

# Speaking for the Licensee

*Graduate student's discussion  
of how a small corporation  
benefitted from licensing*

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*EDITOR'S NOTE: Last year, the Research Committee of LES U.S.A. Inc. instituted a program of supporting graduate students in U.S. and Canadian universities to do research and write papers analyzing the economic benefits resulting from a license from the licensee's viewpoint.*

*The first research project has been completed by John A. Churan, a graduate student at Capital University in Columbus, Ohio, where he is a candidate for a master's degree in business administration at the Capital Graduate School of Administration. We are pleased to publish Mr. Churan's paper.*

*Bill Riley of Battelle Memorial Institute was the coordinating LES member. We hope to publish additional papers of a similar nature in the future. Also, should LES Member Societies in other countries wish to try a similar program they are invited to contact the President of LES U.S.A. for details of the U.S. program.*

In the past, many articles have been written on the subject of licensing. Some spoke of licensing in a positive vein, but more times than not the reader got the impression that licensing favored only the licensor. Generally, the licensor is a big corporation making equally big profits from the licensing agreement.

It wasn't too many years ago that a company by the name of Xerox patented an ingenious and money-saving process, photocopying. In those years, Xerox has grown to the point where it is a household name. In fact, when most people refer to photocopying, they simply call it Xeroxing.

A fact that is probably not too well known outside the industry is that Xerox licenses some of its patents to selected firms. Some competitors felt that Xerox was being too selective in its group of licensees and, as a result, filed a complaint through the Federal Trade Commission in January 1973. In its complaint of January 1973, the FTC charged that Xerox dominated the office copier industry through unfair marketing and patent practices and foreclosed its foreign affiliates from competing in the United States.<sup>1</sup>

## Under Fire

Another large firm, Borden, Incorporated, and its

product ReaLemon, have also been under fire by the FTC concerning the licensing of the reconstituted lemon process. In an effort to break up a monopoly of the reconstituted lemon juice market, the Federal Trade Commission's chief administrative judge recommended that Borden, Incorporated, be required to license other companies to make and sell Borden's ReaLemon under the ReaLemon name.<sup>2</sup>

Because of this type of publicity, there are many misconceptions concerning the licensing function. Most articles written explaining licensing use the General Motors and the American Telephone and Telegraph examples of the corporations involved. The general public and small businesses have come to believe that licensing is for the big and the big only. Additionally, it is felt that the profits are only enjoyed by the licensor. The licensing function is very misunderstood, and few writers take the time to explain exactly how licensing occurs and operates. It is very unusual to even find the licensing function defined.

In his often-used text book, *Marketing Management*, Philip Kotler explains the licensing function pointing out advantages to both sides:

"The licensor enters an agreement with a licensee \_\_\_\_\_, offering him the right to use a manufacturing process, trademark, patent, trade secret, or some other thing of value, for a fee or royalty. The licensor gains entry into the market at little risk; the licensee gains production expertise or a well-known product or name, without having to start from scratch."<sup>3</sup>

In many cases, the licensor has a product or process which it believes will be successful, but for some reason, possibly lack of money or market expertise, does not wish to market the product itself. As a result, the licensor seeks another firm to market its idea.

Then, of course, there is the firm with the money or expertise to market a good product, but unable to develop it economically. It must then seek a firm which has the product or can develop the product for its use. This is the situation which The Wahl Refractory Products Company of Fremont, Ohio found itself confronted with in the mid-1950's.

## Small Firm

This paper will deal with Wahl and its struggle to survive in a field dominated by a few firms. Wahl, a U.S. firm with but a handful of employees, used the licensing function to its advantage. It did this as the licensee and not as a licensor. Although this is but one instance, it stresses the concept that the small firm can use licensing to return a very good profit.

Founded in 1919 by O. C. Wahl, Wahl Refractory Products Company had only one product at the time, a quality mortar for laying and setting firebrick. Wahl grew slowly but continued to add quality refractory products. During World War II, like many small firms, Wahl found great success and sold everything it could produce. Unfortunately, this almost proved to be the undoing of the firm.

During the war years, the company did little to improve its product, since sales were at all-time highs. Because of this, the family-owned company rested on its laurels. Innovation and experimentation were left behind. For nearly a decade, Wahl invested little to improve its products. As a result, sales began to drop and the record profits of the early 1940's began to decline. By the early 1950's, the company was barely staying out of the red. In 1953, its total sales amounted to approximately 2 million pounds, far below the levels of World War II. In 1953, however, Dan Lease, a young and imaginative lawyer, took over the leadership of the firm.

Lease was new to the industry; in fact, this was his first industrial position. Although he had majored in law at The Ohio State University, Lease had a keen business sense. His first action as president of Wahl was to personally contact the majority of Wahl's customers. This helped him get a clear-cut idea why Wahl's sales had fallen far below the levels of the past.

### Inferior Product

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Lease gained an insight into the problems that were facing Wahl. The situation was one that faces many companies, but one that is often difficult to correct. The customers were more than pleased with the service they had received. Wahl's salesmen were honest and did not use hard-sell tactics. What they promised, they delivered on time. Wahl's products were very reliable and did exactly what they were supposed to do. The problem was one of inferior products. Customers were buying fewer Wahl products because Wahl's products were not up to par with others. Other companies, some with their own research and development, had improved their products. They were far superior to those of Wahl. Lease realized that unless something was done to improve Wahl's products, the market would slowly dwindle to the point of nonexistence.

Wahl Refractory Products had always been a small firm with little excess cash on hand, but by 1954, its profits were practically nil, and excess cash was difficult to come by. Lease's dilemma was how to gain hundreds of thousands of dollars of research and development with only a few thousand dollars the budget could spare.

Solving this dilemma would be quite a task for someone with a good deal of experience in the refractory industry. For a novice such as Lease, the problem was much greater, but he was luckier than many. He stumbled upon a wealth of information. While discussing his plight with a neighbor, an executive with Alcoa, Lease got the name of an expert in the field, D. L. Seaver of Pittsburgh. Lease contacted Seaver, who in turn gave him a list of research firms conducting research and development in the area

of Lease's interest. Through this contact, Lease became aware of Battelle Development Corporation of Columbus, Ohio.

In 1955, Lease contacted Battelle and related his present and future needs to them. Lease knew that Wahl either had to add new products or improve its existing products. It was his intention to add new products, even if they were not new to the industry. Money was a major concern, and to risk thousands of dollars for research into an entirely new product would be too risky. After discussing a few ideas with Battelle and satisfying himself that they had satisfactory knowledge of the industry, Lease decided to start a transfer of information agreement with Battelle.

Although vast sums of money were not involved, this was a rather daring move for Lease. Wahl was a very close, conservative company, and the agreement Lease was considering was no guarantee that there would be any improvement in the Wahl profit picture. The initial investment of \$500 per month was certainly not a huge amount, but to a struggling firm every dollar is important. In the past, this type of investment had almost always been reserved for the larger firm. The small businessman rarely had the money or courage to invest money in research and development.

Lease was initially interested in an improved mortar for firebrick. This was just the beginning of improvements which he sought and received from Battelle. Wahl was soon on its feet and doing well. No longer in danger of going into the red, Wahl began to expand both its plant capabilities and sales regions. Lease continued his technology transfer agreement with Battelle throughout the 1960's, but it wasn't until 1969 that a license agreement became part of the exchange.

For some years, Battelle had been experimenting with means to strengthen concrete. What proved to be most successful was adding steel fibers to the concrete. The strength and durability of the concrete was increased four-fold when the proper mix of steel fibers was added to the concrete. Lease became familiar with the project and realized that there were a number of uses for such a substance in the refractory industry.

### License Agreement

Lease discussed his idea with those concerned at Battelle, and a license agreement was drawn up. Battelle immediately began work on the project and found that the concrete and refractory castables reacted in the same manner when the steel fibers were added.

The steel fibers in the castable act as a buffer against cracking. Should a small crack develop in the castable, the steel in the finished product absorbs the burden of the crack and keeps it small. It is of supreme importance that the steel fibers be mixed evenly throughout the castable. The steel fibrous concrete and/or castable is patented by Battelle Development Corporation and trademarked Wirand.<sup>®</sup>

During the testing of this product, Wirand,<sup>®</sup> and shortly thereafter, other refractory companies began to consider the possibilities for the product. Lease realized that he had a good product, but with larger

companies entering the same market, Wahl had to make its product more desirable. All the other firms in the market supplying the substance left the entire mixing process up to the customer. It was Lease's belief that the process was too difficult for the customer to perform and still obtain satisfactory results. The steel has to be mixed evenly throughout the castable, and the process is a difficult one.

Lease then designed a process to pre-mix the two components. This new product, "Wire-N-Cast", is shipped to customers totally pre-mixed, which not only saves the firm time but also helps to achieve more consistent results. All the user has to do is add water.

Wirand<sup>®</sup> is indeed a breakthrough in the field of refractories, as it can save thousands of dollars. The initial cost is approximately twice that of conventional high-temperature mixes, but its additional life is many times that of previous mixes. Wirand<sup>®</sup> has been the topic of two articles, one in *Brick & Clay Record* and the other in *Modern Metals*, both appearing circa 1974.

Wahl Refractory Products has been doing well since this initial contact with Battelle, but in the late 1960's, sales began to level off at approximately 4,000 to 5,000 tons. However, with the addition of Wire-N-Cast (Wirand<sup>®</sup>) to their product line, sales again began to increase rather rapidly, as shown in the following table.

| Year        | Tonnage |
|-------------|---------|
| 1971        | 5,098   |
| 1972        | 5,872   |
| 1973        | 8,392   |
| 1974        | 9,417   |
| 1975        | 7,009   |
| 1976        | 8,947   |
| 1977 (Est.) | 9,000   |

In 1976, sales totaled over \$3 million, with Wire-N-Cast (Wirand<sup>®</sup>) commanding over 25 percent of sales and increasing. Both Wirand<sup>®</sup> and the other technology acquired from Battelle have become instrumental in the prospering of The Wahl Refractory Products Company. Mr. Lease estimates that less than 5 percent of today's sales are from products that were available in 1955. The sales staff has grown from one to five manufacturers' representatives. Although sales are mainly centered in the midwest, Lease has given serious thought to expansion. An integral part of this expansion would be an offshoot of the license with Battelle. "Fiber Fast Crete", similar to the projects that Battelle had studied in the past, would be a road

repair substance. Expansion into this phase of the market could possibly increase the size of Wahl many times.

It is difficult to speculate about where Wahl Refractory Products would be today without the company's contact with Battelle. It would have to be assumed, however, that Wahl would be a very different company than it is today. Wahl might have been able to remain profitable without the added technology, but this supposition is doubtful.

During my interview with Dan Lease, I asked him exactly why he continued his license with Battelle after the Wirand<sup>®</sup> process became stable, particularly since Wahl could have bought the steel through licensed dealers and could have foregone its Battelle contract. His answer is a sound one: that Wahl can still gain any new knowledge that Battelle discovers pertaining to Wirand<sup>®</sup>. Lease pointed out that the changing technology of the industry is difficult to keep up with, especially for the small firm with limited funds. The ability to join a larger firm with a high level of expertise to battle the changing technology is an enormous opportunity.

This is not to say that just any small firm can reach a licensing agreement and expect to double sales, as Wahl did. The license can only give the small company help in competing with larger firms. It still takes a great deal of hard work to gain the success that Wahl has made. Wahl personnel put a lot into the business and that, coupled with the added technology, increased its profits. One would not have succeeded without the other.

Without the personal selling that Lease added when Wire-N-Cast (Wirand<sup>®</sup>) was made available, or without the process to package the product, Wahl may not have had the success that it has found. The licensor can only add technology to the assets of the small firm. Most of the responsibility rests on the licensee. He first must seek out the licensor with expertise in his field. After the technology transfer is complete, it is still the firm's responsibility to sell the product and keep the customer satisfied.

#### NOTES

<sup>1</sup>"FTC's Proposed Settlement with Xerox Chiefly Seeks Freer Licensing of Patents", *Wall Street Journal*, p. 10 (October 10, 1974).

<sup>2</sup>"FTC Urges Borden Product Be Sold by Others", *Wall Street Journal*, p. 5 (September 3, 1976).

<sup>3</sup>*Marketing Management*, Philip Kotler, Prentice-Hall, Englewood Cliffs, New Jersey, p. 857 (1972).