

# FROM IDEA TO REALITY



**I**N CANDY, AND MOST OTHER INDUSTRIES, there are outsiders who come around thinking they have the next \$1 million idea. Some might, but they often have no idea of how to get it in the right hands to make a deal.

For most manufacturers, these people are a pain. They often have not done their research, or have little understanding of the process a product must go through to become viable. Many offer ideas that have already been done, while others have items that can't be made efficiently enough to be marketable. These can be frustrating, time-consuming scenarios, even for the most patient manufacturer. But those that are open to new ideas, know where to go to get them, and know how to structure a deal, stand to reap great rewards.

When an idea burns itself into someone's imagination, a potential million dollar product concept is born. But what to do, where to go and who to trust? How does an idea for a new candy item travel the path toward financial success?

When entering unfamiliar terrain, the prudent way to minimize risk and maximize the potential success of the trek is to hire a guide. In licensing or developing a new product, an experienced licensing agent works in much the same way.

Working with a new product development company or product licensing agent lets you cut to the chase. Such companies are in the business of vetting new offerings — qualifying and quantifying an idea's market potential before it is presented. An experienced development company should be able to estimate costs, manufacturing possibilities, and in some cases, even have a supplier ready to turn concepts into final product. Dealing with a company that understands your business and the way it works can be of huge benefit when adding new items to your line.

As agents, we take the onslaught of submissions and allow the cream to rise to the top. We typically charge newcomers to the industry \$99 to evaluate their items. This separates serious creators from those who simply throw stuff against the wall to see what sticks. A team of experienced developers explore the merits of each item and conduct cursory market and manufacturing research. If an idea passes muster and we see potential for success, we offer the creator a representation agreement.

Our normal deal is to represent the item for no less than two years, this being the minimum time needed to cover the market and present the item to the appropriate potential

licensee/partners. We split each deal on a 50/50 basis with the inventor, but different split arrangements can apply when working with another professional development group.

Candy companies do not incur charges to review products. However, once there is interest in moving forward on a deal, the advance and royalty usually offsets our investment and the financial risk we take to bring the best products to market. We are clearly in it for the long term, back-end rewards.

There are other business models. Some companies might charge either a flat fee or a pay-as-you-go method of remuneration. There are also food chemists and other experts who work on specific projects, which can save quite a bit of time and effort. Candy companies can certainly use more than one way to explore new possibilities, but the door must be open to allow opportunities to walk in.

For example, many, if not most, of the best new items introduced during the past 10 years originated from outside innovators and creators. Among the best are Cap Candy's Spin Pops, which grew a whole new sector, despite industry protests that consumers would never go for such high-priced items.

Therefore, when working with a product licensing agent, it helps to have an open mind about what is being presented. Rarely will the final product be the same as what is presented at the initial product review meeting.

## GETTING DOWN TO BUSINESS

Generally five to 10 items in various states of development will be presented for consideration. These are noted on a "presentation sheet" which includes a brief non-disclosure statement making clear that everything presented in the meeting remains confidential. Sometimes it's found that a product being shown might have been in the public domain or is being developed internally by the manufacturer. For obvious reasons, such items do not fall under the confidentiality restrictions. When the issue comes up, we simply note it on the sheet.

One must remember that the purpose of this meeting is to work in good faith. The manufacturer realizes that they, in principle, are open to share a percentage of sales in exchange for taking on something new that comes out of the meeting. This might be a finished, turnkey item, a diagram, a prototype, or even an idea born from the brainstorming that often occurs when working with creative thinkers. If a potentially profitable concept or product comes out of the meeting, the intent should be to create a win-win deal for all parties.

**The next great product idea could walk in your door tomorrow.**

## ELEMENTS OF A DEAL

### ■ LICENSOR

This is normally the item's inventor and might include the agent

### ■ LICENSEE

Usually the manufacturer who buys the license

### ■ ADVANCE AGAINST ROYALTIES

A percentage of anticipated first year royalties, +/- 25 percent

### ■ ROYALTY

A percentage of sales shared with the licensor ranging from three percent if tied to a brand/character license, to as much as 10 percent

### ■ MINIMUM GUARANTEE

The minimum the manufacturer agrees to pay for the first year, or each year thereafter, to keep the license

### ■ TERM

The period given to market the item, often with renewal periods based on reaching minimum sales levels.

### ■ TERRITORY

The area where the item can be sold, either worldwide or restricted to North America. International rights are limited to those areas a company currently sells into or plans on selling into.

### ■ DATE OF FIRST COMMERCIAL SALE/SHIPMENT

This commits the licensee to bring the product to market. If the date is missed, the licensor might take back the license

### ■ GOVERNING LAW

Sets the venue for court disputes.

### ■ DESCRIPTION OF LICENSED PRODUCT

A detailed description of what is being licensed. In addition, a "Fruit of the Tree" clause includes extensions and concept modifications to allow any improvements to benefit both parties.

**'Most of the best new items introduced during the past 10 years originated from outside innovators'**

If a product proves to be of interest, it is sent for further review. Manufacturers will consult with their internal marketing and development teams, as well as other sources, to see if the item will match with the company's ability to manufacture it, and if it fits with future marketing goals.

Sometimes, as was the case with Candy Planet's Candy Foam, the manufacturer wants an on-the-spot deal for an option or license. This prevents their competitors from bidding on a product. Typically, a 30-day consideration period is agreed on, at the end of which the "material" is returned or a deal negotiated. If a license is not immediately negotiated, an option outlining deal details can be bought one month at a time. The monthly option fee can be included as part of the advance against royalties.

Manufacturers are required to provide quarterly statements to the licensor outlining the amount of sales, less discounts, returns and other charges, along with a check for the percentage of sales due the licensor. It is not unusual to involve the creator in the development phase of the project and in fact is recommended. Remember, the person who came up with the vision has generally done a great deal of research and probably has a wealth of knowledge to offer. This might include food scientists, ingredient and component suppliers, packagers and other sources that can help bring an item to market. They are also likely to be able to lend advice as to what has failed or succeeded in their testing.

### PROTECTING THE CONCEPT

It is important to point out that many deals are based on a good idea and not necessarily an in-force patent. What you are buying is often simply an AHA! idea that will hopefully

generate good profits. It could be as simple as modifying an existing manufacturing process to develop a new material texture.

If it is possible to keep a manufacturing process, a blending technique, or other trade secret under wraps, you can have a significant edge in the market. In fact, a patent can serve as a blueprint for potential knock-offs, since all filings are publicly available. Additionally, if patents are not done on an international basis, you can be certain to see your baby in the hands of strangers! This is not to say a strong patent is not desirable. Cap Candy vigorously protects its patent with substantial legal investments a smaller company might not be able to sustain.

It is not only your right to protect your patent from the circling vultures, but your obligation. If you neglect to take action against a known knock-off, you are in effect giving away the rights free under what is called an "Implied License." If given the opportunity, you must decide where the money is better spent, legal or marketing. In the case of Candy Foam and Pinwheel Pop, the creator and licensee decided that the innovation was strong enough to seek patent protection.

The best place to look for professionally presented new products and concepts is the product licensing industry. A select group of these companies are members of LIMA, the licensing trade organization. Additionally they can be found through the Toy Industry Association. The sad fact of life in the candy business is that innovation and an openness to ideas from outsiders is only just beginning. The best news is that for those willing to build on new relationships, the market is extremely fertile. **CB**

### ABOUT THE AUTHOR

**Howard Jay Fleischer** is President of New York City-based RoyaltyPros Licensing. He represents new product inventors and creators worldwide and negotiates deals in categories including candy, toys, games, novelties and book formats



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