

“Licensing In The Marketing Mix”

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### **Author Biography**

With more than ten years of international business experience, Asim Khan brings dedication and tenacity to his role as Chief Executive Officer of Business Management Group, Inc. Corporate presidents, government officials, and industry associations seek his hard-earned expertise in a wide variety of industries—commodities, energy, electronics, manufacturing, technology, and financial services to name just a few. Mr. Khan also serves on the boards of directors for several corporations and nonprofit organizations.

An Honorary Chairman on the National Republican Congressional Committee's Business Advisory Council, Mr. Khan takes your business seriously—whether managing a project, finding new overseas distribution channels, or developing business plans as a consultant. His technology background—a Master's degree in Technology Management from the University of Phoenix—combined with solid sales, financial, and operations experience have proven him to be an effective asset to many corporate teams.

## **Executive Summary**

Licensing is a method of leveraging an organization's process, trademark, patent, or other intellectual property for a fee or royalty. Licensees capitalize on a known image and incorporate that image into their own products or services. Licensed products are generally easier to market since they carry an existing customer base, and marketing efforts are often supported by the licensor. Licenses are granted for several reasons, the most common of which are to increase exposure and to generate income.

Before granting a license, licensors should screen prospective licensees to ensure that they will be able to use the license in a way that upholds the quality and reputation of the licensed property. This often involves developing a stylebook to guide the licensee's use of the property. In addition, the licensor must legally protect its property with a trademark, copyright or patent before it can grant a license.

Often, agents and consultants are retained to assist companies with the business of licensing. Agents handle a range of activities on behalf of the licensor, including selection of licensees, negotiating contracts, creating stylebooks and collecting royalties, while consultants guide licensees in obtaining and using licenses.

## LICENSING IN THE MARKETING MIX

Licensing is a method of leveraging an organization's process, trademark, patent, or other intellectual property for a fee or royalty. The licensed property can then be associated with a product or used in conjunction with a service or other effort produced by the licensee. The arrangement benefits both parties. The licensee gains a familiar association with a product or a tested method of doing things, and the licensor gains additional revenue and, in the case of trademarks or brand names, exposure for the trademark or brand being licensed. In the latter case, for example, a company that does not have a recognizable brand can obtain a license from a known brand to enter into a market that would otherwise be too expensive to cater to. In this way, the licensee capitalizes on an image that is already known and respected.

Companies grant licenses for several reasons. Though licensing does generate income for the licensor, licensing is often not an end in itself. Rather, licensing allows the owner of a property to gain entrance into new markets that would otherwise remain untapped due to lack of marketing expertise or ways to distribute their existing products in a new market. In some cases, licensing can also expand a company's customer base by offering goods to those who cannot afford its main line products.

The growing trend toward globalization of businesses is a significant factor in the licensing arena as well. About one third of the revenue from licensed products that originate in the U.S. comes from international territories. In addition, international licensors are increasingly entering the U.S. market, a situation that was extremely rare a decade ago. Licensing properties overseas has significant advantages to companies that want to introduce products to international

markets without investing in expansion or exporting activities. Of course, before licensing in other countries, several factors must be considered. A licensing campaign that is effective in one country may not work as well in another for a variety of reasons. Differences in laws with respect to intellectual property, taxes, antitrust issues and customs may have a significant effect on overseas licensing contracts. Knowledge of the economy in the foreign market is essential when planning an international licensing effort, as are language and cultural issues.

When a licensed brand or trademark is already known, licensees often have little additional marketing to do because they are able to capitalize on attracting an existing customer base. However, in some cases, licensees are required to contribute to marketing efforts, often by investing a percentage of sales for marketing efforts. Such an agreement can benefit both sides. Since both the licensor and licensee have an interest in sales of the product, the best marketing strategy is often the result of the combined efforts of both. This is especially true when art and design are central to the development of the licensed product.

Companies entering into a licensing agreement to increase brand awareness and recognition in new markets must select licensees carefully. This is important to ensure that pitfalls that could damage the licensor's reputation are avoided. One of the more common mistakes licensors make in this regard is inadequate monitoring of the product. If a licensed product is of inferior quality or is sold in discount stores, for example, the reputation of the brand can be jeopardized. To ensure consistency in quality, licensors develop a style guide that must be used by licensees in designing the final product. Licensors will want to examine the quality of the licensee's product to ensure that the guidelines set forth in the style guide are followed. In

addition, the licensee's capacity to produce the volume of sales necessary to maintain the relationship is an important consideration. The licensee's experience, breadth and depth of distribution channels, the size of its sales force, and its total marketing capabilities are all issues here. The licensee's willingness to guarantee a certain amount in royalty payments is another prime consideration for licensors.

Before a property can be licensed, it must be cleared and protected legally by the owner. The way a property is protected depends on the kind of property it is. Trademarks, copyrights and patents are examples of how a property can be legally protected for licensing. Trademarks are applied to words and phrases, brand names, characters, symbols and designs that identify a company's goods and distinguish it from another. Trademarks are registered with the Patent and Trademark Office (PTO) of the United States Department of Commerce. In contrast to trademarks, copyrights exist automatically with the creation of original material and are owned by the author of the material. Graphics, music and written work are automatically copyrighted material. The symbol © indicates a copyright, but the use of the symbol is optional since the copyright always rests with the author automatically unless the work is considered "work for hire." Patents can be filed for designs, technologies and other inventions that provide a unique way of accomplishing something. Regardless of its reputation, a licensable patent can provide revenue from companies that can use the patented method or design to improve their own products or services.

In terms of finances, most licensing agreements involve royalty payments to the licensor by the licensee. Typically, an amount of sales of the licensed product, a minimum guarantee and

an advance are included in the contract. Graduated royalties and royalties that are tied to performance benchmarks may also be negotiated. Royalties are typically between 5 and 14% but can range from 1-20%. The rate depends, of course, on the popularity and demand of the property to be licensed. In competitive sectors, where there are many similar properties available for licensing, royalty rates are lower than for unique properties with well-established markets. Royalty rates are typically applied to the manufacturer's selling price, not the retail price.

The guarantee included in most royalty agreements is a minimum amount that the licensee must pay the licensor even if sales are not great enough to generate that amount in straight royalties. Including a guarantee minimizes the risk to the licensor and also encourages the licensee to be proactive in generating sales. Often the guarantee or a percentage of it is required in an advance upfront. In certain cases, the advance may be waived or lowered, for example, when the licensor wants the licensee to initially invest funds in marketing or developing the product.

The business of licensing can pose many challenges. For many licensors, retaining a licensing agent is the most cost effective and efficient way to manage licensing ventures. Especially for those new to licensing, agents offer expertise and contacts that can prove invaluable to the licensor. This may be particularly important when licensing is done internationally. Agents handle the business of licensing, from selecting licensees and contract negotiations to creating stylebooks and collecting fees. Most agents work by charging a percentage of royalty income, while others are hired on retainers and collect fees upfront. Commissions paid to agents can range from as low as 15% to as much as 55%, but generally fall

in the 35 to 40% range. Retainers may range from \$3,000 to \$20,000 for a basic agreement, with fees for consulting or additional duties added to that amount.

While agents assist licensors with business matters, manufacturers often turn to licensing consultants to guide them through the process of obtaining the license to a property. Consultants can represent manufacturers who do not have in-house staff with experience in licensing. Consultants advise manufacturers in evaluating whether a property is appropriate for the manufacturer, and they can help develop licensing strategies as well. Though terms vary widely, most consultants, like agents, either work on commission or charge a retainer.