

Young Lawyers

BY MATTHEW P. DIGESTI, ESQ.



BUILDING A PROFESSIONAL RELATIONSHIP WITH ENTREPRENEURS THROUGH THREE LEGAL TOPICS

Entrepreneurs and young lawyers have a certain synergy. Generally, both groups are motivated and eager to master their respective fields. It's this synergy that brings entrepreneurs and young lawyers together both socially and professionally.

With the steady growth in Nevada's start-up community, young lawyers should educate themselves on start-up issues and discussion points. As I have previously discussed in this column, the start-up community is an excellent area for young lawyers to network and develop long-lasting professional relationships.

Whether you are a business lawyer, civil litigator, family attorney, or focus your practice on trusts and estates, if you don't know what matters to start-ups, you may not get entrepreneurs interested in the legal services you can provide for them. By contrast, if you can speak intelligently about start-up issues, that same entrepreneur who needs family law services may feel comfortable hiring you even though family law and intellectual property are not often seen as directly connected. What follows is a primer on top-level issues facing entrepreneurs that may help develop the professional relationship.

1. THE NAME: Due Diligence Before Decision

The easiest mistake to avoid is infringing upon an existing business' trademark. Too often, start-ups select a business name but do not perform any due diligence on that name to see if that name is already registered.

The Lanham Act is the federal statute that governs trademarks and service marks. A trademark is a word, phrase, logo, graphic symbol or other device that identifies the source of a product and distinguishes it from its competitors (ex: Microsoft (software)). A service mark is the same as a trademark, but promotes a service rather than a product (ex: FedEx (delivery services)).

Businesses should research existing trademarks and service marks on the United States Patent and Trademark Office (USPTO) website to ensure its name does not infringe another business' intellectual property rights. The cost of failing to do so can be substantial.

A Reno business recently chose a business name without searching the USPTO database. After selecting the name, paying for digital advertising, procuring merchandise and opening for business, it received a cease-and-desist letter from a competing business that had previously registered the trademark with the USPTO. It cost the new business approximately \$50,000 to stop using the old name and to begin using a new name. You can be a value-add by guiding start-ups around this pitfall through a simple conversation.

2. THE ASSETS: Protecting the Intellectual Property

One topic I particularly enjoy speaking about with entrepreneurs is identifying and protecting the business' value. A start-up's value is derived, in part, from its intellectual property.

Most start-ups begin with a new product, a new service, or an improvement on an existing process, system or method. Many entrepreneurs don't understand that these assets must be created or invented within the context of the business in order for the business, and not the individual entrepreneur, to own the asset. If the entrepreneur creates or invents an asset before the business entity is formed, the entrepreneur will need to sell or assign the intellectual property rights to the business. If the business hired a third party to create or invent the asset, the third party must sign a "work-for-hire" agreement to transfer all the intellectual property rights to the business. Understandably, many entrepreneurs start their businesses before the entity is actually formed. What some do not understand is that doing so complicates ownership of the intellectual property portfolio, and those complications will have to be ironed out through agreements and additional legal fees.

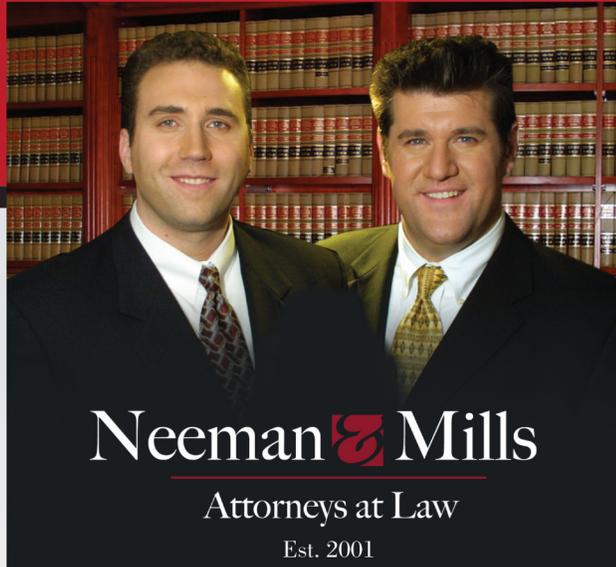
3. THE PEOPLE: Protecting the Human Capital

Lastly, a start-up's value is also derived from human capital. Human capital is made up of the employees who work for the business. If the entrepreneur employs a key individual, the entrepreneur should consider whether or not there is sufficient justification to have that employee under contract to ensure that employee not only remains with the business, but agrees to non-compete, confidentiality and non-solicitation provisions. These contractual provisions will ensure that the employee does not leave the business to work for competitors, that the employee keeps the business' valuable secrets confidential and that the employee does not solicit other employees to leave the business and work for competitors. These are small but important steps in protecting the start-up's assets.

It is an exciting time to be an entrepreneur in Nevada. Our economy is diversifying and entrepreneurship is becoming a force in that diversification. Hopefully these three broad legal topics will assist you in developing professional relationships with those individuals. **NL**

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