



To learn more about how Venable can help you handle unsolicited ideas, please contact the author below.

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Handling Unsolicited Idea Submissions

Intellectual property risk can arise in a variety of ways, including through seemingly harmless interactions. One area of outwardly innocent business activity that has the potential for liability and litigation (not to mention negative publicity) is the receipt of unsolicited ideas. Today, many businesses receive unsolicited ideas, suggestions, or proposals through a variety of ways, including by mail or e-mail. Customers, entrepreneurs, small businesses, and even employees can send ideas to a company. These submissions can make their way to various departments and can contain a variety of suggestions and "business ideas," including new ways to offer products and services.

The mishandling of these unsolicited business ideas can give rise to liability. Liability typically results from two scenarios:

- i. a non-employee (the submitter) offers to sell an idea substantially similar to the one that the company (the recipient) has already developed or is about to implement; or
- ii. the company (the recipient) uses an unsolicited idea or something similar to the submitted idea without compensating the non-employee (the submitter).

To avoid liability in such situations, companies should consider instituting internal procedures for handling the receipt and possible use of unsolicited ideas. These procedures can be a key element in protecting a company from or mitigating potential liability.

Relevant laws and discussion on this topic do reach the generalization that there is no protection for the submission of a "mere" idea in the abstract. But, the law on this issue does delineate three possible legal theories under which a plaintiff, the submitter of an unsolicited idea, could prevail against an entity which misuses his or her idea or uses something unquestionably similar. First, a plaintiff could claim a property right in the idea he or she discloses to a company, alleging the wrongful taking of this property when the organization implements a similar idea. Second, a plaintiff could use a quasi-contract theory and argue that a company unjustly enriched itself by exploiting the plaintiff's idea without compensating him or her. Finally, a plaintiff could attempt to prove the existence of an express or implied contract between the parties by alleging that a company, by acceptance of the submission, promised compensation in exchange for disclosing the idea and allowing the company to exploit it for commercial gain. Because the property, quasi-contract, and contract theories are generally the same for all practical purposes, a plaintiff must generally prove the same three elements under these theories in order to establish liability: (i) the idea must be novel and concrete; (ii) it must be disclosed in confidence; and (iii) the defendant must adopt and use the idea without compensating the plaintiff.

What You Can Do

With this framework in mind, we suggest below a brief framework for handling unsolicited ideas in order to assist a company in avoiding or mitigating potential liability for their submission and/or use. There is no single "correct" response to an unsolicited business decision. But, once a company makes a decision on how it would prefer to handle unsolicited ideas, *i.e.*, whether to reject or evaluate them, it should set forth in writing the internal policy and procedures to be followed in each case. Employees or agents who have contact with possible submissions – whether heads of marketing or business development or receptionists – should understand the procedures and policies they must follow regarding unsolicited proposals.

1. **Isolate the receipt of unsolicited ideas**
2. **Isolate, in particular, claims of intellectual property infringement included with the submission**
3. **Record the development of ideas by company personnel and the receipt of unsolicited business ideas from non-company personnel**
4. **Once an unsolicited submission is received, consider (i) rejecting all unsolicited ideas or (ii) utilizing unsolicited ideas only under standardized procedures and arrangements**
5. **If accepted or utilized in any manner, consider using an Idea Submittal Agreement with the submitter**

The procedures outlined above can work for instances when a company merely receives an offer to obtain information on a business idea at a future date or when an unsolicited letter already contains a specific idea. Of course, when the unsolicited correspondence already contains specific information

about an idea, greater precautions need to be taken to ensure that the submitted idea does not reach the idea development personnel at the company. In all cases, however, maintaining and following a procedure for unsolicited ideas will assist a company with avoiding any problems that might arise from such submittals.

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