

Increase Your Sales Through Licensing

By Diane Bellavance

What is Licensing?

Globalization and the opening of international markets generate an increase in trade on a world-wide basis and greater competition between businesses. It has become increasingly difficult for companies to follow the traditional process of developing, manufacturing and distributing products themselves.

Licensing is a simple and different way of selling one's products. It is a right granted to another party to manufacture, improve or sell a product or a technology within a given territory. Licensing is sometimes accompanied by a strategic alliance for the development and improvement of the product or technology under license.

Licensing is a marketing strategy with numerous benefits to businesses such as a reduction in distribution costs, faster merchandising of the product or technology in a larger market, improvement of a product by the owner and its licensees, opening of additional markets which would otherwise be difficult to penetrate and a way of keeping up with market developments through their licensees.

Important points to remember

The following are examples of significant points to think about prior to concluding a licensing agreement:



- The notion of exclusivity;
- Sub-licenses;
- The territory;
- Remuneration through royalties (withholding tax);
- Sales quotas;
- Ownership of improvements and developments of products or technology;
- Representation and warranties of the licensee;

- Use of patents, copyrights or trademarks;
- Technical or product support;
- Provisions as to confidentiality, non-competition and non-solicitation;
- Protection and ownership of intellectual property rights, as well as clauses pertaining to their infringement;
- Termination clauses;
- Applicable law and possibly arbitration;
- Exact definition of the product or technology which is the subject of the license, as well as the patents, copyrights and trademarks associated with the product or technology.

Choice of Licensee

The choice of licensees is the material factor in the success of a licensing program; finding the right partner is one of the main elements of success. The licensee must have the business skills, the means and resources necessary to use the technology or the product efficiently and to carry out successful merchandising. The company must look for a partner with reliable and adequate manufacturing methods. The licensee must be well established within the given territory. The size of the company, the market covered, the facilities, the number of employees, the products distributed by the licensee and his profitability and reputation are all factors which should be examined during the selection process. A legal due diligence review is highly recommended.



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BARRISTERS AND SOLICITORS

Diane Bellavance
514 877-2907
Technology, Entertainment
and Intellectual Property



Protection of Intellectual Property

It is imperative that the company, as part of a licensing program, ensure that all intellectual property rights covered in the licensing agreement are well protected. Protection under the intellectual property laws gives the company the exclusive use of its technology, its trademarks and its innovations.

International Acts and Foreign Laws

Be sure to verify the acts, foreign laws and formalities which can affect you, such as deductions on royalty payments (withholding tax).

Confidentiality Agreement

A simple, clear and precise confidentiality agreement is essential before beginning talks with a potential licensee. Do not be afraid to require the other party's signature. A letter of intent is an effective preliminary agreement that unites the parties and allows for a more complete license agreement.

We are able to help you with all your legal needs in this field. Please do not hesitate to contact Diane Bellavance at 514 877-2907 or at dbellavance@lavery.qc.ca.

We also invite you to visit our web site at www.laverydebilly.com.

You can contact any of the following members of the Business Transactions Law group in relation with this bulletin.

At our Montréal Office

Philippe Asselin
Diane Bellavance
Pascale Blanchet
Valérie Boucher
Patrick Bourbeau
Serge Bourque
Patrick Buchholz
Richard Burgos
Pierre Cadotte
Pierre Caron
André Champagne
Daniel Alain Dagenais
Pierre Denis
Richard F. Dolan
Georges Dubé
David M. Eramian
Marie-Andrée Gravel
Benjamin David Gross
Isabelle Lamarre
André Laurin
Nicolas Leblanc

Larry Markowitz
Nicole Messier
Philip Nolan
André Paquette
Luc Pariseau
Jacques Paul-Hus
Marc Talbot
Patrice André Vaillancourt

At our Québec City Office

Michel C. Bernier
Martin J. Edwards
Olga Farman
Jacques R. Gingras
Stéphane Harvey
Claude Lacroix
Simon Lemay
Jean-Philippe Riverin
Louis Rochette

At our Laval Office

Michel M. Dagenais

You can contact any of the following members of the Technology, Entertainment and Intellectual Property Law group in relation with this bulletin.

At our Montréal Office

Diane Bellavance
Patrick Bourbeau
Patrick Buchholz
David M. Eramian
Isabelle Lamarre
Ian Rose

At our Québec City Office

Olga Farman
Jacques R. Gingras
Simon Lemay
Louis Rochette

Montréal

Suite 4000
1 Place Ville Marie
Montréal, Quebec
H3B 4M4

Telephone:
514 871-1522
Fax:
514 871-8977

Québec City

Suite 500
925 chemin Saint-Louis
Québec City, Quebec
G1S 1C1

Telephone:
418 688-5000
Fax:
418 688-3458

Laval

Suite 500
3080 boul. Le Carrefour
Laval, Quebec
H7T 2R5

Telephone:
450 978-8100
Fax:
450 978-8111

Ottawa

Suite 1810
360 Albert Street
Ottawa, Ontario
K1R 7X7

Telephone:
613 594-4936
Fax:
613 594-8783

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