

MOVIE MERCHANDISING

By Mark Litwak

With the release of such movies as *A Bug's Life* and *Toy Story*, the incestuous relationship between products and movies has come full circle. With *Toy Story* we have a movie about toys -- some new as well as such old favorites as Mr. Potato Head-- which serves as a vehicle to promote its toy characters whose sale, in turn, promotes the film they star in. Rarely has such synergy between movies and products been so fully realized.

Whether you view *Toy Story* as nothing more than a thinly disguised commercial hawking toys to youngsters, or you see the movie as a creative masterpiece that smartly capitalizes on spin-off opportunities, there is no doubt that movie merchandising has become big business. According to the trade publication Licensing Letter, licensed products generate more than \$73 billion dollars a year, of which \$16 billion is derived from entertainment such as movies. 1

The major studios realize that not only can the sale of movie-related products generate substantial revenue, but these products can be used to effectively promote films. Typically, 40 percent of movie merchandise is sold before a film is released. For its 1996 live action film *101 Dalmatians*, Disney made deals with more than 130 companies including cross-promotional deals with McDonald's, Dr. Pepper, Frito-Lay and Alpo. Warner Bros. entered into more than 200 deals for *Space Jam*.

Of course, selling movie-related products is nothing new. Walt Disney built an empire marketing Mickey Mouse ears and other toys, not to mention the enormous revenue generated from theme parks. While merchandising has been around a long time, there has been a resurgence of activity since the release of *E.T.* in 1982. You may recall a scene in that movie in which a child shared some of her Reese's Pieces candy with a friendly alien. As a result of exhibiting that product in the film, its sales increased an incredible 65%. This bonanza delighted the makers of Reese's Pieces, but was much to the chagrin of the executives at M & M's. They had denied Steven Spielberg's request to use their candy after their marketing guru figured that having an alien eating M & M's would reflect badly on the product -- one of the greatest marketing blunders of all time.

After this incident was reported in the trade press, many manufacturers began to make more of an effort to place their products in films. They realized that insertion of their product in a successful film could boost sales, and cost less than the cost of advertising. Studios also took notice and made more of an effort to promote products in their movies as well as looking for spin-off products that could be marketed. Typically, studios enter into two basic types of agreements: 1) product placement deals where a manufacturer has its product shown in a film, or 2) merchandising deals where the studio licenses to a manufacturer the right to use names, characters and artwork for spin-off products such as toys, clothing, novelizations and soundtrack albums.

Product Placement

A new breed of agent has arisen to promote the use of products in films. The product placement agent doesn't represent people; he represent products. One agent might represent several non-competing products: Mar's bars for candy, Dr. Pepper for soda, Coors for beer, Ford for cars, and so forth.

The product placement agent spends his time looking for scripts in which to place products. Of course, not every placement is desirable. Coca Cola would not want their soda to be consumed by a character who then

vomits and goes into convulsions. But assuming the placement is in a neutral or positive light, manufacturers will likely be interested.

To induce filmmakers to insert products in movies, the product placement agent can offer several carrots:

1) Release forms: the producer will not have to bother writing to the manufacturer for permission to include the product in the film. Note that displaying a product in a film without permission is not necessarily a violation of a manufacturer's rights. Nevertheless, it is often easier to obtain written permission than risk a possible lawsuit.

2) Freebies: Agents will give producers cartons of candy bars, free airline tickets, a truckload of beer. These freebies can help a producer lower his production costs by eliminating the need to buy props and food. If an item is expensive, such as a car, a mink stole or fine jewelry, often the agent will lend it for the duration of the shoot.

3) Promotion: If McDonalds agrees to distribute millions of *Roger Rabbit* cups to its customers, and spend additional millions of dollars to advertise the promotion, the movie benefits from increased audience awareness. For distributors, promotional campaigns are often the most alluring aspect of a product placement deal.

4) Cash: Sometimes cash is part of a placement deal. Nabisco paid \$100,000 to have its Baby Ruth candy bar shown in *The Goonies*. The company also agreed to provide \$1.5 million dollars in network advertising and to give away movie posters with the purchase of its candy at displays in 37,000 stores.

Manufacturers will usually reserve expensive promotional deals and cash payments for major studio releases. However, they are often willing to provide freebies to low-budget filmmakers.

Merchandising

Separate and apart from product placement deals, studios license the right to sell spin-off products to manufacturers. Producers and distributors usually do not manufacture film-related products themselves. They license the right to sell these products to other companies (the "Licensee"). In most instances there is no risk to the producer or distributor (the "Licensor") because the licensee incurs all manufacturing and distribution expenses. The producer/distributor typically receives an advance payment for each product, as well as royalty payments, often between five and 10 percent of gross revenues from sales to retailers (i.e., the wholesale price). If the movie flops and the products don't sell, the manufacturer incurs the loss.

Many movies have limited merchandising potential. While *The Phantom Menace* will spin off numerous toys, posters and other items, films like *Saving Private Ryan*, *Elizabeth* and *Life is Beautiful*, have much less potential. Musicals, such as *Saturday Night Fever*, *Grease*, *Flashdance*, and *Dirty Dancing*, can earn substantial revenues from soundtrack recordings. Moreover, a hit song can effectively promote a film. Similarly, music videos have become important marketing tools.

In negotiating a merchandising agreement, care should be taken to carefully define the scope of the license. The agreement should specify the terms, territories and the particular articles which the licensee can manufacture.

Since hundreds of different licenses may be granted, and each is usually on an exclusive basis, the parties will want to make sure that a license does not conflict with any other licenses. Here is a sample agreement:

Checklist for negotiating a Merchandising Agreement

Date of agreement. _____

Name of Licensor. _____

Name of Licensee. _____

Title of Motion Picture. _____

State Law governing agreement. _____

Name of Licensor's attorney. _____

Full address of Licensor. _____

Licensee's attorney. _____

Effective Commencement Date. _____

Termination Date. _____

Guaranteed Minimum Compensation. _____

The Royalty shall be _____ percent of the wholesale price. (e.g. seven) _____

SAMPLE MERCHANDISING AGREEMENT

AGREEMENT made ***Agreement Date*** between ***Licensor*** ("Licensor") and ***Licensee*** ("Licensee") with respect to certain merchandising rights in the motion picture entitled: ***Picture Title*** (the "Picture").

1. LICENSE:

(a) Grant of License: Licensor grants to Licensee for the term of this Agreement, subject to the terms and conditions herein contained, and Licensee hereby accepts, the exclusive right, license and privilege to utilize the names, characters, artists' portrayal of characters, likenesses and visual representations as included in Picture (collectively the "Property") solely and only in connection with the manufacture, advertising, distribution and sale of the article or articles specified in Schedule "A" attached hereto and by this reference made a part hereof (such articles being referred to herein as "Licensed Products") under the terms and conditions stated herein. Licensee agrees that it will not utilize the Property in any manner not specifically authorized by this Agreement.

(b) Limited Grant: Nothing in this Agreement shall be construed to prevent Licensor from granting any other licenses for the use of the Property in any manner whatsoever, except that Licensor agrees that, except as provided herein, it will grant no other licenses effective during the term of this Agreement, for use in the Licensed Territory of the Licensed Product(s). Licensor specifically reserves all rights not herein granted, including, without limitation, premium rights. For purposes of this Agreement, premium rights shall mean use of the Property in such manner as to identify it with a particular product or service other than the Licensed Products. It is clearly understood that the Licensed Products may not be sold for use, or be used as, premiums, self-liquidators, containers, or for any secondary use without the prior written consent of the Licensor.

2. TERRITORY: The license hereby granted extends only to the territory described in Schedule "B," attached hereto and by this reference made a part hereof (hereinafter: Licensed Territory"). Licensee agrees that it will not make, or authorize, any use, direct or indirect, of the Licensed Products or Property in any other area, and that it will not knowingly sell articles covered by this Agreement to persons who intend or are likely to resell them in any other area, to the extent this prohibition is permitted by law.

3. LICENSE PERIOD (THE "TERM"): The License granted hereunder shall be effective and terminate as of the dates specified in Schedule "C," attached hereto and by this reference made a part hereof unless sooner terminated in accordance with the terms and conditions hereof.

4. EXCLUSION: Anything in this Agreement to the contrary notwithstanding, Licensee's rights hereunder shall not include the right to, and Licensee hereby warrants that it will not, use the Property for any endorsement, including but not limited to the Licensed Product(s).

5. PAYMENT: (a) Guaranteed Minimum Compensation: Licensee shall pay to Licensor, as Guaranteed Minimum Compensation under this Agreement, not less than the minimum amount specified for the respective period of time set forth in Schedule "D" (attached hereto and by this reference made a part hereof) and such Guaranteed Minimum Compensation shall be paid in a manner and at the time specified in said Schedule "D."

(b) Percentage Compensation: Licensee agrees to pay Licensor a sum equal to the percentage specified in Schedule "E" in connection with the distribution of any units of the Licensed Products covered by this Agreement (hereinafter "Percentage Compensation") whether to third parties, to its affiliated, associated or subsidiary companies or otherwise, whether or not billed. A Percentage Compensation shall also be paid by Licensee to Licensor on all Licensed Products distributed by Licensee to any of its affiliated, associated or subsidiary companies. The amount payable to Licensor under this sub-clause 5(b) shall be reduced by the amount of any advance paid to Licensor pursuant to Schedule "D."

6. PERIODIC STATEMENTS: Within thirty (30) days after the initial shipment of the Licensed Products covered by this Agreement, and on the tenth day of each month thereafter, Licensee shall furnish to Licensor complete and accurate statements, certified to be accurate by Licensee, showing the number, description and sales price of the Licensed Products distributed and or sold by Licensee during the preceding month, including a statement of any returns made during the preceding month. Such statements shall be furnished to Licensor whether or not any of the Licensed Products have been sold during the month for which such statements are due. Percentage Compensation as provided in Schedule "E" shall be payable by the Licensee simultaneously with the rendering of statements. Receipt or acceptance by Licensor of the statements furnished pursuant to this Agreement or of any sums paid hereunder shall not preclude Licensor from questioning the correctness thereof at any time, and if any inconsistencies or mistakes are discovered in such statements or payments, they shall

immediately be rectified and the appropriate payments made by Licensee. Time is of the essence with respect to all payments hereunder.

7. **BOOKS AND RECORDS:** Licensee agrees to keep accurate books of account and records covering all transactions relating to the License hereby granted and Licensor and its duly authorized representatives shall have the right upon reasonable advance notice to an examination of said books of account and records and of all other documents and material, whether in the possession or under the control of Licensee or otherwise, with respect to the subject matter and the terms of this Agreement and shall have free and full access thereto for said purpose of making extracts and or copies therefrom. All books of account and records shall be kept available for at least two (2) years after the expiration or termination of this License, and Licensee agrees to permit inspection thereof by Licensor during such two (2) year period as well. The receipt or acceptance by Licensor of any of the statements furnished pursuant to this Agreement or of any Percentage Compensation paid hereunder (or the cashing of any checks paid hereunder) shall not preclude Licensor from questioning the correctness thereof at any time prior to the date two (2) years after the conclusion of the term of this Agreement, and if any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. Payment shall be made in United States funds. Domestic taxes payable in the Licensed Territory shall be Licensee's responsibility. If any such examination shows an under reporting and or payment in excess of five percent (5%) of the total amount reported and or paid for any twelve (12) month period and if that underpayment is acknowledged by Licensee or is affirmed by litigation or arbitration, then Licensee shall pay the costs of such examination and or litigation, including, without limitation, attorneys' fees with respect thereto.

8. **COPYRIGHT AND TRADEMARK NOTICES:** (a) Copyright and Trademark Notices: Licensee shall cause to be imprinted irremovably and legibly on all Licensed Products and on at least the principal face of all packaging, enclosure materials and advertising materials for the Licensed Products the complete copyright notice: © (name of copyright owner date of copyright) (The year of the copyright notice shall be the year in which the latest revision of the respective Licensed Products, packaging, enclosure or advertising is first placed on sale, sold or publicly distributed by the Licensee under the authority from Licensor).

Licensee shall also cause to be imprinted irremovably and legibly on all Licensed Products and on at least the principal face of all packaging, enclosure materials and advertising materials for the Licensed Products the appropriate trademark notice, either "TM" or "R" as Licensor shall determine, and shall affix the notice as specified by Licensor.

(b) Copyright Samples, Approval and Registration:

(i) Prior to the production of any particular Licensed Product or of any packaging, enclosure, promotion and advertising therefor, Licensee shall deliver, at Licensee's expense to Licensor the following;

(a) a complete set of art work and sketches and actual samples, if available of the applicable Licensed Product;

(b) its packaging, enclosures, promotional materials and advertising; for Licensor's written approval of the copyright and trademark form and of the manner and style of use of the Property. Once Licensor approves the trademark or copyright notice, Licensee will not deviate from the Licensor-approved notice. Licensee shall make such deliveries to Licensor each time a new Licensed Product, packaging, enclosure, promotion or

advertising is to be produced. Public sale and distribution will not be made until Licensor's approval pursuant to this Subclause 8(b) is received.

(ii) Promptly after the first public sale or distribution, Licensee shall deliver, at Licensee's expense, five (5) complete prototypes of each Licensed Product, packaging, enclosure, promotion and advertising for copyright and trademark registration at Licensor's discretion and expense; however, Licensor has no obligation to obtain such registration(s). Licensee will advise Licensor in writing of the date of first public sale and distribution. Copyrights and trademarks in all such material shall be owned by Licensor.

9. LICENSOR'S APPROVAL OF LICENSED PRODUCTS, ADVERTISING, CONTAINERS, MATERIALS:

The quality and style of the Licensed Products as well as any carton, container, packing or wrapping material shall be subject to the express written approval of Licensor prior to distribution and sale thereof. Each and every tag, label, imprint or other device used in connection with any Licensed Products and all advertising, promotional or display material bearing the Property and or Licensed Products shall be submitted by Licensee to Licensor for express written approval prior to use by Licensee. Such approval may be granted or withheld as Licensor in its sole discretion may determine. Licensee shall, before selling or distributing any of the Licensed Products, furnish to Licensor free of cost, for its express written approval, three (3) prototype samples of (a) each Licensed Product, (b) each type of carton, container, packing and wrapping material used with each Licensed Product, (c) each and every tag, label, imprint or other device used in connection with any Licensed Product, and (d) all advertising, story board, script, promotional or display material bearing the Property and or Licensed Products.

Said samples shall be sent to Licensor by means permitting certification of receipt at the mailing address stated in the notice clause herein. Failure by Licensor to approve in writing any of the samples furnished to Licensor within two weeks from the date of submission thereof shall be deemed approval thereof. After samples have been approved pursuant to this clause, Licensee shall not depart therefrom in any respect without the express prior written approval of Licensor. The prototypes shall conform to the requirements of Clause 8.

10. PROTECTION OF LICENSOR'S RIGHTS AND INTERESTS: Licensor and Licensee agree that Licensee's utilization of the Property upon or in connection with the manufacture, distribution and sale of the Licensed Products is conditioned upon Licensor's protection of its rights and obtaining the goodwill resulting from such use. Licensee agrees to protect Licensor's rights and goodwill as set forth hereinbelow and elsewhere in this Agreement.

(a) Good Will and Protection:

(i) Licensee recognizes the great value of the publicity and goodwill associated with the Property and, in such connection, acknowledges that such goodwill exclusively belongs to Licensor and that the Property has acquired a secondary meaning in the mind of the purchasing public. Licensee further acknowledges that all rights in any additional material, new versions, translations, rearrangements, or other changes in the Property which may be created by or for Licensee, shall be and will remain the exclusive property of Licensor and the same shall be and will remain a part of the Property under the terms and conditions of this Agreement.

(ii) Licensee shall assist Licensor and or Licensor's authorized agents to all reasonable extent requested by Licensor in obtaining and maintaining in Licensor's name any and all available protection of Licensor's rights in and to the Property; specifically, Licensee agrees to sign documents, give testimony, provide exhibits, provide

facts and otherwise cooperate with Licensor and its agents in obtaining registrations, assignments, certificates and the like evidencing Licensor's rights in the Property. Pursuant to the foregoing, Licensee shall assign over to Licensor, at Licensor's request, formal and absolute title subject to the License granted herein, to any protectable new version, variation, revision, arrangement of compilation of the Property, ownership of which shall be absolute in Licensor.

(iii) Licensor may, if it so desires, and in its reasonable discretion, commence or prosecute any claims or suits against infringement of its right in the Property and may, if it so desires, join Licensee as a party in such suit. Licensee shall notify Licensor in writing of any activities which Licensee believes to be infringements or utilization by others of the Property or articles of the same general class as the Licensed Products, or otherwise. Licensor shall have the sole right to determine whether or not any action shall be undertaken as a result of such activity and shall have sole discretion in the accommodation or settlement of any controversies relating thereto. Licensee shall not institute any suit or take any action with respect to any such infringement or imitation without first obtaining the written consent of Licensor to do so.

(b) Indemnification By Licensee: For purposes of this Subclause 10(b) "Indemnified Parties" refer to Licensor, and (name of copyright owner if other than Licensor), their parents, subsidiaries and affiliates, and co-producers and co-venturers of Licensor and the performers and other personnel in or associated with the Property and Licensees of rights relating to the Property, and the person or firm whose rights are being licensed hereunder and, where applicable, sponsors of the Property and their respective advertising agencies, and officers, directors, employees and agents of each of the foregoing and all persons connected with and or employed by them and each of them.

Except for the rights licensed hereunder by Licensor to Licensee, Licensee hereby indemnifies and shall hold harmless the Indemnified Parties and each of them from and against the costs and expenses of any and all claims, demands, causes of action and judgments arising out of the unauthorized use of any patent, process, method or device or out of infringement of any copyright, trade name, patent or libel or invasion of the right of privacy, publicity, or other property right, or failure to perform, or any defect in or use of the Licensed Products, the infringement or breach of any other personal or property right of any person, firm or corporation by Licensee, its officers, employees, agents or anyone, directly or indirectly, acting by, through, on behalf of, pursuant to contractual or any other relationship with Licensee in connection with the preparation, manufacture, distribution, advertising, promotion and or sale of the Licensed Products and or any material relating thereto and or naming or referring to any performers, personnel, marks and or elements. With respect to the foregoing indemnity, Licensee shall defend and hold harmless Indemnified Parties and each of them at no cost or expense to them whatsoever, including but not limited to attorneys' fees and court costs. Licensor shall have the right but not the obligation to defend any such action or proceeding with attorneys of its own selection.

(c) Product Liability Insurance: Licensee shall obtain and maintain at its sole cost and expense throughout the term standard Product Liability Insurance, the form of which must be acceptable to Licensor, from a qualified insurance company licensed to do business in the State of ***governing state*** naming Licensor and each and all the Indemnified Parties described in Subclause 10(b) above, as additional named insureds, which policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failures to perform, alleged or otherwise, in the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be a minimum of One Million Dollars (\$1,000,000) combined single limit for each single occurrence for bodily injury and One Hundred Thousand Dollars (\$100,000) for property damage. The policy shall provide for thirty (30) days' notice to Licensee and Licensor from the insurer

by Registered Mail, return receipt requested, in the event of any modification, cancellation or termination. Licensee agrees to furnish Licensor a certified copy of the policy providing such coverage within thirty (30) days after the date of this Agreement and in no event shall Licensee manufacture, distribute or sell the Licensed Products prior to receipt by Licensor of such evidence of insurance.

(d) Advertiser's Liability Insurance: Licensee shall obtain and maintain at its sole cost and expense throughout the term standard Advertiser's Liability Insurance, the form of which must be acceptable to Licensor, from a qualified insurance company licensed to do business in the State of ***governing state*** naming Licensor and each and all of the Indemnified Parties described in Subclause 10(b) above as additional named insureds. The amount and coverage shall be a minimum of Five Hundred Thousand Dollars\One Million Dollars (\$500,000\\$1,000,000). The policy shall provide for thirty (30) days' notice to Licensee and Licensor from the insurer by Registered Mail, return receipt requested, in the event of any modification, cancellation or termination. Licensee agrees to furnish Licensor a certified copy of the policy providing such coverage within thirty (30) days after the date of this Agreement and in no event shall Licensee manufacture, distribute or sell the Licensed Products prior to receipt by Licensor of such evidence of insurance.

(e) No Licensor Warranty: Licensor makes no warranty or representation as to the amount of gross sales or net sales or profits Licensee will derive hereunder. Licensor makes no warranty or representation concerning the quality of the Property or that production of the Property will be completed or that the Property will be released. Licensor shall not be under any obligation whatsoever to continue the distribution of the Property or to continue to use any element of the Property. If the Property is not completed, and release thereof not commenced in the United States within one (1) year after the date of this Agreement, by reason of fire, earthquake, labor dispute, lockout, strike, act of God or public enemy, any local, state, federal, national or international law, governmental order or regulation, or any other cause beyond Licensor's control, including but not limited to the death, illness or incapacity of the director or of any principal member of the cast of the Property, this Agreement shall terminate at the expiration of said one (1) year period and Licensor's only liability shall be to return to Licensee the unrecouped portion, if any, of the Guaranteed Minimum Compensation theretofore paid by Licensee to Licensor after the expiration of said one (1) year period, in which event Licensor shall make said refund within thirty (30) days after receiving said demand.

11. SPECIFIC UNDERTAKINGS OF THE PARTIES:

(a) Licensor warrants, represents and agrees that:

(1) It has certain ownership rights in and has the right to grant licenses to utilize the names (including the name of the Picture), characters, artists' portrayal of characters, likenesses and visual representations as included in the Picture and to grant the rights to the Property granted Licensee in this agreement.

(b) Licensee warrants, represents and agrees that:

(1) It will not dispute the title of Licensor in and to the Property or any copyright or trademark pertaining thereto, nor will it attack the validity of the License granted hereunder.

(2) It will not harm, misuse or bring into dispute the Property or any part thereof;

(3) It will manufacture, sell and distribute the Licensed Products in an ethical manner and in accordance with the terms and intent of this Agreement;

(4) It will not incur any costs chargeable to Licensor;

(5) It will not enter into any sublicense or agency agreement for the sale or distribution of the Licensed Products;

(6) It will not enter into any agreement relating to the Property for commercial tie-ups or promotions, or otherwise with any person or entity engaged, in whole or in part, in the production of motion pictures or television without the prior written consent of Licensor. Licensee's advertising on television is not subject to the provisions of this subclause;

(7) It will manufacture, sell and distribute Licensed Products of a high standard and of such quality, style and appearance as shall be reasonably adequate and suited to their exploitation to the best advantage and to the protection and enhancement of the Property and the good will pertaining thereto; that such articles will be manufactured, packaged, sold and distributed and advertised in accordance with all applicable (whether national, federal, state, provincial or local) laws: and that the policy of sale, distribution and or exploitation by Licensee shall be of high standard and at the best advantage of the Property and that the same shall in no manner reflect adversely upon the good name of Licensor, or the Property;

(8) It will diligently and continuously solicit sales of the Licensed Products and actively offer the Licensed Products for sale, and make distribution in order to meet orders for the articles covered by this Agreement;

(9) It will sell and distribute the articles covered by this Agreement outright at a competitive price and not for more than the price generally and customarily charged the trade by Licensee, and only to the public by direct mail order sales, to jobbers, wholesalers and distributors for sale and distribution to retail stores and merchants, and to retail stores and merchants for sale and distribution direct to the public. Licensee shall not, without prior written consent of Licensor, sell or distribute such article to jobbers, wholesalers, distributors, retail stores or merchants whose sales or distribution are or will be made for publicity or promotional tie-up purposes, premiums, giveaways or similar methods of merchandising. If any sale is made at a special price to any of Licensee's parents, affiliates or subsidiaries or to any other person, firm or corporation related in any manner to Licensee or its officers, directors or major stockholders, a Percentage Compensation shall be paid on such sale based upon the price generally charged the trade by Licensee.

Notwithstanding anything to the contrary contained herein, Licensed Products may only be sold through required distribution channels for ultimate use by the consumer and may not be sold in quantity or otherwise for any distribution method or device not contemplated by this Agreement.

(10) It will not grant exclusivity to any purchaser without the written consent of Licensor. In addition, Licensee will not require any purchaser to purchase assortments containing merchandise other than that licensed hereunder in order to obtain the articles which are the subject of this License.

(11) It will coordinate the release, promotion, and distribution and sales activities for the Licensed Products with the release of the Property in such manner as Licensor shall request.

12. TERMINATION: (a) If Licensee files a petition in bankruptcy or is adjudicated a bankrupt or if a petition in bankruptcy is filed against Licensor or if Licensee becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law or if Licensee discontinues its business or if a receiver is appointed for it or its business, the License granted hereunder, without notice, shall terminate automatically (upon the occurrence of any such event).

(b) If Licensee shall violate any of its obligations or conditions under the terms of this Agreement, Licensor shall have the right to terminate the License herein granted upon fourteen days' notice in writing, and such notice of termination shall become effective, unless Licensee shall completely remedy the violation and satisfy Licensor that such violation has been remedied within the fourteen day period.

(c) If the License granted hereunder is terminated in accordance with the provisions of Sub clauses 12(a) or 12(b), all compensation theretofore accrued shall become due and payable immediately to Licensor, and Licensor shall not be obligated to reimburse Licensee for any payment theretofore paid by Licensee to Licensor.

13. FINAL STATEMENT UPON TERMINATION OR EXPIRATION: As soon as practical after termination or expiration of this Agreement, but in no event more than 30 days thereafter, Licensee shall deliver to Licensor a statement indicating the number and description of Licensed Products which Licensee has on hand (or in process of manufacture) as of (a) sixty (60) days prior to the end of the Term of this Agreement, or (b) fourteen days after receipt from Licensor of a notice terminating this Agreement (in the event no such notice was given, fourteen days after the occurrence of any event which terminates this Agreement) whichever shall be applicable.

14. DISPOSAL OF STOCK UPON EXPIRATION: Upon expiration of the term of this Agreement, Licensee shall have the right, pursuant to the provisions hereof, to dispose of all Licensed Products, theretofore manufactured at the time of the expiration of the License granted hereunder, for a period of 90 days after the date of such expiration subject to the condition that Licensee pays to Licensor all compensation accrued to such time and delivers to Licensor a report in the form required by Clause 6 above to such time. Notwithstanding anything to the contrary contained herein, Licensee shall not sell or dispose of any Licensed Products if this Agreement was terminated for any cause set forth in Clause 12 above.

15. EFFECT OF TERMINATION OR EXPIRATION: Upon expiration of the License granted hereunder or the earlier termination thereof, all rights granted to Licensee hereunder shall forthwith revert to Licensor, and Licensee thereafter, directly or indirectly, shall not use or refer to, except as provided in Clause 14, above, the Property or any name, character, trademark or designation which in Licensor's reasonable opinion is similar to the Property, in connection with the manufacture, sale or distribution of products of the Licensee. Licensee shall upon the expiration or termination turn over to Licensor all molds and other materials which reproduce the Licensed Products, or give Licensor satisfactory evidence of their destruction.

Licensee hereby agrees that at the expiration or termination of this Agreement for any reason, Licensee will be deemed automatically to have assigned, transferred and conveyed to Licensor any and all copyrights, trademark or service mark rights, goodwill or other right, title or interest in and to the merchandising of the Property which may have been obtained by Licensee or which may have vested in Licensee in pursuance of any endeavors covered hereby. Licensee will execute, and hereby irrevocably appoints Licensor its attorney-in-fact (acknowledging that such power is coupled with an interest) to execute, if Licensee fails or refuses to do so, any instruments requested by Licensor to accomplish or confirm the foregoing. Any such assignment, transfer or conveyance shall be without consideration other than the mutual covenants and considerations of this

Agreement. Also, upon expiration or termination of this Agreement, Licensors shall be free to license to others the right to use the Property in connection with the manufacture, sale and distribution of the Licensed Products,

16. REMEDIES OF LICENSOR: (a) Licensee acknowledges that the failure of the Licensee to cease the manufacture, sale or distribution of Licensed Products except as herein permitted upon the expiration or earlier termination of the License granted hereunder or the failure of Licensee to fulfill its obligations specified in Clauses 4, 5, 6, 8, 9, 10, and 11, will result in immediate and irremediable damage to Licensor and to the rights of any other licensee of the Property. Licensee acknowledges that Licensor has no adequate remedy at law for any such failure referred to or referenced to in this Clause and in the event of any such failure, Licensor shall be entitled to equitable relief by way of temporary and permanent injunctions, in addition to such other further relief as any court of competent jurisdiction may deem just and proper.

(b) If Licensor uses any remedy afforded by this Clause, Licensor shall not be deemed to have elected its remedy or to have waived any other rights or remedies available to it under this Agreement, or otherwise.

17. FORCE MAJEURE: Licensee shall be released from its obligations hereunder in the event that governmental regulations or conditions arising out of a state of national emergency or war, or causes beyond the control of Licensee render performance by Licensee hereunder impossible. The release of obligations under this Clause shall be limited to a delay in time for Licensee to meet its obligations for a period not to exceed three (3) months, and if there is any failure to meet such obligations after that period, Licensor shall have the absolute right to terminate this Agreement upon fourteen days' notice in writing. Such notice of termination shall become effective if Licensor does not completely remedy the violation within the same fourteen day period and satisfy Licensor that such failure has been remedied.

18. RESERVATION OF RIGHTS. Licensor reserves all rights pertaining to the Property, except as specifically granted herein to Licensee.

19 NOTICES:

(a) All notices to be given to Licensor hereunder and all statements and payments to be sent to Licensor hereunder shall be addressed to Licensor at (address of Licensor) or at such other address as Licensor shall designate in writing from time to time. Licensee shall send a courtesy copy of each notice hereunder to Licensor's attorney, ***Licensor's Attorney***. All notices to be given to Licensee hereunder shall be addressed to it at ***Licensor's Address***, or at such other address as Licensee shall designate in writing from time to time. Licensor shall send a courtesy copy of each notice hereunder to Licensee's attorney, ***Licensee's Attorney***. All notices shall be in writing and shall either be served by Certified or Registered Mail Return Receipt Requested, or telegraph, all charges prepaid. Except as provided herein, such notices shall be deemed given when mailed or delivered to a telegraph office, all charges prepaid, except that notices of change of address shall be effective only after the actual receipt thereof.

(b) Submission: All submissions pursuant to Clauses 8 and 9 shall be forwarded by personal delivery or mail, all charges prepaid by Licensee pursuant to the provisions of Subclause 19(a) above.

20. WAIVER, MODIFICATION, ETC.: No waiver, modification or cancellation of any term or condition of this Agreement shall be effective unless executed in writing by the party charged therewith. No written waiver

shall excuse the performance of any act other than those specifically referred to therein. Licensor makes no warranties to Licensee except those specifically expressed herein.

21. NO PARTNERSHIP, ETC.: This Agreement does not constitute and shall not be construed as constituting an agency, a partnership or joint venture between Licensor and Licensee. Neither party hereto shall hold itself out contrary to the terms of this Clause, and neither Licensor nor Licensee shall become liable for any representation, act or omission of the other contrary to the provisions hereof. This contract shall not be deemed to give any right or remedy to any third party whatsoever unless said right or remedy is specifically granted by Licensor in writing to such third party.

22. NON-ASSIGNABILITY: The license granted hereunder is and shall be personal to Licensee, and shall not be assignable by any act of Licensee or by operation of law. Licensee shall not have Licensed Products manufactured for Licensee by a third party unless Licensee first obtains Licensor's approval in writing and unless the third party enters into an agreement with Licensor not to supply Licensed Products to anyone other than Licensee. Any attempt by Licensee to grant sub-licenses or to assign or part with possession or control of the License granted hereunder or any of Licensee's rights hereunder shall constitute a material breach of this Agreement. Licensor shall have the right to assign this Agreement, in which event Licensor shall be relieved of any and all obligations hereunder, provided such assignee shall assume this Agreement and all rights and obligations hereunder in writing.

23. GOVERNING LAW: This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of ***governing state***, and its validity, construction, interpretation and legal effect shall be governed by the laws of the State of ***governing state*** applicable to contracts entered into and performed entirely therein.

24. HEADINGS: The headings used in connection with the clauses and subclauses of this Agreement are inserted only for the purpose of reference. Such headings shall not be deemed to govern, limit, modify, or in any other manner affect the scope, meaning, or intent of the provisions of this Agreement or any part thereof, nor shall such headings otherwise be given any legal effect.

25. ENTIRE AGREEMENT: This Agreement sets forth the entire understanding of the parties hereto relating to the subject matter hereof. No modification, amendment, waiver, termination or discharge of this Agreement, or of any of the terms or provisions hereof shall be binding upon either party hereto unless confirmed by a written instrument signed by Licensee and Licensor. No waiver by Licensor or Licensee of any term or provision of this contract or of any default here under shall affect the other's respective rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default whether or not similar.

26. SEVERABILITY: If any provision of this Agreement shall be held void, voidable, invalid, or inoperative, no other provision of this Agreement shall be affected as a result thereof, and, accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid, or inoperative provision had not been contained herein.

27. RIGHTS AND REMEDIES CUMULATIVE: Except as otherwise provided in this contract, all rights and remedies herein or otherwise shall be cumulative and none of them shall be in limitation of any other right or remedy.

28. EXECUTION OF AGREEMENT: This contract shall not be effective until signed by a duly authorized officer of Licensee and countersigned by a duly authorized officer of Licensor.

29. SPECIFIC ARRANGEMENT: If there is any specific arrangement between the parties, such specific situation shall be embodied in Schedule "F", attached hereto and by this reference made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreements of the day and year first above written.

AGREED TO AND ACCEPTED:

LICENSOR: _____

By: _____

LICENSEE: _____

By: _____

SCHEDULES ANNEXED TO LICENSE AGREEMENT BETWEEN ***Licensor*** and ***Licensee*** dated ***Agreement Date***.

Schedule "A" LICENSED PRODUCTS.

Schedule "B" LICENSED TERRITORY.

Schedule "C" LICENSE PERIOD:

Effective commencement date: ***Commencement date***

Termination date: ***Termination Date***

Schedule "D" GUARANTEED MINIMUM COMPENSATION:

The Guaranteed Minimum Compensation under this Agreement shall be ***Guaranteed min Compensation*** dollars payable upon execution of this Agreement. Such payment shall be an advance against the Percentage Compensation attributable to gross sales made by Licensee during the period for which the Guaranteed Minimum Compensation is due. The payment of Guaranteed Minimum Compensation shall be non-refundable.

Schedule "E" PERCENTAGE COMPENSATIONS:

The Percentage Compensation under this Agreement shall be ***Royalty*** (**Royalty**%) seven of the current wholesale price of the Licensed Products based on one hundred percent (100%) of the articles sold.

Schedule "F" SPECIAL ARRANGEMENT.

APPROVED: _____

By: _____

LICENSEE: _____

By: _____

¹ These figures are for 1997.