



Trademark Licensing

Stephen R. Reily

Licensing Corporate Brands and Trademarks: Knowing What It Should Cost

As someone who runs a licensing agency for the owners of brands and trademarks, I can be expected to argue that brand owners should always hire agents. Not so. They should generally do so, but not because it's the only way to do well.

When prospective licensing clients ask why they should hire an agent, I generally tell them that there is no reason they could not license their brand in-house, except for this: They will never be able to devote the resources appropriate to the opportunity or the resources that a professional licensing agent would bring to the job.

Why not? Because there is no general understanding of what it costs to do licensing well or what services professional licensing entails. If there were greater disclosure of those facts, agency terms of representation would become standardized and the industry would grow. This is what the world of brands—both brand owners and those who represent them—needs.

Why Brand Owners Need Disclosure and Standardization

Brand owners need to learn that professional licensing requires a large, devoted, and experienced staff. Brand owners have generally confused the job of licensing with the function of registering and protecting its marks. The two jobs are related, to be sure, but they are not the same. The person in charge of coordinating registrations and

renewals with trademark counsel rarely has the time (to say nothing of the mindset) to focus on opportunistic licensing.

An in-house director of trademarks is usually busy around the clock with maintaining domestic and international trademarks, coordinating cease-and-desist letters, and approving trademark usage by internal salespeople and the brand's advertisers. He has little, if any, time to study the licensing industry, keep up with retail and design trends, or pursue licensing deals in a proactive way.

When they have looked to outsiders, brand owners often have been misled by pitches from "licensing agents" who resemble full-service professional agencies about as much as Kinko's resembles Young & Rubicam. These logo-slappers allow brand owners to think that licensing agents who perform more or less the same work are charging wildly different rates. Instead, there are people holding themselves out as licensing agents in order to collect finders' fees and make their clients do the work. They lack the brand sensitivity, long-term perspective, negotiating skills, and professional management with which a true licensing agent earns its fee.

Professional licensing requires a devoted staff, and that costs money. It also requires a level of quality that can only come from trained professionals. A brand owner almost always understaffs its in-house licensing effort, staffs it inappropriately, or hires a firm it doesn't deserve, because brand owners have not been made to understand how hard it is to launch a full-scale licensing program.

Why Licensing Professionals Need Disclosure and Standardization

Licensing professionals (meaning, primarily, licensing agents) need standardization and a general understanding of what services licensing professional provide so that they can compete on their qualifications and not on their fees.

Brand owners generally believe that licensing agents demand too large a commission to do their work. Licensing agents have to spend too much time explaining why the fees and commissions they seek are reasonable compensation for the work and risk they assume on behalf of their clients. This is not because licensing agents are greedy, but because there is a general misunderstanding among brand owners about how much it costs to do serious licensing well.

For these reasons, bringing the light of day and standardization to licensing should be the industry's foremost project. But it is not.

To this relatively new member of its trade, the licensing industry seems to believe that the less anyone understands about what professional licensing costs (and what professional licensing agents charge), the better. The only people rewarded by that belief are the unprofessional agents who end up being overpaid. No other industry has grown with the belief that disclosing what its professional practitioners earn would threaten their work.

Real estate agents, to take one example, charge a uniform commission across the country—a fact that certainly has not hurt its practitioners, who compete not on their commissions but on their skills. Standardization of terms has helped real estate professionals by creating a universally accepted appraisal of the value added (and risk assumed) by a good real estate agent and a uni-

