

"Read the Fine Print Before Accidentally Giving Away Your Technology" - article by attorneys Frank Lauletta & Randy Ford

Beware and be careful not to give away your valuable intellectual property when distributing your goods or services.

SEWELL, NEW JERSEY, UNITED STATES, February 15, 2019 /EINPresswire.com/ -- Seller beware. Whether you are a software company, cloud-based service provider, data provider, IT vendor, research firm, or any other business that sells products or services based on proprietary technology or concepts, beware and be careful not to give away your valuable intellectual property when distributing your goods or services.

Businesses that sell a technology or other proprietary service are often selling to larger more established companies. Many large companies have a standard one-size-fits-all form of vendor services agreement used for everything from staplers to sophisticated software. Often the form agreement is written based on the assumption that you (the vendor) are creating the technology, concept, or idea specifically for this customer and that the entire work product being delivered belongs to the customer. Another common provision that is less onerous but can nonetheless be problematic is when the form agreement states that you (the

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Frank A. Lauletta & Randy Ford, Attorneys at Lauletta Birnbaum

vendor) own the underlying concept or technology but that any modifications, enhancements, or customizations completed in connection with the services belong to the customer.

In either event, signing such a vendor agreement could have a long-term, negative impact on your ability to grow and expand your business in the future. In the first situation, you have arguably sold your entire technology to your customer. In the second situation, you have kept the underlying technology or know-how, but have limited your ability to sell or license functionality or know-how you may

have developed while working with that customer to other potential customers. It is not uncommon that your other customers and prospective customers have the same or similar



Office of Lauletta Birnbaum, Frank Lauletta, Partner



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Lauletta Birnbaum, Attorney Frank A. Lauletta

functionality requirements but just haven't contacted you yet. You do not want to restrict your ability to work with other customers requiring similar work for which you have experience in providing.

Read the Fine Print

Just because the agreement looks like a preprinted form with dense type and hard to read paragraphs doesn't mean it isn't enforceable. In fact, it probably is and, furthermore, a customer that believes it purchased proprietary technology from you may very well seek to protect that ownership. The customer most likely does not intend to go into your business itself, but the customer may be very interested in keeping its competitors from benefitting from the services that you provided to them. In sum, any vendor agreement form presented by a potential customer should be reviewed carefully to ensure that it does not jeopardize your ability to continue to market and distribute your technology, concept or services to others.

If You Don't Ask, the Answer is "No"

No matter how imposing or non-negotiable a customer's form of agreement may appear, don't be afraid to ask for a change. If a potential customer objects to making any changes you can always agree to sign it later, but if you don't ask, you have no chance of protecting yourself. It is rare that a potential customer will walk away simply because you asked to make a change to an agreement, and if the potential customer does, it may likely be an excuse as opposed to a reason. Finally, failure to suggest any changes to an agreement may be viewed as a red-flag by the customer that your business is not taking appropriate risk avoidance measures or is under-funded.

Ask Nicely

Negotiating changes to a vendor agreement does not need to be a hard-nosed adversarial process. Ask nicely. Point out that the form agreement does not fit the circumstances of your



Frank Lauletta, Partner at the Law Firm Lauletta Birnbaum

Frank A. Lauletta, Business Attorney



Overview

Frank Lauletta is an experienced corporate attorney who has many years of "hands on" experience in private and public companies. His practice focuses heavily on representing and counseling a broad array of companies in corporate transactions such as venture capital, corporate finance, and mergers and acquisitions. Frank also has extensive experience representing companies and shareholders in connection with drafting and negotiating shareholders agreements and buy-sell agreements and also frequently represents clients involved in partnership disputes and shareholder oppression actions. With his broad legal experience, executive-level background, and extensive relationships in the legal, venture capital, and high technology communities, Frank is uniquely suited to serve as outside general counsel to clients.

Working closely with executive management teams, Frank currently serves in this capacity to a number of software and other technology-based companies throughout the United States.

Frank is frequently relied upon to help develop sales, licensing and royalty-based models for companies in the software, cloud, energy, medical and other intellectual property and technology-based industries. Frank also assists companies in developing their form sales, licensing, terms of use, distribution, employment and other agreements. Since 1997, Frank has negotiated and closed hundreds of software licensing, distribution, technology, joint venture, construction and other complex agreements with dozens of Fortune 500 and international companies with annual transaction values ranging from hundreds of thousands to multiple millions of dollars.

Frank Lauletta, Attorney Profile at solomonlawguild.com



591 Mantua Blvd, location of Lauletta Birnbaum and Vert Properties (Frank Lauletta, Attorney)

particular product or service. A potential customer is much more likely to agree to change its form agreement to reflect that you retain ownership of your technology during the negotiation process before you sign the agreement, than cede ownership of it after you sign.

About the Authors:

For more information related to negotiating and finalizing licensing agreements, distribution agreements and other commercial contracts, contact [Frank Lauletta](mailto:flauletta@lauletta.com) (flauletta@lauletta.com) or Randy Ford (rford@lauletta.com) of [Lauletta Birnbaum](#) LLC.

About [Frank A. Lauletta](#)

As a general corporate attorney, Frank Lauletta's practice focuses heavily on representing and counseling a broad array of emerging growth and established companies in both the public and private sectors. With his broad legal experience, executive-level background, and vast relationships in the legal, venture capital, and high technology communities, Frank is uniquely suited to serve as outside general counsel to clients. Working closely with executive management teams, Frank currently serves in this capacity to a number of software, telecommunications, and high technology companies throughout the United States.

Bio of attorney Frank Lauletta on law firm website: <http://lauletta.com/our-lawyers/frank-a-lauletta/>

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News: <https://hype.news/frank-a-lauletta-attorney-at-law>

LinkedIn Profile: <https://www.linkedin.com/in/frank-lauletta-9143a82/>

Law Directory: <http://www.legaldirectories.com/Lauletta-Frank-A-III-245514-Atty.aspx>

Caitlin Mattera
Lauletta Birnbaum
+1 856-232-1600

[email us here](#)

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