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Jessica L. Bailey-Wheaton, Esq., Editor
Todd A. Zigrang MBA, MHA, ASA, FACHE, Publisher

What's Your Brand Worth? The Benefits of a Brand to the Grantee (Part 3 of a 4 Part Series)

As discussed in the first installment of this four-part series, *trademarks* and *trade names* are symbols that represent an intangible quality of the good or service provided under the trademark/trade name. These attributes might include quality, reliability, and/or dependability, and they may be classified generally as *reputational*. Value for a trademark/trade name arises from its ability to transfer this *reputational* quality to a product or service.[1] Trademarks and trade names are both components of the brand of a business entity.

The first part of this four-part series set forth an overview of *trademark* and *trade name* valuation as it relates to the healthcare industry. The second installment reviewed the economic benefits accruing to the consumers of the *trademark* or *trade name* (i.e., patients). This third installment will review the economic benefits accruing to the grantee (licensee) of the *trademark* or *trade name*.

Trademarks and trade names hold distinct economic value for each party involved. They reduce information asymmetries for consumers[2] and bring recognition and "*brand loyalty*" to the subject enterprise through the perception of quality assurance in the goods and/or services provided by the branded organization.[3] Healthcare enterprises have grown their business by licensing the use of their trademarks and trade names to others, i.e., granting permission to a licensee (grantee) to use the trademark(s) and/ or trade names(s) owned by the licensor (grantor). This phenomenon has become common in the healthcare industry, with enterprises such as Mayo Clinic, Cleveland Clinic, and Johns Hopkins using affiliations with various other hospitals and physician practices to expand their reach beyond their Market Service Area (MSA) and across the U.S.

A grantee usually uses a trademark or a trade name to leverage the reputation and goodwill attached to that brand. Trademarks associated with successful and highly advertised products have developed tremendous goodwill with consumers.[4] It is this goodwill that the grantee can use to their advantage and derive benefit from it. Usually the grantor is a larger entity with greater reach and, in that situation, the grantee can "bask in the reflected glory"[5] of the grantor by using their trademark or trade name.

To avail themselves of these benefits attached to a trademark or trade name, the grantee agrees to pay a fixed price, i.e., royalty. One technique to estimate this royalty rate is through a comparison of the market for rates for similar transactions. Another technique may be to calculate the royalty rate based on the incremental income attributable to the trademark or trade name. The royalty rate can then be determined by dividing the total sales revenue of the grantee by the incremental earnings attributable to the trademark or trade name.[6]

The incremental earnings attributable to the trademark or trade name are the additional revenue that the grantee will realize from the increase in sales and the higher prices which can be demanded through the use of the trademark or the trade name.[7]

As discussed in Part One of this series, one of the ways a trademark or a trade name may be valued is through the income-based method of incremental earnings. This method may be one of the most relevant methods from the perspective of the grantee as it seeks to quantify the difference between the: (1) earnings of the business enterprise *with* the use of the trademark or trade name; and, (2) the earnings of the business segment *without* the use of the trademark or the trade name.[8] This can be quantified by calculating the difference in earnings between a branded product and an unbranded product, or by building assumptions as to how the business would change after the acquisition of the trademark or trade name and quantifying these changes. Analysts may find it difficult to measure these earnings accurately as it is difficult to predict the precise impact of a trademark or trade name on the operation of a business; additionally, the healthcare industry lacks generic products to which a brand can be compared, unlike industries such as food or retail goods.

Due to the lack of accurate information to predict incremental earnings by the use of a trademark or trade name, the analyst often relies on the relief from royalty method under the market-based approach. A market or income-derived royalty rate may be applied to the future cash flows of a business entity or business segment and the projected cash flows can be discounted to their present value equivalent at an appropriate risk adjusted required rate of return to arrive at an indication of value for the incremental economic benefit generated by the use of a trademark or trade name.[9] The relief from royalty method is an attempt, through normative industry market data, to quantify the expected increase in revenues and

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profits that will accrue to a grantee due to their use of the acquired trademark or trade name.

The risks to the grantee in the acquisition of a trademark or trade name include the risk that the procured goodwill might fail to generate the projected increases in revenues and profits that supported the selected royalty rate. In addition, the grantee also exposes themselves to the risks arising from any future public relations embarrassments that the brand might suffer from the use of the trademark or trade name by the grantor or other grantees, such as a large case brought by the government for fraud and abuse, or a HIPAA (Health Insurance Portability and Accountability Act of 1996) violation, that would have a negative impact on the perception by consumers of the grantee's business.

Part Four of this four part-series will specifically focus on the economic benefits accruing to the trademark or trade name *grantor*.

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1 For more information, see the first installment of this four part series: "What's Your Brand Worth? – Valuation Considerations for Healthcare Enterprises" Health Capital Topics, Vol. 11, Issue 1 (January 2018), https://www.healthcapital.com/hcc/newsletter/01_18/PDF/TRADE.pdf (Accessed 2/19/18).

2 For more information, see the second installment of this four part series: "What's Your Brand Worth? – The Benefits of a Brand to Consumers" Health Capital Topics, Vol. 11, Issue 2 (February 2018), https://www.healthcapital.com/hcc/newsletter/02_18/PDF/TRADE.pdf (Accessed 3/7/18).

3 Health Capital Topics, January 2018.

4 "Intellectual Property: Valuation, Exploitation, and Infringement Damages" By Gordon V. Smith and Russell L. Parr, Hoboken, NJ: John Wiley & Sons, 2005), p. 42.

5 "What does a Hospital's Brand Name Mean?" By Steve Sternberg, U. S. News, October 5, 2015, https://health.usnews.com/health-news/patient-advice/articles/2015/10/05/what-does-a-hospitals-brand-name-mean (Accessed 3/7/18).

6 Smith and Parr, 2005, p. 503-511.

7 "Trademark Royalties" Royalty Exchange, 2018, https://www.royaltyexchange.com/learn/trademark-royalties (Accessed 3/7/18).

8 Health Capital Topics, January 2018.

9 *Ibid.*

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Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "*The Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); American Health Lawyers Associate (AHLA); the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).

John R. Chwarzinski, MSF, MAE, is Senior Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC). Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, as well as, economic and financial analysis. Mr. Chwarzinski is the co-author of peer-reviewed and industry articles published in *Business Valuation Review* and *NACVA QuickRead*, and he has spoken before the Virginia Medical Group Management Association (VMGMA) and the Midwest Accountable Care Organization Expo. Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. He is a member of the St. Louis Chapter of the American Society of Appraisers, as well as a candidate for the Accredited Senior Appraiser designation from the American Society of Appraisers.

Jessica L. Bailey-Wheaton, Esq., is Vice President and General Counsel of **HEALTH CAPITAL CONSULTANTS** (HCC), where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.

Daniel J. Chen, MSF, is a Senior Financial Analyst at **HEALTH CAPITAL CONSULTANTS** (HCC), where he develops fair market value and commercial reasonableness opinions related to healthcare enterprises, assets, and services. In addition, Mr. Chen prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services, and applies utilization demand and reimbursement trends to project professional medical revenue streams, as well as ancillary services and technical component (ASTC) revenue streams. Mr. Chen has a Master of Science in Finance from Washington University St. Louis.