

WPI Venture Forum

Worcester Polytechnic Institute
Alumni Association
100 Institute Road
Worcester, MA 01609
(508) 831-5821

PRSR
FIRST CLASS MAIL
US POSTAGE
PAID
WORCESTER MA
PERMIT NO. 1654

CHANGE SERVICE REQUESTED

WPI VENTURE FORUM CALENDAR OF EVENTS

June 15, 1999 – The Perfect Executive

Directions to WPI Campus, Salisbury Labs, Kinnicutt Hall, Room 115

From The East:

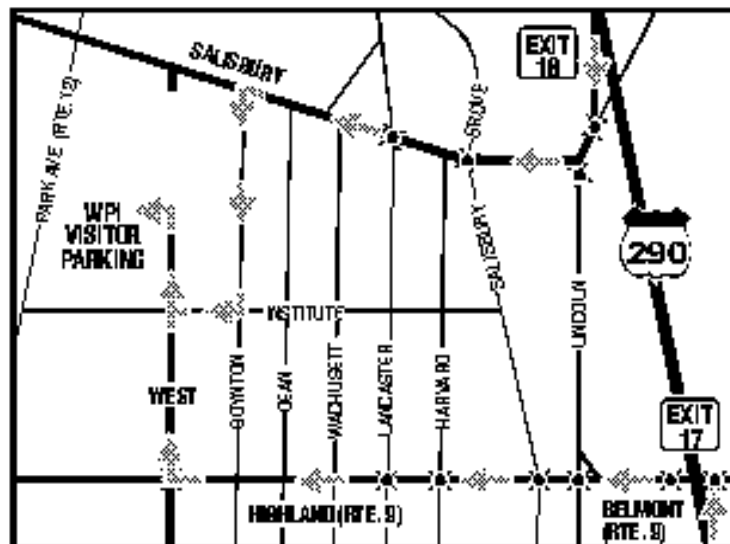
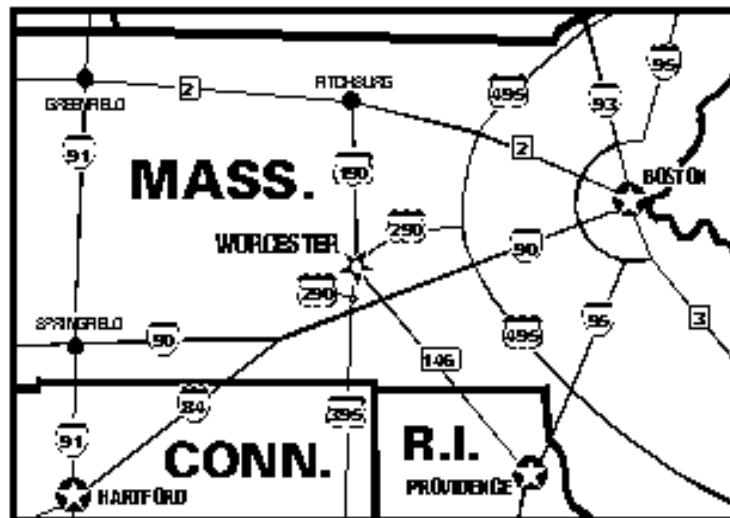
Take Mass. Turnpike (I-90) to Exit 11A (I-495). Proceed north to I-290, then west into Worcester. Take Exit 18, turn right at end of ramp, then an immediate right before next traffic light. At next light, proceed straight through, bearing to the right on Salisbury St., At the WPI sign, turn left onto Boynton St. There is parking in the large lot on the right behind Gordon Library or continue on Boynton St. then right onto Institute Rd., then right onto West St. Visitor parking is on the left after footbridge.

From The North:

Take I-495 south to I-290. Follow directions as from east.

From The South And West:

Take Mass. Turnpike I-90 to Exit 10 - Auburn. Proceed east on I-209 into Worcester. Take Exit 17, turn left at end of ramp, follow Route 9 west through Lincoln Square, straight onto Highland St. then right at light onto West St. Through first intersection of West and Institute Rd. Visitor parking is on the left after footbridge. Additional parking on Boynton St. behind Gordon Library.





A Look at the Upcoming Meeting

The Perfect Executive

By Andrew Clapp, Managing Director, Gateway Financial Group

Before you can prepare an Executive Summary, you need a business plan from which the Executive Summary will be extracted. The Executive Summary should only take a few hours to prepare, provided that your business plan is in order. So here are our suggestions for preparing what we believe is the Perfect Executive Summary.

1. The Eye Catching Intro – The first paragraph of an Executive Summary should be compelling and capture the reader's attention. Take your best shot. Play your strongest card by stressing that single feature of your business that is its most eye-catching and distinctive characteristic. Don't rely solely on what you think is your strongest feature; ask others to tell you what they think. Here are some examples:

- “The replacement of textbooks with a whole new learning paradigm begins this fall at more than 30 colleges and universities with the first time, class-room use of EduSmith's internet-based electronic textbooks. The cost of electronic vs. printed text

is low, the enhanced learning features are high, many of which are much more difficult to obtain, and the target market is well-defined.”

- “LitmusWorks was profitable in its first year, earning \$65,000 on sales of \$650,000 last year, and will generate profits on sales projected at \$4 million this year and \$9 million next year. For a high tech software company, the Company's ability to be profitable while growing at a high rate, is enviable.”
- “When our missionary salespeople call on restaurants that are using one of the 2 or 3 national brands, they try ours, and 6 out of 10 restaurants switch and begin ordering our product through their distributor. The reason? Taste and appearance, never price. We now have 30% of the New England market and are expanding down the East Coast. Does the consumer like our product? We have more than 10,000 testimonial letters on file received from consumers over the 5 year life of the company.”

2. Business Definition – Your second paragraph should define your business, stating clearly what your product or service is, and for whom it is targeted – “Jamesco manufactures stainless steel check valves for the petrochemical industry.” You should then expand on the products or services and the variations so that the reader has a full appreciation of the company's breadth product line.

You should talk about products you plan to develop and how they will be funded. This should

be a short paragraph. Any paragraph with excess words or descriptions dilutes, the impact you are seeking.

3. The Offering – Right up front, indicate how much capital you are seeking and how the proceeds will be used. This allows the reader to quickly assess the financial parameters of the deal.

Also indicate a “range of value” you place on the company, so the reader is aware of what equity interest they will receive for the proposed investment. Most early stage firms are reluctant to do this as they are afraid of putting too low a value on the company, or conversely, too high a value, thus discouraging potential investors. This is why we recommend a range, albeit a rather wide range, with some discussion of the basis for such a valuation.

We met with a start-up company in the waste management industry which placed an initial value of \$200 million on their firm. Nothing short of a miraculous system – capable of ▶

Continued on page 8

CONTENTS

Letter from the Chair	2
Sponsor's Corner	3
Past Meeting Summary	4
Business Basics	6
Intent-to-Use Trademark	7
Creation of a Trademark.	9
Want to Hire a Star	10

June Meeting Sponsor—

Fleet Bank

WPI VENTURE FORUM

The mission of the WPI Venture Forum is to promote and serve technology-based entrepreneurial activity and economic growth in the region by increasing the business and financial knowledge of the participants through sharing experiences with entrepreneurs as well as area business, financial and educational leaders.

EDITOR

Nancy McKenna (508) 793-7615

1998/1999 SPONSORS

BANNER & WITCOFF, LTD., patent law

BOWDITCH & DEWEY, general law

CIRRUS TECHNOLOGY, marketing & web development

FLEET BANK, banking

MASSACHUSETTS TECHNOLOGY DEVELOPMENT CORP.,
venture capital

MIRICK O'CONNELL, general law

MOTTLE McGRATH BRANEY & FLYNN, PC, accounting

NEILDS, LEMACK & DINGMAN, patent law

PRICEWATERHOUSECOOPERS, accounting

WEINGARTEN, SCHURGIN, GAGNEBIN & HAYES, LLP

ZERO STAGE CAPITAL, venture capital

1998/1999 EXECUTIVE BOARD

Chair

Brian Dingman

Vice Chair

Shari Worthington

Treasurer

Paul F. McGrath

Clerk

Mark J. Conoby '83

McRae C. Banks

Norman T. Brust

Robert J. Creeden

Stephen N. Davis

Sharon C. Davis

William P. Densmore '45

Jeffrey L. Donaldson

Martina Gorski-Strong '84

Robert E. Hokanson

Peter D. McDermott '73

Nancy McKenna

Mark Parish

Richard H. Prince

Pamela Sager

WPI VENTURE FORUM COMMITTEES

Marketing Committee:

Steve Davis (508) 528-7571

Monthly Programs:

Mark Parish (508) 520-9586

New Program Committee:

William P. Densmore '45 (508) 753-2500

Online Services:

Shari Worthington (508) 755-5242

Radio Program:

Robert E. Hokanson (508) 869-2984

Sponsorship: Robert J. Creeden (617) 723-4920

WPI VENTURE FORUM OFFICE

phone: (508) 831-5075 or

Email: ventureforum@WPI.EDU

www.wpiventureforum.org

WPI Venture Forum ©1999, A monthly publication of
The WPI Venture Forum and the WPI Alumni Association,
100 Institute Rd., Worcester, MA 01609, (508) 831-5821.
Volume 8, No. 10, June 1999.

Letter from the Chair

Two Years of Challenges and Rewards

By Brian Dingman

This issue marks my last column as chairman of the WPI Venture Forum. My two-year tenure has been interesting, fun, challenging, and rewarding. I thought I would take this opportunity to reflect back.

It turns out (to no one's surprise) that I had little idea as to the full scope of this position until after I was handed the gavel. I was fortunate, however, to have had enough experience on the Executive Committee to have seen my predecessors ably fill the position; I thus had some idea of what to shoot for. That's not to say that I didn't have my own ideas of the position, and own thoughts of what I would like to accomplish, rather it is a nod to the previous chairs I had seen in action, Norm Brust, Pam Sager, Bob Creeden, and Peter McDermott, for setting the bar high.

I was also extremely fortunate to be the first chair to have the assistance of a half-time staff person, which definitely lightened the load! I thank WPI for their generous support for our efforts, and look forward to a long, mutually beneficial relationship. Special thanks to Sarah Ribeiro for her wisdom, perseverance, and patience with a group of committed volunteers, who seem to always have more ideas than time to implement them.

I would be remiss if I did not also thank our Sponsors for the generous support, both monetary and in other ways, including in many instances, substantial time commitments by Sponsor personnel. We look forward to continuing to help our Sponsors achieve their own missions and objectives.

The major operational change in the past two years has been our conversion to a membership organization. This is helped us to identify like minded individuals and companies, which has helped us to develop programs which we believe are suited for our members. Member growth has been strong, which also helps to validate our mission and operations.

Overall, the WPI Venture Forum strives simply to achieve its mission of promoting and serv-

ing technology-based entrepreneurial activity, primarily through education and networking. We have committed to continuing our long-standing tradition of monthly meetings, a monthly newsletter, the weekly radio show on WTAG, and the business plan contest, as our core programs, which accomplish our mission. We will also continue to explore new and creative means of furthering the mission, with programs such as last month's Breakfast with Ken Olsen and the business plan workshop, as well as non-program opportunities.

In closing, and most importantly, I would like to personally thank each and every volunteer for their invaluable insight, creativity, and time, without which we would not operate. I would also thank each of you for supporting me as Chair, and providing me the opportunity to grow personally in these past two years. I urge each of you to continue your fine work for the WPI Venture Forum in support of technology entrepreneurship and business opportunity. And for those of you who have not had the opportunity to volunteer for our organization, please do so next season. I guarantee that you will learn and grow, and that you will make business contacts which without a doubt will help you tremendously in your own business pursuit. You just can't lose!

See you (in the audience) in September.



Brian Dingman is a partner in the Westborough intellectual property law firm Niels, Lemack and Dingman. Brian can be reached at (508) 898-1818, or by email at NLDlaw@aol.com. VF



Electronic Commerce Set to Take Business by Storm

By Shari L.S. Worthington, President, Cirrus Technology

It's impossible to ignore the wealth of information available via the Internet. Currently, you'll find about 150 million Web pages in existence, covering everything from special interest activist groups to consumer malls to business sites. By the year 2000, estimates are that that number will have grown to 1 billion Web pages. Pretty amazing for a technology that's only a few years old!

Even younger is the much talked about "Electronic Commerce" — doing business online. More than a retail gimmick, e-commerce is important for the business- to-business community. In fact, it's crucial for manufacturers, distributors, and systems integrators to get into the e-commerce swing because over 100 million people, including your customers, are finding the Internet an exciting place to be. And more than half of those 100 million log on to the Internet DAILY to access everything from games to graphics, from product information to purchasing forms. So, the bottom line for business is that if your company isn't already generating qualified leads and sales from your Web site, then you could easily be left in the dust by your competitors.

A perspective on E-Commerce

First, let's define the terms. Electronic commerce doesn't mean you have to sell your product via the Internet and take credit cards or use one of the still

esoteric online payment schemes. Electronic commerce, a.k.a. e-commerce, a.k.a. electronic business, means that you can get closer than ever to your partners — your customers, potential customers, vendors, and other business associates. So close that you can develop such strong relationships with them that they would have to pay a fortune to switch loyalties to another company.

But don't take the sales side too lightly, either. E-commerce is already generating billions of dollars in revenue for many technology-based companies and is saving millions of dollars for others through online customer support. To provide a little perspective, here are the sales numbers for a few select industries in 1997:

- Mail order & home shopping = \$80 billion
- Process control equipment = \$30 billion
- Video rentals = \$30 billion

Back then, e-commerce was down around in the \$8 billion range (still, an impressive jump from 1996's \$300 million). Today, though, e-commerce is on its way to hitting \$300 billion by the year 2001.

E-commerce in action

E-commerce has rocketed from relative obscurity to the front pages of daily newspapers. Only a year ago, it took the form of Electronic Data Interchange (EDI) and messaging; now, e-commerce connotes the business model of the future...and the present! Although it's hard to tell which end is up when you're trying to sort the Internet from Intranets, Extranets, Embedded Extranets, and Virtual Private Nets, the bottom line is that technology has taken us to the point where we can now put the entire business enterprise online and provide our customers with virtually everything they need with a simple click of the mouse.

Fruit of the Loom, for example, uses the Web to tie together their network of distributors so they can provide information on their mills and distributor inventories to customers. To accomplish this, the company implemented an online catalog, which includes a complete product database and ordering information; customer

billing, which routes through accounts payable for snail mail billing and payment; and bulletin boards and chat rooms so customers can exchange information with each other.

Computer vendor, Gateway 2000, which is already selling over a billion dollars online, uses their Web site for everything from online ordering to technical support, corporate information, and a humor section with contests and an online magazine.

While it's absolutely critical to the success of any business that plans on being around through the next decade, e-commerce changes the ground rules for everyone. It involves a fundamental change in internal company business practices and it requires riding a not insignificant technology learning curve (don't worry, though, as there are a number of firms, like Cirrus Technology, that specialize in helping corporations apply e-commerce technologies).

Security issues

The biggest barriers to e-commerce today are: (1) people don't trust the security of online ordering systems, (2) there is no easy way to pay, and (3) people can't find the information they need online. A number of secure transaction technologies are in the works, but mostly e-commerce is plugging along using the Secure Sockets Layer (SSL) network protocol. While this is primarily an issue for those wishing to pay online with credit cards, continuous enhancements to the protocol, such as biometric identification (e.g. fingerprinting, iris scans), instead of passwords and client-side payment information management, are keeping security features steadily improving.

As to finding what people need online, companies must be more in tune with their customer base. The ideal Web site provides a high level of personalization, high information content, straightforward navigation, superior products and services, and a way for customers to interact (to form a sense of community among themselves and with your company). ▶

Continued on page 10

Finding the Funds

By Mark Parish

Robert Creeden, a partner at the venture firm of Egan-Managed Capital, led the audience at the April 20, 1999 Venture Forum meeting through a number of different approaches to "Finding the Funds" in the capital markets of 1999. This Forum assisted entrepreneurs to better understand how and where to find the money necessary to fund their early stage or emerging company. The whole



Carrie McIndoe

Photo by Ron Bouley

The first speaker of the evening was Carrie McIndoe. Carrie represents a group of private investors who invest individually or collectively in early stage companies. Carrie covered some of the impressive deals that she was involved in, and offered advice that she learned from these experiences. Most of the companies she has helped had problems conveying their message properly. Some needed to deepen their team, sharpen their

business plan, or simply increase the "professional" look of their plan. In almost all the cases though, the entrepreneurs needed assistance in their presentation and pitch to investors. Once the packages were complete, Carrie put together the companies seeking investment with the appropriate investors. Once the deal is complete, the investors she works with participate on the board of directors, help the companies work collectively with their new partners, planning for the future, assist in staffing the board of advisors, and keep the company on track with a venture capital investment or IPO.

business plan, or simply increase the "professional" look of their plan. In almost all the cases though, the entrepreneurs needed assistance in their presentation and pitch to investors. Once the packages were complete, Carrie put together the companies seeking investment with the appropriate investors. Once the deal is complete, the investors she works with participate on the board of directors, help the companies work collectively with their new partners, planning for the future, assist in staffing the board of advisors, and keep the company on track with a venture capital investment or IPO.



Carol Vallone

Photo by Ron Bouley

Carol Vallone, an entrepreneur that is well along in her second company, started the off her presentation with the four best words she has ever said to a venture capitalist, "(Thank you, but) we don't need you." Though Carol is working on her fourth round while planning her fifth round of financing, all of her investors become instant partners and all knew when further investment stages were scheduled from day one. Carol planned her business growth on a traditional business pyramid model. For each stage, from setting up her technology infrastructure to the product delivery, planning was critical to the business's success, and to the investor's confidence. She found that when raising money, she had to be clearest on what she was "in it for," or what was her personal goal. Clearly stated goals help sort out what kind of investor is right for her and her company, and what role she was to play.

In her case, her goal is to create the highest return on investment. Your own company may be striving to be a successful lifestyle company, or perhaps the next successful IPO company. In addition, Carol always keeps in mind how much personal debt if any she is willing to take on during each step of the way.

Carol values the advice and guidance she gains from her well-rounded expertise pool. Her board of advisors changes over time to adjust for the changing stage of her company. In the early stage, this helped validate the company's business concept. Second, she set clear benchmarks for raising money that the investors agree with, from "build and test" to "expansion for production." Carol looks at raising capital as a sales cycle. Even if investors have turned down an opportunity to invest, Carol keeps them informed of her progress through email and letters, preparing them for the next investment. She added, "I never let them see me sweat, and I keep the pipeline full." What was important in her success was keeping a care- ►

Continues



Photo by Ron Bouley

Jerry Bird (left) and Paul Gasparro

ful eye on who were the right investors at the right time, who would be right for the next level or round of financing, and what value they would bring to her company. She closed her comments with the advice, “Raising dollars is an emotional roller coaster – be sure to let your family know what to expect.”

After a networking break where the audience was able to speak one-on-one with the presenters, Jerry Bird and Paul Gasparro presented an interesting performance of their first and subsequent meetings. Claflin has invested in Nexcen, so it was interesting to see how the relationship started and proceeded in this condensed format. For Paul, this was his fourth entrepreneurial adventure, and was one of many deals that Jerry has been involved in. Paul covered his experience during the early stages of raising money with Jerry playing the role of an investor questioning Paul each step of the way; he began with advice from anyone that would give it to him. He checked web sites, Pratts Guide to Venture Capital at the library, and the Mass High Tech Council. He found thousands of VC’s and called everyone he could, no matter where they were located. One VC gave him sound advice: Target your calls to VCs to those who qualify for your company’s criteria. In other words, limit the scope of your search by geography, technology and size of deal when considering venture capital, or any fund raising. The early stage investment firm should be physically close enough to have good communication during and between board meetings, a technology interest that matches your company’s, and that does invest-

ments in the size that you are requesting. Many investment firms or groups limit the area of technology they consider, such as biotechnology or computer hardware. All have limits on the size of deal that they will consider. More often than not in today’s market, the floor is higher than what a start-up is considering with many firms considering deals of \$10 million or higher. Once you have listed your qualification parameters, then list those investors that fit your criteria and contact them.

To stand out, you need to have a “two minute elevator speech,” Paul suggested. Jerry explained how this is a pitch you can give anyone you have just met or contacted on the phone and should cover the market, the problem and solution, and pricing. It is used to gauge interest from both parties. Paul started with 10 inquiries per day using referrals from lawyers, accountants, and venture capitalists. Then prepared to go into greater detail on a “value proposition” or your business plan. His first business plan was very detailed and contained over one hundred pages. He quickly learned to be concise, and limited his executive summary to less than four pages.

Another observation Paul made was that venture capital firms never say no if they are at all interested in your deal. “They like to keep their option to buy in forever, and keep asking questions in order to drag out their option,” he concluded, so he now works on how to close with a potential investor. After receiving an indication that an investor is serious, he quickly finds out who has the authority to approve the investment. He makes it a point to meet the partners. If there

is resistance, he quickly moves back to his target list, and uses referrals from those he is speaking with to get names of the next target firm. Most venture capitalists he has spoken to is looking for what return they can expect for their investment and how soon. Your business plan should be ►

Continued on page 11

Sobering Facts

By Richard Dacri, President, Dacri & Associates

The problem of alcoholism and substance abuse in the workplace is taking a significant toll on workers and organizations.

Some alarming facts:

- 20% of our population uses drugs
- 71% of all drug users are employed
- 50% of all workers' compensation claims are related to drugs or alcohol
- Drug users use medical benefits at a rate of 8 times of non-users
- Substance abusing employees are absent from work more often than their non-abusing co-workers

Finally, though the cost of substance abuse in the workplace is difficult to access, Marsh & McLennan Corporation estimates the national figure to be \$75 billion per year. So what is the cost to you? Using Marsh & McLennan's estimate, the cost to you is \$640.00 per employee, whether the employee is a user or non-user! That's correct, it is costing the employer with 100 employees \$64,000.00 every year. So what can employers do?

- Establish and enforce policy on alcohol and substance abuse
- Provide support mechanisms for employees such as an employee assistance program

- Train supervisors
- Provide substance abuse educational opportunities for all employees

The key to effectively addressing this problem is in having well-trained supervisors. Supervisors must understand their role, recognize symptoms and behavioral problems, and know how and when to intervene. Only with proper intervention, can employers hope to deal with this costly problem.

This article first appeared in the "Dacri Report, Your Human Resource Update", Volume 3.03, March, 1998. Richard Dacri is the President of Dacri & Associates, a Human Resource firm that specializes in management and human resource issues, and can be reached at e-mail: dacriassoc@aol.com or call 1-800-892-9828. VF

Assignment of Intent-To-Use Trademark Applications at the Wrong Time can Void Subsequent Registration

By Kevin Lemack

Federal law (15 U.S.C. §1051(b)) allows the filing of federal trademark applications before actual use of the mark has commenced. Such so-called “intent-to-use” (ITU) applications eventually require proof of actual use in interstate commerce before a federal registration can be granted. Depending upon the timing, a sufficient showing of trademark use can be established by filing an “Amendment to Allege use”, if filed prior to publication of the mark by the Patent and Trademark Office (PTO), or by filing a “Statement of Use”, if filed after the Notice of Allowance issued by the PTO. A black-out period exists between publication of the mark and the issuing of a Notice of Allowance, during which neither an Amendment to Allege Use nor a Statement of Use will be accepted by the PTO.

The filing of an intent-to-use trademark application constitutes constructive use of the mark, as long as the application eventually matures into a registration (15 U.S.C. §1057(c)). Thus, the filing date of an intent-to-use application can be critical to the applicant, as it affords the applicant priority over later used marks or later filed applications of third parties.

Trademarks, trademark registrations, and trademark applications for registration can be valuable assets of a company. With the pervasiveness of mergers and acquisitions in today’s business world, such assets are often wooed by a potential suitor, or can be used as collateral for a

loan. However, care must be taken prior to entering into any assignment agreement encompassing ITU applications, as premature assignment can void a subsequent registration.

Specifically, 15 U.S.C. §1060 provides in relevant part:

“A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. However, no application to register a mark under section 1(b) shall be assignable prior to the filing of the verified statement of use under section 1(d), except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing . . .” (Emphasis added).

The legislative history of the foregoing highlighted section indicates that the prohibition against assignment of ITU applications prior to the filing of a Statement of Use is to protect against trafficking in marks and to help ensure that the intention of the ITU applicant is bona fide.

Significantly, in the case of *Clorox Co. v. Chemical Bank*, 40 U.S.P.Q.2d 1098 (TTAB 1996), the Trademark Trial and Appeal Board held that the penalty for violating 15 U.S.C.

§1060 is not only the invalidation of the assignment, but also the invalidation of the trademark application and any resulting registration. In *Clorox, USA Detergents* had assigned its ITU application to Chemical Bank to provide collateral under loan and security agreement with the bank. It was apparently never the intention of Chemical Bank to use the mark; indeed, the agreement included a license provision whereby all rights to the mark were licensed back to USA Detergents, and a re-assignment provision, whereby USA Detergents would reacquire the mark when the underlying loan was paid. Nevertheless, the Trademark Board concluded:

“[T]he assignment to [Chemical Bank], prior to the filing of the verified statement of use, of the intent-to-use application which matured into the registration at issue was not only invalid under Section 10 of the statute, since there was no transfer to [Chemical Bank] of the assignor’s ongoing and existing business under the . . . mark, but the resulting registration for such mark was also rendered void. In violating, whether unwittingly or otherwise, the statutory provision against assignments of the kind which took place herein, [Chemical Bank] and its assignor engaged in the very trafficking in a mark (albeit for the purpose of providing security for a loan) which Congress plainly sought to prohibit in order to safeguard the intent-to-use system by ensuring that an applicant’s intention to use a mark is bona fide.” 40 U.S.P.Q.2d at 1105-1106.

The *Clorox* case illustrates a major pitfall for companies looking to assign their trademarks, even if only as a security interests. The status of all intent-to-use trademark applications should be carefully reviewed prior to the execution of an assignment, to ensure that statutory prohibition against certain assignments is not violated.

Kevin Lemack is a partner in the Westborough intellectual property law firm Niels, Lemack and Dingman. Kevin can be reached at (508) 898-1818, or by email at NLDlaw@aol.com. VF

The Perfect Executive

Continued from front page

disposing of all of a city's waste with no sludge or effluent – would warrant such a high valuation. Instead, they might have placed a more conservative range of values on the company, indicating that a reasonable group of people is involved in the start-up.

Investors will want to know that the initial valuation is not a firm figure, and that they will have to compete with others who are considering the company's offering.

If you've ever received a catalog that precedes an auction of fine art or antiques, there is usually an estimate given for the expected bid or range of bids. We find that they are often a bit lower than what the final bid comes in at...which stimulates the bidder's interest in either attending the auction or participating by phone. The key is to get the firm interested in participating, and not discouraging interest too early.

Some firms prepare an "offering" which states the price, terms, etc., of an offering. More often than not, this turns off an institutional investor, because it almost certainly says that the offering has been prepared from the Company's perspective, not the institutional investor's. It also says that the offering is intended for individual, not institutional, investors.

Not only must investors study the business and decide whether they are interested or not, they know that they must be prepared to negotiate against a somewhat entrenched thought process that went into preparing such an offering document. Most will simply "pass".

4. Management – Management is probably the single most important part of an Executive Summary in the eyes of most investors. You should look for an imaginative way of describing your management. For example: *"The four managers of the firm, while only having worked together for 2 years at Xylo Corp., have worked together in prior firms. They have built close working relationships that have previously been tested under the strain of managing and growing an early stage business or product line within a large company. One of the board members previously was the President's reporting executive at a prior company, so that relationship is also well developed."*

Your management should have a balance: a visionary who is the driving force, an experienced operations person, and a technologist

where appropriate, and a sales/marketing executive with a track record. Also absolutely essential is someone who has administrative and financial management experience. A CFO is probably overkill within an early stage company, but where millions are to be placed in the hands of the entrepreneurial group, the question will arise as to who can manage the funds, the books, and be accountable for the use of proceeds. Sometimes a part-time CFO can be engaged, but within the team there must be a responsible manager type.

If you have a void, fill it before you seek financing. If you cannot fill the void prior to funding, at least identify the person who has agreed to accept the position upon funding, and who is willing to meet with capital sources.

5. Financial Performance – Too many executive summaries place this at the end, whereas most investors want to know what the expectations are for the company in terms of how large the firm will become, and how soon will it be profitable. We recommend using a summary table that shows one or two years of historical performance and five years of projected performance, and only 2 – 3 key numbers – Revenue, Gross Profit and EBIT. A brief explanation should accompany the table, including what events might be the cause of a projected spike in revenue or change in profitability.

Here, anywhere in the Executive Summary, you should take advantage of the opportunity to relate anecdotes that break up the monotony of most business plans:

"Early in 1997, the Company wanted to raise equity but its board vetoed the idea until the Company proved that it could operate profitably, something unheard of in the Internet industry. During the 3rd and 4th quarters,

the Company managed to be profitable in 4 of the 6 months, satisfying its board's mandate. Thus the Company is confident with its ability to attain the profit projection."

How soon should your Company show a profit? That depends on your type of company. If yours is an exceptional venture, i.e. within the top 1 or 2% of companies that venture capitalists look at, then you might show losses for more than 1 or 2 years. Biotech companies show losses for many years. But many venture capitalists will rarely consider a company that cannot become profitable by the 12th month from funding.

6. Market – By now you should have the readers' attention and he/she is steered to the task of reading the rest of the Executive Summary or requesting a copy of the full business plan. Now you should briefly describe the market, referencing the source of each statistic or number you present for credibility. You should focus on the market size and growth rates for the segment in which you are competing. You should also indicate who the competitors are within your market segment as well as those firms that might logically enter the market in the future. A large firm entering the market in the future might concern you and you may be reluctant to mention them. The investor sees it quite differently – such a firm might possibly be strategic partner or acquirer for the company, which is very important to the investor's concern for an exit opportunity. Also a large competitor would add credibility to what you are introducing and might accelerate acceptance of your product or service.

You should briefly describe your firm's competitive advantage, if any. This might be on a regional basis or within a market segment where you might enjoy acceptance. Finally, you should describe how you plan to address or expand your sales activity within your market and what resources will be required (personnel capital, etc.) and how you propose to obtain them, particularly if resources such as highly trained technical people are required.

7. Technology – For companies in which technology is a key component, describe it and how you plan to remain current or ahead of the rest of the industry. If this is a key aspect of the business, say what you can about it, but be sensitive to the fact that a confidentiality agreement may not have been executed with the reader of your ►

Continues

executive summary. If technology is a critical part of your company's appeal, you might wish to place the description of the technology nearer to the beginning of the Executive Summary.

8. Closing Paragraph – Why should an Executive Summary end on a flat note? None of your sales letters do, nor does an appeal to anyone that you are seeking a favorable decision from. Therefore, this should be a short paragraph that invites action from the reader, suggesting a meeting or a conference call meeting (in which others might participate that couldn't attend a meeting because of cost, distance, etc.).

9. Other Tips

Appearance - The Executive Summary should be attractively presented, with the occasional and consistent application of bolding, italicized type, indenting, etc. If you are unskilled at this, the tendency is to overdo it – when you do this, do so in an understated manner. Have others look at it solely from an appearance point of view and get their opinions.

Style – The writing style of your Executive Summary, as well as your business plan, is very important. Avoid the excessive use of adjectives or superlatives – most executives are guilty of this. The reader becomes numb and soon begins to subconsciously discount what is being said. Build credibility through frankness and a simple choice of words presented in a direct somewhat factual style. There is plenty of time to “sell” in your cover letter, over the phone or in person. Use the active more often than the passive tense.

Andrew Clapp is the Managing Director of the Gateway Financial Group, located in Boston, Massachusetts. He can be reached at 617-451-2369 or email at adc@gatewayfinancial.com. vF

Creation Of A Trademark Does Not Bestow Ownership

By Joseph Iandiorio, Patent Attorney

The fact that a party conceived of a mark does not mean that they are necessarily the owner of it. It is the first user or adopter of the mark that is the owner.

Compton is the former member of the Board of Directors of the Shelter for Abused Women of Collier County. Compton and Birtolo were discussing the possibility of a non-profit street painting festival to raise money when the two conceived of the name “Via Colori” for the event. Whatever interest Birtolo possessed in the name she later transferred to Compton, and at his suggestion, the Shelter's Board of Directors adopted the name “Via Colori” for the street painting fundraiser, which first took place in 1994. Subsequent events were held under the same name in 1995 and 1996. Each time the festival was funded and staffed by the Shelter and all advertisements indicated that “Via Colori” was to benefit the Shelter; indeed, all proceeds went to the Shelter.

Compton filed an application with the U.S. Patent and Trademark Office to register the mark and obtains a registration under his own name. He allowed the Shelter to use the trademark with certain limitations. The Shelter didn't abide by those limitations and Compton filed suit for trademark infringement. The Shelter filed a countersuit attacking his ownership.

Usage Equals Ownership

The ownership of a trademark, both under the federal Lanham Act and state and common law, is determined by use, and specifically prior-

ity of use as well as continuity of use. Trademark ownership is accorded to the first bona fide user of the mark. This is because the mark is merely a symbol of existing good will and without use there can be no good will and nothing yet created for the mark to represent or symbolize.

Thus the fact that Compton first conceived the mark “Via Colori” is irrelevant to whether or not he owns the mark. The invention, creation or discussion of a trademark does not create priority rights. The mere fact that a party conceived the idea of a trademark and discussed it with others does not establish priority as the date of those events. Registration of a mark unaccompanied by prior use does not create ownership. The registration does not create the trademark; it is the use of the mark to identify a single source which creates the exclusive trademark rights. Registration is merely a confirmation of those rights which must pre-exist.

In this instance it is undisputed that the first and only entity to use the mark “Via Colori” was and is the Shelter. Compton had no prior use, in fact had no use at all of the mark “Via Colori”. Therefore, he has no ownership of the mark and cannot prevail upon a claim for trademark infringement. *Compton v. Fifth Avenue Association Inc.*, 47 USPQ2d 1300 (M.D. Fla.).

This article first appeared in Decisions & Developments, Volume 20, Number 1, January 1999. Decisions & Developments is a publication of Joseph Iandiorio, a patent attorney with the intellectual law firm of Iandiorio & Teska, located in Waltham, Massachusetts. Joe can be reached at 781-890-5678. vF

Want To Hire A Star?

By Davis Rothfeld, President, CS+M

What do you hate most about your job? If you're like most managers, you answered: "I hate firing people."

If firing people is something you would rather avoid, there is a solution – don't hire the wrong people! I don't care if you are running a two-person lemonade stand or IBM, nothing is more destructive to your company than hiring the wrong person for the job.

Here are some tips to help you get it right the first time:

1. The best people out there are not necessarily the ones knocking on your door. If you meet individuals you want working for you, let them know. Tell them you are available to talk whenever they're ready to make a job change. Today's college grads will make an average of 10.3 job changes during their career, so the person you have your eye on is likely to become available.

2. Request, and check unexpected references. When job applicants come in with their resumes, ask them for four or five names other than those listed. Contact those people as soon as the interview is over, before the candidate has a chance to warn them you might be calling.

3. Make sure the applicants have done their homework. Ask them what they've done to prepare for the interview and what they know about your company and your industry. If candidates haven't done much thinking or preparation to get hired, how much are they likely to do once they are on the job.

4. Find out if they can write. In many businesses, thank-you notes, confirmation letters, information memos and proposals are the bread and butter of customer contact.

5. Check how applicants handle themselves on the phone. For any positions that require phone work, interview the candidate several times by phone. The trends towards conducting business from remote locations, as opposed to face-to-face, is only going to continue. Applicants should have the same energy, presence and presentation skills on the phone that you would expect them to have in person.

6. Allow the candidates to talk. Too many interviews revolve around the boss spinning long-winded war stories about his or her days on

the road, while the candidate nods in silent. While good listening skills are important, the candidates should have a few ideas of their own.

7. Use multiple settings for interviews. Some candidates may appear to be very statesmanlike around the shop, but appear to squirm as if they've been beset by chiggers when they are placed in a formal setting. Take the candidates out to eat, to ball games, to meet with important clients and to the company picnic.

8. Stay "open for hiring" year round. When anyone really solid comes through your door, find a position for them, even if you don't have an opening. This gives you bench strength.

9. Surround yourself with winners. A great manager is willing to hire strong players and then figure out how to make them shine. You'll win more and go further if you surround yourself with players who can not only keep up with you, but can also teach you something.

10. And finally, use the acid test of hiring. Ask yourself: "How would I feel if this person were working for my competitor?" Your answer will determine what to do.

Dave Rothfeld is President of CS+M, Creative Sales + Management, Inc., located in Natick, Massachusetts. This article first appeared in "Focus On Sales", a publication of CS+M, in July/August 1998, Volume 13, Number 4. CS+M is a sales and management consulting firm that helps professionals develop the skills necessary to enhance their business and increase their market share. CS+M offers customized programs to address corporate marketing support and in-house training requirements. Dave can be reached at 1-800-841-1849 or e-mail: dave@csm4tqs.com. VF

Electronic Commerce

Continued from page 3

Internet's influence on customers

According to an Ernst & Young study, even if a customer does not buy over the Internet, sales are influenced by what they learn online. 32% of those with online access have purchased products or services on the Internet, but a mere 4% make more than 10 purchases annually. 64%, however, research products online and later buy through traditional channels. Convenience was identified by 53% as their main reason for purchasing online, while 46% named variety and 45% cited cost savings.

So, if you're not online yet with a well-designed, useful Web site, what are you waiting for? For your competitors to show you how?

Bio Shari Worthington is President of Cirrus Technology (<http://www.CirrusMarketing.com>), an 11 year old firm specializing in marketing, publishing, and Web development for the high tech markets. She is also Vice Chairman of the WPI Venture Forum (<http://www.wpiventureforum.org>). VF

Don't Miss the Opening Season! 1999-2000 WPI Venture Forum

Starts another year of programming in September of '99

The membership year runs from July 1, 1999 through June 30, 2000. Please send the form and a check for \$20 to:
WPI Venture Forum, WPI, 100 Institute Road, Worcester, MA 01609

The membership benefits include: half price attendance fees to WPI Venture Forum monthly meetings, free subscription to the WPI Venture Forum Newsletter, discounts and notification of WPI Venture Forum events.

Name & Title _____

Company _____

Address _____

City _____ State _____ Zip _____

Email _____ Fax _____ Phone _____



Finding the Funds

Continued from page 5

projecting on the high side since it is exactly what it is called, a business plan.

Once you know the deal is real and good for both parties, work toward a partnership with the investors. "Work toward 'we' and not 'them' mentality. Convey to them early on what role you are expecting to play – founder, CEO, technology leader. The investors will be expecting a board of director's seat, preferred stock for their investment, anti-dilution protection, and control over large expenditures. In return you can expect expert advice, crisis control, introductions to others in your industry, and assistance on raising the next round of financing. Never keep secrets from your board as you wouldn't from any part-

ner since they are a trustworthy sounding board. Remember that they invested in you and your team; they do not want to know detailed day to day operation problems, but rather how the company is doing in meeting the targets in the big picture of product development, production and sales. Schedule regular board meetings, keep them updated regularly, and prepare an agenda with detailed financials prior to each meeting so that there are no surprises.

As an entrepreneur, Paul stressed not to give up, provide a sound value proposition and articulate, and find the right match. Make sure your projections are real and can be supported with market data, but at the same time aggressive. You may be tested as to how committed you are to your own plan, so don't flip-flop on your positions. Finally, be sure not to under-fund your company since you will run out of money too early and will have to raise money at a difficult time. Jerry then covered some of the many types of financing deals that may be offered from purchase of stock to convertible loans depending on the stage of your company.

During the round-table discussion, the four presenters answered many questions. Many of the questions had to deal with valuation issues, which were handled with different perspectives, but with similar results. The clear message was

not to dwell on a few percentage points, but to get the funding settled so that you can start rolling down the path to success. Other comments addressed the targeting issue and ideas for getting those first few critical introductions. Our panel agreed that that night at the Forum could be the first step in an introduction since they were all present and available for networking!

In summary, Bob Creeden summed up the night with a list of points that were raised. This list included: Cover the business basics and personal information in a well written, concise business plan, find and listen to advisors, sharpen a presentation on your ideas, target the investor before approaching, expect a long process ahead, use referrals to get introductions, use a small business lawyer, and look to the investor as a long-term partner. **vf**

SEE YOU NEXT YEAR

Watch for our
September Meeting