

TOP 3 INTELLECTUAL PROPERTY MISTAKES MADE BY SMALL BUSINESSES

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PEOPLE

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Launching a new business can be a scary task for even the most passionate entrepreneur. As can be maintaining a growing team and operations for more established small and family owned businesses. Both the hours and the to-do lists are long and arduous. Some mistakes are bound to happen. One of the most common mistakes small businesses make is failing to recognize the importance of intellectual property (IP) to the success of the company. Here are some of the most frequent missteps that small business make, and how they can be avoided.

LACK OF OVERALL IP STRATEGY

Companies often have detailed business, marketing and funding plans, but may not develop an IP strategy to protect arguably the most valuable aspect of their business. A solid IP strategy should include a listing of assets the business currently has, a plan for when and how to protect those assets, and a plan for how to protect the business in IP litigation.

One action that is often overlooked by small businesses is to research their existing competition. Research isn't just critical to discovering similar technology or offerings already available to the public when trying to protect your own IP, but it is crucial for a small business to be confident they are not infringing upon another's IP rights. An IP attorney can conduct clearance searches or advise a business on potential infringement issues.

DIY APPROACH TO IP

Most small businesses are cost conscience, especially at the outset. It can be tempting for these businesses to perform their own research, however, fortifying these rights requires appropriate guidance from a qualified IP professional. General knowledge of IP may point a business owner in the right direction, but it won't be able to answer the detailed questions of their specific business or exactly what aspects can be protected under the law.

A consultation with an IP attorney assists in laying the foundation of any IP rights the business will seek to secure, and will arm the business with the

knowledge they need to establish an IP strategy.

IMPROPER DOCUMENTATION

Often the key to getting a small business off the ground can be finding the right investors and the highest quality suppliers. However, identifying such vendors may require disclosing certain features of a product, which can be fatal to IP rights. When meeting with third parties, it is essential that a proper non-disclosure agreement (NDA) be in place to protect a business's IP rights. Other concerns include having employment contracts with terms that obligate the employee to keep confidential the proprietary information of the business, both during and after employment. Additionally, proper employee assignment documents should be used to transfer the IP rights from the employee to the business itself.

Standard NDA, employment and assignment forms are a good starting point, but companies should seek the assistance of an IP attorney to tailor these documents to the specific business.

Being proactive and meeting with a qualified IP attorney to determine a business's IP assets and develop a plan of action is essential. In so doing, a business can gain significant value from the IP assets it creates and can protect itself from potential exposure to third-party infringement. It is a worthwhile expenditure to retain IP counsel to ensure you are taking appropriate action at the appropriate time. The success of your business depends on it.