

What's Your Brand Worth? The Benefits of a Brand to the Grantor (Part 4 of a 4 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.

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 and the third installments reviewed the economic benefits accruing to the consumers and the grantee of the trademark or trade name, respectively. This fourth installment will review the economic benefits accruing to the grantor (licensor) of the trademark or trade name.

Trademarks and trade names hold distinct economic value for each party involved. They reduce information asymmetries for consumers² 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, in part, 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), subject to certain conditions and restrictions.

As discussed in Part Three of this series, the grantee benefits from the use of the trademark or trade name due to the goodwill that it generates. Licensing of trademarks or trade names is beneficial for the grantor as well. A trademark or trade name is valuable when it is recognizable, versatile, and identifies with positive attributes.⁴ The economic value of a trademark or trade name to a grantor is based on the earning power of the trademarks and trade names. It is the goodwill built and associated with the brand that a grantee is willing to pay for, as it would lead to increased revenues and profits for the grantee. In addition to the financial benefit, a trademark or trade name may also generate other, non-monetary, benefits to the grantor, such as improvements in processes and the expansion of the grantor's geographic footprint.

A trademark or trade name “*may represent investment made in advertising and quality assurance testing.*”⁵ Extensive advertising undertaken by the grantor may lead to a reduction in marketing expenses to the grantee, thereby increasing the value of the trademark or trade name.

Additionally, a grantor may use the trademark or a trade name to expand their geographic footprint and reach beyond their market service area to gain entrance in new territories and markets with relatively little investment (e.g., building another hospital).⁶ Licensing is a way for the grantor to increase its own brand recognition with every new affiliation into which the grantor enters (subject to appropriate guidelines and/or restrictions of use, as discussed below), by patients visiting one of the grantee's hospital, i.e., the grantor's branded hospitals (in contrast to a hospital physically owned and operated by the grantor), and perhaps considering the grantor's own hospital for healthcare services that may not be provided at one of the grantee's hospital.

As mentioned above, licensing provides grantors with financial benefit, principally by way of royalty payments received from the grantee. The grantor provides a grantee the right to avail itself of the benefits attached to a trademark or trade name, in return for a price, i.e., a royalty payment. This provides a passive source of income to the grantor, without losing ownership rights of the trademark or trade name. These royalty payments received from the grantee are the economic benefits of licensing trademarks and trade names to the grantor.

One technique to estimate this royalty rate is through a comparison of market royalty rates paid 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 methodology for determining an appropriate royalty rate and valuing a trademark or trade name are discussed in detail in Part Three of this Four Part series.⁷

Before licensing a trademark or trade name, often the grantor is forced, by the virtue of developing a brand value, to standardize their services and processes.⁸ These processes, which represent a brand, influence the technical and service quality, which may ultimately impact the outcomes of the business, such as, productivity and efficiency.⁹ These standardized processes also provide a guideline or restriction of use to

the grantee while using the trademark or trade name. This standardization of process may provide a benefit to the grantor by enhancing the reputation of the grantor by widening the adoption of the policies and procedures preferred by the grantor throughout the industry.

One of the risks that a grantor faces when licensing a trademark or trade name is the possibility that the grantee may not maintain the required quality control, which may, in turn, diminish the grantor's reputation. Additionally, if the grantor allows many organizations the use of its trademark or trade name, the brand reputation may be diluted making it more difficult to control and protect the associated quality and the brand image of the trademark or trade name. Standardization of the services provided and processes performed by the grantee, or restriction(s) of use, under the trademark or trade name, can help to mitigate this risk faced by the grantor.

The licensing of trademarks and trade names has become a common phenomenon in the healthcare industry, with

enterprises such as Mayo Clinic, Cleveland Clinic, and Johns Hopkins forming innovative affiliations with various other hospitals and physician practices. A variety of affiliations have been solidified (and expanded) in the past several years, with some of the most successful being the Cleveland Clinic's *Heart and Vascular Affiliation Program*, with approximately 18 affiliates nationwide,¹⁰ and Mayo Clinic's *Mayo Clinic Care Network*, with more than 40 member healthcare organizations.¹¹

The numerous benefits to the grantor listed above, such as the creation of an additional revenue stream; the expansion of the entity's geographic footprint; the standardization of core processes; the formation of strategic partnerships; and, many more, serve to encourage healthcare enterprises to license the use of the brand that they have developed, by way of licensing their trademarks and trade names to other organizations.

1 "Trademarks, Triggers, and Online Search" By Stefan and Catherine Tucker, *Journal of Empirical Legal Studies*, Volume 11, Issue 4, 718-750, December 2014.

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 "Intellectual Property: Valuation, Exploitation, and Infringement Damages" by Gordon V. Smith and Russell L. Parr, Hoboken, NJ: John Wiley & Sons, 2005), p. 43.

4 "Valuation of Intellectual Property and Intangible Assets" By Gordon V. Smith and Russell L. Parr, Hoboken, NJ: John Wiley & Sons (2005), p. 49.

5 "Guide to Intangible Asset Valuation" By Robert F. Reilly and Robert P. Schweihs, New York, NY: American Institute of Certified Public Accountants, Inc. (2013), p. 29.

6 See: "How To Establish A World-Class Corporate Brand License Program" *Forbes*, 2017,

<https://www.forbes.com/sites/oliverherzfeld/2017/02/15/how-to-establish-a-world-class-corporate-brand-licensing-program/#1a53ea452113> (Accessed 4/17/18).

7 For more information, see the third installment of this four part series: "What's Your Brand Worth? – The Benefits of a Brand to Grantee" *Health Capital Topics*, Vol. 11, Issue 3 (March 2018), https://www.healthcapital.com/hcc/newsletter/03_18/PDF/TRADE.pdf (Accessed 4/9/18).

8 "Can Branding by Health Care Provider Organizations Drive the Delivery of Higher Technical and Service Quality?" By Roman R. Snihurowych, MD; Felix Cornelius, PhD; Volker Eric Amelung, PhD, MBA, *Quality Management in Healthcare*, Volume 18, Issue 2, April-June 2009, p. 3.

9 *Ibid.*

10 "Heart & Vascular Institute: Alliances & Affiliations" Cleveland Clinic, <https://my.clevelandclinic.org/departments/heart/depts/heart-vascular-affiliates> (Accessed 4/6/18).

11 *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.