



# AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

## Don't Let These Mistakes Trip Up Your Start-Up!

BY JULIE K. O'NEILL • JULY 23, 2018

Here are a few things we have seen a client or two get tripped up on with their start-up – don't let this be you...

- Don't waste your legal bucks. Don't ask your lawyers to draft documents, pay for those documents, and then never review or sign them. We know you are busy, but you shouldn't pay for legal work that you never use! Take an hour or two and get that paperwork in place. Lack of clear and binding agreements can cause huge expense and delay, especially in the context of a sale, not to mention litigation.
- Don't ignore the importance of reverse vesting. Joe and Eddie formed a start-up brewery. They each owned 50% of the entity, and then they brought in some investors for 20% of the entity. After the investment, Joe and Eddie each owned 40%, and the investors owned 20%. Six months later, Eddie met his true love and moved to Madrid to be with her. He continued to own 40% of the company, even though he was no longer involved with management or day to day operations. The company was later sold for a great sum, and Eddie received 40% of the sale proceeds. If reverse vesting had been put in place at the beginning, the company and/or the other owners would have been able to buy back some or all of Eddie's equity ownership, at original cost, when he stopped providing services to the brewery. That would clearly be a better alternative than letting him have a windfall on something to which he only contributed a fraction of the work needed to make the brewery a success.
- Don't let a consultant create intellectual property for you without an assignment in place giving your brewery ownership of that IP. We once did a deal for a business owner who had started his business for \$5k and now was selling it for \$17M. For a few years, the owner had a friend of his working on a proprietary software program for use in the business. The friend was not an employee, but a consultant. The owner paid him monthly for the work, but there was no contract in place. When discussing various closing issues, we informed the owner that his friend would have to sign an assignment of intellectual property covering the software program, and the owner assured us that it would not be a problem. Unfortunately, when you are about to receive \$17M in cash, your "friend" may turn out not to be so much of a "friend." He tried to hold the owner up for another \$275k at closing, even though he had already been paid richly for his work. We remedied the issue with some creative solutions, and the "friend" did not receive any further payment. He is no longer a friend of the owner.

Be careful, and have a great rest of summer!