Five Legal Myths That Can Cost You a Fortune

By Jack Garson

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Myths about the law abound. They range from age-old lore, like "possession is nine-tenths of the law," to mistakes about intellectual property rights. When you fall into the trap of letting these fables guide your decisions, you can get your business into trouble. So let's dispel some of these legal myths.

Myth 1: Hey, I own that intellectual property.

Misunderstandings about intellectual property ownership are rampant. Many business people think if they register a new business with their home state, they automatically obtain trademark registration of their business' name. No such luck. The trademark registration process is a completely independent process, and you don't get any trademark registration rights just from setting up a new company.

Similarly, when businesses hire independent contractors to work on new ideas and inventions, companies often assume that they own the intellectual property created by the contractor. Wrong again. Unless you have a special agreement in place assigning the IP rights to your business, that contractor remains the owner of any copyright or patent associated with his or her work.

On the other hand, some business people assume that anything on the Internet is free for the taking — which is a myth that the evil geniuses at Napster helped spread. We see companies snatch up and use ("scrape") pictures from the websites of other businesses. The scrapers mistakenly believe that if a photo is on the Internet, it's free for the taking. Wrong still again. In fact, many website owners — fighting off this type of stealing — are employing "bots" to patrol the Internet for these thefts. Next thing you know, the scraper is receiving a cease and desist letter and, if that doesn't stop the theft, a lawsuit follows.

Myth 2: I'm not bound by this contract because I signed it under duress.

I was recently trying to extricate a client from a terrible deal when he explained that he signed the contract under duress. He quite firmly believed that he should be allowed out of the contract. "What do

you mean by duress?" I asked my rather insistent client. Was there a blowtorch pointed at your hand? Did the other side threaten you with water boarding? Did they hold your family hostage? No, my client replied, "They wouldn't sell me the goods unless I signed their contract."

Duress this is not. Under the law, you will only be excused from a contract on account of duress where there was some significant wrongful act by your opponent, such as a threat of physical harm or kidnapping.

Myth 3: Court is expensive and time-consuming; arbitration is quicker and cheaper.

Ha! Court is outrageously expensive and time-consuming, and arbitration has gotten almost as bad. You can have a family in the time that it takes to go from the beginning to the agonizing end of some court cases. Your average lawsuit lasts for one to two years, but it can take much longer. We had one case in which the judge took more than one year just to issue her decision in the case.

What takes all of that time? Aside from the initial preparation of the lawsuit — or the response, if you're being sued — there are a number of hurdles you need to jump. "Discovery" is a big one. Here, you and your opponent gather evidence from each other, including requests for documents and answers to key questions and depositions of witnesses. Then there are a variety of skirmishes before the big battle, including motions and related hearings.

Oh, yes, then there is the trial. You would think it would stop there — perhaps a couple of years into the process and with six figures drained out of your bank account. Maybe not. If the other side appeals, it could double your time in the case and dramatically increase your costs.

How about arbitration? Isn't arbitration the cheaper, quicker, friendlier version of litigation, more akin to a pillow fight than battling it out in court? Sorry. Arbitration has gone on steroids, and that pajama party has turned into a Texas cage match. There are still some arbitrations that are relatively quick and cheap, but it is not unusual to see an arbitration last a year or more and cost well into the hundreds of thousands of dollars — for each party! So be nice. Try not to fight.

Myth 4: Everyone's doing it, so it must be OK.

OK, folks, I shouldn't have to even write about this one. Your mom already warned you: Just because everyone else is doing something doesn't mean you should. Remember the bridge?

Still, virtually everybody — at least in some point during their business life — signs a contract just because everyone else does. For example, how about those website terms and conditions that you click to accept without even reading them?

Worse things happen when we sign 60-page leases, 100-page construction contracts, and even two-page purchase orders without reviewing or negotiating them, just because they are “standard.”

Here’s what “standard” brings you. You may end up doing work and losing money on the job. Instead of getting paid, you pay just to fulfill the contract. Or you get stuck with obligations that last for years and expose you to plenty of risks. Or you sign away important rights.

Similarly, there are a variety of practices that businesses assume are OK just because they are prevalent. Take unpaid internships. Most of them violate the law. As a general rule, unpaid internships are intended to be educational programs that do not involve interns performing work normally undertaken by regular, paid employees. Yet many businesses do what most every other business does: They use interns to make photocopies, do filing, run errands and take on other jobs that administrative and other paid staff normally perform. That’s illegal! And it exposes your business to lawsuits and penalties.

Myth 5: At least I’ll get my attorney’s fees if I win.

Not so fast there. In the United States, unlike Britain, if you win a contract dispute, you are not automatically entitled to reimbursement of your attorney’s fees. Generally, the other side only needs to pay for your lawyer if you have a contract that says you will be reimbursed if you prevail. Even if you have such an agreement, you may only get a portion of your legal fees. But absent extraordinary circumstances, you don’t have a chance at reimbursement of your attorney’s fees without including this critical provision in your contract. This is just another example where a mistaken belief can undermine critical decisions like whether you should pursue a lawsuit.

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