

Legal Counsel from Start-Up to Exit

Ed Cavazos

ed.cavazos@pillsburylaw.com

Chris Murphy

murphy.austin@gmail.com

The Challenges of Representing Early-Stage Companies

- Limited Resources
 - Limited Experience
 - Need to Prioritize Needs
 - One-size Does Not Fit Each Type of Client
 - R&D-based Company different than Consumer-based Company
 - Determining Acceptable Levels of Risk
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The Challenges of Representing Early-Stage Companies

- **Engagement Details**
 - **Fee Arrangements**
 - **Discounts**
 - **Deferrals**
 - **Flat Fees**
 - **Blended Rates**
 - **Taking Equity**

1. Formation

- **When?**
- **What type of entity? Corporation, LLC, partnership**
 - C corporation v S corporation (tax flows through)
- **Jurisdiction of incorporation**
- **Naming the Company / Branding**
 - corporate name and URL reservation
 - trademark availability
- **DIY Formation?**

2. Who is the Client? / Competing Interests

- Where multiple founders / partners, establish relative ownership early
- Impose vesting/transfer restrictions
 - rights of first offer
 - buy-sell agreements
- How to make sure founders are individually looked after
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3. Equity / Stock Options

- **Need to establish appropriate plan in connection with formation, if the company wants to use options as currency**
 - vesting period, cliff
 - acceleration provisions
 - immediate exercise

4. Employees/Consultants

- **Maintain appropriate documentation**
 - “at will” employment offer letter
 - proprietary information and inventions agreement
 - Non-compete and non-solicitation?

- **Assignment of intellectual property**

5. Managing Outside Relationships

- Customers
- Partners
- Suppliers
- Service Providers
- Licensors / Licensees

6. Funding

- **Initial Inquiry:**
- **What is the end-game?**
 - Typical liquidity event (acquisition or public offering)
 - “Lifestyle” business
 - Important as it affects choice of entity and structure of the company
- **Angel Investors / Friends and Family**
- **Institutional Investors / Venture Capital**
- **Alternative forms of funding (revenue-based loans, etc.)**

7. Intellectual Property

- Types of assets that can be protected
 - Inventions (called “patents” when a patent issues)
 - Software
 - Documentation, photos and other “digital assets”
 - Logos / domain names / brands
 - Plans / formulas / know-how
 - In-bound licenses / relationships
- Categories of IP Rights
 - Patent rights
 - Copyrights
 - Trademark rights
 - Trade secret rights

7. Intellectual Property

- When to formally protect rights:
 - Patent
 - Trademark
 - Copyright

7. Regulatory Concerns

- Varies Dramatically By Industry (FDA? Financial regulations?, etc.)
- Some regs are universally applicable
 - Marketing / Advertising Rules
 - Immigration
 - Privacy (especially overseas)

7. International Issues

- When to tackle?
- Localization
- IP
 - Patents
 - Trademarks
- Privacy / Data Protection

8. Disputes / Litigation

- How to avoid litigation
- Recognizing that litigation costs are paramount concern (even more than underlying merits)
- How to handle when you have no choice
 - Contingency?
 - Partnering with other Counsel
 - Insurance?

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