

Legal Aspects of an E-Business

3 important things to consider before you start your e-business

Today's Most Read

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Starting an e-commerce business is, for the most part, no different than starting any other business. However, taxes and trademark matters can have different legal consequences.

Business Entity

The type of structure you choose for your business requires the same analysis you would go through for any business. First, do some research into the various forms of legal and tax business structures available. Your business can be a sole proprietorship, a partnership, a limited liability partnership, an LLC, or an S or C corporation. Each has different legal and tax consequences that you should be sure you understand. You can talk to an [accountant](#) and a [lawyer](#), or you can take the risks of doing the research and formation on your own and then fix mistakes later when your business has enough revenues.

In most cases, you should pick a structure that gives your business a separate legal and tax identity from yourself. This allows you to be sure that for tax and legal purposes, the money and acts of your business are separate from your own. For example, if the users of your dating service sue you because a fellow user posted libelous information and you lose, the company's assets can be taken, but not your personal assets; the losses from the lawsuit would be deducted on your company's tax statements, not your personal one. A sole proprietorship means that a person does business as himself—which means that legally and for tax purposes, you are one entity. Many businesses start as sole proprietorships and then change their structure later.

If you plan to seek capital from outside parties, as many e-commerce businesses do, the preferred entity of most investors and VCs is the C corporation, which is the standard corporation formed. LLCs, Limited Partnerships and other entities are not favored due to the variation in rules between states and because they lack the legal structure of shareholders, a board of directors and officers, which are standard components of investment. If you have less than 35 shareholders, you'll probably want to elect to be an S corporation for tax purposes. You must file the election form 2553 within a short time after incorporating, so be sure to check with the IRS regarding the filing and the deadlines. If you need to expand beyond 35 shareholders in the future, you can change your tax status back to a C corporation to do so.

Sales Taxes

The revenue collection agencies in most states now have some kind of formal position on e-commerce sales. Most treat the sales in the same way they treat mail-order sales; however, you should contact

your state tax agency and ask for help and information with regard to your particular business to be sure.

Trademarks

Because your domain is such a big part of your e-commerce business, you'll want to be sure to [protect it](#). The best way to do that is through trademark law. A trademark is a word or symbol used to identify the source of goods or services to consumers.

You may apply for registration of a trademark or service mark, word, phrase or image after you use the mark to identify a product sold or service performed "in commerce," which means that you've used it for advertising and/or sale to customers. Your online business name can be a service (for trademark purposes) if it provides any kind of service to consumers: information access, ticket booking, online dating and so on. If your site sells the goods you manufacture, then your product names would be goods for trademark purposes. Trademark rights arise upon use in commerce--with or without national registration--of the name of the good or service. However, national registration expands and protects your trademark rights, giving your company a presumption of first use of the mark in association with particular goods or services.

The trademark office will not register a domain name that does not also meet the requirements of being a trademark; a domain name by itself is considered merely an address. Having trademark rights allows you to protect your domain name against others who might allege that it infringes on their trademark and try to have it legally taken from you, and also allows you to enforce your trademark rights against others who use domain names similar to yours to try to divert your customers.

Trademarks are complex, so make sure you read more about them or consult an attorney for your particular situation. You can learn more at www.uspto.gov.

Other laws to be aware of when running an e-commerce business are Federal Trade Commission regulations, which regulate mail order, Internet and auction activities, as well as advertising, consumer data collection, sweepstakes, contests, promotions and more. You can learn more about these at www.ftc.gov.

Note: The information in this column is provided by the author, not Entrepreneur.com. All answers are general in nature, not legal advice and not warranted or guaranteed. Readers are cautioned not to rely on this information. Because laws change over time and in different jurisdictions, it is imperative that you consult an attorney in your area regarding legal matters and an accountant regarding tax matters.

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