

Winter 2020

## Whiskey Sour: An IP Evaluation of Nathan Green's Contribution to Jack Daniel's Whiskey and how that Contribution Led to an Inequitable Distribution of Generational Wealth

Emmanuel Onochie

Follow this and additional works at: <https://scholarship.law.marquette.edu/iplr>



Part of the [Intellectual Property Law Commons](#), [Law and Race Commons](#), and the [Legal History Commons](#)

---

### Recommended Citation

Emmanuel Onochie, *Whiskey Sour: An IP Evaluation of Nathan Green's Contribution to Jack Daniel's Whiskey and How that Contribution Led to an Inequitable Distribution of Generational Wealth*, 24 Marq. Intellectual Property L. Rev 1 (2020)

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Intellectual Property Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

# WHISKEY SOUR: AN IP EVALUATION OF NATHAN GREEN’S CONTRIBUTION TO JACK DANIEL’S WHISKEY AND HOW THAT CONTRIBUTION LED TO AN INEQUITABLE DISTRIBUTION OF GENERATIONAL WEALTH

EMMANUEL ONOCHIE

I. INTRODUCTION.....	67
A. Historical Context.....	68
B. Who Was Nathan “Nearest” Green?.....	68
II. NATURE OF GREEN’S CONTRIBUTION.....	69
A. Jack Daniel’s Distillery’s First Master Distiller.....	69
III. IP EVALUATION OF GREEN’S CONTRIBUTION.....	70
A. Overview of Calculations.....	70
B. Discount Cash Flow (“DCF”) Method.....	71
1. Calculating Expected Cash Flow (“CF”).....	72
2. Increased Risk-Adjusted Discount Rate.....	73
IV. GENERATIONAL WEALTH INEQUALITIES.....	74
V. CONCLUSION.....	75

## I. INTRODUCTION

“I not only use all the brains that I have, but all that I can borrow.”<sup>1</sup>

–WOODROW WILSON

“[U]ntil the lions have their own historians, the history of the hunt will always glorify the hunter.”<sup>2</sup>

–CHINUA ACHEBE

---

1. *Woodrow Wilson Quotes*, BRAINYQUOTE, [https://www.brainyquote.com/quotes/woodrow\\_wilson\\_161750](https://www.brainyquote.com/quotes/woodrow_wilson_161750) [<https://perma.cc/2RK7-RX9H>] (last visited Jan. 21, 2020).

2. *Chinua Achebe and the Bravery of Lions*, NPR: THE TWO-WAY (Mar. 22, 2013), <https://www.npr.org/sections/thetwo-way/2013/03/22/175046327/chinua-achebe-and-the-bravery-of-lions> [<https://perma.cc/JG57-5R2U>] (quoting a 1994 interview with Chinua Achebe in the *Paris Review*) (internal quotation marks omitted).

Intelligence is man's greatest strength. Historically, significant intellectual contributions have come from the voiceless. American slavery brought about an institutional exploitation of ideas and intellectual contributions in a systematic effort to dehumanize and control a group of people.<sup>3</sup> The story of Nathan Green, the man responsible for teaching Jack Daniel how to make whiskey, is a story that illustrates the impact that these institutional exploitations have had on the transfer of generational wealth along racial lines.

### A. Historical Context

In 1858, the Attorney General issued an opinion that denied a slave owner's patent application for a machine that was invented by a slave.<sup>4</sup> The application was denied because a slave was not considered a person, and the slave owner was not the true inventor; thus, neither of them had legal grounds to take the required patent oath.<sup>5</sup> The Attorney General also denied another patent application by a free African American because, under *Dred Scott*, he was not a citizen of the United States.<sup>6</sup> Ultimately, African Americans were not afforded any protections for the fruits of their intellectual labor.

### B. Who Was Nathan "Nearest" Green?

Nathan "Nearest" Green was born into slavery circa 1820.<sup>7</sup> As a young man, Green was owned by a firm called Landis and Green.<sup>8</sup> Green was then rented to Dan Call, a local wealthy preacher and distiller.<sup>9</sup> Green began to learn the art of distilling whiskey at Call's distillery.<sup>10</sup> Call introduced Green to a young Jack Daniel, and Green was tasked with teaching Daniel how to make

3. See Tina Pequeno, *The Dehumanization of Slaves and Slave Holders*, U. HOUS.-CLEAR LAKE (Nov. 16, 2004), <http://coursesite.uhcl.edu/HSH/Whitec/LITR/4232/models4/projects/proj04/rp04pequeno.htm> [<https://perma.cc/P6YP-RMLH>] (last visited Mar. 19, 2019) (providing a sample student research project from LITR 4232: American Resistance).

4. Brian L. Frye, *Invention of a Slave*, 68 SYRACUSE L. REV. 181 (2018).

5. *Id.*

6. *Id.*; see also *Scott v. Sandford*, 60 U.S. 393, 452 (1857).

7. *About Nearest Green*, NEAREST GREEN FOUNDATION, <https://www.nearestgreen.com/about-nearest-green/> [<https://perma.cc/U7HA-SMT3>] (last visited Mar. 19, 2019).

8. Clay Risen, *Jack Daniel's Embraces a Hidden Ingredient: Help from a Slave*, N.Y. TIMES (June 25, 2016), <https://www.nytimes.com/2016/06/26/dining/jack-daniels-whiskey-nearis-green-slave.html> [<https://perma.cc/UD7Z-Q8B3>].

9. Lizzy Alfs, *Ex-Slave Who Trained Jack Daniel Gets New Recognition*, USA TODAY (July 21, 2017), <https://www.usatoday.com/story/money/nation-now/2017/07/21/ex-slave-who-trained-jack-daniel-gets-new-recognition/498391001/> [<https://perma.cc/V6UR-3MKU>].

10. *Id.*

whiskey.<sup>11</sup> In 1866, Daniel took over Call's distillery, and Green continued to work with Daniel as he established the first registered distillery in the country.<sup>12</sup> Green ultimately became the first Master Distiller in Jack Daniel's Distillery's history, and there is no record showing that Daniel ever actually owned Green.<sup>13</sup>

## II. NATURE OF GREEN'S CONTRIBUTION

This article is not meant to be an exact measurement of how much Nathan Green would be entitled to for his contribution to Jack Daniel's Whiskey. Such a calculation would prove too difficult, if not impossible, because the passage of time presents too many unknown variables. Instead, this article places a rough quantitative estimate on the value of Green's knowledge if he was afforded the same opportunities as his white counterparts. First, this article will analyze the significance of Green's contribution to Jack Daniel's Whiskey. Second, the Discount Cash Flow ("DCF") Method will be used to place a monetary value on Green's knowledge of whiskey. Finally, this article uses Nathan Green's story to discuss how a lack of opportunity and intellectual property protection led to an inequality in generational wealth across racial lines.

### A. Jack Daniel's Distillery's First Master Distiller

It is difficult to overstate Nathan Green's importance to Jack Daniel's Whiskey. Without Green, Jack Daniel's Whiskey may not be as good, or, worse, Daniel may have never even learned how to make whiskey. The quality of the whiskey Green helped create, Jack Daniel's Whiskey, was validated when in 1904, the Jack Daniel's brand exploded onto the mainstream by winning a gold medal at the World's Fair in St. Louis, Missouri.<sup>14</sup> Fawn Weaver, an author and researcher, was instrumental in piecing together the Nathan Green story.<sup>15</sup> Fawn Weaver's hard work led Brown-Forman, the company that now owns the Jack Daniel's Distillery, to retroactively

---

11. *Id.*

12. *Our Story*, JACK DANIEL'S, <https://www.jackdaniels.com/en-us/our-story> [<https://perma.cc/6LLF-8HE9>] (last visited Jan. 14, 2020).

13. Jessica Bliss, *A Slave Taught Jack Daniel How to Make Whiskey. She's Made Telling His Story Her Life's Work.*, THE TENNESSEAN (Feb. 23, 2018), <https://www.tennessean.com/story/entertainment/2018/02/23/fawn-weaver-jack-daniels-whiskey-uncle-nearest-nathan-green/1067108001/> [<https://perma.cc/J8JF-KN87>] (last visited Mar. 23, 2019).

14. *Jack Daniel's Celebrates 150 Years!*, YOUNG'S MARKET CO. (Apr. 10, 2017), <https://www.youngsmarket.com/jack-daniels-celebrates-150-years/> [<https://perma.cc/6YWA-MSSR>].

15. *The Lost Story of Nearest Green, the Slave Who Taught Jack Daniel How to Make Whiskey*, CBS NEWS (Jan. 1, 2018), <https://www.cbsnews.com/news/nearest-green-slave-who-taught-jack-daniel-how-to-make-whiskey/> [<https://perma.cc/4C93-9GQN>].

acknowledge Green's importance.<sup>16</sup> Initially, Brown-Forman improperly named Jack Daniel its first Master Distiller, but Green is now recognized as the first Master Distiller in Brown-Forman's official history.<sup>17</sup>

The Jack Daniel's Distillery website describes a Master Distiller as a person "responsible for overseeing the entire whiskey-making process, but also becomes the face of Jack Daniel's through advertising and promotional events held worldwide."<sup>18</sup> As the first Master Distiller, and person responsible for teaching Daniel the art of whiskey making, some of Green's methods and practices are likely still utilized.

Jack Daniel was very particular about his whiskey. The record shows that "[Daniel] used only the iron-free cave spring water on his property and the finest grains, mellowed his whiskey by filtering it through 10 feet of sugar maple charcoal, and changed the charcoal out more often to produce a more consistent and better whiskey."<sup>19</sup> Many credit this unique process as being responsible for the taste that millions of Jack Daniel's Whiskey drinkers have grown to love. Therefore, because Green taught Daniel how to make whiskey, he is likely largely responsible for the taste enjoyed by millions of Jack Daniel's Whiskey drinkers for a century and a half.

### III. IP EVALUATION OF GREEN'S CONTRIBUTION

#### A. Overview of Calculations

An Intellectual Property ("IP") is typically evaluated before it is sold. Here, the asset is not up for sale, and because Green's contribution occurred in the mid-1800s, important variables needed to make the evaluation are lacking. Therefore, estimating the numerical value of Green's contribution requires a deep dive into the hypothetical. First, instead of helping Daniel start his company, this article assumes that Green used his knowledge to start his own whiskey company. Next, this article also assumes that the company still belongs to the Green family and that the company is currently as successful as Jack Daniel's Whiskey. Lastly, this article assumes the Green family is looking to license its whiskey-making methods.

16. *Id.*

17. Jeanne Ridgway Bigger, *Jack Daniel Distillery and Lynchburg: A Visit to Moore County, Tennessee*, 31 TENNESSEE HISTORICAL QUARTERLY 3–21 (1972).

18. *Jack Daniel's Bottles*, JACK DANIEL'S BOTTLES, <http://jackdanielsbottles.com/distillery/master-distillers> [<https://perma.cc/65RY-UBW5>] (last visited Mar. 11, 2019).

19. Fortune Editors, *Jack Daniel's Marketing Magic*, FORTUNE (Dec. 8, 2011), <http://fortune.com/2011/12/08/jack-daniels-marketing-magic/> [<https://perma.cc/EB3R-N2F7>] (last visited Mar. 11, 2019).

It is an important distinction that Green’s knowledge of whiskey making is what is being licensed, not the company itself. This article will use the Discount Cash Flow (“DCF”) Method of IP evaluation, along with recent revenue figures from Brown-Forman’s annual reports, to estimate the current value of a license for Green’s whiskey-making methods.

### B. Discount Cash Flow (“DCF”) Method

The DCF method is used to calculate the value of an intellectual property.<sup>20</sup> These valuations are important when a company intends to sell or license a patent, trademark, copyright, or a trade secret to another party.<sup>21</sup> They are also important when performing damage valuations in IP litigation.<sup>22</sup> The recipe for making Jack Daniel’s Whiskey is no longer a trade secret because it is published on the Jack Daniel’s Distillery’s website.<sup>23</sup> The company does not need to protect the recipe because the main ingredient is water from an iron-free spring cave located on the Jack Daniel’s property.<sup>24</sup> However, this article assumes the IP being evaluated is a trade secret that pertains to the process involved in making Jack Daniel’s Whiskey. The DCF method calculates the present value of an IP asset by using the present cash flow attributable to the IP asset over the useful life of the asset.<sup>25</sup> Brown-Forman is a publicly-traded company, which means that its Jack Daniel’s Whiskey sales are posted online.<sup>26</sup>

Under the DCF method, the profits generated by the IP asset is estimated for a given time period.<sup>27</sup> The time period, in this case, will be five years. Then the profits are divided by the expected net sales over that same period.<sup>28</sup>

20. *The Valuation of Trade Secrets*, SEYFARTH SHAW: TRADING SECRETS (Apr. 3, 2018), <https://www.tradesecretslaw.com/2018/04/articles/intellectual-property/the-valuation-of-trade-secrets/> [<https://perma.cc/5MT7-XS39>] (last visited Mar. 23, 2019).

21. *Id.*

22. Paul Flignor & David Orozco, *Intangible Asset & Intellectual Property Valuation: A Multidisciplinary Perspective*, WIPO, [https://www.wipo.int/sme/en/documents/ip\\_valuation\\_fulltext.html](https://www.wipo.int/sme/en/documents/ip_valuation_fulltext.html) [<https://perma.cc/M3KW-D2RA>] (last visited Mar. 11, 2019).

23. *Process*, JACK DANIEL’S, <https://www.jackdaniels.com/en-us/process> [<https://perma.cc/H4UW-GVQ2>] (last visited Jan. 19, 2020).

24. *Id.*

25. Flignor & Orozco, *supra* note 22.

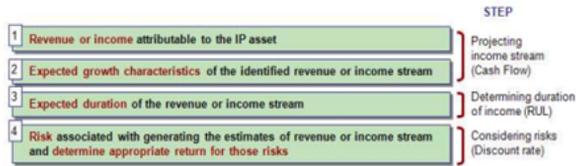
26. *About*, BROWN-FORMAN, <https://www.brown-forman.com/about/> [<https://perma.cc/822T-2KNX>] (last visited Mar. 23, 2019).

27. *Module 11: IP Evaluation*, WIPO, [https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip\\_panorama\\_11\\_learning\\_points.pdf](https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_11_learning_points.pdf) [<https://perma.cc/XDL4-7VRT>] (last visited Mar. 11, 2019).

28. *Id.*

However, the expected net sales are influenced by risk factors that devalue the IP asset.<sup>29</sup>

### Discount Cash Flow Model<sup>30</sup>



#### Necessary information for IP valuation

$$PV = \sum_{t=1}^n CF_t / (1 + r)^t$$

PV = present value  
 CF = (expected) cash flow  
 t = time representing years of IP asset economic life  
 n = time that economic life is expected to end  
 r = annual rate of discount (representing the risk factor) or time value of money and assumed

#### Example

Company X is negotiating to license the use of its trademark whose current market value is estimated to be US \$ 2 million. Company X estimates that the royalty rate would lead to an annual stream of US \$ 10,000 in five years (the economic life of the trademark). The risk-adjusted discount rate has been estimated to be 8%.

Therefore, other things being equal, the net present value of the Trademark will be  
 $PV = 10,000/(1+0.08)^1 + 10,000/(1+0.08)^2 + 10,000/(1+0.08)^3 + 10,000/(1+0.08)^4 + 10,000/(1+0.08)^5$   
 $= 9259.26 + 8573.38 + 7938.39 + 7350.23 + 6805.96 = 39,927.22$

i.e. Company X would expect to receive, at present, least US \$ 39927.22 if it is to license its Trademark for five years.

## 1. Calculating Expected Cash Flow (“CF”)

According to its 2018 Annual Report, the Brown-Forman Company sold thirteen-million cases of Jack Daniel’s Whiskey.<sup>31</sup> There are a dozen 750 ML bottles in each case.<sup>32</sup> At a wholesale price of around ten dollars a bottle, each case is worth around \$120. This means that the expected cash flow is close to the product of \$120 multiplied by the thirteen-million cases sold (\$120 x 13,000,000 = \$1,560,000,000). The 2018 cash flow that resulted from the sale of thirteen-million cases of Jack Daniel’s Whiskey is valued at approximately \$1,560,000,000. Thus, this article estimates that the license will yield an annual stream of income of \$1,560,000,000 over a five-year period and a CF of \$1,560,000,000.

29. *Id.*

30. *Id.*

31. *Icons of American Whiskey*, BROWN-FORMAN 2018 ANNUAL REPORT 02, [https://static.brown-forman.com/wp-content/uploads/2018/06/BF\\_FY18\\_Annual\\_Report-Final.pdf](https://static.brown-forman.com/wp-content/uploads/2018/06/BF_FY18_Annual_Report-Final.pdf) [<https://perma.cc/2XFW-6QDW>] (last visited Mar. 11, 2019).

32. *See id.*

## 2. Increased Risk-Adjusted Discount Rate

Using the DCF method, “[a]ll risks are lumped together and are assumed to be appropriately adjusted for in the discount rate and the probability of success, rather than being broken out and dealt with individually.”<sup>33</sup> The risk factor variable essentially reduces the value of the IP.<sup>34</sup> In its 2018 Annual Report, Brown-Forman outlined numerous risks to its business.<sup>35</sup> The company mentions risks such as, “[h]igher costs or unavailability of materials could adversely affect our financial results, as could our inability to obtain certain finished goods or to sell used materials,”<sup>36</sup> and “[t]he inherent uncertainty in supply/demand forecasting could adversely affect our business, particularly with respect to our aged products.”<sup>37</sup> These stated risks were among a list of twenty risk factors that have a company-wide effect on the product’s gross income.<sup>38</sup>

Moreover, for the purpose of this article, the risks associated with the hypothetical purchase will go beyond the aforementioned risks. The risk factor will be exaggerated to account for variables that are unique to the realities of this situation. Variables such as time, product reputation, cultural impact, and branding are factors, separate from Nathan Green’s knowledge, that have helped Jack Daniel’s Whiskey become a successful product.<sup>39</sup> Therefore, to get an accurate and fair representation of the value of Green’s contribution, the risk factor must be increased to account for variables beyond Green’s contribution that have contributed to the company’s success. An exaggerated risk factor value of fifty percent should discount Green’s contribution enough to accurately account for other variables that could have impacted the success of the product.

Lastly, although a trade secret has no numerical life span, this article assumes that, as of today, Green wants to license his knowledge for five years.

---

33. *Module 11: IP Evaluation*, *supra* note 27.

34. *Id.*

35. *Icons of American Whiskey*, *supra* note 31, at 13–21.

36. *Id.* at 17.

37. *Id.* at 16.

38. *Id.* at 13–21.

39. Steve Baltin, *How Frank Sinatra Made Jack Daniel’s into a Rock Star Brand*, FORBES (Jan. 28, 2017), <https://www.forbes.com/sites/stevebaltin/2017/01/18/how-frank-sinatra-made-jack-daniels-into-a-rock-star-brand/> [<https://perma.cc/7L9L-DXGF>] (last visited Mar. 19, 2019). Musician and social icon Frank Sinatra gave Jack Daniel’s a trendy appeal. *Id.* When Frank Sinatra was introduced to Jack Daniel’s in around 1947, it was selling under 200,000 cases at that point, and it was a very small brand. *Id.* Sinatra became an unofficial brand ambassador, and he helped the brand grow. *Id.* Now the company sells around eleven million cases a year. *Id.* These are the kinds of external impacts that could diminish Green’s contribution to Jack Daniel’s.

The present value (“PV”) of Green’s knowledge will be represented in the following equation:<sup>40</sup>

$$\begin{aligned} \text{PV} = & 1,560,000,000/(1 + .50)^1 + 1,560,000,000/(1 + .50)^2 \\ & + 1,560,000,000/(1 + .50)^3 + 1,560,000,000/(1 + .50)^4 \\ & + 1,560,000,000/(1 + .50)^5 = \mathbf{\$2,709,135,802.469} \end{aligned}$$

Based on the success of Jack Daniel’s Whiskey and the assumption that Green’s knowledge is a trade secret, this article estimates that the PV of Nathan Green’s knowledge is approximately **\$2,709,135,802.469**.

#### IV. GENERATIONAL WEALTH INEQUALITIES

The average black household in the U.S. holds less than one-tenth of the net worth of the average white household.<sup>41</sup> America’s wealth inequality across racial lines is well documented. The physical exploitation of slaves has been the consistent focus of why such inequalities exist. However, centuries of intellectual exploitation and the failure to protect black wealth-generating ideas and inventions have also played a role in why such inequalities exist today.

In 1967, the Jack Daniel family sold the company to the Brown family for twenty-million dollars.<sup>42</sup> Adjusted for inflation, twenty-million dollars in 1967 translates to approximately 153,088,023.95 dollars in 2020.<sup>43</sup> Furthermore, in 2016, with a net worth of 12.3 billion dollars, Forbes Magazine ranked the Brown family as the twentieth richest family in America.<sup>44</sup> Although the Brown family’s business portfolio includes other alcoholic beverages, Jack Daniel’s Whiskey is undoubtedly their highest selling product.<sup>45</sup>

The Brown family and the Daniel family greatly benefited from Green’s knowledge and expertise. Based on the estimated amount, **\$2,709,135,802.469**, that this article attributes to Green’s knowledge of whiskey and the success of Jack Daniel’s Whiskey, Green helped to generate immense wealth for the Brown and Daniel families. Ironically, in 2018 Green’s descendants are still

40. *Scientific Calculator*, WEB2.0CALC, <https://web2.0calc.com/> [<https://perma.cc/Z8F9-BC2U>] (last visited Mar. 19, 2019).

41. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* (2d ed. 2006).

42. *Brown-Forman Corporation*, ENCYCLOPEDIA.COM (Dec. 26, 2019), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/brown-forman-corp> [<https://perma.cc/98T2-N7LS>] (last visited Jan. 18, 2020).

43. *Inflation Calculator*, US INFLATION CALCULATOR, <https://www.usinflationcalculator.com/> [<https://perma.cc/7CF7-AFDJ>] (last visited Jan. 18, 2020).

44. # 20 *Brown Family*, FORBES (June 29, 2016), <https://www.forbes.com/profile/brown/#fea0d6658148> [<https://perma.cc/K3VA-4GKE>].

45. *Icons of American Whiskey*, *supra* note 31.

helping the Brown family generate wealth because three of Green's descendants still worked at the Jack Daniel's Distillery.<sup>46</sup>

The power imbalance made the possibility of a joint venture unrealistic. In today's world, a joint venture is formed when a person with a skill or expertise partners with a person or entity that has the capital to turn that skill or knowledge into an economic asset.<sup>47</sup> In the absence of an equal partnership, a percentage or royalty is often used as a means of equitable compensation.<sup>48</sup> Unfortunately, Green was never given an option for a partnership or equitable compensation to justly reward him for his expertise.

The unfairness surrounding such unjust distributions of wealth has led to unsuccessful lawsuits brought by the descendants of African Americans. In *In re African-American Slave Descendants Litigation*, descendants of African Americans brought nine actions against various corporate defendants.<sup>49</sup> The plaintiffs sought monetary relief and injunctive relief against the defendants for injustices connected to slavery.<sup>50</sup> The plaintiffs brought claims against "eighteen present-day companies whose predecessors are alleged to have been unjustly enriched through profits earned either directly or indirectly from the Trans-Atlantic Slave Trade and slavery between 1619 and 1865, as well as post-Emancipation slavery through the 1960s."<sup>51</sup> The claims were dismissed on four grounds: (1) lack of standing, (2) the action presented a nonjusticiable political question, (3) action failed to state a claim upon which relief can be sought, and (4) the claims were barred by the statute of limitations.<sup>52</sup> Thus, similar to Green's descendants, descendants of slaves who were instrumental in creating wealth in this country have no recourse, while the descendants of the beneficiaries enjoy continued generational wealth. It is an unjust reality.

## V. CONCLUSION

Although the Green family will never be justly compensated for Green's contributions, it is interesting to think about the impact men like Nathan Green have had on our society. Slaves were not allowed to receive patents or afforded

---

46. *The Lost Story of Nearest Green, the Slave Who Taught Jack Daniel How to Make Whiskey*, *supra* note 15.

47. Jean Murray, *What is a Joint Venture and How Does it Work?*, THE BALANCE SMALL BUSINESS, (June 25, 2019), <https://www.thebalancesmb.com/what-is-a-joint-venture-and-how-does-it-work-397540> [<https://perma.cc/WJR3-58SZ>].

48. *Id.*

49. *In re African American Slave Descendants Litigation*, 304 F. Supp. 2d 1027 (N.D. Ill. 2004).

50. *Id.*

51. *Id.* at 1039.

52. *See generally id.*

means to protect their intellectual property.<sup>53</sup> Today, each person has the liberty to dictate what to do with their intellectual property, which is intrinsically tied to a person's sense of self. However, in the not too distant past, a slave owner was able to own not only the slave themselves but also any intellectual property produced by the slave.<sup>54</sup>

African Americans and people of color have contributed greatly to this country, and the refusal to recognize, protect, and reward black ingenuity has greatly deprived the black community of an immense amount of generational wealth.<sup>55</sup> Green helped create a billion-dollar product, and based on our DCF calculations, his knowledge and methods proved to be worth billions of dollars today. Unfortunately, unlike the Brown and Daniel families, Green's family will likely never see much of that amount. Ultimately, the least we can do as a society is to recognize the contributions that men like Nathan Green have made to the wealth of this country.

---

53. Frye, *supra* note 4.

54. Shontavia Johnson, *America's Always Had Black Inventors – Even When the Patent System Explicitly Excluded Them*, THE CONVERSATION (Feb. 19, 2017), <http://theconversation.com/americas-always-had-black-inventors-even-when-the-patent-system-explicitly-excluded-them-72619> [<https://perma.cc/YBX3-66YG>].

55. Tracy, *5 Inventions by Enslaved Black Men Blocked by U.S. Patent Office*, ATLANTA BLACK STAR 5 (Feb. 11, 2014), <https://atlantablackstar.com/2014/02/11/5-inventions-by-enslaved-black-men-blocked-by-us-patent-office/> [<https://perma.cc/332E-TTGG>]. Ned, a slave, invented a cotton scraper and his owner Stuart attempted to patent the scraper but was rejected. *Id.* Stuart persisted, that “the master is the owner of the fruits of the labor of the slave, both manual and intellectual.” *Id.* (quoting an August 25, 1858 letter written by Stuart to Secretary of Interior Jacob Thompson) (internal quotation marks omitted). Despite numerous rejections, Stuart began manufacturing the creation, and the former Mississippi governor wrote Ned's scraper was “long way ahead of both the common scraper.” *Id.* (quoting JOHN HEBRON MOORE, *THE EMERGENCE OF THE COTTON KINGDOM IN THE OLD SOUTHWEST: MISSISSIPPI 1770–1860*, at 44 (1988)) (internal quotation marks omitted).