

## Collegiate Licensing Case Study

Intellectual property accounts for about 40% of the net asset value of all corporations in America.<sup>1</sup> One clear method of extracting value from these assets is by entering the licensing market for trademarks and copyrights which, globally, involves \$100 billion per year. But the potential of this market is not limited to traditional firms and for-profit enterprises. Companies specializing in collegiate-sports licensing have been helping colleges and universities maximize revenue through licensing deals. Given that they are institutions that specialize in the creation and cultivation of knowledge and expression, colleges and universities should naturally be attuned to the potential that exists in these intellectual property-related activities.

### The Collegiate Licensing Company

Founded in 1981, the [Collegiate Licensing Company \(CLC\)](#) is the oldest and largest collegiate licensing agency in the United States.<sup>2</sup> The company provides licensing and marketing services for its clients, [which include 200 colleges and universities](#).<sup>3</sup> Collegiate Licensing's clients sell more than \$3 billion in merchandise annually. In 2007, the company was acquired by IMG Worldwide, which subsequently [purchased ISP](#), another collegiate-sports marketing firm with 60 college clients.<sup>4</sup>

### Revenue Streams

**Table 1: Top 10 CLC Colleges, By Royalties**

| College                           | Royalties                    |
|-----------------------------------|------------------------------|
| The University of Texas at Austin | \$10.15 million <sup>5</sup> |
| The University of Alabama         |                              |
| University of Florida             | \$4.8 million <sup>6</sup>   |
| The University of Michigan        | \$4.1 million <sup>7</sup>   |

<sup>1</sup> KAMIL IDRIS, INTELLECTUAL PROPERTY: A POWER TOOL FOR ECONOMIC GROWTH 34 (2002).

<sup>2</sup> About CLC, <http://www.clc.com/clcweb/publishing.nsf/Content/aboutclc.html> (last visited Jan. 10, 2011).

<sup>3</sup> Clients, <http://www.clc.com/clcweb/publishing.nsf/Content/institutions.html> (last visited Jan. 10, 2011).

<sup>4</sup> Matthew Futterman, *IMG Moves Further Into School Sports*, THE WALL STREET JOURNAL, July 29, 2010,

<http://online.wsj.com/article/SB10001424052748704895004575395532930536888.html>

<sup>5</sup> John Maher, *Horns' \$10.15 Million in Royalties Top List*, AUSTIN AMERICAN-STATESMAN, Aug. 27, 2010, <http://www.statesman.com/sports/longhorns/horns-10-15-million-in-royalties-top-list-884171.html>

<sup>6</sup> UNIVERSITY ATHLETIC ASSOCIATION, INC., UNIVERSITY OF FLORIDA, 2010-2011 OPERATING BUDGET 5 (2010), [http://www.uaa.ufl.edu/uaa/Executive\\_Summary\\_2010-2011.pdf](http://www.uaa.ufl.edu/uaa/Executive_Summary_2010-2011.pdf).

<sup>7</sup> THE UNIVERSITY OF MICHIGAN, FY 2011 UNIVERSITY OF MICHIGAN DEPARTMENT OF ATHLETICS OPERATING BUDGETS 2 (2010), <http://www.regents.umich.edu/meetings/06-10/2010-6-X-17.pdf>.

|                                   |                            |
|-----------------------------------|----------------------------|
| University of Georgia             |                            |
| University of North Carolina      | \$4.2 million <sup>8</sup> |
| University of Notre Dame          |                            |
| Louisiana State University        |                            |
| The Pennsylvania State University |                            |
| University of Tennessee           |                            |

Table 1 lists the top ten CLC-affiliated institutions according to royalties received on merchandise sold. Unfortunately, CLC itself does not provide data on the amount of revenues each institution received. Furthermore, some universities [jealously guard](#)<sup>9</sup> the total amount of royalties earned by their licensing programs. Nevertheless, data from other institutions provides an estimate of the size of these revenue streams. The University of Texas at Austin is easily the top seller of branded merchandise among CLC’s clients, pulling in over \$10 million in 2010. For comparison, Ohio State, the top seller among non-CLC schools, [made about \\$8 million](#).<sup>10</sup> Although data on the bottom half of the top ten is sparse, Auburn University, an institution with approximately the same sized student body as the University of Tennessee, received [\\$3.4 million in royalties in 2010](#).<sup>11</sup>

### A Range of Licensing Options

When you think of collegiate licensing, certain product categories make sense intuitively. It seems obvious to place the trademark of the licensing university on apparel, for example. Sure enough, royalties from apparel make up the bulk of CLC’s royalties. Yet in 2008-09, royalties from non-apparel products accounted for [40 percent of CLC’s royalties](#).<sup>12</sup> The largest royalty generating non-apparel category was video games, with [EA Sports representing the largest single licensee](#).<sup>13</sup> What might surprise you is the range of products that lend themselves to increased

<sup>8</sup> Eric Ferreri, *Big Sports Wins Mean Big Money for Campuses; Royalties Pay for Scholarships*, THE NEWS & OBSERVER, Apr. 25, 2010.

<sup>9</sup> Chris Pollone, *Big bucks for Bama: Championship merchandise rakes in millions*, ALABAMA’S 13.COM, Mar. 31, 2010, [http://www2.alabamas13.com/news/2010/mar/31/big\\_bucks\\_for\\_bama\\_championship\\_merchandise\\_rakes\\_ar-398739/](http://www2.alabamas13.com/news/2010/mar/31/big_bucks_for_bama_championship_merchandise_rakes_ar-398739/) (noting that “Neither CLC nor the university athletic department would say [how much Alabama makes each year in licensing royalties].”).

<sup>10</sup> Mayer, *supra* note 5.

<sup>11</sup> Darren Rovell, *Auburn’s Licensing Revenues Will Skyrocket With Championship*, Jan. 11, 2011, CNBC.COM, [http://www.cnbc.com/id/41019193/Auburn\\_s\\_Licensing\\_Revenues\\_Will\\_Skyrocket\\_With\\_Championship](http://www.cnbc.com/id/41019193/Auburn_s_Licensing_Revenues_Will_Skyrocket_With_Championship).

<sup>12</sup> Did You Know, <http://www.clc.com/clcweb/publishing.nsf/Content/did+you+know.html> (last visited Jan. 10, 2011).

<sup>13</sup> Press Release, Tricia Hornsby, The Collegiate Licensing Company Names Top Selling Universities and Manufacturers (Nov. 15, 2010), <http://www.clc.com/clcweb/publishing.nsf/Content/First+Quarter+Rankings+2010-11>.

sales when combined with the strong brand of a college or university. Almost any type of product can become a market for collegiate licensing, including paper goods and printed matter, household utensils and glassware, toys and sporting goods, and education and entertainment services.<sup>14</sup>

Colleges and universities face a range of options when it comes to brand licensing. One question is what aspects of their identity to trademark in the first place. Registering a trademark confers several benefits, including greater remedies for infringement and the option of recording the mark with US Customs, which can then seize shipments entering the United States with infringing products.<sup>15</sup> Because colleges and universities are often comprised of many items that each can be potentially trademarked—names of stadiums, uniform and helmet designs, and color schemes, for example—but only limited funds to spend on registration. It is important to determine which marks should be registered, and the classes of products to which those registered marks should be applied. Given the lucrative nature of collegiate licensing, the maintenance of a trademark portfolio and attendant licensing deals is an endeavor worth pursuing.

Syracuse University successfully navigated a variety of trademark-development issues. Its example is illustrative. The challenge the university faced was to develop a consistent brand identity. Since its founding in 1890, Syracuse has seen its brand identity undergo [at least ten alterations](#), each time changing the logo, mascot, name, or some combination thereof.<sup>16</sup> Syracuse had tried multiple times to develop a consistent, successful identity, but it was not until 2004 that the university finally had success with the [hiring of Nancy Cantor as chancellor and the appointment of Daryl Gross as athletic director](#).<sup>17</sup> Once the two settled on a logo that they felt adequately drew on the traditions of the athletic program—the [Block S](#)<sup>18</sup>—their team had to research similar identifying marks used by other universities. Michigan State University, which [also used a Block S](#), albeit in forest green rather than the orange with blue outline desired by Syracuse, presented a potential problem.<sup>19</sup> After initially refusing to enter into a coexistence agreement, Michigan State [eventually agreed not to challenge](#) Syracuse's use of the Block S, provided it was used with some mark that would signal to audiences that it belonged to Syracuse and not Michigan State University.<sup>20</sup>

## Issues in Collegiate Licensing

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<sup>14</sup> See Bruce B. Siegal and Jim Aronowitz, Collegiate Licensing, *THE LICENSING JOURNAL* 37 (2005).

<sup>15</sup> *Id.* at 36.

<sup>16</sup> Sue Westcott Alessandri, Developing a Consistent Collegiate Brand Identity: Retaining a Legacy While Avoiding Trademark Infringement 16-17, <http://www.reputationinstitute.com/members/nyc06/Alessandri.pdf>.

<sup>17</sup> *Id.* at 9.

<sup>18</sup> See <http://www.sportslogos.net/logo.php?id=lfh2fxwjfmysj71nzmqw> for a depiction of the logo.

<sup>19</sup> Westcott, *supra* note 9, at 13.

<sup>20</sup> Westcott, *supra* note 9, at 14.

Collegiate licensing raises the potential for erosion of a college athlete's ability to control their image. Last year, Sam Keller, former University of Nebraska and Arizona State quarterback, [sued](#)<sup>21</sup> video game publisher Electronic Arts, the National Collegiate Athletic Association, and the Collegiate Licensing Company, claiming that his image was being used illegally.<sup>22</sup> Although NCAA amateurism rules prohibit the endorsement of products by college athletes, the players' physical features, jersey numbers, and playing styles are closely duplicated in video games.<sup>23</sup> The case presents the difficult question of when "a person's right to control [their] image trump[s] the free-speech rights of others to use it."<sup>24</sup> Powerful groups have joined each side: the Motion Picture Association of America, Gannett, ESPN, Viacom, the First Amendment Coalition, and the First Amendment Project on the side of Electronic Arts, and the players unions for baseball, basketball, football, hockey, soccer, the Screen Actors Guild, and the AFL-CIO on the side of Mr. Keller.<sup>25</sup>

Collegiate licensing also raises the possibility of infringement from other actors. Many apparel retailers sell knock-off versions of what is otherwise properly "licensed apparel." Smack Apparel, for example, sold t-shirts featuring the color schemes of collegiate institutions without obtaining a license.<sup>26</sup> The United States Court of Appeals for the Fifth Circuit affirmed a district court decision against Smack Apparel, holding that the company's use of the institutions' colors constitutes trademark infringement as a matter of law.<sup>27</sup>

Infringement of the rights of colleges and universities can originate from unexpected sources. Consider the fact that many high schools have mascots and logos that, sometimes intentionally, bear a striking resemblance to those used by major colleges and universities. Glades Day School, for example, used a [gator mascot and logo](#) that were nearly identical to the University of Florida's.<sup>28</sup> In the past, these types of infringements would go largely unnoticed, but now the internet makes the identifying marks of high schools around the country readily available. Certainly, colleges do not relish the prospect of forcing typically smaller, less powerful high schools to change their designs. Colleges and universities often don't want to appear to be overly aggressive litigants, but at the same time, they fear that selective or weak enforcement can result in loss of trademark protection or a diminution of the value of the licenses that it might sell in the future.

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<sup>21</sup> JDSupra, Keller v. Electronic Arts, Inc., et al. Class Action Complaint and Jury Demand, <http://www.jdsupra.com/post/documentViewer.aspx?fid=98e583b8-4e5d-4d9e-96e1-3a382e2397f6> (last visited Jan. 10, 2011).

<sup>22</sup> Katie Thomas, *Struggle Over Compensation is Much More Than Video Games*, INT'L HERALD TRIBUNE, Nov. 17, 2010.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Bruce Siegal, *Colorful Trends in Collegiate Trademark Protection: An Update*, 26.4 THE ENTERTAINMENT AND SPORTS LAWYER 19 (2009).

<sup>27</sup> *Id.*

<sup>28</sup> Adam Himmelsbach, *Colleges Tell High Schools Logos are Off Limits*, NYTIMES, Nov. 26, 2010, available at <http://www.nytimes.com/2010/11/27/sports/football/27logos.html>.