

## Norris Legal Consulting – American Law Specialists

In partnership with the Chamber, our objective is to provide Chamber members with information on the complex US legal landscape, which might assist in US-NZ business relationships, and to assist NZ businesses expanding into the lucrative US markets. In our monthly column, we write about legal issues which we deal with in our representation of NZ businesses doing business in and with the US, however, we are also open to suggestions on topics about which members are interested in learning. So, please feel free to email us with your comments, questions and any suggested topics at [info@nz-uslegal.co.nz](mailto:info@nz-uslegal.co.nz).

### **THE TROUBLE WITH “DIY”**

New Zealand is a proud *Do-It-Yourself* (“DIY”) nation whose people demonstrate what we Americans admiringly call “rugged individualism”. This national character trait likely takes its roots from the construction of a society so far away from the rest of the world thereby creating a unique mixture of self-reliance and communal harmony. A Kiwi will rarely ask for assistance, but will also be quick to help a neighbor in need. This has undoubtedly led to a unique *DIY/ No 8 Wire* culture and an amazing array of innovative businesses. However, taking a DIY approach when doing business in the United States is a recipe for disaster.

Many of our clients come to us once they are in a dispute or are facing governmental regulatory issues after having tried to navigate the complicated US legal systems without professional US legal advice. These disputes and problems could almost always have been prevented had the client sought out a US lawyer’s advice beforehand. While it is not difficult to find a free form on line or to use non-attorney legal service providers (ie Legal Zoom or Rocket Lawyer) to create your US legal documentation, use of these DIY legal document sources places you and your business at risk. Form documents are not specifically tailored to your business and leave many legal issues unaddressed and leave you exposed to a range of potential risks and liabilities.

For example, a client came to us regarding a dispute with they were having with an independent agent they hired to manage their US subsidiary. After training the agent for about a year on the intricacies of their business methods, sharing their sales strategies, and generally teaching the agent how to run the business, the agent quit and immediately opened up a competing business in the same city. They called us wanting to enforce a non-competition agreement that they had the agent sign when he first started working for them. Our client had used a form employment agreement they found online that included a non-competition clause in it, but did not have any effective trade secret protection language. Their thinking was that the non-competition clause would prevent the agent from using their trade secrets or business methods in competition against them. Unfortunately for them, this agent lived in California, where non-competition agreements are unenforceable. There simply was no contractual protection that the client could utilize, and since the client did not protect its trade secrets, there was no basis on which it could claim misappropriation against the ex-agent. This situation could have been prevented had they simply invested in an employment contract drafted specifically for their business by a US attorney.

Another regular problem our clients come to us with is where they find themselves receiving notices from state governments that their business owes back taxes and penalties for failing to register their business in that state. The common story we find is that a NZ company will start a

subsidiary in Delaware by using an online incorporation service. Thinking that this is all that is needed, they open up an office in Texas (for example) to act as their importer of record or distributor. They are completely shocked when they find out that the Texas State Comptroller's office wants to collect taxes and penalties for failing to register the business and the Texas Attorney's General is seeking an injunction to shut down their office. This common problem comes down to the fact that a business entity must register in each state in which it is doing business. Any sales in that state are subject to state taxation and a company may not legally conduct business in another state without registering. The penalties, back taxes and business interruption caused by this sort of situation could have been easily avoided had the company simply sought out legal advice before beginning operations in the US.

The moral of the story is that the United States does not have a Do-It-Yourself type of legal system. Simple innocuous actions, like using on-line form legal documentation, can lead to disastrous and costly legal predicaments. Making the proper investment in legal advice on the front end will always put you in a better position later on.

- Zachary D. Norris, JD, LL.M. and Ada Echetebe, JD, LL.M.

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