

A Guide of Legal Considerations for eCommerce Companies – Part III

Growing your eCommerce Company – Hiring Employees; Working with Social Media Influencers

Unless you have a fully-automated business or your office is staffed by robots (hopefully T-800s), you may eventually find that you need help with your eCommerce business.

In Part III of our eCommerce legal guide, we'll dive into the particulars of hiring employees and contracting with independent contractors. We'll also cover some of the more important considerations for when you turn to social media influencers.

Hiring for your eCommerce Business

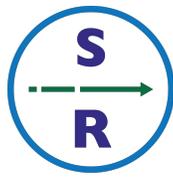
When it comes time to call for help, will you hire an employee or will you contract with an independent contractor? Do you see yourself incentivizing employees or independent contractors with equity? If you don't have your own Columbus eCommerce attorney, consider the following points when contemplating equity or entering into an employment agreement or independent contractor agreement.

Recruiting eCommerce Employees

A common initial thought for founders is to give out equity to compensate contractors and initial employees. Pump the brakes, Oprah – not everybody in the audience has to receive equity. Handing out 5%-10% to a number of people can quickly leave the founders with less than 50% ownership in the company – not an ideal situation early on in the company's life.

There are a number of ways for developers, contractors, and employees to share in the growth of your company without handing out equity, or at least as much equity as you were initially planning on.

For example, say you wanted to bring on a developer to handle the build-out of your site and online store. You have considered paying the developer with a mix of cash and equity. In lieu of giving out equity, you could pay the developer a percentage of all or specific sales made through your site for a specified period.



Apart from ensuring that your site runs, the developer will be incentivized to build a site that can handle high volumes of traffic and efficiently process sales. Meanwhile, you retain equity while the developer still shares in the upside of your business.

For employees, there can be a number of alternatives to issuing equity. One popular example is phantom stock. With a phantom stock plan, your employee would receive a phantom stock agreement where your company grants the employee a specific number of shares and the actual cash value of your company's shares. Whenever your employee goes to cash out and redeem the phantom stock, your company would write the employee a check for the amount of the shares multiplied by the current value per share.

Another alternative is a stock appreciation rights plan. When your employee has a stock appreciation rights agreement, your company is agreeing to pay the employee the difference between the set initial value of your company's shares and the value that the shares have risen to, when the employee exercises the right to redeem the SARs.

eCommerce Employment Agreements

Some common misconceptions with employment agreements are that they should only be used for positions like CEO or for when you want to sign someone to a contract for a number of years.

No matter how big your eCommerce company is and no matter what position you're hiring for, employment agreements are

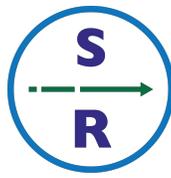
one of the best legal steps you can take to protect your business. Not all employment agreements are 15-20 pages of intimidating legalese. Some of the best and most effective employment agreements can be simple 1-3 page templates where you fill in the blanks whenever you have a new hire. And yes, you can (and in most cases, should) use employment agreements for "at will" employees.

A good employment agreement can establish a clearer and more productive relationship with your employee, and in the event of future issues, save you thousands of dollars in dealing with fallout related to termination.



What needs to be in your employment agreements? Consider the following areas:

-Job duties: Do not be tempted into copying and pasting a job offer letter from the internet and slapping in a basic description of the position you're hiring for. A good employment agreement will clearly define the job duties and expectations. For example, if this is a full-time position, you may want to stipulate that the employee will devote "full-time working efforts" towards the position.



-Sensitive information: If your employee has access to confidential information, trade secrets, or, proprietary methodology— basically, anything you don't want out in the open, you MUST address this in an employment agreement. If you have an employee who runs off to a competitor or starts their own company with your confidential information, but you can't prove the information was, in fact, confidential and that the employee had no right to walk off with such information, you may find yourself in a world of trouble.

-Non-competes, non-solicitation, and non-disparagement provisions: Incorporating these provisions will largely depend on how you run your business. Further, enforceability is very much a product of state law— i.e., don't go overboard with the scope or blindly copy a provision from the internet; this may end up invalidating your provisions.



Independent Contractor Agreements

Why do you need an independent contractor agreement? If you and a contractor agree on how much the contractor will be paid, and the contractor does good work, you may think

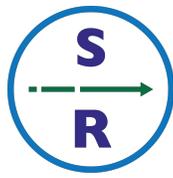
that you don't need an independent contractor agreement.

There are many reasons why you want an independent agreement tailored to your eCommerce business. Consider the following areas:

-Proper worker classification: This is perhaps one of the biggest reasons as to why you need a good independent contractor agreement. The last thing you want is to have an issue with a government agency over whether you have properly classified those who work for you. A good independent contractor agreement will expressly stipulate that the contractor is not an employee, is responsible for the contractor's own taxes, and your company is not responsible for providing any type of benefits whatsoever.

-Intellectual property rights: A good IC agreement will also be very clear as to the fact that your company owns the intellectual property that is provided by the independent contractor. Magic words that should be referenced include that you own all "right, title, and interest" in the work product; the work product shall be deemed "works made for hire;" and if the work product is not deemed "works made for hire," the contractor should "assign, transfer, and convey" all right, title, and interest in the work product.

-Contractor preexisting materials: To the extent the contractor is including or working off of any of the contractor's own materials, a good contract will reference such preexisting materials and be clear regarding contractor's ownership. That said, you want a license to be



able to use such preexisting materials as they relate to the work product you're paying for.

-Overall structure: If you're working with the contactor for a specific project, a simple contract may be best. However, if you think the contactor will be working on multiple projects in the future, a good alternative to signing a new contract at the start of every project is to have a master contract and just sign a new statement of work when a new project begins.



Social Media Influencers

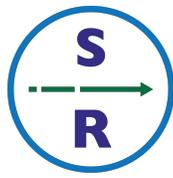
In the scheme of eCommerce-related contracts, social media influencer agreements (or influencer agreements) can certainly be on the more creative and unique side. With the rise of social media and social media personalities and brands, more eCommerce companies are turning to social media personalities for marketing and advertising.

Before you blindly PayPal someone else to fire off a quick tweet about how durable your improved take on the ShamWow is, consider putting together a social media influencer agreement. Areas that you may want to cover include:

-Specificity: Detail is your friend when writing a good social media influencer agreement. A social media influencer usually has accounts across multiple platforms, most likely including Twitter, Instagram, Facebook, and Twitter. A poor agreement will just specify that the influencer will post regarding your product or service. A good agreement will state that the influencer will post on specific platforms, when the posts will occur, and having the influencer use certain hashtags, if desired. If you are looking for posts regarding an upcoming product launch or event, a good strategy can be to have the influencer post on specific days leading up to the launch or event.

-Restrictions on Posting for Competitors: Depending on your goals for the posts, you may want a provision that limits the influencer from posting regarding any of your competitors for a specific amount of time. For example, say you're launching your new ShamWow, but your competitor Vince Offers LLC is also releasing their latest ShamWow within a week of your launch. You may want to stipulate that the influencer cannot post anything regarding Vince Offers LLC for a 30-day period following the influencer's post for your product.

-Intellectual Property: There can be a number of IP considerations with influencers. Common points for consideration include (i) having a license to use the influencer's name, likeness, and posts; (ii) having influencers stipulate that their posts will be original works and will not infringe the intellectual property rights of any third party; and (iii) granting a license to the influencer to use your branding and trademarks.



-Payment Terms: Payment can depend on the scope of posting and the number of posts. A common payment model is half due upon execution of the agreement and the remaining half after the posting is completed. eCommerce companies may also choose to compensate influencers with free or discounted merchandise.

-FTC Compliance: Social media influencers may be subject to certain Federal Trade Commission rules. You'll want a provision that stipulates that the influencer's services are FTC compliant.

-Prohibited Content: It may seem obvious that you probably don't want your influencer using offensive or obscene language. Additional content you may want to prohibit might include content that is sexually oriented; content that may negatively target ethnic, gender, religious, age, or professional groups; or content that promotes dangerous or unsafe activities.

-Non-Disparagement: Given that your goal is to pay the influencer to say good things about your brand and product, you may want a non-disparagement clause that prevents the influencer from making any detrimental statements concerning any aspect of your business, including company ownership, policies, and products.

eCommerce Lawyer Columbus Ohio



Based in Columbus, Drew Stevens is a technology and corporate attorney licensed in Ohio and Washington. Drew works with a number of software and technology companies, including eCommerce, SaaS, InfoSec, IoT, telecom, manufacturing, and software development businesses.

Drew focuses his practice on technology transactions, mergers and acquisitions, intellectual property, and business law. Drew works closely with growing companies, to help protect intellectual property assets, structure business and M&A ventures, assist with transactional and business needs, and advise on data security regulations and breaches.

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