

Brands on the brink

At a time when many marquee brands have filed for or are teetering on the edge of bankruptcy, and others face their toughest times in decades, licensing is increasingly being used to generate revenue for brands, stave off insolvency or as a new business model altogether.

Not too long ago a roll call of brands like Lenox, Linens 'N Things, Sharper Image, Steve & Barry's, Eddie Bauer, read like a Who's Who list. Sadly, today "Being in the Red" is the "New Black" and they enjoy the not so enviable company of GM, WaMu, Enron, Oneida, on a long list of other good brands gone bad. But the real story is the impact these companies had on the world of licensing, both good and bad, and how it is changing the way the licensing industry does business.

Falling stars

Let's take for instance Steve & Barry's who topped License Global's list as "Retailer of the Year" in 2006 and filed for bankruptcy in July 2008. How does a star fall so fast? Razor thin margins and a souring economy proved to be a recipe for disaster. And the fallout? Everyone was left holding the bag – from the 17,000 employees who lost their jobs, to the hundreds of malls who lost major tenants, to Sarah Jessica Parker who was "Bitten" on her exclusive line, to the dozens of smaller licensors and agents who counted on Steve & Barry's to drive significant volume and whose agreements were rejected during bankruptcy proceedings, to countless vendors like the shopping bag supplier who didn't even get paid for the bag he's left holding. It's a sad and devastating ripple effect that we see playing out over and over.

Or, like Linens 'N Things who filed Chapter 11 in May of 2008 and shuttered the doors of its 120 stores. As if vendors like Lenox, as just one example, weren't having a difficult enough time, the last

thing a brand needs is one less major retail account.

The same applies to licensees. We personally dealt with many manufacturers who were very close on deals for Lenox or for which Linens 'N Things would be a key retail account – deals that never happened or never met their potential because of bankruptcy proceedings. Having had contracts rejected through the process and without all compensation, I am acutely aware of the pain of these events.

Staying on top

Should we run and hide because we could get burnt? Absolutely not! In fact, we are seeing more and more business turning to licensing to actually help during these challenging times. Take for instance the fact that we have had calls from and conversations with over 30 restaurant-type brands this year – an amount nearly quadruple what a normal year would look like – is certainly no coincidence with the state of the restaurant industry. As restaurant sales have declined for the second straight year according to the National Restaurant Association, brands are trying to insure that when the economy rebounds their brands are still top of mind.

They are more and more interested in figuring out how to engage their consumers when they are dining at home. It's not an easy answer to license due to franchisee concerns, but many have done so quite successfully with seemingly little impact to location sales.

Take for example Cinnabon, a part of franchisor Focus Brands' portfolio which is owned by private equity firm Roark Capital, who has used licensing extensively to grow its brand and relationship with its consumers.

Now, instead of only being able to enjoy Cinnabon on a trip to the mall, the taste of its signature cinnamon is available at grocery in products ranging from

cinnamon rolls by Pillsbury, to coffee by sister company Seattle's Best, to snack bars by Kellogg's and roasted nuts by Mellace. While this drops revenue to the bottom line and builds impressions (to the tune of millions of impressions on the General Mills NASCAR alone), the trick to getting the franchisees on board with the idea of licensing was to show these products have different dayparts and usage occasions than the Cinnabon core products and to have revenue go into a fund for the franchisees.



Conversely, another franchisor, Mrs. Fields, wasn't able to avoid bankruptcy in 2008, but tried to use licensing as one of their strategies to stave it off. After emerging from Chapter 11 in under 60 days, their rebuilding plans continue to include licensing.

Struggling to perform

It's also a tough time for franchisees across the US, with many filing for bankruptcy protection because they can't cover their fixed operating costs since sales and royalties have dropped off. And it's not just restaurant brands. Bally's Total Fitness filed for bankruptcy protection twice within a 17 month period and is just about to reemerge yet again. Licensing has played a role to greater and lesser success over the years and it will be interesting to watch how it evolves in this next iteration.

Shifting to a different outlook on licensing for good brands whose traditional business was no longer working, an ever more attractive business model is developing whereby the brands become wholly licensed properties. No more burden of inventory, huge staff, potential channel conflicts, etc. Entire businesses have become 100% licensed and firms are specializing in revitalizing brands through this business model.

Cherokee Inc. was the pioneer of this model back in 1995 when it licensed its brand to Target for likely the first direct to retail deals whereby Target developed a whole range of products under the Cherokee name that were not available at other retailers, making it a go-to destination for these branded products.

Over the years, the success of this model has been replicated most successfully by firms like Iconix, Hilco and Gordon Brothers. Iconix has an impressive track record on its brand portfolio including Candies exclusively at Kohl's, Joe Boxer at Kmart, Mossimo at Target, OP at Wal-Mart, just to name a few. Infused frequently with celebrity endorsements



and marketing campaigns, these brands get a jolt of freshness and a sense of cache that may have otherwise been waning.

Likewise, firms like Hilco Consumer Capital and Gordon Brothers Group are giving a second life to brands like The Sharper Image with programs like the exclusive office furniture collection at Office Max. Or, take Polaroid, once thought to be a dead brand, who recently announced a deal with Summit Global Group for digital and video cameras estimated to generate \$1.3 billion in sales over five years.

And for brands that not only flirted with or filed bankruptcy, there are firms like River West Brands that even resurrects brands from the graveyard, dusts them off and gets them back in the hands of consumers.



For example, they helped take dormant brands like Nuprin, which had disappeared from store shelves, to CVS as a retail exclusive across a broader range of analgesics and Salon Selectives, similarly flat-lined, to retailers across the country. (I suppose to appeal to the big hair 80's girl inside all of us?).

Avoiding the risk

One of the key lessons behind all of this is the fact that all licensing involves some degree of risk, but the best thing we can do is mitigate that risk through careful due diligence and well crafted agreements.

We're taking a very close look at company balance sheets, talking to bank references and other partners about the timeliness of payments and structuring deals to protect our clients and ourselves. Licensees can't believe that the halo of their brand is enough these days.

If they are in an even slightly precarious financial position, the deal will need to be structured in such a way that exclusivity can't lock a licensor out of a category should they file for bankruptcy, guarantee payments will be more front-loaded and collection efforts ratcheted up so a licensee can be terminated for being in breach for late payments.

While we can't avoid the fact that some companies will still fail, the best we can do is make sure they don't bring anyone else down with them.

Even in these uncertain times where red is all around, licensing is an ever more sought out business model to differentiate product offerings.

With a creative eye towards deal making and proper due diligence, extracting value from beloved brands can be ever more appealing for parties on all sides of the equation.

I don't know about you, but I want to be on the list of companies that not only weathered this storm, but helps bring black back to brands on the brink! ■



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Stylish German cider looks to expand

Whether it's pure, "sour," or mixed with cola, a special cider-like beverage from the German region of Hesse has found its ideal package in the beverage can. BEMBEL-WITH-CARE, a start-up company based in the region, has replaced the old-fashioned stoneware pitcher (the traditional "Bembel") with a stylish aluminum container from Ball Packaging Europe – with the purpose of giving its specialty drink access to a younger group of consumers. Produced by a traditional winemaker, BEMBEL-WITH-CARE in cans has been available at retail chains and via the Internet since early August. This is just the beginning, though: Thanks to the cool, matte lacquered outfit, BEMBEL-WITH-CARE is intended to become a nationwide German trend beverage soon. In Germany, cider has led rather a sort of wallflower existence until now. "Unjustifiably," according to Benedikt Kuhn and Kjetil Dahlhaus. In the opinion of the two avowed cider fans the traditional drink might even turn into the next trend beverage – if only its appearance were a bit more attractive: "Young consumers consider cider staid and uncool. This is due to the fact that it is still presented in a form that holds little appeal for this group."

In 2007, Kuhn and Dahlhaus – both designers with a university degree – accordingly founded BEMBEL-WITH-CARE, a new cider brand including the attendant merchandise products, specifically aimed at this trendy target group. After the market introduction a year ago, BEMBEL-WITH-CARE initially sold its cider in five-liter party cans via the Internet – with steadily rising demand. Since August 2009, the new drink has been sold also in the 0.5-liter can throughout Germany. It comes in three flavors: Pure Apfelwein, Sour Apfelwein and Apfelwein Cola. "The beverage can appeals in particular to young consumers," Kuhn explains. "Moreover, as an on-the-go package it is ideal for our target group, who are mobile and trendy".

The BEMBEL-WITH-CARE cider is clarified through filtration and pasteurized. This gives the cider a shelf life of one year as well as consistently high quality. BEMBEL-WITH-CARE's cider is mild with a high residual sweetness and light carbonation. The mixed product Apfelwein Cola retains the authentic cider flavor. The beverages are produced by the traditional Odenwald winemaker Krämer. Cider is exempt from the mandatory deposit - but the can is fed into the recycling process just as reliably and conveniently via the Green Dot system. And this is a veritable plus for the environment: For the recycling of beverage cans saves up to 95% of the energy required for the production of new metal and thus an equal amount of CO2 emissions. In Germany roughly 90 % of beverage cans are recycled, which has made them the most environmentally friendly one-way packaging.

