

Start-ups and some relevant IP issues

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Trademarks & Designs Rights when having a Start-up

Claus Barrett Christiansen

Introduction

For start-ups, there are often high costs and limited revenue. Further, if a business develops something that is patentable, a start-up will often prioritize patent drafting and filing before trademark and design protection because the patents are thought to be the primary source for future commercial exploitation.

However, consequences could be severe if you fail to protect your trademarks and designs. Lack of trademark protection leaves your business exposed to the risk of infringement claims and also, you could lack protection and the possibility to enforce valuable assets which could be paramount to your business.

The basics of trademarks

Traditionally, a trademark is an indication of commercial origin, i.e. it is something that makes the relevant public able to distinguish the goods or services from one trader from the goods and services from another trader.

Trademarks are although much more than that. You can for example build goodwill in a trademark, allowing you to make customers adhere to your products or services and even making it feasible to charge a price premium and build a customer base. Especially in times where digital platforms are the most important means of communication, trademarks are more important than ever to attract traffic and allow customers to navigate between different sources of goods or services.

It varies from jurisdiction to jurisdiction whether or not protection of a trademark requires registration. The majority of jurisdictions are first-to-file jurisdictions where trademarks only enjoy protection if they are registered. China is an example of a first-to-

file jurisdiction. However, in some jurisdictions - first-to-use jurisdictions - acquired distinctiveness is sufficient to establish protection even without registration. Denmark is an example of a first-to-use jurisdictions whereas Germany applies a combination of first-to-file and first-to-use i.e. you can acquire protection through long term not insubstantial use. In addition to use-based protection, many jurisdictions also have marketing practice rules and principles of passing off which further complicates the position of especially unregistered trademark rights. In the EU there is full harmonization of EU wide trademarks and on a national level there is also a very high degree of harmonization, although the issue of registered and unregistered trademark rights is not harmonized.

At a first glance, the possibility to acquire protection just by using a trademark, or through marketing practice rules and passing off, might seem compelling. But as a start-up you need to consider the fact that if you can acquire protection without registration, so can others, and that will create a trademark landscape which is extremely difficult to navigate in - especially without a considerable budget for proper availability searches.

Company names are granted some level of trademark-like protection, but similar to unregistered trademarks the protection varies from jurisdiction to jurisdiction and in many jurisdictions, company name protection is quite narrow.

In addition, start-ups need to keep in mind that trademark rights are often the only basis to prevent third parties from using infringing domains, which is important as you do not want to generate traffic for competitors or even squatters.

A trademark, once registered or used, is not a time limited IP right but a perpetual right provided it is properly maintained.

Trademarks can be registered on a national level but that is rather expensive if many countries are to be covered. For the EU Trademark one registration will cover all the EU countries, and for global registration needs there are international registration systems such as the Madrid Protocol that will allow for relatively

decent priced registrations, but only for countries that have subscribed to such systems.

The basics of designs

Design protection provides protection of the appearance of a product or part of a product. The detailed requirements for design protection vary in most jurisdictions although in the EU there is a uniform regulation both for the EU wide design protection and on a national level in the EU Member States.

In almost all jurisdiction there is a requirement of novelty for a design to be registered. This means that if the design has been published before application for registration, the possibility for the design to be registered can be ruined. However, many jurisdictions have a grace period of e.g. 1 year, which allows registration if the application has been filed within one year from the first publication of the product.

In addition, in the EU there is the feature of unregistered designs, which allows for 3 years of protection for designs even without registration. The protection of unregistered designs is never the less not as strong as the protection of registered designs.

Design protection is not perpetual but will expire after typically 25 years or less for the registered designs. In some common law jurisdictions there are complicated relations between copyright protection and design protection.

Design protection is a monopoly right and it allows for the registrant to enforce the design against other designs which gives the same overall visual impression.

Design protection is often supplemented by copyright for which registration cannot be a protection requirement and also by marketing practice protection and passing off protection.

Practical issues for start-ups

The evil of trademark and design protection for a start-up is that it is most often not something you can postpone for longer periods of time and then register when profits start to flow in.

For trademarks there are no legal time limit to file for registration, but if your start-up is successful you can be almost certain that in the first-to-file jurisdictions someone else will register your trademarks. The problem with such third party registrations is that it is extremely difficult and expensive to remedy because it is not even an offence or contrary to the trademark laws.

It is a sad experience for a start-up to be subjected to the loss of a valued trademark right - after having spent time and money on accustoming the public to recognizing the trademark as the origin of your products or services - just because it was not registered timely and someone else took the initiative to register.

The problem, especially for start-ups, is that even though you spent some of your scarce funds on registering your trademark, you almost never have the money to do it in all the relevant jurisdictions and even if you do, there is a use requirement in most jurisdictions, requiring use to either obtain or maintain protection. Thus, if you start up in the US or the EU and register your trademark and later want to expand to Japan and China, someone else might have registered the trademark there.

If as a start-up you plan to use the relatively cheap distribution on platforms like Alibaba and Tmall you absolutely need a trademark registration to be allowed to carry out business on such platforms.

For designs it is even worse since if you either publish, or alternatively in some jurisdictions do not register within a relatively short grace period, you will not be able to register at all. That can actually mean life or death for design orientated start-ups. There is as mentioned sometimes supplementary protection under copyright, but for especially applied art this can be challenging. As for marketing practice protection and passing off, these types of protection are much more difficult creatures to handle and consequently much more expensive to enforce. On top

of this, investors and business angels would almost always consider it a substantial weakness if start-ups have not secured their trademarks and design rights, especially in Europe where it is quite cheap to do so, as there are EU-wide rights for both trademarks and designs which requires only one registration.

Conclusion

It is difficult to make money if you have no money. Therefore, start-ups often have to postpone trademark and design protection even if the start-up is a design company heavily dependent on their creations and often also their trademarks.

In terms of long – or even just medium - term strategy and protection of the start-up it should be prioritized whenever possible to protect trademarks and designs from the beginning, at least for the trademarks and designs which are crucial for the start-up. This will almost always pay off and in addition, even in early phases of the life span of a start-up, registration of trademarks and designs could help attract investments whereas the lack of registration could scare off investors.

At least the attention of start-ups should be directed at the consequences of not registering so that the decision – regardless of whether it is out of necessity – is taken with adequate knowledge of the risks of postponing registration.

Trade Secrets for Start-ups

Pierodavide Leardi

Introduction

Trade secrets are often considered as one of the most important competitive advantages of a start-up company and one of the most interesting assets for early stage ventures.

Sometimes, they are referred to as the “secret sauce” that makes a business idea unique and one of the most common questions that are being asked to IP lawyers is: how can I protect this idea?

With the entry into force of the TRIPs Agreement that governs trade secrets protection within the OMC, the EU Trade Secrets directive and the Defend Trade Secrets Acts in the US, trade secrets protection is now based on a set of widely accepted and well known principles and can be thus considered an IP asset on which start-ups and venture businesses can rely on in cross border transactions.

Understanding the basics of Trade Secrets

Trade secrets are meant to protect a wide range of company information: know-how, business information and technological information can be kept secret and confidential.

Obtaining trade secrets protection does not require formalities or applications. What the legitimate holder of a trade secret needs is keeping its information secret.

One of the clearest definition of trade secrets is given by the EU Trade Secrets directive of 2016. It states that ‘trade secret’ means information which meets all of the following requirements:

a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known

among or readily accessible to persons within the circles that normally deal with the kind of information in question;

b) it has commercial value because it is secret;

c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

With some adaptations this principle is generally applicable globally.

Trade secrets protection is meant to last for an unlimited period of time, namely, until the information is kept secret by the legitimate holder.

The holder is protected only against misappropriation cases that can be divided into two main categories: i) misappropriation by partners or employees; ii) industrial espionage.

This is one of the main differences between trade secret and patent protection. The former, is meant exclusively to prevent misappropriation cases; the latter, protects the invention as claimed in the patent registration *per se*.

It is worth mentioning that the most frequently stolen information are: email lists; non-financial business information; customer/supplier/pricing list; compound compositions.

The scope of protection of trade secrets allows several activities that can not be considered illicit or unlawful such as:

a) independent discovery or creation of the same information protected as trade secrets by others;

b) observation, study, disassembly or testing of a product or object, or service that is available to the public or that is lawfully in

the possession of the acquirer who is free from any legally valid duty to limit the acquisition of the trade secret;

c) exercise of the right of workers or workers' representatives to information and consultation ;

d) any other practice which, under the circumstances, is in conformity with honest commercial practices.

Lastly, to cover the basics of trade secrets protection, it is worth mentioning that the main remedies available for misappropriation cases are preliminary and definitive injunctions and the award of damages. These orders allow the holder of trade secret to keep his competitive advantage on the market and to prohibit the use of the information by others. Publication of judicial decisions can be also awarded as a supplementary deterrent to further infringers.

Practical issues for start-ups

There are several practical reasons that may suggest a start-up company to consider trade secret protection for its know-how.

First and foremost, trade secrets allow to maintain a lead-time advantage over other competitors even when the secret idea will be disclosed at the time of first publication of the product or service offered by the start-up.

Another reason that must be considered is that trade secret protection is generally not expensive, it does not need any filing or paper work and is not difficult to enforce.

On the other hand, other factors should be taken into account as good reasons for not choosing trade secrets protection: i) ease of reverse engineering; ii) fear of patenting by competitors; iii) clear advantages of patent protection in specific cases.

The relationship between trade secrets and patents is self evident and very important in early stage projects. First, trade secrets provide protection prior and complementary with patenting. As every one knows a patentable invention must be kept strictly secret before filing the patent application in order to prevent public disclosure of the invention and the nullity of the patent application.

Second, trade secrets could be a perfect alternative to patents when the patentable invention will not be made available to customers or third parties and can not be subject to reverse engineering. In these cases, it is crucial to keep in mind that to obtain a valid patent registration, full information of the patented process or product has to be submitted to the patent office and upon publication or issuance, will then be available - by definition to every one including competitors. This mechanism allows third parties to perform studies and research on the patented invention and to exploit the invention itself after the expiration of the patent. The temporary monopoly on the patented subject matter is regarded as a tradeoff for thus disclosing the information to the public.

One last practical remark on trade secret company policy has to do with corporate policies and corporate awareness as uncertainty and lack of care could kill a trade secret.

In order to be protected, trade secrets must first be kept secret within a business and properly handled as secret information. Every trade secret holder should first develop its own trade secret policy, circulate it to employees and company personnel to enable stakeholders and employees to be aware of the existence of trade secrets and their protection. No one, within a business should never be confused when it comes to understanding what

information is a company trade secret and what information is not.

The same reasoning and care must be applied to third parties relationships. Start-ups and venture businesses needs to negotiate and execute non disclosure agreements that are often time bound. Excluding trade secrets from the time-bound is a mandatory strategy to prevent the lost of secrecy of the shared information.

Conclusion

Protecting trade secret is crucial for start-ups and venture capitalists. Today's global legal framework gives almost uniform global protection to this type of company information.

Trade secrets holders must none the less adopt company policies that allow the proper identification and protection of trade secrets within the company and in the contractual relationships with third parties and business partners.

In some cases trade secrets can be a valid alternative to patent protection and both start-ups and venture capitalists could be more flexible in assessing these opportunities in early stage ventures.

IP Law and Ownership in Employment Relationships

Sanna Wolk

Introduction

Nowadays many companies are well aware of the value of intellectual property and the ownership and control of intellectual property rights is crucial to the success of any business and in order to maximise the value of intellectual property assets it is necessary to maintain and effectively manage all of their associated ownership rights.

Intellectual property is created by various groups of persons, which can include contractors, employees or sub-contracted manpower. Most frequently, however, development, research and creative activities are still performed by employees.

Traditionally, companies' most important assets were limited to fixed assets, such as land, real property, machines and equipment, and similar. Even though manpower has always been regarded as essential for a business, it has also been considered replaceable. Employees could be replaced without jeopardising the company and its future. However, in our service-oriented, technologically innovative economy, human capital, such as key persons with know-how and creative ideas regarding a company's products and services, is a valued asset.

Recent decades have brought an upsurge of interest in the legal ownership of intellectual property rights created by employees. This interest is reflected in international discussions from the beginning of the 1900s onwards. However, there are no international solutions regarding employees' intellectual property rights. At present the nature of both employees' and employers' rights is defined by national legislation. Furthermore, there is no

standard formula for the employers' right at national level.¹ In some countries the relevant rules on the employer's right to employees' intellectual assets are to be found in the national intellectual property acts. In other countries and for certain intellectual property rights, a transfer from the employee to the employer follows from general principles of law. Consequently, the methods of identifying the owner of, and establishing rights over an employee's intellectual property assets, are relatively uncertain. Therefore, in our global economy with cross border research and development, clarification of these questions in the employment contract or within a specific contract could be useful to both parties.

Different approaches in different law systems

From a legal perspective, the view on the right of employers to employees' intellectual rights differs substantially between the two main legal systems in the world today, the common law system and the civil law system. This apart from those legal systems based on Asian and Arab-Islamic cultures.

In the *common law system*,² e.g. in the United States and in the United Kingdom, the investor (employer) benefits from its employees' intellectual creations. The situation is similar in the Netherlands. In those countries the employer is the initial owner of the employees' intellectual property rights produced in the course of the employment. The employer is treated as the first owner, but not deemed to be the author. Therefore the duration of copyright, for example, is measured with reference to the life of the employed creator. Further on, the national laws in these countries make it clear that contractual provisions, whether expressed or implied, can affect the employer's initial ownership.

¹ See further *Employees Intellectual Property Rights* (eds. Szkalej/Wolk), 2 ed., Wolters Kluwer 2017.

² Otherwise called the Anglo-Saxon system.

In the *civil law system*,³ to which most of the countries of Continental Europe – Germany, France and the Nordic countries, for example – belong, a legal person such as an employer, may not generally be deemed the first holder of an intellectual property right. Those rights are normally linked to individual persons. Therefore, an employer may normally only obtain intellectual property rights by assignment by law or in contract.

Ownership and harmonisations efforts at a European level

At present no major international harmonisation efforts are in progress regarding employees' intellectual property rights. The ownership and control of intellectual property rights are mainly managed in national legislation. However, within the European Union, the Commission has, from the 1970s onwards, adopted and is continuing to introduce a number of measures which seek to harmonise ownership aspects of employee's intellectual property rights throughout the Union.

Employees' inventions

During the 1970s an effort was made in the patent field to adopt a Community Patent Convention, a convention that has not yet come into operation. Patent protects new inventions, involving an inventive step, insofar they are capable of industrial application, as for example software inventions.

At that time, in the 1970s, the opinion within the European Community was that matters regarding employees' inventions should be dealt with under the Member States' national laws and not harmonised at a European level.⁴ The need for harmonisation

³ Otherwise called the Roman-Germanic or written law system.

⁴ Compare Article 60(1) of the European Patent Convention (EPC). EPC has left patent ownership to the discretion of the states signatory to it and the right to a European patent is determined in accordance with the law of the State in which the employee is mainly employed. If the State in which the employee is mainly employed cannot be determined, the law to be applied will be that of the State in which the employee's employer has his place of business. See also Article 11(4) of the Regulation (EC) No 2100/94 on Community Plant Variety Rights. From the provision it follows that if the

in the field of employees' inventions was not considered an urgent matter, hence the differences in the laws of the Member States. Since then, during the 1990s and 2000s, the European Commission has announced that possible harmonisation as regards inventions by employees is not necessary and that the matter should continue to be regulated by the various national laws.⁵

Today, at a national level, the rights to employees' inventions are regulated to a greater extent than the rights to other intellectual property assets created by employees. For instance, Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the United Kingdom all have national provisions on the ownership of employee's inventions.

Employees' copyright

In the late 1980s and in the early 1990s, copyright was at the centre of attention within the European Union. Copyright protects creations of the mind insofar they are original and expressed in a particular form. Copyright protection covers a very broad range of creations, such as software, databases, web pages and multimedia works.

In the late 1980s the European Commission published its proposals for copyright within the Community.⁶ The Commission's efforts led among other to the adoption of Directive 2009/24/EC on the Legal Protection of Computer Programs. Article 2(3) of the

breeder is an employee, the entitlement to the Community plant variety right shall be determined in accordance with the national law applicable to the employment relationship in the context of which the variety was bred, or discovered and developed.

⁵ See further the Green Paper on the Community Patent and the Patent System in Europe, COM(97) 314 final and the Proposal for a Council Regulation on the Community Patent COM(2000) 412 final.

⁶ See the Green Paper on Copyright and the Challenge of Technology – Copyright Issues Requiring Immediate Action, COM(88) 172 final and the Follow-up to the Green Paper – Working Programme of the Commission in the field of Copyright and Neighbouring Rights, COM(90) 584 final.

Directive contains a mandatory requirement on employees' programs.⁷ The employer shall exclusively be entitled to exercise all *economic rights* in an employee's computer program, where a program is created in the execution of the employee's duties or where the employee is following instructions given by the employer.⁸ It is an automatic legal transfer of the copyright in computer programs. However, if the parties agree, the employed author of the computer program can recover the rights through a specific clause in the employment contract or a separate agreement on the exploitation of the computer program made by the employee (waiving the legal automatic transfer of rights).

A similar provision to Article 2(3) of the Directive on Computer Programs was included in the first draft of the Directive 96/9/EC on the Legal Protection of Databases. However, it was deleted from the final version of the Directive and recital 29 only states that nothing prevents Member States from stipulating in national laws that where a database is created by an employee in the execution of the duties or following the instructions given by the employer, the employer exclusively shall be entitled to exercise the rights in the database so created. Yet, during early 2000s the European Commission has announced as regards ownership of employees' copyright that: "At this point, it would seem advisable to analyse the issue further and, in particular, identify specific situations where harmonisation would yield added value and address Internal Market needs."⁹

Summing up, today only employee's computer programs are regulated at European level and the question of employees' copyrighted works in general is left to national legislation. In some countries, such as in the Netherlands and the United Kingdom,

⁷ About employees software, *see further* EU Copyright Law - Subsistence, exploitation and protection of rights (Rosenmeier/Szkalej/Wolk) Wolters Kluwer 2019.

⁸ *Compare* Article 3(2)a Directive 87/54/EEC on the Legal Protection of Topographies of Semiconductor Products (a non-mandatory provision regarding employees' chips).

⁹ Commission Staff Working Paper on the Review of the EC Legal Framework in the Field of Copyright and Related Rights, SEC(2004) 995, Brussels, 19.7.2004 p. 14.

national copyright acts regulated employees' copyright. In other countries, such as Germany, France and the Nordic countries, a transfer from the employee to the employer follows from general principles of law. Nevertheless, all Member States have included in their national copyright laws provisions implementing the mandatory requirement on employees' computer programs in Article 2(3) of the Directive on Computer Programs.¹⁰ *Moral rights*, however, such as right of paternity and right of integrity, are left outside the scope of the Computer Program Directive and are therefore currently regulated by national provisions.¹¹ In the Member States belonging to the civil law system, moral rights are considered to arise directly in the author and to be inalienable even by voluntary transfer (cession) to an employer. On the other hand, in the Member States belonging to the common law system, employees have no moral rights as the copyright is vested in the employer. Yet, the employer normally does not have a right to the moral rights.

Employees' designs

The protection of industrial designs is growing in importance. A design is the ornamental or aesthetic aspect of an article. Designs are applied to a great variety of products from different industry and trade sectors, from complex instruments with a special or exclusive use, such as machines, vehicles, tools, computers, to simple or everyday articles, such as clothes, electrical appliances, toys and furniture.

In the 1990s, after having dealt with patents and with selected areas of copyright, the European Commission turned its attention to the harmonisation of industrial designs within the

¹⁰ See further the Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation and effects of Directive 91/250/EEC on the Legal Protection of Computer Programs, COM(2000) 199 final.

¹¹ See also Article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works of 1886.

Community.¹² The first effort was the adoption of Directive 98/71/EC on the Legal Protection of Designs. However, since ownership of rights in design is an area where the laws of Member States differ, there is no provision in the Directive dealing with employees' designs.¹³ Nevertheless, since 2002 there is a Community-wide right of design protection. This was established through Regulation 6/2002/EC on Community Designs. The Regulation is binding in its entirety and directly applicable in all Member States since 6th March 2002. As to Community design, all design rights are automatically vested in the employer, where the design is developed in the execution of the employee's duties or when the employee is following instructions given by the employer. This follows from Article 14(3) of the Regulation.¹⁴ However, this unless otherwise agreed or specified under national law. As a design right is intended to be an economic right, rather than a moral one, a transfer of a design can therefore be total (compare with copyright).

In terms of ownership of employee's designs, then, we have to distinguish between national design protection, valid only within the Member State's territory, and Community design protection, that provides right holders with a right which is valid throughout the European Union. However, Community design can be available next to a Member State's national design, especially during the short period of unregistered design and national registered design. In practice it can happen that there is a clear provision on employees' Community design, but no national provision, or a conflicting one, regarding the transfer of national design rights

¹² See the Green Paper on the Legal Protection of Industrial Design (III/F/5131/91).

¹³ The Green Paper on the Legal Protection of Industrial Design made elaborate provision for employee designs a provision that was based on Article 60(1) of the EPC. Yet, the provision was abandoned in the initial 1993 Draft Proposal.

¹⁴ Article 14 of the Design Regulation sets out who will be the first owner of a design, of a jointly made design and an employee's design. From Article 14(1) it follows that the right to the Community design shall be vested in the designer or the designer's successor in title. If two or more persons have jointly developed a design, the right to the Community design shall be vested in them jointly, Article 14(2).

from the employee to the employer. The Design Regulation does not declare whether the Community provisions on employees' design or national law should prevail in those situations.

One more cautionary note is in order. Since a design can also be protected by copyright, in those situations national provisions on copyright may be applicable at the same time as the provisions in the Design Regulation. National provisions that do not always stipulate the same as in Article 14(3) of the Design Regulation.

Conclusion

Summing up, there is no international harmonisation in the matter of ownership of intellectual property rights. National laws still vary to a great extent from country to country, and each intellectual property right is based on whether or not the applicable legislation provides guidance. Nevertheless, similarities also exist between the national legislations concerning ownership of employees' intellectual property rights created during the course of employment. Furthermore, one common thread for all intellectual property areas is that a properly drafted agreement can help ensure that the party seeking ownership of the relevant intellectual property rights will get what it bargained for and secure the value of its intellectual property assets.

I have now briefly described the legal situation concerning employees' intellectual assets. The last issue I would like to address is whether uniform rules in this field are desirable at an international, or at least at a European, level. It is a challenging question, today at the beginning of the twenty-first century. My opinion is that it would be desirable. Particularly as the existence of differences between national laws concerning employers' and employees' rights to intellectual property causes complications and problems for cross-border research and development, both within multinational enterprises and for co-operation between companies. Divergent rules concerning employees and employers' rights create uncertainty. Furthermore, intellectual property rights

have shown an increasing tendency to overlap, and a given object of intellectual creativity may be covered by several and perhaps as regards ownership, conflicting rights.

However, there are a number of questions that have to be considered before it is possible to create uniform international, or European, rules regarding employers' rights to employees' intellectual creations. Nevertheless, in the work with uniform rules, it is important to find a proper balance between the interests of the employee and the employer and a reward to employees may be fair. Especially when some employed creators, depending on what intellectual property rights are created, are economically compensated through mandatory national provisions for the rights that are transferred to the employer. For instance several European Member States have mandatory provisions regarding employed inventors' right to reasonable remuneration for the rights in inventions transferred to the employer. This applies for instance in the Czech Republic, Denmark, France, Finland, Germany, Greece, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. For other intellectual creations, national solutions vary as regards the employed creator's right to economic compensation and there is no European homogeneity. Nevertheless, it is important to have fair and coherent principles applicable to all intellectual property rights.

The ownership of employee's intellectual assets can be laid down in a contract, e.g. in the employment contract or in a separate contract.

In the absence of any particular contractual clause, there is no international guidance that provides for specific solutions regarding employee's intellectual property rights.

The ownership and control of intellectual property rights are mainly managed in national legislation. However, at a national level there is no standard formula for the employers' right.

Dos & don'ts when Swedish start-ups heads for the U.S. market

Peter Dahlen

Introduction

The American Chamber of Commerce in Sweden works to connect Swedish start-up and scale-up companies with U.S. companies in order to facilitate knowledge sharing and collaboration on everything from U.S. business culture and access to capital to mentoring opportunities, sales and distribution channels, and faster routes to market.

Among the concerns Swedish companies contemplate as they investigate the U.S. market, the most commonly expressed are related to access to capital, legal liability, immigration issues, the labor market, and finding advisors on market entry with expertise that specifically applies to their business.

Dos and Don'ts for entering the U.S. market

Accordingly, below are some Dos and Don'ts for entering the U.S. market:

Dos:

- Have a detailed plan for U.S. expansion
- Focus your resources, geographically, etc.
- Adapt to U.S. market conditions
- Hire local experts and independent advisors
- Retain local counsel for:
 - Intellectual property protection
 - Contract drafting – be aware of contract formation issues
 - Taxes
 - Immigration issues - know visa requirements

- Labor issues
- Understand U.S. business culture:
 - Emphasis on individual initiative & achievement
 - Business hierarchy - may be informal depending on industry
 - Direct communication style + small talk before business
 - Deal-focused approach to negotiations
- Localize the branding and optics of your business

Don'ts:

- Overreach
 - U.S. market scope is vast: one market, the size of Europe
 - 50 States + Washington, DC - each a distinct market
- Underestimate differences re: customer and partner relations, sales, and marketing
- Ignore the legal system
- Be careless in choosing business partners
- Underestimate the challenge of hiring the right people
- Be uninformed
 - Be aware of equal rights laws, appropriate interview questions, and acceptable termination procedures.
 - 50 states + Washington, DC = 51 legal systems