



The Franchise Valuations Reporter



Our Expertise

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



- Damages, Valuations & Expert Testimony
- Finance, Accounting and Tax
- Cyber Security and E-discovery of Electronically Stored Information

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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Franchise Technology Risk Management



Our franchise law and computer forensics experts provide consulting and implementation of all aspects of cyber security, ESI management and e-discovery for franchise systems - from preparation of cyber security and ESI-related policies and procedures manuals through collection, preservation, processing, production and presentation.

To inquire about our services, please e-mail Henry@FTRM.biz or call (212) 689-0400

We Write the Book

Franchise Regulation and Damages, the only treatise that covers 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](#).

Valuations: Brand Value and Trademark Value

Trademarks Comprise a High Portion of Enterprise Value

In a recent publication, MARKABLES (a firm that specializes in valuing trademarks) analyzed the net discount rates applied in almost 1,000 trademark valuations between 2005 and 2013. Below are some of the major findings.

- The median discount rate was 11.0%.
- On average, the trademark-specific discount rate is 1.5% higher than the discount rate of the related cash generating unit.
- Trademark discount rates were fairly stable since the financial crisis in 2008.
- Discount rates are generally higher with respect to trademarks with short useful lives.
- By region, Europe and Asia show the lowest average discount rates, while North America, Australia and South Africa are highest. Such differences should be considered when comparing the value of assets in different regions.
- The discount rate has an important impact on trademark value. All other things equal, an increase of the discount rate from 10% to 12% would result in a 21% decrease of trademark value, and a decrease of the discount rate from 10% to 8% would result in a 35% increase of trademark value for an indefinite lived trademark.

Additionally, MARKABLES offered data on "brand values" in a new report, "Global Top 20 Brands in 2013". The rankings in the report represent brand values that follow international accounting and financial reporting standards and include the following:

	Brand Value (in millions)	% of Enterprise Value
Sprint	\$6,455	11.8%
Crown (Corona beer)	\$2,306	32.6%
Sealy	\$524	40.9%
Kayak	\$496	26.5%
Saks Fifth Avenue	\$374	11.5%
Wish-Bone	\$348	60.4%
Shippy	\$265	39.8%

Key ratios: The 2013 Top 20 brands accounted for 34.3% of all assets of these enterprises (including other intangibles, goodwill, plant and equipment, inventory, and receivables). The figure is in line with previous years. The average brand premium of the Top 20 was 8.0% of net revenue in 2013. That is, 8% of revenue represents profit directly attributable to the brand. This figure is lower than in 2012 but higher than it was in 2010 and 2011.

Valuations: Estate of James Brown

As With Michael Jackson's Estate, Valuations Are All Over the Place

Just how big the late soul singer's estate is remains a matter of significant and unusual debate. In 2009, when the executors transferred control of the estate to the attorney general's administrator, they valued it at \$86 million. They based that figure on offers that they said had been made to buy the copyrights to the more than 800 songs Mr. Brown wrote or controlled and to the dozens of albums he recorded in his 50-year career. In 2006, for example, a Royal Bank of Scotland appraisal found that just a

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portion of the assets was worth \$42 million.

But there's been a fight between heirs and a charity set up by Brown so the State of South Carolina came in and appointed an administrator. He valued the estate at \$6.5 million saying he had an investment firm help establish the figure, but did not detail the analysis. You can read more of this tawdry tale [here](#).

Damages: Limitations in Contract Enforced

Provisions Specifying No Punitive, Consequential or Incidental Damages Upheld

In a terminated tire dealer's action to obtain damages following termination of its dealership agreements, the limitation of damages provisions in the terminated agreements were enforceable and supported the manufacturer's summary judgment motion, the district court in Greenville, South Carolina ruled.[1]

[1] *Michelin North America, Inc. v. Inter City Tire and Auto Center, Inc.*, (C.A. No. 6:13-1067-HMH US DC SC December 22, 2014)

Franchise Times' Legal Eagles

Take Your Award and . . .

I recently received a second reminder from *Franchise Times* magazine to vote for their "Legal Eagles". I couldn't believe they would have the shameless chutzpah to send such invitations to me in light of how they treated me last year. First I was notified by the magazine that I had been voted one of their so-called celebrated few (it was not the first time) and I announced it in this newsletter. So imagine how foolish I felt when they published the list without my name (or the decency to advise me I was excised).

So I sent an email asking about their decision and they told me that they had rescinded the so-called honor because I was not a legal practitioner. Of course, I have a J.D. and an LL.M. (in Taxation) and have been a lawyer for more than 35 years; and I have appeared both as a lawyer and as an expert in many courts throughout the land - for decades - as well as written scholarly legal contributions such as a legal treatise for CCH entitled "Franchise Regulation and Damages" and a Tax Management Portfolio for BNA/Blumberg entitled "Tax Aspects of Franchising". And as readers of this newsletter know, I have written scores and scores of legal articles for a whole host of forums such as the ABA Forum on Franchising, the IFA, the Practicing Law Institute and the NYU Institute on Federal Taxation,.

But *Franchise Times* and its "Legal Eagles" editors have determined I am not qualified for their prestigious award. So don't waste your vote. DON'T VOTE FOR ME! "If nominated I will not run, if elected I will not serve."

Awuah, Continued

Franchisor Massage Envy Ruled Not an Employer Of Its Franchisees' Massage Therapists

Last week, bucking the current trend of finding franchisors to be employers of their franchisees' employees (viz. McDonalds and the NLRB), the federal district court in San Diego decided that MEF, the franchisor, could not be held liable for any wage and hour violations committed by its franchisees[1]. MEF's motion for summary judgment turned on whether MEF was an employer of the plaintiffs, and could therefore be liable for any wage and hour violations made by its franchisees.

The court was required to determine whether MEF assumed the right of general control over the relevant day-to-day operations at its franchised locations. Noting that multiple spa locations changed their pay policies at different times and in different ways, the court determined that the lack of uniformity among those locations suggested that MEF did not control employee wages and hours, but left the responsibility to the franchise owners. The court also found that there was no evidence that MEF exercised control over the hiring and firing decisions at the franchise locations, or that it controlled the employees' work schedules. MEF was therefore not an employer of the plaintiffs, and was not liable for any of its franchisees' violations of California's minimum-wage laws. The motion for summary judgment was therefore granted.

[1] *Vann v. Massage Envy Franchising LLC*, Case No. 13-CV-2221-BEN (WVG) January 6, 2015, Benitez, R.

Cyber- Security

Webinar To Focus on Trade Secret, Computer Fraud and Non-Compete Law

We recommend the [complimentary webinar](#) to be given on January 27, 2015, by Seyfarth Shaw LLP which will cover recent developments/headlines in trade secret, computer fraud, and non-compete law. Here is their listing for 2014, as published by Lexology:

1. Increased Threat to Trade Secrets by Hackers.
2. More High-Profile Prosecutions under the Computer Fraud and Abuse Act and Economic Espionage Act.
3. Continued Attempt to Create Civil Cause of Action for Trade Secrets Theft in Federal Court.
4. Attempt to Harmonize Trade Secrets protection in EU.
5. Massachusetts Fails to Enact Proposed Non-Compete / Trade Secrets Legislation.
6. Courts Continue to Grapple with UTSA's Preemptive Impact.
7. Continued Significance of Choice of Law and Forum Selection Provisions In Non-Compete Disputes.
8. Social Media Continues to Generate Disputes.
9. NLRB Challenges Employer Policies on Employee Use of Social Media and IT Resources.
10. Courts, Lawmakers, and Regulators Continue to Scrutinize Non-Competes and Consideration Remains a Hot Button Issue.

A more complete discussion of these developments can be found [here](#).