

Memorandum

To: Fred & Sally of “Fred’s Miracle Cough Syrup”

From: Sunshine Bramer

Date: November 10, 2023

Subject: New Business Venture Plan

Following up on our recent meeting this memorandum is to help guide and assist in creating clarity and provide information with starting your new business for your homeopathic cough medicine. This is intended to aid in the formation of your new business by addressing the following areas: choosing appropriate entity type, product liability issues, management issues, and estate planning for both business and family property.

Business Entities

There are four main business entities that you can choose: Sole proprietorship, limited liability company, general partnership, and corporation. Here you will find that I have provided the advantages and disadvantages of each to help guide you on the best path for you and your new business.

Sole Proprietorship

Firstly, a sole proprietorship is defined as, “a business in which one person (sole proprietor) controls management and profits.” (Kubasek, 2021). If you deem to go this route this can come with perks such as having less legal formalities and having control of the management of your company. This will let you be able to hire employees and management staff with your

discretion and judgement as well as set your own working and business hours. Lastly, as sole proprietor of your company you will be able to reap the rewards and profits of your company.

This may appear to be a very big incentive to go this route but there are also disadvantages with this endeavor. As sole proprietor “you are personally liable for any losses or obligations associated with your business” (Kubasek, 2021). Sole proprietorship is considered a separate legal entity meaning that you r can be personally sued or held liable. Another disadvantage that I would like to mention would be the limited financial funding. Sole proprietorship can be an expensive endeavor and the options for funding are limited to your personal finances and any personal/business loans that you may acquire or qualify for.

Limited Liability Company (LLC)

Limited liability company or LLC can be defined as, “hybrid entities that combine the characteristics of a corporation with those of a partnership or sole proprietorship.” (Kubasek, 2019). Within the U.S. owners of LLC’s are protected from personal responsibilities and liabilities. The only difference an LLC is from a corporation is that LLCs are not required to allocate the profits and losses towards their ownership interests which makes the record keeping easier and more flexible. One of the main advantages of an LLC is that the IRS treats them like a partnership or sole proprietorship. This meaning that owners of LLC’s can reports profits and losses on their personal tax returns.

The main disadvantage of this type of pf entity is the death of a member or bankruptcy which depending on the state law, the company may have to be dissolved. In the endeavor of operating a publicly traded company this may not be the appropriate route to take.

General Partnership

A general partnership can be defined as a business arrangement where two or more people agree to share assets, profits, as well as financial and legal liabilities. This entity comes with a couple conditions to be met: must be a minimum of two people, and all partners must agree to have unlimited personal responsibility for any debts or legal liabilities the partnership might incur. Now let's take a look at the advantages and disadvantages.

Advantages

1. A general partnership is less expensive and easier to set up than a corporation or [limited liability partnership \(LLP\)](#).
2. Less paperwork is involved. In the United States, filing partnership paperwork with a state is generally not required, though certain registration forms, permits, and licenses may be necessary at the local level.
3. As a pass-through entity, the partnership pays no taxes.
4. No external financial reporting/annual report is required.
5. A general partnership is simple to dissolve.

Disadvantages

1. Personal liability is unlimited. A partner's personal property can be seized to pay partnership debts.
2. With shared liability, partners must deal with the financial and legal consequences of each other's (and employees') actions.

3. Disputes may be difficult to address and disastrous for the business (unless properly planned for in the partnership agreement).
4. Over time, a business can become complicated, encounter greater risks, increase potential personal liability, and outgrow the general partnership structure. (Bloomenthal, 2023)

Corporation

The last business entity is corporation, and it can be defined as, “formed by selling shares of stock to investors who become shareholders and the owners of the company.” (Kubasek, 2021). Corporation are considered legal entities. With a corporation, shareholders are responsible for electing the board of directors. Once the board of directors is elected, they are responsible for overseeing the business. One advantage of a corporation is the selling of stocks and bonds for financial sourcing. A corporation can also be considered a separate legal entity meaning that they are independent from their owners and considered a legal entity that can conduct business, own property, borrow money, sue or be sued, enter bidding contracts, and pay taxes. This is beneficial because it can protect your business financially and legally.

The disadvantages of a corporation are the expenses of becoming a corporation and the documentation to maintain the business. Lastly with a corporation there is double taxation meaning both corporate revenue and payments of dividends to stockholders are remitted.

Product Liability

Product liability law provides victims of dangerous products with legal recourse for any injury suffered. The severity in the importance of making your product follow and comply FDA guidelines is imperative; this will not only keep your consumers safe but keep your company safe legally as well. Since there has been a note stating that there is an ingredient in your homeopathic cough syrup that has a severe reaction in conjunction with aspirin, this needs to be made aware and labeled properly. This can create a huge liability and even greater lawsuit if not taken seriously and steps taken to create awareness of potential danger. This falls under the manufacturer's "duty to warn" legal obligation which states that a manufacturer of a prescription drug has to warn all persons who will come in contact with and potentially be injured by the products.

Agency Relationship

An agency relationship with Sam can be implied from his involvement prior to the formation of the business as an implied partnership. To help mitigate this it needs to be expressed to Sam that this will not be a partnership but an employer-employee relationship. It is very important to clear up this distinction as there can be legal implications of an implied partnership when certain requirements are not fulfilled. With an employer-employee relationship, Fred and Sally, you would be the ones that would set Sam's hours, pay, job description, responsibilities and even termination. If Fred and Sally were to allow Sam in a partnership, he would have a say in business decisions as well as share in the profit and losses.

Manufacturing

The manufacturing of Fred's Miracle Cough Syrup at the family farm will not cause any transfer of ownership of property. Fred is the owner of both the land and the business and has simple ownership of the property which allows him to full use of the land and any property erected on the property.

Personal Property Issues

Since Sam is using his personal vehicle, vehicle liability is a big concern. Since work conducted is authorized by Fred, Sam can get into an accident that can harm himself and/or others. Even though Sam is personally insured this will not cover the liability lawsuits against the company while Sam was conducting work authorized tasks as an Agent for Fred's Miracle Cough Syrup. To help circumvent this, Fred should ensure that there is a proper commercial vehicle policy on Sam's van. The other concern to consider on Sam's van is vehicle policies minimizing principal liability by limiting the van usage to strictly business rather than personal as well. Lastly vehicle maintenance records are a must to show that it is in good working order to avoid negligence lawsuits.

Estate Planning

Estate planning will help with the continuation of the company for far into the future and this can be helped with an established will. A will is a legal document that sets the wishes on how your property and assets are to be handled. If no established will is set then your business and assets are to be decided upon a court and judges in the event of your death. Ensure that your will is very specific in how you would like to disperse your personal assets and who the business will go to in the event of your passing, if you

are not specific and use vague language it can cause turmoil for your family and business partners which can lead to long legal battles or dissolution of your estate. I would suggest speaking to a legal aid to help draw up an airtight will.

Transferring Ownership

If you would like to transfer ownership to your children at any point in your life I would suggest a family limited partnership (FLP), that way you would still have some control over business dealings and decisions. An FLP allows you to transfer all your assets into partnership shares thus passing down wealth while still maintaining tax protection. This is what we would call a trust which can be used by you and your future beneficiaries. There are two types of trust, express and implied. Express trusts are created when either the person is alive or by a will. Implied trusts or involuntary trusts are court written and appointed. A reason a trust should be created when transferring ownership because all your demands will be written down and legally carried out.

Personal Recommendation

In regard to Fred's Miracle Cough Syrup I would advise going with an Limited Liability Company (LLC) to be better suited for this company. Operating under and LLC will give them the protection but allow for them to operate in their personal morals. You will be able to choose who works for you and how far reaching you will take your company. Since this will be a new business the expenses will not be such a heavy blow like it would with a corporation and will allow you to expand slowly. You will have more flexibility on your profits and losses rather than the double taxation of a

corporation. This entity will also be a great avenue to venture down if and/or when you decide to make Sam a full partner. The entity is also great for the liability protection it can provide for you, your family, and the farm you live on. Again, I would advise to make sure that your severe reaction that your syrup can cause with aspirin be labeled to ensure that you do not get penalized. sued, and mark up the intention with your product. Other than that I wish you luck in your future endeavors and hope that this information helped.

Regards,

Sunshine Bramer

References:

Kubasek, N.K. Browne, M.N., Herron, D.J., Dhooge, L.J., Barkacs, L.L. (2021)

Dynamic Business Law (5th ed.) McGraw-Hill Education

Bloomenthal, A. (2023, August 14) General Partnerships: Definition, Features, and Example

As found on: <https://www.investopedia.com/terms/g/generalpartnership.asp>