Collateral/Character Licensing

James G. Colpitt

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BIOGRAPHY OF JAMES G. COPLIT

James G. Coplit is an associate with the law firm of Grimes & Battersby, which is based in Stamford, Connecticut. Jim is an intellectual property lawyer with a particular specialization in licensing.

Jim has a B.S. degree (Mechanical Engineering) from Cornell University and a J.D. degree from the Boston University School of Law. Prior to joining Grimes & Battersby, he had been associated with two small firms in Boston and a non-profit corporation in Connecticut.

Jim has authored numerous articles in the areas of licensing and intellectual property protection, and has presented several talks on these subjects to such diverse groups as the New Jersey Patent Law Association and Massachusetts Continuing Legal Education. He also contributes to the annual updates of several books, including The Law of Merchandise and Character Licensing, published by Clark Boardman, Multimedia and Technology Licensing Agreements, published by the West Group, and the Licensing Annual published by Aspen Law & Business.

MERCHANDISING LICENSE AGREEMENT ANNOTATED

by Charles W. Grimes and Gregory J. Battersby

Charles W. Grimes and Gregory J. Battersby are partners in the law firm of Grimes & Battersby, Three Landmark Square, Stamford, CT 06901 and Executive Editors of *The Licensing Journal*. They are recognized authorities in the area of licensing law. They authored the seminal work in the area, "The Law of Merchandising and Character Licensing" and are regular speakers to Bar and lay groups on licensing topics.

CLAUSE	COMMENT
THIS AGREEMENT is entered into this 1st day of January, 1993 by and between XYZ PROPERTIES, INC., a New York corporation with offices at 111 Madison Avenue, New York, New York 10022 ("LICENSOR") and DODGERTOWN NOVELTIES, INC., a California corporation with offices at 1 Baseball Boulevard, Los Angeles, California 99999 ("LICENSEE").	This paragraph sets the stage by identifying the Licensor and Licensee and establishes the effective date of the Agreement.
WITNESSETH:	
WHEREAS, LICENSOR is the sole and exclusive owner of the copyrighted Property or Properties identified more fully in Schedule A attached hereto (the "Property"); and WHEREAS, LICENSOR is the sole and exclusive owner of the trademark(s) identified more fully in Schedule A attached hereto (the "Trademark"); and	These paragraphs define the Licensed Property and trademark(s) as identified in the attached Schedule A.
WHEREAS, LICENSOR has the power and authority to grant to LICENSEE the right, privilege and license to use, manufacture and sell those types of licensed products which incorporate or are otherwise based on the Property as identified in Schedule A attached hereto (the "Licensed Products") and to use the Trademark on or in association with the Licensed Products; and	Here, the Licensor confirms that it has the authority to grant the Licensee the right to make and sell the Licensed Products.
WHEREAS, LICENSEE has represented that it has the ability to manufacture, market and distribute the Licensed Products in the countries identified in Schedule A attached hereto (the "Licensed Territory") and to use the Trademark on or in association with the Licensed Products;	Here, the Licensee confirms it is able to manufacture and market the Licensed Products in the Licensed Territory.
WHEREAS, LICENSEE desires to obtain from LICENSOR an exclusive license to use, manufacture, have manufactured and sell Licensed Products in the Licensed Territory and to use the Trademark on or in association with the Licensed Products; and	
WHEREAS, both LICENSEE and LICENSOR are in agreement with respect to the terms and conditions upon which LICENSEE shall use, manufacture, have manufactured and sell Licensed Products and use the Trademark.	
NOW, THEREFORE, in consideration of the promises and agree-	

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ments set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows:	
1. LICENSE	
(a) LICENSOR hereby grants to LICENSEE for the Term of this Agreement as recited in Schedule A attached hereto, the exclusive right and license to use, manufacture, have manufactured, sell, distribute and advertise the Licensed Products in the Licensed Territory. The license includes, but is not limited to, a license under any and all patents and copyrights and any applications therefore which have been filed or may be filed in the future with respect to the Property. It is understood and agreed that this license shall pertain only to the Licensed Products and does not extend to any other product or service.	This provision is the operative exclusive license grant to use the Property.
(b) LICENSOR hereby grants to LICENSEE for the Term of this Agreement as recited in Schedule A attached hereto, a royalty-free, non-exclusive license to use the Trademark on or in association with the Licensed Products in the Licensed Territory as well as on packaging, promotional and advertising material associated therewith.	This is the operative exclusive license grant to use the Trademark on Licensed Products and on promotional and advertising material.
(c) LICENSEE shall also have the right to grant sub-licenses to third parties to manufacture and/or sell the Licensed Products in countries in the Licensed Territory other than the United States subject to LICENSOR's prior express written approval of each such sub-license.	This grants the Licensee the right to grant sub-licenses, limiting them to countries within the Licensed Territory outside the United States. The Licensee must notify and receive written approval from the Licensor of the sub-license before an agreement is made.
(d) LICENSEE shall not make or authorize, any use, direct or indirect, of the Licensed Products, like or similar in any other country outside the [illegible]sed Territory and will not knowingly sell the Licensed Products to p[illegible]ons who intend or are likely to resell them in any country outside the Licensed Territory.	In provision 1(d), the Licensee agrees not to knowingly sell Licensed Products to a third party who is likely to distribute them outside of the Licensed Territory, possibly in conflict with other Licensees.
2. TERM OF THE AGREEMENT	
This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the date of execution by both parties and shall extend for a Term as recited in Schedule A attached hereto (the "Term").	By reference to Schedule A, this establishes when the Agreement commences and ends.
3. COMPENSATION	
(a) In consideration for the licenses granted hereunder, LICENSEE agrees to pay to LICENSOR during the Term of this Agreement, a royalty in the amount recited in Schedule A attached hereto (the "Royalty") based on LICENSEE's Net Sales of Licensed Products.	By reference to Schedule A, this provision defines the royalty rate.
(b) In the event that LICENSEE grants any previously approved sub-licenses for the use of the Property in countries outside of the United States, LICENSEE shall pay LICENSOR FIFTY PERCENT (50%) of the gross income received by LICENSEE from such sub-licensees.	This provision defines the percentage the Licensor will receive from income received by the Licensee from an authorized sub-licensee.
(c) The Royalty owed LICENSOR shall be calculated on a quarterly calendar basis (the "Royalty Period") and shall be payable no later than thirty (30) days after the termination of the preceding full calendar quarter, i.e., commencing on the first (1st) day of January, April, July and October with [illegible]ception of the first and last calendar quarters which may be "short" [illegible]ding upon the effective date of this Agreement.	This provision determines when royalties will be calculated and when payment of royalty is due by the Licensee. In this case, royalties are calculated on a quarterly basis, and payment must be received no later than thirty days after the quarter ends.
(d) With each Royalty Payment, LICENSEE shall provide LICENSOR	This provision describes how the royalty state-

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with a written royalty statement of the type attached hereto as Exhibit B. Such royalty statement shall be certified as accurate by a duly authorized officer of LICENSEE, reciting on a country by country basis, the stock number, item, units sold, description, quantity shipped, gross invoice, amount billed customers less discounts, allowances, returns and reportable sales for each Licensed Product. Such statements shall be furnished to LICENSOR whether or not any Licensed Products were sold during the Royalty Period.	ments must be submitted to the Licensor. Each ment should be certified by an officer of the Lice
(e) LICENSEE agrees to pay to LICENSOR a Guaranteed Minimum Royalty in accordance with the terms of Schedule A attached hereto (the "Guaranteed Minimum Royalty"). As recited in Schedule A, a portion of the Guaranteed Minimum Royalty for the first year shall be payable as an Advance against royalties (the "Advance"). The actual royalty payments shall reflect the amount of all Guaranteed Minimum Royalty payments including any Advances made.	The Guaranteed Minimum Royalty and Advance identified in Schedule A are recited in this provision. It specifically provides that the actual royalty payments will be credited against the Guaranteed Minimum Royalty.
(f) "Net Sales" shall mean LICENSEE's gross sales (the gross invoice amount billed customers) of Licensed Products, less discounts and allowances actually shown on the invoice (except cash discounts not deductible in the calculation of Royalty) and, further, less any *bona fide* returns (net of all returns actually made or allowed as supported by credit memoranda actually issued to the customers). No other costs incurred in the manufacturing, selling, advertising, and distribution of the Licensed Products shall be deducted nor shall any deduction be allowed for any uncollectible accounts or allowances.	A definition is provided for "Net Sales." This provision should be reviewed by the Licensor's accountants.
(g) A Royalty obligation shall accrue upon the sale of the Licensed Products regardless of the time of collection by LICENSEE. For purposes of this Agreement, a Licensed Product shall be considered "sold" upon the date when such Licensed Product is billed, invoiced, shipped, or paid for, whichever event occurs first.	This provision defines the types of transactions for which a royalty is due.
(h) If LICENSEE sells any Licensed Products to any party affiliated with LICENSEE, or in any way directly or indirectly related to or under the common control with LICENSEE, at a price less than the regular price charged to other parties, the Royalty payable LICENSOR shall be computed on the basis of the regular price charged to other parties.	This provision provides that a full royalty shall be paid for distressed sales.
(i) The receipt or acceptance by LICENSOR of any royalty statement, or the receipt or acceptance of any royalty payment made, shall not prevent LICENSOR from subsequently challenging the validity or accuracy of such statement or payment.	The cashing of a royalty check by the Licensor should not constitute a waiver to prevent the Licensor from being able to subsequently challenge the correctness thereof.
(j) Upon expiration or termination of this Agreement, all Royalty obligations, including any unpaid portions of the Guaranteed Minimum Royalty, shall be accelerated and shall immediately become due and payable.	This is a standard "acceleration" clause, confirming that all guaranteed payments will become due and payable upon termination or expiration of the Agreement.
(k) LICENSEE's obligations for the payment of a Royalty and the Minimum Royalty shall survive expiration or termination of this Agreement and will continue for so long as LICENSEE continues to manufacture, sell or otherwise market the Licensed Products.	
(l) All payments due hereunder shall be made in United States currency drawn on a United States bank, unless otherwise specified between the parties.	This provision is particularly relevant with regard to foreign Licensees so that the Licensor is not obligated for bank collection fees for processing foreign checks.
(m) Late payments shall incur interest at the rate of ONE AND ONE-HALF PERCENT (1 1/2%) per month from the date such payments were originally due.	This is a standard "time is of the essence" provision with interest accruing for late payments.

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4. AUDIT	
(a) LICENSOR shall have the right, upon at least five (5) days written notice and no more than once per calendar year, to inspect LICENSEE's books and records and all other documents and material in the possession of or under the control of LICENSEE with respect to the subject matter of this Agreement at the place or places where such records are normally retained by LICENSEE. LICENSOR shall have free and full access thereto for such purposes and shall be permitted to be able to make copies thereof and extracts therefrom.	The Audit Provision is relatively standard and should be reviewed by the auditors the Licensor plans to use for auditing Licensees. It provides that the Licensor has the right to audit under reasonable terms.
(b) In the event that such inspection reveals a discrepancy in the amount of Royalty owed LICENSOR from what was actually paid, LICENSEE shall pay such discrepancy, plus interest, calculated at the rate of ONE AND ONE-HALF PERCENT (1 1/2%) per month. In the event that such discrepancy is in excess of ONE THOUSAND UNITED STATES DOLLARS ($1,000.00) LICENSEE shall also reimburse LICENSOR for the cost of such inspection including any attorney's fees incurred in connection therewith.	In the event that the audit reveals underpayment, the Licensee must pay discrepancy with interest. If the underpayment is more than $1000, the Licensee must also pay the cost of the audit.
(c) All books and records relative to LICENSEE's obligations hereunder shall be maintained and kept accessible and available to LICENSOR for inspection for at least three (3) years after termination of this Agreement.	One problem frequently encountered is destruction of records. This provision requires that the Licensee keep all books and records for at least three years after expiration of the Agreement.
(d) In the event that an investigation of LICENSEE's books and records is made, certain confidential and proprietary business information of LICENSEE may necessarily be made available to the person or persons conducting such investigation. It is agreed that such confidential and proprietary business information shall be retained in confidence by LICENSOR and s' ot be used by LICENSOR or disclosed to any third party for a period o. . (2) years from the date of disclosure, or without the prior express written permission of LICENSEE unless required by law. It is understood and agreed, however, that such information may be used in any proceeding based on LICENSEE's failure to pay its actual Royalty obligation.	Provision 4(d) states that in the event of an audit, the Licensor agrees to maintain the confidentiality of the information it gains access to. This information can be used, however, in an action by the Licensor to enforce the royalty obligation.
5. WARRANTIES & OBLIGATIONS	
(a) LICENSOR represents and warrants that it has the right and power :o grant the licenses granted herein and that there are no other agreements with any other party in conflict herewith.	The Licensor warrants that it has the right to grant this license and that it has not already granted these rights to another party.
(b) LICENSOR further represents and warrants that it has no actual knowledge that the Property and/or Trademark infringe any valid right of any third party.	Here, the Licensor warrants that the Licensed Property and/or Trademark will not infringe the rights of any other party.
(c) LICENSEE represents and warrants that it will use its best efforts to promote, market, sell and distribute the Licensed Products.	This is important as it defines what efforts the Licensee will make to promote and sell the Licensed Products.
(d) LICENSEE shall be solely responsible for the manufacture, production, sale and distribution of the Licensed Products and will bear all related costs associated therewith.	
(e) It is the intention of the parties that LICENSEE shall introduce the Licensed Products in all countries in the Licensed Territory on or before the Product Introduction Date recited in Schedule A and commence shipment of Licensed Products in all countries in the Licensed Territory on or before the Initial Shipment Date recited in Schedule A. Failure to meet either the Product Introduction Date or the Initial Shipment Date shall constitute gr. ds for immediate termination of this Agreement by LICENSOR.	This obligates the Licensee to introduce Licensed Products in accordance with a specific schedule detailed in Schedule A. The Licensor will have the right to terminate the Agreement if this schedule is not kept.
LICENSEE shall be entitled to materially modify or change the Licensed Products without the prior written consent of LICENSOR pro-	

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vided, however, that LICENSOR shall be entitled to its full compensation on any such modified or changed version of the Licensed Products. Further, should LICENSEE utilize any dominant feature of the Property and/or the Trademark on any product other than the Licensed Products, LICENSOR shall be entitled to a royalty on such other products in an amount to be negotiated between the parties.	
6. NOTICES, QUALITY CONTROL & SAMPLES	
(a) The Licenses granted hereunder are conditioned upon LICENSEE's full and complete compliance with the marking provisions of the trademark, patent and copyright laws of the United States and other countries in the Licensed Territory.	This conditions the license grant upon the Licensee's full compliance with the intellectual property laws of the United States and foreign countries and requires that the Licensee advise the Licensor upon commencement of sale of Licensed Products in any country.
(b) The Licensed Products, as well as all promotional, packaging and advertising material relative thereto, shall include all appropriate legal notices as required by LICENSOR.	
(c) The Licensed Products shall be of a high quality which is at least equal to comparable products manufactured and marketed by LICENSEE and in conformity with a standard sample approved by LICENSOR.	The quality control provision is the heart of any merchandising license agreement and is required when a trademark is being licensed.
(d) If the quality of a class of the Licensed Products falls below such a production-run quality, as previously approved by LICENSOR, LICENSEE shall use its best efforts to restore such quality. In the event that LICENSEE has not taken appropriate steps to restore such quality within thirty (30) days after notification by LICENSOR, LICENSOR shall have the right to terminate this Agreement.	
(e) Prior to the commencement of manufacture and sale of the Licensed Products, LICENSEE shall submit to LICENSOR, at no cost to LICENSOR and for approval as to quality, six (6) sets of samples of all Licensed Products which LICENSEE intends to manufacture and sell and one (1) complete set of all promotional and advertising material associated therewith. Such approval by LICENSOR shall not be unreasonably withheld. Failure of LICENSOR to approve such samples within ten (10) working days after receipt hereof will be deemed approval. If LICENSOR should disapprove any sample, it shall provide specific reasons for such disapproval. Once such samples have been approved by LICENSOR, LICENSEE shall not materially depart therefrom without LICENSOR's prior express written consent, which shall not be unreasonably withheld.	This provides that the Licensee cannot manufacture or sell Licensed Products without prior approval by the Licensor. In this particular case, the failure of Licensor to approve samples within ten working d after receipt means that the samples have been approved by the Licensor. It is in the Licensee's best interest to obtain product approval at as early a date as possible to avoid scrapping or destroying already manufactured products.
(f) At least once during each calendar year, LICENSEE shall submit to LICENSOR an additional twelve (12) sets of samples.	The yearly submission of additional samples is to ensure that the quality control requirements are being complied with.
(g) The LICENSEE agrees to permit LICENSOR or its representative to inspect the facilities where the Licensed Products are being manufactured and packaged.	Pursuant to this paragraph, the Licensor is given a reasonable right to inspect the manufacturing facilities to ensure that the quality control standards are being complied with.
7. NOTICE AND PAYMENT	
(a) Any notice required to be given pursuant to this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service.	This is a classic notice and payment provision and governs how notice and payment should be made.
(b) Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the provisions of this paragraph.	

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8. PATENTS, TRADEMARKS AND COPYRIGHTS	
(a) LICENSOR may seek, in its own name and at its own expense, appropriate patent, trademark or copyright protection for the Property.	The Licensor may obtain patent, trademark and copyright protection for the Property and/or Trademark.
(b) In the event that LICENSEE requests that LICENSOR obtain patent or trademark protection for a particular item or in a particular country where LICENSOR had not, heretofore, obtained such protection, LICENSOR agrees to take reasonable steps to obtain such protection, provided, however, that LICENSEE shall be obligated to reimburse LICENSOR for the cost of filing, prosecuting and maintaining same.	If the Licensee wishes the Licensor to secure patent, trademark or copyright protection, the Licensor will do so, at the Licensee's expense.
(c) It is understood and agreed that LICENSOR shall retain all right, title and interest in the original Property as well as in any modifications or improvements made to the Property by LICENSEE.	This provision confirms that the Licensor is the sole owner of the Property and Trademarks.
(d) The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions.	
(e) LICENSEE acknowledges LICENSOR's exclusive rights in the Property and, further, acknowledges that the Property and/or the Trademark are unique and original to LICENSOR and that LICENSOR is the owner thereof. LICENSEE shall not, at any time during or after the effective Term of the Agreement dispute or contest, directly or indirectly, LICENSOR's exclusive right and title to the Property and/or the Trademark or the validity thereof. LICENSOR, however, makes no representation or warranty with respect to the validity of any patent, trademark or copyright which may issue or be granted therefrom.	Licensee estoppel is still alive and well in the trademark area, and this provision states that the Licensee may not attack the validity of the Licensor's rights in the Property and/or the Trademark.
(f) LICENSEE acknowledges that the Property and/or the Trademark have acquired secondary meaning.	The Licensee should specifically recognize that the Trademarks have acquired secondary meaning. This is particularly helpful in the case of unregistered Trademarks. A provision that Licensee's use will inure to the benefit of the Licensor is required in any form of trademark licensing.
(g) LICENSEE agrees that its use of the Property and/or the Trademark inures to the benefit of LICENSOR and that the LICENSEE shall not acquire any rights in the Property and/or the Trademark.	
9. TERMINATION	
The following termination rights are in addition to the termination rights provided elsewhere in the Agreement:	This governs the grounds under which the Agreement may be immediately terminated upon written notice to the Licensee.
(a) Immediate Right of Termination. LICENSOR shall have the right to immediately terminate this Agreement by giving written notice to LICENSEE in the event that LICENSEE does any of the following:	
(1) fails to meet the Product Introduction Date or the Initial Shipment Date as specified in Schedule A; or	The Licensor may terminate the Agreement if the Licensee fails to commence sales of Licensed Product or fails to continuously sell and ship Licensed Product for three consecutive royalty periods.
(2) after having commenced sale of the Licensed Products, fails to continuously sell Licensed Products for three (3) consecutive Royalty Periods; or	
(3) fails to obtain or maintain product liability insurance in the amount and of the type provided for herein; or	If the Licensee fails to maintain product liability insurance, the Licensor may terminate the Agreement.
(4) files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if the LICENSEE discontinues its business or a receiver is appointed for the LICENSEE or for the LICENSEE'S business and such receiver is not discharged within thirty (30) days; or	In the event of a bankruptcy by the Licensee, the Agreement may be terminated. There is, however, doubt whether this provision is enforceable under the Bankruptcy Act.
(5) breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Property and/or the Trademark; or	Should the Licensee make any unauthorized assertion of rights in the Property and/or Trademark, the Licensor may immediately terminate the Agreement.
(6) fails, after receipt of written notice from LICENSOR, to immediately discontinue the distribution or sale of the Licensed Products or the use	If the Licensee fails to include the agreed-upon

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of any packaging or promotional material which does not contain the requisite legal legends; or (7) fails to make timely payment of Royalties when due two or more times during any twelve-month period.	legal legends on the Licensed Property, the Agreement may be terminated when, upon written notice, the Licensee fails to correct the situation. The Licensor may terminate the Agreement if the Licensee repeatedly fails to make timely payments of royalty when due.
(b) Immediate Right to Terminate a Portion. LICENSOR shall have the right to immediately terminate the portion(s) of the Agreement relating to any Property and/or Licensed Product(s) and/or for any country in the Licensed Territory if LICENSEE, for any reason, fails to meet the Product Introduction Dates or the Initial Shipment Dates specified in Schedule A or, after the commencement of manufacture and sale of a particular Licensed Product in a particular country, ceases to sell commercial quantities of such Licensed Product in such country for three (3) consecutive Royalty Periods.	The Licensor may terminate a portion of the Agreement with regard to a specific Licensed Product and/or a specific Licensed Territory in the event of the Licensee's failure to commence or maintain sales of that Product or within that country.
(c) Right to Terminate on Notice. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach.	The Agreement may be terminated by either party on 30 days written notice to the other party upon any breach of the Agreement, if the breach is not cured within the given notice period.
(d) LICENSEE shall have the right to terminate this Agreement at any time on sixty (60) days written notice to LICENSOR. In such event, all monies paid to LICENSOR shall be deemed non-refundable and LICENSEE's obligation to pay any guaranteed monies, including the Guaranteed Minimum Royalty, shall be accelerated and any yet unpaid guaranteed monies shall become immediately due and payable.	Upon termination, all payment obligations by the Licensee are accelerated and become immediately due.
10. POST TERMINATION RIGHTS	
(a) Not less than thirty (30) days prior to the expiration of this Agreement or immediately upon termination thereof, LICENSEE shall provide LICENSOR with a complete schedule of all inventory of Licensed Products then on-hand (the "Inventory");	Upon termination, the Licensee should provide the Licensor with a statement indicating the quantity of Licensed Products on hand at the time of terminati
(b) Upon expiration or termination of this Agreement, except for reason of a breach of LICENSEE's duty to comply with the quality control or legal notice marking requirements, LICENSEE shall be entitled, for an additional period of three (3) months and on a nonexclusive basis, to continue to sell such Inventory. Such sales shall be made subject to all of the provisions of this Agreement and to an accounting for and the payment of a Royalty thereon. Such accounting and payment shall be due and paid within thirty (30) days after the close of the said three (3) month period.	In the event of termination for other reasons than a breach of the Agreement, a three month sell-off period is granted to the Licensee for remaining Licensed Products. Any sales during this period are subject to royalty payments which should be made no later than thirty days after the sell-off period ends.
(c) Upon the expiration or termination of this Agreement, all of the rights of LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR and LICENSEE shall immediately discontinue all use of the Property and the like, at no cost whatsoever to LICENSOR.	Upon termination, the Licensee may not use the Property and/or Trademark in any manner.
(d) Upon termination of this Agreement for any reasons whatsoever, LICENSEE agrees to immediately return to LICENSOR all material relating to the Property including, but not limited to, all artwork, color separations, prototypes and the like, as well as any market studies or other tests or studies conducted by LICENSEE with respect to the Property, at no cost whatsoever to LICENSOR.	The Licensee further agrees to turn over to Licensor all material used in the manufacture of the Licensed Product.
11. GOOD WILL	
LICENSEE recognizes the value of the good will associated with the	As in Paragraph 8(g), a provision that the good will

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...perty and acknowledges that the Property and all rights therein including the good will pertaining thereto, belong exclusively to LICENSOR.	associated with the Licensed Property and the Licensed Products will inure to the benefit of the Licensor is required in any form of trademark licensing.
12. INFRINGEMENTS	
LICENSEE shall have the right, in its discretion, to institute and prosecute lawsuits against third persons for infringement of the rights licensed in this Agreement. If LICENSEE does not institute an infringement suit within ninety (90) days after LICENSOR's written request that it do so, LICENSOR may institute and prosecute such lawsuit. Any lawsuit shall be prosecuted solely at the cost and expense of the party bringing suit and all sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, in excess of the amount of reasonable attorneys' fees and other out of pocket expenses of such suit, shall be divided equally between the parties. Upon request of the party bringing the lawsuit, the other party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The party bringing suit shall reimburse the other party for the expenses incurred as a result of such cooperation.	This provision gives the Licensee the right to prosecute third party infringers. If the Licensee chooses not to file suit, the Licensor may then pursue the infringer itself. The parties agree to cooperate with each other in the event of a litigation.
13. INDEMNITY	
(a) LICENSEE agrees to defend and indemnify LICENSOR, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of ...parties against LICENSOR based on the manufacture or sale of the ...nsed Products including, but not limited to, actions founded on product liability.	In the event of a defect in the Licensed Products, the Licensee agrees to provide a complete defense to the Licensor against claims by third parties and pay any eventual recovery.
(b) LICENSOR agrees to defend and indemnify LICENSEE, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSEE challenging the authenticity of the originally submitted Property provided, however, that such indemnity shall only be applicable in the event of a final decision by a court of competent jurisdiction from which no appeal of right exists and shall be limited up to the amount of the actual monies received by LICENSOR under this Agreement. Further, this indemnity does not cover any modifications or changes made to the Property by LICENSEE.	Indemnification by the Licensor is typically required in the event of a claim by a third party challenging the Licensor's ownership of the property. In such event, the Licensor will provide a complete defense for the Licensee and pay whatever recovery may be awarded against both parties, up to the amount of actual monies it has received under this Agreement.
14. INSURANCE	
LICENSEE shall, throughout the Term of the Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in New York, standard Product Liability Insurance naming LICENSOR as an additional named insured. Such policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be as specified in Schedule A attached hereto. The policy shall provide for ten (10) days notice to LICENSOR from ...insurer by Registered or Certified Mail, return receipt requested, in the ...of any modification, cancellation or termination thereof. LICENSEE agrees to furnish LICENSOR a certificate of insurance evidencing same	As many Licensees are unable to live up to the terms of the indemnification provision of the Agreement due to their size, Licensors will typically require that the Licensee maintain product liability insurance naming the Licensor as a named insured. The amount is specified in Schedule A. In view of the strict insurance licensing requirements of New York State, it is recommended that the insurance company be licensed in New York.

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within thirty (30) days after execution of this Agreement and, in no event, shall LICENSEE manufacture, distribute or sell the Licensed Products prior to receipt by LICENSOR of such evidence of insurance.	
15. JURISDICTION This Agreement shall be governed in accordance with the laws of the State of New York.	In any dispute, the law of the Licensor's home state should govern.
16. DISPUTES All disputes under this Agreement shall be resolved by the courts of the State of New York including the United States District Court for the Southern District of New York and the parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.	Here, the parties agree that any disputes between them will be litigated in the Licensor's home state.
17. FORCE MAJEURE It is understood and agreed that in the event that an act of the government, or war conditions, or fire, flood or labor trouble in the factory of LICENSEE or in the factory of those manufacturing parts necessary for the manufacture of the Licensed Products, prevents the performance by LICENSEE of the provisions of this Agreement, then such nonperformance by LICENSEE shall not be considered as grounds for breach of this Agreement and such nonperformance shall be excused while the conditions herein prevail and for two (2) months thereafter.	This is a standard "force majeure" provision, which states that non-performance by the Licensee for reasons beyond its control will not be grounds for immediate termination.
18. AGREEMENT BINDING ON SUCCESSORS The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.	
19. NO JOINT VENTURE Nothing contained herein shall be construed as a joint venture or shall make one party the agent of the other party.	This Agreement is a license and not a joint venture or partnership.
20. ASSIGNABILITY The license granted hereunder is personal to LICENSEE and shall not be assigned by any act of LICENSEE or by operation of law unless in connection with a transfer of substantially all of the assets of LICENSEE or with the consent of LICENSOR.	This Agreement may not be assigned by the Licensee except in connection with a sale of the company.
21. WAIVER No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.	A waiver of a breach will not constitute a subsequent waiver by that party of like or similar breaches.

CLAUSE	COMMENT
22. SEVERABILITY	
If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.	This provides that in the event that a provision in this Agreement is held invalid or unenforceable, it will be deemed severed from the Agreement and the remaining provisions will remain in effect.
23. INTEGRATION	
This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties, including any option agreements which may have been entered into between the parties, and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict with said Agreement.	Integration means that the Agreement is a final document and that parties cannot rely on earlier drafts or understandings. Similarly, the Agreement may not be modified or changed except in writing signed by both parties.
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.	
XYZ PROPERTIES, INC. By:_____ Jim Lookgood Title: Vice-President Date: January , 1993	
DODGERTOWN NOVELTIES, INC. By:_____ Mike Marshall Title: President Date: January , 1993	

SCHEDULE A

Licensee: Dodgertown Novelties, Inc. **Licensee Address:** 1 Baseball Blvd., Los Angeles, California 99999
Licensee Contact: Mike Marshall, President
Licensee Telephone: **Licensee Telex No.:**
Licensee Cable No.: **Licensee Telefax No.:**

1. Licensed Properties

The following Property, examples of which are attached, form part of this Agreement:

The name and character representations of the Diamond Kids.

2. Licensed Trademarks

The following Trademarks form part of this Agreement:

DIAMOND KIDS
PINE-TAR
BULLPEN
SWIFTY
HARD HAT

CHECKLIST FOR DRAFTING MERCHANDISING LICENSE AGREEMENTS

By James G. Colpitt, Esq.
Grimes & Battersby
Three Landmark Square, Ste. 405
Stamford, CT 06901
Tel: (203) 324-2828
Fax: (203) 348-2720

- ◊. Identification of Parties
  - ◊. Names
  - ◊. Addresses
- ◊. Definition of Property
- ◊. Definition of Licensed Products
  - ◊. Fragmentation Issues if Exclusive
- ◊. License Grant
  - ◊. Exclusive vs. Non-Exclusive
  - ◊. Definition of Territory
  - ◊. Reservation of Rights
  - ◊. Entertainment and Merchandising Rights
  - ◊. Sublicensing
- ◊. Term of Agreement
  - ◊. Options to Renew
  - ◊. Effect of Commercialization of Property
- ◊. Compensation
  - ◊. Royalty Income
  - ◊. Sublicensing Income Division
  - ◊. Royalty Period Defined
  - ◊. Net Sales Defined
  - ◊. Royalty Statements
  - ◊. Advance
  - ◊. Guaranteed Minimum Royalty
    - ◊. Guaranteed vs. Non-Guaranteed
  - ◊. When Sale Occurs
  - ◊. Sales to Affiliates
  - ◊. Receipt Will Not Prevent Subsequent Challenge
  - ◊. Acceleration
  - ◊. Survival of Termination
  - ◊. Currency
  - ◊. Interest

- ◊. Post-Termination Rights
  - ◊. Inventory
  - ◊. Sell-Off Period
  - ◊. Cease Selling
  - ◊. Return of Material
- ◊. Infringements
  - ◊. Party with Initial Right/Secondary Right
  - ◊. Cooperation
  - ◊. Responsibility for Payment
  - ◊. Responsibility for Lead Counsel
  - ◊. Division of Proceeds
- ◊. Good Will
- ◊. Indemnification
  - ◊. Product Liability
  - ◊. Infringement
- ◊. Insurance
  - ◊. Product Liability
  - ◊. Advertiser's
- ◊. Force Majeure
- ◊. Jurisdiction and Disputes
- ◊. Notice Provision
- ◊. Non-Disclosure & Non-Compete
- ◊. Termination
  - ◊. On Notice in Event of Breach
  - ◊. By Agent
- ◊. Binding on successors
- ◊. Waiver
- ◊. Independent Contractor
- ◊. Severability
- ◊. Assignability
- ◊. Integration
- ◊. Execution and Dating by Parties