

7 Key Differences in Brand Licensing Practice in Asia versus the West

Corporate brand licensing has already taken off in Asia, with a number of Western brands realizing remarkable success. But in contrast to many highly acclaimed licensing deals, there are numerous spectacular failures. As a brand licensor, you need to understand some of the key differences in licensing practices in Asia versus the West, and adapt your licensing strategy accordingly.

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Asia is already a hot bed for corporate brand licensing! From Shanghai to Seoul and across various industries, many mega corporate brand licensing deals have already been made across Asia. (see side story) Among these licensing deals, some have achieved great success, but there are also numerous complete failures. Most failures are the result of a lack of knowledge of the key differences in licensing business practices in Asia compared to the West. Many Western brand licensors simply “copy and paste” their licensing programs from the U.S. or Europe to Asia. Such an approach can be risky as considerable damage can be done to the brand and you may find yourself helpless in controlling the fallout.

There are many visible differences in how licensing is being done in Asia versus the West. And there are also many “not so obvious” differences that may make or break a licensing deal in the long run. As a brand licensor, you need to be aware of these key differences before making your first leap, or if you’ve already started, you may want to review your licensing programs and take actions for improvement.

Difference 1: Need for tighter trademark registrations in Asia

Once you have specific key Asian countries in mind for which you plan to launch licensing programs, review the trademark registration status in each of these countries first.

Remember, Asia is not a homogenous market, and there are enormous differences in languages, legal and business practices that you need to be aware of. For example, in addition to registering the trademark in its original language, it is advisable to register your trademark in the distinctive Chinese language even if the Chinese mark does not appear on your products. This is critical because the Chinese consumers remember your brand in its Chinese language. If a foreign mark does not have a Chinese name when it enters the Chinese market, the licensees, retailers or the distributors will give it a Chinese name for practical commercialization in the market. Tragically, unknown to you, the Chinese marks can be registered by third parties! After this occurs, it is very hard for you, the genuine owner, to take back the trademark rights.

Apart from the protection of your trademarks, you should also use copyrights to protect your catalogues, brochures and website content, especially if you intend to pursue a bundled license (as will be covered later in this article). Copyrights are granted automatically, but it is advisable to register them in your key markets; especially in India and China where voluntary registration is allowed. Copyright registration will be accepted as evidence of copyright ownership in the event that you wish to pursue a copyright infringement and greatly reduces evidence preparation needs, thereby saving your company extra costs for a long and complicated process.

Difference 2: Different level of brand awareness in Asia vs. the West and its implications

Having reasonably strong brand awareness in Asia is a good starting point. However, many Western consumer brands have much lower brand awareness in Asia, as compared to their home countries. These differences in recognition have significant implications for the brand’s licensing potential in Asia. For those who don’t have much brand awareness in Asia, the licensing door is not necessarily shut, but you need to add tangible value to the licensees’

business by bringing in other forms of intangible assets. But before asking what you can add to your licensing package, ask yourselves what Asian licensees need and what they value most in a licensing arrangement. Here are some commonly asked questions by Asian licensees: “In addition to the brand name, what else can you offer? Can you license the product design? How would you support us in marketing your brand in Asia? How much will you invest in advertising? Can we tap into your supplier base? Can we enjoy the same discount rate that you have with your suppliers?”

Many of these questions are not common in the West. But you don’t need to go out and search the earth for an answer. Indeed, you already have most answers within your organization. Here are some intangible assets that you may include in your licensing package:

- History and heritage. Marketing is about story telling. If your brand has interesting history and rich heritage, exploit them to the fullest, and present them to your Asian licensee prospects. This tact is something that you probably do not need to follow when dealing with licensees in your home country where brand awareness is high. But it pays dividends when you do so with your Asian licensee prospects. For example, as an American iconic brand, Westinghouse maintains a well-kept archive with images of vintage Westinghouse products (which are world’s first electric cooking range produced in 1917 and world’s first electric clothes dryer introduced in 1946, etc) and boxes of documents that capture many milestone events in the Westinghouse 124+ year history. Westinghouse’s Asian licensee partners have been invited to visit the Heinz History Center in Pittsburgh, Pennsylvania where the archive is located; many of the historical records have been selected and made available to licensees in Asia. Why is this extra step needed? Well, it is important to understand that it is a common business practice among Asian companies to register a trademark in Europe or the US, and then market the newly registered trademark as a European or American brand to their consumers, with a fabricated brand story. These practices may sound ridiculous, but bear in mind, such tactics have proven to be cheap and effective! However, as consumers become more sophisticated, companies have realized that they need substance in their brands; licensing or acquiring a Western brand with history and heritage is an appealing solution.
- Product design and marketing collaterals, such as product catalogs and website content, often can be an added value in the bundled licensing deal.
- Shared supplier network. Many Asian retailer licensees often ask for access to your supplying manufacturers, or they ask to be introduced to the other licensees in your home market for joint product procurement. In many Asian countries, retailers do not possess merchandising capability in-house (see difference 4 below) so it makes sense to allow them to access to your supplier network. Sharing your supplier network not only helps you and your licensees enjoy lower unit purchase costs, but also maintains a consistent brand image across the continents.

Difference 3: Differences in licensing strategies in Asia vs. the West

There are some common characteristics about Asian licensees that necessitate the adjustment in your licensing strategies in Asia. First, the mentality of “a bird in the hand is worth two in the bush” is prevalent. In rapidly growing emerging markets across Asia, opportunities come and go quickly. Coupled with many uncertainties in the economy, many companies operate on a relatively short term basis. With a 3-year or 5-year brand licensing agreement in-hand, their first priority is to make money before the license expires, on the assumption that the license won’t be renewed (for whatever reason). Such a mentality strongly discourages licensees from investing upfront in the brand, and it also contributes to the challenges in licensee compliance in Asia. This mentality also conflicts with Western brand owners who care more about the long term growth of the brand. For lesser known brands that require a more substantial upfront investment in Asia, it is much tougher to find good licensee partners who not only have strong capabilities, but are equally committed to brand investment, and remain patient long enough to experience brand growth in Asia.

The second common trait of Asian licensees, particularly among Hong Kong, Indian and Chinese firms, is their strong preference to acquire a Western brand versus becoming a licensee. That may well be the consequence of the shorter term mentality mentioned above. Since trademark rights are territorial in nature, the notion of selling trademark rights in selected countries is a valid one and may make business sense.

Some innovative licensing strategies, such as License-to-Own (LTO), have been used in Asia on numerous occasions with success. An LTO approach is a licensing arrangement with a performance-triggered option for the licensee to purchase the trademark rights, usually in limited territories. It starts with a licensing arrangement with pre-determined performance criteria, such as the number of retail stores to be opened, sales volume, advertising spending, and strict compliance to the license agreement. Once these milestones are met, the licensee can exercise options to purchase the partial or full trademark rights in specific Asian countries, and in some cases, form a joint venture with the brand owner. The prospect of owning, at least partially, the trademark rights in the country in which the licensee operates provides strong motivation and long term security for them to focus resources and invest in the brand upfront. Further, they are more likely to treat the licensed brand with the same level of dedication and care as the brand owner. LTO, in essence, removes the uncertainties for both parties while unlocking the synergies, thus providing substantial rewards for all.

BasicNet SpA, the Italian sportswear firm that makes and sells Kappa branded goods, received 27.1 million euros in 2006 from the sale of rights to the Kappa brand in China and Macau. With the trademark rights for China, China Dongxiang, Kappa’s licensee in China, invested heavily in retail expansion and brand building. This effort quickly turned Kappa into one of the most popular sportswear brands in China. Was this also a good deal for BasicNet SpA? The sales volume of Kappa products in China was RMB105MM (about 10 million euros) in 2004, and based

on an estimated 5% royalty rate, the purchase price paid for the Kappa trademark in China is a 51 multiple of its annual royalty income in China! This is much higher than normally expected in brand acquisition deals in the US or Europe.

The LTO strategy has worked well for many brand owners who do not have the resources to build their brands in Asia. For example, French outdoor gear company LaFuma sold its trademark rights in Korea to licensee LG Fashion in 2009. (See side story) Pierre Cardin sold its trademark rights in China to a group of Chinese companies for reported 48 million euros in cash in early 2010.

Difference 4: Differences in Evaluation Criteria of Licensee Partners

Developing a winning strategy is no guarantee of a licensing program's success. Working with the right licensees is equally important.

Given the significant differences in business practices in Asia as compared to the West, brand owners need to develop some understanding of the local market and evaluate potential licensee partners against a set of standards that may differ greatly from those used at home.

Here is an illustration. The department store channel is always one of the most important when upscale consumer brands enter a new market. That is also true in China. Some Western brand owners, naturally, want to duplicate their proven Retail Direct Licensing model with department store operators in China, but soon realize this can be difficult.

Department stores operators in China adopt a different business model as compared to their Western counterparts. They are often said to be acting like landlords, literally, with the bulk of their revenue derived from the rental of floor space to vendors who set up their shops in the premises. Vendors who rent the space at department stores are responsible for merchandising their product line in the store and hiring sales people to staff the store. This is why department stores pay little attention to merchandising and marketing, making them unfit for a direct to retail licensing arrangement.

Traditionally, appliance chain stores in China have adopted a similar business model to that of department stores. However, this is changing... Suning's recent retail direct licensing deal with Whirlpool (refer to the side story) is considered one of the largest in Asia. It is noteworthy that the main product category covered by the Whirlpool-Suning DRL deal is air-conditioners. This category is part of Suning's roots, as they were founded as an air conditioner dealer in early 1990s, before turning into the largest appliance retailer in China. With Suning's past experience and connections in the air conditioner industry, it was easier for Suning to make the transition from landlord-type retailer to brand licensee. However, a chain store operator's (e.g. Suning) commitment to uphold the Whirlpool brand image remains to be seen.

Aside from retailers, many brand owners find themselves dealing with Asian manufacturers seeking well known brands. Many of these manufacturers are supplying products to their OEM clients worldwide. Any company visit to these licensee prospects can be an awe-inspiring experience. Standing in front of massive manufacturing facilities equipped with top-notch production equipment and tens of thousands of well trained employees working around the clock, the manufacturer may look like a decent licensee candidate for you. But be warned that the scale of the manufacturing facilities is no indication that these companies would be the perfect licensees for your brand in Asia. Quite to the contrary, experience shows that OEM-oriented manufacturers are often poor licensee candidates. As manufacturers who thrive on mainly OEM orders, they are set up and operate very differently from sales and marketing driven companies. Despite the desire to transition from OEM manufacturers to brand players via licensing, most lack in-house marketing, sales and distribution capabilities, not to mention their OEM clients may give them pressure to relinquish their licensed brands.

Difference 5: Differences in the Royalty Rates

First, when it comes to royalties, there is no such thing as a “standard rate”. Even for the same brand, the royalty rate can vary greatly from market to market in Asia. Second, despite having lower brand recognition in Asia, the royalty rate may not be necessarily lower than what you typically receive in your home country. Because Asian consumers usually have a preference for Western brands, they are more willing to pay large brand premiums compared to consumers in the West. So how should you determine the royalty rate?

In general, the “¼ rule” can be useful in determining the appropriate royalty rate. What is the “¼ rule”? In short, the royalty rate calculation can be derived as ¼ of the extra value generated by the brand, i.e. the brand premium in a specific market. For example, in highly price sensitive industries like consumer electronics, if your brand can garner \$110 for its new digital camera compared to the \$100 wholesale price for one with similar features but branded under a local Indian brand, the reasonable royalty rate to ask for would be \$2.50 per unit (1/4 of \$10 extra value attributed by your brand). That translates to a 2% royalty rate (i.e. \$2.5/\$110) in India. A benchmark will be established when estimating the price premium produced from your brand in specific markets.

As a comparison, if you are in the sportswear industry and the brand is able to create an extra RMB200 in brand premium for a sports jacket that is retailed at RMB600 in China, the royalty rate should be 8%. (RMB 50/600)

The advantage of using this approach can be applied in various industries and countries. Of course, this approach works only when both parties agree upon the positioning of the licensed brand in the local market, and the benchmark with which the licensed brand should be compared in that specific market.

Difference 6: Differences in recording requirements

Unlike the U.S., trademark law in many Asian countries requires recording the brand licensing agreement by the licensor with the respective government of each, China, Malaysia, Singapore and Thailand, to name a few. For example, in China, within 3 months after the signing of the licensing agreement, the licensor should file a copy of the trademark licensing contract with the China Trademark Office. The China Trademark Office will then publish the recorded license in the Trademark Gazette to provide public notice of the existence of the license agreement for the registered trademark. The published notice may serve as proof for the licensee of their rights to the registered trademark. The need to produce such proof is quite common in most Asian countries where customs, local government bureaus or retailers will demand this before doing business with your licensees.

Further, if any major changes are made to the licensing agreement during its term, the licensor should re-file an application for recording. Though there are no penalties for failure to record and the validity of the licensing agreement will not be affected for this failure, the lack of recording could undermine attempts by the licensor to enforce its rights against 3rd party infringers.

Difference 7: Differences in Quality Control and Factory Audit

Do you know where your licensed products are made? Do you review your licensed products before they are launched? Do you perform regular inspections of them at retail? The answers are probably YES for most brand licensors. But when your licensees are located 6000 miles from your office, and the licensed products are sold in the emerging markets the answers can be quite different.

Factory auditing is a “must have” tool in the due diligence process. Always insist on the right to audit your licensees and their suppliers, if they purchase the licensed products from 3rd parties. Each licensee should be selected for an audit every couple of years; or when a licensee relocates production facilities; or if it begins to outsource production to 3rd parties. As the brand owner, the licensing agreement should require timely notification by the licensees in any of these events.

Factory audits should be conducted by trained professionals in your organization, or if you need to assign an independent auditing firm in Asia, it is recommended that one of your own staff be present during the audit.

A typical factory audit shall cover the licensee’s organization structure; product development capability; manufacturing facilities and equipment; production capacity; quality assurance system; licensed product sales and royalty payment accounting; and the prospective licensee’s compliance with all of the standards contained in the license agreement.

In addition, an SA8000 audit is recommended. SA8000 is a global social accountability standard developed by Social Accountability International and it covers issues such as child labor; forced labor; workplace safety and health; working hours and wages. These areas can be problematic in many parts of Asia; as the brand owner, you need to save your organization from any PR nightmare related to these potential offenses. An effective SA8000 audit should also include interviewing various employees which you select randomly. During the interview, only you, the auditor and the interviewee should be present so that the discussion can be conducted in confidence without external influence.

After the audit, preventive and corrective actions should be recommended for issues identified during the audit. Importantly, you need to follow-up on the implementation of all corrective actions.

Look before you leap

The differences between Asian and Western licensing discussed in this article are by no means exhaustive. Other differences which have implications in creating strong licensing programs include cultural and management styles; licensors and licensees' responsibilities in brand building; and licensee compliance, etc. These topics will be discussed in future.

With steadily growing economies and more affluent consumers with appetites for Western brands, Asia will become an important and lucrative market for Western brand licensing programs. Venturing into new territories isn't without risk; the biggest risk is the temptation to simply "copy and paste" your licensing program in Asia. There are three principles that may guide you in your next venture. First, be aware of the key differences in conducting brand licensing in Asia. Second, avoid making decisions without leaving your headquarters... you need to immerse yourself in the local market or seek professional assistance from a licensing agency that has a local team in Asia; and third, be prepared to localize your licensing program for Asia to maximize its financial return and its longevity.

Side Story

Asia is already a hot bed for brand licensing. However, many of these deals are not reported in the licensing trade magazines in the West.

Here are some recent examples: In 2008, Whirlpool concluded a multi-year, brand licensing arrangement with Suning, the largest home appliance retailer in China, for air conditioners. This is one of the first Direct to Retail Licensing deals (DTR) in China. Interestingly, the deal between Whirlpool and Suning had been portrayed in the local news as a “Strategic Alliance” between the companies, without mentioning the phrase “brand licensing”. The combination of a well known American appliance brand and the guaranteed shelf space at China’s largest appliance retailer was a powerful and successful one. Not only did the Whirlpool brand quickly rise to become one of the top selling air conditioner brands in China, both companies expanded the license dramatically to cover a much wider range home appliances. Encouraged by its success, in 2009 Suning consummated another DTR licensing deal with Pioneer – a Japanese consumer electronics company for LCD TVs, etc. The deal is expected to generate sales of more than 770MM yuan (USD 110MM) in licensed products by 2012. These two licensing deals represent a new type of approach for brand owners. While success is being realized now, both Whirlpool and Pioneer experienced negative results in China using traditional business models.

Whirlpool is certainly not the only American consumer brand that has flourished through brand licensing in Asia. The Westinghouse brand has a number of licensing agreements with various Asia-based companies for small kitchen products, personal care products, baby care products etc in Asia. These licensed products have been placed in appliance chain stores in Hong Kong, showrooms in Dubai, and department stores in China. Asia has become a key component in the USD 2.8B Westinghouse brand licensing program.

LG Fashion, one of the largest fashion companies in Korea, has successfully built an outdoor apparel and footwear business through brand licensing with Lafuma, a French company that specializes in outdoor apparel, equipment, and footwear. The licensing program worked so well for both parties that Lafuma recently assigned its trademark rights in Korea to its licensee, LG Fashion in July 2009. Such License-to-Own (LTO) licensing deals are not common in the U.S. or in Europe, but the LTO strategy provides strong incentives to Asian licensees to invest heavily upfront in the brand, that is otherwise not considered in a traditional licensing or distributor arrangement.

Watch for more licensed products during your next trip to Asia!