

Music Business/Law Tips - "Merchandising"

Signed artists, as well as unsigned artists that tour and have a strong following, can make a considerable amount of money by selling merchandise such as T-shirts, jackets, buttons, bumper stickers, posters, etc.

When an artist is preparing to tour, the artist will enter into a merchandising agreement with a merchandiser. The artist licenses to the merchandiser the right to use the artist's name, likeness or logo for the manufacture and sale of merchandise. In exchange for the license, the merchandiser pays the artist a royalty on the goods sold. Artists and their representatives beware because many record companies try to obtain the exclusive merchandising rights to the artist when the artist signs a recording contract.

The merchandising agreement consists of a few basic deal points:

Royalty. The royalty will either be a percentage of the gross sales of the item sold (usually from 25%-50%), or it will be in the form of a flat fee per unit sold.

Advances. Although the amount of the advance depends upon the stature of the artist, it can range anywhere from \$0 to over \$1,000,000. As with record royalties, merchandising advances are recoupable from royalties.

Term. This period is usually one or more years, or until the advance is recouped. The artist should make sure it has the right to repay the advance so that the deal does not drag on if sales are slow. The merchandiser will want to have a sell-off period (generally six months) after the deal ends in order to finish selling the goods that were manufactured. However, there should be no right to manufacture any further items.

Territory. The territory can be worldwide or rights can be licensed on a region by region basis.

Creative Control. The artist should insist that it has approval over any artwork which will be marketed so that shoddy or negative merchandise does not enter the marketplace.

The sale of merchandise can be very lucrative depending upon the type of artist because some forms of music lend themselves better to the sale of merchandise. Yet, since most popular artists will enter into some type of merchandising agreement, knowledge of the parameters of the contract will help ensure a fair deal.

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