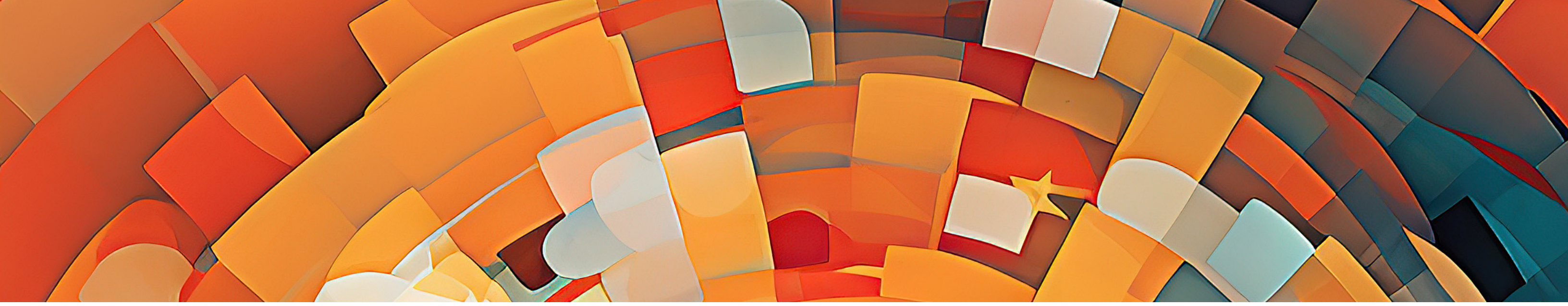
Presidential Task Force

Intellectual Property Reporting for Brands

INTA International Trademark Association

JANUARY 2024

Contents



I. Executive Summary and Key Recommendations

> **“THE PTF’S WORK IS ALIGNED WITH INTA’S 2022–2025 STRATEGIC PLAN”**

Intellectual Property, including trademarks and brand-related assets, often forms the most important asset class of member companies of the International Trademark Association (“INTA”). INTA believes that it is in the best interests of brand owners and their stakeholders to enhance communication internally and externally regarding the commercial, financial, and legal value of brands.

The INTA 2022 Presidential Task Force on Intellectual Property Reporting for Brands (the “PTF”) was set up to broaden the perspective of a company’s management, employees, investors, and other stakeholders by considering manners in which information regarding the value of brand-related intellectual property can more effectively—or transparently—be communicated. As such, the PTF’s work is aligned with INTA’s 2022–2025 Strategic Plan, and in particular its strategic direction to “Promote and Reinforce the Value of Brands.” The PTF respectfully submits this final report, which describes the task force’s work as well as recommendations for INTA.

The efforts of the PTF were broadly organized into two main workstreams, which are described in the report: Corporate IP reporting for brands, led by PTF Co-Chair Katie Sullivan (Whirlpool Properties, Inc., USA), and financial IP reporting for brands, led by PTF Co-Chair John Plumpe (Epsilon Economics, USA).

Based on the work described in this report, the PTF is making the following key recommendations for INTA:

- **Corporate IP Reporting Recommendation:** Publish and promote the PTF’s reporting guidelines as global IP reporting standards and as a Practitioners’ Checklist (e.g. on the INTA website). Introduce the tool to INTA members with an education session (e.g., as part of the In-House Practitioners Workshop) at the 2024 Annual Meeting, with potential follow-up sessions at the 2024 Leadership Meeting and/or the 2025 Annual Meeting. Create a Committee or Sub-Committee on IP Reporting.

- **IP Accounting and Internal/External Outreach Recommendation:** INTA executive management and others should continue to pursue engagement with the International Financial Reporting Standards (“IFRS”) Foundation/International Accounting Standards Board (“IASB”) to leverage the 2022 INTA Board Resolution on International IP Accounting Standards. Work in collaboration with the Building Bridges Committee to reach out to other accounting organizations. Solicit feedback from key INTA members (brand owners in various geographies) regarding the INTA Board Resolution and its potential effects.

- **Brand Valuation Recommendation:** Continue to work with the Commercialization of Brands Committee, in particular the Brand Valuation & Evaluation Subcommittee. Leverage the PTF’s work to have the Subcommittee members (especially the brand owner and service provider members) work on solutions to the “Legal Data Gap” identified below and continue to engage with the International Organization for Standardization (“ISO”).

II. Composition of the 2022 Presidential Task Force

INTA President:
Zeeger Vink, MF Brands Group (Switzerland)

Task Force Co-Chairs:
John Plumpe, Epsilon Economics (USA)
Katie Sullivan, Whirlpool Properties, Inc. (USA)

Task Force Members:
Eva Toledo Alarcon, Padima (Spain)
Rasha Al Ardah, Al Tamimi & Company (Dubai)
Bill Bryner, Kilpatrick Townsend LLC (USA)
Brian Buss, CBIZ Forensic Consulting Group (USA)
Samir Dixit, Acorn Management Consulting (Singapore)
Jill Goldman, Alarm.com (USA)
Thomas Gounel, Alvarez & Marsal (France)
Lora Graentzdoerffer, Masco Corporation (USA)
Ashley Krause, RE/MAX, LLC (USA)
Jeff Marowits, Keystone Strategy (USA)
Michael Moore, Mattel (USA)
Maria Jose Sanchez Rey, Federacion Nacional de Cafeteros de Colombia (Colombia)
Andy Stalman, Totem Branding (Spain)

INTA staff Liaisons
Trevor Longchamps
David Martineau

Disclaimer: The information and discussion presented herein do not necessarily represent the views or opinions of the individual members or leaders of the Presidential Task Force and should not be interpreted as such.

III. Introduction and Background

The true economic value of companies increasingly lies in their non-physical assets, collectively referred to as "intangible assets." One study found that between 1995 and 2020 the share of intangible asset market value in companies in the S&P 500 increased from 68% to 90%.[1] A subset of intangible assets, referred to as "Marketing Intangibles" plays an important role, with trademarks and brands generally the most prominent, next to other intangible assets such as patents, know-how, customer relationships (including data), and goodwill. In parallel, "Brand Value" has become a dominant feature in the marketing world; yearly brand value rankings are now significant media events.

> "THE TRUE ECONOMIC VALUE OF COMPANIES INCREASINGLY LIES IN THEIR NON-PHYSICAL ASSETS, COLLECTIVELY REFERRED TO AS 'INTANGIBLE ASSETS.'"

As the world's largest brand owner organization, the International Trademark Association ("INTA") naturally has developed an active interest in the financial treatment of trademarks and brands. In INTA's 2018–2021 Strategic Plan, the "Promotion of the Value of Trademarks and Brands" served as one of the Association's three strategic directions, and the current 2022–2025 Strategic Plan continues to emphasize the importance of valuation and commercialization of brands.

In March 2018, INTA formed the Brand Value Special Task Force, which provided recommendations on brand valuation-related topics. One recommendation of the Brand Value Special Task Force's 2020 Report was that INTA should engage with the International Accounting Standards Board (IASB), particularly on the issue of internally developed or homegrown brands being excluded from balance sheets. The effect of this blanket exclusion under current international accounting rules is that significant aspects of companies' values remain unreported, which can result in subdued management attention to trademarks and brands, among other potential issues. The blanket exclusion of trademarks and brands from being recognized as intangible assets on the balance sheets of the entities that developed them means that as long as a trademark has not been sold, it does not have a reported accounting value. However, in economic reality the value of intangible assets often drives many important decisions. These include some of the most prominent mergers and acquisitions, with no public disclosure required by the target company regarding the value of those assets before the transaction. This also impacts corporate IP management and investment in IP-driven businesses of all sizes.

To illustrate the huge scale of the issue, Brand Finance calculated that globally in 2021, total corporate value was approximately $137.6 trillion, but that disclosed intangible assets (excluding goodwill) was only $6.4 trillion (approximately 5%). Further, Brand Finance calculated that "undisclosed value" (such as internally developed intangible assets) comprised $58.9 trillion (approximately 43%)—approximately nine times the value of disclosed intangible assets.

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[1] Source: Ocean Tomo, a part of J.S. Held, Intangible Market Value Study, 2020. Available at: https://oceantomo.com/intangible-asset-market-value-study/

In-house legal practitioners have a key role to play in brand IP reporting—and yet when asked how the financial value of their organization's brands was reported, 48 percent of respondents in INTA's 2020 In-House Practitioners Benchmarking Report responded that they did not know. A 2022 INTA survey of in-house counsel on use of Key Performance Indicators (KPIs) confirmed that opportunities to improve internal corporate brand IP reporting abound as well—the survey found that how companies report on their brand value and the effectiveness of their trademark strategies varies widely, with 67 percent of respondents saying they use no KPIs at all.

INTA's PTF was formed to evaluate and provide suggestions regarding how brand-related intellectual property in general, and its financial value in particular, is communicated by companies both internally and externally. The focus of the PTF was to assist in broadening the perspective of a company's management, employees, investors, and other stakeholders by considering manners how information regarding the value of brand-related intellectual property can more effectively—or transparently—be communicated. With intellectual property, including trademarks and brand-related assets, being amongst the most important assets of many INTA-member companies, the PTF believes that it is in the best interest of brand owners and their stakeholders to enhance communication internally and externally regarding the value of brands,[2] in line with INTA's Strategic Plan.

[2] Brand owners should also be sensitive to disclosure of brand information that could foreshadow or otherwise contain competitive, strategic or confidential information.

IV. Objectives and Methodology

As noted above, the objective of INTA's PTF was to broaden the perspective of a company's management, legal leadership, employees, investors, suppliers and customers, and other stakeholders by considering ways in which information regarding brand-related intellectual property and its value can more effectively—or transparently—be communicated.

The PTF was composed of INTA members and other experts from diverse industries, functions, and geographies, to reflect the comprehensive and global scope of the project. All PTF members bring particular expertise in one or several of the subtopics, resulting from their professional experience and/or previous INTA activities.

The efforts of the PTF were broadly organized into two main workstreams: corporate IP reporting for brands, and financial IP reporting for brands. Under the guidance of INTA President Zeeger Vink (MF Brands Group, Switzerland), the first workstream was led by PTF Co-Chair Katie Sullivan (Whirlpool Properties, Inc., USA), while the second workstream was led by PTF Co-Chair John Plumpe (Epsilon Economics, USA).

The PTF formed four subcommittees to conduct its work:

1. Corporate IP Reporting;
2. Brand Valuation;
3. IP Accounting; and
4. Internal/External Outreach.

These last two subcommittees ultimately were combined to assist in establishing communications outside of INTA regarding the work of the PTF, primarily regarding IP Accounting and the 2022 Board Resolution.

From its inception up to the presentation of this report, the PTF and its subcommittees met in person or through video calls on numerous occasions. The PTF Co-Chairs provided the Board of Directors with regular updates on its progress.

V. INTA Standards For Corporate IP Reporting

The Corporate IP Reporting subcommittee first worked to identify any existing current global practices of IP reporting, and was not surprised to find there were not any documented standard practices. (Similarly, the results of the INTA In-House Practitioners Committee survey on Key Performance Indicators showed both that in-house practitioners are not aware of any standards and that they would value guidance and benchmarking on reporting.)

The team then worked to draft INTA Guidelines for Corporate Brand IP Reporting, taking into account that in-house practitioners have different reporting lines with both internal and external stakeholders (**business leadership, legal leadership, investors, consumers, etc**.).

Recommended next steps are to publish and promote the Reporting Guidelines as a global IP reporting standard and as a Practitioners' Checklist (e.g., on the INTA website). In addition, it is recommended that the tool be introduced to INTA members with an education session (e.g., as part of the In-House Practitioners workshop) at the 2024 Annual Meeting, and potentially the 2024 Leadership Meeting and/or 2025 Annual Meeting. The task force also recommends that INTA create a committee or subcommittee (perhaps as part of the In-House Practitioner's Committee or the Commercialization of Brands Committee) on IP reporting.

A. OVERVIEW OF GUIDELINES FOR CORPORATE BRAND IP REPORTING

Corporate trademark practitioners can and should be effective advocates for reporting on the value of brands and their underlying IP rights, both internally and externally. The PTF has assembled guidance for in-house practitioners, organized by target audience, i.e., the stakeholder receiving the report.

Our objective is to enable corporate trademark counsel to raise awareness and understanding of brand IP across a spectrum of corporate stakeholders, and assist in improving reporting on the value of brand-related IP in external forums. The standards below can evolve; continuous input from INTA members will be crucial to the success of the PTF's recommendations and to improvement in understanding of IP value.

"CORPORATE TRADEMARK PRACTITIONERS CAN AND SHOULD BE EFFECTIVE ADVOCATES FOR REPORTING ON THE VALUE OF BRANDS AND THEIR UNDERLYING IP RIGHTS."

For the stakeholders identified, we have included:

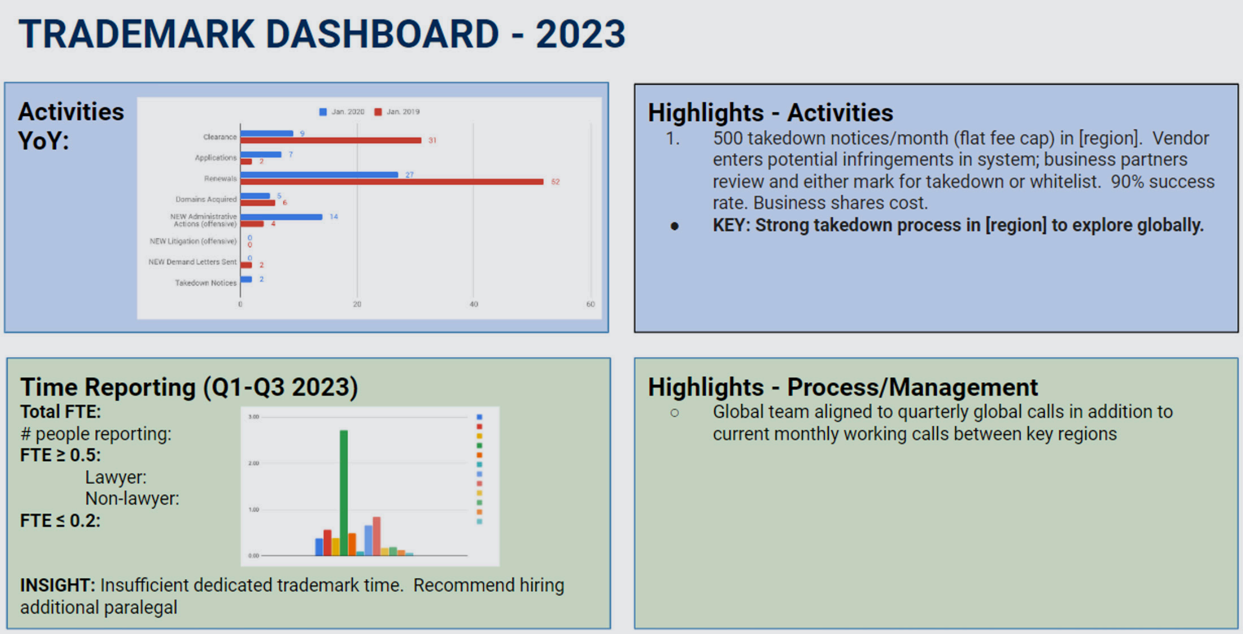
- Minimum standards for IP reporting;
- Recommended additional topics to consider;
- Educational topics for leaders new to an organization or to a brand-focused role; and
- Sample showcasing suggested information.

B. INTERNAL IP REPORTING

Within the context of the PTF, "internal" IP reporting by in-house trademark counsel means providing information for use within the organizational structures of a given company. While this can concern various target groups such as employees, divisions, country organizations, or management, such reporting can contain confidential information of a strategic and/or commercially sensitive nature.

Recommendations for IP reports addressed to internal stakeholders (including employees in general):

- ❑ Tell the quantitative and qualitative IP story—select relevant reporting metrics/KPIs and explain them, e.g., the number of clearance searches and what it tells you.
- ❑ Consider using comparisons (year-over-year, brand-to-brand). If the data does not tell you anything or does not present an accurate or representative overall picture, consider whether you really need to include it.
- ❑ Determine frequency of reporting. While business leaders are often accustomed to quarterly reporting, these reports could be issued monthly or yearly, if a quarterly frequency is not preferred.
- ❑ Use infographics, charts, logos, pictures, etc., to tell your story simply, quickly, and powerfully to non-IP specialists.
- ❑ Consider educational or training sessions to ensure that there is a good understanding across the board of the concepts and of the importance of trademark protection. Enable information to flow in both directions. Consider establishing a reporting tool that allows employees to report potential trademark infringements or violations of brand guidelines.



Example illustration showing sample dashboard for internal stakeholders with year-over-year comparison of activities, as well as narrative of what the activity data shows; also showing time reported to trademark team with request for resources.

Recommendations for IP reports addressed to Legal Leadership:

MINIMUM STANDARDS

1. Health of the trademark portfolio

- ❏ Strength of the primary brands
  - ❏ Longevity of use
  - ❏ Distinctiveness
  - ❏ Findings of fame/consumer recognition
- ❏ Geographic scope of protection
- ❏ Recent dispute decisions that have narrowed or widened/reinforced the scope of rights for a brand
- ❏ Vulnerabilities or gaps that need filling (perhaps related to use, or lack thereof) and related budget asks, if law department pays for applications

2. Clearance strategy, which determines the level of legal risk

3. Enforcement strategy, which determines a significant portion of the budget of the legal department (if IP is part of Legal)

CONSIDER INCLUDING

Matter management and metrics:

- ❏ clearance searches in last year (knockouts and full searches)
- ❏ trademark, design, copyright
- ❏ applications filed
- ❏ renewals
- ❏ marks abandoned
- ❏ demand letters sent, and outcomes
- ❏ oppositions or cancellations filed or pending
- ❏ litigation matters filed or pending
- ❏ domain registrations owned
- ❏ marketplace takedowns, UDRPs, domain disputes, etc, filed and outcomes
- ❏ total open matters
- ❏ wins and losses, plus impact
- ❏ customs seizures
- ❏ license agreements
- ❏ recognition of notoriety/well-known status (consider geographical map)
- ❏ status of brand protection or other campaigns focused on a particular product or brand
- ❏ status of M&A activity
- ❏ turnaround time on business requests

***Note:** Depending on the structure of your department and business, consider different options for reporting metrics: you can report domestic and international metrics separately, or by region, or by brand*

Budget—information about annual expenses for prosecution, maintenance, disputes; performance against budget, and whether additional resources are needed

EDUCATIONAL ONBOARDING FOR NEW LEADERS

- ❑ What is a trademark? Leverage the INTA Fact Sheets.
- ❑ The trademarks that are important to your company.
- ❑ Litigation history—whether you spend a lot of time combating infringements or counterfeits, whether you're in an industry where competitors regularly oppose each other's applications.
- ❑ Importance of consistent, correct use of trademarks.
- ❑ Filing strategy—sales countries, manufacturing, defensive filings
- ❑ Size of company, number, and structure of legal resources (inside and outside), vendors used for surveillance, etc. Business case for more resources if you need them.

Example illustration of slide for legal leadership showing highlights of brand protection metrics and status of notable enforcement actions.

Example illustration of explanation for legal leadership of trademark protection and registration strategy.

BUSINESS LEADERSHIP

Recommendations for IP reports addressed to Business Leadership (marketing, or brand-decision-making function):

MINIMUM STANDARDS

- ❑ Summary of brand IP strategy and how it contributes to company success/ROI (include costs of protection strategy including registrations, enforcement actions, etc.)
- ❑ Brand awareness/value of your brands
    - ❑ Revenue each brand generates
    - ❑ Advertising and marketing spend for each brand
    - ❑ Leverage consumer insights data with a legal lens, including reputation and loyalty information (leverage tools used by the brand marketing organization)
    - ❑ Impact if you were not able to own/use/defend your brand—perhaps in a specific country, or in an expansion category
- ❑ International trademark classification, what classes are important to your company, concept of zone of protection/expansion
- ❑ Dispute decisions that have narrowed or widened/reinforced the scope of rights for a brand
- ❑ Details of coexistence or settlement agreements; getting alignment especially if you're going to narrow your rights
- ❑ Any impact to risk factors that trigger public disclosure events
- ❑ Vulnerabilities or gaps (perhaps related to use, or lack thereof—explore consequences of non-use), filing and related budget asks (if business pays for applications) (consider use of a heat or risk map)
- ❑ Same topics for copyright/designs, if part of your branding/important to your industry
- ❑ Information to request: Future expansion plans (products or geography), plans to update logos or make other brand changes

CONSIDER INCLUDING

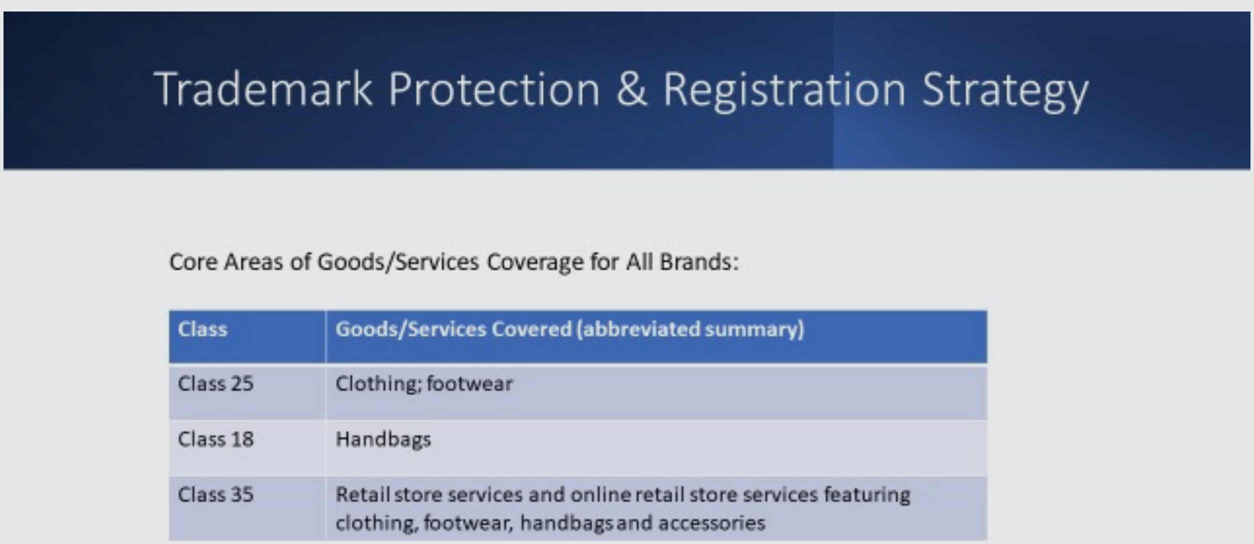
- ❑ Review of current brand guidelines regarding how brand elements should be used
- ❑ Biggest challenges for your brands in the trademark protection or process space
- ❑ Current objectives of trademark team and how they support/align with business objectives
- ❑ Legal trends
- ❑ For business leaders who appreciate (or require) brevity, consider sharing "Top Three" takeaways on key topics, such as the top enforcement concerns, most active enforcement regions, main protection strategies, top brand assets main focus areas for the current year, and/or most important recent accomplishments
- ❑ Consider the role the trademark portfolio plays in your company's objectives and highlight those aspects. Examples:
    - ❑ Primarily conflict-avoidance/defensive—number of clearance searches, successful resolution of defensive actions (co-existence, etc.)
    - ❑ Primarily cost-control—number of marks not renewed (and why those were the correct strategic decisions) and corresponding cost savings, improved processes and efficiencies
    - ❑ Primarily revenue generation—licensing royalties, unused domains sold, low priority brands sold rather than abandoned, other commercialization efforts
    - ❑ Primarily strategic—consumer recognition of brands, genesis of key partnerships

CONSIDER INCLUDING (cont.)

- ❑ Metrics/KPIs
    - ❑ Quantification of merchandise value of seized goods (this implies cost-savings generated by enforcement expenses)
- ❑ What is the ask? What help, escalation, budget, other resources, etc., are needed?

EDUCATIONAL ON-BOARDING FOR NEW LEADERS

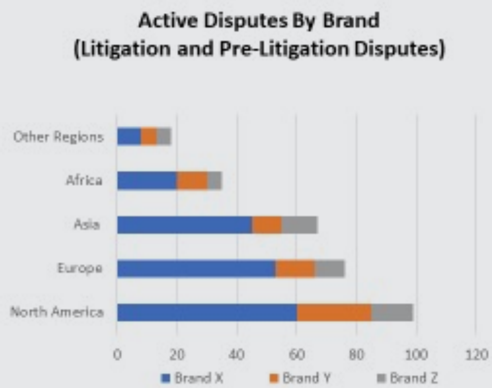
- ❑ What is a trademark? Leverage the INTA Fact Sheets.
- ❑ The trademarks that are important to your company and longevity of use
- ❑ Litigation history—whether you spend a lot of time combating infringements or counterfeits, whether you're in an industry where competitors regularly oppose each other's applications
- ❑ Importance of consistent, correct use of trademarks
- ❑ Filing strategy—sales countries, manufacturing, defensive filings
- ❑ Size of company, number and structure of legal resources (inside and outside), vendors used for surveillance, etc.
- ❑ Business case for more resources if you need them

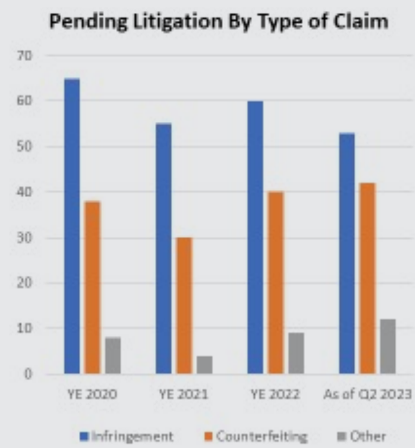


Class	Goods/Services Covered (abbreviated summary)
Class 25	Clothing; footwear
Class 18	Handbags
Class 35	Retail store services and online retail store services featuring clothing, footwear, handbags and accessories

Example illustration of slide for educating business leadership on key classes to protect for a brand.

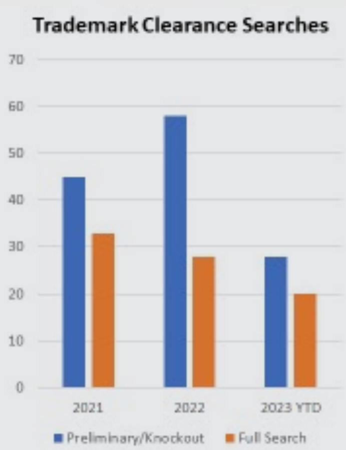
Trademark Enforcement Dashboard

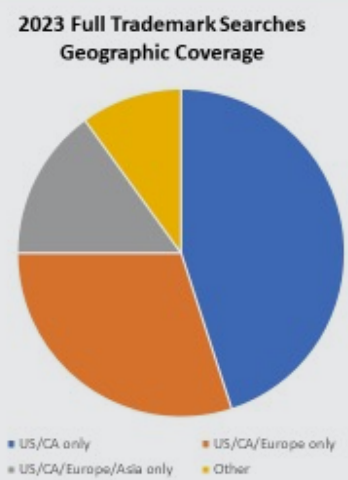




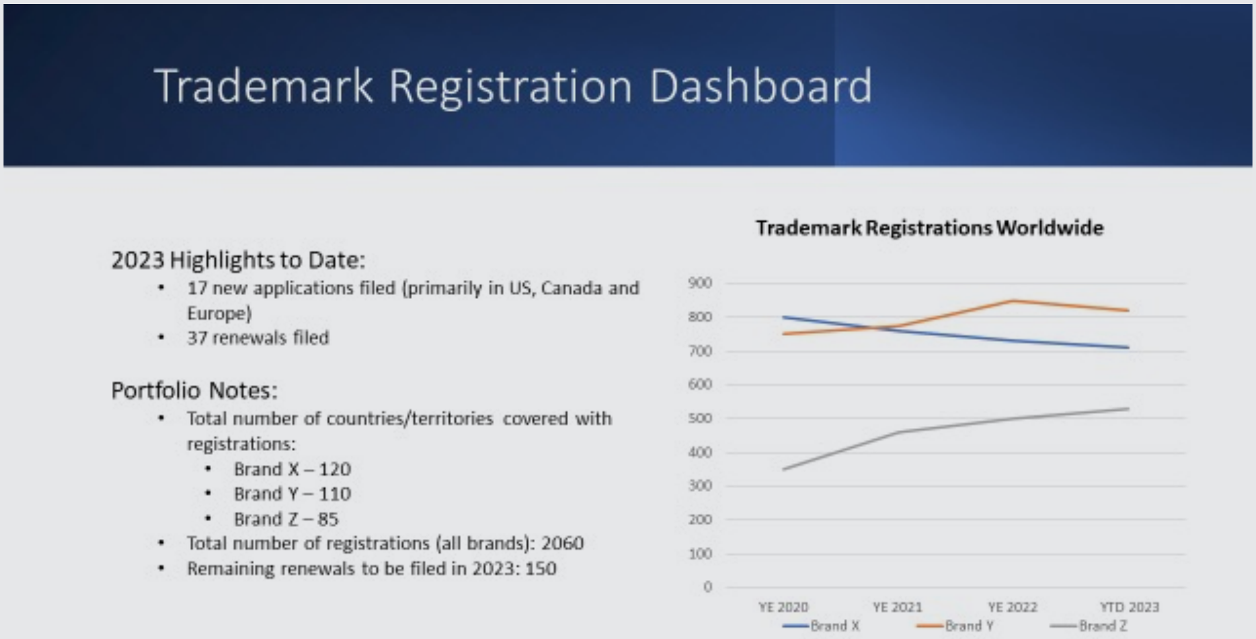
Example illustration of slide for educating business leadership on key classes to protect for a brand.

Trademark Clearance Dashboard





Example illustration for legal or business leadership showing clearance activity broken out by type of search and year, and geography of search.



Example illustration for legal or business leadership showing registration activity and portfolio statistics.

Recommendations for IP reports destined for Finance and Tax Teams:

MINIMUM STANDARDS

1. **Identify and locate (geographically) the main IP-owning entities**
2. **Recent dispute decisions that have narrowed or widened/reinforced the scope of rights for a brand**
    - If damages, how calculations were impacted by benchmarks like third-party royalty rates or intercompany royalty rates
3. **Third-party license royalty rates for each brand**

CONSIDER INCLUDING

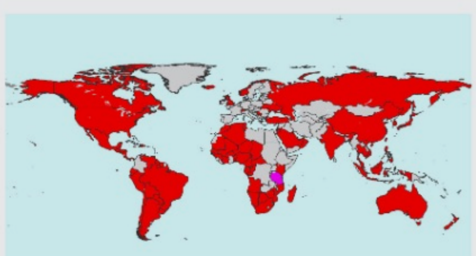
❑ Legal-focused aspects of brand valuation analysis, for each primary brand

- ❑ Distinctiveness
- ❑ Brand awareness
- ❑ Scope of registration
- ❑ Extent of use
- ❑ Well-known mark status
- ❑ Risk of cancellation, dilution, enforcement strategy/aggressiveness
- ❑ Potential for growth

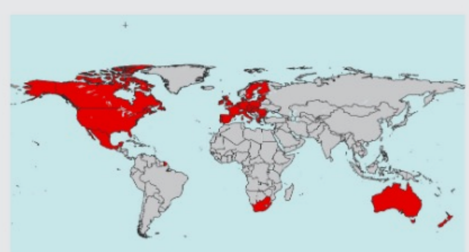
❑ Budget issues—opportunities to capitalize IP costs

XYZ Brand Heat Map

Registrations for word mark in at least one class



Registrations for logo in at least one class



Registrations for color mark in at least one class

Example illustration for use with finance leadership using graphics to show coverage for word mark vs. logo vs. trade dress for a brand.

Recommendations for IP reports destined for Corporate Strategy Teams:

- ❏ What is a trademark? What trademarks are important to our company?
- ❏ Existing royalty rates for each primary brand and impact of lowering them
- ❏ Standard terms for licenses or joint ventures—i.e., positions on exclusivity, sublicensing, audits, and quality control
- ❏ Process—when to include Legal in strategic discussions
- ❏ Develop KPIs and metrics that align with the specific goals of the corporate strategy team

Recommendations for IP reports destined for Investor Relations—see below under EXTERNAL IP REPORTING.

C. EXTERNAL IP REPORTING

Within the context of the PTF, "external" IP reporting means providing information for use outside the organizational structures of a given company. Such reporting does not contain confidential information of a strategic and/or commercially sensitive nature, but can include information from publicly available sources such as IP registers and court decisions.

Recommendations for IP General Public (consumers/competitors/press)

MINIMUM STANDARDS

1. Affirmation (on website/products/app) that XYZ is a registered trademark

CONSIDER INCLUDING

- ❏ Information on brand protection ("We actively protect and defend our trademarks") or brand disputes that might impact the public image of the company; request correct use of marking symbols
- ❏ Contact information for consumers to report brand abuse/infringements
- ❏ Brand guidelines (for correct trademark use on social media, CVs, articles, etc.)

Consider working with the communication department and the investor relations team to develop a dedicated reporting strategy for addressing public relations concerns associated with trademark issues.

Recommendations for IP reports destined for the Investing Community:

MINIMUM STANDARDS

1. **Summary of brand IP strategy and importance of IP to your business**
2. **Number of brands, list of most strategically important brands, awareness data for the brands**
3. **General level of IP protection**
4. **Key pending litigation**
5. **Brand/trademark value (if recognized on balance sheet)**

CONSIDER INCLUDING

- ❑ Size of overall trademark, design, and copyright portfolio (number of registrations and applications, numbers of jurisdictions with protection)
- ❑ Legal-focused aspects of brand valuation analysis, for each primary brand
  - ❑ Distinctiveness
  - ❑ Scope of registration
  - ❑ Extent of use
  - ❑ Well-known trademark status
  - ❑ Scope of commercialization—licensing or franchising
- ❑ Prominent sponsorships or co-branding relationships—including influencers, other social media metrics
- ❑ Number of licenses or other commercialization of the brands
- ❑ Brand/trademark value (if not recognized on balance sheet; to be coordinated with finance/tax department)
- ❑ Note: Consider including this information in the Annual Report and Investor Day materials.

Recommendations for IP reports destined for Trade customers and franchisees/licensees:

MINIMUM STANDARDS

1. **How to use trademarks properly, including specific guidelines for your company's trademarks**
2. **Highlight actions not to take—co-branding, unilateral enforcement actions, launches without prior clearance**
3. **Instructions for customers/licensees to help with enforcement, such as by reporting infringements or improper uses of your brand to the IP Department**

CONSIDER INCLUDING

- ❑ Prominent sponsorships or co-branding relationships
- ❑ Major actions/KPIs relevant to the territory/category

EDUCATIONAL ONBOARDING FOR NEW LEADERS

- ❑ What is a trademark?
- ❑ What trademarks are important to your company? How important/valuable are they (why should they care?)

VI. IP ACCOUNTING AND INTERNAL/ EXTERNAL OUTREACH

A. BACKGROUND

An important sub-domain of IP reporting concerns *financial* IP reporting. In contrast to general corporate IP reporting, for which there is little formal guidance, financial IP reporting is subjected to many rules and regulations worldwide. The most important source of regulations are the national and international accounting rules.

While lawyers look at IP from a *rights* perspective, the finance and accounting professions mostly focus on the *financial value* of IP assets, which they tend to refer to as "intangible assets," or simply "intangibles". There is broad overlap between the object of analysis by IP lawyers and accountants, yet it should be kept in mind that varying terminologies can be employed (e.g., trademarks vs. brand names), hinting at different underlying concepts. That said, the general purpose of both corporate and financial IP reporting is largely the same, namely informing business stakeholders about the existence and value of IP assets, and their contribution to business success.

As already mentioned in *Chapter III*. *Introduction and Background*, current accounting standards impose a relatively restrictive regime on intangibles. INTA, at the initiative of the PTF, takes the position that, in short, this regime needs to change to allow reporting on IP value in an appropriate way, and to let IP rights play one of their core roles in business and society, namely incentivizing investment in creation and innovation.

At the outset, the PTF remarks that INTA's call for change does not mean that the Association can presently and on its own propose a full, detailed, and balanced alternative regime on a global level. For this it is recommended that INTA reach out to relevant accounting standards organizations and work together with them on such a proposal.

B. ACCOUNTING STANDARDS AND MOTIVATIONS

A brief overview of the current accounting standards will help to orient the reader to the issue and to develop an understanding regarding why accountants have excluded internally developed trademarks from being listed as assets on corporate balance sheets. The International Financial Reporting Standards (IFRS) Foundation is a not-for-profit, public interest organization established to develop a single set of high-quality, understandable, enforceable, and globally accepted accounting standards—IFRS Standards—and to promote and facilitate the adoption of the standards. IFRS Standards are set by the IFRS Foundation's standard-setting body, International Accounting Standards Board (IASB), and are called International Accounting Standards ("IAS").[3] Particularly relevant for the work of the PTF is IAS 38, *Intangible Assets*.

[3] https://www.ifrs.org/about-us/who-we-are/

Importantly, IAS 38 only allows for recognizing an item as an intangible asset if it can be demonstrated that the item meets the definition of an intangible asset and the "recognition criteria."[4] The recognition criteria state that an "intangible asset shall be recognized if and only if: (a) it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity, and (b) the cost of the asset can be measured reliably."[5]

It follows from IAS 38 that expenditures associated with internally developed brands, as well as expenditures on brands after acquisitions, are expensed as incurred on income statements, and not capitalized on the balance sheet as assets.[6] In contrast, IAS 38 allows acquired intangible assets to be recognized on balance sheets because the acquisition price paid "reflect(s) expectations about the probability that the expected future economic benefits embodied in the asset will flow to the entity."[7]

IAS 38 concludes that "**(i)nternally generated brands…shall not be recognized as intangible assets.**"[8] The rationale provided by IAS 38 is that "(e)xpenditure on internally generated brands, mastheads, publishing titles, customer lists and items similar in substance cannot be distinguished from the cost of developing the business as a whole. Therefore, such items are not recognized as intangible assets."[9]

> "ACCOUNTANTS HAVE EXCLUDED INTERNALLY DEVELOPED TRADEMARKS FROM BEING LISTED AS ASSETS ON CORPORATE BALANCE SHEETS"

C. CONSEQUENCES OF THE EXCLUSION BY CURRENT ACCOUNTING STANDARDS AND OPPORTUNITIES FOR CHANGE

The current IP accounting restrictions impact corporate IP management and investment in IP-driven businesses of all sizes. Listed below are some of the main issues:

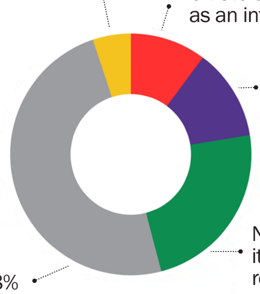
- As accounting forms the backbone of sound economic analysis, the exclusion of large portions of IP value means that a significant part of the economy remains undisclosed. While decades ago IP could still be considered an economic niche activity, in today's increasingly intangible economy, IP forms a crucial driver that requires systematic analysis and reporting for fullness of information and transparency.
- The current treatment of internally developed marketing intangibles and related IP as costs and not as assets can result in important IP income streams, such as royalties and damages, not being properly attributed to those assets. Such income could therefore erroneously be considered as "found money," preventing proper ROI calculations, and providing no incentive to properly manage and maintain investment in IP.

4 Id., ¶ 18, referencing ¶¶ 8-17 and 21-23.
5 Id., ¶ 21.
6 In financial accounting, "capitalize" means to record an expenditure that may provide benefit in a future period as an asset rather than to treat the expenditure as an expense of the period of its occurrence. The asset would appear on the firm's balance sheet.
7 Id., ¶ 25.
8 Id., ¶ 63, emphasis in original.
9 Id., ¶ 64.

- Investors in public and private companies require complete and reliable information for sound investment decisions. While many jurisdictions and stock exchanges impose stringent publication and valuation requirements (for example, in the case of initial public offerings), excluding IP from core financial documentation hampers transparency.
- The exclusion of internally developed IP from balance sheets could significantly limit funding possibilities for SMEs, as IP often represents their core assets. Asset-backed funding generally requires a recognition of intangible assets and their value.
- Limited recognition of IP value leads to limited financial literacy among IP specialists. To illustrate the issue, INTA's 2020 In-House Practitioners Benchmarking Report provides the results of a survey of in-house practitioners. When asked how the financial value of their organization's brands was reported, 48% responded that they did not know.

"THE EXCLUSION OF LARGE PORTIONS OF IP VALUE MEANS THAT A SIGNIFICANT PART OF THE ECONOMY REMAINS UNDISCLOSED"

How the financial value of a brand is reported in respondent's organization



- Limited recognition of IP value leads to limited IP knowledge among finance professionals. A common thread throughout the 2020 INTA Brand Value Special Task Force report concerns the benefits of strategic partnering and aligning of finance, marketing, and legal stakeholders regarding brands. If the accounting community were to allow internally generated trademarks to be recognized as assets on balance sheets and in other financial statements, multi-disciplinary partnerships and alignment could be formed around the value of brands.
- Removing the current blanket exclusion of in-house developed marketing intangibles would stimulate the improvement of IP valuation standards. Relatedly, and as will be described later in this report, the PTF evaluated the possibility of providing guidance for improvement on ISO standard 10668 ("Brand valuation"), to include concrete legal parameters concerning the validity and strength of IP rights (e.g., on key legal notions such as distinctiveness and notoriety).
- More generally, financial IP reporting provides key information for all company stakeholders, including top management: how can a company properly manage an asset for which it does not know the value? The current forced absence of homegrown IP from a company's main financial accounts can lead to insufficient management attention for IP. Treating IP as a long-term asset (i.e., on the company balance sheet) can contribute to the company's health, competitiveness, and longevity.

The following resolution was presented to the INTA Board of Directors by the PTF at 2022 INTA Annual Meeting, in April 2022, and was approved;

- *WHEREAS, current international accounting rules require an exclusion of trademarks and complementary intellectual property ("IP") that are developed in-house from recognition as assets on corporate balance sheets;*
- *WHEREAS, the exclusion of trademarks and brands developed in-house understates the financial value of companies for management, investors and other stakeholders;*
- *WHEREAS, the exclusion of trademarks and brands as financial asset limits management attention to IP, hampering its strategic contribution to the protection of creative and innovative competitiveness and longevity of companies;*
- *WHEREAS, brand owners, along with investors and other stakeholders, could benefit from the lifting of this exclusion and contribute to bringing accounting standards in line with the global move into the intangible economy; and*
- *WHEREAS, the International Trademark Association, on behalf of its members, can advance its strategic mission by building bridges to and engaging with non-legal organizations regarding IP reporting and valuation, with the goal of benefiting its members;*
- *BE IT RESOLVED, that it is the position of the International Trademark Association that accounting standards should not require a blanket exclusion of trademarks and complementary IP that are developed in-house from recognition as assets on corporate balance sheets.*

Within the two primary workstreams of the PTF, the subcommittees used this Board Resolution as a foundation for their work.

D. INTERNAL/EXTERNAL OUTREACH

After drafting and presenting the 2022 INTA Board Resolution, the IP Accounting subcommittee worked with the Internal/External Outreach subcommittee to formulate a plan to approach organizations regarding INTA's position. The first target organization for engagement was IASB, the International Accounting Standards Board, which promulgates the International Accounting Standard ("IAS") 38: Intangible Assets. The IASB is a unit of the previously discussed IFRS Foundation. The outreach letter to IFRS was sent on behalf of INTA by CEO Etienne Sanz de Acedo in December 2023 to the IASB Chair, Dr. Andreas Barckow, and to Chair of the IFRS Foundation Trustees, Erkki Liikanen. The PTF recommends that INTA leadership, with assistance from the INTA Communications Director and/or the Building Bridges Committee, continue to attempt to engage with IFRS/IASB so that INTA may be heard as the IASB continues revisions to IAS 38, as discussed below.

In August 2022, IASB designated the review and potential revision of IAS 38: Intangible Assets, as a "Research pipeline project." Through the PTF's research into the proceedings of IASB during the past few years, it was determined that the financial reporting treatment of internally developed trademarks was one of the primary reasons for IASB deciding to review IAS 38 now. Typically, IASB reviews standards on a five-year cycle, but has decided to address IAS 38 earlier than usual.

The PTF—via the Outreach subcommittee which combined with the IP Accounting subcommittee—worked in collaboration with the Building Bridges Committee to develop a list of accounting organizations for potential outreach globally in 2023–2024, after contact with IASB has been established. This list currently includes:

- United States: Financial Accounting Standards Board (FASB); American Institute of Certified Public Accountants (AICPA), Public Company Accounting Oversight Board (PCAOB), Sustainability Accounting Standards Board (SASB), Committee of Sponsoring Organizations (COSO)
- Europe: Accountancy Europe; European Financial Reporting Advisory Group (EFRAG); International Valuation Standards Council (IVSC)
- Asia/Pacific: International Federation of Accountants (IFAC); International Auditing and Assurance Standards Board (IAASB); additional regulatory bodies for accounting in Philippines, Malaysia, Singapore, Indonesia, Thailand, and Vietnam
- In addition, the Building Bridges committee has been researching accounting associations in Latin America, the Middle East, and other parts of the world.

Further, the PTF has been in contact with WIPO, which appears to have an interest in the subject. PTF Co-Chair John Plumpe has been appointed to WIPO's 2023 Expert Consultative Group on Valuation of Intangible Assets and will keep INTA leadership informed of any relevant developments involving WIPO of which he becomes aware during his tenure with that group.

It should be noted, and is recommended, that INTA further explore the potential implications for companies of an accounting rule change that would not require a blanket exclusion of internally developed brand-related IP from corporate balance sheets. INTA should consider the tax implications and other positives and negatives that its members may face, as well as any other concerns that members may have, and consider appropriate involvement of tax experts.

VII. BRAND VALUATION

A. BACKGROUND

In addition to Corporate IP reporting and IP accounting, a third form of IP reporting can be observed in the context of brand valuations. IP rights such as trademarks, designs, and copyrights underpin the broader notion of "brands," and these rights provide brand owners with legal and commercial "monopolies" on many of the key components of brand image. Reporting on brand value therefore automatically says something about the value of the underlying IP rights and, notably, trademarks. Alternatively stated, a brand valuation should address the validity and strength of the brand's underlying trademarks. The assessment of such legal parameters of brands is typically the domain of IP lawyers.

In October 2022, the ISO organization opened the ISO 10668 standard on *Brand Valuation—Requirements for monetary brand valuation* for review. ISO Technical Committee 289 is currently conducting a "systematic review" of the standard. INTA has already established communication with the leader of the ISO Technical Committee, Mr. David Haigh, and agreed to provide input on relevant legal parameters for consideration in a brand valuation setting.

The PTF's Brand Valuation Subcommittee was tasked with reviewing the ISO 10668 standard, for the purpose of providing feedback on behalf of INTA. The objective was to research, identify, and describe the possible sources of data to evaluate legal parameters for brands. Ideally, this would provide a list of the resources, their cost to access, and possible relevance for brand valuation projects.

> "A BRAND VALUATION SHOULD ADDRESS THE VALIDITY AND STRENGTH OF THE BRAND'S UNDERLYING TRADEMARKS"

Key steps that were identified are:

1) Develop recommendations for INTA to give to ISO regarding the Legal Aspects of ISO 10668; and
2) Compile a list of data and information providers INTA members can use to address the Legal Aspects of ISO 10668

Put simply, INTA's goal is to provide commentary and suggestions that enable ISO 10668 to successfully advance analytical approaches to recognizing brand value in the marketplace. To do so, the brand valuation specifications of ISO 10668 should be analytical and replicable.

For reference, the following are the key provisions of the current ISO 10668 standard regarding "Legal Parameters":

The "Legal Parameters" per ISO 10668

- *Section 3.6: "When performing a monetary brand valuation, financial, behavioral and legal parameters shall be taken into account. . . . The monetary brand valuation shall be conducted on the basis of the findings from the financial, behavioral and legal modules."*

- *Section 6.3 is the “Legal Aspects” Section and includes:*
    - *Section 6.3.1 Assessment of Legal Protection*
    - *Section 6.3.2 Legal Rights to Be Valued*
    - *Section 6.3.3 Legal Parameters Affecting the Brand Value*
- *Section 6.4 Sourcing and Use of Quality Data and Assumptions. “The appraiser shall ensure that reliable data for the completion of the brand valuation is obtained. This shall include data available from the brand owner and appropriate third parties. The appraiser shall thoroughly assess the relevance, consistency and adequacy of all data and assumptions used.”*

Also for reference, these are findings from a previous INTA report that touched upon the topic of Brand Valuation:

From IP Accounting and Brand Valuation Standards Report, INTA 2021

ISO 10668—Brand Valuation (the “Standard”) recommends considering financial, behavioral, and legal parameters. However, obtaining relevant information from multiple roles in the organization presents multiple challenges for valuation analysts. The Brand Valuation Standard neither acknowledges the challenges of obtaining “required” information nor provides recommendations or suggestions for completing a brand valuation if some required elements are not available.

The Standard correctly notes that due to the limited geographic scope of trademark rights (in trademark doctrine referred to as the principle of territoriality), the legal analysis of trademark parameters needs to be done on a national level (or on a regional level, in case of, for example, EU trademarks). In contrast, a financial brand valuation generally produces a single global monetary amount as the valuation opinion. However, the Brand Valuation Standard lacks concrete guidance on how the multiple national/regional analysis results of legal parameters should be consolidated into a global valuation opinion.

B. ANALYSIS AND CONSIDERATIONS

ISO 10668 provides a bit of a conundrum for the PTF’s recommendations. The PTF Brand Valuation Subcommittee, on behalf of INTA’s members, applauds the inclusion of consideration of “legal aspects” of a brand (and its underlying trademarks) in any brand valuation. As we discuss below, a trademark’s legal standing is critical to consideration of the enduring value of a brand—therefore “legal aspects” should be part of a valuation analysis. That said, exploration of “legal aspects”—especially globally—is quite resource-intensive, ever-changing, and will be prohibitive for many brand owners. In addition, while we have identified a number of resources, the market for brand valuation support is highly fragmented and generally provided bespoke by law firms. It is recommended that INTA seek input from brand owner members on how to address the tension between greater specification and consideration of legal aspects and brand owner obligations.

Of particular concern to the Subcommittee is that while some legal parameters which may be useful—or even necessary—in brand valuations are readily accessible at low cost, others may not be available on a turnkey, low-cost basis. The PTF is not keen to include suggestions to ISO regarding legal parameters if the costs of implementing those suggestions would be unreasonable for INTA’s brand owner members.

In this respect it is also worth mentioning that developments in data technology can play an interesting role in enabling the comprehensive analysis of a brand's legal position. For instance, legal service provider Clarivate offers a *Trademark Strength Index™*, based on contents from its CompuMark™, Darts-ip™, and MarkMonitor™ databases, providing a global picture of a trademark's strength in terms of geographical scope, class coverage, distinctiveness, and recognition of well-known status in case law; in short, the key parameters in legal trademark assessment. The index is applied to Clarivate's *Top 100 Best Protected Global Brands*. Individualized, Big-Data, and AI driven services like these could form an interesting alternative to the classic in-depth (and thus costly) legal analysis per jurisdiction by law firms, which will remain necessary in case of legal conflicts but may be somewhat superfluous for the more limited purpose of assessing a brand in general terms for a brand valuation.

One way to further the PTF's goals is to create strong incentives and financial benefits for brand owners related to documenting and monitoring their brand value using a standard approach. Benefits could include increased enterprise value through external communication of brand value, or the ability to collateralize brands where value is recognized. These are preliminary thoughts, but there appears to be an opportunity to extend the PTF's work through a system of incentives that could spur more services and make the provision of brand valuation more efficient.

For example, one way to unlock shareholder value could be to establish a system of brand-related supplemental financial reporting, similar to the current movement around ESG reporting. Rather than determining a monetary value for internally developed brand assets, brand owners could provide supplemental information about the behavioral, financial, and legal aspects of their brand assets, in line with the recommendations on "Corporate Brand IP Reporting" formulated in this report. Should financial markets "value" this supplemental information about brands, the markets may favor those companies providing such information. If brand owners who provide supplemental information about their brands see a positive market reaction, it is likely that more information vendors will develop tools to analyze and evaluate brands, making brand analysis more accessible and affordable. Therefore, INTA's recommendations for Corporate Brand IP Reporting also intend to drive value for brand owners, and we hope a vendor eco-system will emerge to support efficient analysis of brands as assets.

C. CONSIDERATIONS

We attempt to provide some recommendations to INTA (and, in the future, pending INTA's desired level of engagement, to ISO) to advance consideration of "Legal Aspects," even in the setting of this tension.

1. The discussion of "Legal Aspects" in ISO 10668 would be well served by acknowledging that the term "brand" refers to a set of associations related to a product, firm, or person that is supported by recognized intellectual property, and, notably, in the form of a trademark. A trademark is governed by local and international legal regimes. Thus, a "brand's" value is highly influenced by the legal status of the trademarks that undergird the brand.

2. "Legal Aspects" in ISO 10668 should be further defined in a detailed, jurisdiction-agnostic legal framework. In **Exhibit 1**, we provide an example of a framework for legal considerations, from the INTA Brand Value Special Task Force Report (April 2020).

3. It is recommended that an assessment of “legal aspects” for brand valuation include consideration of the legal status of trademarks and other IP associated with the brand in each jurisdiction where there is intent to use. Trademark legal considerations are jurisdiction-specific, meaning that each government entity and certain international bodies document and govern those rights in specific territories. A brand valuation assessment of “legal aspects” requires consideration of a trademark’s legal status in each jurisdiction in which the brand operates. Subsequently, IP professionals can supply a comprehensive global picture of national rights, based on the publicly accessible trademark databases.

4. Include a “risk analysis” laying out the variation inherent to consideration of legal aspects. There is a high degree of variability in the evidence and data available related to a trademark’s legal status. For example, some trademarks are new, and filings have only begun. Authorities may not have rendered any judgments on the validity of those trademarks, and they have never been challenged. To take another extreme, some trademarks operate across many jurisdictions and have done so for decades or more. They have a record of filings and administrative procedures, they have successfully prosecuted actions against infringers and have withstood scrutiny across a variety of legal proceedings. Consideration of “legal aspects” of a brand’s value (as supported by a trademark) should encompass the ability to adapt financial value on the basis of the wide differences in legal strength of trademarks. We recommend that this variability be part of a “risk analysis” in consideration of legal aspects. Those valuing brands should make attempts to categorize the evidence available and allow for a variety of results based on this risk. Vendors such as Clarivate already offer tools to assess the level of distinctiveness, notoriety, and publicly-available enforcement actions of a trademark.

5. INTA should work with IP offices around the world to stimulate the development of publicly available information to analyze the “legal aspects” of multiple brands across multiple jurisdictions. While many vendors offer patent evaluation services, we were unable to identify vendors offering similar services to enable evaluation of trademarks. This could look similar to the EUIPO’s “Blockathon” anti-counterfeiting project.

6. ISO 10668 should be enhanced by documenting a set of local registries and other records that enable those performing brand valuation to access legal records. Such a resource database would best serve brand owners if developed locally. INTA could develop and provide a resource that links INTA members to the trademark databases maintained by local trademark offices. WIPO has a global brand database; however, like other trademark databases, it lists trademark registrations but does not contain enough information for a complete “legal” evaluation to support a brand valuation. For instance, the databases typically do not provide information on defense or enforcement actions. A list of items that could be necessary for an exhaustive brand valuation would help in building this resource.

7. The PTF recommends that the review of a brand’s legal aspects be integrated with empirical market data and other aspects of a brand’s valuation to produce a dynamic and accurate representation of brand value. There is a significant overlap between economic and legal considerations. To take a simple example, a brand may have weak legal protection in a given geography because of a prior, similar mark. If that jurisdiction is one where the brand has high sales, then this legal status puts brand value at significant risk. If, on the other hand, the brand has not meaningfully entered the market, this weak legal protection would materially only put future expansion and not current exploitation at risk.

In summary, it is recommended that INTA leverage the PTF’s work to have the Subcommittee members (especially the brand owner and service provider members) work on solutions to the “Legal Data Gap” identified above and continue to engage with the ISO organization. It is also recommended that INTA seek input from members who are brand owners on how to address the tension that exists regarding the resources currently available (and their associated costs) with the possibility and benefit of brand valuation standards including greater information regarding legal parameters.

VIII. CONCLUSION

Based on the work described in this report, the PTF issues the following key recommendations for INTA:

Corporate IP Reporting Recommendation: Checklist on the INTA website and introduce the tool with an education session (perhaps part of the In-House Practitioners workshop) at the 2024 Annual Meeting, with potential follow-up sessions at the 2024 Leadership Meeting and/or 2025 Annual Meeting. Create a Committee or Subcommittee on IP Reporting.

Internal/External Outreach and IP Accounting Recommendation: INTA executive management and others to continue to pursue engagement with the International Financial Reporting Standards (IFRS) Foundation/ International Accounting Standards Board (IASB). Work in collaboration with the Building Bridges Committee to reach out to other accounting organizations. Solicit feedback from key INTA members (brand owners in various geographies) regarding the INTA Board Resolution and its potential effects.

Brand Valuation Recommendation: Continue this work with the Commercialization of Brands Committee, in particular the Brand Valuation & Evaluation Subcommittee. Leverage the PTF's work to have the Subcommittee members (especially the brand owner and service provider members) work on solutions to the "Legal Data Gap" identified above and engage with the International Organization for Standardization (ISO).

EXHIBIT 1

Annex G from April 2020 Report of INTA's Brand Value Special Task Force

Annex G: Checklist of Legal Considerations for Brand Valuation

The following are questions for trademark professionals to consider when determining the scope of brand assets and related rights in the valuation. These questions were developed by the [Brand Valuation Special] Task Force members.

- **Creation and Acquisition of Rights**
  - **Bundling of IP rights and IP valuation**
    - What registered IP rights should be considered?
      - Trademark (remaining analysis is focused on trademarks)
      - Product packaging/product design/trade dress
      - Copyright
      - Patents
      - The right of publicity/rights of persona/personality rights
      - Geographical indications
    - What other rights should be considered?
      - Domain names
      - Trade names
    - What constitutes trademarks?
      - Words
      - Names
      - Devices
      - Certain three-dimensional shapes
      - Colors
      - Slogans
      - Sound
      - Trade dress/getup/packaging
      - Holograms
      - Motion marks
      - Shapes
      - Texture
      - Smell
    - In addition to the above, what other registrable trademarks should be considered?
      - Collective trademarks
      - Certification trademarks
      - Well-known marks (see discussion on dilution)
      - Service marks
    - Should rights pending registration be also considered?
    - Are there any other unregistered rights to be considered?
      - Use of unregistered trademarks
      - Trade name
      - Trade secrets
      - Goodwill
    - What product/service categories does the trademark registration cover?
    - In which countries is the trademark protected through trademark registrations?

EXHIBIT 1

Annex G from April 2020 Report of INTA's Brand Value Special Task Force
(continued)

- **Ownership and IP valuation**
    - Who owns the trademark rights?
        - Individual
        - Company: parent, subsidiary or joint venture
        - Trust
        - Association
        - Partnerships
    - How did the trademark originate?
        - Are the trademarks developed within the company or have they been acquired?
        - Did the trademarks originate from a joint venture?
- **House brands and IP valuation**
        - Is the trademark used on its own or with its house brand?
        - Is the trademark used only as a trading name and not on actual products or for services?
        - Are there any different uses of the trademark that need to be considered?
            - Translations
            - Transliterations

- ### Protection of Rights
    - **Civil and criminal enforcement and IP valuation**
        - Is there any misleading use of marking that could make the company susceptible to litigation, based on unfair competition laws?
        - Are there any potential bases to cancel the trademark registration on the grounds that:
            - the trademark is descriptive
            - the trademark is not distinctive
            - the trademark is misleading or disparaging
            - the trademark is functional
            - the trademark relates to armorial bearings, flags and other state emblems
            - the trademark is generic
            - the trademark consists of a geographical indicator
            - the trademark is against public policy or principles of morality
            - the trademark includes a badge or emblem of particular public interest
            - the trademark is protected by statute or local law/regulation
            - the trademark is prohibited in this jurisdiction
            - the trademark application was made in bad faith
            - the trademark infringes prior rights
            - the trademark is not in use anymore
        - What steps are taken by the company to ensure that the trademark does not become generic?
            - Is there employee and customer training or literature on the proper use of the trademark?
            - Does the company perform quality assurance audits of its use of its trademarks?
            - Does the company have a specific Trade Mark Usage Policy that defines the manner and standards of use of the trademark?

EXHIBIT 1

Annex G from April 2020 Report of INTA's Brand Value Special Task Force

(continued)

- What steps are taken by the company to ensure that the trademark is not being infringed?
    - Are they using a watch service to monitor trademark applications by third parties?
    - Are they opposing pending trademark applications by third parties (see also Oppositions) that are similar to their trademarks?
    - Are they filing cancellation actions against third-party registrations that are deemed to be infringing?
    - Are they issuing cease-and-desist letters?
    - Are they doing periodic market surveys to identify possible infringers?
    - Are they maintaining a database of actions taken against third parties so that future habitual infringers can be identified?

- **Counterfeits and IP valuation**
    - What steps has the company taken to reduce the incidence of counterfeiting of their products, if any?
        - Are there valid trademark registrations in countries where counterfeiting is experienced?
        - Are there customs records?
        - Are there regular audits of their supply chains?
        - What security measures have been put in place to ensure that there is no leakage?
        - Are there education/awareness plans in motion for customers, traders, intermediaries, customs authorities, or any other authority involved, such as the police, etc.?
        - Are there regular market surveys conducted by the company to ensure the early identification of third parties selling infringing articles or manufacturing infringing articles?

- **Dilution and IP valuation**
    - Is there prima facie evidence that the trademark is a well-known mark?
        - Court decisions?
        - Declaration that the mark is well-known through the filing of petitions, wherever applicable?
        - Registration on a register for well-known marks?

- **Commercialization of Rights**
    - **Transfer of trademarks and IP valuation**
        - Is the trademark assigned or licensed?
        - Is the trademark assignment for some or all the goods and services?
        - Is goodwill included in the assignment?
        - Is there a requirement to record the assignment in the territory of assignment?
        - If licensed, please see Section on Licensing and IP valuation below.

- **Licensing and IP valuation**
    - Is the license for a portion of the territory covered by the trademark or the whole territory?
    - Is the license for some or all of the goods and services?
    - Is the license exclusive?
    - Are there any limitations to the license (such as, for example, the duration of the license)?
    - Is there a requirement to record the license in the territory of the license?
    - Are there pending trademark applications that are being assigned or licensed?
    - Does the company perform quality assurance audits of licensees?

- **Maintenance of Rights**
    - Competitive environment and IP valuation
    - Disruptive innovation and IP valuation
    - Corporate governance and IP valuation
    - Evidence and IP valuation
    - Non-use and IP valuation
        - Is an attack on the grounds of non-use possible?
    - Mergers & Acquisitions
    - Factors that increase the brand value
    - Factors that decrease the brand value

[11] https://www.inta.org/wp-content/uploads/member-only/perspectives/industry-research/Brand-Value-Special-Task-Force-Report-Full-Report.pdf?verify=1701792381-KgI5LLRKy4CpJ3Ij9Q7e0PLeWOr8i-vqWkxNWI0mayE

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