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Six Costly Mistakes
Fast Growing Companies Make and How You Can Avoid Them

Presented by:
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Poll

What part of the contract negotiations process do you dislike most? Choose all that apply:

(1) Too long
(2) Gets in the way of your business
(3) It can get antagonistic and tense
(4) All of the above.
When you close strong business deals, you…

- Increase revenue opportunities
- Lower overhead expenses
- Minimize and understand legal risks
Mistake #1

Failure to go through all 6 stages of a Business Deal
6 Stages of a Business Deal

- Internal Business Strategy
- Exploration and Proposal
- Business Terms (and LOI)
- Contract Review & Negotiations
- Contract Execution
- Contract Management

Stage 6
Stage 5
Stage 4
Stage 3
Stage 2
Stage 1
Consequences

When you skip parts of the 6 stages…

♦ Lost revenue streams
♦ Exposure to legal risks
♦ Lost business flexibility = restricted growth
Toy Manufacturer

Stage 1: Internal Business Strategy
Stage 2: Exploration and Proposal
Stage 3: Business Terms (and LOI)
Stage 4: Contract Review & Negotiations
Stage 5: Contract Execution
Stage 6: Contract Management

European Toy Distributor

Deal fell through
Never got to Stages 5 and 6
Never finished Stage 4
Best Practices

♦ Avoid setting artificial deadlines to close a deal.
Mistake #2

Failure to identify your company’s Internal Business Strategy before discussing the Business Deal
Internal Business Strategy

♦ Business objectives (goals and needs)
♦ How will Business Deal meet objectives
♦ Must-have’s
♦ Nice-to-have’s
Consequences

No Internal Business Strategy

♦ Un-met company needs and goals
♦ Un-intentional concessions
♦ Incomplete Business Terms for Stage 4
ABC Tech

Backend Technology & Content

XYZ Corp

Customer Software & Content

Combined Technology & Content
Sales & Marketing
Revenue Sharing
Best Practices

♦ Get input from everyone involved in project.
Mistake #3

Failure to identify, define and vet all Business Terms before looking at the contract
Business Terms

♦ Define relationship and how you’ll work together
♦ Purpose, goals and needs
♦ Term, duties and obligations, protections
♦ What happens if things go wrong?
♦ How will company and deal evolve?
Poll

How often do you use Term Sheets in your Business Deals?
Consequences

No Business Terms or Term Sheet

♦ Un-met company needs and goals
♦ Unknown Partner goals and needs
♦ Little or no leverage
♦ No creative and strategic compromises to offer
♦ Missing critical business and legal issues
Mobile App Developer

- No leverage
- Unknown partner goals and needs
- Lost revenue

Magazine Publisher

- Un-met needs and goals

- Process dragged out
- No creative and strategic compromises
- Parties overwhelmed by the legal issues
ABC Tech

- Knowledge of partner’s needs and goals
- Leverage

XYZ Corp

- Convinced that the partnership was a solid business deal

- Organized deal into several contracts
- Open to compromising
- Peace of mind during negotiations
Best Practices

♦ Silence is golden
♦ Face-to-face meetings
Mistake #4

Failure to execute an LOI when you started work on the project BEFORE signing the contract
Poll

How often do you start work on projects before signing the contract?
Purpose of LOI’s

- Limited period of time – until contract is signed
- Serious commitment to partnership
- Limitations, requirements, protections
Consequences

No LOI before you start working

♦ No payment (or very little or delayed payment) for services or products provided
♦ No exclusive commitment
♦ No protection of confidential information
♦ No protection of intellectual property
Sports Media Company

Valuables and Benefits Protected
value of developer’s services, intellectual property, confidential information, exclusive partnership

Technology Developer

• Client got advertising product completed on time

• Vendor got paid

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Best Practices

♦ Include must-have’s in your LOI’s.
♦ Control time for creating and negotiating LOI’s.
Mistake #5

Failure to get a fully-executed and complete contract
Fully-Executed and Complete Contract

- All required signatures
- One version of final contract
Consequences

Missing signatures or only exchanged signature pages

- Invalid contract because of missing signatures
- Invalid contract because of conflicting terms in different versions of the contract
- Lost opportunity, time and money
Best Practices

♦ Include must-have’s in your LOI’s.
♦ Control time for creating and negotiating LOI’s.
Mistake #6
Failure to manage the life of your contract
Managing Your Contracts

♦ Tracking the details

♦ Duties and obligations, timelines, terms and renewals, and other conditions and requirements

♦ Modifying the contract when business conditions and transactions change
Poll

Do you diligently track deadlines and other details of each business deal after it has closed?
Consequences

- Missed contract deadlines = Lost revenue opportunities
- Breach of contractual obligations = Exposure to legal risks
- Lost contractual rights and benefits = Lost revenue and lost future opportunities
Software Developer

Termination Notice required to be sent 60 days in advance

60 days

Should have sent notice

Telecom Company

30 days

Software Developer found contract

End of term

Contract with Existing Customer Ends

Software Developer lost new customer
Technology Company

Contract Executed

End of old term, beginning of new deal

Note dates for renewal or termination

Negotiate

Offer enhanced deal
Best Practices

♦ Create one page summaries or spreadsheet of contract details.
Bonus - Mistake #7

Failure to make your business attorney a member of your business team
Poll

When do you contact your attorney?
Choose one:
(1) when you have an urgent need
(2) at the beginning of each business deal
(3) you meet regularly with your business attorney even when there are no active deals in progress.
Consequences

When you use your business attorney in a Reactive Mode

♦ Ineffective and inefficient use of legal resources
♦ Higher legal fees = Higher expenses, Lower Income
♦ Lost opportunities
Proactive v. Reactive

♦ Updates on your company’s goals, plans and potential issues.

♦ Updates on your products and services, clients and business development efforts.
Best Practices

♦ Make sure your business attorney has…
  ♦ Contracts, IP and technology experience
  ♦ The mindset of closing deals from both legal and business perspectives
♦ Bring your business attorney in at the beginning of the 6 stages of the Business Deal process.
What can you do now?

- Always go through all 6 stages of a business deal.
- For each business deal, always start with internal meetings to identify your internal business strategy.
- Before looking at the contract, discuss your business terms internally and then with your potential partner.
What else can you do now?

- Use LOI’s if you start work before the contract is signed.
- Bring in your business attorney at Stage 1 of each of your business deals.
- Pull out your existing contracts and create summaries or a spreadsheet of the important contract deals.
Something
to help you
master
the Business Deal Process
and
contract negotiations…
Thank You

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