

## **Trademark Valuation According to Laws and Regulations in Vietnam \***

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### **Abstract**

Pricing and valuation may be confusingly interchangeable in various industries from manufacturing to commerce etc.. However, they are in fact different. Pricing can be simply understood as a process whereby the price is set by a seller or by an agreement between a seller and a buyer. On contrary, valuation analysis is normally conducted by experts. So, trademark valuation is a process whereby a trademark value is determined by means of diligent research, unbiased judgment, and some pretty simple arithmetic. In this study, we point out the drawbacks and obstacles in pricing in trademark transfer in our country in comparison with other countries/regions and then we will suggest some measures to improve the regime for pricing in trademark transfer in Vietnam. Authors also present Some Basic Concepts Related To Pricing And Valuation Of Trademark and valuation methods. Authors also use a construction case of LICOGI (general company in construction and infrastructure in Vietnam) as reference for pricing issues. Last but not least, in this study we could resolve some controversial issues in trademark pricing and transfer in various companies from production, manufacturing to construction, real estate and commerce sectors in developing countries such as Vietnam, at least from definitions, concepts and legal framework.

**Keywords:** Intellectual Property Assets; Trademark Pricing Services; Law; Valuation Method; Vietnam

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## Penilaian Merek Dagang Menurut Undang-Undang dan Peraturan di Vietnam

### Abstrak

Penetapan harga dan penilaian mungkin membingungkan dan dapat dipertukarkan di berbagai industri mulai dari manufaktur hingga perdagangan, dll. Namun, sebenarnya keduanya berbeda. Penetapan harga secara sederhana dapat dipahami sebagai proses di mana harga ditetapkan oleh penjual atau dengan kesepakatan antara penjual dan pembeli. Sebaliknya, analisis penilaian biasanya dilakukan oleh para ahli. Jadi, penilaian merek dagang adalah proses di mana nilai merek dagang ditentukan melalui penelitian yang rajin, penilaian yang tidak bias, dan beberapa aritmatika yang cukup sederhana. Dalam studi ini, kami menunjukkan kelemahan dan hambatan dalam penetapan harga dalam transfer merek dagang di negara kami dibandingkan dengan negara/kawasan lain dan kemudian kami akan menyarankan beberapa langkah untuk meningkatkan rezim penetapan harga dalam transfer merek dagang di Vietnam. Penulis juga menyajikan Beberapa Konsep Dasar Terkait Penetapan Harga Dan Penilaian Merek Dagang dan metode penilaian. Penulis juga menggunakan kasus konstruksi LICOGI (perusahaan umum dalam konstruksi dan infrastruktur di Vietnam) sebagai referensi untuk masalah harga. Last but not least, dalam penelitian ini kita dapat menyelesaikan beberapa masalah kontroversial dalam penetapan harga dan transfer merek dagang di berbagai perusahaan mulai dari produksi, manufaktur hingga konstruksi, real estat dan sektor perdagangan di negara-negara berkembang seperti Vietnam, setidaknya dari definisi, konsep dan kerangka hukum. .  
Kata kunci: Aset Kekayaan Intelektual; Layanan Penetapan Harga Merek Dagang; Hukum; Metode Penilaian; Vietnam.

### Оценка товарного знака в соответствии с законами и правилами Вьетнама

#### Аннотация

Ценообразование и оценка могут быть ошибочно взаимозаменяемы в различных отраслях, от производства до торговли, и т. д. Однако на самом деле это разные понятия. Ценообразование может быть просто понято как процесс, посредством которого цена устанавливается продавцом или соглашением между продавцом и покупателем. Напротив, оценочный анализ обычно проводится экспертами. Таким образом, оценка товарного знака — это процесс, в ходе которого стоимость товарного знака определяется посредством тщательного исследования, беспристрастного суждения и некоторых довольно простых арифметических действий. В этом исследовании мы указываем на недостатки и препятствия в ценообразовании при передаче товарных знаков в нашей стране по сравнению с другими странами/регионами, а затем предлагаем некоторые меры по улучшению режима ценообразования при передаче товарных знаков во Вьетнаме. Авторы также представляют некоторые основные концепции, связанные с ценообразованием и оценкой товарных знаков, и методы оценки. Авторы также используют случай строительства LICOGI (генеральная компания в области строительства и инфраструктуры во Вьетнаме) в качестве справочного материала по вопросам ценообразования. И последнее, но не менее важное: в этом исследовании мы смогли решить некоторые спорные вопросы, связанные с ценообразованием и передачей товарных знаков в различных компаниях из производственного сектора, изготовления в сектор строительства, недвижимости и торговли в развивающихся странах, таких как Вьетнам, по крайней мере, в отношении определений, концепций и правовой базы.

**Ключевые слова:** Активы интеллектуальной собственности; Услуги по ценообразованию товарных знаков; Закон; Метод оценки; Вьетнам

## A. INTRODUCTION

In reality in emerging markets such as Vietnam, there are difficulties in establishing framework for trademark pricing in Vietnam industries from manufacturing, production to commerce, real estate, construction, etc ([Rossi et al., 2016](#); [Khayatnezhad and Nasehi, 2021](#)). In terms of legal framework and activities and in applications or in use.

To the extent of our research, the main objectives are classified into two levels as follows:

General objectives: By researching the doctrine, elaborating and criticizing legal and practical issues in connection with pricing in trademark transfer in Vietnam, we point out the drawbacks and obstacles in pricing in trademark transfer in our country in comparison with other countries/regions and then we will suggest some measures to improve the regime for pricing in trademark transfer in Vietnam. Based on the general objectives, our research will obtain three following objectives: Firstly, we will resolve the theoretical issues relating to pricing in trademark transfer which are theory of trademarks, theory of trademark transfer, theory of royalty in trademark transfer, theory of approaches to trademark pricing; theory of methods to pricing in trademark transfer; the relationship among competition law, intellectual property law and contract law governing pricing agreement in the trademark transfer contract. Secondly, we will focus on practical issues in respect to pricing in trademark transfer in Vietnam through a case study of LICOGI. To get this target, we initially research the guidance's and recommendations provided by the FAVI – a typical consulting firm practicing on pricing of intellectual property including trademark transfer ([Rossi et al., 2016](#)). We thereby, later provide selected comments on Vietnam's laws relating to trademark pricing.

The research's subject matters are the economic and legal issues relating to pricing in trademark transfer which include: a focus on pricing in trademark transfer contracts; our research will focus only on the guidance's and recommendations of two international organizations, WIPO and OECD, in respect of intellectual property valuation; in the researching module on foreign laws and practices in pricing in trademark transfers, we will only study in Vietnam; The research will study the pricing valuation for two principal types of trademark transfer contracts which are trademark conveyance and trademark licensing. Other types of contracts, such as franchising, capital contribution in trademark, securities for civil duties will be researched together with each principal types; and the recommendations to improve the trademark transfer pricing regime will be just for Vietnam.

**The period of study:** this study will focus on the gathering information implemented from 2008 to 2015 and added and updated till the end of 2016. The geographic extent: The research will focus on the state administration and enforcement in pricing in trademark transfer in Vietnam. The surveys on pricing in trademark transfers shall be implemented in preferred locality mainly in Hanoi. For reference to the achievement and experiences of foreign countries, the research will concentrate on the comparison on laws and practices in trademark in Vietnam. We will thereby provide the comprehensive and feasible recommendations. The main content of our research project: The theory of valuation of trademark, Foreign law, regime and practices re pricing for trademark transfer, Vietnam's law, regime and practices re pricing for trademark transfer.

### **Literature Review**

In emerging markets such as Vietnam, there are controversial issues in intellectual properties in many business from manufacturing, production to construction, real estate, commerce, etc. Intellectual property valuation has not been new in the jurisprudence in the World and Vietnam for years. There have been many researches on intellectual property valuation in general as well as trademark valuation in particular. These researches have indicated the importance of intellectual property valuation, intellectual property valuation approaches and methods. There have been a number of writings and scientific works published in Vietnam until now.

The current researches have been classified into three major questions: (1) What are the overall framework and practices on intellectual property valuation?; (2) What are the overall framework and practices on trademark valuation?; and (3) What are the positiveness and shortcoming of pricing valuation for trademark transfer in Vietnam and what are suggested solutions for trademark valuation in Vietnam?

### **The researches on intellectual property valuation:**

Gordon V. Smith & Russell L. Parr. Gordon V. Smith & Russell L. Parr, among other authors, have given great contributions to research of intellectual property valuation as well as trademark valuation. The two authors who are the well-known intangible property valuation experts have publicised a number of books regarding intellectual property valuation. In their book namely *Valuation of Intellectual Property and Intangible Assets* by [Hagelin \(2001\)](#), intellectual property valuation is one of the main contents (the two remaining parts elaborating the nature of intellectual property and special circumstances). In

intellectual property valuation, the authors have focused on analyzing fair market value, payment value, licensing rate (royalty), domain name valuation, technology pricing and pricing in technology transfer from the universities. In the books, *Intellectual Property: Licensing and Joint Venture Profit Strategies* by [Gordon et al. \(2003\)](#), and *Intellectual Property: Valuation, Exploitation and Infringement Damages*, by [Gordon et al. \(2009\)](#), have researched on business strategies to make decisions on investment in intellectual property such as transfer of use right of intellectual property or intellectual property contribution to the joint venture; recommended the models applicable to royalties calculation. As the researches within WIPO, most of Gordon V. Smith & Russell L. Parr's researches have not discussed the trademark valuation in particular, but intellectual property valuation in general. However, these researches have greatly contributed to the legal doctrine and practice relating to intellectual property valuation.

In researching intellectual property valuation, [Taplin \(2004\)](#) has recognised the importance of intellectual property valuation and elaborated on the nature of intellectual property valuation while the intellectual property has occupied up to 70% of the value of assets of nearly all the big companies; the milestones in the history of law and practice in intellectual property valuation in Japan, U.S.A and U.K; the direct effect of the U.S.A's intellectual property valuation on U.K and Japan's law and practice, especially, since the intellectual property valuation was put in Bayh-Dole Act (amended).

Many current researches have provided the detailed elaboration of valuation approaches and methods. The general issues relating to the intellectual property valuation approaches and the features affecting intellectual property valuation ([Singh & Paliwal, 2014](#)); the general approaches applicable to valuation of intellectual property which included market approach, cost approach, income approach, relief-royalty approach. Especially, the valuation of different forms of intellectual property such as patent, trade secret, copyright, software, trademark and brandname were carefully discussed in the book.

Analyzing the intellectual property valuation, its discovered the obstacles and defects of Vietnam's current provisions of law in relation to intellectual property valuation ([Matthews, 2003](#)). Nguyen Thi Tuyet, by the writing "The roles of intellectual property and the Vietnamese enterprises and adjudication bodies' awareness of intellectual property in equalization of state-owned enterprises" recorded in Report of State-level Project on Intellectual Property carried out by the Economics & Budget Committee of National Assembly in

2009, analyzed the generally theoretical issues in respect to the intellectual property, the significance of intellectual property valuation and the approaches applicable to intellectual property valuation. As a result, she pointed out the practical obstacles in valuation of intellectual property in equalization of state-owned enterprises. Because of the inaccuracy of the intellectual property valuation standards and the enterprises' unawareness of intellectual property valuation, the intellectual property was usually underrated or ignored. Finally, the author requested the State to provide the detailed and strict regulations on intangible property as well as intellectual property, and classify the intangible property in order for the accurate valuation approaches. According to the author, it was necessary to improve the enterprises' awareness of value of the intellectual property.

Trademark valuation researches have been substantially focused on the trademark valuation approaches and methods. In general, the trademark valuation approaches and methods are the same to the approaches and methods for intellectual property valuation. One of such researches was "Brand name Valuation" edited by [Vu tri Dung, Nguyen Tien Dung and Tran Viet Ha, published by National Economics University Publisher, 2009](#); the project "Trademark valuation in the progress of modernization and industrialization in Vietnam" written by Tran Nam Long, Vietnam Intellectual Property Research Institute, 2010. These works have provided the outcomes of analyzing trademark valuation approaches and methods, such as cost approach, market approach and income approach. Distinctively, Tran Nam Long, by his project, introduced and analyzed the new approach which used the techniques to valuation of option contract. He briefly introduced and described econometrics applicable to simulate a method used for trademark valuation (econometric model) as well. Additionally, Tran Nam Long analyzed the theory and practice regarding the principles of trademark valuation, the factors affecting the trademark valuation. The author also provided a little information about the experience of foreign countries and international community in the trademark valuation. Vietnam's practice in trademark valuation was also researched by Tran Nam Long. Thereby, he recommended the most appropriate approach and methods for Vietnam. According to him, with our recent legal environment, emerging economy and other socio-economic situation, discounted cash flow was much more suitable than other methods.

## **B. METHODS**

Authors start from real situation in developing countries such as Vietnam, we have obstacles in issues of intellectual properties in various

industries, from manufacturing, production to construction, commerce. These issues need legal framework to resolve in terms of both law and economics combination approaches. Law & economics combination approach: As the economic nature of property valuation, this method is used to illustrate the economic issues in pricing in trademark transfer. Legal dogmatic: This method includes description and analysis which are used to describe and analyze the different sources of law relating to pricing in trademark transfer such as legal instruments

### C. RESULTS AND DISCUSSION

Many SMEs in Vietnam doing business in manufacturing, production, construction, commerce, etc has faced trademark valuation and intellectual properties definitions and concepts. So first of all, we discuss intellectual property concepts and then propose suitable legal framework.

#### **1. The Legal Base of Intellectual Property Pricing When Transferring of Trademark**

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can generate.

Types of intellectual property include, but not limited to Copyright, Patent, Trademark, Industrial design, Geographical indications and so on.

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when craftsmen used to put their signature or "mark" on their products. According to Section 1(1) of Trademarks Act 1994 of UK, a mark is, "any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trademark may, in particular, consist of words (including personal names), designs, letters, numerals, or the shape of goods or their packaging." A Vietnamese law defines, "*A mark means any sign used to distinguish goods and/or services of different organizations or individuals.*" Although there are various definitions of trademarks with differences in wording, a trademark can be understood as any word, name, symbol, device, or the combination of them

used by a supplier to identify his products or services and to distinguish them from those supplied by others.

Valuation is a type of professional activity that combines economic-technical, legal, and social aspects. Currently, Vietnamese law regulates the valuation of intellectual property in some specific legal documents.

The 1995 Civil Code is the first legal document regulating intellectual property rights in Vietnam. Intellectual property objects defined in this Code include: subjects of copyright (literary, artistic, scientific works); Objects of industrial property rights are inventions, utility solutions, industrial designs, trademarks, appellations of origin and other objects provided for by law. Following the 1995 Civil Code, the 2005 Civil Code and the 2005 Intellectual Property Law continue to be supplemented and further refined provisions on the subject matter of intellectual property rights.

According to Vietnamese Accounting Standard No. 04 on Intangible Fixed Assets, only a number of objects of intellectual property rights are considered as intangible fixed assets such as inventions, copyrights or marks (in case such marks are not created from the internal organizations as the mark is acquired). Circular No. 45/2013/TT-BTC stipulates that all subjects of intellectual property rights (including copyright, industrial property rights, rights are regarded as intangible fixed assets and hence are the basis for valuing and calculating the value of enterprises).

Vietnamese Accounting Standard No. 04 provides instruction of determination of cost and principles of accounting entries for intangible assets classified as intangible fixed assets of enterprises. These include: trademarks, computer software, copyrights, and patents. Trademarks formed within the enterprise are not recognized as intangible fixed assets.

According to Vietnamese laws, valuation is understood as follows: 1). The 2006 Technology Transfer Act states: "*Technology pricing is an activity of valuation of technology.*" 2). The 2012 Price Law stipulates: "*Valuation is the determination of prices for goods or services by competent state agencies or production and business organizations and individuals.*" Thus, asset valuation is understood as consulting, specifying the specific price level for each type of asset, which is the basis for activities of trading in goods and services on the market. For property, goods and services priced by the State (authorized agencies), the specific prices of each kind of property and goods are compulsory.

For goods and services which are not subjected to the State price determination, organizations and individuals shall set prices themselves



according to the market rules, which shall serve as basis for trading, exchange and transaction activities.

In Vietnam, it should be noted that the “price fixing” concept is inconsistent with the concept of “appraisal/valuation”. Clause 15, Article 4 of the 2012 Law on Price stipulates: *“Valuation is the determination by agencies and organizations with price-appraising function in accordance with the provisions of the Civil Code. At market price at a certain place or time, for a certain purpose according to the price appraisal criteria”*. Thus, price appraisal focuses on checking, authenticating price of goods and services. The price appraisal is usually conducted by price appraisers in accordance with the price appraisal criteria set by the State.

## **2. Some Basic Concepts Related to Pricing and Valuation of Trademark**

During valuation, an appraiser must clarify the concepts. In order to value a trademark, an appraiser must define the following matters: a). The audience of valuation; b). The purpose of valuation; c). The date of valuation; d). The appropriate valuation method .

For valuation methods, some scholars classify the methods into four methods. According to Paul Flinger and David Orozco, there are four main methods namely transactional method, cost method, income method, and binomial/option method. John Turner identifies four approaches including (1) market value of company less the net tangible assets; (2) cost based (historical cost and replacement cost); (3) comparable market valuations; and (4) economic benefits method. Gordon V. Smith and Susan M. Richey present three methods, i.e. market method, cost method and income method. We agree with Gordon V. Smith and Susan M. Richey. So, the subsequent subsection will discuss each method in detail.

## **3. Market Method**

The market method is the most direct and simplest method. The present value of future benefits is measured by this method. The market method is so-called transactional method. This method is considered to be the most reliable of methods when it can be performed credibly. The market method is ideally based upon an analysis of relevant transactions: of comparable property; between unrelated parties; contemporaneous to the valuation date; and in an active market.

**Comparable Property:** In reality, market method is very often applied to measure the value of real property and other fixed tangible assets. Yet, it

appears to be difficult to find a comparable trademark. Therefore, market method is rarely used in valuation of trademark. To apply the market method in valuation of trademark, we must identify the following: (1) the comparability in the same industry; (2) comparability in profit contribution; and (3) comparability in market share. When market transactions of trademarks exist that have similar characteristics to the trademark being appraised, a direct application of the market approach is possible.

**Unrelated Parties:** It is inevitable that we must select the comparable transaction between independent parties. Because, the transaction between the related parties may be subject to the policy of the group in which the related parties are members. Therefore, it is doubtful about the arm's length price in the related parties' transactions.

**Public Market:** To be useful, the exchange consideration must be known or discoverable. Actually, it is difficult to find exchange prices for trademarks because there is no trademark exchange market.

**Active Market:** For comparable market valuations to be valid there must be an active market that is trading comparable assets. Unfortunately, there is no active market in trademarks.

There are two steps in application of market method. First, screening refers to the selection process of identifying candidate third party transactions with sufficient information on pricing, scope and terms and conditions to be deemed comparable to the intangible asset in question. Adjustment is the second step. An appraiser must find an arm's length transactions of trademarks to be comparability. However, finding exact comparable transactions is day dream. Adjustments refer to an explicit quantifiable change in the valuation due a specific rationale.

#### 4. Cost Method

The cost approach seeks to measure the future benefits of ownership by quantifying the amount of money that would be required to replace the future service capability of the subject property. The underlying assumption of this method is that the cost to purchase (or create) new property is commensurate with the economic value of the service that the property can provide during its life. There are two ways from starting point to reach the value conclusion, reproduction cost new (historical cost) and replacement cost. Reproduction cost new represents the cost to create a replica, while replacement cost new is the cost incurred to obtain an asset with equal utility.

By historical cost method, it is relatively easy to calculate from funds invested, factored-up for the “time-cost” of money. However, there is a problem with this method. It is extremely hard to identify the correlation between the expenditures on a trademark with the potential revenue in the long term. For example, ABC Corporation spent a lot of money to develop a new trademark, but because this trademark did not attract the customers, the sale of products bearing the new trademark failed. In this case, a costly trademark is not necessary to result in high revenue. In other cases, the reasonable investment in the new trademark accompanied by high-quality products bearing the new trademark gives rise to the significant sale grow.

The historical cost for development of a trademark may be: concept development; brainstorming with clients, associates, industry experts, and psychologists; new brand or brand extension analysis; trademark registration in appropriate jurisdictions; consulting expenses; trademark searches; a linguistic search to determine the foreign language meaning of possible names; preliminary consumer testing; market research to study the reaction of consumers, stockholders, company executives, and Wall Street analysts; trademark registration in appropriate jurisdictions; package designs; advertising campaign development; commercial planning, scripting, and recording; development of branding policy and style standards Yet, to estimate historical cost and replacement cost is not an easy task, because the expenses for development of a trademark are usually incorporated into those of development of corporate organization and position over a long time. For example, ABC Corporation spends VND 2 billion for its advertisement in order to increase its market share; it is difficult to identify the costs for development of trademark in this case.

The replacement cost of an IP asset is the cost to develop similar functionality to the subject IP outside the scope of the legal protection. To carry out the valuation, an estimate is made of the time and resources needed to bring an asset to the same stage of maturity as the IP asset being valued. The replacement cost method is a forward looking perspective on how to create an asset with similar functionality to the asset in question – it should not be confused with historical cost or accounting cost. The replacement cost method may be useful for a transferor to have a valuation in negotiation with a transferee. By this method, the transferor may argue that it is costly for him to develop an alternative trademark. By contrast, it does not appear that the transferee may rely on the value conclusion based on replace cost method.

When using the cost method, the appraiser shall apply the following adjustments:

**Physical Depreciation:** We are really asking ourselves how much of the total service that an asset can provide has been used up at the time of our observation and how much remains. However, a trademark is not in a physical form, so physical depreciation is not applicable to it.

**Functional Obsolescence:** Functional obsolescence refers to the degree that the subject asset is not “state of the art,” or that it may suffer from design or operating deficiencies that reduce its desirability when it is compared with similar assets that may be available in the marketplace. A trademark can exhibit various level of functional obsolescence. For example, in practice, a trademark may become less attractive over time. Thus, it is occasionally redesigned to match the new generation of customers.

**Economic Obsolescence:** It is presumed that a trademark is used for commercial purpose. Thus, a trademark may attain full market value only if it is exploited to contribute to the earning of the enterprise and when those earnings provide a reasonable rate of return on an investment in the property at its replacement cost less depreciation.

Even cost method is useful for tangible property and some intangibles like software; it is not reliable in valuation of a trademark.

## 5. Income Method

The income method is directly related to one of the definitions of market value that we provided previously: Market value is equal to the present value of the future economic benefit of ownership (Gordon V. Smith & Susan M. Richey, 2013). The economic benefits method is based upon the principle that an IP asset must produce a net economic benefit during its life in order to have any value.

It is obvious that a dollar to be received in the future is worth less today than a dollar to be received immediately. So, the future economic benefit must be described in terms of dollars because these assets must pay for their keep with some dollar benefit to the enterprise. Therefore, an appraiser shall be required to determine the present value of an IP asset. To work out the present value of a new IP asset, it is needed to calculate: (a) the cost of design, research, development, production, marketing, and distribution; (b) the life of the product or process; (c) the life of the associated IP, and (d) the timing and

quantum of the income stream. Furthermore, risks and inflation should not be ignored.

There are three mathematical formulas for the calculation of present value. The first formula is applicable where the relevant income is expected to be perpetual and unchanged. This formula indicates as follows:

$$\text{PV (present value)} = \text{Income} / \text{Risk rate}$$

We come into recognition that this formula may provide unrealistic results. Since the economic benefit of a trademark is independent on the amount of sales of products and services over time. So, an unchanged economic benefit is just a hypothesis.

The second formula: **PV = Income x (1 – Growth Rate)/(Risk Rate – Growth Rate)**

Because it assumes that the economic benefit is perpetual and stable, this formula is unlikely to produce the realistic results.

The most frequently used tool is discounted cash flow (DCF). The formula is:

$$\text{PV} = \text{income}(1)/(1 + \text{rate}1) + \text{income}(2)/(1+ \text{rate}2) + \text{income}(3)/(1+\text{rate}3) + \dots$$

This formula accepts change of income and economic benefit over a long time. This formula therefore represents the most realistic picture of the present value of future economic benefits of ownership, which is what we seek (Gordon V. Smith & Susan M. Richey , 2013).

Trademark valuation has been more and more important in trademark transfer transactions. To have a realistic value conclusion, professional analysis must follow the basic principles and methods of trademark valuation. There have been three main valuation methods recognized for now. In practice, income method has been widely used in valuation of trademark is income approach.

## D. CONCLUSION

In reality in emerging markets such as Vietnam, there are difficulties in establishing framework for trademark pricing and transfer in Vietnam industries from manufacturing, production to commerce, real estate, construction, etc. In terms of legal framework and activities and in applications or in use. Authors also use a construction case of LICOGI (general company in construction and infrastructure in Vietnam) as reference for pricing issues.

Our research is one of the first research works focusing on this theme. The novelty and creativity of the project will be described as follows:

- The research constructs the comprehensively theoretical model and grounds regarding pricing for trademark transfer including principles for pricing, factors affecting pricing and pricing methods. The doctrines in transfer price in trademark transfer will be researched and developed.

- The research analyses and compares Vietnam's law, regime and practice in pricing for trademark transfer with other countries's including developed countries (USA & EU) and developing countries (India & China). Consequently, the good examples for Vietnam will be come out.

- The research will set out the theoretical and practical bases as well as the principles for improvement of law and regime in pricing for trademark transfer in Vietnam.

- The research will produce the particular and detailed recommendations for improvement of law and regime in pricing for trademark transfer in Vietnam.

- The law & economics method which is the modern method studying the legal issues in the economic aspects will be used to implement our researches in this project.

### **Pricing v. Valuation**

In relation to the trademark transfer, there may be three relevant parties. The first party is a transferor. The second party is a transferee. The transferor wants to get the highest price as possible and the transferee is willing to pay the lowest possible price. It is difficult to assess how much is good for both parties because there are a lot of factors motivating the parties' choice. As we have already analyzed, it is very difficult to realize trademark value. So, if the price is blindly low set, the transferor may put herself into risks. In contrast, if the price is blindly high set, the transferee may put himself into risks. To reduce the risks as well as transactional costs, the transferor and transferee would engage an expert to value the relevant trademark.

The result of valuation is value conclusion. It is noticeable that the trademark value concluded by the expert is not a price. The parties may mutually set a price which is different from the value conclusion. However, the management of either parties or both may be accountable for the difference to shareholders or relevant government agencies (i.e. taxation agency). Further, because the trademark value may change over time, the value conclusion could

be only valid for a period of time. It is undeniable that the value conclusion shall be subject to the inputs. Therefore, we may have various value conclusions for a trademark. Which value conclusions shall be used is dependent on the parties' discretion.

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**JEL:** O3, O30, O34

## ABBREVIATIONS

ASEAN	Association of South East Asian Nations	IP	Intellectual Property
CEO	Chief Executive Officer	IVS	International Valuation Standards
DCF	Discounted Cash Flow	IVSC	International Valuation Standards Council
GATT	General Agreement on Tariff and Trade	NAFTA	North American Free Trade Agreement
GDP	Gross Domestic Products	PV	Present Value
GN	Guidance Note	VND	Vietnam Dong
IAVSC	International Assets Valuation Standards Committee		

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