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.

Franklin Pierce Law Center
Advanced Licensing Institute 2005

MERCHANDISING AND CHARACTER LICENSING

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Overview

- Introduction to Merchandising
- Protecting Merchandising Properties Under the Intellectual Property Laws
- The Art of Negotiation
- The Merchandising License Agreement
  - An Overview
  - Important Provisions in the Agreement
- Extent of International Licensing
- The Future of Licensing

•Introduction to Merchandising

- "Merchandising" Defined
  - "The licensing of a recognizable trademark or copyright for use on ancillary or collateral products or services"

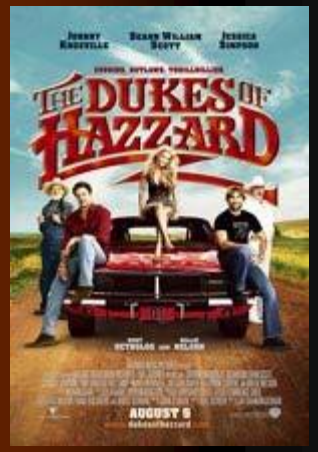
•Introduction to Merchandising

- The Source of Merchandising Properties:
  - Character & Entertainment















•Introduction to Merchandising

- The Source of Merchandising Properties:
  - Sports & Collegiate





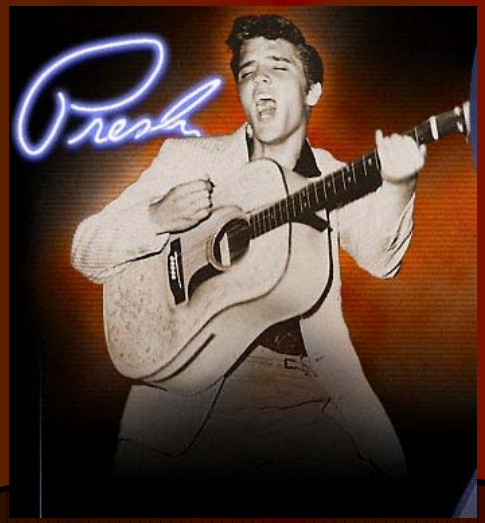


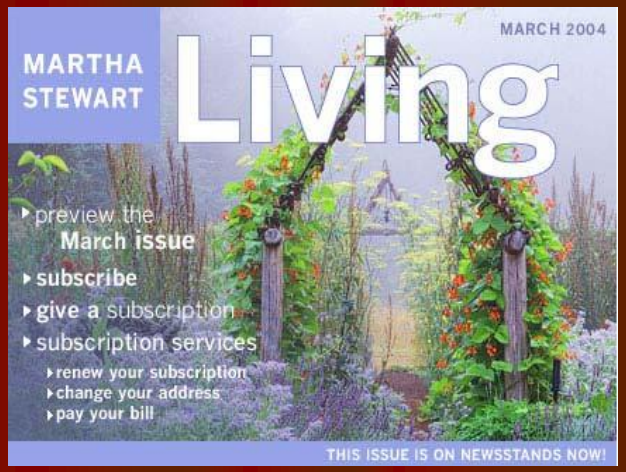


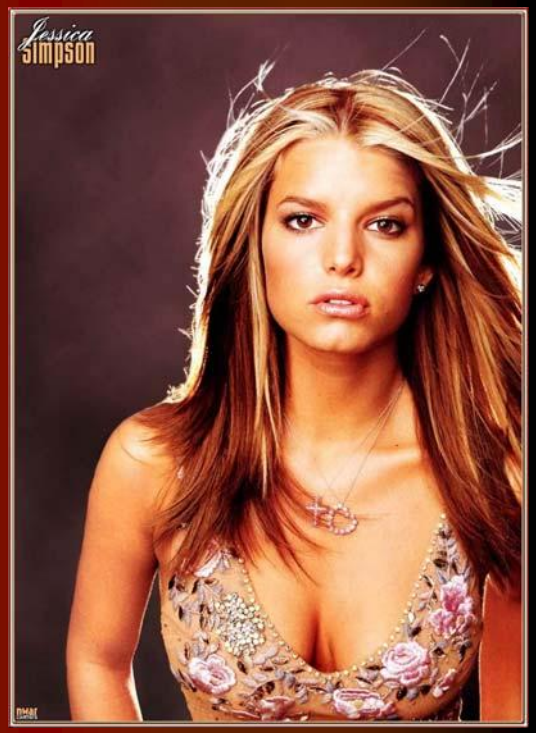


•Introduction to Merchandising

- The Source of Merchandising Properties:
  - Celebrity & Designer







•Introduction to Merchandising

- The Source of Merchandising Properties:
  - Corporate & Events







•Introduction to Merchandising

- Types of Licensed Products
- State of the Industry 25 Years Ago
  - Disney
  - Warner Bros
  - Paramount Pictures
  - Few Others
- LIMA's Harvard/Yale Survey

•Introduction to Merchandising

- Total domestic licensing revenues of $5.8 billion
  - Character & Entertainment $ 2.5 billion
  - Corporate Marks & Brands $ 1.1 billion
  - Fashion $ 848 million
  - Sports $ 807 million
  - Collegiate $ 203 million
  - Art $ 167 million
  - Music $ 113 million
  - Publishing $ 43 million
  - Non-Profit $ 40 million
  - Others $ 22 million

•Introduction to Merchandising

- Licensing Revenue by Product Category
  - Apparel $ 1.02 billion
  - Toys/Games $ 975 million
  - Software/Videogames $ 553 million
  - Gifts/Novelties $ 491 million
  - Food/Beverage $ 441 million
  - Accessories $ 479 million
  - Home Decor $ 292 million

•Introduction to Merchandising

- Corporate Licensing, the fastest growing segment of the licensing industry
- Leaders:
  - Coca-Cola
  - Harley Davidson
  - Chrysler Corporation
  - M&M/Mars
  - Pillsbury

•Protection of Properties

- Copyright Protection
  - Applicable for Art and Characters
  - Inexpensive and Immediate
  - Finite Duration Irrespective of Use
- Trademark Protection
  - Applicable for Names and Characters
  - Immediate and Relatively Inexpensive
  - Infinite Duration with Use
- Right of Publicity
  - State by State

•Protection of Properties

- Search Considerations
  - All-Class Merchandising Searches
  - Consider Other Established Uses
    - Yale for locks
    - Harvard for software
- Intent to Use Trademark Applications
  - Merchandising Classes, e.g. 9, 16, 25, 28
  - Protect Before You Publicize

•The Art of Negotiation

- Know Your Property
  - Be Aware of Its Strengths & Weaknesses
  - Know the Competition
- Know Your Adversary
  - Investigate, Investigate, Investigate
- Be Humble

•The Merchandising Agreement

- Type
  - License vs. Assignment
  - Exclusive vs. Non-Exclusive
- Basic Terms
  - Compensation (Royalty Rates, FOB, Split)
  - Net Sales
  - Advances
  - Guaranteed vs. Non-Guaranteed Minimum
  - Royalty Periods (quarterly, yearly, monthly)
  - Term of Agreement
  - Licensed Territory

•The Merchandising Agreement

- Disputes and Governing Law
  - Arbitration vs. Litigation
  - Venue
  - State Law
- Audit and Document Retention Provisions
  - Time, Location, Cooperation & Payment
  - Records-Type, Location, Period
- Intellectual Property Rights
  - Responsibility
  - Enforcement Against Infringers

•The Merchandising Agreement

- Insurance Provisions
  - Product Liability
- Indemnification Provisions
  - Product Liability by Licensee
  - Infringement by Licensor
- Warranties
  - Power to Enter Into Agreement
  - Non-Infringement/Best of Knowledge & Belief

•The Merchandising Agreement

- Identification of Licensed Property
  - Trademarks & Character Names
- Identification of Licensed Products
  - Exclusive Licenses--Fragmentation Issues
- Term and Territory
  - Fixed Terms; Options to Renew
  - Worldwide vs. Intergalatic

•The Merchandising Agreement

- Royalty Rates and Minimums
  - Domestic vs. FOB Royalty Rate
  - Split Royalty Situation
  - Minimum vs. Guarantee
- Quality Control Provisions
  - Multiple Approvals of Products/Packaging/ Advertising
  - Recourse for Failure to Comply

•The Merchandising Agreement

- Termination Provisions
  - Termination on Notice for Breach with Right to Cure
  - Immediate Right to Terminate
    - Repeated Failure to Pay Royalties
    - Failure to Maintain Insurance
    - Failure to Meet Product Introduction & First Shipment Dates

•The Merchandising Agreement

- Licensor Wish List:
  - Retain all rights or agree upon equitable sharing
  - Get licensee to commit to a guaranteed minimum royalty
  - Get highest royalty rate and advance as possible
  - Protect against domestic sublicensing
  - Protect against FOB sales
  - Limit reps and warranties to “best of knowledge & belief”
  - Cap liability
    - Tie indemnity to reps and warranties
    - Must be final judgment
    - Cap on income received
  - Build milestones to trigger termination (i.e. Product Introduction Date, First Shipment Date or ceased sales)
  - Deal only with a reputable company

•Scope of International Licensing

- Sales of licensed products by country:
  - United States/Canada 65%
  - Western Europe 22%
  - Japan 9.8%
  - Australia/New Zealand 1.3%
  - So./Central America 0.7%
  - Southeast Asia 0.5%
  - Eastern Europe insig.
  - Other 0.7%

Current Royalty Rates

	Range	Median
• Entertainment/Character:	8-20%	10%
• Corporate Brands:	4-12%	7-8%
• Art	3-15%	6-8%
• Designer & Fashion	4-10%	6%
• Colleges & Events	7-9%	8%
• Professional Sports	7-12%	9-10%
• Non-Profit	4-12%	6-7%

•The Future of Licensing

- Disturbing Trends:
  - Transfer fees
  - Royalty Rates Approaching 20%
  - Licensees Offering Equity plus Royalties
  - Increased use of transfer fees
  - Refusal to grant options to renew
  - Ownership issues for licensee developed material
  - Inflexibility in product submissions
  - Extraordinarily high guarantees paid as advances