

Introduction

Build a better mousetrap and the world will beat a path to your door.
—Ralph Waldo Emerson

IP-based businesses and entrepreneurs drive more economic growth
in the United States than any other single sector.
—United States Patent & Trademark Office

A. The Circuitous Sequel

To fully understand the purpose of this book, it is helpful to put it into the context of my other writings and professional activities. I am currently Dean of Hamline University School of Law and recently served as Interim Dean of Hamline University Graduate School of Management. Before joining Hamline, I served as a law professor and an attorney practicing in the areas of intellectual property and business law. As a law dean and professor, I am committed to the lawyer's obligation to make the law more accessible to the public. My goal with this book is to demystify the legal "secrets" of starting a business and to create new opportunities for anyone with the creativity and tenacity necessary to become an entrepreneur.

In 2002, I published the *Independent Filmmaker's Law & Business Guide*. The book has been a hit among filmmakers and has assisted them to make films, create film companies, and participate in social discourse through entertainment. Since the book's publication, movies such as *The Passion of the Christ* and *Fahrenheit 9/11* have demonstrated that independent films have the power to transform public discourse about important events. Since writing that book, however, I have learned a few things. First, most Americans are not filmmakers. While the audience for the book has been receptive, it is not particularly large. Second, while the book provided tools to make documentaries and films relevant to social issues, in significant ways, any book on filmmaking can have only a limited impact on society.

While my academic writing is primarily social and legal commentary, my goal is to address readers directly, and in doing so, impact society in a tangible way. The most important step we can take to create a free and just society is to create economic opportunities that are universally available to each and every person. Economic security is the cornerstone of liberty.¹

My hope is that *Own It* will accomplish the objectives of *The Independent Filmmaker's Law & Business Guide* for a larger audience and those with a greater need. *Own It* is a book for all entrepreneurs—not just the risk takers in the film industry. However, many of the suggestions are similar because independent filmmaking is a particular form of entrepreneurship.

Own It is different from every other business start-up book for one simple reason. The goal is not merely to instruct you on how to start a business, but to identify attributes that can lead a business from the garage to the top of the Fortune 500 list. The *Own It* strategy focuses on a rule learned from independent filmmakers, authors, and musicians. This fundamental business axiom is known by every venture capital guru and dot.com success.

The central axiom of this book is exclusivity and relevance. By owning the property that provides the core asset of a business, the owner can reap the benefits, maintain healthy profit margins, and discourage competition. Through careful research and an understanding of the stressors that create business opportunity, entrepreneurs can identify the opportunities to build enterprises invaluable to their customers and protected from competition.

Through the legal doctrines of patent, copyright, trademark, and similar tools, the exclusivity once reserved for the industrial giants of the twentieth century can now be used for every conceivable business. Microsoft, Intel, and IBM all exist because of exclusivity; their technological inventions are patented, and their software is copyrighted. Similarly, Disney, AOL-Time/Warner, and Fox derive their worth from copyrights. Nike, Mercedes, and Jordache have built empires on their most valuable assets, their names and logos. Coca-Cola and Kentucky Fried Chicken rely on trade secrets to accomplish these goals.

But the successes are not limited to the most powerful companies. Apple Computer is renowned for its origins in a garage. Famous Amos cookies, Mrs. Fields, Ben & Jerry's and many others started from humble beginnings, but

1. As a United States lawyer (licensed in California and New Hampshire), I simply do not have the expertise to provide the same tools to individuals in countries outside the United States. The lessons in this book, however, are not limited to U.S. citizens or to businesses operating only in the United States.

built success upon the intellectual property of copyright, trademarks, patents and trade secrets, and publicity rights.

Because the relationship between the entrepreneur and the investor is critical to the success of business models built on exclusivity and relevance, the book also explores financing options and suggests how to manage the interests of the investors, the entrepreneurs, and the employees of the business. Together with some nuts-and-bolts information on the start-up phase of the business, this book will provide the keys to unlocking the American dream and building a secure financial future for every entrepreneur. The book does not provide any get rich quick schemes, but provides a model for building a business that will last.

B. The Role of the Book

This book is a guide to one particular aspect of creating a new enterprise. There are dozens of topics the book does not touch. There is no discussion of inventory control, double-ledger accounting, parachute colors, or the movement of cheese. Instead, it provides legal and business fundamentals. The entrepreneur must supply the business knowledge to make the book's principles useful and some business experience, to know when to take risks and when to avoid them.

THIS BOOK DOES NOT CONSTITUTE THE PRACTICE OF LAW OR PROVIDE LEGAL ADVICE THAT CAN BE RELIED UPON AS AUTHORITY. THIS INFORMATION IS GENERAL IN NATURE AND SHOULD ONLY BE USED IN CONJUNCTION WITH A LICENSED ATTORNEY, PROPERLY FAMILIAR WITH THE SPECIFIC LEGAL MATTER IN QUESTION.

THIS BOOK IDENTIFIES PARTICULAR INDIVIDUALS, FIRMS AND COMPANIES. NOTHING HEREIN CONSTITUTES AN ENDORSEMENT OF THESE ENTITIES OR OF THEIR SERVICES AND CANNOT BE RELIED UPON AS THE LEGAL BASIS FOR ENGAGING SUCH SERVICES. Although many of the companies listed are the largest or most visible in their respective fields, their names are used either for illustrative purposes or to provide a starting point for the reader's own research. Conversely, the failure to appear in the book should not be deemed a negative assessment of any particular product, service, or organization.

As for gender-specific language, the book identifies the business person or entrepreneur as male and the professionals—attorneys, accountants, and consultants—as female. This characterization is not intended as a stereotype. I

find the use of mixed gender references confusing when applied to the same character type, so I have elected to represent the entrepreneurial spirit through this approach. As the acknowledgements suggest, the profession of entrepreneurship—both the legal and business professionals in the field—are increasingly led by women.

C. Acknowledgements

This book was born of necessity. Not my necessity, but that of my clients and the clients at Hamline University School of Law's Nonprofit and Small Business Clinic. Through a myriad of meetings and conversations, I learned about the barriers that kept thoughtful new business owners from succeeding. I am very grateful to those individuals for sharing their time and educating me on the needs of the entrepreneur.

This project is the result of the work supported by my colleagues at Hamline University School of Law, Hamline University Graduate School of Management, Franklin Pierce Law Center, and the law firm of Gallagher, Callahan, and Gartrell (GCG). I particularly wish to acknowledge Donald Pfundstein, who brought the core values captured in this text to the management of GCG. Donald proved that law firm management need not always be an oxymoron.

I appreciate the efforts of many business professionals, lawyers, and other colleagues who reviewed the manuscript for this book to assure that I never ran too far off course, though the responsibility for all information in the text is solely my own. In particular, I would like to thank members of my family who read drafts of the book and provided thoughtful guidance, including Sherman Garon, the business owner from whom I learned so many of these lessons; Dan Garon, the next generation of entrepreneur; and my wife, Stacy Blumberg Garon, my constant source of inspiration, candid analysis and exceptional editing. I have benefited greatly from the advice of many other experts who reviewed my efforts and challenged my ideas, including Tom Field, Carol Honabach, Denis Malony, Susan Stephan, and my research assistant Laura Haske.

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