

You Think It's All Plain Sailing?

A formula for success in licensing, with a major ingredient being humor

BY J.H. WEBB*

Interlicon has conducted, on behalf of Unifoam A.G., what can perhaps be described as a particularly successful licensing campaign. It has resulted in the establishment of over 100 licensees around the world from Western Europe and the U.S.A., through the Eastern Bloc, the Middle East and Far East and to such far-flung outposts as South Wales, and to other such delightful places to stay away from, if you are on a limited expense account, like Japan and even way down to the Antipodes.

Whatever may have happened to the British Empire over the last decade, it can truly be said that the sun never sets on the sources of Unifoam income.

182 In some countries, including the United Kingdom, most of Western Europe, the United States of America and Japan, more than 50% of the foam manufacturing industry are licensees of Unifoam.

So, what is foam, we may ask?

In our case, it is flexible polyurethane foam plastic, which is used extensively in all forms of upholstery, from car seats and panels, all types of furniture, carpet cushion, padded photograph albums, bath sponges, bath mats, quilted bedspreads, down to such things as blotting pads, X-ray wedges and a host of other items. With one or two exceptions, about which we shall say nothing, if it squashes, it is likely to be polyurethane foam.

New Plants

For the last 18 months and still continuing throughout this year, factories are being set up around the world at the rate of better than one every 14 days, using British, Norwegian and American equipment.

Unifoam's technical team roam round the world like gypsies.

To what do we attribute this success?

Well I would like to say that it is entirely due to the brilliance, foresight and planning of a most accomplished team of commercially minded Licensing Executives, backed by superb advisors, in the form of members of this organization like, Mr. Jim Barrett, a former LES President, who handles all our patent matters and Robin Skelton, who handles the legal side.

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Whereas, this may well be true in the case of the last two named gentlemen, reality is otherwise, unfortunately, far removed from the theory of the matter.

Unifoam really started off when operating, on behalf of a Dutch Company, as consultant in their licensing matters, I stumbled across a competitive system owned by a magnificent and extremely tough Greek

From LES U.K. International Conference

who lived, not surprisingly, in Athens. In my naivety, I felt there would be no problem in dealing with this intrusive foreigner and getting him to see my point of view. I felt sure that in one way or another, he would fall to the potency of the arguments that we had prepared and relinquish all rights to his process. This, of course, was our first mistake.

The Greek turned out to be very tough, competent and to have as his advisor, in matters patent, the said Jim Barrett.

After a pleasant preliminary meeting, I returned rapidly to Athens with all the forces I could muster and to cut a long and somewhat painful story short, we were slaughtered in the ensuing battle and ended up with a joint holding in a new company, which was, henceforward, known as Unifoam.

Well, whatever else we may be, we are fairly quick to learn and, having taken a bit of a bashing, we felt that the best thing we could do would be to acquire most of the team which had seen us off. We have worked happily and effectively with them everafter.

Advances Technology

The process concerned is, I think, interesting in that it could be used by most manufacturers of urethane foam, which is an industry of large volume turnover and has plenty of money flowing from which to extract a share, in return for the savings made.

Basically, the process advances the technology, particularly in the direction of making a more efficient foam block and saving something in excess of 10% of their raw material cost. Fortunately, also, the improvements in technology are eminently patentable.

I think there are two criteria for a successful licensing operation, i.e. one that produces good income for the Licensor and these are, a *large turnover* in the particular industry and an *efficient process* and, fortunately, we had both of these.

We appointed four machinery manufacturers around the world, two of whom are either British or British-controlled.

Now here, of course, the fun starts. It is essential, in matters of this sort to have most of the machinery in a

common or nearly common pattern, which, preferably, works when switched on. Foam machinery is, by nature, very large and complicated — usually, for instance, over 70 meters in length and it produces foam blocks 2 meters wide and 1 meter high at a rate of 5 meters per minute. Of course, it can also produce rubbish at roughly the same rate.

Getting machinery right is not all that easy, as anyone who has purchased a new car can testify, but unfortunately, even when the machine is right don't whatever you do, think you have cracked it and settle down for a good game of golf. You have many other things to contend with, depending where you are. For instance, there is, first and foremost and, sometimes funniest, the customer or more correctly, the licensee. We found that he may or may not have a factory ready to receive your excellent machinery when it arrives and we have still two incidents of people with machinery still in boxes, when it was originally delivered on schedule, some 18 months ago.

Now, in the foam industry, 18 months is a long time and things move on apace and in that time a great number of modifications may well have been made to the machinery.

Rough Time Ahead

It always starts the day off well when your technicians arrive, perhaps having only joined you 12 months ago and are landed with a fine piece of equipment, which is nicely obsolete, which he has never seen before and which he hopes he will never see again. It is always difficult to explain to the licensee, who possibly does not speak any of the 10 languages in which you are fluent, why your technicians have arrived and immediately started to carve lumps off his treasured equipment. You then ask your technician to place the first piece of steel one foot from the wall and he replies, "Massa, what's a foot?" Then you know you are in for a rough time.

We sent one of our ex-technicians out on his first trip, on what we thought would be a nice easy assignment. He was fully trained but, unfortunately, we had omitted to train him for a factory which had no facilities for the storage of raw materials or for removing the finished product. The machine ended in a sea of mud, one foot deep and, I must say, his report was quite hilarious, or it would have been if I hadn't been the one who had to sort it all out, and I quote as follows:

"The box trial was based on a rise time of 120 seconds, polyol temperature 22 degrees, TDI 21 degrees, density approximately 21 kilograms/m³. After the box trial was completed, we were told by the President that he wanted to bless the machine for the first trial and would appreciate it if we could make the run either Friday, between the hours of 7 and 9:30 a.m. or Saturday, between 7:30 and 9 a.m. as the stars would then be in the best position. We were told that, after the coconut ceremony had taken place we could start the machine. The coconut ceremony consisted of 30 minutes of prayer with approximately 40 relatives present. An arrangement of coconuts, fruit, vegetables and lighted candles was made on the primary

conveyor and after the ceremony was over it was found that, on rechecking the tin catalyst, it had gone off, so we had to start all over again".

In one place, in Italy, the technician was busy trying to install the machine and the patriarch of the company arrived and kept standing over him. He explained he had little to do with the running of the factory, but just liked to be around. Well, after tripping over him for a couple of days, our technician — shall we call him Smith, because that was, in fact, his name — decided he had had enough and explained to this old gentlemen that he was standing directly in the path of a very dangerous ray from a microwave oven, which could, in fact, render him impotent, if he stood in its path. Perhaps, because he had just reached the tender age of 81, this did not alarm him too much. In any case, he was still hanging about the next day, so Mr. Smith collected from all the window sills throughout the factory, a large number of dead flies and proceeded to strew these where the very smart old gentleman used to stand. He pointed them out to him the next morning as evidence of the effectiveness of the ray and the old gentleman was never seen around the factory again.

Well incidents like this apart, in my view, *excellent technical service*, both to set up the plant and to keep the licensee updated with techniques and assistance in time of trouble, is a very necessary part of a successful licensing campaign. So successful licensing programs involve expenditure on "After-Sales Service" both in keeping abreast of new techniques and making sure that the licensees can use them and also to keep an eye on the competitors so that potential trouble is sniffed out early. By this means, one can hopefully avoid expensive litigation. You cannot sign up a licensee and just collect royalties from then on for the rest of the period of the agreement. Keeping up human relationships between licensor and licensee by regular visits is absolutely vital. Exchange of ideas on improvement of the technology are important.

Good Advice

Now of course, the basis of most intellectual property is the patents and here we were fortunate in having a fairly simple series of patents to cover the vital parts of the process and for one of the earlier processes the patent carried on, virtually without challenge, throughout the whole period of its natural life. Even if you have a good patentable process, you can still go wrong if you do not get good patent advice in the first place.

I suppose one of the difficulties is, especially for people starting off as a small inventor from scratch as it were, is that he needs a good patent agent when he can afford it least. I think my advice to him would be to take his invention to a company or perhaps, more hopefully, from our point of view, a licensing consultant and arrange to exploit it jointly. Give away future royalty for the undoubted benefit of getting a correct start. It must be borne in mind that once a development has been made and patented, the first five years of the patent life are those when the big sell takes place. It is also the time when competitors wake up and produce alternative technology, so time wasted at the

beginning of a licensing campaign is extremely expensive and is nonrecoverable.

In these days of high taxation, it is also necessary, at the outset, to find the right tax background and, in this case, as Unifoam was a joint venture between nationals of different countries, we were able to choose, after very careful examination, the country and indeed the Canton where profit could be maximized, in terms of tax.

I would like to be able to say that we got our licenses in the best possible form early on, but unfortunately, that would be entirely the opposite of what happened and, of course, we suffered as a result. I suppose, if the licensee thinks in a Western way and is extremely honorable and continues to get a benefit from the process that you have licensed to him it really does not matter what agreements you have with him, but then that is not the sort of person that you are really writing agreements for. You are writing them for the one who might be difficult and certainly here, the really good agreement probably prevents a lot of misunderstanding and reduces the possibility of the licensee trying to wriggle too far or too hard. Whereas I abhor the idea of litigation unless absolutely necessary, it would form the basis for such a process, if needed. So, the fourth tenet of a successful licensing experience depends on a *good agreement*, as a hedge against difficult times and difficult customers.

Of course, it takes a long time before you realize that different parts of the world require different treatment. In Latin American countries there are usually severe restrictions on the amount of royalties that can be extracted and on the length of the agreement. In the U.S.A. and EEC you have to watch antitrust like the plague. Some countries do not like continuing royalties and insist on lump-sum payment. This, of course, applies to parts of the Eastern Bloc. In certain countries, the export of money is the difficult matter, viz., parts of Africa.

Middle East

The Middle East works to a different set of rules again and for a Westerner licensing there it is a bit like playing football to rules inspired by the Marquess of Queensbury. Mind you, if you have seen one or two football matches that I have seen recently, perhaps those rules would be more applicable.

I think that success comes in the Middle East when you realize two things. The first is, that by and large, ladies do not figure in the industrial scene and this is a serious disadvantage, from a number of points of view.

The most important of this context is that there are not many secretaries about, so people don't write letters and thus, you should not be too upset if you do not receive answers to those that you might send. You also need infinite patience and a great deal of time.

Approach the Middle East with your sense of humor at the ready, because you may well find that you make elaborate appointments and arrive in say, Saudi Arabia, to find that your potential licensee has just left for a months stay in London. The best hotel in another place sported a roof, which has a most ingenious drainage arrangement, so that, on the infrequent occasions when it rained, the roof water was vented

through several strategically placed holes in my bathroom, which were designed to just miss the bath. Needless to say, it rained on the occasion I stayed there.

The central cooling system made no appreciable difference to the temperature, but plenty of noise. Getting hotels any way is often a most difficult and expensive process. Having occasionally found a room at £200 per night, we have searched the neighborhood for some other traveler to share both the room and the expense, in order to make the expense account slightly more believable.

Perhaps some of the difference in the mental processes can be best illustrated by recounting an incident which happened in Sharjah when an itinerant and somewhat inefficient crane erector dropped a large two-ton section on top of our car. Now, whereas you and I may well have decided that this was a job to be handled by the insurance company, not so our good Lebanese friend. He leaped onto, what appeared to me to be a tangled mass of scrap iron perched on the back of a lorry and what, in reality was presumably a series of crane parts. He took the precaution of taking with him a large stick and proceeded to beat the two available Arabs whom he had decided were responsible. Another two ran off behind a building and were hotly pursued when a loud thwacking noise seemed to put everything right. The Manager, rather foolishly, emerged to apologize and to say that he would like to recompense our friend for the accident. He was sufficiently ill advised to say he was sorry, to which our friend countered with, "Don't say sorry to me!! Where is the Bank for sorries?"

If I had not known it already, I would have come to the conclusion that, what makes life in the Middle East interesting is that peoples' thought processes follow an entirely different path from our own and, of course, it is always important, in licensing, to remain *flexible*, and go a long way to meet your fellow negotiator.

Favored-Nation Clauses

However, despite our flexibility, we do have Favored-Nations Clauses in all our contracts. Consequently, the main items in the agreements, such as the amount of money we extract in each territory and, in fact, in these days of sophisticated legislation, across territories is always kept on a similar basis.

The fact that the laws of the major western nations impose conditions of antitrust led us to believe that, commercially, one should not try to offer exclusivity, unless exclusivity is demanded for good economic reasons.

In the case of Unifoam, we have no exclusive licenses and, due to the fact that we get what we consider as a sufficient return on our process license, we have been able to build up and extract from our machinery licensees, cooperation in selling etc., due to the fact that we do not charge them royalty.

As I said previously, an agreement which is good for one country, is totally unsuitable for another. We always remained totally flexible and ready to respond to any proposition, provided that, in the end, we got most of the money, to which we felt entitled. Another important factor in this particular enterprise, was that

we managed to link up with four very good machinery manufacturers who had representatives around the world and joint companies here and there. We thus had tremendous and inexpensive coverage.

Raw material manufacturers, with whom we formed associations, also helped and we had a large team of people available to us who were to follow up inquiries with the minimum of expense, so that we only had to leave our cherished desks when there was a real smell of success in the air.

With the number of licensees involved of course, this means that one is virtually permanently away, but anyway the theory is good. So gradually and painfully we became experts on licensing. Anyway, we got to our present state of knowledge, I suppose, by making every mistake in the book but making it only once. (Well perhaps occasionally we made them twice).

Can I turn, for a moment, to the legal and financial side. Here again we were fortunate enough in having experts with enormous connections around the world. We have often found that, for instance, in Latin-American we have quite often visited the customer, got him virtually to sign the agreement and then had

to leave a local solicitor to finish the job for us.

Money collection is, of course, fun. I could certainly write a book on 4,000 ways of how not to pay. From people whose dogs have eaten their check books to accounts departments that have burned down or the wife running away with the cash books, but now, with persistence, we run a fairly efficient money collection system. Only in extremes do we visit the licensee and cry all over the cashier's desk.

We prefer humor to threats, compromise to confrontation, and honey to vinegar.

To sum up, therefore, our licensing campaign, which appears to have been successful, is based on having a large *Monetary turnover* in the industry involved in which we can share in the savings which our process achieves. Good patents and good patent agents, good lawyers and good agreements, flexibility and geniality of approach and determination always, to be commercial and to avoid being legalistic. Good technicians, who visit licensees regularly, good luck, and the ability to survive in the stormy seas of licensing, and with these it could be possible that life will be "All Plain Sailing."