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INTELLECTUAL PROPERTY IN THE FASHION DESIGN INDUSTRY

HOW A SMALL BUSINESS CAN APPROACH
LICENSING OPPORTUNITIES





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How a Small Business can
approach Licensing Opportunities

Foreword

The Centre for Fashion Enterprise has worked with London's emerging fashion designers since 2003. During that time it has become obvious that sound legal advice at an early stage is paramount, and the partnership with the legal firm Olswang has helped us to stem the flow of lost financial opportunity through identifying and securing the designers' assets. The financial ramifications of not understanding the key legal issues to a fashion designer in business are clear to see across the industry – which is the reason why we wanted to work with the Intellectual Property Office to produce an "Intellectual Property Guide for the Fashion Design Industry" for non legal fashion professionals. It includes clear guidelines relating to Design Rights, Trade Marks, Copyright and Licensing with a roadmap on why to use these.

Small designer businesses are operating within a global environment where, according to Chris Donegan in his July/August 2011 article in *Spears, Brand and IP* experts estimate that over 80% of the value of typical Fortune 500 companies is represented by IP. This includes brands, trade-marks, copyrights and patents.

Understanding and managing IP has been an active basis of trade and business for decades and is now a mainstreamed activity. Small and medium enterprises and talented individuals can more readily benefit through royalties and IP revenue streams from their ideas and inventions through a better understanding of the "tools of the trade".

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**Intellectual Property in the
Fashion Design Industry**
How a Small Business can approach
Licensing Opportunities

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The fashion industry is an Intellectual Property (IP) intensive industry, continually generating and commercially exploiting creative ideas and innovations. Whilst IP is largely intangible, it is similar to any other types of physical property in that under the law, it has a legal owner and therefore can be sold, bought, licensed or damaged.

This series does not include a section on patents. Patents are registered intellectual property rights which protect certain new inventions. Obtaining patent protection is costly and the standard for obtaining patent protection is very high. Patents rarely arise in the context of fashion design, therefore we have focussed on Trade Marks, Design Rights, Copyright and Licensing in this guide. However, an example of where they might arise is in relation to an inventive process in the manufacture of fashion, for example, a process for creating a particular wash on denim. If you consider that patents might be relevant to you, we recommend that you should seek advice from a firm of patent attorneys or intellectual property lawyers specialising in patents.

The Hermès Kelly bag, the latest Westwood creation, the Stella McCartney collection in H&M: some last a season, some a lifetime and others just a few weeks. All are creative work the Nike 'swoosh' logo, all are the resulting from someone's intellectual effort or distinctive brands attracting goodwill through use and all are at risk of being copied, in whole or in part.

This creative IP output from the fashion industry directly generated £6.6 billion of GVA (Gross Value Added) to the UK economy in 09/10¹. However, data analysis by the Centre for Fashion Enterprise estimates that amongst small and medium-sized designer enterprises (SMEs) IP leakage (or monetary losses) is somewhere in the region of £100,000 per year. Businesses lose out as a result of copycats and wrongful trademark ownership, which can restrict a designer's ability to trade in some overseas territories under their existing brand name. As a business matures, this figure could grow to an estimated £500,000 in lost revenues including loss of licensing opportunities. Therefore, the fashion sector is capable of generating further significant economic returns if IP is considered, protected and commercialised at an earlier stage. Some of these issues are explored in this series of papers including:

- Counterfeiting – a copy bearing the trade mark of the copied designer. Usually of inferior quality to the original.
- Knock-offs – producing garments that copy the design and style of another product, but without using the trade mark.
- Passing off – using an unregistered mark, characteristic, or get-up of another company in order to trade on the good will (reputation) of the company.

By offering IP protection through copyright, design rights and patents, innovation is encouraged, as the creator or owner of the IP rights is rewarded with exclusive rights to commercially exploit their ideas and inventions. The creator is thereby incentivised to continue innovating. Equally the enforcement of IP rights is essential to prevent counterfeiters and copycats cannibalising their sales which will also deter people from investing the time and capital in creating new and innovative works.

Within the fashion industry it has also been argued that to some extent the opposite is true. The very fact that fashion designs are copied is one of the drivers of the continued reinterpretation of styles and collections. Fashion designers innovate to stay ahead of the copiers. For example, if a collection is likely to be copied on the high street within 6 (sometimes within only 2) months, the designer needs to invent something new to stay ahead.

In the face of the culture of copying on the high street and the existence of counterfeiters it is difficult to see how any designer can protect their brand, image and designs. Yet, legitimate trade not only continues but also thrives, leading some economists to conclude that sometimes counterfeiting can have positive outcomes for fashion brands:

- Firstly, elite shoppers of a much-copied brand, such as Chanel, will continue to seek out new, genuine items to differentiate themselves from the crowd clad in fake outfits and so may change their wardrobes more regularly.
- Secondly, the imperfect copies create their own market, which enhances the status of those products in the real market. A real YSL bag is clearly more aspirational than a fake. So amongst casual consumers of designer products, purchasing the "real thing" can add considerable status benefits. Brands follow the trends and therefore produce similar items for elite consumers.

Whichever argument holds true, it is undeniable that every level of the fashion industry, from haute couture to supermarket clothing ranges, is to some extent reliant on designers taking inspiration from the work of others to reinterpret styles and re-visit old ideas in new colours, fabrics and configurations. It is this ability to imitate, borrow and reinvent that keeps the fashion industry so vibrant. The fashion cycle begins at the catwalk shows, from which ideas and inspiration filter through the industry until mass-produced, budget friendly alternatives hit the high street chains and market stalls. And with some high street retailers investing in the latest manufacturing and inventory technologies, this cycle is reducing so that they can introduce new ranges within weeks rather than months.

As with any industry, counterfeiting can be seen as a good sign for a business. It demonstrates that a copied work or brand has considerable value. But this is only if the designer/brand owner has the resources to challenge, litigate and stay one design step ahead of the criminals. For emerging designer businesses with limited resources, it can be more challenging to protect and enforce their IP rights and therefore they do not enjoy the 'positive' aspect of copying and counterfeiters.

Designers should also keep in mind the following points:

- Misuse (infringement) of the IP of others can be damaging and costly.
- IP rights are geographically territorial, so a designer needs to check that a right is available for use in all territories in which they intend to do business, including the need to consider the IP issues before embarking on overseas fashion shows or PR activity.
- Ownership of rights that have demonstrated a commercial return is useful in convincing investors, venture capitalists or banks to the commercial value of a company.
- Protecting IP also enables designers to safely access new markets through licensing, franchising, entering joint ventures or other contractual arrangements (including overseas manufacturing, marketing and distribution) with other companies.

This guide is based on the prevailing law in the UK in 2011, which is aimed at enlightening the trade and students on the issues relating to IP in the fashion industry. It is a framework to support the earlier consideration, protection and exploitation of IP within the design and commercialisation process. The guide sections are:

- Trade Marks
- Registered Design and Design Right
- Copyright
- Licensing

Alongside the Trademark, Design Rights, Copyright and Licensing Guides, two toolkits have been developed as resources for fashion entrepreneurs. These cover the following themes:

- How a small business can develop an IP Strategy.
- How a small business can approach Licensing Opportunities.

The purpose of this collection is to provide relevant and topical resources for business planning and tuition in order to improve the commercial return from IP developed within the industry, from smarter ways of operating and from individual talent.

WHAT IS LICENSING?

Licensing is a contractual arrangement between two business entities in which the brand owner (the licensor) permits another company (the licensee) to use its intellectual property (IP) in exchange for a fee known as a royalty. The IP can be the licensor's brand name or trademark, a patent or copyright or a design.

The licensing industry used to be dominated by large film and TV studios allowing famous characters from film and TV to be portrayed on children's products such as 'Mickey Mouse' t-shirts, 'Bob the Builder' pyjamas or 'Star Wars' bedding; but licensing is also widely used by fashion and lifestyle brands and retailers who forge partnerships with other companies in order to launch new products or enter into new territories.

Fashion licensing has become a global phenomenon, generating hundreds of millions of pounds in retail sales each year as the consumer's desire for designer goods increases with every passing season. In fact it is now integral to the fashion arena as designers licence accessories, eyewear and fragrance to increase revenue into their business.

While the most established fashion houses enjoy the greatest profits from licensing, there are also opportunities for smaller fashion enterprises to open new income streams on a more modest scale. As businesses grow opportunities will increase so it is important to protect your intellectual property as early as possible so that you can enter confidently into commercial agreements which can reap significant financial rewards.

This guide is not an instruction, but is intended to alert you to the key elements to consider when considering licensing. It is recommended that you seek professional independent legal advice before entering into any kind of agreement.

WHY SHOULD I CONSIDER LICENSING?

The traditional two-season fashion wholesale model means designers experience financial peaks and troughs throughout the year, often leaving them with limited cash flow at critical points of the season struggling to pay for bulk production or bills from London Fashion Week. As designers and SMEs develop, licensing can be one of the most profitable ways to assist you in building your brand further by injecting valuable working capital into the business. There are typically three types of licensing opportunities which may arise:

Collaboration

If you are approached by a UK high street retailer to design an exclusive apparel collection that will bear your name, or invited to develop unique print designs in collaboration with an international accessories brand that carries your trademark, it is usually referred to as a 'design collaboration'. In fact a collaboration is actually a form of licensing. In both of these situations the other party is using your intellectual property.

In these instances, the retailer is seeking to gain credibility from an association with your designer label. The partnership allows them to introduce exciting new products to differentiate themselves from their competition, and provides a new story for the press. As the designer you stand to gain increased visibility from the relationship and will receive valuable remuneration.

Brand extension

Brand extension licensing within the fashion industry is largely focused on businesses which have built up a high degree of brand awareness and are recognised globally by consumers outside of the fashion world. But fashion houses have not achieved this success by wholesaling alone. They have done it by adopting a brand extension strategy, allowing new products to be manufactured and sold under licence by third parties which have specialist knowledge in a product area where the designer may not.

The core competency of most fashion labels is the design and production of apparel collections. Some designers add accessories into the product mix early on, but these are rarely profitable ventures as the sales quantities are too low to achieve economies of scale and often result in factories adding a surcharge on smaller orders which in turn restricts sales.

Specialist licensing companies can however develop complementary products bearing the design signature and name of the fashion label and pay the designer a royalty in return. From watches to handbags and fragrance to sunglasses, there is a very long list of products which can be licensed, and many designers generate more revenue from licensing income than they do from wholesaling their garment collections.

Licensed products are often significantly more affordable than the designer label's high priced fashion collection. For instance, the cost of a Prada fragrance or a pair of Chanel sunglasses is affordable to many people, allowing aspirational consumers to buy into the label. People who will perhaps never own a Chanel suit or a Prada dress to can demonstrate their brand preference at an accessible price point.

While smaller designers can also generate licensing revenue albeit on a more modest scale, it is unlikely to happen until you have developed a brand signature, secured a number of select high profile international stockists, established a press following and a real or aspirational customer base. An annual turnover of £500,000 - £1million would normally be the minimum turnover expected before other parties would approach you about brand extension licensing as financial considerations on their part will always take precedence.

Manufacturing licensing

A third type of licensing is a manufacturing licence agreement. In this instance the other company (the licensee) will become responsible for the sample development, bulk production, sales, distribution and marketing of the designer's actual collection. This kind of licence arrangement allows the designer to focus on the design of the collection itself while the licensee takes over the logistical and commercial aspects of running the business. The manufacturer receives the benefits of the wholesale margin and pays the designer a royalty fee in return for the privilege of using the designer's IP.

The advantages are that the licensee has access to (or may even own) factories, they will have their own sales force and will invest money in marketing of the collection. Working with such a company can provide designers with support on product development, and allow access to new fabrications and production methods while relieving them of the stresses associated with manufacturing and distribution.

EARLY STAGE LICENSING OPPORTUNITIES

Per the above example, you may be asked to collaborate with a high street store to develop a capsule collection which will be co-branded at retail i.e. displaying the trademarks of both your label and the store. More often than not, the initial approach will come from the retailer, who may have been following the progress of your label. In such a case, the retailer is seeking to 'buy into' your design credibility to enhance their own market positioning. While this is flattering, you must decide how this will benefit your business, apart from the potential valuable revenue coming into your business.

You could regard a collaboration purely as a marketing exercise to raise awareness of your label to a prospective new audience from the PR campaign. Alternatively the retailer may also offer you additional support for your own label such as making introductions to manufacturers or potential clients.

If you feel you have more to gain than to lose by collaborating and allowing the other party to use your intellectual property, then you can proceed to entering into contractual negotiations.

Early stage brand extension through collaboration

Let's say you are invited to collaborate with a major international accessories company who would like to use your prints to revitalise their collection of casual bags. They would like the product to be co-branded – i.e. they want to use your name on the product, the labelling and ticketing and in the advertising and PR campaign. Despite the relative difference in size of the two companies, you have something they need – the ability to gain them press, retailer and consumer attention by being associated with a highly desirable young fashion brand.

How could working with this company help your business?

- If the accessories brand is aspirational and a wide international reach the deal would take your label to new markets, raising awareness of your brand to retailers and consumers in those territories.
- If you have planned to launch bags and other accessories under your own label, you could view this as a trial at no expense to your business to ascertain whether your prints can translate on to different product categories.
- The price of your collections may be out of reach for many consumers who aspire to be associated with your label. These new collaborative products will allow fans of your brand to buy into it at an accessible price point, broadening the customer base.

With such benefits, assuming the financial remuneration meets your requirements, and the proposed timelines fit with yours, it would be difficult to find a reason not to partner with such a company. If you establish that the benefits outweigh the risks, then you can proceed to contract.

Early stage manufacturing Licensing

This type of licensing can relieve the designer of many stresses and strains of running a fashion label. The idea of developing your collection and then handing over the responsibility of all the operational aspects to another party can be appealing, but maintaining control of your label from a distance can be tricky. So what about the downside?

Such licensees are usually based abroad, in particular in Italy where manufacturers regularly approach emerging UK designers with offers of assistance to grow their labels. But you need to remember that the licensee may host a stable of higher profile designer labels that could be a combination of owned and licensed brands. Where would you fit in? Would you be given low priority? Will the licensee observe your initial brand positioning strategy and sell to clients you have identified as your targets or will they pursue their own retail agenda? Will you have the freedom to select the fabrics and colours you want, or will you be restricted to fabrics their other bigger labels are going use?

Intellectual Property in the Fashion Design Industry

How a Small Business can approach Licensing Opportunities

With a manufacturing licensing arrangement there will be an inevitable loss of control for the designer because of the distance from the licensee, so it is vital to minimise the risks. But it must be remembered that this is a commercial proposition for the licensee, usually a long term contract over several years and they will need to achieve a certain sales target – sometimes way above the level that the designer intended, in order for it to be viable for their business.

The deal will normally be structured to give the designer a percentage of the wholesale sales so the higher the sales value, the higher the royalty fee will be for the designer. In all the above cases, there would be a licensing contract in place safeguarding both parties, and setting out among many other things the product categories the licensee is allowed to produce, sales expectations, length of the agreement, the geographical scope (where would they be allowed to sell the product) and including a clear approval process where the licensor signs off product at every stage of development. (See Approval Process on Page 18).

Rejecting a Licensing Opportunity

There may be instances where it is necessary to reject an approach to licence. This may be where the retailer, brand or manufacturer is not at the right level of the market and you feel that associating your brand with theirs could potentially have a detrimental effect in the long run. Alternatively, the remuneration they are offering may not be high enough for what they have requested you to do, or you may wish to hold out for another preferable opportunity with competitor, or perhaps you like the company but don't wish to licence elements of your IP that they are requesting. If you decide the risks are too great or that you are not going to proceed for another reason, always be gracious in rejecting such an approach. Remember people move around in the fashion industry and that person may later move to a company you have aspired to work with for a long time. Equally, you may want to work with the company at a later date. Let them know you are grateful for the opportunity but that it is not right for your business right now.

WHAT CAN I LICENCE?

You can enter into a licensing agreement by using a number of your business assets known as your intellectual property

- Trademark
- Copyright
- Registered Design or unregistered design right

Often a licence will include more than one of these. Trademark:

This is the name of your label which your customers recognise and which differentiates you from your competitors. Your trademark may be your own name or another word or phrase you have chosen which may be

used on its own or combined with a graphic logo device. The options for licensing include:

- Allowing a retail licensee to use your trade mark alongside theirs (co-branding) on a range of products designed and developed in partnership by you and the licensee, but produced and sold by them in their stores. This is the most likely scenario for young fashion labels which have not built up sufficient brand equity to enter into licence agreements using only their own trademark.
- Permitting a licensee to use your trade mark on a range of products that you design and they produce and wholesale to their clients. This is often the best way of commencing a brand extension programme. Product categories which designers generally expand into include such as footwear, bags and jewellery. It is imperative however that all products being licensed bear your design signature so you need to be heavily involved in every aspect of the business.
- Allowing your trademark to be used on products developed and produced by the licensee. A prime example would be eyewear which is a specialist product. You may have no understanding of how frames are tooled and manufactured, but concept-wise you would certainly have ideas of the shapes, materials and colours you want to use. Working with such a licensee, always have a stringent formal approval process included in the contract so you get to sign off the concept, initial prototypes, sales samples and bulk production.
- Larger companies may allow licensees to apply their trade mark to new products in new territories. This can only be successfully achieved when there is a back up team managing and is not recommended for a young business.

Copyright:

Copyright is particularly relevant if you produce print or textile designs, since these are likely to be of interest for potential commercial exploitation in a host of product categories e.g. home furnishings, luggage, toiletries, packaging, or stationery. If another company wishes to produce such goods using your designs you may grant them the rights to do so under licence for a certain period of time in exchange for a royalty fee.

Options include:

Allowing a licensee to reproduce your copyright design on a range of their products and market them. A good example of this would be existing print designs reproduced on to standard range stationery items, for example greetings cards, wrapping paper and exercise books. You would still wish to retain the right to approval.

Allowing a licensee to reproduce your copyright design on a range of their products, in which you have some design input. An example of this might be where a stationery company admires your design signature and requests you to adapt what you have done previously for use on a variety of their products, resizing the print to accommodate different sizes of diary, or note pad for example, or perhaps introducing new colours to the print. Again, rights of approval must be granted to the designer who must give a formal sign off at every stage of the product development

- You may allow someone to use one or more of your designs from previous seasons e.g. Topshop's use of several designers' prints for a limited edition collection of t-shirts to celebrate 10 years of NewGen sponsorship at London Fashion Week in February 2012.

Registered Designs or Unregistered Design Rights:

It is also possible to licence actual garment designs – for instance if you develop a unique garment construction method which you know is distinctive, you can choose to register it before licensing. If you do not formally register the method, you will still have unregistered design rights, meaning you could stop people copying the design for a short period of time.

Licensing options include:

- Allowing a licensee to reproduce and adapt your design in a way that it appeals to an entirely different market to your own, perhaps through use of lower priced materials or production methods which will appeal to new more price sensitive customers.
- You may allow a licensee to produce and take to market your designs from a previous season
- Permitting a licensee to reproduce your design and sell it in a new territory that you currently do not supply. This is highly unlikely for an emerging designer label and not to be recommended

Examples:

Using the examples listed earlier:

1. The UK retailer produces, markets and sells the designs created by the designer and branded with the designer's trademark in conjunction with their own trademark
2. The international accessories brand sells and produces their own bag designs bearing prints created by the designer who owns the copyright to those designs. The designer's trademark is applied to the finished product in conjunction with the brand's
3. Italian manufacturer produces, sells and markets collections designed and developed by the designer and sold and marketed under the designer's trademark.

It is really important to protect your IP. Not only will it safeguard your main wholesale business, but if licensing is integral to your business development strategy, then protection of your IP including copyright, trade mark and design registration will ensure that you have appropriate protection for any assets you may decide to licence

EXCLUSIVE OR NON-EXCLUSIVE CONTRACT?

Which type of licensing contract you enter into will be partly dependent on the long-term strategy for your business and the relative strength of your label and partly on the commercial expectations of the licensee. While the licensee is likely to press for exclusivity either on a product group or for a particular territory, or both, your first preference when licensing out your IP should be to give away as little as possible to the other party for the most revenue you can. A non-exclusive licence recommended wherever possible.

Exclusive Licence:

There are different types of exclusivity you can offer:

1. Allowing a licensee exclusive rights for a particular product group in one specific territory e.g. Bags for the UK. ('Bags' is a very broad category).
In this instance only the licensee can exploit your IP in the category of 'bags'. This means even you would not be allowed to produce and sell bags yourself in the territory you have awarded them the licence for.
2. Allowing a licensee exclusive right for a sub-group i.e. Leather hand bags for the EU.
Here the category has been specified as leather bags. This way you could appoint one company who is a leather specialist as an exclusive licensee for leather bags in Europe while retaining the right to produce other bags yourself or allow another licensee to produce other types of bags.
3. Allowing a licensee exclusive rights for a particular product group on a global basis e.g. Watched worldwide.
With a product group such as watches, this is not likely to be a problem as you would need to work with a specialist watch manufacturer who is category expert with access to all the tooling that the production of watches requires.

With regard to the licensing of bags, think ahead of the possibilities. You may want to reserve the right to create a small line of bags yourself during the contract or you be asked to produce a design for a goody bag for a special event. If the licensee insists on exclusivity you can request the insertion of wording in the contract that will allow you the right to develop your own bags for specific purposes, and also to retain the right to supply artwork for bags for special events or for design collaborations. The licensee will be less worried about you producing a few bags or offering a print for a special event or creating a bag design for another brand or retailer. However they will want to be sure you cannot sign up with one of their competitors.

Exclusive agreements are not encouraged, but if a licensee insists on exclusivity, and this point proves to be a deal breaker (i.e. they will not sign unless you do give them exclusivity), then you should request a higher guaranteed royalty from the licensee and make sure that the term of the licence is not too long. You must also be very clear on which bags you are awarding them.

Offer less until they request it. Be clear on what their speciality is. If it's handbags and small leather goods, give them just that. You may want to retain 'travel bags' for another company or may decide you don't want to do travel bags within the lifetime of that contract. Categories and territories can always be added later if things are working well.

In any case, always ensure there is an 'exit clause' in every contract in case things go wrong. There will be a clause for terminating the agreement if either party is in breach of the terms, but what if you feel the project is not working as you would like? The bag licensee might be achieving a high level of sales but you may feel the quality and aesthetic of the bags is not what you wanted, and they are selling to the wrong level of retailer. Or they may insist on reproducing best selling styles that you consider to be 'old' and would prefer to delete from the collection. While a few teething problems may exist, if you feel things are not improving and the licensee is not listening to you it is advisable to opt out.

Exclusivity within a contract can be for a product, a territory or both. The licensee will always try to secure exclusivity, but unless they are going to offer you big financial guarantees, and you are sure of their quality and professionalism it is best to push for a non-exclusive agreement. This allows you to be less dependent on one commercial partner.

Non-exclusive Licence:

Traditionally the licensor always favours a non-exclusive licence because of the additional flexibility it allows. The designer is the licensor in this instance. With a non-exclusive licence you are awarding the licensee the opportunity to exploit your trade mark, but also reserving the right to licence the same IP to another party. This type of arrangement may not please the licensee but you can advise them it is not your policy to enter into exclusive agreements at this early stage of your business. You should however reassure the licensee that it is not your policy to actively seek alternative licensees in the same category as this would not be commercially viable for any party involved.

A compromise may be to commence with a non-exclusive licence for a trial period and if the licensee proves they are a satisfactory partner, then switch to an exclusive contract when it is up for renewal.

Bear in mind that a non-exclusive licence may command a lower fee, but this might be offset against your ability to explore other options which may be very lucrative in the long term.

Sole Licence:

The use of your IP is restricted to yourself and the licensee only. This means that you cannot appoint any other licensees for the IP in question for the goods and territory covered by the licence but can use the rights yourself. As such a sole licence is similar to an exclusive licence and, for all the reasons noted above, a non-exclusive licence will give a licensor more flexibility.

Licensing a print design

You may allow a licensee to use one of your prints exclusively for a single product category in their territory (e.g. bags) but you may want to reserve the right to licence the same print to a licensee of another product in the territory (e.g. bed linen or stationery). You must retain the ability to maximise the revenue from one source of IP from as many commercial partners as you can.

The UAL Own-it service (www.own-it.org) has a range of licensing contract templates, which are available to download. They also offer advisory session for UAL staff, students and alumni (up to 3 years after graduation). Entering a licensing agreement is not a simple task, so you should consider seeking expert advice and guidance.

REMUNERATION FROM LICENSING

Whenever a designer's IP is used by a retailer, brand or manufacturer they will be paid a fee by the other party (licensee). This may be a fixed fee agreed by both parties in advance, or may be a royalty fee calculated as a percentage of wholesale sales of the products. The fixed fee option is a guaranteed fee which is not dependent on the level of sales achieved. If you are paid a royalty, the fee will be dependent on the sales of the products. A frequent compromise is a combination of both of the above – a lower fixed fee and a royalty paid when sales arrive at a pre-agreed level.

The royalty percentage paid by licensees to the designer can vary and is likely to be between 5 and 15 percent. In the case of a retail collaboration where the product is not sold at wholesale prices, the designer may be paid a percentage based on the retailer's full selling price.

Critical to both the above scenarios is that the designer should always receive a minimum guaranteed royalty, and should be paid fifty percent of it as soon as the contract is signed.

WHAT KIND OF PAYMENT TERMS CAN I SECURE?

When entering into negotiations for a licensing deal, you need to have some idea of the royalty fee you expect to be paid and a clear reason as to why you are interested in the project.

For example if a major high street retailer wants you to collaborate with them you may question whether associating your label with a different level of the market is a prudent

option. However you may decide that the association is unlikely to damage your brand in the long term and the remuneration coming into your business will outweigh the commercial risks. In this case, your primary objective is to maximise your revenue from the exercise with as high a royalty as possible.

On the other hand, a highly desirable luxury brand may invite you to collaborate with them on a new product category that you are really interested in entering into. You might not be offered a high fee, but you may feel that a positive brand association with them will reinforce the aspirational nature of your own label. You will benefit greatly from the anticipated PR campaign and the opportunity will also allow you to trial a new product category at someone else's expense.

When licensing a new product such as eyewear where the product is more technical, the royalty fee will depend on the licensee's sales plan for the season and the length of the contract. For a small business this may be negligible. Designers sometimes allow eyewear manufacturers to use their name on newly developed product without a royalty fee. In this instance, the designer is doing it for prestige and showing their label can stretch into other product categories and the licensee pays for the cost of the tooling to get their name on the catwalk. Even if a royalty fee is not included in the negotiations, it is your IP and a licensing contract is still required.

You also need to establish your relative strength in the negotiations, which may be based on the following:

- If the licensee approached you, you are in a stronger position as they clearly want to work with you.
- You may already have received an approach from that one of their competitors.
- The amount of IP you are willing to give them.
- The workload they require from you.
- The amount of territories that they require and that you are willing to give them.
- The number of product categories you are willing to allow.
- Your own brand awareness and reputation, based on sales, press coverage and industry buzz.
- The length of the agreement you are prepared to consider – the longer the term, the higher the overall guaranteed revenue will be.
- Whether the agreement is exclusive or non-exclusive.
- What is the licensee seeking to achieve for their business by associating with you? Is it primarily cachet and credibility from associating with your brand or your design acumen, or to significantly increase sales?

Once you know the strength of your position, you need to consider the level of remuneration you will accept. The licensee may make you an offer, or you may choose to advise them of your anticipated fee. In both instances, it is unlikely that either party will accept the first offer.

It's important that negotiations regarding design fees, royalties and timings of payments should take place relatively early to avoid lengthy negotiations about other terms that fall apart later on when the parties can't agree on the financial aspects. Generally there are three types of payment; fixed fee, royalty and a combination of the two.

Fixed Fee:

If a licence arrangement involves the designer actually carrying out all the design work, then consider the expectations. A typical brief may be as follows:

- Retailer requires designer to design a capsule collection of 20 garments for one season (6 months).
- The 20 garments are to be manufactured and sold exclusively by the retailer.

The designer will be paid a lump sum for the designs irrespective of how many the retailer is going to sell.

You must clarify exactly what will be required. Clearly the designer will develop more than 20 designs to achieve the net result of 20 garments, but is the designer also required to provide technical packs for each product which can be time consuming to develop? This will affect the fee paid by the retailer.

Whatever the project fee that is agreed, it is essential the retailer is contracted to pay half of the agreed fee upon signing the agreement. The contract should then include a precise payment plan for the balance.

For an emerging designer, this type of fixed remuneration is standard for design collaboration. It can sometimes be a better proposition than a royalty arrangement as it enables you to plan your cash flow:

- Provides a lump sum injection of cash to fund the core business.
- Sales volumes are uncertain, particularly with a little known name and production volumes are likely to be low, making the potential royalty return rate very low.

The risk is that the products may sell really well and so a royalty figure may have provided greater returns than the fixed fee. In reality, for most new and emerging designers, this is unlikely to occur.

Guaranteed Minimum Royalty

It is possible to negotiate a minimum guaranteed royalty, which is a fixed sum linked to a royalty rate. If the actual royalties accrued are greater than the minimum guaranteed royalty, the designer will receive additional income. However if sales are below the forecast, the designer will receive the guaranteed amount anyway.

E.g. the licensee's sales forecast is £100,000 in wholesale sales. If the royalty percentage is 10% you would set the minimum guaranteed royalty at £10,000.

This means whatever the licensee's actual sales; you are guaranteed to receive £10,000.

So even if the licensee sells only £60,000 worth of product you will still receive £10,000.

If, however the licensee's sales are actually £150,000 then your 10% royalty fee would generate £15,000, so you would receive the agreed £10,000 plus an extra £5000 after the product has been delivered to store

This is a standard method of setting royalties in a licensing agreement offering a compromise between the guarantee of a fixed fee and the potential of royalties if the product sells well.

The royalty percentage should be carefully considered. If you insist on a 15% royalty, this may price the product out of the market and you will receive 15% of a low sales figure. If however you opt for a 5% royalty, the remuneration could be considerably more from higher wholesale sales.

Sales Plans:

If the contract covers 3 seasons, you should specify that you expect to see an increase in sales year on year. If for example you agree with the licensee that 20% is a reasonable cumulative increase, the sales and revenue plans would be as follows;

- Season 1 sales £100,000 - Minimum guarantee £10,000
- Season 2 sales £120,000 -Minimum guarantee £12,000
- Season 3 sales £150,000 -Minimum guarantee £15,000

Over the 3 seasons, the contract will be worth minimum guarantee revenue to your business of £37,000. If the licensee's actual sales exceed the above sales forecasts each season, then you could earn considerably more.

Payment Schedule:

Whether you are to receive a fixed fee or minimum guarantee plus royalties it is essential to have a clear payment schedule in the contract.

The timeline for licensing development, sales production and distribution can be very lengthy, so royalties may not be technically due for a full year after signature.

Any additional royalties from excess sales would be payable quarterly throughout the retail sales season. The licensee would advise you of the sales achieved and the royalties due via a 'royalty statement' and you would raise an invoice for the relevant amount.

You will need to remain aware of the dates that royalty statements are due and also when invoices are due to be raised.

If you are entering into a longer term contract covering several years or seasons, you should also request 50% of the additional seasons' minimum guarantees to be paid in advance at the relevant time when you are establishing the payment schedule.

HOW LONG SHOULD A LICENCE CONTRACT LAST?

Your business strategy and the desires of the other party will assist in considering the length of contract; however it is worth noting that licensing contracts for fashion apparel and accessories are often relatively long term. Three years is average. Part of the reason is that it can take up to a year of investment before any product reaches retail if you consider the development process, sales period, manufacturing timeline.

For example –if a licensing contract is signed in March for a spring summer season the design, product development and sampling will take several months. The product might be launched to retailers in September with order books closing end October. Manufacturing is in November, December and January with deliveries to stores in February, March. It is therefore a whole year before any revenue will come into the licensee's business.

It is imperative therefore to negotiate minimum royalty guarantees for each year of the contract and insist on an advance payment of 50% of the first year's minimum guarantee upon signature of the contract. This may not be a huge amount of money, but once someone has paid out in advance they are often more motivated to recoup that outlay by putting more sales effort in.

Trial Agreement

It may be advisable to enter into a trial agreement for one year (two seasons) before making a longer term commitment. Some licensees will accept that but others may demand a longer contract, particularly where they are required to invest in tooling, the costs of which need to be absorbed over a longer period of time such as eyewear or watches.

This will be dependent on how confident you are with the potential partner. If they are clear market leaders in their field you may feel happy entering into a longer term agreement immediately.

With a trial licence agreement for a new product category or a new territory, you can include a clause on the contract allowing you to extend the contract if things are going well. This should not be automatic but an extension may be agreed after a review of the progress between yourself and the licensee.

A short term contract would also allow for a shorter termination notice if you realise things are not going to work out with the licensee. Always have a clause in the contract which enables you to exit from the arrangement after a period of 3-6 months.

A trial agreement provides both partners with the opportunity to test the relationship and the sales results. If the arrangement proves to be particularly successful, the partners may want to consider renegotiating a longer-term contract, which is likely to offer you greater long term revenue into the business. As a general rule, the shorter the term of an agreement, the lower the remuneration will be.

WITH WHOM SHOULD I LICENCE?

Potential licensing partners for your IP can include:

- Fashion and lifestyle retailers (high Street fashion chains, department stores and designer retailers).
- Garment Manufacturers.
- Accessory Companies (bags, luggage, eyewear, footwear, watches, jewellery, fragrance, etc.).
- International Fashion and lifestyle brands.
- Home Interiors Companies (soft furnishings, wall coverings, fabrics, DIY, etc.).
- Automobile Manufacturers.
- Consumer Goods Producers.
- FMCG companies.
- Beauty companies.
- Telecoms companies.
- Stationery companies.
- Drinks producers.

Brand Alignment:

Any licensing arrangement must represent a satisfactory match between your label and the licensee. If you are considering a product focused brand extension agreement, for example a collection of accessories, your label and the other brand need to be at least of a comparable positioning in the market place. It is always in your interest to partner with an aspirational brand or manufacturer.

But even if the brand alignment is right, consider the personal chemistry between you and the person you are dealing with. Are they sympathetic to the aspirations of your label? Do they listen to you? It is vital to feel secure in a licensing partnership as communication, trust and parity are key to the success of the venture.

Due diligence:

With support from your business advisers or legal representative, you should undertake a 'due diligence' check on the potential licensing partner. This means ascertaining their design, production, sales and marketing capabilities and their financial standing. Before signing any agreement, you must be satisfied that the licensee has the funds that they have agreed to pay you.

You should ascertain whether the licensee has the capacity to produce the forecasted volumes to a quality level acceptable to you. Assess their samples for other clients and if it's practical ask to visit their factory. Do they sell to the correct distribution channels?

Ask their other clients whether they deliver on time? Remember your reputation depends on theirs.

WHAT ELSE DO I NEED TO CONSIDER?

Non Disclosure Agreements (NDA):

Before you enter into any potential partnership discussion it is good practice to have all parties sign a confidentiality/non-disclosure agreement. Your negotiations are likely to cover ideas, products, processes and business plans that need to remain confidential from the market place and other competitors. An NDA will also make a potential partner think twice about infringing your IP should you not reach agreement to work together.

The UK does have common law protection for confidential information shared between businesses, but using it as a defence when leaks occur generally requires an expensive court case. Asking a potential partner to sign an NDA sets the parameters of the anticipated business relationship by demonstrating:

- that you take your IP seriously, and that you protect it, which is a positive sign for anyone considering licensing it;
- that you take a responsible business approach to negotiations; and
- that you expect to be treated professionally.

NDAs are not a sign of distrust; they are used extensively throughout all industries.

N.B. UAL students and alumni can download free NDA templates from the Own-it advisory service website (www.own-it.org).

Approval Process:

With any business, but particularly with a designer label, it is imperative to ensure that licensed products are at the quality you would demand if you were making them yourself. You must ensure within any forms of licensing contract that there are clauses permitting you to approve and monitor the quality of all licensed products at every stage of development. To control quality you can negotiate contractual obligations for the following:

- Physical Sign off of initial concept – drawings / sketches etc. These should be signed and dated by you.
- Sign off of initial prototype - The physical product must be shown. Requests for amendments must be written down by you and signed and dated.
- Sign off of initial sample. Sign and date the approval form, with written requests for amendments.
- Sign off of sales samples – Any requests for changes to the product for bulk production should be written down and signed and dated. You should clarify in the contract that you wish to retain a sample at this stage.
- If the quality of the samples is below standard even after repeated re-sampling you reserve the right to reject outright.
- Often the contract will include a time limit for your approval and comments. It will state that if you have not given approval in writing by a particular deadline that the sample shall be deemed approved. Try to adhere to the approval timeframe as much as possible (often 72 hours or 5 working days) but if you are delayed and cannot review the product, you should stipulate that if you have not approved it by the deadline, it shall be deemed 'disapproved'. Do not agree to a clause in the contract allowing automatic approval.

The licence agreement should cover any cost issues that might arise if there are quality problems. This will be covered in the indemnity clause which is designed to protect the designer if there are problems or claims because of faulty items or other issues which are the fault of the licensee.

Remember, the approval process within a licensing agreement covers not only the fabrication, print, fit, patterns and toiles of the garments, but also labelling, packaging and marketing material. It is recommended that you provide a 'trade mark' style guide to the licensee. This can be 2 or 3 pages showing how your trade mark can be used, including Pantone references for the colours, positioning of the branding and any other specific information such as how close you will allow another brand to be situated.

You will of course provide the licensee with the necessary artwork in the correct format.

Quality control

This is especially pertinent if you are considering licensing your registered trade mark because a trade mark is not just regarded as the symbol, name or logo; it signifies the heritage of the products and therefore reflects a consistent standard of quality. If you do not include quality controls within the agreement and do not monitor the quality, you risk not only damaging your brand but also possibly losing your trade mark registration

Pricing:

Pricing of any licensed products must complement your own pricing strategy and the price parameters of the market for the product. The product should be targeted only at stores you have previously approved, which is another important point to include in the contract. You must approve all price lists before the licensee begins to sell, whether this is design collaboration or brand extension licence.

A collaborative diffusion line or limited high street retailer range will likely be made available at a lower price than your core range, in order to meet the ceiling price point for a broader consumer group. This has been previously covered.

Advertising, Marketing and Product Presentation:

It is essential to sign off the marketing campaign for any licensed product launch. This includes all printed media, the selection of fashion titles, publications you are willing to be interviewed by, the website, social media and so on. If the licensee is targeting a new territory or a new market, you must ensure that the image of your label is maintained.

If a commitment to marketing spend is part of the licence agreement, consider approval rights to cover the style and design of messages, media to be used as well as the timing and duration of the campaign. You must also seek approval of packaging, labelling and if possible in-store positioning and branded signage.

Another important consideration is the use of social media. Who will control the activity on the website, Twitter or Facebook page?

Personal Appearances

As a fashion designer, you are the personality behind the image of the brand; therefore you may agree with the licensee that you will undertake a number of personal appearances throughout the duration of the agreement or give interviews to the press. If this is required, you should advise the licensee that this will increase their cost.

It is usually better to specify a separate daily fee for 'marketing days' as it can be hard to quantify in advance what your involvement might be.

Wording should also be put in the contract so the same daily fee is charged for travel time if international travel is required. E.g. a trip to New York would be charged one day each way for travel.

Remaining Stock:

When a licence arrangement comes to an end, whether it is sudden or just the natural end of an agreement, there will inevitably be left over stock in the licensee's store or warehouse. It is important that you determine in advance what will happen to this excess product.

It is usual to allow the licensee a 90 day sell off period, although you may negotiate a longer period. If the licensee is a retailer, it is likely that the product will be sold in their next sale. If it's a wholesale licensee and the product is in their warehouse you may agree to them selling the products to a designer clearance company, or they may have a retail client who will buy it at a discount. Whatever you agree, make sure you continue to monitor and claim any royalties due.

An alternative if the quantities are low and you wish to control the disposal of the products, you could purchase the product back at a heavy discount and sell through a private orders evening or at special events such as London Fashion Weekend.

If you feel that a sell off period would be detrimental to your brand, for example if you are unhappy with the quality of the product or if the licensor is proposing to drastically mark down the products. You could consider:

- Demanding that the licensee sends all remaining stock to charity, preferably abroad.
- Insisting that the licensee destroys all remaining stock. Licensee would be responsible for the costs of destroying the stock and you would need to have proof. This is a drastic measure and not to be recommended.

Your legal representative will be able to discuss the options with you.

Licensing Considerations

While licensing can bring a small business excellent commercial opportunities to increase revenue and raise awareness of their brand, it may not work for everyone.

Licensing may not always be the best or most lucrative option for your business

- If you believe your business is capable of fully commercialising your IP, you will normally make greater returns in the longer term, rather than relying on a small percentage of licensing revenue. The type of product you intend to licence will influence this. For instance it is unlikely you will develop your own fragrance as this requires a specialist approach, however you may decide to develop your own handbags.
- If approached by a manufacturer who insists on a long term manufacturing licensing deal of several years, this may not work for you if it conflicts with your strategy

for the business. In this instance, it may be better to persevere with managing your own production and boost revenue by undertaking short term collaborative projects.

- It is imperative to maintain control over the use of your IP. This is not only regarding the sales and marketing strategy, but fabric and production quality, fit, branding and labelling. Your IP must be represented correctly in every medium it is used (on garments, labels and printed material) and you must ensure you are entitled to sign off at every stage of development. This can be very difficult when you are operating a manufacturing licensing arrangement from a distance.
- If initial brand extension licences are successful and reap financial rewards, it can be tempting to accept other opportunities to licence additional products. Extending the product selection too far could diminish the value of your IP by reducing the exclusivity of products bearing your trademark. Designers have previously been accused of 'selling out', most notably Pierre Cardin whose name could be found on a multitude of inappropriate products sold through mass retail channels which damaged the main brand.
- Licence agreements are not 'standard', there will be many different factors to consider and it is possible to negotiate on many aspects of the deal in order to find the best solution for the partners involved. A good licensing deal will provide a satisfactory result for both parties.

Summary

Licensing in its various forms can offer great opportunities for emerging designers and SMEs. It can help to develop your label in your home market, assist you in entering overseas markets which you don't have the knowledge or capacity to exploit alone, or to launch your label in new product categories. All these licensing options can bring vital funds into your business.

Essential to the success of any licensing venture before, during and after you have signed the licence agreement is regular communication. You should keep the licensee informed and respond when they ask you questions. Equally they must respond to you and address any concerns you raise so issues can be resolved quickly and amicably. Breakdown in communication lines is the most common reason for licensing arrangements to fail. It is your IP they are taking to market so it is in your interest to retain control of your label ensuring the brand perception remains consistent in all new commercial ventures as you broaden your reach to new consumers and build your business.

WHERE CAN I FIND A LICENSING CHECKLIST?

The UKIPO has prepared a checklist that you may want to use to prepare yourself for any discussion with your legal representative, or before meeting a potential licence partner.

The checklist can be found via the following link and in Appendix 2:

<http://www.ipo.gov.uk/licensingchecklist.pdf>

Where Can I Find Some Tips on Negotiating?

Appendix 1 contains a few hints and tips on preparing for and conducting a negotiation, which are taken from a WIPO (World Intellectual Property Office) learning module on technology licensing. This learning module can be found here:

(www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_7_learning_points.pdf)

Where Can I Find Further Information on IP?

UK IPO (www.ipo.org.uk):

- Checklist for Licensing Deals, <http://www.ipo.gov.uk/licensingchecklist.pdf>
- IP Healthcheck Series: Non-Disclosure Agreements (WS0019), November 2010
- IP Healthcheck Series: Agreeing a Price for Intellectual Property Rights (DPS/C450/04-11), April 2011
- Search and Advisory Service
- MyIP: Intellectual Property Explained (WS0011DPS\MWL\11-10), November 2010
- IPO Crime Group, Supply Chain Toolkit (WS0020DPS/E100/06-10), June 2010
- IP Healthcheck Series: Licensing Intellectual Property (DPS/C450/06-11), June 2011
- IP Healthcheck Series: Choosing the Right IP Advisor (DPS/C450/08-11), August 2011

EU funded China IPR Helpdesk:

The China IPR SME Helpdesk provides free information on protection and enforcement of IP rights in or relating to China.

<http://www.china-iprhelpdesk.eu/>

Centre for Fashion Enterprise:

- UK Designer Fashion Economy, Dr Neri Karra, Centre For Fashion Enterprise/NESTA, December 2008
- Production Toolkits, <http://www.fashionalliance.co.uk/>
- Designer Toolkit, http://www.nesta.org.uk/areas_of_work/creative_economy/fashiontoolkit/designers_edition
- Manufacturer Toolkit, http://www.nesta.org.uk/areas_of_work/creative_economy/fashiontoolkit/manufacturers_edition
- Jewellery Manufacturers Toolkit, <http://benchpeg.com/toolkit/>

Own-it Fact Sheets (<http://www.own-it.org>)

Free downloads:

- The Intellectual Property Guide to ... Fashion, Gallant MacMillan, 2009
- Factsheet: Confidentiality, Briffa, 2004

Own-it Contract Templates

(<http://www.own-it.org>) May be subject to a download fee:

- Assignment of a Licence or Licence Agreement, CT266A
- Non Disclosure Confidentiality Agreement, CT239A
- Acknowledgement of Joint Ownership of Intellectual Property, CT240A (inc. patents, copyright, designs and trademarks)
- Prospective Investor Confidentiality Agreement, CT243A
- Joint Development and Commercialisation Agreement, CT245
- Intellectual Property Due Diligence Questionnaire, CT267
- Memorandum of Understanding in Relation to Negotiation of a Formal Joint Venture and Licensing Agreement, CT160
- Merchandising Licence, CT122
- Merchandising Agreement, CT135

Own-it Podcasts (<http://www.own-it.org>)

Free download:

- Building a fashion brand: An insider's guide to licensing
- Building_fashion_brand pt1
- Building_fashion_brand_p2
- East meets west: Fashion manufacture in China
- http://www.own-it.org/uploads/files/93/original/east_meets_west_part_1.mp3
- http://www.own-it.org/uploads/files/92/original/east_meets_west_part_2.mp3
- How not to get ripped off: Enforcing and protecting your IP
- http://www.own-it.org/uploads/files/33/original/Intro_Copy_LCF_p1.mp3
- http://www.own-it.org/uploads/files/32/original/Intro_Copy_LCF_p2.mp3

Other Useful Resources

CFE IP Guides

- Trade Marks
- Design Rights
- Copyright
- Licensing

CFE IP Toolkit

- How a small business can develop an IP Strategy.

APPENDIX 1: NEGOTIATION GUIDE

What Should I Consider When Negotiating?

The following are a few tips on negotiations taken from the [WIPO Learning Module on Licensing](#). This is a general guide, so notes have been added in italics:

Always aim for a win-win outcome

Be clear if you are not happy with the deal, otherwise you may have to live with it for a while.

A 'win-win' outcome is where both partners should reap significant benefits from the arrangement, and it is not deemed to be weighted in favour of one party. If in doubt, do not sign

Consider all the options you'd be happy to accept

A negotiation is about reaching a consensus; so you need to be flexible, so don't approach with an all or nothing stance.

As an SME with highly valuable design collateral which the other party wants to licence you are in the driving seat. Be flexible to a point, but if in doubt postpone the signature

Always have a counter proposal

If the other partner asks for a concession, only grant it if you get one in return.

This not always going to work as you may not be able to think of anything to ask for in return. Don't be rushed into giving in to the demands of the licensee. Take your time and if necessary, request time to think about it.

Decide on your maximum and minimum outcome

Then make sure the deal is somewhere between the two.

This is sound advice. You should enter into negotiations with your best and worst case scenario already considered.

Aim high, but remain credible

Be realistic about what you can to achieve; do some research; consult with peers and use this information for your max and min outcomes; don't take it personally if they don't seem to value your design ability as highly as you do.

As a designer label, you reserve the right to value your design ability highly without appearing arrogant. Unless there are exceptional circumstances you do not need to work with someone who does not appreciate your talent.

Offer concessions that are cheap for you, but valuable for the other party

Never undervalue what you are offering.

As above

Everything is negotiable

You don't get the deal you deserve; you get the deal you negotiate!

No, not everything is negotiable. It can take years to have the confidence to become a good negotiator and to willingly argue a point.

APPENDIX 2: UK INTELLECTUAL PROPERTY OFFICE LICENSING CHECKLIST

This checklist sets out the major issues you need to think about before licensing IP. It can be used, for example, to organise your thoughts before talking to your legal advisor, to develop a negotiating strategy for your personal use or as the basis for a preliminary non-binding memorandum of understanding or "heads of terms" before executing a binding agreement. You are also advised to review your intellectual property portfolio and obligations in relation to intellectual property when considering licensing.

N.B. This document is a checklist of the principles to be agreed before an IP licence is drafted. It is not binding on either the licensor or the licensee. It is intended only to assist the parties to identify any major issues early in their negotiations.

Subject	Possible Approach (For Discussion)	Answers/Notes/Comments
Parties	<p>Name, company number (if applicable) and registered office/principal place of business of the licensor.</p> <p>Name, company number (if applicable) and registered office/principal place of business of the licensee.</p> <p>Will other members of the licensee's group of companies be able to use the IP?</p> <p>If 'yes', will the licensor grant the right to use directly to other members of the licensee's group, or will the licensee grant sub-licences to its group?</p>	
What is being licensed	<p>What is the main IP being licensed? Is the IP capable of registration and should that be put in place before proceeding?</p> <p>Is there any other IP that the licensee will need to be able to use to benefit from the licence?</p> <p>What know-how or other confidential material is the licensee being permitted to use?</p> <p>Does any of the IP belong to someone other than the licensor? If it does, does the licensor have the right to license it? Are there any terms and conditions that apply to any of the IP, which has been licensed in that must be carried through to the licence?</p> <p>If the IP is jointly owned by the licensor and another person, does the licensor have the right to license the IP?</p>	

Intellectual Property in the Fashion Design Industry
 How a Small Business can approach Licensing Opportunities

Subject	Possible Approach (For Discussion)	Answers/Notes/Comments
<p>Rights granted/ Restrictions imposed</p> <p><i>(These issues should be addressed in relation to each piece of IP being licensed)</i></p>	<p>Will the licence be:</p> <ul style="list-style-type: none"> • exclusive (licensor may not use the IP); • non-exclusive (licensor may use the IP and grant other licences); or • sole (licensor may use the IP but will not grant other licences)? <p>May the licensee grant sub-licences to others?</p> <p>Will the licensee be restricted to using the IP for:</p> <ul style="list-style-type: none"> • personal/private use; • academic teaching/research; • non-profit making purposes; or • other limited purposes? <p>Will the right to use the IP be restricted to:</p> <ul style="list-style-type: none"> • one or more particular fields of use; • one or more distribution channels; • one or more specific territories? <p>May the licensee transfer (assign) the licence freely or only with the licensor’s permission?</p> <p>May the licensee use the IP to provide services to others?</p> <p>May the licensee manufacture and sell products?</p> <p>May the licensee import products?</p> <p>May the licensee use the IP to carry out a process? What rights and restrictions will apply in respect of:</p> <ul style="list-style-type: none"> • copying works; • modifying/adapting/translating works; • making improvements; • incorporating into another work/with other IP; • publication and distribution; • sharing with others; • using only on/with a specific platform or device? 	

Subject	Possible Approach (For Discussion)	Answers/Notes/Comments
<p>Rights granted/ Restrictions imposed</p> <p><i>(These issues should be addressed in relation to each piece of IP being licensed)</i></p>	<p>How will improvements be identified?</p> <p>Who will own the IP in any improvements/developments/ modifications/translations?</p> <p>Will there be any license back of improvements/developments/modifications/translations?</p> <p>Will competition law affect the terms of a licence?</p>	
<p>Fees and Payment</p>	<p>How will the licensor and licensee each realise benefit from the licence?</p> <p>Is the licence part of a larger transaction involving other sources of commercial benefit or trading of IP?</p> <p>If yes, what is the nature of that transaction?</p> <p>Will there be one or more lump sum payments?</p> <p>If yes, how much will be paid and when?</p> <p>Will there be ongoing payments or royalties?</p> <p>If yes, how are they to be calculated, e.g:</p> <ul style="list-style-type: none"> • by reference to use or items manufactured or sold; or • a pre-determined periodic payment? <p>Under what circumstances (if any) and by how much may these payments or royalties be increased? Will they be indexed-linked?</p> <p>When will these ongoing payments and royalties start?</p> <p>How frequently will they be calculated and paid?</p>	

**Intellectual Property in the
Fashion Design Industry**
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approach Licensing Opportunities

Subject	Possible Approach (For Discussion)	Answers/Notes/Comments
Fees and Payment	<p>Are there any minimum payments? If yes, what are they?</p> <p>Will the licensee have to meet any sales or other targets?</p> <p>How will any targets be reviewed during the licence period?</p> <p>What will be the consequences of not meeting any targets (e.g. loss of exclusivity or termination of the licence)?</p> <p>Will the licensor have the right to audit the licensee's books?</p> <p>At what rate will interest be paid on late payments?</p>	
IP Protection and Infringement	<p>Will the licensor or the licensee be responsible for registering any IP, or renewing any existing registration?</p> <p>Who will bear the costs of the above?</p> <p>Will the licensor or the licensee be responsible for pursuing any infringers?</p> <p>Who will bear the costs of the above?</p> <p>Will the licensor give the licensee any indemnity against the infringement of third party IP?</p> <p>Will the Licensee give the licensor any indemnity against third party claims resulting from the licensee's act or omission?</p>	
Confidentiality	<p>What information of the licensor is to be kept confidential?</p> <p>What information of the licensee is to be kept confidential?</p> <p>Is confidential information to be kept confidential indefinitely or for a definite period?</p> <p>If the latter, what period?</p> <p>Is either party subject to the Freedom of Information Act?</p>	

Subject	Possible Approach (For Discussion)	Answers/Notes/Comments
Warranties and Liability	<p>Will the licensor give any warranty:</p> <ul style="list-style-type: none"> • as to its ownership of the IP/ its right to license; • that the licensed IP will not infringe third party rights; • that the licensed IP/material will comply with specification; • in relation to anything else? <p>Will there be any financial cap of the liability of the licensor?</p> <p>Is liability for loss of profits, business, contracts etc. to be excluded?</p> <p>Is that exclusion to apply where an indemnity has been given?</p>	
Other Issues	<p>Is the licence:</p> <ul style="list-style-type: none"> • of indefinite duration (for the life of the IP); • for a fixed period (and if it is what is that period) • terminable by either party giving notice to the other (and if so under what circumstances)? It is assumed that the licence will be terminable for breach of contract or insolvency of a party. <p>May the licensor terminate if there is a change in the ownership of the licensor?</p> <p>What will happen on the termination/ expiry of the licence?</p> <p>Are any provisions of the licence agreement to continue after termination/expiry and for what period?</p> <p>Who will be the contact point for each party and how can they be contacted?</p> <p>What support and training will the licensor provide to the licensee?</p>	

The Centre for Fashion Enterprise (CFE) is London's pioneering business incubator that supports and nurtures emerging fashion design talent.