

Ad Infinitum™ Checklists

Product Licensing in Direct Response



An Annotated Checklist of Critical Deal Points for Infomercial Licenses

By D. John Hendrickson



Checklist

1 - Product Line

- Define: _____
- Patents: _____
- Trademarks: _____
- Copyrights: _____
- Includes improvements? _____
- Includes extensions? _____
- Includes modifications? _____

2 - Grant of Rights

- Exclusive or non-exclusive: _____
- Permitted channels of distribution: _____
- Permitted means of advertising and promotion: _____
- Right to use inventor's name, photograph and biography: _____
- Rights reserved by licensor: _____
 - Limitations on exercise of reserved rights: _____
 - Reverse royalty: _____

3 - Territory

- Universe or regional: _____
- Country or regional royalty minimums: _____
- Country or regional outside dates for commencement of sales: _____
- Home shopping appearances required overseas? _____

Checklist

4 - Compensation

- R&D reimbursement? _____
- Consultant fee to inventor during R&D phase? _____
- Royalty advance? _____
- Royalty: _____
 - Definition: _____
 - Rate(s): _____
 - Payment schedule: _____
 - Reserve for returns: _____

5 - Term

- Test period: _____
- Outside date for roll-out to commence: _____
- Maximum number of consecutive one year terms: _____
- Annual minimums as a condition of renewal from year to year: _____
- Minimum royalties? _____
- Minimum sales? _____
- Separate term for foreign distribution? _____

6 - Approvals

- Product design: _____
- Improvements: _____
- Additions: _____
- Modifications: _____
- Selection of manufacturer: _____
- Quality of materials & workmanship: _____

Checklist

- Final production run: _____
- Use of licensor's trademarks: _____
 - On the product: _____
 - In advertising: _____
- Development of additional trademarks for the product: _____
- Product performance claims: _____
- Selection of product experts: _____
- Selection of testimonialists: _____

7 - Ownership of Advertising Materials

- Who will own the advertisements? _____
- Any post-term transfer of ownership? _____
- Reverse royalty? _____
- Lump sum buy-out? _____
- How will talent, music and other ongoing royalties be handled? _____
- Indemnification responsibilities for post-term use? _____

8 - Services of Licensor

- Will inventor appear in infomercial or other advertisements? _____
- Will inventor appear on home shopping channels? _____
- R & D services prior to final prototype? _____
- Ongoing R & D during term? _____
- Ongoing content creation during term? _____
- Product content? _____

Checklist

- Internet articles/blogs /chatrooms/webinars? _____
- Other? _____

9 - Registration & Protection of Intellectual Property

- Responsibility for filings and maintenance: _____
 - Domestic: _____
 - Foreign: _____
- Responsibility for enforcing IP against infringers: _____
- Responsibility for defending third party claims of infringement: _____
- Allocation of costs: _____
- Allocation of ownership: _____
- Post-term disposition of the IP: _____

10 - Indemnification and Insurance

Who will be responsible for:

- Intellectual property infringement: _____
- Product liability: _____
- Product efficacy claims (including testimonials): _____
- Infomercial production claims: _____
- Other advertising content: _____

Each party's insurance responsibilities:

- Required coverage amounts (per incident and annual aggregate): _____
- Required coverage categories: commercial general liability, including specific coverages for: _____

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- Product liability: _____
- Advertising injury: _____
- Media liability: _____

11 - Representations and Warranties

- Authority to enter into agreement: _____
- Authority to grant the rights which are the subject of the agreement: _____
- No contractual or other obligations preventing fulfillment of agreement: _____
- No contractual or other obligations impairing the value of the licensed property: _____
- No prior grant of interest in the licensed property that will impair agreement: _____
- No undisclosed commission or other compensation due any third parties: _____
- No pending litigation or claim: _____
- Licensed property won't infringe rights of any third parties: _____
- Licensed property isn't being infringed by third parties: _____
- Licensed property won't infringe any laws, orders, regulatory guidelines, etc.: _____
- Marketing of product will comply with all laws, orders, regulatory guidelines, etc. _____

Checklist

12 - Incidents of License

- Further develop the product, including improvements and extensions: _____
- Advertise and promote by any (or defined) means: _____
- Utilize the marketing company's own intellectual property in connection with the licensed IP: _____
- Protect the licensed property from third party infringement: _____
- Sublicense the rights granted: _____

13 - Exclusivity

- No other direct response advertisements during the term: _____
 - Television only: _____
 - Other direct response venues: _____
- No other development or sale of competing products: _____
 - During the term: _____
 - Post-term for months/years: _____
- Right of first refusal: _____
- Acknowledge any reserved rights: _____

14 - Audit Rights

- Time period in which licensor can object to royalty statement: _____
- Scope of records subject to inspection: _____
- Frequency of audits: _____
- Location of audits: _____
- Error threshold for imposing cost on licensee: _____
- Nondisclosure agreement required? _____