MUSolutions Webinar The Post-Launch Checklist:

Business, Tax and Intellectual Property Considerations for

Your Emerging Business

June 6, 2017

Presented by
Josh Hoffman, Esq.
Kevin Israel, Esq.
Michael Monyok, Esq.





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



- 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



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



Tax Matters



- Quarterly Payments
- Understanding Credits and Deductions
- Self-Employment Taxes

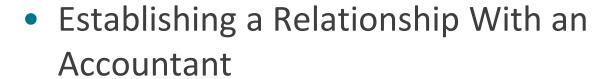


Start-Up and Early Years

- 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



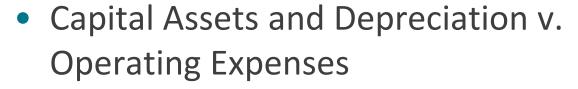
Accounting Matters



- 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



- 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





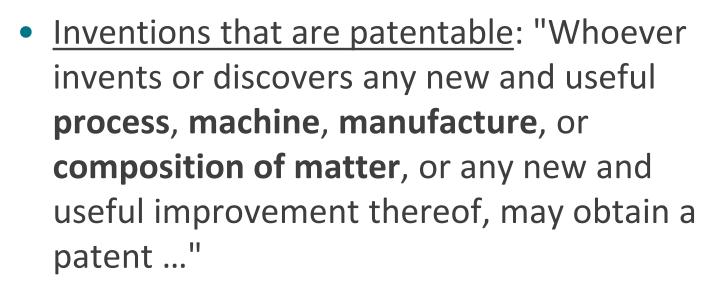
Michael Monyok, Esq.

Intellectual Property Basics

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



Patents (Utility)



- 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





- 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





- 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

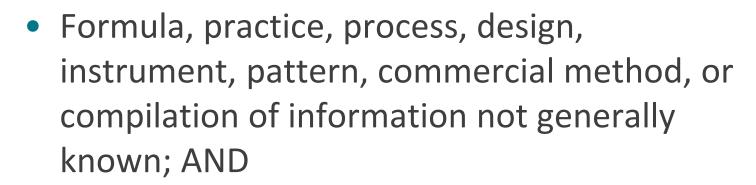


Copyrights

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







- 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





Josh Hoffman, Esq. 412.456.2845 jjh@muslaw.com



Kevin Israel, Esq. 412.456.2841 kfi@muslaw.com



Michael Monyok, Esq. 412.456.2817 mgm@muslaw.com

Meyer, Unkovic & Scott

Henry W. Oliver Building 535 Smithfield Street, Suite 1300 Pittsburgh, PA 15222

www.muslaw.com

