Article

Avoid Bursting the Dot.com Bubble

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That hissing sound you may have recently heard is the air leaking from the dot-com bubble.

Notwithstanding the recent drop in the Nasdaq, however, there are still ways to realize value from your emerging-growth company.

Regardless of your strategy, the value of your company depends on the value of its assets or income stream. But, in the unwelcome event of restructuring or reorganization, preplanning can be your best ally.

For example, identifying and protecting the company's intellectual property assets may create wealth beyond sales. In addition, customer lists may be one of a dot-com's most valuable assets.

Knowing how to avoid some of the pitfalls associated with customer lists, including privacy issues, may maximize their value.

Should the company encounter financial speed bumps, proper planning may get the company running up to full speed once again.

PROTECTING YOUR ASSETS

Assess your company's strategies and have an intellectual property audit performed.

Identify and information you may want to keep confidential.

This may include unpatented innovations and research results (such as formulas and algorithms), information on operations of the company (such as manufacturing processes), and financial and legal information of the company.

You may also want to license and/or register the company's copyrights in software, user manuals, or material distributed or displayed over the Internet.
You may also capitalize on the company's intellectual property by licensing, assignment or other transfer of rights.

Get everyone on board protecting your company's intellectual property. Establish agreements and policies that address employee obligations to the company, including assigning their rights in an invention to the company, or their nondisclosure of trade secrets to third parties. Continually monitor these policies to ensure that employees comply with these obligations.

Establish a privacy policy that addresses disclosure of a customer's confidential information by the company. Although the law regarding privacy is still emerging, consumers might have the ability to collect damages for violations of consumer protection laws.

Intellectual property and technology are often owned by emerging growth companies that are, or will become, financially unstable.

When a company files bankruptcy, all its legal and equitable interests in property, including its intellectual property and technology licenses, become property of the company's bankruptcy estate.

It is important to be aware, however, that the effect bankruptcy has on intellectual property rights is still unsettled.

Prebankruptcy strategies may minimize a company's risk, depending on whether the company is a license or licensor.

Certain language may be used in licenses to put a licensee or licensor in a better negotiating position. Also, transactional steps may be undertaken to prevent intellectual property and any related agreements from becoming property of the estate under the Bankruptcy Code, where its ownership is subject to a bankruptcy court's jurisdiction.

MORE BANG FOR THE BUCK

Many decisions a company makes in its early stages impact its later value, regardless of its exit strategy. Rapid changes in technology often makes these decisions more complex than they might be for a traditional company.

It's always best to consult counsel who understand and can identify these risk areas before you encounter them, and can help you plan your strategy for survivability.

Primary Contacts

Kevin Lippman
Dallas
214.855.7553
klippman@munsch.com

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