

# Growth Company Event Series

## The Business, Legal, and Regulatory Issues Affecting Your Growth Company

On February 28, 2013, Foley & Lardner LLP hosted a panel presentation as part of Foley's Growth Company Event Series called "The Business, Legal, and Regulatory Issues Affecting Your Growth Company." Christopher Ward, Senior Counsel in Foley's Labor & Employment Group, moderated the discussion by the panelists, who included Andrew Cittadine, CEO at Diagnostics Photonics, Craig Desens, Sr. VP, Client Support Services & People at Networked Insights, Paul Reiman, Director of Global Total Rewards at Morningstar, and Julie Silverstein, President and COO of Eved. The conversation focused on the "big picture" challenges that companies face as they begin and continue to grow. The panel provided specific examples of potential pitfalls, as well as recommendations on how to face such challenges.

## "Culture" – How Do You Define It And Does It Matter?

### IDENTIFY YOUR CORE VALUES

While the term "culture" can be difficult to pin down, at its essence, a company's culture is the manifestation of its core values and principles. The identification of these core values is critical to both start-up and larger companies, since they should be employed at every stage of the company's growth – including recruiting, employee relations and investor relations. However, it is also important to keep in mind that a company's culture is an evolving concept.

In order to adapt to a company's growth, the culture may have to be "pruned" – what might be non-negotiable values at the outset when the company consists of a limited number of individuals with similar backgrounds will have to be flexible when the company diversifies through its growth.

### IMPLEMENTING YOUR CORE VALUES

"Culture" is not something that can or should be forcefully imposed. Rather, implementation of the company's core values starts from the top-down. Accordingly, the company's founder and subsequent leadership will play a large role in both defining and maintaining corporate culture. While the establishment of consistent core values may be easier in the beginning of a company's growth (since, typically, the founder is more involved in recruiting new talent), as the company expands, it is important to keep the company, through its leadership, employees, and policies accountable to those core values. More than one panelist suggested discussing an employee's ability to work consistently with the core values during performance evaluations.

### ADAPTING YOUR CORE VALUES

When a company is growing – and growing quickly – it may be tempting to ignore "culture" in favor of competency. However, the panelists uniformly agreed that, for long-term sustainability, it is key to consider both "cultural" fit, as well as competency, in hiring and retention decisions. This is another reason why having a defined set of core values can facilitate less turnover. While it is important to adhere to a set of core values during growth, it is equally important that growth companies be flexible about adapting them as needed, particularly when a company expands internationally. For instance, it may be part of the corporate culture to reward top performing employees with a watch in the United States. Though it might be a suitable gift in the United States, it may send an entirely different, and even negative, message to an employee in an office in another country.

## Financing

### IDENTIFYING POSSIBLE AVENUES FOR FINANCING

Different companies can employ different financing strategies, but for start-ups, financing is often the most challenging stage of their development. One option to



keep in mind – particularly for technology-based start-ups – is the government. Certain federal agencies, including the Department of Defense, offer substantial grants, aimed at motivating technology-based entrepreneurs. Typically, start-ups are equity financed, although convertible debt is an attractive alternative (i.e., a debt investment that converts to equity at a discount once more substantial financing has been secured).

In a company's very early stages, the amount of available financing is largely dependent upon the risk profile of the founder and how much money he or she can invest. Regardless of which avenue of financing a company pursues, it is important to match the financing strategy with the company's needs and to choose a structure that is consistent with the founder's long-term objectives.

#### **SETTING MILESTONES**

One of the critical components of financing is timing, since the availability of financing will be largely dependent upon the company's valuation at the time of the financing. The panelists felt that it is almost always better to take more money when it is available (i.e. have a round of financing oversubscribed) because financing is difficult and time-consuming to obtain. However, management should always consider whether an additional strategic or operational milestone can be met before closing on a round of financing as this could likely affect the valuation of the company in the financing.

#### **VALUE-ADDED FINANCING**

Private equity or venture capitalists, rather than large banking institutions, offer growing companies a unique opportunity for enhancing value. Private equity firms and venture capitalists often demand representation on the company's board of directors in connection with their investment. This group of investors often takes a deep interest in the company's vision and provides their expertise in helping the company meet its strategic initiatives.

## **Sales & Marketing**

### **IDENTIFYING THE KEY OPINION LEADERS**

One of the initial steps towards developing a successful marketing strategy is identifying the "key opinion leaders." These are those individuals whose endorsement of the company's products or services will carry significant weight with the market, irrespective of whether their support contributes a material amount of *direct* revenue for the company. These endorsements serve as references and validations for potential income-producing customers and market segments.

### **LEVERAGING YOUR BOARD OF DIRECTORS**

A company's board of directors may provide additional sources of networking and marketing opportunities. Therefore, a growth company may consider a potential board member's connection to key opinion leaders before granting board rights or may wish to create a board consisting of those influencers themselves.

### **SELLING TOO EARLY**

One of the biggest pitfalls a start-up company can make is selling its products or services before determining its marketing message. It is imperative that the company have a consistent message about its product and services *prior* to attempting to sell them. Oftentimes – particularly in a saturated market – the added value of a company's product or service can be a difficult one to articulate. Therefore, it is prudent that some time and resources be devoted to developing an accessible "pitch" before deploying a sales force.

### **THERE IS NO "ONE SIZE FITS ALL" MARKETING**

It is a common misconception that there is a "right way to market." However, given the accessibility provided by technology, there are often more efficient methods of broadcasting a company's message than the more traditional routes (e.g., putting a bunch of employees on planes). Once a company has identified a definable and marketable product, it should attempt to tailor the most cost-effective manner of marketing that product, rather than adopting a one size fits all approach.



## Intellectual Property

The value and importance of intellectual property to a given company can vary. For example, a medical device start-up may sensibly plan both its operations and strategic initiatives around the procurement of patents and development of new intellectual property. On the other hand, other growth companies may develop their intellectual property at a later stage, allowing the company's evolving business plan and needs to govern what is actually created and ultimately protected.

- » ***Mission, vision, values.*** A growth company should develop a clear statement of what it values and then hire people who are passionate about that mission and those established values.
- » ***“Look really carefully at what they need to shed.”*** A growth company needs to understand that part of expansion is understanding what needs to be shed – a company cannot continue to grow at an incline if its products or people are weighing it down.

## Parting Thoughts

- » ***“Hire top notch people.”*** A growth company needs capable and flexible leadership and employees in order to ensure sustainability.
- » ***“Scalable, repeatable, profitable.”*** A growth company should identify what it can repeat as a business, scale it down, and then attempt to turn a profit from it.

---

## FOR MORE INFORMATION

For more information on this session or Foley's Growth Company Event Series, visit [Foley.com](http://Foley.com) or contact any of the Foley attorneys below:

**Lisa Conmy**  
312.832.4356  
[lconmy@foley.com](mailto:lconmy@foley.com)

**James Griffith**  
312.832.4930  
[jgriffith@foley.com](mailto:jgriffith@foley.com)

**Aaron Tantleff**  
312.832.4367  
[atantleff@foley.com](mailto:atantleff@foley.com)

**Christopher Ward**  
312.832.4364  
[cward@foley.com](mailto:cward@foley.com)





Derek Wright  
312.832.4372  
dlwright@foley.com

This document was prepared by Joanne Lee, Senior Counsel in the Litigation Department at Foley & Lardner LLP.

This document should not be considered as legal advice and should be implemented only after talking to your own professional advisor.

