

THE BIGGEST IP MISTAKES BUSINESSES MAKE

2017 Hawaii Small Business Fair

11:15 a.m. to 12:15 p.m., Saturday, May 6, 2017, Leeward Community College

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1. Choose descriptive or generic trademark
 - a. Expensive and difficult to register in U.S. and foreign countries
 - b. Consider translation issues
2. Fail to register trademarks and variant domain names - IP portfolio for investors or future purchasers of your business.
 - a. get federal registration 5 years old ASAP- or someone else applies first
 - b. register domain names to prevent gripe site, cybersquatters, pornography
 - c. be sure domain names all registered in business' name, not webmaster's name.
3. Fail to analyze ownership of trademark confusion issues in spinoffs
 - a. Trademarks indicate SOLE source - resort v. golf course
4. Fail to apply for patents before first public use or disclosure.
 - a. Lose all patent rights in U.S. (though grace period possibly available)
 - b. Lose patent rights in many foreign countries
5. Fail to obtain assignment of copyright, or backup copy, of website and database.
 - a. Assignment of database rights - fight with webmaster?
 - b. Loss of website
 - c. Programmers leave with code - have to call FBI
6. Fail to obtain model releases, or keep them recoverable for photos years in future.
 - a. \$10,000 minimum damages
7. Fail to take reasonable efforts to maintain secrecy.
 - a. No protection for confidential business information, unless meets standards of Uniform Trade Secrets Act
8. Use sloppy subcontractors.
 - a. Contractor copies photo from Internet or adapts prior artwork (no consent)
9. Fail to obtain insurance.
 - a. Advertising injury and commercial general liability pre-2000 ISO forms
10. Hire general litigation attorneys for IP litigation.
11. Fail to analyze whether to obtain foreign trademark or patent rights.
 - a. Public domain outside US
12. Fail to renew registrations or pay maintenance fees.
13. Fail to record assignments or changes of corporate name or structure, or financing statements, in U.S. or foreign jurisdictions.
14. Fail to think carefully about available scope of patent rights and enforceability.
 - a. Unnecessarily narrow coverage that could be broader
15. Fail to think carefully about potential profit from IP rights, and likelihood of realizing those profits.
 - a. Hobby v. business - minimum wage
16. Fail to plan or budget for infringement or counterfeiting - no one will find out?

DEFINITIONS AND APHORISMS

Business = providing goods and services to others for a profit

Money = medium for exchanging goods and services

Economy = allocation of goods and services (resources) through a population

Intellectual = Product of the mind

Property = possession and right to exclude others

Spend your time wisely - you can always make more money, but not more time.

If you're not making minimum wage, it's a hobby, not a business.

Don't quit your day job.

Cash is king.

You won't know whether you did the right thing until you look back 5 years later.

Don't get emotionally attached to your IP - make objective business decisions.

There are only three ways to make money from property: sell it, lease it or use it.

Starting or running your own business is MUCH riskier than the stock market.

Take care of what matters first, before investing in a new business: health insurance, life insurance, long term care insurance, college tuition, retirement, refinancing your mortgage, emergency fund, etc.

Remember that other people depend on you - don't risk their livelihoods too.

If you're too lazy to completely analyze your business idea for profitability, what makes you think a purchaser will?

You will eventually retire, so you will eventually need to sell your business.

Companies won't buy your idea, invention, or business, unless you convince them it will make them a profit.

Getting an IP portfolio helps maximize what you can get in selling your business.

For intellectual property, an ounce of prevention is worth a TON of cure, and often you cannot cure!!

Even a nonprofit enterprise must make money, or else it can't survive and perform its nonprofit mission.

An industry disruptive technology will be copied, because peoples' livelihoods are at stake.

Lawsuits are a waste of time and money - only the lawyers win.

Budget for the IP issues.

If it's not protected, it's in the public domain.

If an invention won't generate many tens of thousands of dollars in profits, it's not worth patenting.

Every dime you spend in advertising, collateral, etc. is an investment in your trademark - protect it against someone else stealing your reputation.

Copyright registration is the biggest bargain ever offered by the federal government.

It's easy to do your own trademark and copyright applications - it's easy to do them wrong.

Do you look for the cheapest doctor to take care of you? Then why look for the cheapest patent attorney to take care of your intellectual property?

It's more expensive for me to fix someone else's mess, than to do it right the first time, and many messes cannot be fixed.