

Prepared by Vice President for Administration
This replaces Executive Policy No. E8.205 dated January, 1983.

UNIVERSITY OF HAWAII

EXECUTIVE POLICY - ADMINISTRATION

June 2006

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E8.205 -- Indicia and Licensing Policy

I. INTRODUCTION

Under Section 304-2, Hawaii Revised Statutes, 2004, as amended, the University of Hawaii by its Board of Regents has the power to enter into contracts on terms it deems appropriate and to manage its property. The President has been delegated the authority to approve, sign and execute contracts, as provided by Board of Regents Policy, Section 8-1a. The following objectives, policies and guidelines provide for the systematic control and use of the University-owned indicia, to enable the University to benefit from revenues generated through the use of the indicia such as logos, seals, symbols, marks, verbiage and other trademarks identified with the University of Hawaii.

This policy establishes the University's collegiate licensing program in accordance with Section 1-6 of the Board of Regents Policies.

II. OBJECTIVES

The objective of this executive policy is to establish Systemwide controls for University-owned indicia, and to permit manufacturers and related commercial entities the use of such indicia on or in products by:

- A. Protecting the University's ownership of its indicia.
- B. Protecting the University's name and image through the review of all products and promotions incorporating the University's indicia.
- C. Ensuring that the University is reasonably compensated through royalties when its indicia are used.

- D. Promulgating clear and practicable procedures and forms for the issuance, monitoring and enforcement of licenses.
- E. Promoting the discretionary use of indicia in a responsible, equitable, and controlled manner that is in the public interest, and under conditions that will not jeopardize the University's tax-exempt status.
- F. Promoting indicia in a controlled manner through encouraging campuses, departments, and affiliated organizations to purchase emblematic merchandise for resale or promotional use through licensed vendors.

III. DELEGATION OF AUTHORITY

The Vice President for Administration is authorized to administer this policy throughout the University system.

IV. ADMINISTRATION OF LICENSING POLICY

- A. Licensing Administrator: An individual who: (1) coordinates and oversees the daily operation of the licensing program and (2) develops and implements administrative policies and objectives pertaining to the protection and proper use of the University indicia.
 - 1. The Licensing Administrator shall have the authority to:
 - a. propose practices and procedures to implement this policy;
 - b. register the indicia with the appropriate Federal and/or State agencies;
 - c. propose royalty rates and/or administrative fees to be charged to licensees;
 - d. initiate documentation to grant licenses or otherwise authorize third parties to use the indicia;

- e. work with the University's contracting officer to contract with agents to assist in the administration of this program on a local, national, and international level; and
 - f. review the use of the indicia on products, in promotions, and in other commercial uses that may arise from time to time.
- B. Licensing Committee: The Vice President for Administration may appoint a Licensing Committee to work with the Licensing Administrator to establish practices and procedures to implement this policy. The Vice President for Administration shall appoint a member of the Committee to serve as its chair. The Committee shall function in an advisory capacity to the Vice President for Administration.
- C. Definition, Indicia: As used in this policy, "indicia" includes without limitation, the following: the name, seal, logos, symbols, initials, designs, logographics, other abbreviations developed by or associated with the University, or any college, school, department, or activity, within the University System, and which may be applied to items manufactured for sale to the public.
- D. Categories, Indicia: Indicia fall into two basic categories as follows:
1. Those works in which the University owns the copyright, and qualify for the relatively simple registration process under the Federal Copyright Law, as amended (17 U.S.C. 101, et, seq.). These works generally include creative pictorial and graphic works, e.g. two-dimensional works of fine, graphic, and applied art, photographs, prints, maps, diagrams, etc.; and
 2. Those de minimis works in which creative authorship is slight such as names, titles, slogans, letterings, colorings, etc., which would not qualify for copyright. These Indicia are more properly subject to State of Hawaii Trademark Registration (Chapter 482, H.R.S., as amended) if the use is limited to intrastate; and concurrent State registration, as well as Federal

registration under the Federal Trademark Act of 1946, as amended (15 U.S.C. 1051-1127) if the use is in both intrastate and interstate commerce.

- E. License/Minimum Standards: Standard non-exclusive licenses shall be controlled, numbered, and issued to each licensee by the University's contracting officer or his/her designee. The minimum standards to be met by each licensee are as follows:
1. At the time of license execution, each licensee shall be required to pay the University the advance guaranteed annual royalty and administrative fees as specified under this policy;
 2. Each licensee shall be issued a non-exclusive license for one an initial term of not longer than (1) year subject to revocation for cause;
 3. Each licensee shall pay a reasonable annual royalty that adequately reflects the value added to the product on which the indicia are displayed. In developing the royalty rate, consideration may be given to the cost to the consumer, the impact on the licensees and retail community, and the rates in place at institutions of similar size and stature to the University;
 4. Each licensee shall observe established University rules and policies;
 5. Each licensee shall indemnify, defend, and hold harmless the University and the State of Hawai'i, and their officers, employees, agents, and representatives, and any person acting for or on their behalf, from and against any and all claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liabilities, losses, damages, costs, and expenses (including, without limitation, attorney's fees and litigation related costs), arising from any claimed injury to or death of persons, personal injury, or damage to or destruction of property, resulting from or related to any act or omission of the licensee, or any of the licensee's officers, employees, agents,

representatives, subcontractors, sublicensees, vendors, suppliers, customers, invitees, or any person acting for or on behalf of the licensee, including, without limitation, any claims or actions for libel, slander, defamation, invasion of privacy, unfair competition, misappropriation, trademark or copyright infringement, or other related or similar claim arising from any broadcasts, promotional announcements, advertisements, articles, programs or other materials disseminated, or activities undertaken by the licensee;

6. Each licensee shall provide evidence of appropriate and adequate insurance protection covering the licensee's indemnification obligations and any claims for product liability, property damage, personal injury, bodily injury, and death arising out of or in connection with the use of indicia, which policy must be renewed upon expiration for the life of the license and proof thereof submitted to the University; and
 7. The Vice President for Administration may waive any or all requirements of Section IV.E above, upon written request and after determining that it is in the best interest of the University, which shall be subject to the concurrence of the Office of Risk Management and the Office of the University General Counsel.
- F. General Licensing Guidelines¹: The Vice President for Administration may develop guidelines for licensing the use of the University indicia.
- G. Internal Processing and Controls.
1. The Licensing Administrator is designated as the control point, and the individual authorized to receive all inquiries and requests to use University indicia that may be made or submitted

¹Strict compliance with these Guidelines is essential to protect the University in the event of I.R.S. inquiry with regard to the generation of unrelated trade or business taxable income I.R.S. 512 (b) (2), and 513 (a) (2).

to any part of the University system, including all four year and community college campuses;

2. The Licensing Administrator shall review such proposals and work with the legal, risk management, procurement or other contracting designee, and external affairs/university relations offices, as needed, to negotiate, draft and issue a standard non-exclusive license agreement as defined in Section IV.E;
3. The Licensing Administrator shall work with the University's contracting officer or the contracting officer's designee to obtain the licensee's signature, finalize the issuance of the license agreement, collect the advance royalties and other applicable fees and provide contract administration services relating to the issued license agreement; and
4. All license royalty revenue realized shall be placed in an account established in the University of Hawaii commercial enterprises revolving fund (HRS §304-8.41) under the control of the Vice President for Administration or the Vice President's designee. Distributions from this account may be made in accordance with §304-8.41.