

Business Development Academy
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Internet Tools for Intellectual Property Analysis

Doug Bania & Brian Buss

Neivium Intellectual Property Consultants

www.neivium.com

Easy Concepts – Difficult to Apply

For Damages or Valuation, Finding Useful Data can be Challenging

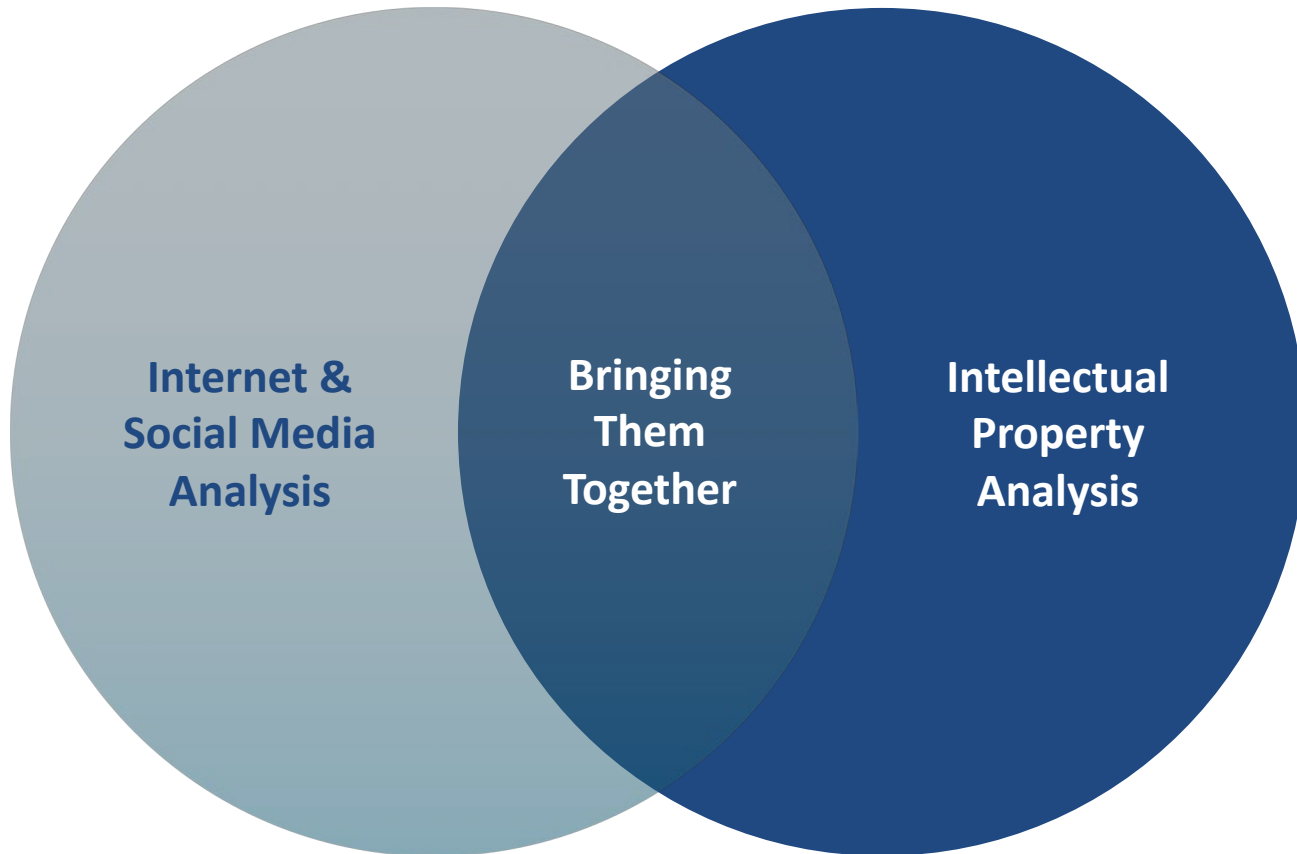
While the concepts are relatively clear, IP experts must find facts and data to:

- Evaluate the business(es) using the Subject IP
- Quantify the portion of profits or cash flows contributed specifically by the Subject Asset
- Identify where and how IP infringement has impacted financial performance at the plaintiff or defendant

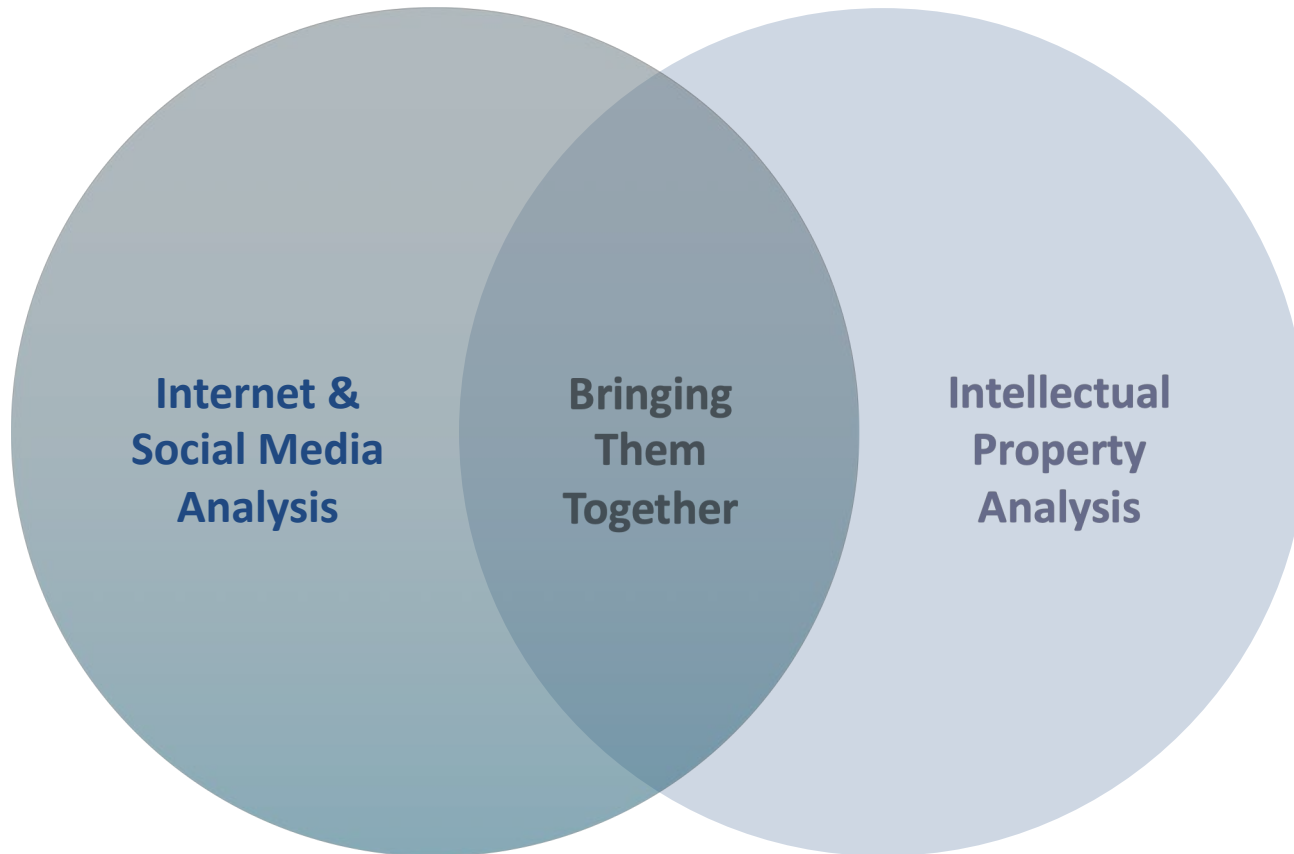
In more and more situations, Internet and Social Media tools can provide some additional facts, evidence and support

Introduction

A Financial and Economic Perspective on Internet & Social Media IP







Analysis of Internet & Social Media Activity



Old World v. New World

Internet and Social Media Data Allows a New World of Analysis

Old World IP Use Traditional Media		New Misuse Search & Social
Obvious misuse in television and print		Internet misuse can be hidden in metadata and keywords
The number of people witnessing the misuse is geographically constrained		Worldwide audience and the potential of misuse going viral
How many customers actually took action is not accurate		Data regarding how many customers took action is very accurate
Gauging customer preference depended on surveys or anecdotes		Search analytics and social media reactions provide additional insights

The Tools

Three Tools to Improve Valuation and Damages Analyses

Search Optimization

- Determine which phrases or product features attract site traffic and drive commerce
- Identify phrases used by the Company to attract site traffic

Site Traffic Data

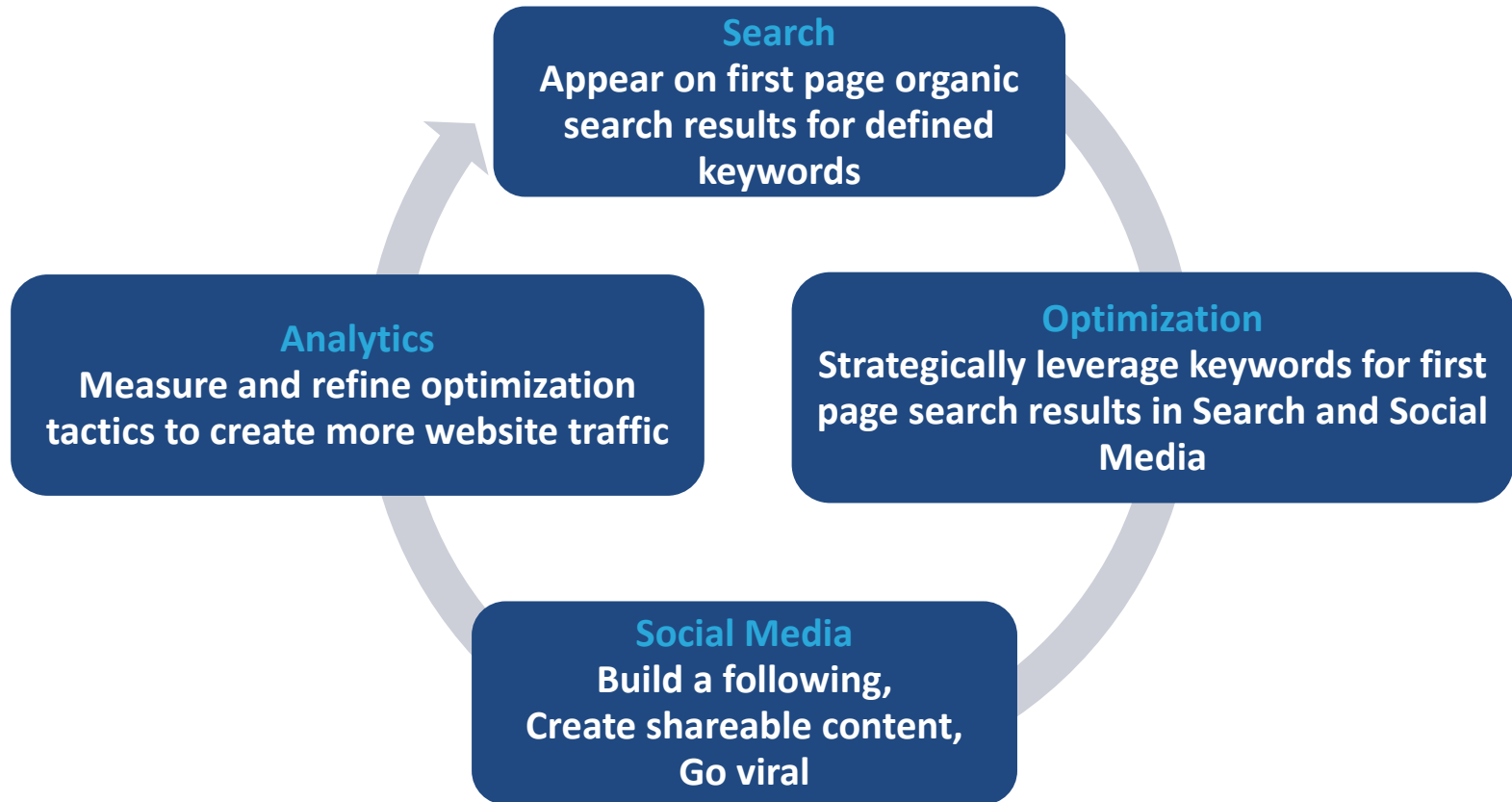
- Information about customer preferences and behaviors
- Quantify responses to promotions
- Understand behavior and reactions to site content

Internet & Social Media Advertising

- Quantify impact of search phrases purchased by the Company
- Quantify costs avoided when using IP to drive organic Impressions and Click-through
- Identify demographic information about potential and actual customers

Key Concepts of Internet Use: Business Owner

The Internet is the New Corner Store, and Foot Traffic is Search & Social



Key Concepts of Internet Analysis

Search + Social + Optimization + Analytics = Defensible Analysis



Educating the Audience

Educate First to Set the Stage for Your Calculations

Valuation and damages experts must educate their audience regarding the basics of search & social prior to approaching an analysis or calculation

Educating the Audience

Any Analysis or Valuation Using Internet & Social Tools Starts Here

Growing importance of the Internet for businesses

The Internet is a huge place to promote business

Search and How it Works

Internet is a huge library with billions of books, search engines are the tools to find information

Importance of First Page Search Results

First page is worth the fight

Importance of Social Media

Key platforms for marketing and building demand

Use of Metadata and Optimization

First page search results are not an accident

Use and Leverage of Google Analytics

Google provides tools and tactics

Case Study: Educating the Trier of Fact About Search

Defendant used the Plaintiff's TM-protected company name in search optimization and social media

Two competing construction supply companies had operated in non-overlapping geographies

Both businesses evolved into online retail & distribution of construction supplies and design concepts

Therefore businesses begin to overlap and compete for customers outside their home geography

Educating: Importance of Search & Social

Of the 9 organic search results, over 50% are for the Defendant

Defendant: Second and Third organic search result

Defendant: Social Media sites

Shop The Company Store -- It's Springtime
[www.thecompanystore.com](#)
 Start-Up with 20% Savings and Free Shipping from 100
 Comforters
 Duvet & Comforter Covers
 Sheets
 Blankets

The Company (2003) - IMDb
[www.imdb.com/title/tt0201212](#)
 Rating: 6.2/10 - 4,344 votes
Plot: The Company - A behind-the-scenes look at the world of Service The Company - Executive Steve Campbell and a group of sales clerks, with a...
Stars: Full Cast & Crew **Plot Summary** **See Reviews**

The Company (TV Mini-Series 2007) - IMDb
[www.imdb.com/title/tt0450022](#)
 Rating: 7.8/10 - 3,294 votes
Plot: The Company - A mini-series that traces CIA activities over a 40-year period. Richard Hudson at court of The Company (2007) Bill of O'Connell and...
Director: Full Cast & Crew **Guide** **Trailer**

The Company - Wikipedia, the free encyclopedia
[en.wikipedia.org/wiki/The_Company](#)
 The Company may refer to:
 The Company (TV miniseries), a miniseries about the CIA based on the above list item.
 The Company (novel), a novel...
 The Company (film) - Wikipedia, the free encyclopedia
[en.wikipedia.org/wiki/The_Company_\(film\)](#)
 The Company is a 2005 film about the Jeffrey Baker of Chicago. It was released on September 26, 2005 in the United States and around the world in the first half

T.H.E. Company - Tom Hassenfratz Equipment Company
[www.thecompany.com](#)
 This online store for all your Agricultural and Lawn & Garden parts. We also have a wide selection of aftermarket parts for Tractors, Combines, Planters.

Bedding: We're All About Comfort | The Company Store
[www.thecompanystore.com](#)
 The finest 100% made bedding, straight to your door. Sheets, comforters and more in every size and pattern, using only the highest quality natural fibers.

The Company: A Novel of the CIA - Amazon.com
[www.amazon.com/The-Company-A-Novel.../dp/0142000022](#)
 The Company: A Novel of the CIA (Robert J. Reid) on Amazon.com. "FREE" shipping on qualifying offers. This critically acclaimed bestseller from internationally...

The Company
[www.thecompany.com](#)
 The Company - Focus Online Reader - Home - Article - By George... Summary of The Company Announcements, 2011/04/28 2:48 pm. News - 28 Comments.

The Company - Rotten Tomatoes
[www.rottentomatoes.com/m/the_company](#)
 Rating: 71% - 128 reviews
 While *Company* is a deliriously unfiltered narrative that provides some insight, but the *Company* from *Company* generally speaking the...

Plaintiff's paid result

Plaintiff: First organic result

First page of organic search results

Plaintiff: Ninth organic result

Educating: Analyzing Code to Determine SEO

The site's code can be “read” to investigate SEO strategies

Tactic	Use at SampleCompany.com	Likely Result
Use key terms in Title Tag	<code><title>The Company, Sales and Structure Designs</title></code>	The title tag “The Company” alerts both the search engines and the user as to the topic of that particular page
Use key terms in the URL	<code>http://www.sample.com/about-the-company</code>	This URL contains the keywords “The Company” which provides users and search engines more information about the page
Use key terms in the Description	<code>meta name="description" content=";The Company has been selling since 1972. Click here to find out more about sales, structure and The Company." /></code>	The description meta tag provides the search engines a summary of what the page is about
Use key terms in the Keywords	<code><meta name="keywords" content="sales, structure, the company, green supplies, The Company, Sample Company, samplecompany" /></code>	If a search engine finds specific key terms throughout the content of the website and in the keyword meta tags, that website will likely be ranked higher in search results

Educating: Use & Application of Google Search Tools

Keyword "Intellectual Property Valuation"

Paid Search Results

The screenshot shows a Google search for "intellectual property valuation". At the top, the search bar contains the query. Below the search bar, there are navigation tabs for "All", "News", "Images", "Shopping", "Maps", and "More", along with "Settings" and "Tools". The search results are displayed below. The first result is a paid advertisement for "Expert Valuation of IP | Serving Global Base Since 2003" by Crec, marked with an "Ad" icon. A red box highlights this result with the text "Paid result". Below the advertisement is a featured snippet for the same topic, titled "Valuation Description. The description states the general characteristics of the intangible asset. Intellectual property refers to patents, trade secrets, copyrights, trademarks/trade dress. ... Patents, if broad enough, can be powerful elements of competitive advantage." A red box highlights this snippet with the text "Featured Snippet". Below the featured snippet is a link to a YouTube video titled "Intangible Asset & Intellectual Property Valuation: A Multidisciplinary ...". Below the video link is a "People also ask" section with four questions: "What is IP value?", "Can you sell intellectual property?", "Is intellectual property an asset?", and "How do you evaluate a patent value?". Below the "People also ask" section is an organic search result for the same topic, titled "Intangible Asset & Intellectual Property Valuation: A Multidisciplinary ...". A red box highlights this organic result with the text "Organic result".

Organic search results are influenced by SEO

Paid search results are driven by Google Ads

Google's Keyword Planner helps marketers select and purchase keywords, with the objective of appearing in search results for the selected terms

The visible distinction between Paid and Organic results has diminished

Marketers are paying Google (and search engines) to appear in your searches

Paid search also provides useful data

Organic result

Educating: Use & Application of Google Search Tools

Paid Search Results, Adwords, and The Keyword Planner Tool

Google AdWords

Keyword Planner

Where would you like to start?

Find new keywords and get search volume data

Search for new keywords using a phrase, website or category

Enter one or more of the following:
Your product or service

intellectual property valuation **Keyword**

Your landing page
www.example.com/page

Your product category
Enter or select a product category

Targeting ?

- United States
- All languages
- Google
- Negative keywords

Date range ?

Show avg. monthly searches for: last 12 months

Get Ideas

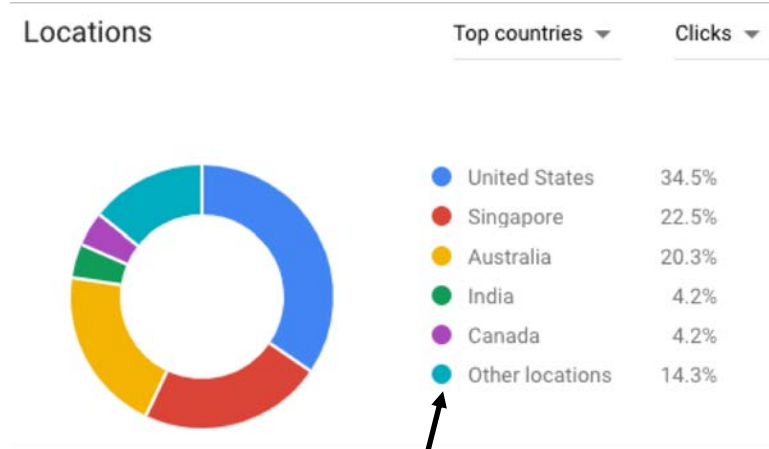
Customize your search ?

Keyword filters

Keyword options

- Show broadly related ideas
- Hide keywords in my account
- Hide keywords in my plan

Keywords to include



% of Searches from selected territories

Suggested High Top of Page PPC \$Rate

<input type="checkbox"/> Keyword (by relevance)	Avg. monthly searches	Competition	Ad impression share	Top of page bid (low range)	Top of page bid (high range)
<input type="checkbox"/> intellectual property valuation	100 - 1K	Low	-	\$3.00	\$15.00

Average Monthly Searches, from all Search Users

Suggested Low Top of Page PPC \$Rate

Case Study: Application of Google Keyword Tools

Defendant used the Plaintiff's Trademark on Line of Furniture

Defendant Omnia Italian Design used Plaintiff Stone Creek's brand name on furniture manufactured for retail client

Infringing furniture had quality craftsmanship, made in USA, fast turn-around, free local shipping, customization and low prices

Google Keyword Planner was used to prove that infringing brand name was unknown in trading territory, therefore, purchases were made for other reasons than brand name

Case Study: Application of Google Keyword Tools

Defendant used the Plaintiff's Trademark on Line of Furniture

Summary of Average Monthly Searches in Store's Territory		
Store Name	Searches for Store Name	Searches for "Stone Creek"
Bon-Ton	60,500	10
Carson's	90,500	10
Younkers	135,000	10
Herberger's	135,000	10
Elder-Beerman	74,000	10
Boston Store	74,000	10
Bergner's	45,000	10
<i>Google rounds nil results to the nearest 10</i>		
"Stone Creek" in Arizona		1,000

Using the Google Keyword Tool, we convinced the Judge that the Stone Creek brand name was essentially unknown in the Bon-Ton trading territory

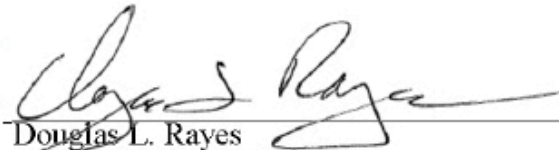
Case Study: Application of Google Keyword Tools

102. The evidence supports a finding that separate markets prevented the likelihood of confusion:

- A. Consumers in the BTTT were unaware of Stone Creek;
- B. The vast majority of Google searches for Stone Creek Furniture originate in Arizona;
- C. The number of Google searches for the Stone Creek website from the BTTT were negligible;
- D. Stone Creek had no brand awareness in the BTTT;
- E. There was no actual confusion by a consumer in the BTTT purchasing Omnia STONE CREEK furniture.

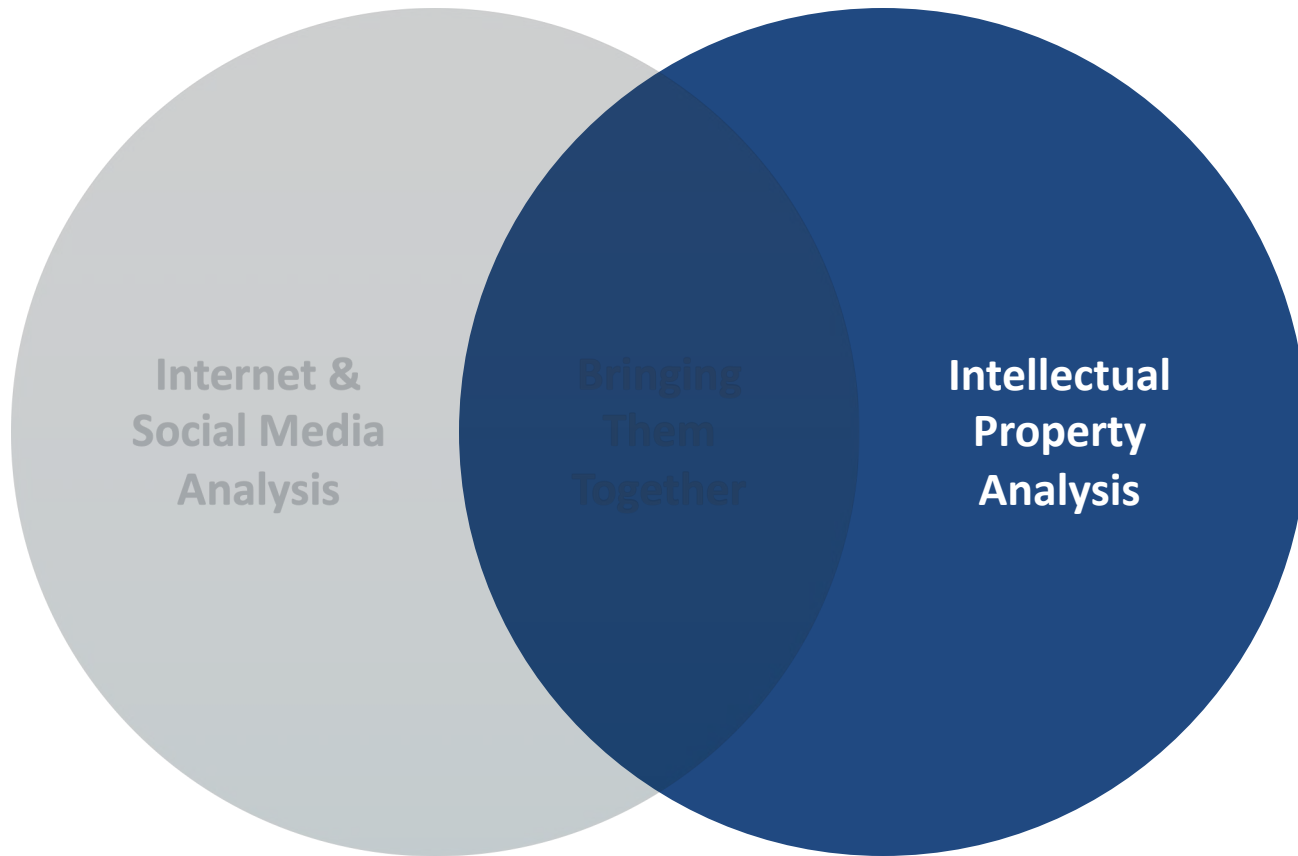
103. Omnia is not liable to Stone Creek on any of Stone Creek's claims. Accordingly, **IT IS ORDERED** finding in favor of Defendant Omnia Italian Designs, Inc., and against Plaintiff Stone Creek, Inc. on all counts and all causes of action. The Clerk shall enter judgment in accordance with this Order.

Dated this 9th day of November, 2015.


Douglas L. Rayes
United States District Judge

*Data from Google's
Keyword Tool drove
the Judge's ruling*

IP Valuation & Damages for the Internet



Valuation & Damages Methodologies

Analysis of the Financial / Economic Impact of IP Assets on the Internet will Employ One or More of These Methodologies

	Standard Methodologies	Internet IP Methodologies
Cost Approach	Cost to replace or replicate	<ul style="list-style-type: none"> • Relief from pay per click • Value of impressions
Income Approach	Present Value (PV) of future benefits <ul style="list-style-type: none"> • Discounted cash flows (DCF) • Relief from Royalty • Lost Profits / Unjust Enrichment 	PV of <ul style="list-style-type: none"> • Additional Site Visits / Traffic • Additional online transaction or customer inquiries
Market Approach	Study of transactions <ul style="list-style-type: none"> • Guideline companies • Guideline transactions • Industry benchmarks 	<ul style="list-style-type: none"> • Comparable Pay Per Click • Hypothetical license/transaction

Important to base new analyses on accepted methodologies

Drivers of Value

IP Depends on Other Assets and Resources to Generate Economic Benefits



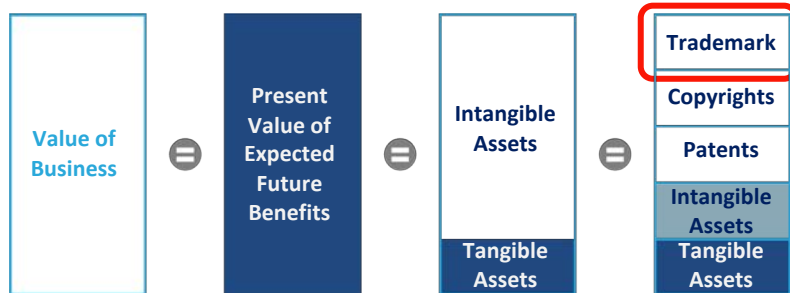
Business Value > Value of IP Assets owned by the Business

Apportionment: Identify the portion of future benefits derived from use of the IP Assets

Internet Analytics as an Apportionment Tool

Apportionment Framework

What is the value of this box?



Tools to Apportion Economic Benefits

- Website Analytics
- Social Media Analysis
- Comparable licensing transactions (“CUT”)
- Excess profits (“CPM”)
- Feature count and comparison
- Marketing Mix Analysis
- Promotional Use Analysis
- Surveys / Interviews / Focus Groups

Always best to use multiple tools

Apportionment Questions

When required to apportion profits or identify the smallest salable unit, these questions can be answered using Internet Analytics

For apportionment analyses we use a template with 17 questions drafted to identify how the Subject IP Asset is contributing to financial performance

Of the 17 questions, these 6 are often addressed using Internet and Social Media Analytics

- Where are products purchased?
- What other products or features do consumers consider?
- Are promotions or discounts used to attract commerce?
- How are customers finding the product?
- Is the product sold in conjunction with other products?
- Does marketing and advertisement focus on the IP-protected feature?

Google Analytics to Support Unjust Enrichment

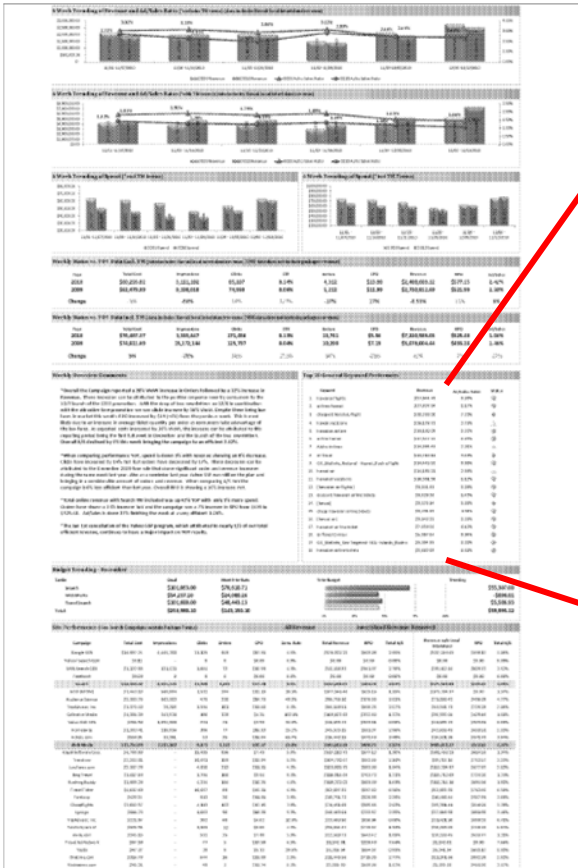
Unjust Enrichment Profits: Traffic at Defendant's Website

Monthly visits due to searches using TM	25,000
Conversion Ratio: Visitors who purchased	25%
<hr/>	
TM search purchases	6,250
Average e-commerce purchase	\$250
<hr/>	
Incremental revenue	1,562,500
Ratio: Incremental profit margin	15%
<hr/>	
Incremental profit per month	234,375

Explain the mechanism, then quantify the impact

Site Analytics to Quantify Commerce

Weekly Summary of Website Traffic



Top 20 General Keyword Performers

Keyword	Revenue	Ad/Goals Ratio
1. hawaiian flights	\$57,644.78	0.99%
2. airlines hawaii	\$37,837.04	1.17%
3. cheapest hawaii flight	\$30,293.00	7.20%
4. hawaii vacations	\$26,178.73	2.79%
5. hawaiian airfare	\$19,190.08	0.32%
6. airline hawaii	\$17,547.74	0.95%
7. air hawaii	\$14,884.40	3.38%
8. airkauai	\$14,710.11	3.40%
9. G G_Sibelinez_National - Hawaii_Book a flight	\$14,445.52	0.05%
10. hawaii air	\$14,195.21	2.59%

- Keyword #7 was a trademark owned by another party
- Searchers using this phrase contributed between \$10 to 25,000 revenue / week

Search data proved the Trademark was important

Case Study: Software or Service

Acquirer buys an inspection services business that uses proprietary software tools. After the acquisition a third-party software developer claims ownership of the software code

Software developer claims copyrights and proprietary technologies were sold to the Acquirer without permission

The Target business employed consultant inspectors who used the software tools to conduct inspections and advice customers on safety improvements

Employed three Internet Tools to review and compare the relative contribution of the software v. the consulting services

- Wayback machine for marketing language
- Internet Search Analytics for customer behaviors
- Adwords purchases for Company's preferred search terms

Case Study: Software or Service

Wayback Machine

- Archive.org archives past version of websites
- Through multiple evolutions of the website, Target emphasized its people and the human-service aspect of its product
- Customers were never able to use the inspection software without a consultant

Search Analytics

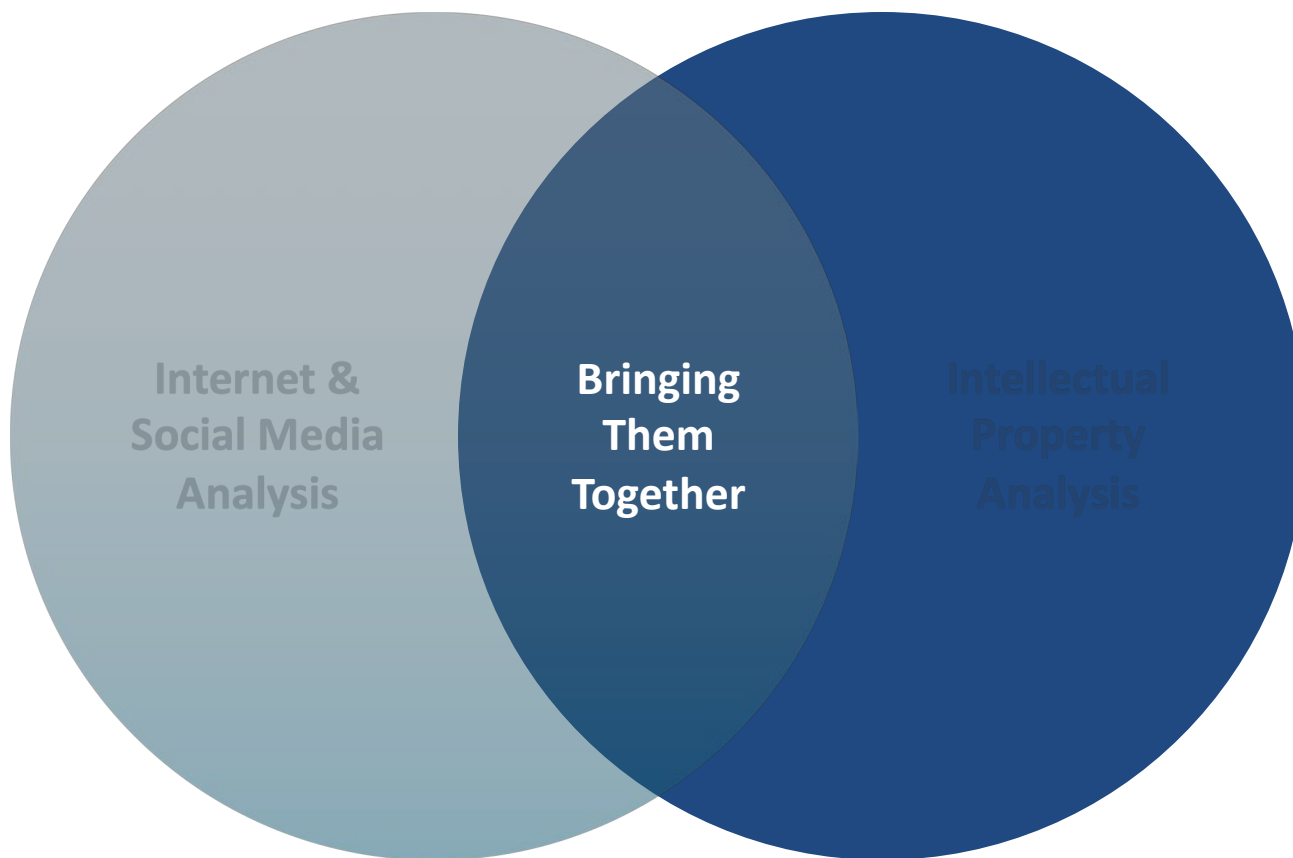
- Nearly all Search terms that drove site traffic emphasized “inspections” “safety” or “safety consultations”
- No site traffic derived from searches for inspection software, systems or tools

Google Ads

- Pre and post-acquisition, the Target invested in Paid Advertising
- Purchased terms emphasized “consultants” “inspection teams” and other people-oriented terms
- Company had not purchased terms related to “systems” “software” or “tools”

Combined with other analytical tools, these analyses indicated the Software provided a lower financial contribution and we reached a low valuation opinion

Bringing Them Together



Challenges for the Expert

What's known about Search & Optimization

- “It’s Google’s algorithm” there are multiple versions of best practices and no practitioner knows exactly how search engines actually select and place websites
- Google Ads and Paid Search prices change over time

Understand the Context of the Calculation

- Just because a number was calculated, doesn’t mean the number is relevant
- Replacement cost based on pay per click can indicate the value of time and effort replaced, but not necessarily the value of brand or TM
- The Subject IP may not be the most important asset for apportionment, consider the possibility the Subject IP may be less important than other assets and resources
- Visits to a website indicates and corresponding purchases indicates visits and sales, not necessarily profits

The Data is available, but it may not always support your initial hypothesis

What to Ask For

Initial Questions & Information Requests

Still need the standard Company & Financial Information

- Historical financial reports
- Business plans, budgets, forecasts
- Key managers, employees
- Sales & margin by product / service
- Industry & market information
- etc., etc.

The Internet & Social Media Request

- List of all Domain names and websites, and description of e-commerce activities; for each domain name: registrar details and proof of ownership
- List of social media accounts and username and password login details
- Description of online and traditional promotional programs, including marketing and advertising campaigns
- Access to the company's website analytics software, e.g., Quantcast or Google Analytics
- Relevant analytic data related to website visits, time visitors remain on the site and number of page views per unique visitor, etc.
- Website platform details and any work-for-hire contracts
- Access to online marketing and/or Customer Relationship Management (CRM) databases

Getting the data may require some education of your own client

Concluding Comments

Our Top Takeaways

- The Internet and Social Media marketing world requires educating your audience before proceeding to the quantitative analysis;
- The Internet Marketing World is less understood, but offers many advantages for financial and economic analysis (there is defensible evidence if you know where to look, and how to explain it)
- Using the analytical advantages available from Internet & Social Media marketing allows compelling Valuation and Expert Analysis (*the proof is available*)
- Be aware of the limits of your calculations

Internet and social media data analysis provides additional tools for the Art & Science of Valuation and Damages Analysis

Thank You

Doug Bania and Brian Buss

www.nevium.com

Nevium

Nevium specializes in intellectual property valuations and expert testimony related to trademarks, copyrights, patents, brands, publicity rights and intangible assets. For IP litigators we provide expert damages testimony that combines our knowledge of Internet and social media analytic tools with accepted methodologies and concise narratives. For C-level Executives and In-House Counsel we provide IP valuation and portfolio strategies with a focus on connecting IP to financial performance and using IP to increase profits.

Our services include:

Valuation: Valuation and financial analysis of patents, copyrights, trademarks, brands, intangible assets and business enterprises.

Damages Experts: Expert testimony and damages opinions for IP infringement, defamation, marketing, business interruption, publicity rights and civil litigation.

Strategic Advisors: Strategic services to leverage IP assets and connect IP to financial performance.

Infringement Investigation: Analysis of IP infringement on websites, social media, SEO and online advertising.