**CHECKLIST**

**DRAFTING MERCHANDISING LICENCE AGREEMENTS**

⚪ Identification of Parties

· Names

· Addresses

⚪ Definition of Property

⚪ Definition of licenced Products

· Fragmentation issues if exclusive

⚪ License Grant

· Exclusive vs non-exclusive

· Definition of territory

· Reservation of rights

· Entertainment and merchandising rights

· Sublicensing

⚪ Term of Agreement

· Options to renew

· Effect of commercialisation of property

⚪ Compensation

· Royalty income

· Sublicensing income division

· Royalty period defined

· Net sales defined

· Royalty statements

· Advance

· Guaranteed minimum royalty

* Guaranteed vs non-guaranteed

· When the sale occurs

· Sales to affiliates

· Receipt will not prevent the subsequent challenge

· Acceleration

· Survival of termination

· Currency

· Interest

⚪ Audit

· Timing and notice

· Underpayment

· Record retention

⚪ Representations and Warranties

· Ownership and non-infringement

· Necessary permissions

· Ability to contract

· No conflicting agreements

· Best efforts to commercialise

· Promote and advertise

· Product introduction and first shipment dates

⚪ Quality Control and Samples

· Marking provisions of intellectual property laws

· Obligation to seek intellectual property protection

· Legal notices

· Quality standards

· Product approvals/types and frequency

* Preliminary artwork
* Final artwork
* Preproduction samples
* Production samples
* Periodically during production

· Right to terminate if quality falls

⚪ Intellectual Property Rights

· Acknowledgment of ownership

· Licensee estoppels

· Goodwill

· Secondary meaning acknowledgement

· Execution of documents

⚪ Termination

· Immediate right to terminate

* Product introduction dates
* Fails to sell continuously
* Fail to maintain insurance
* Bankruptcy or dissolution
* Unauthorised use of marks
* Timely payment of royalties

· Right to terminate the portion of the agreement

· Right to terminate on notice for breach

⚪ Post-termination Rights

· Inventory

· Sell-off period

· Cease selling

· Return of material

⚪ Infringements

· Party with initial right/secondary right

· Cooperation

· Responsibility for payment

· Responsibility for lead counsel

· Division of proceeds

⚪ Goodwill

⚪ Indemnification

· Product liability

· Infringement

⚪ Insurance

· Product liability

· Advertiser’s

⚪ Force Majeure

⚪ Jurisdiction and Disputes

⚪ Notice Provision

⚪ Non-disclosure and Non-compete

⚪ Termination

· On notice in the event of breach

· By agent

⚪ Binding on Successors

⚪ Waiver

⚪ Independent Contractor

⚪ Severability

⚪ Assignability

⚪ Integration

⚪ Execution and Dating by Parties