



Trademark Licensing

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Most Companies Have Too Many Licensors

The Problem

If you look to a corporation's internal licensing department for evidence of trademark usage and enforcement, as well as development of products well-adapted to the brand, you would most likely be impressed.

But if you scratch even lightly beneath that surface and look beyond the internal licensing department for evidence of the same principles elsewhere in the company, you usually will be appalled. Throughout most companies there are multiple divisions authorizing, developing, sourcing, and selling branded products without any trademark protection and with none of the brand discipline that governs the development of the company's own core products.

How does this happen? Why does a company allow so many employees in so many disparate divisions and with so little oversight, to act as unsupervised licensors of its most valuable asset: Its brand? Often for good reasons, but frequently with bad results, and always at a cost to its true licensing opportunities and the long-term value of its brand.

How Does It Happen?

The company opens a visitors' center or museum and needs a gift shop. The manager of the gift shop dreams of becoming a profit center and starts attending gift and premium trade shows. This person,

often someone with no experience with trademarks or brand management, thinks not of how the work can support the brand, but of how he or she can increase his or her own sales. And before you know it, an internal division of the company with no marketing or trademark oversight is sourcing branded products from dozens of suppliers, none of whom execute licensing agreements and some of whom invariably start pirating the brand via independent distribution of the same products. Even worse, few of their products comply with the brand's customary trademark requirements, and even fewer support brand equity or help build its long-term value.

It does not take long before this independent retailer thinks of selling outside his or her own boundaries. In the past this usually meant printing a mail-order catalogue and buying a cheap direct-mail list. Today it usually means tacking an e-commerce link to the company's own Web site. Separately, this manager's search for wholesale customers (again, to increase sales) leads him or her to some entity that either sets itself up as an exclusive representative of branded products, or sets up a "store-within-a-store" at some other location.

The gift shop manager is not the only employee with the same temptations. Sometimes a salesperson wishes he or she had new premiums to offer the best accounts or to potential new accounts. So the salesperson independently sources some products and then needs to print a sheet illustrating them. Again, none of these products and none of their manufacturers comply with traditional trademark requirements, and because

the salesperson has limited design skills and understanding of the company's larger brand objectives, the products have nothing to do with the company's carefully maintained and advertised image. Before long, this salesperson, too, hopes to reduce the prices he or she pays, or to increase his or her divisional profits, by turning the four-color sheet of premiums into a small mail-order catalogue.

Add to this mix the company's own internal or external Web site developers who think they have discovered a way to get rich quick; the brand manager who oversees the development of POS and promotional material; the HR assistant who needs handouts for the corporate retreat; the distributor who asks for the right to sell a co-branded product independently; and the business development staff person who needs gifts at holiday time. Altogether you stop being surprised when you discover that a company has four or five or even 10 people separately developing and distributing branded products.

The Costs

I am a licensing agent, so the immediate risk of these actions I see is that they limit the licensing opportunities for the brand and weakens the opportunities that remain.

But the risks to my clients are far greater than that.

As a legal matter, such unregulated efforts inevitably weaken the trademark that the company is probably paying attorneys tens of thousands of dollars a month to protect—the trademark that probably constitutes the company's single largest asset.

As a financial matter, such efforts invariably lead the company into the mistakes made by all inexperienced (and many experienced) retailers: Excess inventory and the resulting choice between painful write-offs or close-out sales of branded merchandise. Someone will ask at a meeting who had decided that the com-

