

INTELLECTUAL PROPERTY OUTLINE FOR STARTUPS AND SMALL BUSINESSES

Step One: Form Intellectual Property Holding Company

- This could be a corporation, limited liability company, or other entity designed to limit personal liability; depending on various considerations such as tax status.
- This is a critical step in limiting personal liability.

Step Two: Transfer All Existing Intellectual Property Rights to Holding Company

Step Three: Protect Intellectual Property Rights

- A. File Patent Applications (If Any)
 - Consider protecting both utilitarian aspects of inventions (utility patent rights) and ornamental aspects of inventions (design patent rights).
 - All engineers, technical consultants and others who might argue they are “joint inventors” should sign appropriate paperwork.
- B. File Trademark Applications (If Any)
 - Consider protecting both “house marks” (e.g., COCA COLA®, GENERAL MOTORS®) and “child marks” (e.g., DIET COKE®, CHEVY®)
- C. File Copyright Applications (If Any)
 - Consider protecting sculptural / artistic elements of products as well as various ancillary materials (such as marketing “copy,” website / social media content, employee training materials, etc.).
 - Many logos have artistic elements which can be protected by copyright as well as trademark law.
- D. Take Steps to Protect Trade Secret Rights (If Any)
 - Take steps to protect the secrecy of all trade secrets (including customer lists, supplier / vendor lists, manufacturing designs / information and other valuable confidential information).
 - Consider having employees / independent contractors sign Non-Disclosure / Non-Competition / Non-Solicitation agreements.
- E. Take Steps to Protect Your Online Presence
 - Includes registering domain names and social media handles. Also includes having any marketing associates sign social media agreements.

Step Four: Manufacturing & Distribution

- Identify and engage manufacturers, transportation providers (e.g., freight forwarders) and distribution providers (e.g., warehouse facilities, wholesale vendors, etc.)
- Agreements, especially manufacturing agreements, should be reviewed by counsel to ensure that ownership of intellectual property rights is not inadvertently divided.

Step Five: Marketing

- Marketing is arguably the most difficult and important step in the startup process. Clients who lack marketing experience in a target industry should consider engaging a properly vetted outside marketing firm.

This draft form is provided to you courtesy of
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