

occur in cases in which the contract is concluded to the effect that it does not leave enough room for brand building and development. For example, an exclusive licencing agreement regarding a combination mark for clothing with ten years of duration may hinder the licensor from developing an on-line marketing strategy if this has not been foreseen and provided for in the contract itself. Furthermore, every licensor needs to carefully deal with the issue of quality in order to prevent the goods or services marked with the licenced brand to fall behind the quality the licensor envisages or provided before he licenced out the brand, as product and/or service quality problems can substantially damage the value of the brand. Therefore, quality standard clauses can be found commonly in licencing contracts.⁸²¹

Hence, the valuator must assess both quantitative and qualitative licencing-related brand value influencers – expected and factual royalty income streams as well as the abovementioned strategic factors. Licencing-related value factors can only “make or break” brand equity in extreme situations such as the deadlock in case of an exclusive licence and default of the licensee mentioned above. In general, they affect brand value on a sliding scale which must be assessed by an expert on a case-by-case basis.

As delimitation agreements are highly important in practice, it should be assessed within the legal dimension whether conclusion of such an agreement is expedient and has been or is expected to be made. Such contracts generally increase brand value, since they are considerable time and cost savers.

5.14 Trade Mark Surveillance and Genericide Prevention

As well as a pre-registration search is necessary in order to prevent collision and secure one’s own lawful trade mark space, post-registration monitoring is essential in light of the same purposes.⁸²² Ideally, any trade mark proprietor should observe others’ possibly infringing activities in the area of identical and/or similar signs, goods and/or services in order to be able to take appropriate legal action as early as possible. Potential infringement needs to be

821 Cf. *Fammler*, Der Markenlizenzertrag, p.117 et seq.; *Groß*, Marken-Lizenzertrag, pp. 8, 21.

822 This has become particularly important in the on-line world where trade mark infringement is rampant, be it on websites, in blogs, videos, through ad words, meta tags, in virtual worlds such as *Second Life*, or other.