



Ei Phone Interview Transcript
Trademark and Business Attorney Melissa K. Dagodag
Interviewer: Billy J Harris - Ei@CSUDH
9/16/15

Billy: Melissa, the first question that I have for the Entrepreneurial Institute at Cal State University Dominguez Hills is how can the Entrepreneurial members protect their ideas, while pitching their product or business ideas to get funding?

Melissa: O.K the first thing to know is there is an agreement that can protect you, called a non-disclosure agreement. Unfortunately, many people do not like to sign non-disclosure agreements. So I'd recommend it, try to get people to sign a non-disclosure agreement, you may be able to find a template online or you can have an affordable attorney like me draft one up for you before you disclose your ideas to people. However if that is something that people are reluctant to sign than there are a couple of things that you can do in lieu of having a non-disclosure agreement that will afford you some protection. The first thing is, you can send an email or letter to somebody that you going to meet with when you plan on disclosing your invention and you can say "hey Bob I'm looking forward to meeting with you on Friday to discuss my invention called (whatever it is xyz)". The two ideas that you need to convey in that email are it's your proprietary invention or creation, whatever it is and that you want to make money from it. So, you'd say " Hey Bob I'm looking forward to meeting with you to discuss my invention named xyz, I think it's a great one I hope to make a lot of money from it and perhaps you could be a part of that money making picture with me". Something like that. Then after you meet with someone you can also send a follow-up email and your creating a paper trail for yourself that gives you some protection where you can argue that they had access to your idea on such and such date because you met with them and disclosed it and they knew that it

was your proprietary idea and you only disclosed it because you were hoping to make a profit and somehow involve them in the business. So what I'm suggesting is, if people won't sign a non-disclosure you can in fact send people an email or a letter to sort of get a pya, to cover yourself and basically to get a little bit of protection.

Billy: I didn't know that was a way to go about covering yourself, especially by sending the email out.

Melissa: Yes, the way that I proposed is very precise which is to convey the two things: that it's your invention or creative material and you intend to make a profit from it. It goes in the email that you send prior to the disclosure and the email that you send subsequent to the disclosure. Saying "it was great meeting with you Bob I enjoyed discussing my invention called xyz...I hope that we can bring it to fruition and make some money off this invention of mine". It's very specific the formulas that I'm sharing with you. It's only in lieu of a non-disclosure. Far and away it more preferable to have the non-disclosure agreement.

Billy: So the non-disclosure agreement should be first and if you can't do that then the email would be secondary?

Melissa: Yes that is two emails before and after that would be secondary.

Billy: One before the meeting and one after the meeting?

Melissa: Yes.

Billy: That somewhat answers the second question that I'm going to ask you which is what are the ways to get legal services on a limited budget or no budget at all for our Entrepreneurial students and the community members?

Melissa: Well there are a couple of things. I found things like legal zoom filing services. They basically just file forms for you and push paper but they don't give you advice so they're not very useful. So my rule of thumb about things like legal zoom are, if it sounds too good to be true it usually is. I don't find them to

be productive and I end up cleaning up a lot of work that my clients bring to me that has been done by filing services. Where you can get low price legal services is consulting with California Lawyers for the Arts. When I was a young lawyer, it's a nonprofit 501c3 in California I used to give them my time when I was getting started as a young lawyer. A lot of attorneys do give their time to them and you pay a heavily, heavily discounted rate to the California Lawyers for the Arts members. So that would be a resource that you may want to consider. They have decent rates and they get the job done. For a flat fee of around \$30 or \$50 you can get about a half hour of their time...

Billy: That is a great resource "California Lawyers for the Arts". Thank you. My next question is, at what point should the Entrepreneurial Institute students and community members start seeking legal advice? Is it before they decide to pitch, once they have a prototype? At what point should they start seeking legal counsel or legal support?

Melissa: Well it really depends, if they have inventions that they believe are novel or new creations that could potentially receive a patent, they might want to consult with a patent attorney right away to see if it's potentially patentable. This goes into one of your other questions, one of the biggest mistakes that I see entrepreneurs make is that they think they can handle everything on their own, and it becomes apparent that they can't when they have a problem, a legal problem. Maybe there using a brand name and unaware of the copyright and they receive a cease and desist letter. I had an entrepreneur client who was making kid shoes and he attended his first trade show and didn't realize that he was infringing someone else's trademark at the tradeshow because they served him with a legal complaint at the trade show. The idea that you can do everything on your own, while I admire the enthusiasm, energy and positivity, it's not the greatest thing because there are certain things that are legal matters that do require a trained professional to be able to spot the issues and help you avoid huge pitfalls where you can get into trouble. I think once you have a product you might want to consult with somebody about a potential patent and then you might want to consult with a trademark attorney, someone like me who

could help you protect the brand name. The next thing to consider is, if you're in the line of business where it's somewhat risky, an example would be like your making toys for kids where there's a lot of litigation, then that alone might make you want to form a separate company so if you have any assets like a house or cars where someone could sue, and potentially take from you, you can protect that to some degree if you form a separate legal entity. So if you have assets that you might want to protect and you're in a business like a suggested making kids toys or something where its highly litigious those are things that might ad greater emphasis on wanting to consult with an attorney right away.

Billy: What are the costliest mistakes that startups make?

Melissa: Using a brand name that may be infringing someone else's brand name that you're not aware of or making use of a patent of somebody else that you didn't know existed. It's called clearing a patent or clearing a trademark. It makes sure that it's actually available for you to use and you won't get into hot water by going ahead and making that product or using a certain brand name with it.

Billy: OK thank you, my next question is what type of legal practices would increase the success rate amongst startups and any individuals that may have a product idea? Should it be to consult with an attorney beforehand or always staying in contact or communication with an attorney?

Melissa: Well a lot of, well it's what I said before. Just knowing what you don't know. You don't have to be an expert at everything. I do admire that enthusiasm and that attitude but you don't have to be an expert at everything. To know what you don't know is great, and then consult with an attorney if there's any shades of grey. There are professionals for a reason and if it were that easy to be an attorney then we would all be out of business, but we are not because there is no substitute for legal counsel for your specific needs. So I would suggest that, anytime someone has a new product , because of the brand name they want to

use or the potential that it could be patentable and protectable for that person or company or not it could be infringing someone else's brand. That is the point in which you want to consult with someone. Anytime you're thinking about releasing a new product or any sort or even a new service that has a brand name. Also, as I said assessing whether or not there a risk of litigation associated with that service or product would also make a difference. The next step would be whether or not to form a separate business entity to protect your personal assets.

Billy: So anytime you're releasing a new product or service would be the best time to consult an attorney?

Melissa: Yes, and ideally you'd want to do that at least six months before you plan to release that because that's how long it takes to register a trademark.

Billy: OK so at least six months ahead of time.

Melissa: Yes.

Billy: OK thank you. My final question is what advice can you give to the Entrepreneurial Institute and community members about the legal side of being an entrepreneur?

Melissa: I think it's going to go back to what I already said about knowing what you don't know. It's great to have passion, energy and enthusiasm but you can't be a jack of all trades in terms of these professions that have been around for centuries that really require some training just like you wouldn't want to just go out on Web MD and try to solve a medical problem...that's not ideal and you would want a professional, their professionals for a reason. It's great to believe that you can be a jack of all trades but maybe you can just be a jack of your own trade. Maybe your someone who creates headphones whatever it is that you create and your great at designing those and taking care of those type of issues, but not the legal issues about the brand name and protecting yourself from liability and all those other things. Really just knowing what you don't know, consulting with a professional when you need to, and when you have to do that, you should be really organized, write down all your questions. You should tell

that lawyer about your current plans and your future plans so they can plan with you for right now and for the future so they can protect you as well.

Billy: So writing down questions, know what you don't know and like you said, being a jack of your own trade realizing what you actually, don't know

Melissa: Yes. And you can be an expert in the example of the headphones but there is no shame of asking for help. It's a great thing to do because you want to avoid pitfalls. Who wants to start a company under what I always call a dark cloud that could rain on you at any moment. You can get a lawyer involved and try to create sunshine instead of the dark clouds hanging over you.

Billy: OK that was my last question and this is just an extra one that I wanted to know, what do you like most about working with the variety of entrepreneurs, startup companies and businesses that you currently work with? There is such a variety from fashion, arts to business. What do you like most about it?

Melissa: I'm a creative person myself also, I write music, I sing, I write poetry, and I paint. So I really like the kindred spirit part of it where I can really appreciate and understand what my clients are doing and then the fact that I could be like a best friend and protect them in ways that they wouldn't even think about. Many creative people lack of business sense and so with me it's great I could be that creative person but then I could think or put on my thinking cap and say "hey watch out for this and this and that" and be able to that for them when they can't do that for themselves.