

STREETFIGHTING TECHNIQUES FOR THE ENTREPRENEUR

1. Top ten legal tips

- **No collaboration without a contract:** Never collaborate with anyone or hire an independent contractor without a written contract (no matter how rudimentary)
 - ❖ - Describe in detail the deliverables
 - ❖ - Tie payments directly to deliverables, not according to a timeline
- **Make sure you own the IP:** Always make contractors sign an invention assignment and confidentiality agreement
- **...and you can enforce your IP rights:** Make sure that your most fundamental IP development is performed by someone upon whom you can enforce a contract
 - Know that it can be extremely difficult/costly (if at all possible) to enforce a contract if that person is located overseas
- **Know who you're dealing with:** Is that software engineer working for a company? An independent contractor? Where is he/she based? It could make a big difference in the sad event of a legal dispute
- **On whose behalf?** When signing a contract, make sure it is clear that you are signing the agreement on behalf of your business entity, not in your own name.
- **Always read and understand every word of a contract:** Whether you have a lawyer or not, do not sign anything you don't fully understand. "I didn't read it" or "I didn't understand it" (even if you are a foreigner) will almost never protect you.
 - ❖ If you receive contracts that are overwhelming, return them and ask for a 2-page agreement, you will be surprised how often this works, even with large companies.
 - ❖ Seemingly standard agreements like NDAs can hide provisions that are extremely adverse to your interests.
- **Make sure every contract has an "out" clause:** No matter how excited you are about that new client, you should be able to terminate the contract under terms that are acceptable to you. A termination for convenience (with notice) is the ideal provision.
- **Actuals, not percentages:** Never promise a percentage of your company's capital, or there will almost always be ambiguity over the number of shares that serve as the basis for the percentage. If your company is successful this ambiguity will result in a costly dispute. Your stock is your currency: Determine how much "currency" you have in the bank at a given moment, and commit to a number of shares, not a percentage.
- **Missing appendix:** Make sure you have negotiated the "schedules" or "appendixes" to a contract before you sign it. Too many times, contracts get signed with their essential terms missing, as the contract made reference to terms that should be found in the missing schedules or appendixes.

- **Going global:** Don't expand to offices and subsidiaries abroad until your revenues allow your company to bear this expense comfortably. An intermediate step can be to register trademarks patents and copyrights in your target foreign locations first.

2. Use your lawyer wisely

- Don't play lawyer
 - ❖ You'll save time and money if the lawyer drafts an agreement from scratch rather than reviewing your attempt. Give your lawyer directions about your objectives in bullet point format.
- Know exactly what you want from an agreement before briefing a lawyer
 - ❖ Only you know your business and the specifics of the particular deal, so be sure to explain it in detail. A concise email, followed by a quick call to make sure terms and expectations are clear between lawyer and client is often the most efficient way of giving your lawyer an assignment.
- Instructing your lawyer to draft an agreement that is fair for both parties will save you money in fees. There is such a thing as an agreement that favors you too much.
- As a start-up, have a trusted “quarterback” who is not afraid of telling you when you need to go find a specialist. The alternative is to go straight to a specialist, hoping that he/she can handle the majority of your needs, but you may be on your own to find lawyers in other areas.
- You should choose a lawyer who is a good personality fit, and who talks in terms you understand. Choose a lawyer like you would choose your doctor: Obviously, he/she has to be qualified, but you also have to see yourself working with him/her for many years to come.
- If your lawyer cannot explain to you legal concepts, risks and options in terms you can understand, don't get intimidated by the legal jargon: He/she is just not doing his/her job.
- Have a friend, someone more experienced than you are help you determine if a document is trivial, or if it requires the attention of a lawyer. If it is an anchor contract, an essential element of IP protection, spend the money on qualified help. If you are taking little risk dealing with it yourself and using your common sense, save the money for revenue-generating expenses.
- Most business lawyers get paid by the hour, so if your budget is tight, try and obtain flat fees for routine legal tasks such as incorporation, trademark and patent filings, even contract reviews by sending the draft contract to the lawyer for an estimate.
- If you have no money for legal services, get the other party to prepare the first draft. Clearly, you will lose the opportunity to stake an advantageous position first, but you will save in legal fees.