

Chapter 2

Licensing Basics

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2.1 Definitions and Terminology

“**Licensing**” is a transaction in which the owner of some piece of intellectual property grants another party the right to use that piece of intellectual property, typically in exchange for some consideration. Absent the grant of such a right or license, if the other party used that piece of intellectual property they would be considered to be infringing the rights of the intellectual property owner.

“**Intellectual property**” can take many forms and may include, for example, musical works, literary works, artwork, drawings, inventions, discoveries, designs, names, logos, legends, industrial designs, trade dress or the like. The common thread for all forms, however, is that the piece of property must be protectable under some form of intellectual property protection, including by a patent, trademark, copyright, right of publicity or trade secret.

There are many types of “licensing”, virtually all of which will depend in large measure on the property involved. For example, when the piece of intellectual property being licensed is technology or covered by a patent, the act of granting one the right to use such technology or patent is called technology or patent licensing. Similarly, when the property is a piece of software, the act of licensing that software would be called software licensing and, similarly, when the property being licensed is a trademark, the act of licensing it would be called trademark licensing.

The practice of licensing a highly recognizable brand or character for goods or services other than those which generated its original popularity, is frequently called “ancillary product licensing” or simply “merchandising.” Thus, when a studio popularizes a particular character in conjunction with a television series or motion picture, the art of granting a manufacturer the right to use that character on otherwise unrelated products, e.g., t-shirts or toys, is frequently called “**merchandising**.”

It should be appreciated that the term “merchandising” may have many other meanings, particularly to those in the retail or marketing fields. Historically, “merchandising” has been defined as “a sales promotion as a comprehensive function including market research, development of new products, coordination of manufacture and marketing, and effective advertising and selling.”

While that definition, no doubt, remains accurate, in the context of licensing, “merchandising” refers to an entirely different thing, i.e., the combination of a highly recognizable brand or character (or other piece of intellectual property) with generic goods or services so as to enhance or increase the sales of such goods or services. Thus, for example, when the New York Yankees (or Major League Baseball Properties) licenses the “NY” logo for use on an otherwise unadorned black baseball cap, that constitutes “merchandising” in its purest form.

Most licenses are written and become a **License Agreement**.

There are certain terms and words that are commonly used in all licensing transactions, irrespective of the intellectual property involved. The intellectual property owner who is granting the license is typically called the **Licensor**. The party who is being granted permission to use the intellectual property of the Licensor is typically called the **Licensee**.

The intellectual property being licensed is often called the **Licensed Property** and the goods on which the Licensee is being granted the right to use the intellectual property are called the **Licensed Product**. In those instances where the intellectual property is being licensed for use in

conjunction with a service, e.g., advertising, it would be called the **Licensed Service**. It's not uncommon or atypical to include schedules in the agreement to more completely define the Licensed Property and/or Licensed Product.

There are many different forms of a license grant. In some instances, the only party who can use the Licensed Property for the Licensed Product (or Licensed Service) is the Licensee. In such instance, the License would be called an **Exclusive License**. Where, however, the Licensor does not intend to allow only the Licensee to use the Licensed Product (or Licensed Services) but may wish to grant others the right to use such Licensed Product or Licensed Service, the License would be called a **Non-Exclusive License**, whether or not the Licensor ever actually grants the right to another.

Virtually all types of licenses are granted for a defined period of time, e.g., one (1) year; five (5) years; for so long as the Licensee continues to sell Licensed Products. The length of a license is typically called its **Term**. There may be an **Initial Term** and, if the parties agree to a set procedure for renewing the Term, a **Renewal Term**.

Most licenses are granted for use by the Licensee in a particular state, region or country. The area where the Licensee may use or sell the Licensed Products is referred to as the **Licensed Territory**. When the Licensee is restricted to certain markets where they may sell or market the Licensed Products, these are typically referred to as the **Channels of Distribution**.

It is not uncommon for the Licensor to exclude certain rights, either to be able to exploit those rights itself or to grant licenses of those rights to others. Rights typically excluded in a classic License Agreement are rights relating to **Premiums and Promotions**, where the Licensed Product is not sold in the normal course of business but, instead, is given away to the public for promotional purposes. An example of this would be when a toy is given away by McDonald's to help promote the sales of products in its restaurant.

The compensation typically paid by a Licensee for the License is, in most instances, a **Royalty**, which is a percentage of the sales of the Licensee.

The Royalty is typically calculated or based on the Licensee's **Net Sales** of the Licensed Products, which is almost always a defined term in any License Agreement. Net Sales is typically the Licensee's gross sales of Licensed Products, less certain agreed upon deductions such as, for example, deductions for discounts, credits, allowances and returns of Licensed Products.

It's quite common for the Licensor to request that the Licensee pay an **Advance** at the time of signing the License Agreement against its projected Royalties. Most Advance payments are creditable or deductible against the Licensee's earned Royalty payments.

Similarly, it is quite common for the Licensor to require that the Licensee agree to pay a **Guaranteed Minimum Royalty** which protects the Licensor in the event that the Licensee's Net Sales are lower than expected. In that case, the Licensee would have to pay the Licensor the higher of the actual earned Royalty payment for a particular Term or the Guaranteed Minimum Royalty for that Term.

Many Licensors establish a **Common Marketing Fund** which they require be funded by the Licensees. The Common Marketing Fund is used to support and promote the entire licensing program. Typically, every Licensee will be required to pay a percentage of its Net Sales into the Common Marketing Fund.

Most Licensees are permitted to have Licensed Products manufactured for them by a third party, although frequently the Licensee will be prohibited from **Sub-Licensing** its rights under the License Agreement. This restriction means that it cannot typically enter into an agreement with another party and grant that party the rights that they have received from the Licensor.

2.2 Types of Licensing Properties

The kinds of properties that can be merchandised vary widely, although, generally, they take the form of words, names, titles, symbols, designs, character or personality images or likenesses, or combinations thereof that have acquired a wide degree of public recognition through mass media exposure.

In the merchandising context, as noted above, Licensed Properties typically fall into a number of different categories, including:

- Artwork
- Celebrity
- Collegiate
- Corporate
- Entertainment
- Fashion
- Music
- Non-Profit
- Publishing
- Sports

2.2.1 Artwork

The licensing of artwork centers upon the image which constitutes the Licensed Property, although in the case of the more famous artists such as, for example, Warren Kimble, the name of the artist may be included as well. It's been said that in artwork, "it's all about the image" and that statement has always been true. The manufacturer is acquiring the right to reproduce the image and the consumer is buying product because it contains the image. Artwork is also used extensively in the advertising and promotion of products as well as on packaging.

The early pioneers of art licensing were Andy Warhol, Warren Kimble, Mary Engelbreit, Debbie Mumm, Flavia and Thomas Kinkade.

While publishers and manufacturers have been using other people's artwork and images for decades, the actual business of licensing them has evolved over time. Early on, artwork was typically purchased outright from the artist for nominal sums, rather than licensed. As the licensing business grew, artists (and their agents) realized the inequity of simply selling their artwork to publishers and manufacturers who earned far more through selling products derived from the images. They began licensing their artwork on a royalty bearing basis so that they could share in the revenues generated over extended periods of time.



According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products for art properties were gifts & novelties, home décor, and housewares.

As licensing began to gain in popularity, so did the sizes of advances and guarantees that a publisher or manufacturer would have to pay for the right to use the artwork. These advances and guarantees were significant and, frequently, never earned off by the licensee. As a result, the business changed again. While most artwork is still licensed, rather than simply sold or assigned, the more recent trend has been toward smaller advances and guarantees. While the artist may still be able to ride the crest of a very successful product, the publisher or manufacturer is no longer willing to be forced to take all of the risk if the product does not sell well or at least sell up to the expectations of the parties when the agreement was negotiated. In short, a certain business sanity has set in.

2.2.2 Celebrity

Undeniably, we live in a world where people are fascinated by the lives of celebrities.



Magazines such as *People* and *In Touch* have millions of subscribers who want to closely follow the lives of celebrities. Should it therefore come as any surprise that when a celebrity elects to put their name on a product or otherwise associate themselves with that product, more people will buy it?

That is, in a nutshell, what celebrity licensing is all about—the use of a celebrity’s name, image or likeness on a product (or in association with the advertising or promotional material for that product) in order to enhance sales of the product.

In the early days, the celebrity might actually be required to act as a spokesperson for the product, appearing on television or print commercials explaining the benefits of the product and why the consumer should buy it.

More recently, however, this relationship has evolved into one where the celebrity simply licenses the right to use their name or image on the product so as to enhance sales of it. In some instances, the celebrity might be required to actually make a promotional appearance or two with selected retailers or on Home Shopping Network or be required to wear the product on the “Red Carpet” before a Hollywood event, but the promotional support actually required is usually minimal.

Celebrities don’t even have to be alive to be licensable. The estate of Elvis Presley has probably derived more income from licensing his likeness and image after his death than was earned before he died.

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products for celebrity properties were gifts & novelties, home décor, and housewares.

A manufacturer needs to be careful when it comes to the licensing of a celebrity because fame is fleeting. If the celebrity’s life doesn’t go the way the parties had hoped, not only will they take a possible hit in their primary market, but their licensees may similarly be impacted. For example, Tiger Woods was one of the most heavily licensed celebrities in modern time...right up to the time when he admitted marital infidelity. Not only was his name and reputation tarnished, but the sales of licensed Tiger Woods products suffered as well.

2.2.3 Collegiate

The royalty income generated by the licensing of college names and mascots builds buildings and pays for the salaries of professors at most universities. In short, collegiate licensing has become a very important part of the licensing industry over the past few decades and an important stream of revenue for schools. Colleges and universities regularly license others the right to use their names, e.g., the UCLA BRUINS logos and the school's mascots are licensed for literally a thousand different types of licensed products.



While many of the collegiate licensed products are sold either on the college campus or by catalog to alumni, a significant number of licensed products are sold or distributed on a national basis through major retailers. As one might expect, the success of a college licensing program is tied to the success of its athletic teams. With a National Championship win in football or an appearance in the Final Four in basketball, sales of related emblematic merchandise rise as do the royalties paid to the college or university.

BOISE STATE is a prime example of how athletic success can translate to success in licensing. By gaining national attention with its football program and changing its logo, it saw a jump in licensing revenue from \$70,000 to \$700,000 with 350 licensees over a six year period. No longer were the bulk of its licensed products being sold locally in Idaho. National retailers began carrying their products.

This doesn't mean that colleges that are not particularly known for their athletic prowess, but rather, their academic standing are not successful in licensing. Licensed HARVARD and PRINCETON products always remain strong. Interestingly, even colleges with unique or interesting names have met success in the marketplace, e.g., SLIPPERY ROCK UNIVERSITY.

The NCAA has also delved into licensing around their various tournaments, e.g., the FINAL FOUR or the ELITE EIGHT in basketball. Similarly, the various football bowl games, e.g. the ROSE BOWL, have licensed their names and others have sought out "sponsors" for their events, e.g., the DISCOVER ORANGE BOWL (formerly, the FEDEX ORANGE BOWL).

The collegiate market is an interesting one because almost half of the colleges conduct their licensing through the same agent—The Collegiate Licensing Company ("CLC") which is now owned by IMG. Another significant portion of the schools use a second agent, the Licensing Resource Group ("LRG") and the remaining schools or universities have their own licensing departments.

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where collegiate properties were exploited were apparel (by a large margin), software and video games and accessories.

2.2.4 Corporate / Brand

The corporate world watched with interest as the entertainment industry found merchandising to be a great way to both promote their underlying products and generate revenues as well. It didn't take long, however, for well-known corporations to investigate the concept and obviously they liked what they saw. More and more major corporations whose names have become household words have now turned to merchandising to not only add to their bottom line but to help promote the sale of their underlying products.

Many corporations have turned to brand licensing for other reasons. For example, it serves as a very cost-effective vehicle to diversify their product line and enter markets that they had, heretofore, not explored. For example, in 1981 Winnebago Industries was mired down in a depressed recreational vehicle market. While sales of RV's were down dramatically due to the gas crisis, the WINNEBAGO mark was widely known and respected. Capitalizing on the public awareness of its name, Winnebago decided to diversify into the expanding camping market by licensing its brand for a line of sleeping bags, tents and other outdoor product. It was a classic example of how a company can leverage the power of its brand to enter other markets for little or no, capital investment, or risk.



Other corporations have entered the licensing arena to help strengthen their underlying trademark rights. For example, the Coca-Cola Company decided to pursue licensing opportunities at the suggestion of their trademark attorneys who were concerned about their ability to enforce their trademark rights against individuals who were selling a host of different COKE products unrelated to soft drinks. Coca-Cola responded by setting up what would become one of the largest corporate licensing programs in the world to oversee more than 300 different licensees manufacturing thousands of different licensed COCA-COLA products including beach towels, boxer shorts, baby clothing, jewelry, and even fishing lures. It opened up a number of Coca-Cola stores that carrier a wide array of licensed products, many of which were of a nostalgic nature based on early Coca-Cola advertising campaigns.

More significantly, is that the licensing revenue generated from the licensing program contributed handsomely to the corporate bottom line. At one point, it was reported more than \$1 billion of COCA-COLA licensed products were sold annually. At a conservative 7% royalty, such a program would yield about \$70 million in annual royalties which represents about 0.3% of its net operating revenues. Not bad for ancillary income....while also helping promote the sales of its underlying products and strengthening its trademarks along the way.

Still other corporations enter merchandising because governmental regulations might otherwise restrict their ability to advertise their products through conventional advertising channels. These companies look upon merchandising as a way around these regulations, while also generating revenue along the way. For example, many of the tobacco and alcoholic beverage companies have restrictions as to what they can advertise and where. Merchandising permits them to get their message across to consumers without running afoul of the FTC requirements.

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where corporate properties were exploited were food & beverage, apparel and house wares.

2.2.5 Entertainment

Entertainment and character properties, of course, are the granddaddies of all merchandising properties and year in and year out represent the largest segment of the industry. Entertainment properties come from virtually all segments of the entertainment industry, although the largest sources of such properties are Hollywood motion pictures and television shows. For example, Nickelodeon's SPONGEBOB character featured in its hit television show *SpongeBob SquarePants*, has become a major force in children's merchandising, as well as the subject of literally dozens of promotional programs for virtually all of the major retailers and fast food chains. Similarly, the



Sesame Street characters, ELMO, BIG BIRD and OSCAR the GROUCH, have been licensing legends for decades due, in large measure, to the constant exposure that these properties receive every day on television. The children's characters developed over the years and featured in a host of media formats by Disney, Warner Bros. and others including, for example, MICKEY MOUSE, WINNIE THE POOH, BUGS BUNNY and PETER RABBIT also remain extremely popular and viable for licensing.

Blockbuster Hollywood movies produce some of the most successful licensing programs, most notably those based on such superheroes as SPIDERMAN, HULK, BATMAN, and SUPERMAN. The tremendous merchandising success for such characters has resulted in the studios creating their own "Consumer Products Divisions", aka licensing departments to further develop their properties.



Toys and video games have, over the years, been a profitable medium for merchandising properties. BARBIE started out as a popular fashion doll for Mattel and, through merchandising, has become a franchise. Similarly, the BRATZ line of dolls by MGA Entertainment and the GI JOE action figure by Hasbro have both been extensively merchandised for a wide array of products over the years. The character MARIO was the featured character in an early Nintendo video game called Donkey Kong and would ultimately be

licensed for virtually every product known to man and even became Nintendo's official "mascot."

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where entertainment properties were exploited were toys & games, software and video games and apparel.

2.2.6 Fashion

Fashion or designer properties have become a staple of the licensing industry for years due, in large measure, to the multiplicity of different properties available and the vast number of products that carry them. One need only walk through the clothing section of any department store or, for that matter, look at the different brands on the clothes in your own closet, and you will see the impact that these properties have. The reason is very simple and one that retailers readily understand: the presence of a designer's name or logo on a brand *sells product*.

Consumers have come to expect that the presence of a designer's name, ANY NAME, on the product means that it's a better product than the generic version. Whether that proposition is true or not, perception becomes reality and, as a result, virtually all clothing products and related accessories are branded with some name, either that of a real designer or a "house" name to convey the same impression. This may explain why retailers feel the need to develop their own "designer" brands such as, for example, J.C. Penney's ST. JOHN'S BAY brand and Wal-Mart's FADED GLORY brand. Clearly, the early fashion designers have attracted the most attention and started the trend. The initial wave of fashion designers, PIERRE CARDIN, ANNE KLEIN, BILL BLASS, OSCAR DE LA RENTA, and CALVIN KLEIN were all successful with their brands and paved the way for the next generation of fashion designers including, for example, TOMMY HILFIGER, DONNA KARAN and VERA WANG. Spin-offs of such properties such as TOMMY or POLO have similarly enjoyed enormous popularity of their own.



What is curious is that fashion brands are not always about the designer's name, but more about the resultant designs and the certain lifestyle image they evoke. This explains the success for such fashion brands as NAUTICA, FUBU, TOMMY BAHAMA, GUESS? and NINE WEST, or house brands such as CHANEL or LUIS VUITTON, where good design prevailed. Some of the top catalogs have similarly entered the field led by EDDIE BAUER, LANDS END and L.L. BEAN.

At the end of the day in the fashion industry, it's all about designs and quality. Fashion properties that feature good design, quality and value will ultimately prevail and cause the consumer to come back year and after year.

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where fashion properties were exploited were apparel, accessories and health and beauty products.

2.2.7 Music

The music industry rocks when it comes to producing hot merchandising properties. Consider, for example, such performers and bands over the years as the BEATTLES, ELVIS PRESLEY, BRUCE SPRINGSTEIN, BILLY JOEL, CHER, MADONNA, CELINE DION, DOORS, KISS and OZZY OSBOURNE. While clearly these performers and groups sold an enormous amount of licensed products at their concerts and on tour ("venue sales"), they also sold a ton of it through traditional retail channels of distribution.

The JESSICA SIMPSON brand has reached a billion dollars in the sale of licensed products, most notably shoes, handbags and accessories, while USHER has licensed his name (and persona) for a wide range of products, including cologne and aftershave lotion. It has been reported that total concern merchandise sales of BRITANY SPEARS' licensed products have exceeded \$30 million with another \$10 million expected from her next world tour. In particular, BRITTANY SPEARS' line of cosmetics for Elizabeth Arden has sold well as has JENNIFER LOPEZ's line of toiletries. Rock bands have likewise come to recognize the power of their brand. At their height, the British girl's band ATOMIC KITTEN even created their own branded line of clothing called AK brands.



The use of music videos has proven to be an excellent way to sell branded merchandise, as Australia pop star KYLIE MINOGUE proved when she appeared in a music video that promoted her line of lingerie for Agent Provocateur.

2.2.8 Non-Profits

Foundations, organizations, charities and associations regularly look to merchandising as a means of both conveying their message as well as a source of fund raising. Non-profit organizations such as, for example, the American Society for the Prevention of Cruelty to Animals ("ASPCA") have logo licensing programs created to generate revenue for their causes. In the case of the ASPCA, revenue generated from their licensing programs helps to fund their national humane initiatives, while concurrently promoting brand recognition in the minds of consumers.



Similarly, the World Wildlife Fund (“WWF”) works closely with companies and individuals in marketing partnerships, where licensees are permitted to use their PANDA logo and the WWF name to secure revenue for the WWF, as well as building a greater awareness of its organization and activities. In addition, the WWF engages in cause-related marketing promotions and sponsorship programs. (Suggest adding a brief expansion of this last sentence, or an example)

Some associations even set up their own entities to directly engage in licensing. For example, AARP created AARP Financial Inc., which licenses and endorses credit cards, insurance and financial services. It also sells five mutual funds and administers IRAs, sells CDs, and provides financial advisory services to AARP members. New York Life sells AARP Life Insurance policies and annuities; The Hartford sells AARP-branded auto and home insurance to AARP members and other “partners” sell AARP motorcycle and mobile-home insurance. Chase offers an AARP Visa credit card.

Licensing represents the same thing for all of these non-profits and foundations—a revenue source to permit them to pursue their primary endeavors.

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where non-profit/ cause-related (?) properties were exploited were apparel, publishing and gifts & novelties.

2.2.9 Publishing

Many of the most popular entertainment-type properties find their genesis in the publishing industry, particularly the children’s book market. As a result, there is a fine line between pure entertainment properties and publishing properties. Comic strips such as PEANUTS and GARFIELD as well as characters that were initially introduced in books such as PETER RABBIT or WINNIE THE POOH or in comic books such as SUPERMAN, BATMAN, ARCHIE, all trace their genesis to the publishing industry and are considered publishing properties, even though animated version of the characters may have morphed onto the big screen or on television.



According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where publishing properties were exploited were publishing, accessories and stationery products.

2.2.10 Sports

The sports category has been one of the strongest merchandising categories for decades due, no doubt, to our fascination with sports and its players. Sports merchandising is truly a worldwide business and, while baseball and football may be immensely popular in the United States, soccer and cricket teams and players are closely followed – and licensed – in other countries. Interestingly, basketball enjoys almost universal popularity around the world.



For the major sports leagues in the United States, Major League Baseball, the National Football League, the National Basketball Association and the National Hockey League all have their “Properties” divisions that control the licensing of team logos and properties. Thus, if one wants

to license the logo for an NFL team such as, for example, the NEW YORK GIANTS, the first stop in the process is at NFL Properties. The same is true for each of the other leagues.

Apart from the licensing of the team logos, etc., the individual players similarly profit from their own popularity. Players such as LEBRON JAMES, PEYTON MANNING and DEREK JETER have enormous merchandising potential and generally speaking, the licensing for such individual players is handled directly by the player or their agent. Where, however, one wants a “group license” of a number of players or for all of the players of a particular team, the source of those rights is the respective Players Association which controls such group rights. Thus, if one wanted to run a promotion featuring all members of the Los Angeles Dodgers using the DODGERS mark, they would require licenses from MLB Players’ Association for the names and likenesses of the players and from MLB Properties for the right to use the DODGERS mark.

Professional sports leagues and players are not the only sources of licensing potential for sports properties. The OLYMPICS has long been at least partially subsidized on the strength of its licensing and sponsorship programs involving the OLYMPICS LOGO which is one of the strongest and best recognized in the world. Similarly, the International Federation of Association Football (“FIFA”), which is the international governing body for soccer and who oversees the FIFA World Cup tournaments, relies extensively on licensing to support its efforts.



Licensing and sponsorship deals are simply part of the way in which tennis and golf stars such as MARIA SHARAPOVA or TIGER WOODS support their lifestyles and their agents such as IMG are major factors in developing such deals. Not to be outdone, the governing bodies for such sports, the PGA, LPGA, and USTA all maintain licensing programs involving their logos and names as a means to help raise revenues and grow their sports.

According to the 2010 LIMA Survey of the Licensing Industry, the three largest categories of Licensed Products where sports properties were exploited were apparel, gifts & novelties and software and video games.

2.3 Licensed Product Types

In the early years of merchandising, the majority of licensed products would fall into the overall category of “button, badges, and posters” but that has changed dramatically as the industry began to soar. Today, one can find licensed properties on virtually every type of product or service. If one simply reviews the Classification List published by the United States Patent & Trademark Office which they use when classifying goods and services, you will see that of the 45 identified classes, at least 30 would contain some type of licensed products.

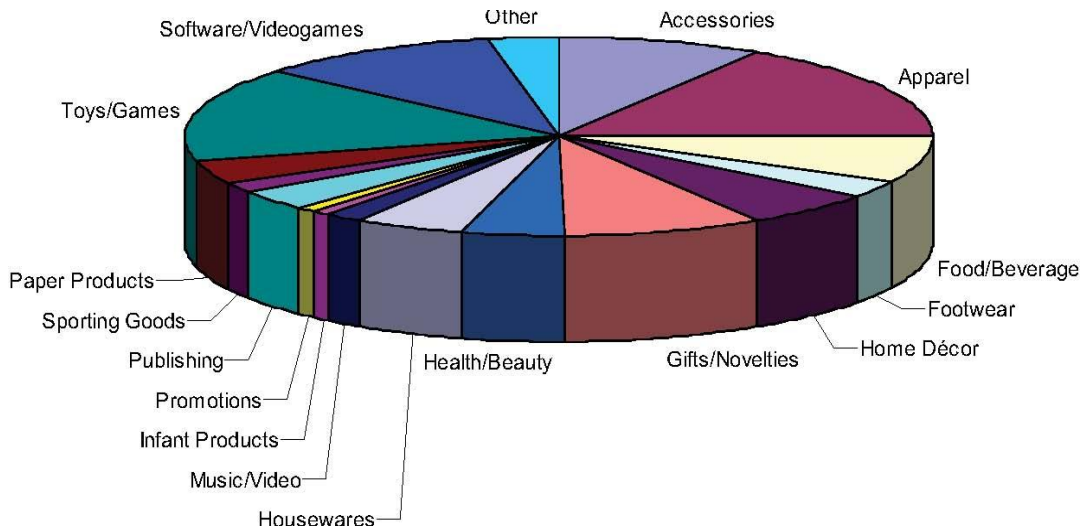
In the course of its Annual Survey of the Licensing Industry, LIMA identified the following categories of Licensed Products:

- Apparel: (Adult, Kids)
- Accessories: (Head Wear, Jewelry & Watches, Etc.)
- Food/Beverage: (Beverage, Candy, Etc.)
- Footwear: (Adult, Kids)
- Home Decor: (Furniture, Home Furnishings)
- Gifts/Novelties: (Collectibles, Gift, Etc.)
- Health/Beauty: (Health, Cosmetics, Etc.)
- Housewares: (Kitchenware, other Houseware Type Products)

- Music/Video
- Infant Products
- Publishing
- Sporting Goods
- Paper Products / School Supplies (Art, Greeting Cards, Lunch Boxes, Bags/Totes, Etc.)
- Toys/Games: (Dolls/Action Figures, Games, Pre-School, Etc.)
- Software/Videogames: (Handheld, Software, Accessories, Etc.)

Of these possible categories of licensed products, the three most active from a licensing viewpoint were apparel, toys & games and software and video games.

A chart illustrating estimated revenues by product category for 2009 is as follows:



Time magazine did an article on the “Top Ten Oddball Celebrity Branded Products” which included: HULK HOGAN’s pastamania; SHAQUILLE O’NEAL’s Shaq-Fu video game; STEVEN SEAGAL’s Lightning Bolt drink; and DANNY DEVITO’s limincello.

2.4 The Popularity of Merchandising

What makes merchandising so popular? The obvious answer to that question is that it sells product. Consumers want to buy products that contain merchandising properties and owners of these properties benefit from the additional exposure that it creates as well as the revenue it generates. It becomes a true win-win situation for all concerned.

From the perspective of the property owner, there are reasons for developing a merchandising program other than for the revenue that it might help generate. For example, it offers a way to:

- Increase the exposure for its underlying product or service;
- Better leverage their advertising expenditures;
- Hedge fluctuations in their basic business model;
- Achieve a high return with minimal investment;
- Expand into new markets and test different new product areas;
- Achieve rapid penetration in a new market or territory;
- Convert a recognizable brand within a depressed core category into products for an emerging market;
- Promote products without running afoul of advertising restrictions; and
- Strengthen one's underlying trademark rights by expanding the breadth of the goods or services on which the brand is used.

From the perspective of the manufacturer or the licensee, it allows a small company to “borrow” or “rent” the popularity and good will that a larger entity may have built up over decades or centuries of sales, thus permitting it to sell products at a rate that it may never otherwise have been able to achieve. It allows these smaller companies to compete on amore equal footing with their larger competitors.