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

THIS AGREEMENT is effective as of [*Date*] by and between [*Owner Name*], a [*Owner's state of incorporation*] corporation with offices at [*Owner Address*] ("LICENSOR") and [*Licensee Name*], a [*Licensee's state of incorporation.*] corporation with offices at [*Licensee Address*] ("LICENSEE").

WITNESSETH:

WHEREAS, LICENSOR is the sole and exclusive owner of the Property or Properties identified more fully in Schedule A attached hereto (the "Property");

WHEREAS, LICENSOR is the sole and exclusive owner of the Trademark identified more fully in Schedule A attached hereto (the "Trademark");

WHEREAS, LICENSOR has the power and authority to grant to LICENSEE the right, privilege and license to use, manufacture and sell those types of products that 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 such 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 "Territory") and to use the Trademark on or in association with the Licensed Products;

WHEREAS, LICENSEE desires to obtain from LICENSOR an exclusive license to use, manufacture, have manufactured and sell Licensed Products in the 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 agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

1. License Grant

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 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.

B. LICENSOR hereby grants to LICENSEE for the Term of this Agreement as recited in Schedule A attached hereto, a royalty- free, exclusive license to use the Trademark on

or in association with the Licensed Products in the Territory as well as on packaging, promotional and advertising material associated therewith.

C. LICENSEE may not grant any sublicenses to any third party without the prior express written consent of the LICENSOR, which consent may be withheld for any reason.

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 Territory and will not knowingly sell the Licensed Products to persons who intend or are likely to resell them in any country outside the Territory.

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").

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.

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 [*Sub- Licensing Percentage*] PERCENT of the gross income received by LICENSEE from such sub-licensees.

C. The Royalty owed LICENSOR shall be calculated on a quarterly calendar basis (the "Royalty Period") and shall be payable no later than [*number*] ([#]) 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 the exception of the first and last calendar quarters which may be "short" depending upon the effective date of this Agreement.

D. With each Royalty Payment, LICENSEE shall provide LICENSOR with a written royalty statement in a form acceptable to LICENSOR. 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.

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.

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.

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.

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.

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.

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.

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.

M. Late payments shall incur interest at the rate of [*Percentage*] PERCENT ([#]%) per month from the date such payments were originally due.

4. Audit

A. LICENSOR shall have the right, upon at [*number*] ([#]) 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.

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 [*Percentage*] PERCENT ([#] %) per month. In the event that such discrepancy is in excess of [*Dollar Amount*] UNITED STATES DOLLARS ($ [#]) LICENSEE shall also reimburse LICENSOR for the cost of such inspection including any attorney's fees incurred in connection therewith.

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 [*number*] ([#]) years after termination of this 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 shall not be used by LICENSOR or disclosed to any third party for a period of [*number*] ([#]) 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.

5. Warranties and Obligations

A. LICENSOR represents and warrants that it has the right and power to grant the licenses granted herein and that there are no other agreements with any other party in conflict herewith.

B. LICENSOR further represents and warrants that the Property and/or Trademark do not infringe any valid right of any third party.

C. LICENSEE represents and warrants that it will use its best efforts to promote, market, sell and distribute 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 Territory on or before the Product Introduction Date recited in Schedule A and commence shipment of Licensed Products in all countries in the 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 grounds for immediate termination of this Agreement by LICENSOR.

6. Notices, Quality Control and 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 Territory.

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.

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 [*number*] ([#]) 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, [*number*] ([#]) sets of samples of all Licensed Products which LICENSEE intends to manufacture and sell and [*number*] ([#]) complete set of all promotional and advertising material associated therewith. Failure of LICENSOR to approve such samples within [*number*] ([#]) 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.

F. At least once during each calendar year, LICENSEE shall submit to LICENSOR, for approval, an additional [*number*] ([#]) sets of samples.

G. The LICENSEE agrees to permit LICENSOR or its representative to inspect the facilities where the Licensed Products are being manufactured and packaged.

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.

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.

8. Intellectual Property Protection

A. LICENSOR shall seek, obtain and, during the Term of this Agreement, maintain in its own name and at its own expense, appropriate intellectual property protection for the Property and Trademark.

B. In the event that LICENSEE requests that LICENSOR obtain intellectual property 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.

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.

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.

F. LICENSEE acknowledges that the Property and/or the Trademark have acquired secondary meaning.

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:

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:

i. fails to meet the Product Introduction Date or the Initial Shipment Date as specified in Schedule A; or

ii. after having commenced sale of the Licensed Products, fails to continuously sell Licensed Products for [*number*] ([#])consecutive Royalty Periods; or

iii. fails to obtain or maintain product liability insurance in the amount and of the type provided for herein; or

iv. 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 [*number*] ([#]) days; or

v. breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Property and/or the Trademark; or

vi. fails, after receipt of written notice from LICENSOR, to immediately discontinue the distribution or sale of the Licensed Products or the use of any packaging or promotional material which does not contain the requisite legal legends; or

vii. fails to make timely payment of Royalties when due two or more times during any twelve-month period.

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 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 [*number*] ([#]) consecutive Royalty Periods.

C. Right to Terminate on Notice. This Agreement may be terminated by either party upon [*number*] ([#]) 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 [*number*] ([#]) days period, the breaching party fails to cure such breach.

D. LICENSEE shall have the right to terminate this Agreement at any time on [*number*] ([#]) days written notice to LICENSOR. In such event, all moneys paid to LICENSOR shall be deemed non-refundable and LICENSEE's obligation to pay any guaranteed moneys, including the Guaranteed Minimum Royalty, shall be accelerated and any yet unpaid guaranteed moneys shall become immediately due and payable.

10. Post Termination Rights

A. Not less than [*number*] ([#]) 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").

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 [*number*] ([#]) months and on a non-exclusive 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 [*number*] ([#]) days after the close of the said [*number*] ([#]) month period.

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.

D. Upon termination of this Agreement for any reason 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.

11. Good Will

LICENSEE recognizes the value of the good will associated with the Property and acknowledges that the Property and all rights therein including the good will pertaining thereto, belong exclusively to LICENSOR.

12. Infringements

A. 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.

B. If LICENSEE does not institute an infringement suit within [*number*] ([#]) 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.

C. 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.

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 third parties against LICENSOR based on the manufacture or sale of the Licensed Products including, but not limited to, actions founded on product liability.

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 moneys

received by LICENSOR under this Agreement. Further, this indemnity does not cover any modifications or changes made to the Property by LICENSEE.

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 [*State*], 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 [*number*] ([#]) days notice to LICENSOR from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination thereof. LICENSEE agrees to furnish LICENSOR a certificate of insurance evidencing same within [*number*] ([#]) 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. Force Majeure

It is understood and agreed that in the event of 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, which 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 [*number*] ([#]) months thereafter.

16. Jurisdiction and Disputes

A. This Agreement shall be governed in accordance with the laws of the State of [*State*].

B. All disputes under this Agreement shall be resolved by the courts of the State of [*State*] including the United States District Court for the [*District*] 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.

17. 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.

18. 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.

19. 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.

20. No Joint Venture

Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership.

21. 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.

22. 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.

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.

[*Owner Name*]	[*Licensee Name*]
By:_____	By: _____
Title:_____	Title:_____
Date:_____	Date:_____

SCHEDULE A
TO MERCHANDISE LICENSE AGREEMENT
DATED [*Date*]
BETWEEN
[*Owner Name*]
AND
[*Licensee Name*]

1. Licensed Properties

The following Licensed Properties form part of this Agreement:

[*Property*]

2. Licensed Trademarks

The following Licensed Trademarks form part of this Agreement:

[*Trademarks*]

3. Licensed Products

The following Licensed Products form part of this Agreement:

[*Licensed Products*]

4. Territory

The following countries shall constitute the Territory:

[*Territory*]

5. Term

This Agreement shall commence on the date executed by both parties and shall extend for an initial Term of:

[*Initial Term*] YEARS

LICENSOR hereby grants LICENSEE [*Number of Options*] separately exercisable options (the "Options") to renew this Agreement for additional [*Option Term*] year extended Terms on the same terms and conditions provided for herein, provided:

(a) LICENSEE provides written notice of its intention to exercise this Option within [*number*] ([#]) days prior to expiration of the then in-effect Term; and

(b) LICENSEE shall have paid LICENSOR total royalty income of at least [*Option Minimum*] during the then in-effect Term.

6. Royalty Rate

LICENSEE shall pay the following royalty rate:

[*Royalty Rate*].

7. Guaranteed Minimum Royalty and Advance

LICENSEE agrees to pay LICENSOR an Advance of [*Advance*] upon execution of this Agreement.

LICENSEE agrees to and will pay LICENSOR a Guaranteed Minimum Royalty of [*Minimum Royalty*] for each calendar year during the Term of this Agreement.

8. Product Liability Insurance

[*PL Insurance*] [*$*] combined single limit, with a deductible amount not to exceed [*Dollar Amount*] UNITED STATES DOLLARS ($[#]), for each single occurrence for bodily injury and/or for property damage.

9. Product Introduction/Initial Shipment

The Product Introduction Date for all Licensed Products in all countries in the Territory shall be [*Introduction Date*].

The Initial Shipment Date for all Licensed Products in all countries in the Territory shall be [*Ship Date*].

CHECKLIST: Drafting Merchandising License Agreements

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* Execution and Dating by Parties