TRADEMARK LICENSING

Mitchell E. Radin of Cowan, DeBaets, Abrahams & Sheppard LLP

(212) 974-7474 – mradin@cdas.com

I. INTRODUCTION
A. TRADEMARK LICENSE DEFINITIONS

1. Trademark: A trademark is a word, name, symbol, device, or other designation, or a combination of such designations, that is distinctive of a person's goods or services and that is used in a manner that identifies those goods or services and distinguishes them from the goods or services of others. A service mark is a trademark that is used in connection with services.

I. INTRODUCTION
A. TRADEMARK LICENSE DEFINITIONS

2. Trademark License: A license is an agreement under which the owner of a trademark, trade name, collective mark, or certification mark authorizes use of the designation by another. Unlike an assignment, a license does not transfer ownership of the designation. Unlike a consent agreement, a license authorizes another to exploit the good will attached to the designation through a use that is likely to be associated by the public with the trademark owner. The use of the designation by the licensee thus accrues to the benefit of the trademark owner.

II. SUGGESTIONS
A. RECOGNIZE OBJECTIVES AND CAPACITIES

RECOGNIZE THE LICENSOR'S AND LICENSEE'S OBJECTIVES AND CAPACITIES

1. For example, Licensor's Capacity to Help Support Licensee's Program By Supporting the Trademark Through Exposure or Support On Other Products

2. For example, Licensee's Capacity to Manufacture, Distribute and Market the Licensed Products

II. SUGGESTIONS (Cont'd…)
B. CLEARLY DEFINE LICENSE TERMS

1. FOR A CLEAR UNDERSTANDING AND TO AVOID LATER DISPUTE.

2. CONSIDER COMPLETING A TERM SHEET FOR KEY BUSINESS TERMS BEFORE DRAFTING LICENSE.

3. FAILURE TO PROPERLY DEFINE (PRODUCTS, TERRITORY, DISTRIBUTION CHANNELS) COULD LEAD TO PROBLEMS AND BREACH.

II. SUGGESTIONS (Cont'd…)

C. CLARIFY RESPONSIBILITIES FOR POLICING AND ENFORCING LICENSED RIGHTS

Licensor and Licensee need to clarify at the time of the agreement which party will be primarily responsible for policing and enforcing trademark rights as they impact on the licensed products and on filing for trademark applications in the appropriate jurisdictions. The division of responsibility may depend on such factors as which party has the most at stake and which party has the financial capacity.

II. SUGGESTIONS (Cont'd…)

D. SPECIFY A TIME FRAME IN THE LICENSE

Several states' laws declare that a license that does not specify a time frame is terminable at will. *See, Trace Minerals Research, L.C. v. Mineral Resources Int'l., Inc.*, 2007 WL 1601495 (D. Utah June 4, 2007). But, see, *Baldwin Piano, Inc. v. Deutsche Wurlitzer GMBH*, 392 F.3d 881 (7th Cir. 2004)

III. QUALITY CONTROL

A. QUALITY CONTROL DEFINED.

Quality control is a vital element of a trademark license. In a trademark license context, quality control is defined as reasonable efforts to ensure that the licensed products meet a certain level of quality. However, it does not mean that the licensed products are of a high quality.

III. QUALITY CONTROL (Cont'd…)

B. QUALITY CONTROL IS AN INDISPENSABLE ASPECT OF A TRADEMARK LICENSE RELATIONSHIP.

1. The Failure of a Licensor to Maintain Quality Control (*i.e.*, Engaging in Uncontrolled or "Naked" Licensing) Can Result in the Loss of Licensor's Rights in its Mark Through Abandonment

III. QUALITY CONTROL (Cont'd…)

2. Uncontrolled or Naked Licensing Occurs When a Licensor Allows a Licensee to Use Its Trademark on Any Quality or Type of Good the Licensee Chooses

3. Licensor's Registration May Be Canceled If the Trademark Is Abandoned

4. Failure to Meet Quality Control Contractual Obligations In Agreement May Result In Abandonment

III. QUALITY CONTROL (Cont'd…)

C. ABSENCE OF EXPRESS CONTRACTUAL RIGHT OF CONTROL MAY NOT BE FATAL, I.E. RESULT IN ABANDONMENT.

1. Licensor Actually Exercises Sufficient Control Over Licensee
2. Licensor Justifiably Relies On Licensee For Quality Control
    a) Limited Circumstances; Some Special Relationship Exists Between Parties
    b) Examples

III. QUALITY CONTROL (Cont'd…)

D. PRACTICAL SUGGESTIONS RE: QUALITY CONTROL.

1. Work Closely With Licensor and Licensee to Understand Their Respective Capacities
2. Ensure Licensor Has In Place Some Mechanism for Exercising Quality Control
3. Do Not Provide a Contractual Obligation Which the Licensor Cannot Meet or It Would be Too Burdensome to Meet
4. Require Policing In The Agreement

III. QUALITY CONTROL (Cont'd…)

D. PRACTICAL SUGGESTIONS RE: QUALITY CONTROL (Cont'd…).

5. Allocate Responsibility in Case of a Consumer Complaint

Be sure that the company with the most ability to handle the consumer complaints and public relations has in place a mechanism to respond quickly to all consumer complaints. If it is Licensee then the Agreement can provide that Licensee provide to Licensor consumer comment and complaint records.

III. QUALITY CONTROL (Cont'd…)

D. PRACTICAL SUGGESTIONS RE: QUALITY CONTROL (Cont'd…).

6. Allocate Responsibility of a Government Recall

Be sure that the company with the most ability to handle the public relations has in place a mechanism to respond quickly to all government recalls. Licensor's immediate termination right is not really sufficient. Consider giving the Licensor the right to designate a communications plan and to appoint someone who will control the public relations process.

III. QUALITY CONTROL (Cont'd…)

E. CONSIDER USING A CONSENT RATHER THAN A LICENSE IF QUALITY CONTROL IS DIFFICULT OR PROBLEMATIC

1. There is no control requirement when a trademark owner consents to another party's defined usage of the trademark on a non-infringing product rather than licenses the usage.

2. Use consent approach to settle dispute, or for one time or limited use where there is no or little possibility of remuneration, or to accommodate a business, possible advertisement or limited promotion.

IV. COMMON TRADEMARK LICENSE AGREEMENT PROVISIONS

- 1. Ownership of Rights
- 2. Grant of License
  - Sublicense
  - Assignments
- 3. Term/Renewal
- 4. Initial Payment; Royalty Provisions
- 5. Statements and Payments
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IV. COMMON TRADEMARK LICENSE AGREEMENT PROVISIONS (Cont'd)

- 13. Licensee's Indemnification
- 14. Insurance
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- 16. Termination
- 17. Effect of Termination
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- 23. Confidentiality

IV. COMMON TRADEMARK LICENSE PROVISIONS - EXAMPLES

1. Ownership of Rights.

LICENSOR has the exclusive right to license the Trademarks for use in association with the Licensed Products in the Territory. With the exception of the rights expressly licensed hereunder to LICENSEE, all other rights relating thereto are expressly reserved by LICENSOR.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

2. Grant of License.

2.1 LICENSOR grants to LICENSEE an exclusive, nontransferable, non-assignable license to use the Trademarks solely in connection with the manufacture (and have manufactured by sub-contractors according to LICENSEE specifications), sale, offer for sale, advertising, promoting and distributing (and having distributed by authorized sales agents of LICENSEE) the Licensed Products solely within the Territory and, for this purpose only, to affix the Trademarks on or to packaging, displays, sales, advertising and promotional materials, used or distributed in connection with the Licensed Products ("Promotional and Packaging Material").

2.2 Agreements with third parties for the manufacturing or distribution of any of the Licensed Products do not require LICENSOR's prior consent. However, LICENSEE agrees that the Licensed Products will not be manufactured in any so--called "sweatshops", or using any child labor or under any other abusive conditions, or in countries in which the U.S. State Department has ether prohibited U.S. companies from doing business or has recommended that they not do business, and the Licensed Products will be manufactured in compliance with federal and state labor, health, safety and related laws.

2.3 All distributors of LICENSEE will be bound by the provisions of this agreement and will grant to LICENSEE all rights in and to any materials, designs, labels or packaging created by them.

2.4 All subcontractors and distributors of LICENSEE must meet the quality standards established by LICENSEE. LICENSEE will manufacture the Licensed Products in the Far East. If LICENSEE becomes aware of any change of subcontractors, LICENSEE agrees to notify LICENSOR thereof.

2.5 **Sublicense**. Except as provided herein, LICENSEE shall have the right to grant sublicenses to third parties in all countries in the Territory except the United States and Canada with the approval of LICENSOR, such permission to be reasonably provided. LICENSEE shall not have the right to grant sublicenses to third parties in the United States and Canada.

2.6. **Assignments**. The license granted hereunder is, and shall remain, personal to LICENSEE and shall not be granted, assigned, or otherwise conveyed by any act of LICENSEE or by operation of law. For the purposes of this Paragraph 2.6, any sale or transfer of any ownership interest in LICENSEE shall constitute a prohibited assignment of the license granted hereunder. LICENSEE shall have no right to grant any sublicenses without LICENSOR'S prior express written approval. Any attempt on the part of LICENSEE to arrange to sublicense, other than as provided in Paragraph 2.5 herein, or to assign to third parties its rights under this Agreement, shall constitute a material breach of this Agreement.

2.7 LICENSOR shall have the right to assign its rights and obligations under this Agreement without the approval of LICENSEE.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

3. Term / Renewal.

3.1 This Agreement shall commence and be effective on January 1, 2008 ("Effective Date") provided this Agreement has been executed by both parties and LICENSOR has received the fully executed Agreement and the Advance payment (see paragraph 4.1). Thereafter, this Agreement shall continue for an "Initial Term" terminating on 2011, unless terminated prior thereto pursuant to this Agreement.

3.2 LICENSEE may, upon written notice to LICENSOR at least 90 days prior to the end of the Initial Term, elect to renew the term of this Agreement for additional 3 year periods ("Renewal Terms") if LICENSEE meets the following requirements and is not otherwise in breach of the provisions of this agreement:

3.2.1 If LICENSEE pays a Royalty of $1,000,000 over the Initial Term with payment of at least $750,000 in the final year of the Initial Term resulting from sales, LICENSEE may renew the Agreement for an additional three years ("First Renewal Term"). If LICENSEE pays a Royalty of $1,750,000 per year over the First Renewal Term [with payment of at least $1,000,000 in the final year of the First Renewal Term resulting from sales], LICENSEE may renew the Agreement for an additional three years. ("Second Renewal Term"). (Initial Term and Renewal Terms constitute the "Term").

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

4. Initial Payment; Royalty Provisions.

4.1 A payment of $50,000 is payable to secure this Agreement as a non-refundable Payment ("Advance Payment") pursuant to the following schedule: $10,000.00 paid upon execution of this Agreement.

4.2 LICENSEE agrees to pay LICENSOR a Royalty of six percent (6%) based upon Net Sales of the Licensed Products sold in the Territory.

4.3 "Net Sales" shall mean gross sales of the Licensed Products by LICENSEE or its affiliates less only standard discounts and allowances provided such discounts and allowances do not exceed 5% of gross sales. No other deduction shall be made for cash or other discounts, taxes, commissions or uncollectible accounts nor for any costs incurred in the manufacture, sale, distribution or exploitation of the Licensed Products. No Royalty shall be paid by LICENSEE based on LICENSEE's usual Net Sales price on any unbilled Licensed Products used by LICENSEE or any of its affiliated companies for in-store displays.

4.4 LICENSEE has discretion to set pricing; however, all pricing shall be established by LICENSEE in a commercially reasonable manner and all Licensed Products shall be sold by LICENSEE at competitive prices not substantially more nor substantially less than the price customarily charged by LICENSEE for similar products to unaffiliated businesses.

4.5 Licensed Products may not be sold in conjunction with or bundled with any other products.

4.6 For the Initial Term commencing January 1, 2008 and terminating on September 1, 2011, LICENSEE agrees to pay LICENSOR a "Guaranteed Minimum Royalty" of no less than $250,000 annually, which shall be paid as follows for the Annual periods:

$250,000 by October 1, 2009, $250,000 by October 1, 2010; $250,000 by October 1, 2011.

4.7 For the Renewal Terms, concerning September 1, 2011, LICENSEE agrees to pay LICENSOR a "Guarantee Minimum Royalty" of no less than $500,000 annually which shall be paid as follows:

First Renewal Term: $500,000 by October 1, 2012; $500,000 by October 1, 2013; $500,000 by October 1, 2014.

Second Renewal Term: $500,000 by October 1, 2015; $500,000 by October 1, 2016; $500,000 by October 1, 2017.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

5. Statements and Payments.

5.1 LICENSEE shall provide LICENSOR within forty-five (45) days after the end of each calendar quarter ("Royalty Period") a complete and accurate statement of its Net Sales for that quarter, said statement to be certified as accurate by an officer of LICENSEE, and shall pay the Royalties owing to LICENSOR for that quarter. Such statements shall be in conformance with the requirements of LICENSOR including, but not limited to, reporting separately by Licensed Product SKU by size, Licensed Trademark utilized, quantity sold, price per unit, etc. and must be submitted whether or not any Licensed Products have been shipped or Royalties have been earned during the Royalty Period.

5.2 Acceptance by LICENSOR of any statement furnished or Royalty paid shall not preclude LICENSOR from questioning its correctness and in the event of inconsistencies or mistakes, they shall be immediately rectified by LICENSEE.

5.3 All payments shall be remitted in United States currency payable to the order of LICENSOR and mailed to LICENSOR's address stated in the preamble or as may be revised hereafter by LICENSOR. Any conversion of foreign currency to United States currency shall be at an exchange rate no less than offered by Chase Bank in New York, New York, on the date of conversion.

5.4 A Royalty obligation shall accrue upon the sale of Licensed Products regardless of the time of collection by LICENSEE. For purposes of this Agreement, a sale is made when a Licensed Product is billed, invoiced, shipped, or paid for, whichever event occurs first.

5.5 Time is of the essence with respect to all payments and interest at the rate of one and one-half percent (1 1/2%) per month and shall accrue on any amount due LICENSOR calculated from the date on which payment was due.

5.6 Any and all Royalty payments, whether denoted as Advances, as Guaranteed Minimum Royalty payments, or otherwise, shall be nonrefundable.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

6. Audit.

LICENSEE shall keep accurate books of account covering all transactions relating to this Agreement. LICENSOR and/or its representatives shall have the right, at reasonable hours of the day upon reasonable notice, to examine such books and all other documents and material in the possession, custody or control of LICENSEE with respect to this Agreement, and to make copies and summaries thereof no more than three (3) times per twelve (12) month period. In the event an Audit reveals an underpayment, LICENSEE shall immediately remit payment in the amount of the underpayment plus interest calculated at the rate of one and one-half percent (1 1/2%) per month from the date such payments were due. In the event such underpayment is greater than $1,000 or five percent (5%) of the reported royalty, whichever is greater, for any Royalty Period, LICENSEE shall reimburse LICENSOR for the cost and expense of such Audit. All books of account and records of LICENSEE relating to this Agreement shall be retained for at least three years after termination of this Agreement.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

7. Artwork & Packaging.

7.1 The form and content of all work relating to the Trademarks must be approved by LICENSOR prior to use.

7.2 LICENSOR will provide to LICENSEE upon request, at LICENSEE's expense, artwork which LICENSEE reasonably requests. All artwork relating to the Trademarks, regardless of who created or contributed to the works, except any artwork which displays the LICENSEE trademark, shall be the sole and exclusive property of LICENSOR on a buy out basis in perpetuity. LICENSEE shall provide LICENSOR with a copy of all finished artwork utilized for Licensed Products in either disc or film format, at LICENSOR's discretion. All artwork not meeting the standard of approved samples shall be destroyed by LICENSEE. LICENSEE shall pay LICENSOR, within thirty (30) days of receiving an invoice therefore, for artwork done by LICENSOR or third parties under contract to LICENSOR in the development and creation of the Licensed Products and/or the Promotional and Packaging Material.

7.3 LICENSEE agrees to use the Trademarks only in the form and manner and with appropriate legends as prescribed from time to time by LICENSOR in writing with reasonable notice, and not to use any other trademark or service mark in combination with any of the Trademarks without LICENSOR's prior written approval.

7.4 The quality and style of the Licensed Products and all Promotional and Packaging Material relating to the Licensed Products shall be consistent with similar goods presently sold or distributed by LICENSEE in the Territory.

7.5 All Promotional and Packaging Material and all Licensed Products on which the Trademarks are used shall contain the name and address (at least city and state) of LICENSEE, the letters "TM" next to each trademark shown or any other appropriate trademark notice provided by LICENSOR, and the following legal notices, all of which shall be permanently affixed.

© 200__ Company A. All trademarks and copyrights are the property of Company A, Inc. and used under license.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

8. Approvals.

8.1 No Licensed Product shall be distributed by LICENSEE prior to LICENSOR's approval of pre-production prototypes or samples of each such Licensed Product and/or Promotional and Packaging Materials. Further approval will be necessary if there is any change proposed by LICENSOR or LICENSEE in type, style, model, grade, description or the like from any previously approved Licensed Product and/or Promotional and Packaging Materials. Should approval or disapproval of samples submitted prior to manufacture or use not be received by LICENSEE within ten (10) business days of the submission, LICENSEE must contact LICENSOR and request a reply. Failure to receive a reply shall be deemed approval by LICENSOR if LICENSOR or its representative do not notify LICENSEE of LICENSOR's disapproval within an additional ten (10) days. If samples are disapproved, LICENSOR will give specific reasons therefore, and LICENSEE will thereafter correct or modify as directed by LICENSOR and resubmit samples for approval following the procedures outlined above. Licensed Product and/or Promotional and Packaging Materials shall not be advertised, manufactured, distributed, sold, or used which differ from the approved samples. Notwithstanding the above LICENSOR recognizes the extreme time constraints faced by LICENSEE in the preparation of its initial Licensed Product and/or Promotional and Packaging Materials and accordingly at least during the period until September 1, 2008 LICENSOR will make its best efforts to provide written approvals within Five (5) business days of receipt of materials.

8.2 Once LICENSOR has given final approval, LICENSEE shall submit, at its own expense, six (6) reference samples in each size, color, and/or material in which the product and/or Promotional and Packaging Materials is produced. All subsequent product of the Licensed Product and/or Promotional and Packaging Materials will conform in their specifications, patterns, and quality to the reference samples approved by LICENSOR, except insofar as variations may be approved by LICENSOR. Upon the subsequent request of LICENSOR, LICENSEE agrees to send to LICENSOR reasonable quantities of samples of Licensed Product and/or Promotional and Packaging Materials, at LICENSEE's expense, for the purposes of testing, inspection, and review.

8.3 In the event the above quality standards are not maintained throughout the Term, LICENSOR has the right to require LICENSEE to immediately discontinue manufacturing, selling and distributing Licensed Product and/or Promotional and Packaging Materials which do not meet such quality standard.

8.4 Approval or disapproval of Licensed Product and/or Promotional and Packaging Materials shall lie solely in LICENSOR's reasonable discretion, and any Licensed Product and/or Promotional and Packaging Materials not so approved shall be deemed unlicensed and shall not be manufactured or sold by LICENSEE. Approval of a Licensed Product and/or Promotional and Packaging Materials which uses particular artwork does not imply approval of such artwork for use with a different Licensed Product.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

9. Compliance with Standards.

9.1 Each Licensed Product shall comply with all applicable laws and regulations and shall meet established safety standards as stipulated for the age group for which the Licensed Product is intended, LICENSEE agrees that all fabrications will meet the then current code with respect to flame retardant and nontoxic materials.

9.2 All Licensed Products shall contain the suggested age usage for each product in a prominent position on packaging.

9.3 LICENSOR shall at all times have the right to inspect the manufacturing facilities of the Licensed Products upon five (5) days' notice to LICENSEE, and all such facilities shall comply with the standards established by LICENSEE and with the provisions of this Agreement.

9.4 RECALLS. If an event has occurred with respect to a Licensed Product which may be reasonably expected to damage or denigrate the Mark or to create a substantial health risk, LICENSEE shall direct a market withdrawal, stock recovery and/or recall of any such Product. Upon mutual agreement LICENSEE shall direct a market withdrawal, stock recovery and/or recall of any Licensed Product which does not materially comply with the quality requirements of this Agreement. In addition, LICENSEE shall direct a recall of any Licensed Product in the event that a recall of the Product is required, ordered or recommended by any court or government agency or any applicable law or regulation, for any reason. LICENSEE shall bear primary responsibility for market withdrawal, stock recovery and/or recall procedures and expenses, however the Parties agree that no royalty shall be applicable to any Licensed Product withdrawn, recovered or recalled. Any request for a market withdrawal, stock recovery and/or recall by LICENSEE hereunder shall not prejudice any other or additional right or remedy LICENSEE may have under this Agreement out of or resulting from or in connection with LICENSEE's (1) performance or non-performance of its obligations under this Agreement; or (2) negligent or willful acts or omissions (or such actions or omissions of LICENSEE's agents, employees, contractors, or consultants).

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

10. Exploitation by Licensee.

10.1 **As is reasonable, LICENSEE shall meaningfully consult with LICENSOR regarding coordinating LICENSEE's sales and marketing of the Licensed Products with LICENSOR's general sales and marketing strategy for the Trademark.**

10.2 **LICENSEE shall commence manufacture, distribution, and sale of the Licensed Products in commercially reasonable quantities so that the first shipment of at least two lines of Licensed Products to retail accounts can be made by September 30, 2008 for retail sale for the 2008 holiday buying season and, thereafter, shall continue to distribute and sell all of the Licensed Products throughout the Territory on a continuous basis in a commercially reasonable manner.**

10.3 **LICENSEE shall use all reasonable efforts to sell the Licensed Products.**

10.4 **LICENSEE shall not directly nor indirectly through any affiliate company in which LICENSEE or any of its controlling shareholders, officers or directors owns an interest individually or in the aggregate in excess of ten percent (10%), sell any Licensed Products. LICENSEE's sales shall be direct to bona fide retailers only.**

10.5 **LICENSEE shall not use a personality or celebrity to endorse or promote any Licensed Products without the prior express written approval of LICENSOR.**

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

11. Goodwill.

LICENSEE recognizes the value of the goodwill associated with the Trademarks. LICENSEE agrees, during the Term(s) and thereafter, never to attack the rights or LICENSOR in such or the validity of this license. LICENSEE agrees that its use of the Trademarks inures to the benefit of LICENSOR and that LICENSEE shall not acquire any rights in the Trademarks.

12. Trademark and Copyright.

12.1 LICENSOR may obtain, at its own expense and in its name, appropriate copyright and trademark protection for the Property and/any Trademarks, and LICENSEE agrees to cooperate with LICENSOR in all such matters. If a country is added to the Territory and LICENSOR does not or has not obtained trademark protection in that country, LICENSEE may agree to pay for the trademark protection in that country in the name of LICENSOR.

12.2 LICENSEE agrees that it shall not at any time apply for any registration of any copyright, trademark or any other designation which would affect the ownership of the Property and/or Trademarks nor file any document with any governmental authority to take any action which would affect the ownership thereof.

12.3 LICENSEE agrees that it shall not at any time use or authorize the use of any trademark, trade name or other designation identical with or substantially similar to the Trademarks. LICENSEE agrees not to associate the Property and/or Trademarks with other properties, trademarks, personalities, or characters without LICENSOR's written permission.

12.4 If LICENSEE becomes aware of the use of any of the Property (or any confusingly similar designations) by any third party, which use is or may be an infringement of or unfair competition with respect to the Property, LICENSEE will notify LICENSOR thereof. LICENSOR will have the sole right to decide whether or not action will be taken against such third parties, and LICENSEE will cooperate fully with LICENSOR in every such action. LICENSOR will pay all expenses of such action and will be entitled to all damages or other amounts that may be recovered. However, if LICENSOR fails or refuses to prosecute or to permit LICENSEE to prosecute any alleged infringement or unfair competition by third parties, then LICENSEE may terminate this Agreement immediately upon notice. In such an event, LICENSEE will be relieved of responsibility for any further payments to LICENSOR under the Agreement.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

13. Indemnification.

LICENSEE agrees to defend, indemnify and hold LICENSOR, and its parent company, their officers, agents and employees, and the owners harmless against any and all liability, claims, demands, suits, loss, damages, causes of action and judgment, out-of-pocket costs and expenses, including reasonable attorney's fees, directly or indirectly arising out of the LICENSEE's manufacture, sale, offering for sale, distribution, promotion and/or advertising of the Licensed Products or LICENSEE's agents, employees, contractors, licensees.

14. Insurance.

LICENSEE shall, throughout the Term, obtain and maintain at its own expense standard product liability insurance, the form of which must be acceptable to LICENSOR, naming LICENSOR as an additional insured. Such policy shall provide protection against 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 use thereof. In no matter which currency such policy is drawn, the amount of coverage shall be at least the equivalent of USD$1,000,000 for each claim and at least the equivalent of USD$3,000,000 in the aggregate. The policy shall provide for thirty (30) days notice to LICENSOR from the insurer in the event of any modification or termination of such coverage. LICENSEE shall furnish LICENSOR a certificate of insurance as well as a copy of the amended endorsement evidencing same within thirty (30) days after execution of this Agreement but in any event, prior to any manufacture and distribution of the Licensed Products.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

15. Seconds.

LICENSEE shall, throughout the Term, obtain and maintain at its own expense standard product liability insurance, the form of which must be acceptable to LICENSOR, naming LICENSOR as an additional insured. Such policy shall provide protection against 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 use thereof. In no matter which currency such policy is drawn, the amount of coverage shall be at least the equivalent of USD$1,000,000 for each claim and at least the equivalent of USD$3,000,000 in the aggregate. The policy shall provide for thirty (30) days notice to LICENSOR from the insurer in the event of any modification or termination of such coverage. LICENSEE shall furnish LICENSOR a certificate of insurance as well as a copy of the amended endorsement evidencing same within thirty (30) days after execution of this Agreement but in any event, prior to any manufacture and distribution of the Licensed Products.

16. Termination.

The following are in addition to the termination rights provided elsewhere in this Agreement:

16.1 LICENSOR shall have the right to immediately terminate this Agreement on written notice should LICENSEE:

16.1.1 Make, sell, offer for sale, use or distribute any Licensed Product or Promotional or Packaging Material without having the prior written approval of LICENSOR or continue to make, sell, offer for sale, use or distribute such after receipt of notice from LICENSOR withdrawing approval of same due to subsequent noncompliance;

16.1.2 Fail after receipt of written notice from LICENSOR to immediately discontinue the distribution or sale of Licensed Products or the use of any Promotional or Packaging Material which does not contain the appropriate legal legend;

16.1.3 Subject the Licensed Product or any Promotional and Packaging Material to any voluntary or involuntary order of any government agency involving the recall of any of the Licensed Products;

16.1.4 Or its controlling shareholders, officers, directors or employees take any actions in connection with the manufacture, sale, distribution or advertising of the Licensed Products or the Promotional and Packaging material which damages or reflects adversely upon LICENSOR or the Trademarks;

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

16. Termination (Cont'd…).

The following are in addition to the termination rights provided elsewhere in this Agreement:

16.1.5 Breach any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Trademarks;

16.1.6 Fail to make timely payment of Royalties when due or fail to make timely submission of Royalty statements when due two or more times during a twelve-month period or fail to pay the Guaranteed Minimum Royalty due for each 12 month period; or

16.1.7 Breach any provision of this Agreement prohibiting LICENSEE from directly or indirectly assigning, transferring, sublicensing or other encumbering of this Agreement or any of its rights or obligations hereunder.

16.2 A party may terminate this Agreement on thirty (30) days written notice to the other party, under any of the following circumstances, provided that during the thirty (30) day period, the defaulting party fails to cure the breach:

16.2.1 Should LICENSEE, after commencing to sell and distribute Licensed Products, fail to continue to sell and distribute such in commercially acceptable quantities in all countries in the Territory for two consecutive Royalty Periods;

16.2.2 Should LICENSOR or LICENSEE violate or breach any of its [material] obligations under this Agreement;

16.2.3 Should LICENSEE file a petition in bankruptcy or be adjudicated as bankrupt or insolvent, make an assignment for the benefit of creditors, an arrangement pursuant to any bankruptcy law, or if LICENSEE discontinues its business or if a receiver is appointed for LICENSEE which is not discharged within thirty (30) days thereafter; or

16.2.4 Should any Licensed Products be sold by LICENSEE at prices which are clearly not competitive prices as such are customarily charged by LICENSEE for similar products to unaffiliated businesses.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

17. Effect of Termination.

17.1 If this Agreement is terminated under paragraph 16.1, no Licensed Products may thereafter be sold or distributed or any Promotional or Packaging Material used without the prior written approval of LICENSOR.

17.2 Upon termination of this Agreement, notwithstanding anything to the contrary herein, all Royalties on shipments made shall become immediately due and payable.

17.3 If this Agreement is terminated under provisions other than paragraph 16.1, Licensed Products which are on hand or in process of manufacture at the time the notice of termination is received or at the time of the expiration of the Agreement as the case may be, may continue to be sold or distributed for a six month period ("Sell-off Period"), provided that all Royalties with respect to that period are paid and that LICENSOR may itself use or license the use of the Trademarks in any manner and that LICENSEE provide LICENSOR with an inventory of Licensed Products it intends to sell or distribute during such period. No products sold during the Sell-Off Period shall be at "distress" or "fire sale" prices or represented in any other way so as to encourage prices lower than those before the Sell-Off Period. If such sales occur, then the sell-off period shall be discontinued immediately.

17.4 Upon termination of this Agreement, all rights hereunder shall revert to LICENSOR who may license others to use the Trademarks in any way whatsoever. LICENSEE shall refrain from any further use of the Trademarks and, at LICENSEE's option, either turn over to LICENSOR all other materials which reproduce the Licensed Products or give LICENSOR satisfactory evidence of their destruction. LICENSEE shall be responsible for any damages caused by the unauthorized use of such molds or reproduction materials which are not turned over or destroyed.

17.5 LICENSEE acknowledges that its failure to cease the manufacture, sale or distribution of Licensed Products or any class or category thereof at the time of termination or expiration will result in immediate and irreparable harm to LICENSOR and to the rights of any subsequent licensees. LICENSEE acknowledges that there is no adequate remedy at law for failure to cease the manufacture, sale, or distribution, and LICENSEE agrees that in the event of such failure, LICENSOR shall be entitled to equitable relief by way of injunctive relief, and such other relief as any court with jurisdiction may deem proper.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

17. Effect of Termination (Cont'd…).

17.6 Within thirty (30) days after termination or expiration of this Agreement, LICENSEE shall provide LICENSOR with a statement indicating the number and description of the Licensed Products which it had on hand or in the process of manufacturing as of the expiration or termination. LICENSOR shall have the option of conducting a physical inventory to ascertain or verify such. In the event LICENSEE refuses to permit LICENSOR to conduct such physical inventory, LICENSEE shall forfeit its rights hereunder to dispose of such inventory.

17.7 In the event this Agreement is terminated by LICENSOR pursuant to Paragraph 16, LICENSOR shall have the right (i) to recover any unpaid Royalty payable by LICENSEE pursuant to this Agreement, (ii) to exercise any rights or remedies it may have against LICENSEE in equity, including the right to specific performance and (iii) to recover from Licensee as liquidated damages percentages of the Annual Guarantees as follows:

In the event of termination after January 1, 200_ during the first Annual Period, or during subsequent Annual Periods in the Initial Term or in any subsequent Renewal Term: one hundred (100%) percent of the balance of the Annual Guarantee for the Annual Period of termination plus fifty (50%) percent of the Annual Guarantee for the first subsequent Annual Period, if any, plus twenty-five (25%) percent of the Annual Guarantee for the second subsequent Annual Period, if any. In arriving at this formula for computing liquidated damages, LICENSOR and Licensee have considered, among other factors, LICENSOR'S substantial investment in the Trademark, the uncertainty of Licensor's ability to relicense the Trademarks for the Licensed Products; and, if relicensed, the uncertainty as to whether LICENSOR can relicense the Trademarks for the Annual Guarantees specified herein.

17.8 In the event this Agreement is terminated by LICENSOR pursuant to Paragraph 16, LICENSEE shall pay LICENSOR all expenses and reasonable attorneys' fees incurred by LICENSOR (i) in the enforcement of its rights under this Agreement and/or (ii) in effecting collection of unpaid amounts of Royalty, Annual Guarantees or other damages hereunder.

17.9 Notwithstanding Paragraph 16, in the event LICENSEE fails to make timely payment of Royalties when due or fails to make timely submission of Royalty statements when due two or more times during a twelve-month period or fails to pay the Guaranteed Minimum Royalty due for any 12 month period, LICENSOR, at its discretion, may decide not to terminate the Agreement but may file an action in any state court in the State of New York, and LICENSEE agrees to jurisdiction and venue in said court, and LICENSEE shall pay LICENSOR all expenses and reasonable attorneys' fees incurred by LICENSOR in effecting collection of unpaid amounts of Royalty or Annual Guarantees and/or obtaining submission of Royalty statements.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

18. Purchase of Licensed Products by Licensor.

18.1 **LICENSOR shall have the right to purchase the Licensed Products at such times and in such quantities as LICENSOR desires.**

18.2 **If LICENSOR desires to purchase Licensed Products for promotional purposes only (not for resale), LICENSEE agrees to sell such Licensed Products at LICENSEE's cost with the Royalty owing to LICENSOR being waived for these purposes only.**

18.3 **If a third party secured by LICENSOR desires to purchase Licensed Products for resale through premium sales, direct response, direct sales, personal appearances or other means (other than to retailers), LICENSEE agrees to sell such Licensed Products upon terms to be negotiated including the Royalty to LICENSOR.**

18.4 **If LICENSOR desires to purchase Licensed Products for its own direct sales (other than to retailers) LICENSEE agrees to sell such Licensed Products upon the most favorable terms and at the lowest wholesale price offered by LICENSEE to any of its customers, regardless of quantity requirements, including the Royalty owing to LICENSOR.**

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

19. Representations and Warranties.

19.1 LICENSOR represents and warrants that:

19.1.1 It is duly organized under applicable law and it has the full authority to enter into and perform all of the duties and obligations contemplated under this Agreement;

19.1.2 It is the owner of all right, title and interest in and to the Trademark and its rights are not the subject of any encumbrance, lien or claim of ownership by any third party;

19.1.3 At no time during the term of this Agreement will it assign, transfer, encumber, or grant rights in or with respect to the Trademarks that are inconsistent with the grants and other rights reserved to LICENSEE under this Agreement;

19.1.4 It has not engaged in any conduct, or omitted to perform any necessary act, the result of which could invalidate the Trademark or affect its enforceability, and it is not aware of any fact that puts in question the validity or enforceability of the Property; and

19.1.5 To the best of its knowledge, LICENSEE's use of the Trademark will not infringe the valid proprietary rights of any third party.

19.2 LICENSEE represents and warrants that:

19.2.1 It is duly organized under applicable law and it has the full authority to enter into and perform all of the duties and obligations contemplated under this Agreement;

19.2.2 It will comply with all applicable governmental laws, rules and regulations in connection with the manufacture, distribution, sale, and use of the Licensed Products and its activities under this Agreement.

19.2.3 It has the financial capacity to perform all of the duties and obligations contemplated under this Agreement;

19.2.4 Marketing Commitment. It will develop and implement a reasonable plan to market the Licensed Product.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

19. Representations and Warranties (Cont'd…): Indemnifications.

19.3 LICENSOR hereby agrees to indemnify and hold LICENSEE and its parent company and its officers, agents, employees and shareholders harmless from any and all judgment, out- of-pocket cost and expenses including reasonable attorney's fees, directly or indirectly arising from the breach of any of the above representations and warranties.

19.4 LICENSEE hereby agrees to indemnify and hold LICENSOR and its parent company and its officers, agents, employees and shareholders harmless from any and all judgment, out-of-pocket cost and expenses including reasonable attorney's fees, directly or indirectly arising out of LICENSEE's manufacture, sale, offering for sale, distribution, promotion and/or advertising of the Licensed Products.

20. Force Majeure.

Neither party will be in default hereunder by reason of its delay in the performance of or failure to perform any of its obligations hereunder if such delay or failure is caused by strikes; acts of God or the public enemy; riots; fires; interference by civil or military authorities; compliance with governmental laws, rules and regulations; delays in transit or delivery; or any other causes beyond its reasonable control.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

21. Dispute Resolution.

21.1 The parties agree that before implementing Paragraph 21.2 below, they will make a good faith effort to resolve any dispute, controversy or differences which may arise between the parties under or in connection with this Agreement. Initially, both parties shall exchange brief summaries identifying the issue and their view of the issue, with the complaining party providing the initial summary. Then a discussion shall be held at a location agreed to by the parties between an authorized representative LICENSOR and an authorized representative of LICENSEE. If the representatives are not able to reach an agreement then an Officer of LICENSOR and an Officer of LICENSEE shall meet at the offices of the LICENSOR and attempt to resolve the issue. If no resolution is reached then either party shall be permitted to implement the procedure in Paragraph 21.2 below.

21.2 All disputes, controversies or difference which may arise between the parties under or in connection with this Agreement or for the breach thereof or as to the arbitrability of such disputes, controversies or differences, which are not resolved pursuant to Paragraph 21.1 above shall be finally settled by final and binding arbitration conducted in New York, NY under the then current Commercial Rules of the American Arbitration Association (including Supplementary Procedures for International Commercial Arbitration), subject to the following additional provisions:

The arbitration shall be conducted by one person, and the arbitrator shall have familiarity with trademark licensing agent agreements. The arbitrator shall have no power to waive, alter, amend, revoke, or suspend any of the provisions of this Agreement. The written award of the arbitrator shall set forth the arbitrator's decision as to which party shall bear the fees and expenses of the arbitration (including, without limitation, the fees of the arbitrator, administrative expenses and attorneys' fees incurred by any or all of the parties) or the proportion or amounts of such fees and expenses which each party shall bear. Except to the extent necessary to enforce an arbitration award or to the extent required by law or court or administrative order, all arbitration proceedings and awards shall be kept confidential by each party, arbitrator, representative, counsel or witness. Judgment may be entered in any court of competent jurisdiction on any arbitration award and such award shall be final and binding.

21.3 This Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to the conflicts of laws provisions thereof, the parties agree that it is executed and delivered in that state, and LICENSOR and LICENSEE each irrevocably consent to personal jurisdiction in any civil action brought in connection with this Agreement in the United States District Court for the Southern District of New York.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

22. Miscellaneous.

22.1 The parties are independent contractors and nothing in this Agreement will constitute either party as an agent of the other.

22.2 This Agreement, together with its Schedules, constitutes the entire understanding between the parties with respect to the subject matter herein, and supersedes any prior or contemporaneous written or oral understandings, agreements, or representations between the parties.

22.3 Any notice, approval or consent given under this Agreement shall be deemed sufficiently given if delivered by hand, or by Federal Express, Airborne or United Parcel Service, or mailed by certified mail, postage prepaid, addressed to the party to be notified at its address shown below or at such other address as may be furnished in writing to the notifying party.

If to LICENSOR, then care of:

_____

With a copy to:

Mitchell E. Radin, Esq.

Cowan, DeBaets, Abrahams & Sheppard LLP

41 Madison Avenue, 34th Floor

New York, New York 10010

If to Licensee, then care of:

_____

With a copy to:

_____

22.4 No waiver by either party of a breach or a default hereunder shall be deemed a waiver of a subsequent breach or default.

22.5 In the event that any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such shall not affect any other provision and this Agreement shall be interpreted and construed as if such provision, to the extent invalid, illegal or unenforceable, had never been part of the Agreement.

IV. COMMON TRADEMARK LICENSE PROVISIONS – EXAMPLES (Cont'd…)

22. Miscellaneous (Cont.'d…).

22.6 LICENSEE's rights hereunder may not be assigned, disposed of, or transferred, voluntarily or involuntarily, to anyone else without LICENSOR's written approval at its discretion. Without limitation to the previous sentence, a merger of LICENSEE into another company or the transfer of a controlling interest in LICENSEE shall be deemed a disposal of LICENSEE's rights hereunder, which, to be effective, would require LICENSOR's written approval.

22.7 Headings of paragraphs and schedules herein are for convenience of reference only and are without substantive significance.

23. Confidentiality

The parties agree to keep strictly confidential all confidential and proprietary sales, product, financial and marketing information received hereunder, as well as the terms and conditions of this Agreement. The parties agree not to use any such information for their own benefit, nor for the benefit of third parties, and further agree not to disclose any of such information to any third party except as may be required by government authority or a court of competent jurisdiction.

V. LICENSOR'S LIABILITY FOR TORTS OF LICENSEE

Licensor must be aware that the license relationship could subject it to claims of liability for the torts of the Licensee using the licensed trademark. *See Kosters v. Seven-Up Co.*, 595 F.2d 347, 352 (6th Cir. 1979) (injury from bottle of Seven-Up soda falling from carton, "Franchisor, like a manufacturer or supplier, may be liable to the consumer for its own negligence.") Generally, Licensor requires that Licensee be sufficiently insured and that Licensor be named on the insurance policy as an additional insured.

VI. BREACH OF LICENSE AGREEMENT

A. FAILURE TO PAY ROYALTIES

A liquidated damages clause was enforceable when the licensee failed to pay royalties for use of the trademark.

Dispute over obligation to pursue third party trademark infringers defeats motion for summary judgment. *See Jordan v. Can You Imagine, Inc.*, 485 F. Supp. 2d. 493 (S.D.N.Y. 2007)

VI. BREACH OF LICENSE AGREEMENT (Cont'd…)

B. BREACH OF A NON-COMPETE CLAUSE

In a license agreement with a non-compete clause and a termination provision requiring thirty days notice to cure, licensee was awarded damages when the licensor attempted to terminate the license, after merging with a competitor of the licensee. *Matrix Group Limited, Inc. v. Rawlings Sporting Goods Co.*, 477 F.3d 583 (8th Cir. 2007).

VII. LICENSOR'S WARRANTY

Licensor primarily warrants that it has title to the trademark rights. Topps Chewing Gum, Inc. v. Imperial Toy Corp., 686 F. Supp. 402 (E.D.N.Y. 1988), aff'd, 895 F.2d 1410 (2nd Cir. 1989) (licensor / defendant did not breach warranty of title where no court had held licensor did not own or have proprietary interest in trademark and predictions as to outcome of litigation made by defendant licensor were inherently uncertain and therefore could not form basis for claim of misrepresentation).

VIII. LICENSEE ESTOPPEL

In general, Licensee is estopped from contesting the validity of Licensor's trademark rights.

<u>See</u>:

- **Sheila's Shine Products, Inc. v. Sheila Shine, Inc., 486 F.2d 114 (5th Cir. 1973);**
- **Chrysler Motors Corp. v. Alloy Automotive Co., 661 F. Supp. 191 (N.D. Ill. 1987);**
- **Seven-Up Bottling Co. v. Seven-Up Co., 420 F. Supp. 1246 (E.D. Mo. 1976), aff'd, 561 F.2d 1275 (8th Cir. 1977).**

IX. ORAL MODIFICATION OF A LICENSE AGREEMENT

General oral representations made to a party after the agreement is in effect are not enforceable. ***Wagner Enterprises, Inc. v. John Deere Shared Services, Inc.*** **397 F. Supp. 2d 1097 (N.D. Iowa 2005)**

TRADEMARK LICENSING

Mitchell E. Radin, Esq. of Cowan, DeBaets, Abrahams & Sheppard LLP

Special Thanks to Alexis N. Mueller, Esq. & Hayden M. Goldblatt

LICENSE AGREEMENT TERMS DETAIL SCHEDULE

1. **Properties:**
   a. **Trademarks and logos: ___**
   b. **all photography and editorial content from the publications subject to ___ownership of same**

2. **Definition of licensed products:** Footwear for young adults and for children

3. **Territory:**

   a. USA (including territories and possessions), Australia, Canada, England, New Zealand
   b. Others to be added on case-by-case, territory-by-territory basis. Should either LICENSOR or LICENSEE identify further opportunities for distribution in such additional territories, each agrees to notify the other and to act in a timely manner.

4. **Term: 3 years + 2 renewal(s)**

INITIAL TERM	FROM	TO
First Contract Year:	January 1, 2008	January 1, 2009
Second Contract Year:	January 1, 2009	January 1, 2010
Third Contract Year:	January 1, 2010	January 1, 2011
FIRST RENEWAL TERM*	FROM	TO
Fourth Contract Year (if any):	January 1, 2011	January 1, 2012
Fifth Contract Year (if any):	January 1, 2012	January 1, 2013
Sixth Contract Year (if any):	January 1, 2013	January 1, 2014
SECOND RENEWAL TERM	FROM	TO
Seventh Contract Year (if any):	January 1, 2014	January 1, 2015
Eighth Contract Year (if any):	January 1, 2015	January 1, 2016
Ninth Contract Year (if any):	January 1, 2016	January 1, 2017

5. **Advance Royalty Payment:**

First Contract Year: Fifty thousand dollars ($50,000.00) with ten thousand dollars ($10,000) paid upon execution of Agreement.

6. **Royalty Rate:**

6%

7. **Guarantees:**

a. **Initial Term:** Two hundred fifty thousand dollars ($250,000.00) annually, to be paid in the following installments:

   i. $250,000 by October 1, 2009;
   ii. $250,000 by October 1, 2010;
   iii. $250,000 by October 1, 2011

b. **First Renewal Term:** Five hundred thousand dollars ($500,000.00) annually, to be paid as follows:

   i. $500,000 by October 1, 2012;
   ii. $500,000 by October 1, 2013;
   iii. $500,000 by October 1, 2014

c. **Second Renewal Term:** Five hundred thousand dollars ($500,000.00) annually, to be paid as follows:

   i. $500,000 by October 1, 2015;
   ii. $500,000 by October 1, 2016;
   iii. $500,000 by October 1, 2017

8. **Approvals by licensor procedure:**

LICENSOR's must pre-approve pre-production prototypes or samples of all Licensed Product and/or Promotional and Packaging Materials. Further approval for any changes proposed by LICENSOR or LICENSEE in type, style, model, grade, description or the like from any previously approved Licensed Product and/or Promotional and Packaging Materials.

If no response is received by LICENSEE within ten (10) business days of submission, LICENSEE must contact LICENSOR and request reply. Failure to reply shall be deemed approval by LICENSOR if LICENSOR or its representative do not notify LICENSEE of LICENSOR's disapproval within additional ten (10) days.

If samples are disapproved, LICENSOR will give specific reasons therefore, and LICENSEE will thereafter correct or modify as directed by LICENSOR and resubmit samples for approval following procedures outlined above.

INITIALS

LICENSOR:_____ LICENSEE:____

LICENSE AGREEMENT

This Agreement is made as of February _, 200_, between: as Licensor: Company A, Inc., a California corporation, (herein "LICENSOR") and as Licensee: Company B, Inc., [a New Jersey Corporation], (herein "LICENSEE").

WHEREAS LICENSOR is the owner of the Trademarks listed in Schedule A ("Trademarks"); and

WHEREAS LICENSEE desires to use the Trademarks on or in connection with the products identified in Schedule B ("Licensed Products") in the countries identified in Schedule C ("Territory"); and

WHEREAS LICENSOR is willing to grant LICENSEE the right to use the Trademarks on such Licensed Products.

Now, therefore, in consideration of the premises and the mutual covenants and conditions herein and for other valuable consideration the parties agree as follows:

1.0 OWNERSHIP OF RIGHTS

LICENSOR has the exclusive right to license the Trademarks for use in association with the Licensed Products in the Territory. With the exception of the rights expressly licensed hereunder to LICENSEE, all other rights relating thereto are expressly reserved by LICENSOR.

2.0 GRANT OF LICENSE

2.1 LICENSOR grants to LICENSEE an exclusive, nontransferable, nonassignable license to use the Trademarks solely in connection with the manufacture (and have manufactured by sub-contractors according to LICENSEE specifications), sale, offer for sale, advertising, promoting and distributing (and having distributed by authorized sales agents of LICENSEE) the Licensed Products solely within the Territory and, for this purpose only, to affix the Trademarks on or to packaging, displays, sales, advertising and promotional materials, used or distributed in connection with the Licensed Products ("Promotional and Packaging Material").

2.2 Agreements with third parties for the manufacturing or distribution of any of the Licensed Products do not require LICENSOR's prior consent. However, LICENSEE agrees that the Licensed Products will not be manufactured in any so-called "sweatshops", or using any child labor or under any other abusive conditions, or in countries in which the U.S. State Department has ether prohibited U.S. companies from doing business or has recommended that they not do business, and the Licensed Products will be manufactured in compliance with federal and state labor, health, safety and related laws.

2.3 All distributors of LICENSEE will be bound by the provisions of this agreement and will grant to LICENSEE all rights in and to any materials, designs, labels or packaging created by them.

2.4 All subcontractors and distributors of LICENSEE must meet the quality standards

established by LICENSEE. LICENSEE will manufacture the Licensed Products in the Far East. If LICENSEE becomes aware of any change of subcontractors, LICENSEE agrees to notify LICENSOR thereof.

2.5 **Sublicense**. Except as provided herein, LICENSEE shall have the right to grant sublicenses to third parties in all countries in the Territory except the United States and Canada with the approval of LICENSOR, such permission to be reasonably provided. LICENSEE shall not have the right to grant sublicenses to third parties in the United States and Canada.

2.6. **Assignments**. The license granted hereunder is, and shall remain, personal to LICENSEE and shall not be granted, assigned, or otherwise conveyed by any act of LICENSEE or by operation of law. For the purposes of this Paragraph 2.6, any sale or transfer of any ownership interest in LICENSEE shall constitute a prohibited assignment of the license granted hereunder. LICENSEE shall have no right to grant any sublicenses without LICENSOR'S prior express written approval. Any attempt on the part of LICENSEE to arrange to sublicense, other than as provided in Paragraph 2.5 herein, or to assign to third parties its rights under this Agreement, shall constitute a material breach of this Agreement.

2.7 LICENSOR shall have the right to assign its rights and obligations under this Agreement without the approval of LICENSEE.

3.0 **TERM**

3.1 This Agreement shall commence and be effective on January 1, 2008 ("Effective Date") provided this Agreement has been executed by both parties and LICENSOR has received the fully executed Agreement and the Advance payment (see paragraph 4.1). Thereafter, this Agreement shall continue for an "Initial Term" terminating on 2011, unless terminated prior thereto pursuant to this Agreement.

3.2 LICENSEE may, upon written notice to LICENSOR at least 90 days prior to the end of the Initial Term, elect to renew the term of this Agreement for additional 3 year periods ("Renewal Terms") if LICENSEE meets the following requirements and is not otherwise in breach of the provisions of this agreement:

3.2.1 If LICENSEE pays a Royalty of $1,000,000 over the Initial Term with payment of at least $750,000 in the final year of the Initial Term resulting from sales, LICENSEE may renew the Agreement for an additional three years ("First Renewal Term"). If LICENSEE pays a Royalty of $1,750,000 per year over the First Renewal Term [with payment of at least $1,000,000 in the final year of the First Renewal Term resulting from sales], LICENSEE may renew the Agreement for an additional three years. ("Second Renewal Term"). (Initial Term and Renewal Terms constitute the "Term").

4.0 **INITIAL PAYMENT; ROYALTY PROVISIONS**

4.1 A payment of $50,000 is payable to secure this Agreement as a non-refundable Payment ("Advance Payment") pursuant to the following schedule: $10,000.00 paid upon execution of this Agreement.

4.2 LICENSEE agrees to pay LICENSOR a Royalty of six percent (6%) based upon Net Sales of the Licensed Products sold in the Territory.

4.3 "Net Sales" shall mean gross sales of the Licensed Products by LICENSEE or its affiliates less only standard discounts and allowances provided such discounts and allowances do not exceed 5% of gross sales. No other deduction shall be made for cash or other discounts, taxes, commissions or uncollectible accounts nor for any costs incurred in the manufacture, sale, distribution or exploitation of the Licensed Products. No Royalty shall be paid by LICENSEE based on LICENSEE's usual Net Sales price on any unbilled Licensed Products used by LICENSEE or any of its affiliated companies for in-store displays.

4.4 LICENSEE has discretion to set pricing; however, all pricing shall be established by LICENSEE in a commercially reasonable manner and all Licensed Products shall be sold by LICENSEE at competitive prices not substantially more nor substantially less than the price customarily charged by LICENSEE for similar products to unaffiliated businesses.

4.5 Licensed Products may not be sold in conjunction with or bundled with any other products.

4.6 For the Initial Term commencing January 1, 2008 and terminating on September 1, 2011, LICENSEE agrees to pay LICENSOR a "Guaranteed Minimum Royalty" of no less than $250,000 annually, which shall be paid as follows for the Annual periods:

$250,000 by October 1, 2009, $250,000 by October 1, 2010; $250,000 by October 1, 2011.

4.7 For the Renewal Terms, concerning September 1, 2011, LICENSEE agrees to pay LICENSOR a "Guarantee Minimum Royalty" of no less than $500,000 annually which shall be paid as follows:

First Renewal Term: $500,000 by October 1, 2012; $500,000 by October 1, 2013; $500,000 by October 1, 2014.

Second Renewal Term: $500,000 by October 1, 2015; $500,000 by October 1, 2016; $500,000 by October 1, 2017.

5.0 STATEMENTS AND PAYMENTS

5.1 LICENSEE shall provide LICENSOR within forty-five *(45)* days after the end of each calendar quarter ("Royalty Period") a complete and accurate statement of its Net Sales for that quarter, said statement to be certified as accurate by an officer of LICENSEE, and shall pay the Royalties owing to LICENSOR for that quarter. Such statements shall be in conformance with the requirements of LICENSOR including, but not limited to, reporting separately by Licensed Product SKU by size, Licensed Trademark utilized, quantity sold, price per unit, etc. and must be submitted whether or not any Licensed Products have been shipped or Royalties have been earned during the Royalty Period.

5.2 Acceptance by LICENSOR of any statement furnished or Royalty paid shall not preclude LICENSOR from questioning its correctness and in the event of inconsistencies or mistakes, they shall be immediately rectified by LICENSEE.

5.3 All payments shall be remitted in United States currency payable to the order of

LICENSOR and mailed to LICENSOR's address stated in the preamble or as may be revised hereafter by LICENSOR. Any conversion of foreign currency to United States currency shall be at an exchange rate no less than offered by Chase Bank in New York, New York, on the date of conversion.

5.4 A Royalty obligation shall accrue upon the sale of Licensed Products regardless of the time of collection by LICENSEE. For purposes of this Agreement, a sale is made when a Licensed Product is billed, invoiced, shipped, or paid for, whichever event occurs first.

5.5 Time is of the essence with respect to all payments and interest at the rate of one and one-half percent (1 1/2%) per month and shall accrue on any amount due LICENSOR calculated from the date on which payment was due.

5.6 Any and all Royalty payments, whether denoted as Advances, as Guaranteed Minimum Royalty payments, or otherwise, shall be nonrefundable.

6.0 **AUDIT**

LICENSEE shall keep accurate books of account covering all transactions relating to this Agreement. LICENSOR and/or its representatives shall have the right, at reasonable hours of the day upon reasonable notice, to examine such books and all other documents and material in the possession, custody or control of LICENSEE with respect to this Agreement, and to make copies and summaries thereof no more than three (3) times per twelve (12*)* month period. In the event an Audit reveals an underpayment, LICENSEE shall immediately remit payment in the amount of the underpayment plus interest calculated at the rate of one and one-half percent (1 1/2%) per month from the date such payments were due. In the event such underpayment is greater than $1,000 or five percent *(5%)* of the reported royalty, whichever is greater, for any Royalty Period, LICENSEE shall reimburse LICENSOR for the cost and expense of such Audit. All books of account and records of LICENSEE relating to this Agreement shall be retained for at least three years after termination of this Agreement.

7.0 **ARTWORK & PACKAGING**

7.1 The form and content of all work relating to the Trademarks must be approved by LICENSOR prior to use.

7.2 LICENSOR will provide to LICENSEE upon request, at LICENSEE's expense, artwork which LICENSEE reasonably requests. All artwork relating to the Trademarks, regardless of who created or contributed to the works, except any artwork which displays the LICENSEE trademark, shall be the sole and exclusive

property of LICENSOR on a buy out basis in perpetuity. LICENSEE shall provide

LICENSOR with a copy of all finished artwork utilized for Licensed Products in either disc or film format, at LICENSOR's discretion. All artwork not meeting the standard of approved samples shall be destroyed by LICENSEE. LICENSEE shall pay LICENSOR, within thirty (30) days of receiving an invoice therefore, for artwork done by LICENSOR or third parties under contract to LICENSOR in the development and creation of the Licensed Products and/or the Promotional and Packaging Material.

7.3 LICENSEE agrees to use the Trademarks only in the form and manner and with appropriate legends as prescribed from time to time by LICENSOR in writing with reasonable notice, and not to use any other trademark or service mark in combination with any of the Trademarks without LICENSOR's prior written approval.

7.4 The quality and style of the Licensed Products and all Promotional and Packaging Material relating to the Licensed Products shall be consistent with similar goods presently sold or distributed by LICENSEE in the Territory.

7.5 All Promotional and Packaging Material and all Licensed Products on which the Trademarks are used shall contain the name and address (at least city and state) of LICENSEE, the letters "TM" next to each trademark shown or any other appropriate trademark notice provided by LICENSOR, and the following legal notices, all of which shall be permanently affixed.

© 200__ All trademarks and copyrights are the property of Company A, Inc. and used under license.

8.0 **APPROVALS**

8.1 No Licensed Product shall be distributed by LICENSEE prior to LICENSOR's approval of pre-production prototypes or samples of each such Licensed Product and/or Promotional and Packaging Materials. Further approval will be necessary if there is any change proposed by LICENSOR or LICENSEE in type, style, model, grade, description or the like from any previously approved Licensed Product and/or Promotional and Packaging Materials. Should approval or disapproval of samples submitted prior to manufacture or use not be received by LICENSEE within ten (10) business days of the submission, LICENSEE must contact LICENSOR and request a reply. Failure to receive a reply shall be deemed approval by LICENSOR if LICENSOR or its representative do not notify LICENSEE of LICENSOR's disapproval within an additional ten (10) days. If samples are disapproved, LICENSOR will give specific reasons therefore, and LICENSEE will thereafter correct or modify as directed by LICENSOR and resubmit samples for approval following the procedures outlined above. Licensed Product and/or Promotional and Packaging Materials shall not be advertised, manufactured, distributed, sold, or used which differ from the approved samples. Notwithstanding the above LICENSOR recognizes the extreme time constraints faced by LICENSEE in the preparation of its initial Licensed Product and/or Promotional and Packaging Materials and accordingly at least during the period until September 1, 2008 LICENSOR will make its best efforts to provide written approvals within Five (5) business days of receipt of materials.

8.2 Once LICENSOR has given final approval, LICENSEE shall submit, at its own expense, six (6) reference samples in each size, color, and/or material in which the product

and/or Promotional and Packaging Materials is produced. All subsequent product of the Licensed Product and/or Promotional and Packaging Materials will conform in their specifications, patterns, and quality to the reference samples approved by LICENSOR, except insofar as variations may be approved by LICENSOR. Upon the subsequent request of LICENSOR, LICENSEE agrees to send to LICENSOR reasonable quantities of samples of Licensed Product and/or Promotional and Packaging Materials, at LICENSEE's expense, for the purposes of testing, inspection, and review.

8.3 In the event the above quality standards are not maintained throughout the Term, LICENSOR has the right to require LICENSEE to immediately discontinue manufacturing, selling and distributing Licensed Product and/or Promotional and Packaging Materials which do not meet such quality standard.

8.4 Approval or disapproval of Licensed Product and/or Promotional and Packaging Materials shall lie solely in LICENSOR's reasonable discretion, and any Licensed Product and/or Promotional and Packaging Materials not so approved shall be deemed unlicensed and shall not be manufactured or sold by LICENSEE. Approval of a Licensed Product and/or Promotional and Packaging Materials which uses particular artwork does not imply approval of such artwork for use with a different Licensed Product.

9.0 **COMPLIANCE WITH STANDARDS**

9.1 Each Licensed Product shall comply with all applicable laws and regulations and shall meet established safety standards as stipulated for the age group for which the Licensed Product is intended, LICENSEE agrees that all fabrications will meet the then current code with respect to flame retardant and nontoxic materials.

9.2 All Licensed Products shall contain the suggested age usage for each product in a prominent position on packaging.

9.3 LICENSOR shall at all times have the right to inspect the manufacturing facilities of the Licensed Products upon five (5) days' notice to LICENSEE, and all such facilities shall comply with the standards established by LICENSEE and with the provisions of this Agreement.

9.4 **RECALLS.** If an event has occurred with respect to a Licensed Product which may be reasonably expected to damage or denigrate the Mark or to create a substantial health risk, LICENSEE shall direct a market withdrawal, stock recovery and/or recall of any such Product. Upon mutual agreement LICENSEE shall direct a market withdrawal, stock recovery and/or recall of any Licensed Product which does not materially comply with the quality requirements of this Agreement. In addition, LICENSEE shall direct a recall of any Licensed Product **in the** event that a recall of the Product is required, ordered or recommended by any court or government agency or any applicable law or regulation, for any reason. LICENSEE shall bear primary responsibility for market withdrawal, stock recovery and/or recall procedures and expenses, however the Parties agree that no royalty shall be applicable to any Licensed Product withdrawn, recovered or recalled. Any request for a market withdrawal, stock recovery and/or recall by LICENSEE hereunder shall not prejudice any other or additional right or remedy LICENSEE may have under this Agreement out of or

resulting from or in connection with LICENSEE's (1) performance or non-performance of its obligations under this Agreement; or (2) negligent or willful acts or omissions (or such actions or omissions of LICENSEE's agents, employees, contractors, or consultants).

10.0 **EXPLOITATION BY LICENSEE**

10.1 As is reasonable, LICENSEE shall meaningfully consult with LICENSOR regarding coordinating LICENSEE's sales and marketing of the Licensed Products with LICENSOR's general sales and marketing strategy for the Trademark.

10.2 LICENSEE shall commence manufacture, distribution, and sale of the Licensed Products in commercially reasonable quantities so that the first shipment of at least two lines of Licensed Products to retail accounts can be made by September 30, 2008 for retail sale for the 2008 holiday buying season and, thereafter, shall continue to distribute and sell all of the Licensed Products throughout the Territory on a continuous basis in a commercially reasonable manner.

10.3 LICENSEE shall use all reasonable efforts to sell the Licensed Products.

10.4 LICENSEE shall not directly nor indirectly through any affiliate company in which LICENSEE or any of its controlling shareholders, officers or directors owns an interest individually or in the aggregate in excess of ten percent (10%), sell any Licensed Products. LICENSEE's sales shall be direct to bona fide retailers only.

10.5 LICENSEE shall not use a personality or celebrity to endorse or promote any Licensed Products without the prior express written approval of LICENSOR.

11.0 **GOODWILL**

LICENSEE recognizes the value of the goodwill associated with the Trademarks. LICENSEE agrees, during the Term(s) and thereafter, never to attack the rights or LICENSOR in such or the validity of this license. LICENSEE agrees that its use of the Trademarks inures to the benefit of LICENSOR and that LICENSEE shall not acquire any rights in the Trademarks.

12.0 **TRADEMARK AND COPYRIGHT**

12.1 LICENSOR may obtain, at its own expense and in its name, appropriate copyright and trademark protection for the Property and/any Trademarks, and LICENSEE agrees to cooperate with LICENSOR in all such matters. If a country is added to the Territory and LICENSOR does not or has not obtained trademark protection in that country, LICENSEE may agree to pay for the trademark protection in that country in the name of LICENSOR.

12.2 LICENSEE agrees that it shall not at any time apply for any registration of any copyright, trademark or any other designation which would affect the ownership of the Property and/or Trademarks nor file any document with any governmental authority to take any action which would affect the ownership thereof.

12.3 LICENSEE agrees that it shall not at any time use or authorize the use of any trademark, trade name or other designation identical with or substantially similar to the

Trademarks. LICENSEE agrees not to associate the Property and/or Trademarks with other properties, trademarks, personalities, or characters without LICENSOR's written permission.

12.4 If LICENSEE becomes aware of the use of any of the Property (or any confusingly similar designations) by any third party, which use is or may be an infringement of or unfair competition with respect to the Property, LICENSEE will notify LICENSOR thereof. LICENSOR will have the sole right to decide whether or not action will be taken against such third parties, and LICENSEE will cooperate fully with LICENSOR in every such action. LICENSOR will pay all expenses of such action and will be entitled to all damages or other amounts that may be recovered. However, if LICENSOR fails or refuses to prosecute or to permit LICENSEE to prosecute any alleged infringement or unfair competition by third parties, then LICENSEE may terminate this Agreement immediately upon notice. In such an event, LICENSEE will be relieved of responsibility for any further payments to LICENSOR under the Agreement.

13.0 **INDEMNIFICATION**

LICENSEE agrees to defend, indemnify and hold LICENSOR, and its parent company, their officers, agents and employees, and the owners harmless against any and all liability, claims, demands, suits, loss, damages, causes of action and judgment, out-of-pocket costs and expenses, including reasonable attorney's fees, directly or indirectly arising out of the LICENSEE's manufacture, sale, offering for sale, distribution, promotion and/or advertising of the Licensed Products or LICENSEE's agents, employees, contractors, licensees.

14.0 **INSURANCE**

LICENSEE shall, throughout the Term, obtain and maintain at its own expense standard product liability insurance, the form of which must be acceptable to LICENSOR, naming LICENSOR as an additional insured. Such policy shall provide protection against 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 use thereof. In no matter which currency such policy is drawn, the amount of coverage shall be at least the equivalent of USD$1,000,000 for each claim and at least the equivalent of USD$3,000,000 in the aggregate. The policy shall provide for thirty (30) days notice to LICENSOR from the insurer in the event of any modification or termination of such coverage. LICENSEE shall furnish LICENSOR a certificate of insurance as well as a copy of the amended endorsement evidencing same within thirty (30) days after execution of this Agreement but in any event, prior to any manufacture and distribution of the Licensed Products.

15.0 **SECONDS**

LICENSEE shall not sell, distribute or use or permit any third party to sell, distribute or use any Licensed Products which are damaged, defective, seconds, irregulars or otherwise fail to meet the specifications and/or quality control or notice requirements of this Agreement. All Licensed Products not meeting the standard of approved samples shall be destroyed by LICENSEE.

16.0 **TERMINATION**

The following are in addition to the termination rights provided elsewhere in this Agreement:

16.1 LICENSOR shall have the right to immediately terminate this Agreement on written notice should LICENSEE:

16.1.1 Make, sell, offer for sale, use or distribute any Licensed Product or Promotional or Packaging Material without having the prior written approval of LICENSOR or continue to make, sell, offer for sale, use or distribute such after receipt of notice from LICENSOR withdrawing approval of same due to subsequent noncompliance;

16.1.2 Fail after receipt of written notice from LICENSOR to immediately discontinue the distribution or sale of Licensed Products or the use of any Promotional or Packaging Material which does not contain the appropriate legal legend;

16.1.3 Subject the Licensed Product or any Promotional and Packaging Material to any voluntary or involuntary order of any government agency involving the recall of any of the Licensed Products;

16.1.4 Or its controlling shareholders, officers, directors or employees take any actions in connection with the manufacture, sale, distribution or advertising of the Licensed Products or the Promotional and Packaging material which damages or reflects adversely upon LICENSOR or the Trademarks;

16.1.5 Breach any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Trademarks;

16.1.6 Fail to make timely payment of Royalties when due or fail to make timely submission of Royalty statements when due two or more times during a twelve-month period or fail to pay the Guaranteed Minimum Royalty due for each 12 month period; or

16.1.7 Breach any provision of this Agreement prohibiting LICENSEE from directly or indirectly assigning, transferring, sublicensing or other encumbering of this Agreement or any of its rights or obligations hereunder.

16.2 A party may terminate this Agreement on thirty (30) days written notice to the other party, under any of the following circumstances, provided that during the thirty (30) day period, the defaulting party fails to cure the breach:

16.2.1 Should LICENSEE, after commencing to sell and distribute Licensed Products, fail to continue to sell and distribute such in commercially acceptable quantities in all countries in the Territory for two consecutive Royalty Periods;

16.2.2 Should LICENSOR or LICENSEE violate or breach any of its [material] obligations under this Agreement;

16.2.3 Should LICENSEE file a petition in bankruptcy or be adjudicated as bankrupt or insolvent, make an assignment for the benefit of creditors, an arrangement pursuant to any bankruptcy law, or if LICENSEE discontinues its business or if a receiver is appointed for LICENSEE which is not discharged within thirty (30) days thereafter; or

16.2.4 Should any Licensed Products be sold by LICENSEE at prices which are clearly not competitive prices as such are customarily charged by LICENSEE for similar products to unaffiliated businesses.

17.0 **EFFECT OF TERMINATION**

17.1 If this Agreement is terminated under paragraph 16.1, no Licensed Products may thereafter be sold or distributed or any Promotional or Packaging Material used without the prior written approval of LICENSOR.

17.2 Upon termination of this Agreement, notwithstanding anything to the contrary herein, all Royalties on shipments made shall become immediately due and payable.

17.3 If this Agreement is terminated under provisions other than paragraph 16.1, Licensed Products which are on hand or in process of manufacture at the time the notice of termination is received or at the time of the expiration of the Agreement as the case may be, may continue to be sold or distributed for a six month period ("Sell-off Period"), provided that all Royalties with respect to that period are paid and that LICENSOR may itself use or license the use of the Trademarks in any manner and that LICENSEE provide LICENSOR with an inventory of Licensed Products it intends to sell or distribute during such period. No products sold during the Sell-Off Period shall be at "distress" or "fire sale" prices or represented in any other way so as to encourage prices lower than those before the Sell-Off Period. If such sales occur, then the sell-off period shall be discontinued immediately.

17.4 Upon termination of this Agreement, all rights hereunder shall revert to LICENSOR who may license others to use the Trademarks in any way whatsoever. LICENSEE shall refrain from any further use of the Trademarks and, at LICENSEE's option, either turn over to LICENSOR all other materials which reproduce the Licensed Products or give LICENSOR satisfactory evidence of their destruction. LICENSEE shall be responsible for any damages caused by the unauthorized use of such molds or reproduction materials which are not turned over or destroyed.

17.5 LICENSEE acknowledges that its failure to cease the manufacture, sale or distribution of Licensed Products or any class or category thereof at the time of termination or expiration will result in immediate and irreparable harm to LICENSOR and to the rights of any subsequent licensees. LICENSEE acknowledges that there is no adequate remedy at law for failure to cease the manufacture, sale, or distribution, and LICENSEE agrees that in the event of such failure, LICENSOR shall be entitled to equitable relief by way of injunctive relief, and such other relief as any court with jurisdiction may deem proper.

17.6 Within thirty (30) days after termination or expiration of this Agreement, LICENSEE shall provide LICENSOR with a statement indicating the number and description of the Licensed Products which it had on hand or in the process of manufacturing as of the expiration or termination. LICENSOR shall have the option of conducting a physical inventory to

ascertain or verify such. In the event LICENSEE refuses to permit LICENSOR to conduct such physical inventory, LICENSEE shall forfeit its rights hereunder to dispose of such inventory.

17.7 In the event this Agreement is terminated by LICENSOR pursuant to Paragraph 16, LICENSOR shall have the right (i) to recover any unpaid Royalty payable by LICENSEE pursuant to this Agreement, (ii) to exercise any rights or remedies it may have against LICENSEE in equity, including the right to specific performance and (iii) to recover from Licensee as liquidated damages percentages of the Annual Guarantees as follows:

In the event of termination after January 1, 200_ during the first Annual Period, or during subsequent Annual Periods in the Initial Term or in any subsequent Renewal Term: one hundred (100%) percent of the balance of the Annual Guarantee for the Annual Period of termination plus fifty (50%) percent of the Annual Guarantee for the first subsequent Annual Period, if any, plus twenty-five (25%) percent of the Annual Guarantee for the second subsequent Annual Period, if any. In arriving at this formula for computing liquidated damages, LICENSOR and Licensee have considered, among other factors, LICENSOR'S substantial investment in the Trademark, the uncertainty of Licensor's ability to relicense the Trademarks for the Licensed Products; and, if relicensed, the uncertainty as to whether LICENSOR can relicense the Trademarks for the Annual Guarantees specified herein.

17.8 In the event this Agreement is terminated by LICENSOR pursuant to Paragraph 16, LICENSEE shall pay LICENSOR all expenses and reasonable attorneys' fees incurred by LICENSOR (i) in the enforcement of its rights under this Agreement and/or (ii) in effecting collection of unpaid amounts of Royalty, Annual Guarantees or other damages hereunder.

17.9 Notwithstanding Paragraph 16, in the event LICENSEE fails to make timely payment of Royalties when due or fails to make timely submission of Royalty statements when due two or more times during a twelve-month period or fails to pay the Guaranteed Minimum Royalty due for any 12 month period, LICENSOR, at its discretion, may decide not to terminate the Agreement but may file an action in any state court in the State of New York, and LICENSEE agrees to jurisdiction and venue in said court, and LICENSEE shall pay LICENSOR all expenses and reasonable attorneys' fees incurred by LICENSOR in effecting collection of unpaid amounts of Royalty or Annual Guarantees and/or obtaining submission of Royalty statements.

18.0 **PURCHASE OF LICENSED PRODUCTS BY LICENSOR**

18.1 LICENSOR shall have the right to purchase the Licensed Products at such times and in such quantities as LICENSOR desires.

18.2 If LICENSOR desires to purchase Licensed Products for promotional purposes only (not for resale), LICENSEE agrees to sell such Licensed Products at LICENSEE’s cost with the Royalty owing to LICENSOR being waived for these purposes only.

18.3 If a third party secured by LICENSOR desires to purchase Licensed Products for resale through premium sales, direct response, direct sales, personal appearances or other means (other than to retailers), LICENSEE agrees to sell such Licensed Products upon terms to be

negotiated including the Royalty to LICENSOR.

18.4 If LICENSOR desires to purchase Licensed Products for its own direct sales (other than to retailers) LICENSEE agrees to sell such Licensed Products upon the most favorable terms and at the lowest wholesale price offered by LICENSEE to any of its customers, regardless of quantity requirements, including the Royalty owing to LICENSOR.

19.0 **REPRESENTAT1ONS AND WARRANTIES**

19.1 LICENSOR represents and warrants that:

19.1.1 It is duly organized under applicable law and it has the full authority to enter into and perform all of the duties and obligations contemplated under this Agreement;

19.1.2 It is the owner of all right, title and interest in and to the Trademark and its rights are not the subject of any encumbrance, lien or claim of ownership by any third party;

19.1.3 At no time during the term of this Agreement will it assign, transfer, encumber, or grant rights in or with respect to the Tradmarks that are inconsistent with the grants and other rights reserved to LICENSEE under this Agreement;

19.1.4 It has not engaged in any conduct, or omitted to perform any necessary act, the result of which could invalidate the Trademark or affect its enforceability, and it is not aware of any fact that puts in question the validity or enforceability of the Property; and

19.1.5 To the best of its knowledge, LICENSEE's use of the Trademark will not infringe the valid proprietary rights of any third party.

19.2 LICENSEE represents and warrants that:

19.2.1 It is duly organized under applicable law and it has the full authority to enter into and perform all of the duties and obligations contemplated under this Agreement;

19.2.2 It will comply with all applicable governmental laws, rules and regulations in connection with the manufacture, distribution, sale, and use of the Licensed Products and its activities under this Agreement.

19.2.3 It has the financial capacity to perform all of the duties and obligations contemplated under this Agreement;

19.2.4 **Marketing Commitment.** It will develop and implement a reasonable plan to market the Licensed Product.

19.3 LICENSOR hereby agrees to indemnify and hold LICENSEE and its parent company and its officers, agents, employees and shareholders harmless from any and all judgment, out-of-pocket cost and expenses including reasonable attorney's fees, directly or indirectly arising from the breach of any of the above representations and warranties.

19.4 LICENSEE hereby agrees to indemnify and hold LICENSOR and its parent company and its officers, agents, employees and shareholders harmless from any and all judgment, out-of-pocket cost and expenses including reasonable attorney's fees, directly or indirectly arising out of LICENSEE's manufacture, sale, offering for sale, distribution, promotion and/or advertising of the Licensed Products.

20.0 **FORCE MAJEURE**

Neither party will be in default hereunder by reason of its delay in the performance of or failure to perform any of its obligations hereunder if such delay or failure is caused by strikes; acts of God or the public enemy; riots; fires; interference by civil or military authorities; compliance with governmental laws, rules and regulations; delays in transit or delivery; or any other causes beyond its reasonable control.

21.0 **DISPUTE RESOLUTION**

21.1 The parties agree that before implementing Paragraph 21.2 below, they will make a good faith effort to resolve any dispute, controversy or differences which may arise between the parties under or in connection with this Agreement. Initially, both parties shall exchange brief summaries identifying the issue and their view of the issue, with the complaining party providing the initial summary. Then a discussion shall be held at a location agreed to by the parties between an authorized representative LICENSOR and an authorized representative of LICENSEE. If the representatives are not able to reach an agreement then an Officer of LICENSOR and an Officer of LICENSEE shall meet at the offices of the LICENSOR and attempt to resolve the issue. If no resolution is reached then either party shall be permitted to implement the procedure in Paragraph 21.2 below.

21.2 All disputes, controversies or difference which may arise between the parties under or in connection with this Agreement or for the breach thereof or as to the arbitrability of such disputes, controversies or differences, which are not resolved pursuant to Paragraph 21.1 above shall be finally settled by final and binding arbitration conducted in New York, NY under the then current Commercial Rules of the American Arbitration Association (including Supplementary Procedures for International Commercial Arbitration), subject to the following additional provisions:

> The arbitration shall be conducted by one person, and the arbitrator shall have familiarity with trademark licensing agent agreements. The arbitrator shall have no power to waive, alter, amend, revoke, or suspend any of the provisions of this Agreement. The written award of the arbitrator shall set forth the arbitrator's decision as to which party shall bear the fees and expenses of the arbitration (including, without limitation, the fees of the arbitrator, administrative expenses and attorneys' fees incurred by any or all of the parties) or the proportion or amounts of such fees and expenses which each party shall bear. Except to the extent necessary to enforce an arbitration award or to the extent required by law or court or administrative order, all arbitration proceedings and awards shall be kept confidential by each party, arbitrator, representative, counsel or witness. Judgment may be entered in any court of competent jurisdiction on any arbitration award and such award shall be final and binding.

21.3 This Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to the conflicts of laws provisions thereof, the parties agree that it is executed and delivered in that state, and LICENSOR and LICENSEE each irrevocably consent to personal jurisdiction in any civil action brought in connection with this Agreement in the United States District Court for the Southern District of New York.

22.0 **MISCELLANEOUS**

22.1 The parties are independent contractors and nothing in this Agreement will constitute either party as an agent of the other.

22.2 This Agreement, together with its Schedules, constitutes the entire understanding between the parties with respect to the subject matter herein, and supersedes any prior or contemporaneous written or oral understandings, agreements, or representations between the parties.

22.3 Any notice, approval or consent given under this Agreement shall be deemed sufficiently given if delivered by hand, or by Federal Express, Airborne or United Parcel Service, or mailed by certified mail, postage prepaid, addressed to the party to be notified at its address shown below or at such other address as may be furnished in writing to the notifying party.

If to LICENSOR, then care of,

, CA ____

With a copy to:

Mitchell E. Radin, Esq.
Cowan, DeBaets, Abrahams & Sheppard LLP
41 Madison Avenue, 34th Floor
New York, New York 10010

If to Licensee, then care of:

_____

With a copy to:

_____

22.4 No waiver by either party of a breach or a default hereunder shall be deemed a waiver of a subsequent breach or default.

22.5 In the event that any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such shall not affect any other provision and this Agreement shall be interpreted and construed as if such provision, to the extent invalid, illegal or unenforceable, had never been part of the Agreement.

22.6 LICENSEE's rights hereunder may not be assigned, disposed of, or transferred, voluntarily or involuntarily, to anyone else without LICENSOR's written approval at its discretion. Without limitation to the previous sentence, a merger of LICENSEE into another company or the transfer of a controlling interest in LICENSEE shall be deemed a disposal of LICENSEE's rights hereunder, which, to be effective, would require LICENSOR's written approval.

22.7 Headings of paragraphs and schedules herein are for convenience of reference only and are without substantive significance.

23.0 **CONFIDENTIALITY**

The parties agree to keep strictly confidential all confidential and proprietary sales, product, financial and marketing information received hereunder, as well as the terms and conditions of this Agreement. The parties agree not to use any such information for their own benefit, nor for the benefit of third parties, and further agree not to disclose any of such information to any third party except as may be required by government authority or a court of competent jurisdiction.

The parties have executed this Agreement.

A COMPANY, INC.

_____

Chief Executive Officer

B COMPANY, INC.

_____

President

SCHEDULE A

TRADEMARKS

XXXXX
XXXXX and Design

and other such Trademarks and Service Marks as may be added by written agreement between LICENSOR and LICENSEE

SCHEDULE B

PRODUCTS

FOOTWEAR for YOUNG ADULTS AND FOR CHILDREN

SCHEDULE C

LICENSED TERRITORY

USA
Australia
Canada
England
New Zealand

Others to be added on a case-by-case, territory-by-territory basis. Should either LICENSOR or LICENSEE identify an opportunity for distribution in such additional territories, each agrees to notify the other and to act in a timely manner.

[LICENSEE has expressed interest in the following additional territories and LICENSOR agrees to consider adding them to the Agreement after LICENSEE has submitted in writing the why, how, when, and projected extent of its distribution in these additional territories:]
South Korea
Japan