



Factors Courts Consider in Determining Validity of Trademark Holding Companies

 Found to be valid trademark holding company

 Found to be invalid or subject to tax

| FACTORS | Express | Sherwin Williams (MA) | Sherwin Williams (NY) | Toys "R" Us/ NYTEX (NY) | Burnham | Crown | SYL | Syms | Zebra Technologies |
|--------------------------|------------------|---|---|---|-----------------------|--|---|--|---|
| SCOPE OF TRANSFER | Most transferred | Most but not all of the marks transferred | All domestic trademarks, trade names, & service marks transferred to SWIMC and DIMC | Geoffrey, Inc. formed to hold TMs, trade names – in particular, TOYS "R" US and KIDS "R" US marks | All marks transferred | All marks transferred | All marks transferred | All of them were transferred | All IP transferred |
| NATURE OF LICENSE | Non-exclusive | Non-exclusive basis | Non-exclusive | Non-exclusive | Exclusive | Apparently exclusive; no attempt to license marks to third parties | Apparently exclusive; no attempt to license marks to third parties | Exclusive | Not clear— license back at least to parent and affiliated companies |
| ROYALTY PAYMENT SCHEDULE | | Quarterly | Quarterly | Not specifically quoted, but assume annually based on figures quoted | | Royalty payments immediately loaned back to parent, usually on same day royalty payment made. Loans without formal loan agreement. | Not clear (but no invoices pursuant to royalty agreement after initial time period) | Annually and then returned back to the parent as dividends | Not addressed |

Factors Courts Consider in Determining Validity of Trademark Holding Companies

| FACTORS | Express | Sherwin Williams (MA) | Sherwin Williams (NY) | Toys "R" Us/ NYTEX (NY) | Burnham | Crown | SYL | Syms | Zebra Technologies |
|---------------------------------|--|---|--|---|---|-----------------------------|--|---------------------------|--|
| WHO WERE THE LICENSEES | | SW as well as unrelated third parties | Sherwin Williams' divisions & third parties | Members of Toys "R" Us group as well as unrelated corporations | | License back to parent only | License back to parent only | Syms only | Parent from two wholly owned licensees |
| TERM | 5 years or 10 years (depending on particular company involved) | Most 10 years | 10 years | 20 years w/ 5-year renewal provision | Indefinite (subject to termination by either party) | Unstated | Unstated | Unstated | Not addressed |
| ROYALTY AMOUNT | Varied by company. 5.5% of gross sales for certain companies. | Percentage of sales bearing the marks (1.5% to 4% based on independent appraiser) | SW Divisions: Stores–2.5%; Consumer–2.5%; Automotive–4.5%; Chemical coatings–1.0%; Specialty products–4.0%. Third party rate not quoted. | Initially, 1% of net sales; after tax years, increased to 3% for TOYS "R" US marks and 2% for KIDS "R" US marks | 3% of net sales of all products sold | Not stated | 4%. Some years, no royalty payment was ever recorded. | 4% Syms' annual net sales | 9.5% of gross sales |
| VALUATION PROCEDURE FOR ROYALTY | Independent third party | Independent third party valuation | Independent third party valuation—American Appraisal Associates | Internal review of rates charged by other unrelated corporations. Subsequent royalty rates were reviewed by a national accounting/ consulting firm. | Valuation by Arthur Anderson | Not stated | Third party that evaluated the royalty had a stake in the tax savings obtained | Syms created | Not addressed |

Factors Courts Consider in Determining Validity of Trademark Holding Companies

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|--|---|--|--|---|--|--|---|---|---------------------------|
| VALUATION OF PORTFOLIO | Independent third party | Independent third party valuation | Independent third party valuation— American Appraisal Associates | Not quoted | Valuation by Arthur Anderson | Not stated | Not stated | Syms created | Not addressed |
| WHO APPROVED THE TRANSACTION | Board of Directors | Board of Directors | Board of Directors | Board of Directors | Board of IP Company | Not stated | Board | Board | Not addressed |
| BOARD MEMBER COMPRISING THE NEW SUB(S) | Members previously unrelated to operating companies | Controller of SW; VP & Treasurer of SW; independent business consultant who was elected President and Treasurer; outside counsel, elected corporate secretary, of the subs | John L. Ault, Chairman; Dr. Donald Puglisi, President/ Treasurer; Gordon Stewart, Secretary; Michael Semes, Asst. Secretary; Conway G. Ivy, Director | Until 11/85: Lario M. Marini, President; David P. Fontello, Vice-President/ Treasurer; Emmett R. Harmon, Asst. Secretary. After 11/85: Howard H. Simon, President; William H. Master, Vice-President/ Treasurer; Michael Goldstein, Secretary (all were Directors of Geoffrey). | Several officers and employees of Burnham served as officers/ directors of IP holding company. Board meetings lasted less than ½ hour. | Third party tax consultant was hired by parent to implement IP holding company; its President and employees were officers and directors of IP holding company. | 3 directors from parent corp. and 1 from company providing office space | Sy Syms, Marcy Syms, consultant who proposed the transaction, CPA | Not addressed |

Factors Courts Consider in Determining Validity of Trademark Holding Companies

| FACTORS | Express | Sherwin Williams (MA) | Sherwin Williams (NY) | Toys "R" Us/ NYTEX (NY) | Burnham | Crown | SYL | Syms | Zebra Technologies |
|--|--|---|---|--|---|--|--|---|---|
| SALARIES PAID TO WHOM/HOW MUCH WAS PAID ON AN ANNUAL BASIS | | President—\$18,000; corporate secretary—\$500; no other employees | Puglisi—\$18,000; Stewart & Semes—\$500; no other salaries noted | No full-time employees; one part-time employee; no salaries quoted | Employee of outside management company paid \$1,200; no other employees | 9 part-time employees paid minimum wages, totaling \$843.66/mo. at peak; \$100/mo. for space (office served merely as mail drop) | \$1,200 for employee; \$1,200 for space (office served merely as a mail drop) | CPA—\$1,200, no other employees | \$600 per month paid by each of two IP subs to 1 employee |
| INCOME INVESTMENT POLICY | | Independent ability to make own decisions | Decisions made by Puglisi; excess cash invested in money market accounts | Not quoted | | Not clear | Required to let a related entity make investment decisions | Returned to the parent in the form of dividends | Returned to parent, less expenses, in the form of dividends |
| LEGAL SERVICES | Outside counsel acted for TM holding companies, overseeing worldwide registration and enforcement activities. Unclear whether TM holding companies or operating companies paid for legal fees. | Retained by and paid by the sub; used SW for admin support but paid market rate | Provided by Gordon Stewart (fees paid to Duane, Morris & Hecksher); in 1991, Spiro Bereveskos provided legal services to SWIMC; all fees paid by subs | Initially provided by McAuly, Fields, Fisher, Goldstein & Nissen; sub paid for services. Subsequently provided by Toys-NJ; Geoffrey paid annual fee of \$50,000. | Paid for by TM holding company | Provided by parent | Provided by parent; holding company appeared to make sporadic use of legal counsel | Paid for by Syms; controlled by Syms | Reported to and paid for by parent |
| MARKETING RESPONSIBILITY | | | | | Burnham Corp. (not TM holding company) | Not discussed | Not discussed | Not discussed | N/A |

Factors Courts Consider in Determining Validity of Trademark Holding Companies

| FACTORS | Express | Sherwin Williams (MA) | Sherwin Williams (NY) | Toys "R" Us/ NYTEX (NY) | Burnham | Crown | SYL | Syms | Zebra Technologies |
|--------------------------------|---|------------------------------|------------------------------|--------------------------------|---|--------------|------------|-------------|--|
| QUALITY CONTROL RESPONSIBILITY | Outside counsel for TM holding companies put quality control procedures in place, oversaw reporting by stores, etc. | | | | Conducted, if at all, but individual employed by both Burnham Corp. and holding company | Not clear | Not clear | Not clear | Department heads of parent with signoff by subsidiaries' employee (with no experience) |