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THE DANGER ZONE AND THE "SWISS CHEESE" EFFECT

Maintaining a strategic approach to licensing

Licensing Series – Part 3

You've done your homework by now and understand just how interrelated your licensing strategy is to your marketing strategy. In order to maintain a consistent strategic approach to licensing, you need to keep the 'bigger picture' in perspective…and that is to maximize your revenue potential from licensing. In order to do this, you need to understand that each licensing deal that you enter into will either strengthen or weaken your foundation.

We all like to take advantage of a 'good thing' when placed before us; often forgetting that there may be undesirable consequences for our short-term actions. The same often happens when faced with an opportunity enter into a licensing agreement. You have a deal before you that you are certain you don't want to lose, often making concessions that yield longer-term limitations on your strategic goals. A continued opportunistic or short-term approach to licensing can create what I refer to as the 'Swiss cheese' effect. A strategy with holes poked all through-out…might stay strong and viable under certain conditions, but eventually, too many holes, holes too big, or too close together can devastate your foundation. If the number and size of holes in a block of Swiss cheese is controlled, then shouldn't you maintain controls over your Intellectual Property?

Here is a fictitious case study to consider:

You've developed an invention for a new drill tool attachment; I'll call it a *Rotapull*. You've done the exceptional work of manufacturing and marketing your *Rotapull* to get it to market. You've started taking orders and making shipments to many retail stores such as: Slears, HomeStop, Leos, Wal-mark (names have been changed to protect the innocent). Your volumes are growing and you appear to be on your way to doing well.

A major retailer of specialty tool products that sells to a high-end clientele, The Sharper Tool, has come calling. Rather than distribute your product, they would prefer to license your patent to make a version of their own and call it the *Pullaround*. They want to market and distribute it under their own brand name and sell it in their specialty stores, catalogs and online. Of course, while this would create a 'competing' version of your own *Rotapull,* you don't mind since they are a specialty store, operating in a niche market and will sell the *Pullaround* at a higher price than your *Rotapull*.

After the *Pullaround* is on the market for a while, Slears figures out that you've obviously made a license arrangement with The Sharper Tool. Slears also has their own well-established line of branded tool products called, *Taskman* tool products. Slears approaches you for a licensing deal to brand their version of the *Rotapull.* They want you however, to agree not to further license your patent for the purposes of creating another branded version of the same product to their 'competitors' for at least five years. You can continue to sell and market the *Rotapull*, but cannot enter into another such licensing arrangement with a Slears competitor. You figure that since you've already got your product on the shelves of several other major retailers and will now have two branded versions, you agree. Besides, the limitation is only for five years.

What you failed to realize is that while the *Taskman* tool line is a well-known line, used by many 'do-it-yourselfers' and 'weekend warriors'…they are not the "tools of choice" for tradesmen. In fact, some months later, Mekkito, a manufacturer of higher-end quality tools has contacted you about licensing their brand of the *Rotapull*. While Mekkito caters to a more specialized clientele, their brand quality is undisputed. Unfortunately, the deal you struck with Slears won't permit you to enter into an branded licensing deal with them. You feel stuck…and you likely are. Without a strong renegotiation with Slears, you may be unable to reach a deal with Mekkito and any others that come calling.

At this point, you hope that your sales for *Rotapull* continue to grow and that you can continue to seek new channels to market and distribute the *Rotapull*. However, this takes more effort and resources and you are spending a significant portion of your profits. With a licensing deal, these efforts are undertaken by the others. Unfortunately, The Sharper Tool has since begun closing stores and eventually sales of the *Pullaround* rapidly decline. Slears' version is doing well, and they are meeting their volumes, but not as well as initially expected.

If you had taken additional steps to understand the tool market and its players, you might have come to realize that the licensing potential for your product was broader than you imagined, and possibly more lucrative. You might not have even considered branded licensing as an option, but when struck with the opportunity, you took it. However, because you didn't

consider branded licensing as part of the bigger picture and how it fits into your overall marketing strategy, you missed the mark. Considering that you conceded into entering into a licensing agreement with limitations in this area, you further limited your ability to maximize your market potential for your patent and your own product. You've poked holes in your strategy…will it hold up?

Now, consider the same opportunities, but you've done your planning and understand the approach to the market. You realize the bigger potential for a branded version of your product. More so, you realize that with a more strategic approach, you may yield higher returns because you aren't strapped with all of the marketing, distribution, etc., that goes along with selling your own product. In the end, your bottom-line costs are decreased while your revenues increase. You are maximizing your opportunities, careful to understand how concessions can limit future market opportunities. Specifically, you understand how to make concessions that will seal the deal, while having a limiting effect on your future opportunities. Keep in mind, there are many ways to carve out corners of the market into slices that may satisfy your distributors and your licensing partners. No one should need a bigger slice than is warranted to serve your needs.

Reference point: branded licensing is also known as OEM (original equipment manufacturing).