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Always in Style: Key Considerations in Buying and Selling Fashion Brands

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While interest in buying and selling fashion brands and their associated business lines is constant, structuring and negotiating these opportunities is uniquely challenging. Here, we present key initial considerations for anyone sitting on either side of the table.

1. Stitching It All Together: Transaction Structure

Transactions can take the form of a stock sale or asset sale and frequently are a hybrid, with negotiations centered on the appropriate scope. In this regard, engaging accountants, operational personnel and attorneys in the due diligence process earlier in the transaction timeline can serve to clear the path for a more precisely defined transaction perimeter and efficient negotiation. Transactions also often include a concurrent licensing component, either back to the seller or other operator(s).

2. Weaving Through the Numbers: Intellectual Property and Tax

While tax guidance is essential for any merger or acquisition, an early consultation with tax counsel is critical when it comes to the buying, selling or investing in brands. Notably, special considerations arise if a portion of an interest in intellectual property is purchased or when a party is making a capital contribution of intellectual property to a joint venture. Tax regulations relating to intangibles could also apply.

3. Couture Techniques: Evaluating the Impact of Acquired Assets

Where the buying or selling of a brand in and of itself essentially speaks to the disposition of an intellectual property portfolio, contracts such as licenses and distribution agreements typically attach to the asset portfolio (and can be the key assets in evaluating a transaction with an operator). These agreements can have both immediate and long-term economic impacts. The inclusion of additional operational assets in a transaction — ranging from inventory to retail leases or warehouse spaces — further expands bespoke deal terms.

4. Elevated Design: Major Diligence for Minority Investments

Minority investments in growth brands looking to scale demand a nuanced analysis as well. While brand owners will first isolate the economic impact on their ownership interest by admitting additional stakeholders, it's important to consider what, if any, services a minority partner is able — and will agree — to provide. For instance, does the prospective partner have capabilities to help expand geographic reach or fill gaps in current operations, such as marketing, public relations or e-commerce distribution? Finally, special attention should be paid to understand the practical scope of non-compete prohibitions in order to negotiate appropriate exceptions.

While anticipating every issue in the sale or acquisition of a brand is impossible, mapping out these points and seeking professional guidance at the outset of a transaction is often both cost-effective and efficient, and can prevent issues from occurring later in the transaction.

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