



The ten greatest legal mistakes in business...

and how to avoid them

By
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The worst thing about committing a legal mistake is that everyone seems to find it obvious after the event especially your wife/partner.

If business owners started to create new, exciting, unique legal mistakes then it would be a real challenge for us lawyers. Fortunately for us, they do not. This means that your lawyer has probably seen the legal mistake before and has a good idea what to do. Although, it may not seem that way to you.

Many small business legal services can be divided into "deals" where lawyers prepare documents to anticipate and avoid future problems or "disputes" (where things did not get documented at the start and the parties come out swinging). Usually deals are cheaper than disputes.

Experienced business owners are adept at working out when to document and when to wing it.

Mistake 1

You unexpectedly die and your business stops dead too.

This can be very inconvenient. Avoid this by having a will including a business clause allowing the trustee to run your business. Add a big life insurance payout and your place on the mantelpiece will be guaranteed. This is called Succession Planning.

For extra points have an enduring power of attorney so that another can sign documents if you are in a coma. The sickeningly organised business will have an extra person appointed to sign documents e.g. the company has granted a power of attorney or at least a minute conferring that right.

Mistake 2

Your business is sued and you lose your home.

A tricky one this and is best combined with Mistake no. 1. A lawsuit can result in bankruptcy for the loser. Is your home in another's name (e.g. your wife's) or is your business a "limited" company? If not, then your entire family life is at risk. This is called "Asset Protection".

Mistake 3

You take court action against your lawyer's advice.

Lawyers spend a lot of time talking their clients out of taking legal proceedings. From a sales point of view I am not quite sure why we do this.

If the credits rolled when you issued the writ all would be well. However litigation is for tough people with money. Litigation is not a deal. However against some unscrupulous people it is unavoidable.

Mistake 4

You do not have a shareholder/partnership agreement.

Often these are difficult to negotiate and seem an unnecessary expense. but become a good idea usually in hindsight, as they can make any split quick, cheap and less acrimonious.

Mistake 5

You do not have terms and conditions.

In the land of the blind the one eyed man is King. If you make the rules of any relationship you should be in a better position if there is a dispute. If you do not impose your terms and conditions on any business relationship then at best there will be uncertainty and at worst you will be subject to someone else's unfavourable terms.

Mistake 6

You keep changing lawyers.

Either you have been very unlucky or you need to re-evaluate your lawyer management skills. Constant change is disruptive and you miss out on the benefits of a trusted relationship. This does not apply to anyone who may want to change to my firm.

Mistake 7

You fail to identify and protect your intellectual property.

What are your trade secrets? Don't answer that! If it is a really good idea and not nailed down someone will steal it. Do you have trade marks, use copyright notices, get assignments of valuable designs, logos and important materials? Use licences when you allow other people to use your name, services, products or ideas as part of their business. You can lose rights by allowing easy use. Or others can say that they thought they could use it too ("implied" consent).

Mistake 8

You do not have written contracts with your employees.

Employees can not only take your paper clips but your trade secrets, client lists, best ideas and deliver them to your competitor. The general law protects your trade secrets to an extent. However a contract can supplement this protection with conditions relating to confidentiality, limits on new employment within a certain area and soliciting your customers.

Mistake 9

You do not read the small print of important contracts.

If it is an important contract, read the small print. Don't just leave it to your lawyer. If you sign a contract you are stuck with it.

Mistake 10

You fail to protect your business/product names.

You may have a domain name and a registered business name but only a trade mark confers ownership of a name. Don't allow a competitor the opportunity of applying for a trade mark of your business name or products. Protect yourself by registering trade marks.

I doubt if any business owner has been able to dodge all 10 legal mistakes. If you are a small business owner and can avoid doing more than 5 on any one day then you are a winner (unless of course you are looking for a *Guinness Book of Records* entry, then go for it).

Paul Brennan is a practicing lawyer, a legal cartoonist for the *Australian Financial Review*, a columnist for *My Business Magazine*, a regular commentator on *Business Essentials*, and author of two books. Paul's latest book, Audio CD and eBook is *The Ten Greatest Legal Mistakes in Business... and how to avoid them* lists the top 10 legal mistakes in business - plus other legal minefields which is published at <http://www.brennanlaw.com.au/publications.html> . Paul, who is known to be a humorous speaker, will be presenting on this topic in for the next Business Essentials Breakfast to be held at AIM on Friday October 26. To make your booking visit aimvic.com.au/events.