

## LICENSING

Licensing may be defined as an arrangement between two parties, where one party has proprietary rights over some information, process, or technology protected by a patent, trademark, or copyright. This arrangement, specified in a contract, requires the licensee to pay a royalty or some other specified sum to the holders of the proprietary rights (licensor) in return for permission to copy the patent, trademark, or copyright.

Thus, licensing has significant value as a marketing strategy to holders of patents, trademarks, or copyrights to grow their business in new markets when they lack resources or experience in those markets. It is also an important marketing strategy for entrepreneurs who wish to start a new venture but need permission to copy or incorporate the patent, trademark, or copyright with their ideas.

A patent license agreement specifies how the licensee would have access to the patent. For example, the licensor may still manufacture the product but give the licensee the rights to market it under their label in a noncompetitive market (i.e., foreign market). In other instances, the licensee may actually manufacture and market the patented product under its own label. This agreement must be carefully worded and should involve a lawyer, to ensure the protection of all parties.

Licensing a trademark generally involves a franchising agreement. The entrepreneur operates a business using the trademark and agrees to pay a fixed sum for use of the trademark, pay a royalty based on sales volume, buy supplies from the franchisor (examples would be Shell, Dunkin' Donuts, Pepsi Cola or Coca Cola bottlers, or Midas Muffler shops), or some combination of these. Franchising is discussed as an option for the entrepreneur as a way to start a new business or as a means of financing growth.

Copyrights are another popular licensed property. They involve rights to use or copy books, software, music, photographs, and plays, to name a few. In the later 1970s, computer games were designed using licenses from arcade games and movies. Television shows have also licensed their names for board games or computer games. Celebrities will often license the right to use their name, likeness, or image in a product (e.g., Andre Agassi tennis clothing, Elvis Presley memorabilia, or Mickey Mouse lunch boxes). This is actually analogous to a trademark license. Brandgenuity, a new venture that opened its door in early 2003, has licensed the Snapple name to produce and market beauty aids, gifts and collectibles, and apparel. Snapple also plans to investigate other deals that include their brands Mystic, Nantucket Nectars, Yoohoo, Orangina, and Stewarts.

Walt Disney has been one of the more significant players in the granting of licensing agreements. Disney's licensing revenue had reached over \$2 billion by 1999. More recently, however, Disney, Sony, Fox, and Warner Brothers, as well as many other entertainment industry players, have taken a much more cautious and selective approach and have in fact downsized their licensing departments and operations. Much of this change in strategy resulted from poor licensing decisions, as with Godzilla, Little Nicky, Batman, Hercules, and Harry Potter, to name a few. Disney has reorganized its licensing business unit after many stores had to be closed

because of poor profitability in 2000. Warner Brothers' retail stores have also suffered, and the company was criticized for carrying too many licensed products on obscure Looney Tunes characters. Some experts in the licensing business believe that licensing will again become a very profitable business strategy, particularly when the economy begins to flourish again.

Licensing is also popular around special sporting events, such as the Olympics, marathons, bowl games, and tournaments. Licenses to sell T-shirts, clothing, and other accessories require written permission in the form of a license agreement before sales are allowed.

Although licensing opportunities are often plentiful, they must be carefully considered as part of the venture's total business model. A small software company, Sonic Solutions, recently reached new profit highs with a licensing agreement with Microsoft. Microsoft agreed to license Sonic's technology, which was used to create digital videodisks. Sonic's potential to sign up with other technology giants such as Sony and Hewlett-Packard could help to boost its sales over \$30 billion in 2003. This is a major and quick fix of the profit picture of this young venture. However, there is risk in conducting this strategy without some overall plan, especially since such a large portion of total sales will be so dependent on a few large clients. This problem will usually occur only if the licensor (Sonic) is not able to deliver its part of the agreement. If the firm has made provisions and planned for these events, then it is an excellent strategy to enhance growth quickly and create a more favorable capital market for its shares.

Another example of a successful licensing agreement is Yak Pak. This is a small fashion bag manufacturer that recently has benefited from licensing agreements with Levi-Strauss & Co. and Williamson-Dickie Manufacturing Company (maker of Dickies). Their challenges has been similar to that of Sonic Solutions. They have noted that the challenges of maintaining a strong licensing arrangement can often be tested by the increased red tape and may lead to possible intimidation by the larger established companies.

One of the most successful examples of licensing of figurines was the Teenage Mutant Ninja Turtles, which accounted for over \$2 billion in licensing revenues. Most of the firms that made Turtles products were small entrepreneurial ventures.

Licensing is an excellent option for the entrepreneur to increase revenues, without the risk and costly start-up investment. To be able to license requires the entrepreneur to have something to license, which is why it is so important to seek protection for any product, information, name, and so on, with a patent, trademark, or copyright. On the other hand, licensing can also be a way to start a new venture when the idea may infringe on someone else's patent, trademark, or copyright. In this instance, the entrepreneur has nothing to lose by trying to seek a license agreement from the holder of the property.

Licensing continues to be a powerful marketing tool. With the advice of a lawyer, entrepreneurs may find that licensing opportunities are a way to minimize risk, expand a business, or complement an existing product line.

Hisrich, PhD, Robert D., Michael P. Peters, PhD and Dean A. Shepherd, PhD.  
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