

S STRATEGY

Attorney Partnerships Build Business Partnerships



Jacqueline Ganim-DeFalco

One of the most fundamental yet overlooked aspects of running a private business is the way in which you manage the relationship with your attorney. In a public company, in-house attorneys are critical to every aspect of corporate decision-making. Often, the relationship that a corporate officer has with the in-house attorneys can make or break a deal.

The legal team, whether in-house or outside counsel, can be a key facilitator to business development efforts when brought into the process at the right time.

Types of Partnerships. There are two sides to deal-making—corporate and entrepreneurial. Corporate partnerships and alliances quickly move out of the operating unit and into the legal department. The challenge in this case is to keep the business goals in front of the legal team. The entrepreneurial deal-makers tend to get deeply into achieving a short-term objective and overlook long-term consequences of skirting legal advice. Bringing in an attorney once a deal is underway can multiply costs tenfold.

There are key issues in making the attorney-client relationship more economical and effective in addressing strategic partnerships and alliances, both domestically and internationally. Partnerships involve a wide range of collaborations, from a cozy handshake casually called a Barney agreement—"I love you, you love me"—to a strategic investment, acquisition, licensing agreement and other such financially binding arrangements.

Barney agreements were made popular by start-up entities seeking endorsement from larger players in the industry. The failure of these loose marketing (or linking agreements) has negatively impacted the term "partnership," which has his-

torically been more strategic and integrated.

Find the Right Fit With Your Law Firm. Finding the right attorney is the first step in putting together a deal. Some firms are set up to take companies public and that's where their resources are oriented. Others focus on general business, but have no experience in strategic partnerships. Seeking out a firm that endorses your company's strategic objectives is a critical exercise. This is a long-term relationship and should be treated as such.

Communicating Your Business Objectives. This is the most critical phase of the relationship. Before discussing any particular deal, it is essential to educate your attorneys about the nature of your business, explain your business model and demonstrate any product applications, if possible. Even a minor business agreement can then be viewed in the proper context.

Regardless of the size of the transaction, a simple call to an attorney to review business objectives is often the best place to start. It's not uncommon, for example, for an attorney to be called after a client has signed a letter of intent. This is far too late and often presents a set of partner parameters that have to be undone before moving forward.

Another facet to setting objectives is to determine the professional and personal agendas of the client's management team. Personal pressures (such as an impending marriage, move or divorce) can greatly influence the direction of negotiations with a potential partner.

Bring the Right People to the Table. In order to start the relationship on the right foot, it's best to come prepared to an initial meeting with an attorney. Having the right executive management and certain documents in hand (or sent in advance) can make the meeting much more productive. Better still, offer to host the meeting at your office. A simple walk-around to view how your technology works often helps the legal team do their job more effectively. The CEO, CFO and chief deal-maker—often the VP of business development—are key attendees.

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Know Your Business Model. In approaching the first meeting, it helps to think of the attorney as a business partner. To be a good partner, the attorney really needs to understand the fundamentals of your business. Don't give the attorney your legal terms. Tell him or her about your monetary and business essentials, and he or she will create the legal parameters that secure your position. In a snapshot, here are some of the areas that impact money and risk:

- How your product/service gets paid for;
- Will you change the product/service?
- When you get paid for the product/service;
- Will you allow the product/service to be handled by a third party?
- Minimum volumes for sale;
- What warranty are you providing?
- Exclusivity;
- What is the length of the agreement?

The deliverables from the attorney after the first meeting should be a budget and a Gant chart that details the steps and time frames necessary to move toward closure.

Deal Breakers. As soon as they step into a deal, experienced attorneys can spot the red flags. Common errors include signing over the rights to title or ownership. Most-favored-nation status for certain distributors, limitations of liability and restrictions set in loose geographic terms are among the common errors.

Standard Agreements. Naturally, business people do not want to reinvent the wheel by

developing what are termed "standard agreements." In today's world, these may include non-disclosure agreements, linking agreements and terms of use (for a Web site) among many.

Nonetheless, even if it takes a quick review by your firm, it's worthwhile to make certain that your standard agreements don't have restrictive clauses.

A larger corporate entity will often have its preferred agreements and, generally, they are not bilateral. It's best not to sign a generic corporate agreement without a review.

Save Your Money and Time. Attorneys are undoubtedly some of the best business partners you will find. Their services are invaluable and if you give them the opportunity to better understand your business, they are often a channel to other opportunities. Many entrepreneurs may be under the impression that billable hours are the end goal of a law firm. This is

far from the case. A good attorney would much rather set up the working guidelines up front and establish business objectives around which a legal framework can be developed. This type of planning, early on in a new venture, can help avoid costly last-minute fire drills.

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