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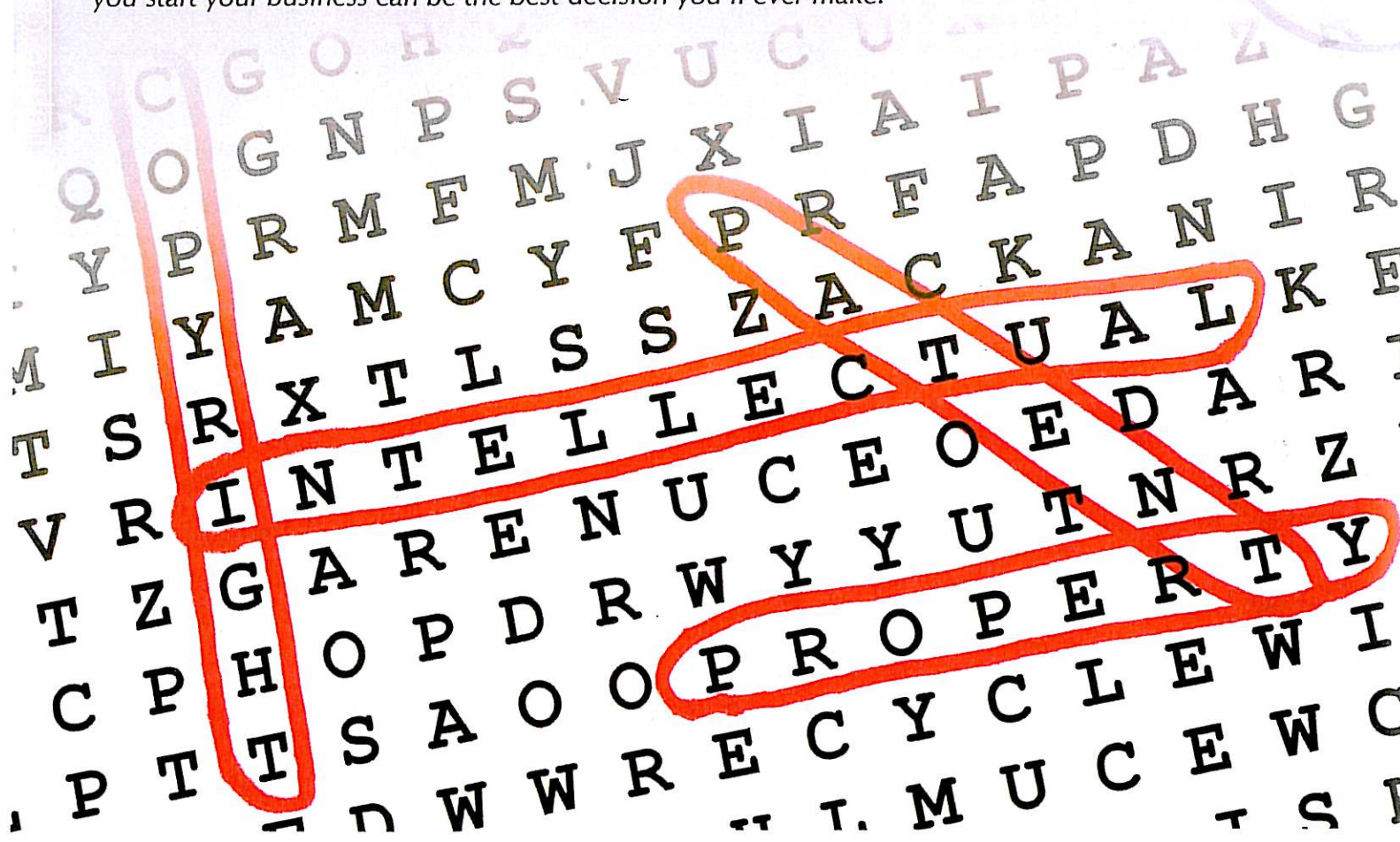
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New Business Protection

Business coach Kelly Townsend explains why hiring an attorney before you start your business can be the best decision you'll ever make.



When you think of starting a new business, hiring a lawyer might not be a consideration. After all, don't you need to have a problem of some kind to hire an attorney? I have a completely new perspective after spending time with Jeanne Seewald, managing partner at Hahn Loeser law firm. Protecting yourself and your business, and preventing potential problems, can save you money in the long run.

Jeanne's practice focus is business and intellectual property law, and she is certified by the Florida Bar Association as a specialist in intellectual property law.

Q: What is "intellectual property" and what does it mean to be a "specialist" in intellectual property law?

A: Intellectual property generally relates to property that results from original creative thought such as patents, copyright or trademarks. Intellectual property law is the body of law that has been developed around the protection of these creations which are also known as intangible property. Lawyers can use the term "specialist" only after they have been board certified by the Florida Bar Association in a particular area of the law.

Q: Why is it important for a new business owner to hire an attorney?

A: Attorneys can determine the best legal entity to use to operate the

business (a corporation, limited liability company, professional association, etc.), and assist with preparing the supporting documents (including minutes, share certificates and a buy/sell agreement) which will be important in the future, particularly if the business owner wants to sell the business one day. A potential buyer will want to see the records book containing those supporting documents.

Also, early in the process, a new business owner should consider protecting his or her intellectual property. If the owner has inventions, they may be patentable. Items such as songs, photographs, recipes, websites or brochures may be protected through copyright. Trademarks — names that are used for

products and services of the business — should also be protected.

Q: How does having an attorney protect a business owner?

A: I spend a lot of time working with clients to protect their trademarks. This involves filing for state or federal trademark registration or, in some cases, handling disputes over the right to use a trademark. Most businesses depend on their brand and name. They do not realize they need protection until there's a problem, which often comes in the form of a cease and desist letter telling the business to stop using its trademark. I investigate the facts, advise the business owner on his or her rights and represent them in the dispute.

Q: With more and more people creating Internet businesses, how can they protect themselves? Is it different than starting a bricks and mortar business?

A: The same principles apply for Internet businesses. The owner should consider setting up an entity to operate the business for liability purposes. Intellectual property must be protected on the Internet. Just like a bricks and mortar business, you need to insure it and protect inventory, cash and other tangible property.

The same efforts need to be directed toward protecting intellectual property. Contracts with web designers and advertisers should be reviewed to assure copyright and trademarks are protected, registered and used correctly. It also is important to consider trademark law when using domain names. The right domain name can be the difference between success and failure for online businesses. However, using the trademark of another company as your domain name can result in a lawsuit, so an analysis should be done of the domain names you plan to use.

Q: When a website is designed for me, is it my property or the designers?

A: Generally, the web designer owns the copyright to the website. The business owner should make sure his or her contract with the designer includes language that transfers the copyright to the owner.

Q: What are some of the more common mistakes business owners make?

A: New business owners often think they cannot afford an attorney at the beginning of the process. Often, this costs more later to correct problems with the entity structure or to resolve a dispute over a trademark.

Q: What questions should business owners ask to ensure they're protected?

A: Have I put a good team of advisors together including an attorney, accountant and financial advisor?

- Do I have an accountant for filing tax returns?
- Do I maintain complete corporate records?
- Do I have a shareholder's agreement or buy/sell agreement in place?
- Do I have trademarks that are important to my company that have not been protected?

Owning a business is an important investment. Hiring a business attorney during the early stages of your development can protect that investment and give you piece of mind.

Kelly Townsend owns Townsend Consulting, an executive coaching and consulting firm based in the Naples-area. Kelly is also a sought-after speaker on personal development.

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