

Trademark Royalty Rates in Bundled License Agreements



Value Discovery [Follow](#)

Aug 29 · 5 min read



Photo by Denny Müller on Unsplash

Trademark Licensing Activity

As noted in our “Trademark Royalty Rates in Franchise Agreements” article, technology licensing typically dominates our collection efforts at IPSCIO/RoyaltySource. Trademark licensing is active, but typically only in areas of consumer-facing goods such as food, beverage, restaurant and apparel. We see very little business-facing trademark licensing activity as well as other consumer-facing services.

To expand the availability of market-based trademark royalty rates to use in a trademark valuation or license negotiation, we offered insights into unbundling composite trademark and technology royalty rates detailed in license agreements. In other words, we will offer benchmarks to help split the royalty rate between technology and trademark.

Broad Use of Bundled License Agreements

Understand that using a composite royalty rate as a market-based indication of a trademark royalty rate requires judgement. The first step is to carefully examine the license terms in order to clearly understand what rights are being granted to the licensee. It is also important to understand the nature of the licensee’s business as an aid to judging what are the most important needs of the licensee that are being satisfied by the license. We must

remember that it is the responsibility of the trademark owner to ensure that the products or services rendered by a licensee maintain the quality standards that customers have come to expect. Hence, there are almost always additional elements such as trade secrets, know-how, procedures or a patent in the license bundle.

Lacking data that can help identify the trademark portion of the rate, you can simply view the rate as a ceiling or the maximum a licensor could charge for the use of a trademark. It is also helpful to simply split the rate 50%-50%. These two suggestions, while not perfect, do supply boundaries to consider and offer a check on the reasonableness of selection of a rate by using another method.



Bundled License Agreements

We have reviewed licenses that bundle the rights to technology and trademark included in the IPSCIO/RoyaltySource database for market-based indications of a split between trademark and technology. We found one example.

The license agreement is dated July 24, 2002 and was still active as of February 2019. The parties to the agreement are Land O'Lakes, Inc. and Dean Foods Company. In general, Land O'Lakes, Inc. granted exclusive rights to use the "Land O'Lakes" brand and the "Indian Maiden" logo on dairy products.

Land O'Lakes is a producer of dairy products, animal feed and crop seed in the United States and their product brands are well-recognized. The dairy brands include Land O'Lakes, Alpine Lace, Lake to Lake and New Yorker brands and the Indian Maiden logo. Land O'Lakes also relies on patents and trade secrets to market and protect their products. Recipes and production methods for dairy and spread products are considered valuable trade secrets.

Dean Foods offers a variety of branded and private label dairy and dairy case products. These include fluid milk, ice cream, cultured dairy products, creamers, ice cream mix and other dairy products. Dean Foods also relies on a combination of trademarks, copyrights, trade secrets, confidentiality procedures and contractual provisions to their market products and protect their intellectual property rights.

Some License History

Dean Foods acquired the "Upper Midwest" operations of Land O' Lakes on

July 10, 2000, including assets used to process milk, juice, cottage cheese, dips and other related products and executed their first trademark license agreement with Land O’ Lakes. The license was exclusive, perpetual, royalty-free and included the United States territory. Given the royalty-free provision, likely the purchase price included a lump sum amount representing a “paid-up” license.

Basic Dairy Products	Value-Added Dairy Products
Milk	Cream
Yogurt	Sour Cream
Cottage cheese	Creamers
Ice Cream	Combination
Eggnog	Nutritional Milk
Juices	Infant Formula
Dips	Soy Beverage

Table 1

Two years later, on July 24, 2002, Land O’ Lakes and Dean Foods revised the license agreement. The license territory was expanded to include Canada and Puerto Rico. The exclusive, perpetual and royalty-free provisions for the original “Basic Dairy Products” remained the same. However, new “Value-Added Products” were included with defined royalty payments. Table 1 summarizes the licensed products.

The surviving royalty-free provision for the Basic Dairy Products supports the observation that the original trademark license was “paid-up” and included in the purchase price. The Value-Added Dairy Products royalty payments are detailed in Table 2.

Products	Royalty Payments	
	Refrigerated	Shelf-stable
Basic Dairy	Royalty-free	Royalty-free
Value-Added Dairy	1.5%	3.0%

Table 2

A premium royalty rate of 3% was negotiated for “shelf-stable” products. Land O’ Lakes has experience with aseptic and extended shelf-life product technology and expanded it through a joint venture relationship formed in 2001. Aseptic technology creates shelf-stable products using a sterilization process which allows product storage for prolonged periods without refrigeration.

Summary

While not specifically stated in the public documents reviewed, the information collected are puzzle pieces and connecting them allows a view

into a technology royalty rate premium over a trademark royalty rate. The technology premium seems to be supported by the specialized production and packaging processes related to extending the shelf-life of food or for food to be stored without refrigeration until opened.

In this case, a royalty rate technology premium of 1.5% for the Value-Added products is evident (3.0% shelf-stable less 1.5% refrigerated), resulting in a 50% premium. This premium, and its inverse 50% (1- 0.50) helps unbundle the composite royalty rate paid for the use of trademarks and technology.

We now have two benchmark adjustments which can help to expand the number of royalty rates observations when addressing the value of a trademark. Our “Trademark Royalty Rates in Franchise Agreements” article noted that 44% of the composite franchise royalty rate relates to trademark. Combined with this Land O’ Lakes/Dean Foods observation, the benchmark adjustment ranges from 44% to 50%.

Obviously, the benchmark adjustments also work to expand the number of observable royalty rates used to value technology. The range for technology is 50% to 56%. In other words, 56% (1- 0.44) relates to the other intangible property such as know-how and procedures to operate the business in a franchise agreement.



Discover more value insights here

. . .

More Information:

<https://www.sec.gov/Archives/edgar/data/1032562/000095013702001355/c66485ex10-11.txt>

<https://www.sec.gov/Archives/edgar/data/1032562/000095013402014427/c72859exv10w1.txt>

<https://www.sec.gov/Archives/edgar/data/931336/000093133619000007/df-20181231x10k.htm>

<https://www.sec.gov/Archives/edgar/data/27500/000095013403004627/d04227e10vk.txt>

<https://www.sec.gov/Archives/edgar/data/931336/000095013403004622/d03908e10vk.txt>

<https://www.sec.gov/Archives/edgar/data/1032562>

/000095013404004408/c83905e10vk.txt

https://www.sec.gov/Archives/edgar/data/1032562
/000095013709002070/c50152e10vk.htm

Copyright© AUS Consultants, Inc.

[Food](#) [Intangible Assets](#) [Trademark](#) [Valuation](#) [Technology](#)

Discover Medium

Welcome to a place where words matter. On Medium, smart voices and original ideas take center stage - with no ads in sight. [Watch](#)

Make Medium yours

Follow all the topics you care about, and we'll deliver the best stories for you to your homepage and inbox. [Explore](#)

Become a member

Get unlimited access to the best stories on Medium — and support writers while you're at it. Just \$5/month. [Upgrade](#)

[About](#) [Help](#) [Legal](#)