

Document and protect

How businesses can avoid making common errors in protecting company assets **Interviewed by Troy Symphon**

For small to mid-sized businesses, there are three problems that seem to occur over and over again: not documenting the ownership interest of the company; not properly documenting the protection of the company's trade secrets such as customer lists, business plans, and pricing information; and not properly documenting the ownership of the company's intellectual property, such as source codes, formulas, inventions and patents.

"In a small to mid-sized business, it's often important that things move quickly, so everyone is in a hurry to get things done, which means that some items get overlooked," says Brian Colao, a member of Dykema Gossett PLLC. "But, in order to get solid advice on these issues, a company does not need to spend a lot of time or money — it just has to understand these issues and why they're so important."

Ignoring these issues could be catastrophic, says Colao, so a business would be well advised to make sure they have all their bases covered.

Smart Business spoke with Colao, about these three issues, the mistakes companies often make with them, and how to avoid making those mistakes in the first place.

What are the consequences of these kinds of errors?

For one, if you don't properly document the ownership interest of the company, you could lose your ownership interest. Even if you're the majority owner and think you're protected, without proper documentation, your ownership stake is at risk. Also, I've seen situations where companies basically lost the right to protect their customer and pricing information, even though it had clearly been stolen, because they didn't properly document it. And finally, I've seen instances where companies lost their IP rights, trademarks, patents and copyright information because they weren't properly documented.

How can companies avoid these errors?

First and foremost, the company owners and leaders need to sit down with a



Brian Colao
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lawyer they're comfortable with and get a complete understanding of what their rights are and what needs to be documented. The cost to sit down with an attorney early on in the process is very modest, but if you just plow forward and ignore these things, the cost of trying to fix things after the fact can be huge. In many cases it's the difference between a few hundred dollars up front to spending hundreds of thousands of dollars after a mistake is made.

What should a company look for in a lawyer?

You want someone who understands small and mid-market businesses and you want someone who can sit down with you in a non-judgmental way and take inventory of the entire situation — from an ownership standpoint, from an IP standpoint and from a customer and employee standpoint. Bottom line, you need a lawyer who can efficiently and effectively evaluate exactly what needs to happen to properly protect the rights of the company, its owners and all parties involved.

What are the smartest 'recoveries' that businesses can make?

If a business is operating right now and hasn't properly documented everything, it's never too late to go back and do that. In fact, it's better to do that now and have those discussions before there's a disaster. Get everyone together and document what the rights are for each and every party involved. Once a dispute happens, it's almost impossible to do that. If you try to go and fix one of these issues after the fact, you're going to spend a lot of time and money. And, in many cases, you won't even be able to recover.

Again, the key is, if you have any doubts in your mind, sit down with a lawyer early in the process. Many lawyers will do an initial consultation for free, and the right lawyer can make a proper evaluation of your rights and save you a lot of trouble on the back end.

Are there any warning signs or things in particular companies should watch out for?

Never do business with partners or employees on a handshake. Things may seem great and they may indeed be fine for a certain period of time, but it is a recipe for disaster just to do business with shareholders, partners or employees on a handshake. If you are currently in a situation such as that, you need to evaluate and document everything. <<

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