

# **Exploiting Intellectual Property Assets: Licensing, Franchising and Merchandising**

**Giulio C. Zanetti**

**Adjunct Professor, Loyola University Chicago**

**International Consultant**

**gzanetti21@gmail.com**

**Beirut, Lebanon**

**August 26, 2014**

# How can Lebanese SMEs become competitive/profitable?

By providing new or better products/services ... or/at lower prices

- more attractive
- better quality
- more functionalities
- brand reputation
- lower price
- good after-sale services
- good marketing strategy

**I.e.: innovation!**

# How can they innovate?

- By internal R&D => own IPRs (then: license-out)
- By acquiring relevant technologies + IPRs (license-in)

*... however ...*

**Costs of R&D or licensing is very high =>**

**=> IP is best solution because **exclusivity** (incentive)**

# What is LICENSING?

Permission granted by the owner of an IPR (Licensor) to another company/person (Licensee) to use it

- on **agreed terms and conditions**,
- for a **defined purpose**,
- in a **defined territory** and
- for a **defined period**

# Why LICENSING?

- **For Licensor**
- **For Licensee**

## Q1?

- The L.or wants to license its new super-stylized futuristic-looking watch called TRIPLE-H to the Licensee possibly for the maximum price (10) but it would be quite happy with 7 or 8.
- The Lee would like to pay 3-5 and it knows that it cannot afford to pay more than 6.

**You are the lawyer of the L.or: what would you advise to do?**

## 3 KEY MESSAGES

- 1. WIN-WIN IS THE ONLY OPTION  
(WIN-LOSE = LOSE-LOSE)**
- 2. YOU DON'T GET THE DEAL YOU  
DESERVE BUT THE DEAL YOU  
NEGOTIATE**
- 3. EVERYTHING IS NEGOTIABLE**

# NEGOTIATIONS ARE COMPLEX

## ***Substance***

Technical elements, results, terms and conditions, money, legal framework, but also ... time, people, and resources involved

## ***Process***

Various actors and organizations  
Various meetings  
Different cultures

## ***Relation***

Trust  
Reputation and image



# COMMON WAYS OF DEFINING SUCCESS

- **... Winning!!**
- **Breaking their bottom line**
- **Not losing**
- **Equity or Fairness**
- **Reaching an agreement**
- **Not fighting, avoid confrontation**

# ELEMENTS OF A SUCCESSFUL NEGOTIATION

- Is better than our *Alternatives* (*BATNA*)
- Meets both parties *Interests* well
- Utilizes *Options* aimed at maximizing value
- Is *Legitimate*, supported by objective standards/criteria
- Improves, or at least does not damage, the *Relationship*
- Is based on clear, constructive *Communication*
- Identifies *Commitments* that are clear, thorough, and realistic

# Dilemma ..... !?



# CONTRACTUAL CLAUSES

- Identification of the parties
- Objective of the parties: scope of license
- Identification of IPRs
- Confidentiality

## TYPES OF LICENSE

- Exclusive OR
- Sole OR
- Non exclusive
- Most favored Licensee clause

- **Territory**
- **Exploitation (quality, volume)**
- **Duration of the contract**
- **Rights on improvements**

## **Remuneration**

- **Direct remuneration**
- **Lump sum (vs. taxes)**
- **Royalties (%)**

# What is Franchising

Franchising allows for business expansion and product distribution via IP licensing ... **WITHOUT REINVENTING THE WHEEL!!!**



«Business for myself  
but not by myself»

**REPLICA OF A  
SUCCESSFUL BUSINESS**

# Franchising

Most countries consider some variation of these elements to constitute a franchise:

1. License to use Franchisor's business model + intellectual property rights (TMs, copyright, ID, trade secrets, K-H, patents)
2. Payment by Franchisee (initial + royalties)
3. Assistance to Franchisee (training, mentoring, manual)
4. significant control by Franchisor (audit, field visits)

## **No good for:**

- **creative business / ad personam**
- **Low margin**
- **Not strong TMs/brand**
- **Very technical business (requires more training)**



# 3 models of franchising

- **DISTRIBUTION franchising**
- **MANUFACTURING franchising**
- **BUSINESS FORMAT franchising: 3 types**

## **3 models of BUSINESS FORMAT franchising**

- **Direct franchising**
- **Master franchising**
- **Area Development Agreement**

# **Advantages and disadvantage of franchising**

# Merchandising

**Techniques used to sell products to consumers** (more than just setting products on a shelf and hoping that they are purchased).

Eg:

the type of packaging,

colors,

slogans,

which stores will carry it,

where the product is placed in the store aisles,

how the retail store will promote the product.

Cost of the product.

Often: **technique to use a known brand for a product to sell another product**

# Thank you



[gzanetti21@gmail.com](mailto:gzanetti21@gmail.com)