

5 KEY TAKEAWAYS

Crown Jewels – The Power of Brand Licensing And Collaborations in the Fashion and Entertainment Industries

On April 8, 2021, [Marc Lieberstein](#) participated in a panel for the Cardozo School of Law FAME (Fashion, Arts, Media and Entertainment) Law Center titled “Crown Jewels - The Power of Brand Licensing and Collaborations in the Fashion and Entertainment Industries.” Barbara Kolsun, Cardozo’s Professor of Practice and Director/founder of FAME, introduced the program, and Professor Sherry Jetter moderated the panel. Marc’s co-panelists were Jay Dubiner, General Counsel at Authentic Brands Group; Avery Fischer, EVP and General Counsel at Ralph Lauren; Michael Neuman, Vice President, Legal Affairs at Marquee Brands; and Ricardo Yoselevitz, Vice President, Brand Partnerships and Business Development, IMG. The program discussed how licensing has become a crucial growth engine for the fashion and entertainment industries and how licensing collaborations have helped brands achieve market power and increase brand value.

Here are five takeaways from the program:

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Outside of revenue generation, licensing – and especially collaborations – has the ability to offer fashion/entertainment brands (a) a lower-cost entry into an existing, new or different marketplace, (b) potentially instant recognition if the brand owner picks the right brand partner to collaborate with, and (c) potentially lucrative new distribution channels, new customers, and expansion into new product lines. Other factors that play a role in licensing and collaborations, include increasing brand recognition and goodwill with consumers. Brands are also now focusing on ways to shift into sustainability and eco-conscious licensing and collaborations to capture the growing Millennial and Gen Z consumer base that places a premium on purchasing from brands who make these objectives a priority.

There are several legal risks associated with licensing and collaborations. Aside from first making sure your trademarks are clear for use in the licensed category and/or for use with the collaborative partner, the largest risk is to the brand’s reputation. This makes due diligence an important undertaking prior to entry into any license or collaboration. Quality control is crucial for brand owners and a primary consideration before entering into any license or collaboration. And in a collaboration, the parties should determine up front who will own what during the relationship, and most importantly, after the relationship ends, i.e., who will own the trademark(s) developed for the collaboration, and which party, if any, will be able to continue making the licensed products.

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License and collaborative partners should try to involve their in-house and outside counsel early on in the business discussions, while counsel should make every effort to understand the business, and most importantly, the business objectives of the license partners. It is important for in house and outside counsel to set client expectations, i.e., what is possible, what is reasonable, and what problems may arise from any of the business terms being considered for the deal. In all situations, counsel should strive to be a resource for the brand partners in any license/collaboration.

While there are several types of collaborations, such as – ingredient licenses, complimentary licenses, cooperative licenses and certification licenses – the most recent and popular collaborations involve influencers. There are Federal Trade Commission regulations that govern how brands and their collaborative influencer partners must conduct themselves in the marketplace, and the agreements reached between the parties must account for such regulations.

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Post-pandemic agreement provisions, such as force majeure, indemnification, and termination are expected to continue to be important provisions in any license/collaboration agreement. Licensees should also expect to see more demands from brand owners about their ability to comply with and secure payment and supply obligations. Such obligations may include, terms that mandate a letter of credit, or a requirement that a second source for licensed products be permitted if the licensee cannot comply.

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