail marketing of MacGregor branded sports equipment and leisure products to the institutional market	2000	2%	IRS
			median	**1%**	
			RR conclusion	**0.59%**	Amazon
			RR conclusion	**2%**	IRS
			RR conclusion	**1%**	judge

The judge asked each party which license agreement introduced by the other party they could accept. With this approach, the judge identified four agreements in the middle of the table that were mutually accepted as comparable to Amazon. From there, he concluded wisely on a reasonable royalty rate of 1.0%. Fair enough and smart, considering the license agreements brought forward by the parties.

However, considering the nature and characteristics of Amazon's business, the selection of observable license agreements is more than questionable.
- None none of the comparable transaction is an online retailer. Store-based retailers build there competitive position on location-based advantages in particular, plus brand. In contrast, online retailers must put a higher emphasis on brand advantages, plus customer relations.
- Amazon was a high-volume low-price general merchandise retailer which disqualifies most of the comparable transactions. High-volume retailers operate at much lower margins with less brand emphasis than specialized retailers.
- The issue with comparable transactions in this particular case is that Amazon is outstanding and hence difficult to compare in all aspects.

The **MARKABLES** database provides a broad selection of different cases in the relevant areas:
- 902 different retail business in total, of which:
- 55 different low-price general merchandise store-based retailers with revenues above US$ 1 billion
- 23 different large online consumer good retailers with revenues above US$ 500 million (except food, fashion, pharmacy)

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Trademark Values - Peer Group Analysis 11/2022

General retailers
(general merchandise megastore retailers > $ 2 billion; online consumer good retailers > $ 500 million except food, pharmacy, fashion; no specialty retailers)

no. of observations: 20 period: 2011-2021 countries: 10	**store-based retailers**	**online retailers**	**mean**
	trademark royalty rate % of revenues	trademark royalty rate % of revenues	
25% quartile	0.3%	0.6%	0.45%
median	0.9%	1.1%	1.0%
75% quartile	1.2%	1.3%	1.25%
mean	0.7%	1.4%	1.05%
Trademark life	• indefinite life: 67% • definite life: 33% with average useful life of 19 years	• indefinite life: 27% • definite life: 73% with average useful life of 8 years	
Trademark revenues	from US$520 million to US$ 21,628 million		

Source: www.markables.net

A royalty rate analysis supports the above assumptions; brand has a slightly higher importance for online retailers, resulting in slightly higher royalty rates. Both aspects (low-price store-based, and online) equally weighted, the resulting mean royalty rates come very close to the royalty rate conclusion made by the judge in the Amazon case.

The **MARKABLES** dataset however reveals another, most relevant detail for this case: useful life. The parties disagreed about the useful life of the transferred trademarks. Amazon's experts proposed a useful life of between 8 and 20 years, while IRS expert proposed an indefinite/perpetual life. The judge finally concluded on a reasonable useful life of 20 years. According to the evidence from **MARKABLES**, useful life is considerably shorter for online retail brands, with less than 10 years on average.

Synopsis

MARKABLES data excels license agreement data in many different aspects:

(1) MARKABLES offers a 5x to 12x times larger selection

(2) Level of comparability is far superior

(3) Median and interquartile royalty rates „to the point“

(4) Additional datapoints allow for various cross-checks, outlier and regression analysis

Trademark Valuation – Comparative Royalty Rate Analysis Summary 11/2022

Three Case Studies

	underwear Schiesser	windows and doors Jeld-Wen	online retailer Amazon
comparable license agreements	7	4	4/8
level of comparability	poor	very weak	medium
median royalty rate peer group	5.7%	3.0%	0.59% / 2.0%
royalty rate value conclusion	2.6%	2.5% / 1.5%	1.0%
comparable cases on MARKABLES	35	37	78
level of comparability	excellent	excellent	good
Median royalty rate MARKABLES	3.9%	1.9%	1.0%

Source: www.markables.net

As of late November 2022, **MARKABLES** has close to 40,000 different intangible assets and their value related data on file.

Trademarks

Trademarks constitute on average 16% of the intangible value of businesses. For 25% of all businesses, trademarks represent their most important (or primary) intangible asset.

13764 cases

Customer relations

Customer relations constitute on average 21% of the intangible value of businesses. For 55% of all businesses, customer relations represent their most important (or primary) intangible asset.

12048 cases

Goodwill

Goodwill constitutes on average 51% of the intangible value of businesses. For the majority of businesses, the value of goodwill is larger than their primary intangible asset.

7932 cases

Technology

Technology constitutes on average 9% of the intangible value of businesses. In some sectors like life sciences, electronics, medtech and aerospace, technology represents the most important (or primary) intangible asset.

2966 cases

Software

Software constitutes on average 7% of the intangible value of businesses. Software typically represents the major (or primary) intangible asset for software vendors, and is a vital asset for all businesses that pursue a digital business model.

2905 cases

Links to source documents:

Schiesser:
https://mayafiles.tase.co.il/RPdf/797001-798000/P797135-00.pdf

Jeld-Wen:
https://www.amazon.de/-/en/Robert-F-Reilly/dp/1937352250/ref=sr_1_fkmr2_1?crid=1YO9V4OTP7H5V&keywords=reilly+Valuing+Intangible+Assets&qid=1669998318&sprefix=reilly+valuing+intangible+assets%2Caps%2C73&sr=8-1-fkmr2

Amazon:
https://casetext.com/case/amazoncom-inc-v-commr-2

About Trademark Comparables AG

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