ENTREPRENEUR SICKNESS: THE FIVE SCREWUPS OF STARTUPS

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As seen in Forbes

Startup visionaries ignore norms and often achieve great success. But, they also blow past laws and incur the wrath of regulators, amass penalties and cripple their businesses. From Tesla's Elon Musk to Uber's Travis Kalanick to Theranos' Elizabeth Holmes, we see brilliance, innovation and marketing wizardry. Not a rookie among them, but they all screwed up like one. Musk almost lost his CEO role, and barely escaped with a $20 million fine and a guilty plea after casually tweeting about going private. The guy still can't shut up — he continues to recklessly bait the SEC. Kalanick got the boot after presiding over chaos and a company culture gone wild. Holmes awaits trial amid allegations of massive fraud. Her company, Theranos, shut down.

Entrepreneurs present great promise but often suffer like tragic Greek figures. What makes them special can prove fateful for their startups. They're visionary (translation: "they don't know the rules or don't care about them"), passionate (translation: "irrational"), and energetic (translation: "impatient"). Despite all their strengths, they stumble into classic crises: entrepreneur sickness.

Like Homer's Odysseus, your team needs to tie you to the mast. Otherwise, the siren call of success will crash you onto the rocks with the other failed startups.

Here are the symptoms of entrepreneurial sickness:

#1 They're Broke

They start a business without enough cash, making compromises that can kill their company. They do handshake deals. Then, they get stiffed or sued. They don't tie up key employees with noncompetes, so ex-employees walk off with their customers. They don't protect their intellectual property and, next thing they know, competitors are selling their brilliance. They hand out stock like monopoly money and soon there's not enough left for investors. Before long, the only mail they're getting is bills and lawsuits.

#2 They Ain't Listless, They're Lawless

They don't follow the law. Most times, rookie entrepreneurs don't know the law and don't care to check — often with catastrophic consequences. Bitcoin companies are getting slammed for unregistered bitcoin offerings. Pot companies are waking up to the fact that they can't deduct many business expenses — because selling pot is still illegal under federal law.

This next one is a rampant screwup. Cash-starved startups often sink to using unregistered "fundraisers" who are usually paid a percentage of the cash they raise. These fundraisers are smooth talkers with plenty of connections to investors. But securities law generally requires all fundraisers must be registered broker-dealers. If a startup violates this rule, investors can insist on a refund of their investments (even long after their investments have been spent), the startup and its executives can be found liable for civil and criminal penalties, and the startup can be barred from later selling stock.

The entrepreneurial gold rush encourages speed. Sometimes caution is just as valuable.

#3 They Jump Out Of Frying Pans And Into Fires

Entrepreneurial Wizards are constantly discarding businesses. But, they haven't really gotten rid of their problems, they've just lost control over them. Under the law, once you sign a contract, you are usually on the hook forever — unless the other parties release you.

So, just selling a company is not enough to get rid of the problems. Even if you find a purchaser who agrees to perform all of your obligations, it is not enough. The purchaser could go belly-up and then you are back in the hot seat. Then, your old contracts can come back to haunt you — from the

Keurig coffee machine contract to the ping pong table rental agreement to the vastly more onerous obligations of real estate leases and business loans. The solution is to get all of the parties to agree you are released — regardless of what happens next.

#4 They Don't Know The Value Of A Good Contract

I knew one software consultant who was so proud of his service agreement. He found it on the internet and used it with all of his clients. I took a glance and then delicately pointed out that his contract was terribly one-sided — in favor of his customers. There were provisions, like warranty and indemnification provisions, that could put Sir-Save-A-Buck out of business. Oops.

Many entrepreneurs hit the gas and race past the details — like contracts. They'll grab some random contract used by another business. Or stitch together bits and pieces of other agreements to create their own Franken-Mess. Mind you, these startups will go on spending sprees for trucks, software, the latest cube furniture, and even a vintage Asteroids video game machine for the breakroom. But, many won't spend for a contract that can keep them out of a class action lawsuit.

Business is filled with "what-ifs." What if you're doing the carpentry work on a condo project, and the lumber you need gets slapped with a tariff? Do you get a change order for the extra cost? What if you're licensing IP from a university and the professors develop advancements that aren't covered by your contract? Can the university license the improved version to a competitor? What if you're hiring drivers to shuttle your attendees to big events? Do they have enough insurance if there is an accident?

You should have a contract that covers the most important risks. You can pay now — and get a good one. Or, you can do without and pay later. But, you'll pay more later.

#5 They're Hasty

Startups are in such an enormous rush to conquer the world that they often overlook basic precautions and fail to protect their companies. These rabbits jump into business without giving much thought to the risks. They don't protect against hackers. They don't conduct background checks of new hires. They don't keep cash reserves or have a line of credit for emergencies. They don't have any contingency plans for bad stuff.

In a modern-day version of Greek heroes, these entrepreneurs have the tragic flaw of brilliant impatience. They are reckless. They rush into big deals. They don't look left or right before crossing the street. And they certainly don't do their due diligence. They'll acquire a fledgling company to bolster their own business. But, they fail to ask hard questions and dig deep. If you overlook problems, they will come back to haunt you. Even the best contract won't save you. Something to reflect upon when the FBI starts knocking and hordes of angry plaintiffs start suing.

Hewlett Packard is no startup, but they made a typical startup screwup — with a lot more zeroes. In 2011, HP spent about $11 billion to buy software company, Autonomy. By 2012, HP said that it finally discovered that Autonomy had cooked its books, artificially inflating Autonomy's value. Then, HP took a write-off of almost $9 billion, which is a lot for some people. Maybe it's just me, but if you're going to look for problems, check before you wire the other guy your $11 billion. Just saying.

A Starter Kit For Treating Entrepreneur Sickness:

- Money: Entrepreneurs don't actually max out 20 credit cards, raise another $100k on Kickstarter, hit Good Morning Portland for free publicity and then go IPO. That's like a hooker dreaming about being Pretty Woman. Dream all you want. If you want any reasonable chance of success, you need to start with enough money to do things the right way. Otherwise, you're just borrowing a parachute that you have to give back halfway through the skydive.

- Reality: "Fake it till you make it" is a myth. Pretending you're successful is still just pretending. Create a business plan that your parents like.

- Prep: Put your imagination to work on what can go wrong. That doesn't mean worry. It means being cautious. It means managing risk. It means seeing as much value in limiting the downside as there is in shooting for the stars.

- Guidance: You may be brilliant. But, get an advisory board, a wise mentor, or an attorney who has seen it all and can share their wisdom.

Above all else, if you can't control your weaknesses, create a business and team that will tie you to the mast.

ABOUT JACK GARSON

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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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