Leveraging Trademark and its Valuation

Most SME business owners are busy running and growing their businesses. The focus generally is on sales/ revenue growth, increasing profits, fixed and other assets such as inventories, debtors, creditors, etc. Many of the vital assets which are intangible in nature are not front of mind including, the people/ staff, goodwill, etc. One such asset which can increase in value over time, perhaps significantly, and can help a business expand and grow faster, is the trademark.

Often times, trademarks and tradenames are used interchangeably but these intangible assets are somewhat different. From a practical point of view, for a single tradename company which uses the tradename as the trademark, these are similar and as such can be valued together. This is not the case with multiple trademark companies where each trademark may be for a different product or service and the tradename (or the overall Branding) may cover the entire business.

An SME trademark owner can allow other party/ ies to use the trademark while retaining the ownership of it. This can be lucrative and can be done by entering into a license agreement with another party. A trademark license is between a trademark owner (or licensor) and another party (or licensee) where the licensor allows the licensee to use the trademark.

Trademark licensing covers franchising, distribution agreements, and merchandising. It also plays a crucial role in how services and goods are marketed, distributed, and sold locally and internationally so the licensor can have control on these matters. Most of these licenses have provisions which control the length or term of the license agreement. They also include matters such as the royalty rate for the use of the trademark (which can be based on revenue, gross or other levels of profit), the territory/ jurisdiction(s) the license covers and if the licensee has exclusivity to the trademark.

Most license agreements will also include provisions about quality control, i.e., the quality of services or goods that are offered or produced under the licensed trademark so the licensor can maintain their standards.

Case Study: ABC runs a successful restaurant in Kuala Lumpur. It has been around for 25 years with high number of patrons across Klang Valley. Through word of mouth, its popularity has increased, and it has been covered in various magazines, social media and blogs. The restaurant is now being managed by the 3 children of the founders. The second generation believes that the growth as a standalone restaurant is limited and they should open more outlets to leverage the trademark and the well-known name (Branding) of the restaurant. They are contemplating a few options including, opening new outlets on their own, franchising and delivery through own riders and other channels. All these options are possible only due to the trademark and the branding of the ABC restaurant.

Valuation of trademarks is essentially the determination of how much a company's unique/ distinguishing trademark is worth. Trademarks are used to identify/ distinguish a company's unique products and services from its competitors. Trademarks can present challenges from a valuation, damages (infringement or other loss), and transfer price (tax) perspective.

Trademarks are created through use and need not necessarily be registered. Registration is generally recommended as if an infringement occurs, it can make enforcing the right easier.

Common methods to determine a trademark's value include:

Income Approach - using past and projected profits
Market Approach - using comparable transactions of similar assets
Cost Approach - using the cost of recreating/ reproducing a trademark

Relief from Royalty ("RFR") - estimating royalty savings by virtue of owning the trademark. RFR is a subset of the Income Approach. RFR is the most common approach for the valuation of trademarks. It is based on the concept that a company does not have to rent a trademark it owns.

Valuation of trademarks in not a straightforward exercise. It involves research, information gathering, support for assumptions and cross-checks. It is subjective in nature and involves valuer's judgement on certain assumptions. Time needs to be spent on understanding many different aspects of the trademark and the relevant business, otherwise there is always the risk of over-valuing or under-valuing something if it is not properly understood.

In conclusion, SME owners should pay attention to the trademark(s) they may have created in normal course of business. Registration, marketing and advertising and other trademark and brand building exercises can pay rich dividends if the trademark is leveraged properly. Valuation of the trademark can go a long way for business owners to understand how to use it for growth and business expansion.

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