

MUSolutions Webinar

The Post-Launch Checklist:

Business, Tax and Intellectual Property Considerations for
Your Emerging Business
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Presented by
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Protecting Your Personal and Business Assets



Josh Hoffman, Esq.



Organizational Documents

- Standard Formational and Governance Documents:
 - C Corporations, S Corporations, Nonprofit Corporations
 - Articles of Incorporation; By-Laws; Buy-Sell Agreement
 - Limited Liability Companies
 - Certificate of Organization; Operating Agreement
 - Limited Partnerships
 - Certificate of Limited Partnership; Limited Partnership Agreement
- Compliance
- Addressing Necessary Revisions



Key Provisions in Organizational Documents

- Major Decision Rights
- Capital Calls
- Transferability
- Duties of Board Members



Co-Mingling Assets

- Personal Bank Accounts vs. Business Bank Accounts
- Items Needed to Open a Business Bank Account
- Piercing the Corporate Veil
 - Adherence to Corporate Formalities
 - Maintaining Adequate Capital/Adequate Insurance
 - Separation of Corporate Affairs
 - Using the Corporate Form to Perpetrate a Fraud



Memorializing Agreements, Minutes and Loans

- Issues Associated With Oral Agreements
- Keeping Proper Minutes
- Memorializing Owner Loans/Capital Contributions
- Conflicts of Interest/Related Party Transactions



Financing

- Establishing a Line of Credit to Ensure Proper Cash Flow
- Letters of Credit
- Personal Guarantees



Practical Business and Tax Considerations



Kevin Israel, Esq.

Choice of Entity

- Limited Liability Company
 - Single Member
 - Multiple Member
- Corporation
 - C Corporation
 - S Corporation
- Partnership
 - General Partnership
 - Limited Partnership
- Sole Proprietorship



Entity Tax Classifications

- Check-the-Box Rules
- Limited Liability Company
 - Single Member LLC
 - Sole Proprietorship
 - C Corporation
 - S Corporation
 - Multiple Member LLC
 - Partnership
 - C Corporation
 - S Corporation



Entity Tax Classifications

- Corporation
 - C Corporation
 - S Corporation
- Sole Proprietor
 - Schedule C – Self Employed



Tax Matters

- Federal, State and Local Taxes
- Quarterly Payments
- Understanding Credits and Deductions
- Self-Employment Taxes



Start-Up and Early Years

- Certain organizational and start-up costs must be capitalized and amortized over 180 months.
 - Election available to currently deduct up to \$5,000.
- Likely little or no revenue; losses
 - Tax Returns required – even if losses
 - The filing of tax returns preserves ability to use loss carry forwards to offset future years' income
- Grants; Competition Cash Prizes – taxable income



Accounting Matters

- Establishing a Relationship With an Accountant
 - Critically important
 - Basic bookkeeping assistance is an affordable and necessary expense.
 - QuickBooks instruction and support.
 - Start with accurate books from Day 1.
 - Clean and accurate books and records payoff down the road when seeking next phase financing.
 - Tax return preparation



Accounting Matters

- Capital Assets and Depreciation v. Operating Expenses
- Managing Payroll
 - Third party payroll processors are affordable and convenient.
 - Assume responsibility for all payroll matters and payroll tax reporting.
- Accounting for financing transactions
 - Loans versus Capital
 - Convertible Debt

Intellectual Property Issues



Michael Monyok, Esq.



Intellectual Property Basics

- Patents (Utility and Design)
- Trademarks
- Copyright
- Trade Secrets



Patents (Utility)

- Inventions that are patentable: "Whoever invents or discovers any new and useful **process, machine, manufacture, or composition of matter**, or any new and useful improvement thereof, may obtain a patent ..."
- Courts have interpreted this to "include anything under the sun made by man"
- Rights conveyed by patent (20 year term):
 - Owner may exclude others from making, using, selling, or offering to sell patented invention

Patents (Utility)

- Examples of Patentable Inventions:
 - Pharmaceutical compound
 - Computer processor
 - Method of manufacturing a computer processor
 - Business methods (potentially)
- Examples of Exclusions:
 - Isolated human pacemaker cells
 - Method of completing a financial transaction



Patents (Design)

- Protects the ornamental design of an article of manufacture
 - No coverage for functional aspects
- Term of 15 years from the date of grant
- Both utility and design patents can be obtained on the same article



Trademarks

- Any word(s), symbol, or design used identify the source of goods or services
- Associates the 'brand' in the mind of a consumer
- Trademark ≠ Tradename
- Length of protection:
 - Indefinite as long as the mark is being used
 - Periodic registration renewals



Trademarks

- What marks are protectable:
 1. Fanciful (ex. Exxon)
 2. Arbitrary (ex. Apple for consumer electronics)
 3. Suggestive (ex. Airbus)
 4. Descriptive (ex. 'crunchy' for cereal)
 - Can be registered if mark has acquired secondary meaning
 5. Generic (ex. Apple for fruit)
 - Cannot be registered

Copyrights

- Protects "original works of authorship"
- Rights afforded by copyright:
 - Reproduce the work in copies
 - Prepare derivative works
 - Distribute copies
 - Perform the work publicly
 - Perform the work by means of digital audio transmission



Copyrights

- Includes:
 - Literary works
 - Dramatic works
 - Pictorial, graphic, and sculptural works
 - Motion pictures
 - Sound recordings
- What is not protected:
 - Facts
 - Non-creative works



Trade Secrets

- Formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known; AND
- Derives independent economic value from not being generally known
- Owner uses reasonable efforts to maintain its secrecy (i.e. NDA, limited disclosure, etc.)
- Cause of action under federal law





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