

BRAND VALUE

SPECIAL TASK FORCE REPORT

APRIL 2020

Legal

Customer
Stakeholder

BRAND
VALUE

Financial

Market

Economic
Political



International
Trademark
Association

Brand Value Special Task Force Report

April 2020





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I often say that when you can measure what you are speaking about, and express it in numbers, you know something about it, but when you cannot measure it, when you cannot express it in numbers, your knowledge is of a meagre and unsatisfactory kind...

— Sir William Thomson, Lord Kelvin (1824–1907)

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FOREWORD

Over the years, businesses have seen a fundamental shift in the sources of value creation from their tangible assets to their intangible assets: their intellectual property. 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. But just how much? How should brands be valued? These questions are taking on increasing significance with financial, legal, and marketing professionals. More importantly, with changing consumer behavior resulting from demographic, socio-economic, and technological developments, all brand professionals are faced with the question of how to measure consumer interactions with brands and how this impacts an organization.

In 2018, the INTA Board of Directors approved the creation of a Brand Value Special Task Force ("Task Force"), composed of fourteen INTA members and non-members:

- Safir Anand (Anand and Anand), India
- Amandine Bavent (BrandZ), United States
- Bobby Calder (Kellogg School of Management at Northwestern University), United States
- Bryce Coughlin (Netflix, Inc), United States
- Thomas Gounel (Formerly, Deloitte), France
- Gustavo Giay (Marval, O'Farrell & Mairal), Argentina
- David Haigh (Brand Finance), United Kingdom
- Andy Harington (The Brattle Group), Canada
- Debra Hughes (Blue Cross Blue Shield Association), United States
- Sara Perry (Netflix, Inc), United States
- Michael Rocha (Interbrand), United Kingdom
- Melody Schottle (Exxon Mobil Corporation), United States
- Jennifer Severns (American Marketing Association), United States
- Doug de Villiers (Deloitte Consulting Africa), South Africa

We are confident that this Task Force Report provides strong recommendations to advance INTA's work in the space of brand value, brand equity, brand valuation, and brand evaluation.

Over the last twenty-two months, the Task Force has engaged in focused research and dialogues designed to provide a set of recommendations for INTA. In addition to clarifying the complex concepts and definitions borne out of the different brand valuation methodologies, the Brand Value Special Task Force Report ("Task Force Report") also discusses ISO 20671: 2019 Brand Evaluation-Principles and Fundamentals which was issued in March 2019.

Section 7 of the Task Force Report highlights seven Expert Insights providing readers an in-depth look into concepts of brand value, brand equity, brand valuation, and brand evaluation from the perspective of financial, legal, and marketing professionals. Additionally, another unique feature of the Task Force Report is that it features an Expert Insight on changing trends in consumer behavior resulting from demographic, socio-economic, and technological developments.

The Task Force members have also developed a checklist of questions for brand professionals to consider when involved in brand valuation and brand evaluation dialogues with stakeholders within and outside of their organization. The Executive Summary of this Task Force Report will be available publicly. The full Task Force Report will be accessible only to INTA members.

In addition to providing a roadmap for INTA on how to advance the Association's work around brand value, brand equity, brand valuation, and evaluation, we are confident that this Task Force Report demonstrates the critical role that trademark professionals play in valuation and brand evaluation exercises alongside finance and marketing professionals, and provides the basis for formulating and developing practical applications of these developing concepts.

We thank the Task Force leaders, members, and staff for their hard work on this initiative.


Tish Berard
2018 INTA President


David Lossignol
2019 INTA President

ACKNOWLEDGMENTS

The Brand Value Special Task Force leaders and members would like to express their gratitude to the following individuals for their contributions in the development of this Task Force Report:

- Frank Findley, Marketing Accountability Standards Board
- Sheila Francis, International Trademark Association
- Renee Garrahan, International Trademark Association
- Erich Decker Hoppen, Marketing Accountability Standards Board
- Dr. Gerhard Hrebicek, European Brand Institute
- Twinky Rampal, Anand and Anand
- Amy Rand, Brand Finance
- Catherine Shen, International Trademark Association
- Heather Steinmeyer, Anthem, Inc.
- Sophie Usiskin, Interbrand

EXECUTIVE SUMMARY

The Brand Value Special Task Force (“Task Force”) was established in March 2018 to provide a set of recommendations to the INTA Board of Directors (“Board”) on how to activate essential aspects of INTA’s 2018–2021 Strategic Plan with regard to the business value of brands (including brand valuation) and brand equity.

The Task Force membership was designed to include both INTA and non-INTA members from various disciplines including but not limited to marketing, finance, economics, and accounting. The Task Force Co-Chairs created two Project Teams, namely The Harmonization Opportunities Team and The Future Team, to explore the complex concepts of brand value, brand equity, and brand valuation. The issuance of the ISO¹ 20671: 2019 Brand Evaluation – Principles and fundamentals (ISO 20671) in March 2019 expanded the original scope of work of the Task Force.

Numerous conference calls, emails, and an in-person meeting during the 2018 INTA Leadership Meeting have facilitated the Task Force’s work. Additionally, the Task Force liaised with various stakeholders within and outside of INTA to inform the work that resulted in this Task Force Report.

Key Findings and Recommendations

Section 5 of this Task Force Report sets out 20 findings and corresponding recommendations by the Task Force. For ease of reference, the specific finding numbers and related recommendations within the main Task Force Report are provided in brackets below. The top 10 key findings and recommendations of the Task Force are that there are:

Opportunities for definitional harmonization between the finance, legal, and marketing professionals. [Finding 1]

INTA’s definition of brands is problematic for financial and marketing professionals because it does not refer to brands as intangible assets that generate economic benefit or value. For ease of reference, INTA’s current definition of brands is as follows:

“Brand” means the total identity of a product or service, which a current or prospective consumer relates to and connects with intellectually, psychologically, and/or emotionally. “Brand” is a complex, multi-layered promise of what will be delivered to and experienced by the consumer.

The Task Force recommends that INTA revisits its current definition of brands and expands it to include that brands are intangible assets capable of generating economic benefits. To assist in refining its definition of brands, INTA can reference the Task Force’s research in Annex D and particularly consider the definition of brands provided within ISO 10668: 2010 Brand Valuation (ISO 10668)– Requirements for monetary brand valuation because both marketing and financial professionals within the Task Force accepted this definition.

Opportunities for definitional clarity within INTA for terms such as brand value and brand equity. [Finding 2]

INTA does not have a working definition for the terms brand value and brand equity, even though these terms are used in INTA’s 2018–2021 Strategic Plan.

The Task Force, through desktop research, found various definitions for the term brand value and brand equity, which can be found in Annex D. After reviewing the definitions for brand value, the two definitions that stood out to the Task Force were the definitions provided by ISO 10668 and ISO 20671 (Standards) which are set out below:

- ISO 10668 defines brand value as the total economic value of a brand in transferable monetary units.
- ISO 20671 defines brand value as the worth of a brand as an asset for an entity.

Both of these Standards were developed by the International Organization for Standardization (ISO).

The Task Force could not agree on the definition to adopt, because the definition provided by ISO 10668 was provided from an accounting perspective while the definition provided by ISO 20671 was written from a marketing perspective. As a result of this, both definitions were maintained in the Task Force Report.

For the term brand equity, both ISO Standards mentioned above did not define the term. The Task Force adopted the American Marketing Association’s (AMA’s) definition of brand equity, which is:

“The value of the brand. From a consumer perspective, brand equity is based on consumer attitudes about positive brand attributes and favorable consequences of brand use.”

1. ISO refers to the International Standards Organization. ISO is an independent, non-governmental international organization with a membership of 164 national standards bodies. Through its members, it brings together experts to share knowledge and develop voluntary, consensus-based, market relevant International Standards that support innovation and provide solutions to global challenges.

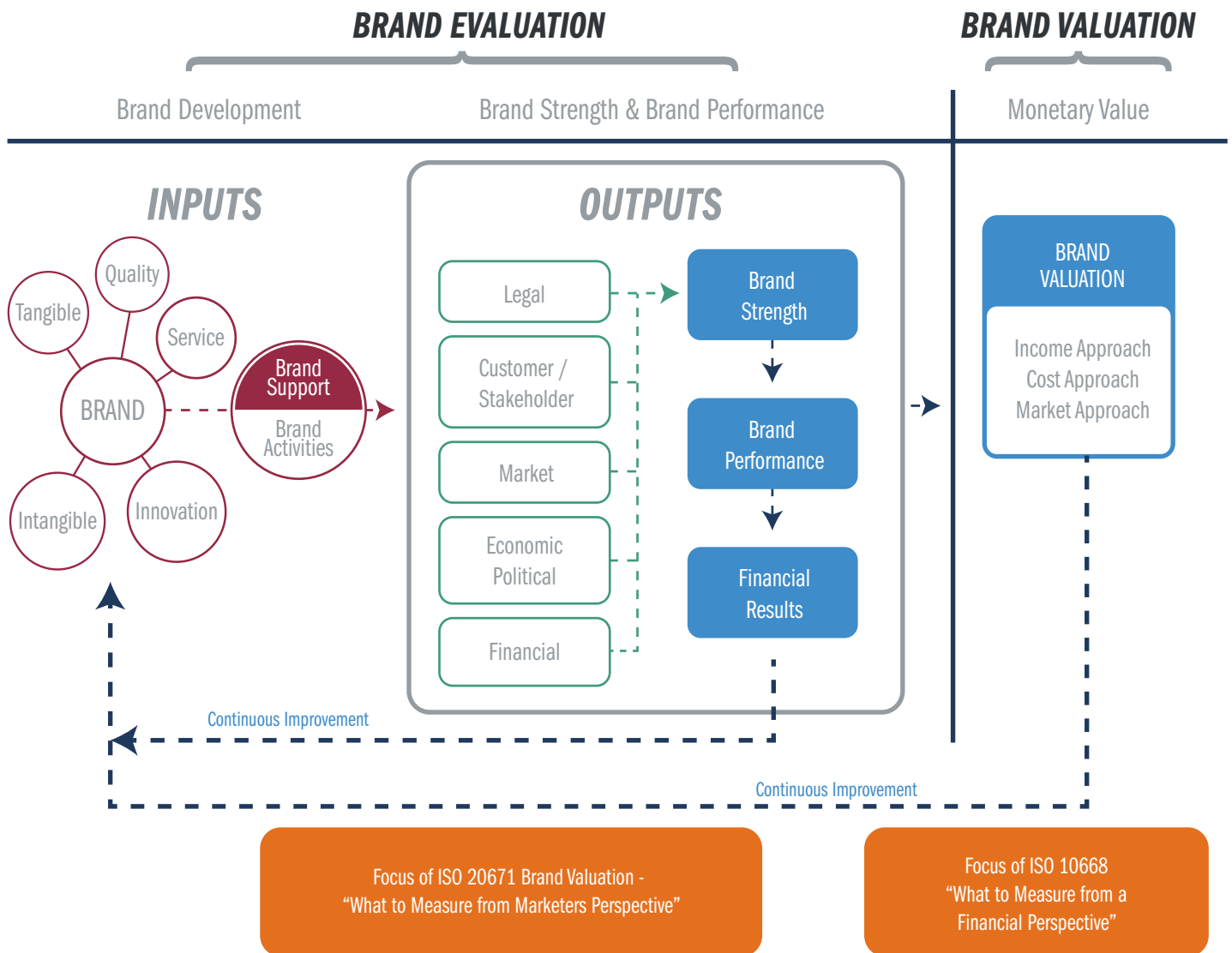
The Task Force recommends that INTA appoints an INTA committee to update the research compiled in Annex D and propose interim working definitions for brand value and brand equity for use by the Association.

Opportunities for INTA to engage with the ISO to support the development of “legal considerations” and “legal dimensions” as aspects of the ISO Standards dealing with brand valuation and brand evaluation. [Findings 3, 8, 11, and 13]

At the outset, the Task Force members recognized that tax legislation, banking regulations, accounting standards, and valuation standards all come into play when valuing intangible assets. So, the Task Force members focused on some of the international and national accounting standards and valuation standards related to intangible assets that would be beneficial for legal practitioners. Specifically, there are only two standards globally that focus on brands. These standards are ISO 10668 and ISO 20671 (Standards).

ISO 20671 defines brand valuation as the measurement of monetary brand value at a point-in-time, while it defines brand evaluation as the measurement of brand strength, brand performance, and financial results using relevant elements and dimensions.

The interplay between brand valuation and brand evaluation is schematically represented in this graphic:



Source: © ISO. This material is reproduced from ISO 31000: 2009, with permission of the American National Standards Institute (ANSI) on behalf of the International Organization for Standardization. All rights reserved.

“Legal considerations” and “legal dimensions” feature in the ISO 10668 and ISO 20671, as they are essential segments in brand valuation and brand evaluation exercises. However, it is unclear to Task Force members to what extent legal practitioners have been involved in the development of these aspects of the Standards.

During the review of both Standards, the Task Force identified several definitional inconsistencies and gaps in ISO 10668 and ISO 20671, that could merit review in terms of definitional harmonization. It was also unclear to the Task Force members whether the provisions of ISO 10668 were wholly incorporated into ISO 20671.

The Task Force recommends that INTA should appoint an INTA committee to conduct a robust definitional review of both Standards and share completed findings with the ISO. The foundation for the engagement with the ISO has already been set through the participation of Dr. Bobby Calder, Chair of Technical Committee 289 of the ISO (the Technical Committee responsible for developing ISO 20671) in the Task Force, and introductions that Professor Calder has facilitated to INTA.

Opportunities for INTA to be a resource for financial and marketing professionals on the “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises. [Findings 4, 5, 6, 10, and 20]

During the Task Force dialogues, it was clear that the treatment of homegrown brands by accounting professionals has been met with creative tensions between the accounting and legal and marketing professionals. While there were several other situations where Task Force members were not always in complete agreement, they (especially financial professionals) were unanimous on the role INTA could play in being a facilitator for dialogues and a central repository on information related to “legal considerations” and “legal dimensions” in brand valuation and brand evaluation respectively. Apart from some of the definitional harmonization opportunities identified above, the Task Force members were interested to know about case law developments around the topic of damages in litigation related to brands, and the approaches that countries were taking towards standardization of valuation practices.

On the other hand, marketing professionals within the Task Force shared that technological developments are outpacing the development of tools to measure ever-changing consumer behavior and by extension, consumer interactions with brands. For example, net promoter score (NPS) is a common way for marketing teams to measure a customer’s willingness to recommend a product, and this sometimes is used as a quick and dirty measure of brand value. However, NPS cannot be measured in real-time.

If there are more robust tools to measure changing consumer behavior in real-time, the Task Force members speculated that there could be more interest in using the market approach when it comes to brand valuation. Additionally, the Task Force members thought that the measurement of consumer interactions could directly impact the implementation and use of ISO 20671, particularly around the topic of brand strength.

INTA should continue discussions with marketing professionals through organizations like the AMA to determine what types of tools are available in the marketplace and whether there are opportunities to jointly develop tools that could assist in measuring some of these consumer interactions.

The Task Force recommends that INTA appoints an INTA committee to provide a proposal on the above-mentioned items (joint events, online repository, and potential tools to measure consumer interactions).

Opportunities for INTA to engage with accounting, auditing, banking, insurance, and related associations, as well as other institutions that develop certification programs on the “legal considerations” and “legal dimensions” in brand valuation and brand evaluation exercises. [Findings 4, 5, 6, 8, 9, 10, and 12]

The current 2018–2021 Strategic Plan emphasizes the importance of INTA building bridges with other professional organizations to remain part of the brand equity conversation. The finance community is a large part of this dialogue and, currently, INTA does not engage with such organizations. The Task Force recommends that INTA should also seek out bridge-building opportunities with accounting, auditing, banking, insurance, and other related associations.

The Task Force also recommends that it is vital for INTA to build bridges with organizations that develop certification programs on IP or brand valuation for finance (accounting) professionals. This will position INTA to support the development of a robust “legal considerations” segment in these programs so that accountants are more equipped to understand some of the brand-related legal issues in brand valuation and brand evaluation exercises. Similarly, the Task Force also recommends that it is essential for INTA to build bridges with organizations that develop brand evaluation certification programs.

Opportunities for in-house practitioners to be stronger strategic partners with their finance and marketing teams in brand valuation and brand evaluation exercises. [Findings 4, 5, 6, 7, 10, 14, and 15]

In 2019, INTA in-house practitioners were invited to participate in World Trademark Review’s (WTR’s) 2019 In-house benchmarking research. The research included a new section on brand strategy.

WTR's report released on May 1, 2019, found that "it is still too often the case that companies do not fully appreciate the value of the brands on which they have built their business and use to extend market reach for their products. This suspicion is backed up by the finding that less than one-third of responding companies had their brands valued by a valuation firm. While an additional 17 percent said that their company was considering a valuation exercise, more than half (53 percent) were not."

The same WTR survey also shed some light on the interplay between the finance and trademark functions, with just half the respondents getting involved in tax-related matters and less than 40 percent charging intra-group license fees. Additionally, more than half of the respondents (51.7%) did not know whether any company trademarks or brands were included as an asset on the corporate balance sheet. For many, this would be the case only when a transaction has occurred, triggering reporting requirements.

The Task Force members had several recommendations to support in-house practitioners in this area:

- Legal, marketing, and finance teams should meet annually or at an appropriate interval to determine:
 - the brand(s) to be valued and evaluated;
 - how the value of brands is captured within their organization;
 - the purpose of the valuation or evaluation;
 - how the valuation or evaluation would be used (internal to business stakeholders, to share with licensees or affiliated companies, for an acquisition or divestiture consideration, or other purposes).
- Legal, marketing, and finance teams should work together to develop routine brand valuation and evaluation programs (for the latter, once ISO 20671 is further refined).
- In-house practitioners should have a series of educational sessions with finance and marketing professionals on the following:
 - Presentation from brand professionals about "what is a brand" and the inventory of legal rights related to brands and/or the portfolio of brands. The Task Force has developed a list of questions for trademark professionals to consider when determining the scope of brand assets and related rights in the valuation in Annex G, which can be shared during these types of presentations.
 - Presentation from marketing about consumer perception related to core brand(s) and perhaps the strategic direction for these brands, such as areas of growth, licensing opportunities, and the tools in place to measure consumer interactions.
 - Presentation from finance professionals on how brand value is captured within the organization.
 - Presentation from brand valuers on various valuation approaches and methods and which approaches would be best suited to which transactions.
- Legal teams should read reports by various brand consultancies and understand the brand valuation approaches that they utilize.

Opportunities for law firm practitioners to be stronger strategic partners with their clients in brand valuation and brand evaluation exercises. [Finding 16]

The Task Force did not find any recent benchmarking research analyzing the changes to the trademark practice in law firms resulting from topics related to brand valuation and brand evaluation. However, the 2019 Citi Hildebrandt Client Advisory indicated that law firm leaders identified mergers & acquisitions/transactional work as the primary driver for practice growth opportunities, particularly in the United States, closely followed by general litigation and financial/capital markets work. The Task Force inferred from this that there could correspondingly be growth in demand for valuation expertise based on these practice growth areas.

Given the close strategic partnership that law firms share with their in-house clients and growth in M&A/transactional work, it is essential for law firms to increase competencies in the areas of brand value, brand equity, brand valuation, and brand evaluation so that they can advise and support their clients appropriately.

The Task Force encourages law firm leaders to:

- Analyze the possibility of incorporating brand valuation-related services to the current offer of services.
- Take brand valuation courses. Examples of courses cited by Task Force members include the Valuation Program conducted by the NYU Stern School of Business. This type of education would enable a lawyer to understand how value is created, measured, eroded, or destroyed, with some illustrative case studies. Even if lawyers are unable to sign a valuation report, they will be able to articulate thoughts around the topic confidently.
- Take a course in economics and behavioral science to understand how value is created, how it migrates, and how it scales or gets eroded.
- Read reports by various brand consultancies and understand the brand valuation approaches that they utilize.
- Attend and participate in seminars hosted by brand valuers.
- Host educational sessions with team members who do not understand the concepts of brand value, brand equity, brand valuation, and brand evaluation by using easy examples to explain how value is created and eroded.

- Invite their accountants to host educational sessions on law firm economics or the business and financial aspects of operating a law firm.
- Promote discussions with their clients on brand value and how this is captured within their organization.
- Maintain a pre-approved list of brand valuation experts so that law firms can work with them if required/necessary if the firm itself does not do brand valuation work. As brand valuation and evaluation exercises are borderless, it is crucial to develop a network of peers around the world that can support global brand valuation and evaluation exercises.
- Partner with PR agencies to proactively offer contingency and remediation plans as part of the firm's services to be applied during times of crisis, as a way to provide quick answers for actions that may erode the value of a brand.
- Encourage learning programs among the clients regarding the creation and preservation of a brand value within the digital context (i.e., social media).
- Promote more interaction and awareness of these matters among the corporate and tax law partners and professionals, if working in a general practice firm.

Opportunities for INTA to be a resource for members on the topic of brand valuation and evaluation. [Finding 19]

Since the inception of INTA's 2018-2021 Strategic Plan, INTA has strived to educate and communicate to INTA membership on the topics of brand value, brand equity, and brand valuation. Details of these initiatives can be found in Annexes A, B, and C.

The Task Force recommends that INTA:

- Continue its emphasis on the topics of the business value of brands (including brand valuation) and brand equity in the forthcoming 2022-2025 Strategic Plan by expressly stating the importance of INTA continuing the brand value and brand equity dialogue with marketing and financial professionals.
- Include/reference to brand evaluation when considering the concept of brand equity in future Strategic Plans.
- Encourage continued development of additional educational programming on the topic of brand valuation, building off the excellent work INTA's Programming Advisory Council and Education Department has done in 2019.
- Encourage new focus on the topic of brand evaluation given that it is new and has not been explored within INTA's educational programming. Apart from the topic of brand evaluation, set out below are other topics that could merit continued exploration:
 - Brand development, valuation, and evaluation in the M&A process.
 - Brand development, valuation, and evaluation in litigation matters.
 - What do all the various brand rankings mean? How are they different? How can they be utilized, and when?
 - What are the different brand valuation approaches and methods, and which transactions are they typically used for?
- Appoint an INTA committee to develop a proposal to update and expand INTA's current online resources on the topics of brand value, brand equity, brand valuation, and brand evaluation. To assist with this process, the Task Force has in Annex A identified a non-exhaustive list of current INTA online resources on these topics.
- Seek content from marketing, accounting, and finance professionals to support the development of the above-mentioned resources. These contributions can come in the form of sponsored content or content swaps with the relevant trade associations.
- Continue to contribute to third party IP and non-IP publications (financial and marketing) on the topic of "legal considerations" and "legal dimensions" in brand valuation and brand evaluation exercises.
- Publish articles together with financial and marketing professionals on "legal considerations" and "legal dimensions" in brand valuation and brand evaluation exercises.

Opportunities for INTA to be a resource to IP Offices on the topic of brand valuation and evaluation. [Finding 17]

IP Offices have different approaches to the topic of brand valuation but have not explored the topic of brand evaluation as it is very new. Given that the Task Force's membership did not include representatives from IP Offices, the Task Force does not provide any recommendations on the role IP Offices should play on brand valuation and evaluation. Instead, the Task Force recommends that this question be considered by the Think Tank focused on the Future of IP Offices. This Think Tank is one of three that was launched during the 2019 INTA Annual Meeting in Boston, Massachusetts.

The Task Force, however, recommends that IP Offices regard INTA as a potential resource for information on speakers for the topics of brand valuation and evaluation, where appropriate. Related to this recommendation, INTA should also consider creating and maintaining a repository of speakers on these topics.

Opportunities for legal educational institutions to incorporate IP and specifically brand valuation and brand evaluation as part of their curriculum. [Finding 18]

Given the importance of this topic to brand owners and all professionals that support their work, the Task Force members determined that it was important for law schools and paralegal educational institutions to provide some foundational education on the topic of valuation and, more specifically, brand valuation and brand evaluation.

Implementation Considerations

The Task Force endorses the constitution of the new Commercialization of Brands Committee in the 2020–2021 Committee term. For recommendations identified above, the Task Force proposes that this new Committee take the lead on some of these activities by setting up a subcommittee dedicated to Brand Valuation and Evaluation. For all remaining findings, the Task Force has also suggested potential implementation options. Along with each recommendation, the Task Force has recommended an implementation timeline.

Conclusion

The Task Force leadership and members thank INTA for the opportunity to contribute to this Task Force Report and remain at the disposal of the Board, CEO, or future teams to answer any questions and provide any further insights about the above-mentioned findings and recommendations.