

DUMAURIER - USA

History

<u>Date</u>	<u>Document/Event</u>	<u>Comment</u>
15/4/82	B & W licenses Imperial Tobacco in USA (duty paid market)	3 years then rolling year to year provided 20 million cigs sold per year - 5% royalty
25/7/84	Above licence assigned to Peter Jackson (Overseas)	-
7/3/85	Rights extended to duty free in USA	-
9/6/89	JLM asks BDB for outright transfer of brand or long-term agreement at nominal royalty rate	Request justified by "expenditure in time and funds" needed to expand US business
27/6/89	BDB says "no" to brand transfer, "yes" to licence re negotiation	Will reduce royalty to 2% for 2/3 years " <u>whilst you are investing in the brand</u> ". New 5 year agreement proposed with option to renew if target (undefined) reached.
20/11/89	JLM gives qualified "yes" to BDB proposal	Wants 2% for 5 years Wants rights at UK/continental duty free airports Wants duty free/paid countries in West Indies
2/1/90	BDB agrees to 2% for 5 years but 5% thereafter. Agreed that "agreed" non-Canadian markets could be added to licence.	
10/4/90	JLM sends BDB draft licence	Expands export rights to Australia/Asia (Appendix C)
19/6/90	NC reaction to draft to RA	Appendix C deleted. BATCo needs to apply for new label registrations Various minor contractual issues
9/7/90	JLM asks BDB for right to sell brand in Canada Place, Japan	
1/8/90	BDB replies OK but only in Canada Place and 5% royalty - also please give up State Express Registered User for Canada.	

500028238

2/11/90	RA sends NC formal copies of licence for signature.	Effective date 1/1/91
4/12/90	PS queries certain issues in licence - omissions etc. Also asks for details for TM registrations.	
28/5/91	RA sends revised licence agreement to PS.	
6/11/91	PS advises RA six amendments needed to the Appendices.	
18/12/91	RA sends revised Appendices to PS.	
6/1/92	PS tells RA she is arranging to have licence executed.	
22/1/92	RA sends PS info re countries where brand currently selling	Peter Jackson not being sold in export markets.
24/1/92	PS letter to RA Peter Jackson to be deleted from agreement because of 12 months non-use provision. Du-Maurier rights will continue for countries specified in 22/1/92 letter.	
29/1/92	PS queries why brand being sold in Cayman Islands.	
20/2/91	PS note to BDB - please give go ahead to sign.	
27/2/91	BDB letter to JLM - 2% agreed on basis of low sales and to help in building up market, 5% should apply once 500 million cigarettes a year is reached but would accept 1/1/93 for it to take effect	Duty free markets should not include trade purchases. Romanian sales not acceptable.

500028239

DU MAURIER - USA

Our case is the following:-

1. We proposed a reduction in the royalty rate "whilst Imperial was investing in the brand" and "to establish the brand in the United States" (BDB letter of 27/6/89 to JLM). We also said at that time that we would be willing to start with a new 5 year agreement since 1992 "is rather a short time span in this situation" (same letter).
2. The brand needed investment in view of the low levels of sales between 1985 and 1988 (113,850 million in 1988). Sales in 1991 are 10 times larger than this which was totally unexpected by both parties and the establishment of the brand has obviously been easier and quicker than anticipated. A 5 year period was an overestimate of the time required to establish the brand. The establishment of 2/3 years originally envisaged in BDB's letter of 27/6/89 has proved to be realistic.
3. The initial period of years should have commenced on 1/1/90 in any event. BDB's suggestion was made on 27/6/89 and JLM's letter of 20/11/89 explicitly accepts "a 5 year term starting in 1990".
4. The 2/3 year period referred to in item 2 above should have started on 1/1/90 and run until 31/12/92 at the latest. The benefit to Imperial of 1992 sales at 2% will be hugely greater than the cost to Imperial of actually having paid 5% on sales in 1990.
5. BDB's proposal of 27/2/92 is very favourable for Imperial. Even if we assume 1992 levels of sales will be the same as 1991 levels it will benefit Imperial and cost BATCo approximately US\$2 million in royalty reduction in the years 1991/1992. Further contribution to the establishment of the brand is not justified.
6. The draft agreement does not include any obligation on Imperial to invest any proportion of its sales in advertising, promotion etc. There is not reciprocity in financial terms regarding investment in the market.
7. The draft agreement has never been signed and is therefore not in force. Until it is signed the old agreement remains in force and the 5% royalty applies. Unless a new agreement is put into place shortly we shall be requiring payment of the 3% unpaid royalty for 1991 under the old agreement.

500028240