

## TT 106 Leveraging IP as Collateral: Tips and Watchouts for SMEs and Start-Ups

Moderator: **Brian Buss**, Nevium Intellectual Property Consultants (United States)

Time: Tuesday, November 16, 2021, 10:30 am Pacific Time

Handout available at: <https://nevium.com/blog>

### Attendee Introductions

- Please provide your contact information in the Video Meeting chat
- If possible, edit your Screen name to include your Name, Firm and Location

### Topic Introduction

Brand assets are widely acknowledged to be some of the most valuable assets at many global corporations.

*In today's knowledge-based economy, intangible assets, including brands, are recognized as highly valuable properties, contributing to revenue and growth, and propelling a significant share of the value of a business (INTA Brand Value Special Task Force Report, April 2020)*

While the common acknowledgement is that “strong” brands are key business assets with the potential to improve financial performance, not all brands have developed to provide measurable financial and economic benefits to the organization.

Factors that make the use of brand assets as collateral challenging:

- At most businesses, the bundle of brand assets is more than trade names and trademark registrations. A “strong” or “valuable” bundle of brand assets may contain trademarks, logos, websites, social media accounts, slogans and more. Use as collateral will require identification and definition of the assets serving as collateral.
- Brand Assets provide benefits to the brand owning organization but may not provide the same benefits to another organization. Value to the current owner will likely be different than value for the lender.
- Brand Assets can fluctuate in value based on external factors. Value at the loan date may not be the same as value at the liquidation date.
- Currently, little consensus regarding “best practices” for either brand evaluation or brand valuation.
- Start-ups and SME’s typically have not developed brand assets with sufficient strength or value to serve as collateral. What can smaller companies do to build brand strength and brand value?

Using an organization’s most valuable assets as collateral makes sense in theory but might be easier said than done.

## Suggested Topics for Today's Discussion:

### 1. Sample transactions using Brand Assets at Collateral

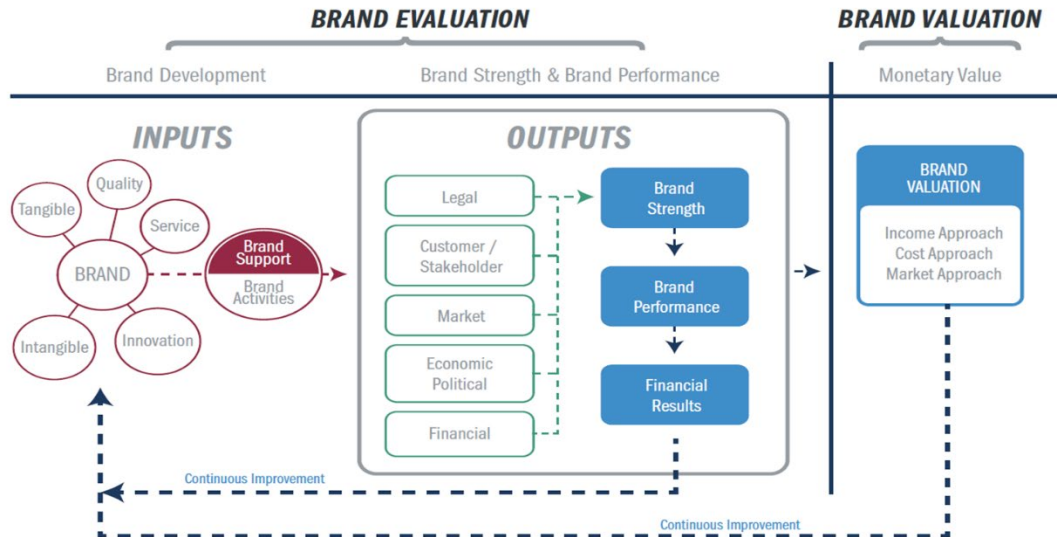
- a. Anyone know of transactions where brand assets served as collateral? Any examples of transactions where brand assets were identified as collateral separate from a general lien on all assets?
- b. Any restrictions or legal limitations prohibiting use of brands, trademarks and intellectual properties as collateral in your jurisdictions?
- c. Common structures:
  - i. ABL (Asset-backed Loan): Brand Assets becomes part of the borrowing base, usually at some percentage of Net Forced Liquidation Value (less than Fair Market Value or NOLV, Net Orderly Liquidation Value)
  - ii. Stretch ABL: Brand is valued and is part of first lien collateral package. Lender is willing to stretch to higher advance rates given backstop or boot collateral (nice to have as collateral, but not primary collateral).
  - iii. Second Lien: Lender gets second lien on working capital assets and first lien on the IP.
- d. Any organizations actively lending and using brand assets as collateral? What are the brand strength or brand value requirements? How is "Brand" defined?
  - i. Relatively well-known brand investors: Iconix, Sequential Brands, BlueStar Alliance, Authentic Brands, Marquee Brands
  - ii. Private equity, Commercial banks, etc.
  - iii. How do lenders monitor and track the value and performance of trademarks and brands used as collateral?
- e. What is the best role for INTA in facilitating use of trademarks and brand assets as collateral?
  - i. Educate and encourage lenders to use trademarks as collateral
  - ii. Track and monitor market transactions
  - iii. Promote brand and trademark valuation
  - iv. Other role(s)?

### 2. Other IP Transactions

- a. Royalty-based Transactions: Claim to future royalties v. claim to trademark and brand assets. Examples include the "Bowie Bonds" of 1997 and auctions on [Royalty Exchange](#).
- b. Sale / License Back Transactions
- c. Trademark Marketplaces: [www.ustrademarkexchange.com](http://www.ustrademarkexchange.com)

### 3. ISO Brand Evaluation and Brand Valuation Standards

#### a. ISO 10668: Brand Valuation and ISO 20671: Brand Evaluation



b. Is Your Organization aware of these Standards? Previous INTA surveys indicated low awareness amongst brand owners and outside counsel

c. How might guidelines or standards increase the likelihood of brand assets serving as collateral?

### Continuing the Conversation

- Navigate to the INTA Café via the Business Development Tab in 2021 Annual Meeting Virtual+ main platform
- Exchange contact information and meet at INTAConnect
- Use LinkedIn to connect with your fellow table topic registrants

### Moderator

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*Nevium specializes in intellectual property valuations and expert testimony. Nevium provides the IP community with a visionary approach to calculating and communicating the financial impact of trademarks, copyrights, patents, brands 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.*

## Additional Resources

- INTA Brand Value Special Task Force Report, April 2020: <https://www.inta.org/wp-content/uploads/public-files/perspectives/industry-research/Brand-Value-Special-Task-Force-Report-Executive-Summary-1.pdf>
- ISO 10668: <https://www.iso.org/standard/46032.html> and ISO 20671: <https://www.iso.org/standard/68786.html>
- INTA Fact Sheet: Assignments, Licenses and Valuation, <https://www.inta.org/fact-sheets/trademark-assignments/>