

Avoiding the Classic Pitfalls

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Whether you are launching a new venture or managing a rapidly growing business, you are sure to face challenges from every direction. These often include supply chain and HR issues, business development, a general lack of sleep, and (of course) legal concerns. It can be easy to overlook or put off seeking legal advice, thinking these issues can be addressed later, but the costs and consequences of these common legal mistakes can often be reduced or even avoided simply by consulting with an attorney early on. By prioritizing time-critical legal needs, businesses can avoid many of the common pitfalls discussed below.

› **Know when and how to protect your intellectual property.** Taking action (or not) at particular times is often critical in successfully obtaining and protecting intellectual property (IP) rights. For example, disclosing an invention before filing a patent application could result in the inability to ever obtain a patent for the invention. Developing a brand that is already taken can be a costly and time consuming error. Failing to register creative works at the appropriate time could deprive their creator of the ability to recover monetary damages for copyright infringement. Implementing inadequate trade secret procedures may deprive the owner of trade secret protection and the value those secrets hold. Businesses sometimes consider IP protection an unnecessary expense, but, in many cases, strong IP protection is exactly what a business needs to grow, succeed, and attract investment. Avoid IP pitfalls by consulting with an attorney sooner rather than later



to learn what actions to take (or not) and the appropriate timing for taking those actions to protect your IP.

› **Take time to structure your entity properly.** Seek advice early on when setting up and organizing your company. If you plan on raising capital from outside investors, a Tennessee or Delaware C-corp will often be the best entity choice. However, depending on the nature of your business, a limited liability company may be appropriate, providing operating flexibility and tax benefits, with similar liability protection to a C-corp. Regardless of how your business is organized, it is essential that you document founders' interest and intellectual property rights in writing through formal agreements. Too often, early stage companies rely on verbal commitments to service providers and other team members, which can cause major issues when a company is looking to raise outside investment or commercialize their services or products. Without written agreements, questions arise as to

company roles, vesting and ownership, and intellectual property rights. Your team members are often your biggest asset, and it is important to clearly define these roles and obligations early on so that the business can operate efficiently and scale.

› **Avoid unfavorable term sheets and compliance issues by involving legal counsel early in investment discussions.** Occasionally, we first meet a client after they have a signed term sheet – when it may be too late to negotiate terms important to the growth of the business. When raising capital, it is important for companies to plan 12-18 months ahead and think about dilution beyond the current round. Sophisticated investors will negotiate governance, liquidation, and other preferential rights that may have a big impact on how you run your business. It is important that you consult with your legal advisor before a term sheet is final to ensure you understand what rights you are giving up and which terms may be negotiable. Private companies issuing securities are subject to federal and state securities laws, and it is important to be familiar with the regulations that apply to your offering. Also, don't misrepresent or underestimate risk to attract investors. Throughout the capital-raising process, an experienced attorney will help you avoid running afoul of securities laws and protect your business as it grows beyond the initial founders.

We often wear several hats with early-stage and high growth companies, providing strategic business advice beyond legal counsel. By seeking out an attorney you trust early on, many of the pitfalls discussed above can be addressed or avoided before they become expensive mistakes.



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