

# Valuing Trademarks In China

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Many changes in intellectual property laws in recent years have resulted in improved trademark valuation techniques

**T**rademark valuation, or the valuation of trademark rights, as it is also referred to in China, is still something relatively new to many people. Nonetheless, trademark valuation has been a hot topic in recent years as more and more people realize the value of trademarks and of intellectual property as a whole.

Although China had a trademark registration system starting from the 1980s and issued trademarks, whether foreign or domestic could be registered and enforced, China was then a central planning economy. Little competition existed and enterprises could easily survive without using and registering their trademarks. In the mid-1980s, with the promulgation of the Trademark, Patent, Copyright, and Anti-Unfair Competition Laws people began to establish the awareness of industrial property and intellectual property. Although it was known that trademarks, particularly registered and famous marks were assets, it was not in the sense of industrial or intellectual property.

There was only a very small number of trademark registrations before 1980, but this number increased drastically in the 1990s, and particularly after 1993 and 1994. Today, the total number of trademark registrations is more than 500,000 (among which 200,000 are owned by foreign nationals, including enterprises in China via WFOEs), and annual new filing amounts to 140,000<sup>1</sup> as a result of the promotion of intellectual property.

In the meantime, acquisition, merger, reorganization, licensing, liquidation, infringement lawsuit

once rare under the planning economy became common in a market economy. All these changes inevitably involve the transfer and shift of assets, whether tangible or intangible. Therefore it becomes natural and necessary to assess assets, including trademarks that now benefit their proprietors in the market.

## LAW AND REGULATIONS GOVERNING IP VALUATION

Since the 1980s, China has promulgated various laws and regulations dealing specifically with intellectual property protection. These include the Trademark Law (1982 as amended in 1993) and its detailed Implementing Regulations, the Patent Law (1984 as amended 1992) and its Implementing Regulations, the Copyright Law (1990) and the Anti-Unfair Competition Law (1993). Meanwhile, China became a party to a number of international treaties, conventions and agreements regarding the protection of intellectual property, which include the Paris Convention, the Madrid Agreement, Patent Cooperation Treaty, Bern Convention, etc. Trademarks, trade names,<sup>2</sup> patents, copyrights, etc. are hence protectable and undeniably intellectual property rights in China with the establishment of such legal systems.

Regulations and guidelines have been adopted and published concerning the valuation of assets. The first such regulations are the "Regulations Concerning the Valuation of State-Owned Assets" published in 1991. Literally, most assets in this country were owned by the State. It appeared logical for the State to publish guidelines in the assessment of assets. There were other regulations and guidelines adopted and published by the Bureau of State-Owned Assets and

China Assets Appraisers Association, but none of them were specifically adopted to deal with the valuation and appraisal of trademarks, although there were some criteria therein to elaborate the characteristics and attributes to consider in trademark valuation.

Besides, in order to be a qualified trademark appraiser, according to regulations published in 1990 by the State Administration for Industry and Commerce (SAIC),<sup>3</sup> under which the Trademark Office is a department, one must have a background of higher education, with practical experience in trademark matters for at least three years and pass examinations organized by the SAIC. One also to be qualified for trademark appraisal/valuation, a must include at least five credited public accountants, professionals in economics and engineering and three qualified trademark appraisers.

In most cases, however, trademarks are evaluated by a team consisting of certified public accountants, economists, legal experts and trademark practitioners.

## METHODOLOGIES AND APPROACHES USED TO ASSESS TRADEMARKS

Methods and approaches to assess trademarks are very much the same with what have been used in valuation of tangible assets. As suggested in the "Regulations Concerning the Valuation of State-Owned Assets," for purposes of assets valuation, four methods shall be used:

- Income approach.
- Replacement cost approach.
- Current market value approach.

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#### • Liquidation approach.

These approaches are basically transferred from tangible assets valuation, and may not best fit the assessment of intangible assets, particularly trademarks. Nevertheless, they are methods that are used in trademark valuation in China.

#### Income Approach

This approach is to value a trademark by means of converting the expected income (earnings) in each year within a certain period of time (usually the validity period of a registered trademark) into cash according to appropriate discount rate, and after adding them up, to obtain present value of trademarks.

This approach may have its disadvantages, however. One example is that a newly registered trademark may have a higher value than a mark that has been used for some time, if only the validity period of registered trademark is taken into consideration. Meanwhile, this method is said to easily over-estimate the actual and realistic value of a trademark, since it multiplies the "expected" income, even if appropriate discount rate is used. By using this method, the value of trademark tends to be higher than the one by other methods.

Nevertheless, this approach remains a better way in trademark valuation and hence it is used more regularly in many cases of trademark valuation. When considering the overall and comprehensive characteristics of a trademark, this method can also reach acceptable and satisfactory results.

#### Replacement Cost Approach

This approach is to evaluate a trademark by totaling the costs to replace the present trademark, i.e. the total costs to obtain a trademark at present conditions. Yet, due to the exclusivity of trademark and other difficulties, it appears very unlikely to replace a trademark. This approach may be quite applicable in intangible asset assessment, but not quite so in trademark valuation. In the meantime, trademarks tend to be under-valued by this approach. Two main attention may be

drawn to the "costs" of replacing the trademarks while their profitability and other positive prospects may be neglected.

#### Current Market Value Approach

Current market value approach, as its name indicates, is an approach to evaluate trademarks by making reference to comparable existing assets in the marketplace. This approach has not been widely used, at least for the time being, because there have not been enough comparable existing assets. Even if there were, the trading conditions and other important aspects to consider may not be accessible to the public, as this market is not yet well developed. However, there is a tendency, which is also encouraged and supported by the government, that trademarks and other forms of intangible assets, shall be able to be accessible in the market.

#### Other Methods Under Discussion

Other methods of trademark valuation includes a combination of income approach and replacement cost approach, and the method of surplus profit.<sup>1</sup>

#### Method of Combination of Income Approach and Replacement Cost Approach

As said above, by way of income approach, the value of trademarks could be over-estimated, while by way of replacement-cost approach, it could be under-estimated. It is suggested that income approach be used to assess total assets, whether tangible or intangible, and replacement-cost approach to assess tangible assets. Therefore, the value of intangible assets can be obtained. By reasonably deducting the value of other forms of intellectual property, the value of trademarks would be obvious.

However, this poses a further question: What is the reasonable deduction of the value of other forms of intellectual property, and how can this be achieved?

#### Method of Surplus Profit

This is a method of comparing the profit of one mark with that of another owned by the same proprietor under similar and comparable conditions. This can be ex-

plained by way of example. A Chinese cosmetic company owned then a known and registered trademark "MASAM" is another only with minimal consideration, and replaced this mark with a new brand "星星" ("XINGXING"), or "SHINE STAR" on the same products. The sales of "XINGXING" was not satisfactory until later "MASAM" was brought back to the company and generated great sales. In the following years "MASAM" continued to be a successful brand and the value of "MASAM" was obtained by comparing with that of "XINGXING."

Yet, this method may be of limited reference because this is one of the very few examples, and there were not many companies that would sell their trademarks and then get them back again, solely for the purpose of assessing their value.

#### ATTRIBUTES TO CONSIDER IN TRADEMARK VALUATION

Methods and approaches are important to trademark valuation, but the characteristics and attributes of trademarks to be taken into consideration are equally important in overall assessment of trademarks. The numerous attributes will include at least the following:

• Legal status, or whether it is registered and legally protected. According to the Trademark Law, only registered trademarks are protected therefore an unregistered trademark is very uncertain and will not be protected. Hence, it basically has no or little value. A first question to ask in valuation of trademarks is, "Is this a registered trademark?"

• Stability, or whether it is legally incontestable. A registered trademark can be subject to cancellation for various reasons. A weak trademark can be very unstable even after registration because one can have little or no value. In 1995, for example, a trademark "999" was registered for cigarettes. This trademark was filed for registration in the belief that it would be highly valuable particularly in connection with the trademark of King King to Maierland/China. It never intended

to sell this registration to a local tobacco monopoly for ten million Yuan (or 1.3 million U.S. dollars). But it was canceled by the Trademark Office on grounds of its intent to profit from a historical event.

• The use of the mark, or whether the mark has been used for a long time and the extent to which the mark has been used. This will also include the geographic area the mark is used.

• The costs for obtaining and maintaining the trademark. This includes costs for registration, enforcement, renewal and other costs to maintain a valid and enforceable trademark.

• Profitability, the ability to profit in the past and in the future.

• Recognition, or whether the trademark is widely recognized and well known to the public. This brand recognition is vital to the value of trademarks. Today, the most valuable trademarks are all well-known ones, whether domestically or internationally.

• Life expectancy, or the ability and time for a particular brand to survive and to be successful.

These attributes are important in that they had greater influences to the value of trademarks in almost all circumstances in the course of trademark valuation.

#### EXAMPLES OF TRADEMARKS THAT HAVE BEEN EVALUATED

There were nearly 2,000 assets appraised firms in China. These firms mainly engaged in tangible assets appraisal. It was until the end of 1993 or the beginning of 1994 trademark valuation cases were reported.

The first examples were the GREAT WALL HOTEL (大墙酒店) and QUANLUDE RESTAURANT (全福楼饭店). The GREAT WALL HOTEL is a member of Sheraton International Hotel chain and is the oldest joint venture-foreigner hotel in Beijing. In January 1994 it was estimated by Beijing Jiaohong Assets Appraisal Limited to be worth 260 million Yuan (or 30 million U.S. dollars). QUANLUDE RESTAURANT is one that serves the well-known Beijing roast duck

with a history of more than 100 years. It was estimated to be worth 271 million Yuan (or 30 million U.S. dollars).

There were reports that trademark (also trade names) had been evaluated elsewhere other than in Beijing.

It was at this time, when more trademarks were evaluated and reported that public attention was drawn to the fact that trademarks (and service marks, trade names and the like) could be far more valuable than they would have thought as "intangible" property.

In 1995, some of the most valuable brands were reported:<sup>1</sup>

1. 红双喜 (RED PAGODA), a cigarette brand, worth 11,000 million Yuan (1,230 million U.S. dollars).

2. 555 (555), a Chinese liquor brand, worth 1,000 million Yuan (120 million U.S. dollars).

3. 三鞭补 (SHANFUWEI), an "888" medicine brand, worth 800 million Yuan (86 million U.S. dollars).

4. 白云山 (BAYUNSHAN) or "FLOWING ROCK CLOUDS," a cosmetic brand, worth 60 million Yuan (7.5 million U.S. dollars).

5. 黑熊 (BLACK BEAR), a toothpaste brand, worth 50 million Yuan (5.6 million U.S. dollars).

In 1996, the five most valuable brands were:<sup>2</sup>

1. 红双喜 (HONGTASHANG), or "RED PAGODA," a cigarette brand, worth 11,300 million Yuan (1,260 million U.S. dollars).

2. 长虹 (CHANGCHONG), or "KAIMING," a TV electronic brand, worth 12,200 million Yuan (1,420 million U.S. dollars).

3. 海尔 (HAIER), a refrigerator and air conditioner brand, worth 7,750 million Yuan (850 million U.S. dollars).

4. 一汽 (YI), or "FIRST AUTOMOBILE," a car and truck brand, worth 6,790 million Yuan (845 million U.S. dollars).

5. 奇瑞 (CHERYN), an air conditioner and motorcycle brand, worth 4,894 million Yuan (790 million U.S. dollars).

In 1997, the five most valuable brands were:<sup>3</sup>

1. 红双喜 (HONGTASHANG), or "RED PAGODA," a cigarette brand, worth 35,400 million Yuan (4,260 million U.S. dollars).

2. 长虹 (CHANGCHONG), or "KAIMING," a TV and electronic brand, worth 15,200 million Yuan (2,190 million U.S. dollars).

3. 海尔 (HAIER), a refrigerator and air conditioner brand, worth 11,800 million Yuan (1,402 million U.S. dollars).

4. 一汽 (YI), or "FIRST AUTOMOBILE," a car and truck brand, worth 7,290 million Yuan (879 million U.S. dollars).

5. 奇瑞 (CHERYN), a TV brand, worth 3,560 million Yuan (400 million U.S. dollars).

These brands represent China's most well-known trademarks. A simple comparison will show how low the value of trademarks can be. In 1996, HONGTASHANG is the best example if one looks at its value in 1990 and that in 1997. Although questions are still asked as to the accuracy of such valuation and the credibility of these figures, there is no doubt about the fact that intangible assets can grow much faster than tangible assets can when they are properly managed.

The valuation of trademarks in China is certainly still in its primary stage. The studies into the methodology and approaches have just begun, and the ways of trademarks that are evaluated are still very much the ways to assess tangible assets although important characteristics of trademark valuation have been noted. It will take time to establish more scientific and systematic methods to test fit the valuation of trademarks in this country. Nevertheless, those first steps have at least helped to promote the vital importance of protecting trademarks, and intellectual property as a whole. In the meantime, it helps to make known how valuable trademarks, and other forms of intellectual property can be to the success of business, particularly in a more open and globalized economy.

#### NOTES

1. See "1997 Annual Report," China Trademark Office.

2. "Trade names" herein refers to, particularly those that are also registered in trademarks.

3. See "Regulations Concerning Trademark Valuation Appraisals," p. 488, "National Laws and Regulations Concerning the Valuation of Patents," Edited by China Trademark Office.

4. See "On the Evaluation of Trademarks," *Pat. (Rev. Change)*, p. 27, China

Patent & Trademark, Issue No. 1, 1997.

5. See "The Situation of Intangible Asset Valuation and Its Development in China," pp. 133-140, *China's Intellectual Property Studies*, Issue No. 1, 1996.

6. See "Appraisal of China's Most Valuable Trademarks," *China's Intellectual Property*.

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7. See "How to Evaluate a Trademark Valuable Brand," *China Intellectual Property Studies*, Issue "Evaluating Trademark Values," March 1998. These trademarks were evaluated by Beijing Renmin Brand Valuation Limited.