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The Franchise Valuations Reporter

Featured Expert Christof Binder

This month we feature an article by Dr. Christof Binder who analyzes how much of the franchise value is in the brand versus the concept and operating system.

Christof Binder, MBA, PhD, is a veteran in brand licensing management and a thought leader in trademark valuation. He is co-founder and managing partner of Trademark Comparables AG, a privately held, Swiss based company engaged in the valuation and capitalization of IP, notably brands and customer relations.

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Have a Damages or Valuation Question?

Call us for a free, confidential consultation. And we're always interested in your comments about the newsletter.

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Valuations: Christof Binder

How Much For the Brand in a Franchise?

Typically, a franchise includes various different rights, i.e. the right to use the brand of the franchisor, some sort of territorial protection or local exclusivity), and the right to use the business concept and the operating system developed by the franchisor. All of these different rights are finally combined in a franchise fee or franchise royalty rate.

An interesting but difficult to solve question in franchising is how much the franchised brand is worth, and how much the concept and operating system. To develop a better understanding of this aspect, we conducted a comparative analysis of both non-franchised and franchised restaurant businesses. More specifically, we compared the trademark royalty rates applied in the valuation of non-franchised restaurant brands with franchise royalty rates paid by franchised restaurants. Each sample comprised 40 individual cases. The main results are summarized in the table below.

Royalty Rate Analysis - 80 Restaurant Businesses

	brand royalty rate (% of revenues)	franchise royalty rate (% of revenues)	share of brand
min	0.2%	2.0%	[10%]
25% quartile	1.5%	4.0%	37.5%
median	2.0%	4.2%	48%
mean	3.2%	5.0%	64%
75% quartile	4.4%	4.4%	[100%]
max	10.0%	8.0%	[>100%]

Source: MARKABLES database

Leaving the first and fourth quartile of the royalty rate distributions out, the analysis indicates a share of between 40% and 60% for the brand in the franchise royalty rate. This brand share would include the price for territory protection because the brand royalty rate describes the value of (exclusive) brand ownership. Hence, the remaining 60% to 40% of the franchise royalty must be for the business concept and the operating system.

Although only indicative, these ratios are a good starting point to isolate the part for the brand included in a franchise. Three factors need to be considered in each particular case. First is price positioning. For franchises

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Within the franchise, distribution and dealership context, we are experts in:

- Damages, Valuations & Expert Testimony
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We offer a free initial consultation. If any readers have questions, you are welcome to email or phone us and we will provide our best answer as quickly as possible.

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We Write the Book

Franchise Regulation and Damages, the only treatise that covers damages in franchise disputes and valuations of franchises, is updated 3 times a year.

For more details, to see a Table of Contents or to place an order, go to the Wolters Kluwer Law & Business web page here.

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with a higher price positioning, the share of brand seems to be at the higher end of the spectrum. Second is the complexity of the business system. If the system is easy to establish, and if the cost advantages on the supply side are small, then the share of brand will also be at the higher end. And third is brand strength. All individual cases in the comparative are well established and enjoy stable local brand awareness in their target audience. Thus, the share of brand is lower for young franchising concepts, or ones that are just entering new territories.

For more information regarding MARKABLES, please visit www.markables.net.

Valuations: A Must for ESOPs

Same Criteria Should Apply to Roll Over Business Start Ups (ROBS)

A memorandum decision from the U.S. Tax Court in *Fleming Cardiovascular, P.A. v. Commissioner* found that the Internal Revenue Service did not abuse its discretion in revoking the Fleming Cardiovascular, P.A. Employee Stock Ownership Plan's qualified and tax exempt status for failure to operate in accordance with plan documents. Of interest to the readers of this newsletter, the ESOP failed to obtain an *independent annual valuation* of the stock by a *qualified appraiser* in five out of seven plan years. Franchisees who bought units using "rollover" proceeds should be especially concerned because the same reasoning should apply to situations where 401k money is "rolled over" for investment in a franchise, i.e., they must get proper valuations!

Source for Valuation Reports

One good thing to come from the wikileaks break-in and disclosure of SONY and other documents has been the availability on line of valuation reports which were stolen and disclosed online. Many were from top firms such as Deloitte, KPMG, E&Y, Houlihan & SVB. Searching for *valuation report pdf* found 1157 results. Some are exceptionally well done and are available here.

Employer or Joint Employer: Another Issue

Must Employers Pay Overtime for Smartphone Usage?

First the issue was independent contractor or employee (Awuah); then it was employer vs joint employer (NLRB and McDonald's); then it was the very definition of employee (Browning Ferris) and now we have come to the *extensio ad absurdam*: would such "joint" "employer" be liable for overtime for an "employee's" use of his or her smartphone after working hours.

Here's the situation: the U.S. Department of Labor's salary requirements for the white-collar exemptions under the Fair Labor Standard Act (FLSA) will be revised in 2016, making millions of additional employees eligible for overtime protection. And the issue of employees using electronic devices after work hours can become a wage and hour problem for employers. In the class action *Allen v City of Chicago*[1], a police officer sued for unpaid overtime related to the off-the-clock usage of his BlackBerry because the police department issued electronic devices and required police officers to respond to work-related emails, text messages and voicemails while off duty.

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The Court decided that the activities did not constitute compensable "work", because under the FLSA, work must involve "substantial" duties pursued necessarily and primarily as part of a person's job. Activities that fall below that "murky" standard - "de minimus activities" - don't require compensation. Nonetheless, employers should presume that the DOL will implement new rules about employees' use of smartphone and other electronic devices outside of normal work hours and take steps to guard against overtime liability. And the police officer is appealing the decision.

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[1] USDC Northern District of Illinois, Case No. 10 C 3183 (Mag Judge Sidney I. Schenkier) decided in December 2015 after nearly six years of litigation

Cyber-Security

Stayed at a Hyatt recently?

Hyatt Says Data Breach Hit 250 Hotels in Some 50 Countries