by the net present value of all future income surplus which the proprietor is able to derive from the brand.[224] This definition is not able to comprehend all items influencing the value of an IP right or a brand. However, it can be used as part of a future-related monetary brand valuation tool, since the ability to generate cash flows is one of the main utilities of a brand and would therefore strongly influence a possible market value. However, in order to gather as much salient information on the respective brand in order to approximate a market situation as realistically as possible, it is essential to realise that the value of all IP assets and especially brands can only be fully understood and operationalised in light of the context in which the respective asset stands. Such context includes, for example, integration of the proprietor company's brand and IP strategy, the characteristics of the brand portfolio, interrelations with other assets, market information and so forth.[225]

2.2.2.2 Sources of Brand Value

As just explained, one central origin of brand value is their potential to generate cash flows. A strong brand is able to leave a positive image in customers' minds which, combined with positive experiences during and after initial purchase, encourages the consumer to purchase the same product or service again. Hence, by providing security of demand, it assures positive cash-flows for the proprietor company while reducing several types of risk for proprietor, customer and intermediary, as set forth above.[226] This security of demand means a security of future brand earnings, which is a major component of brand value. From a financial viewpoint, the value of brands lies therefore mainly in their function to on the one hand accelerate and extend future cash-flows of a company and on the other hand reduce the risk of future cash-flows.[227]

As elaborated above, these are not the only risks mitigated by well-managed brands. However, ultimately, risks such as functional and social ones are reflected in buyer behaviour and sales volume. Hence, they are linked to the cash-flow risk.

224 *Esch/Geus*, Ansätze zur Messung des Markenwerts, p. 1265.
225 A deeper discussion of this would divert too strongly from the examination of brand value at this point. The issue how brands should best be valued will be discussed in detail in chapters three and four.
226 At 2.1.2.2.3.
227 *Srivastava/Shervani/Fahey*, 62 Journal of Marketing, iss. 1, 2, 10-14 (Jan. 1998).

Furthermore, as seen above, brands are, in general, valuable because their trade mark component provides for scarcity due to legal protection.[228] This constitutes the dogmatic foundation of a brand's potential to develop a value. Conceptionally, legal scarcity caused by trade mark protection, whether by registration, by acquired distinctiveness or notoriety, is not essential for the brand to become strong and successful. However, in most cases, trade mark protection is essential, especially during initial branding and market entry phases in which the brand has not yet gained a standing in the marketplace (protection would in this case be achieved by registration). The trade mark component of the brand, if duly looked after, secures freedom to operate within the goods or services classes and the territory it was registered for. It thereby opens up the potential to become known to target audiences, generate revenue and profit.[229]

Ultimately, all brand functions contribute to brand value. The quality in which they – and with them the whole brand – are managed are decisive for the valuation outcome. Correspondingly, a proper valuation methodology needs to handle all important brand functions.

2.2.3 Findings

Compared to valuation of tangible assets, brand valuation is a relatively young art. Science and practice began to deal with brand value on a considerable scale induced by the mid-1980s brand-focussed corporate takeover sprees. In the course of a brand value discussion for both accounting and management purposes, a large number of valuation methods have been developed.

As the price attained in an (ideal) transparent market transaction best reflects the value of the respective asset in monetary terms, brand value can be defined as the estimated quantity of financial assets for which the brand changes hands between willing and informed parties in an arm's length transaction on the date of valuation.

As a consequence, a proper valuation methodology needs to come as close to such a transaction as possible. Since market mechanisms can usually

228 Cf. 2.1.1.3.7.
229 In addition, the trade mark and brand as a whole are also subject to protection through other legal regimes such as (trade) name and competition law.

not be resorted to and brands and different IP assets of the same kind are hardly comparable, a brand valuation tool, today, cannot utlilse market data. Rather, it should operationalise as much information about the respective brand as possible, including the brand's ability to mitigate a number of risks. Such a holistic valuation allows for well-informed and reliable value outcomes coupled with best possible understanding of the respective IP right. It thereby approximates a transparent market transaction as closely as possible and could, if commonly used, help create IP markets. Furthermore, such modus operandi facilitates management of brand and IP and their exploitation as assets.

2.3 Reasons for Brand Valuation

In addition to the 'what' and 'how' of valuation which have been discussed in chapter one and the first two parts of this chapter,[230] every diligent valuator needs to know the 'why' and the objectives thus to be achieved. These topics will be illuminated in the following.

Situations requiring valuation of brands and other IP are manifold. Next to value documentation for accounting, tax and litigation purposes, financial brand value constitutes an important measure of success to be used in the course of strategic brand controlling, for exploitation of brands through certain types of transactions and for purposes of brand finance. Accordingly, in order to establish a systematic overview of valuation-demanding scenarios, this study distinguishes the subgroups strategic brand management and communication, brand transactions, brand finance, brand protection as well as accounting and tax.[231] [232]

230 The issue how IP and brand valuation should best be performed is a central theme of this work and will also be discussed in chapters three and four.

231 This functional differentiation is similar to *Sattler*, Markenbewertung: State of the Art, p. 4. Others distinguish voluntary and compulsory valuations, internal and external purposes or regular and sporadic valuation (cf. *Gerpott/Thomas*, WiSt 2004, 395). Such approaches would, however, lack the necessary degree of selectivity and expressiveness.

232 Company valuation for initial public offerings (IPOs) and brand leasing are two situations requiring brand valuation which will not be mentioned in the following due to their rather low practical occurrence. Equally, the fact that trade marks can be used as investment in kind as means of raising nominal capital for German limited liability companies is of more theoretical than practical nature and shall therefore only be mentioned at this point. Interested readers will find more information in *Nabrotzki*,

2.3.1 Strategic and Operative Brand Management and Brand Controlling

As stated above, brands exert major influence on the overall value of many companies since they constitute important engines of value creation. Therefore, brand management means consistent value management. Still, the value-adding potential of many brands is not being fully exploited.[233]

In order to improve this situation, it is, first of all, crucial to realise that brands do not only have an impact on other intellectual property assets held by the company but, as a strategic asset, on almost all functional divisions of a business. Furthermore, the fact that brand management measures are, generally, cost-intensive and long-term bears, especially in the light of shortened reporting periods, increased conflict potential and justification pressure on brand managers.[234] Comprehensive brand valuation, independently and regularly carried out, can help ease such pressure and conflicts considerably by showing and steering a sustainable successful brand management process.

Ideally, brands are part of an overall IP strategy of a company and therefore used to leverage off other existing IP, mostly patents.[235] For example, in most cases, cost of applying for patents in every possible country will exceed the benefit. Therefore, many companies resort to patenting in countries for which they expect the highest returns on investment and receiving product recognition by registering trade marks in more countries as a complementary protection.[236] This dual or complementary IP protection behaviour reduces overall cost of patenting while creating demand and recognition for the patented product in countries without patent protection, thus maximising return on investment (ROI).

As set forth above, brands are complex, personality-like constructs with both an identity (self-perception) and an image (outsider's perception), which bear

Lizenzen an Immaterialgüterrechten als Mittel der Kapitalaufbringung and *Werwigk*, Kapitalaufbringung durch Immaterialgüterrechte, pp. 18-88.

233 *Sander/Jakobs*, marketingjournal 2004, 34, 34.

234 *Havenstein/Heiden*, BB 2003, 1272, 1272.

235 Regarding the strategic link between patents and brands in the light of increasing shareholder value, cf. e.g. *Berman/Woods*, Patent "Brands" – Positioning IP for Shareholder Value, pp. 211-231 and *Loschelder*, GRUR Int. 2004, 767, the latter discussing European and German case law.

236 This is, for instance, what the Australian health care company *ITL* did; see http://www.wipo.int/sme/en/case_studies/itl.htm (last accessed May 1, 2006).

a relation to each other.[237] Hence, brands need to be managed including both these perspectives. Conception of a brand identity belongs to (together with development of a brand architecture and other topics) strategic brand management. Operative brand management is tasked with its implementation. Brand identity needs to be implemented, amongst others, through positioning and communicating brand achievements. A successful brand identity can only be achieved if the brand is lived consistently by all internal stakeholders, from employees to management (so-called brand citizenship behaviour), and externally communicated in a consistent way. A strong brand image in consumers' minds enables a successful long-term brand-consumer relationship and thereby positive cash flow generated by the brand. It is created by positioning selected brand identity components. This positioning is carried out through marketing means which will be introduced below.

As a consequence of such holistic understanding of brand management, the group of responsible persons comprises far more individuals than merely marketing managers. Brand management, if done properly, is a cross-sectional task. Management and employees shape brand identity and image on a daily basis, be it by direct contact with other stakeholders or indirectly, for example in the course of product development. The brand's value proposition needs to both be communicated consistently and be satisfied effectively by the product and/or service offering. In order to secure and improve brand success long-term, all this needs to be reviewed on a continued basis by means of a holistic brand steering and controlling process. Misdirected investment and management can have fatal implications for all divisions of a business. Hence, the topic of brand management and therefore of brand (e)valuation needs to be addressed at and steered from upper management or board level.

The overall goal of brand management is the increase of brand and thereby of company value. As this overall goal cannot be reached directly,[238] it needs to be accomplished indirectly by means of brand identity, which through positioning creates awareness (as a necessary precondition for origination of brand image) and image.[239] These, in turn, serve the purpose of economic goals such as market share and turnover, which directly affect brand and thereby company value.[240] As a consequence, the respective brand needs to

237 At 2.1.2.2.1.
238 *Schunk/Lütje/Heil*, markenartikel 2004, 24, 25.
239 See above at 2.1.2.2.1.

be valued regularly in order to measure the degree of success of brand management activities. Insights gained from such comprehensive (e)valuation provide valuable information for use in a necessary constant brand management review and improvement process as valuation is a highly effective ROI benchmark. It allows brand managers to be assessed appropriately on the added value their work creates.[241] Insights should include analyses of the respective brand relative to competitors', identification of potential opportunities, strengths and weaknesses of the brand, its risk reduction ability or potential and consumer market perceptions.

The general framework determining success or failure of brand management is complex nowadays. For instance, important issues to be dealt with are, amongst others, information overload,[242] changed buyer behaviour (smart shopping, variety seeking etc.), increased international competition, increasing share of trade brands with respect to overall turnover, decreasing uniqueness and distinctive character of trade marks and brands, converging product quality, shorter product life cycles[243] and increasing brand piracy.[244] Such issues therefore need to be operationalised in a brand valuation methodology used for strategic brand management purposes.

240 *Esch/Wicke/Rempel*, Herausforderungen und Aufgaben des Markenmanagements, pp. 42-51.

241 According to a study carried out by *Günther* and *Kriegbaum-Kling* in 1999, 69.3% of all 128 respondents stated that brand valuation is a suitable measure to assess performance of those responsible for it, cf. *Günther/Kriegbaum-Kling*, Schmalenbach Business Review 2001, 263, 277.

242 Communication is becoming increasingly inefficient due to its ubiquity. It is estimated that, in Germany, only 2% of all information is actually absorbed by customers, cf. *Baumgarth*, Markenpolitik. Markenwirkungen – Markenführung – Markencontrolling, p. 17. In the light of the average 3,000 commercial messages to which the ordinary person is exposed daily, this is not very surprising, cf. *Toubassy*, Brand Licensing. A misunderstood piece of the marketing mix, p. 1.

243 This is closely linked to, amongst others, ephemerality of technical innovations compared to similar developments made by competitors. Together with increased global business pressure, an environment of intensified urgency to make short-term decisions has emerged. This can have negative implications on the respective brands as they have to be managed with a long-term perspective. Brand valuation provides an opportunity to uncover short-term misperceptions and improve the brand management process and thereby the health of the respective brand. According to the 1999 study by *Günther* and *Kriegbaum-Kling*, 81.9% of the respondents stated that brand value as a performance measure offers incentives for a long-term and value increasing behaviour, cf. *Günther/Kriegbaum-Kling*, Schmalenbach Business Review 2001, 263, 277.

244 *Baumgarth*, Markenpolitik. Markenwirkungen – Markenführung – Markencontrolling, pp. 10 et seq.

2.3.1.1 Marketing – Planning, Implementation and Control

As a central component of brand management, marketing shall briefly be highlighted in the following. Like all other brand management instruments, marketing means need to be constantly revisited, reviewed and evolved. A holistic brand valuation or rather evaluation methodology serves as an important resource of guidance in this context.

Marketing is not confined to market communication such as advertising. Rather, it is a fundamental and far-reaching task touching almost every section of a business. The way a marketing concept is established and implemented can vary conspicuously from marketing manager to marketing manager and from company to company. Marketing is a dynamic process during which priority setting can take a variety of forms. For these reasons, there are many definitions of marketing. A viable one defines marketing as 'the planning and implementation process of the conception, pricing, advancement and dissemination of ideas, products and services in order to effectuate processes of interexchange for satisfaction of individual and organisational objectives'.[245]

The classic marketing instruments, the so-called 'marketing mix' or 'four Ps', serve to practically implement the respective marketing strategy. They comprise product, price, place and promotion.[246] These instruments need to be tailored to the respective goals and needs in the course of planning and implementation of each company's brand and marketing strategies. The respective brand identity, as strategically planned, is implemented with the aid of these marketing instruments in the course of operative brand management.[247]

Product policy includes all activities on composition of the market output of the respective company, such as product configuration, additional output, styling, design and branding.[248] In the course of the pricing policy, the general pricing level (top price vs. medium or low price segment) and the pricing

245 *Meckl*, Übung: Funktionsbezogenes Internationales Management (IM) – SBWL IM III, slide 2.

246 *Homburg/Krohmer*, Grundlagen des Marketingmanagements. Einführung in Strategie, Instrumente, Umsetzung und Unternehmensführung, p. 158; *Irmscher*, Markenwertmanagement. Aufbau und Erhalt von Markenwissen und -vertrauen im Wettbewerb, pp. 216-266.

247 *Burmann/Blinda/Nitschke*, Konzeptionelle Grundlagen des identitätsbasierten Markenmanagements, pp. 34-42.

248 *Baumgarth*, Markenpolitik. Markenwirkungen – Markenführung – Markencontrolling, p. 196.