

Navigating the Pitfalls of Unsolicited Idea Submissions

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You hear the familiar *ding* as a notification pops up on your screen. You see an email from an external sender pitching a new toy line – and you are struck when you realize the idea is similar to a new concept your team hatched-up at last week’s informal lunch meeting. What should you do? Better yet, what steps should your organization have taken before this email appeared in your inbox?

Increasingly, many companies are adopting “unsolicited ideas” policies so that they are prepared for this type of scenario. These relatively simple policies can help organizations minimize considerable litigation and liability risk. They provide clarity to individuals considering submitting an unsolicited business idea to the organization and provide clear guidance to employees as to how to act when receiving such an idea.

What are Unsolicited Ideas?

An “unsolicited idea” is an idea that is transmitted to an organization without any request or encouragement by the organization. For example, an email from a member of the public to a toy company with a business idea a new toy concept, character, slogan or ad campaign that was not requested by the company.

Legal Risks Associated with Unsolicited Ideas

Unsolicited ideas are fraught with risk. A person might submit an idea to an organization with an expectation that he or she would be compensated if the idea is used. If the organization ever markets a product that bears a resemblance to the idea, the person who submitted the idea could assert a number of claims against the business, such as infringement of intellectual property rights, breach of implied contract and unjust enrichment. Even if the organization launched a product without knowing about or using the submitted idea, the organization might incur significant legal expenses defending against the claims.

Creating and Implementing an Unsolicited Ideas Policy

Much of the risk associated with unsolicited ideas can be mitigated through the creation and implementation of a comprehensive unsolicited ideas policy. An unsolicited ideas policy should have two components: (1) an external policy that notifies the public of how the company handles unsolicited ideas; and (2) an internal policy that directs company personnel as to proper procedures to follow when receiving unsolicited ideas.

External Policy

The external policy is typically included on a company's website and is intended to notify the public as to the company's practices when receiving unsolicited ideas. The contents of the policy will depend on an organization's general approach to unsolicited ideas. Some organizations encourage the public to submit ideas and include specific procedures for submissions. Organizations taking this approach should consider implementing a policy which governs the process of submission, review and eventual utilization of any submitted ideas.

Many organizations prefer to discourage the public from submitting ideas and adopt policies stating that the organization does not accept or consider unsolicited ideas. An organization that seeks to limit submissions of unsolicited ideas might adopt a policy that includes the following terms:

1. The organization will be under no obligation with respect to the submission, including an obligation to review the submission;
2. The organization will not consider any submission to be confidential or proprietary;
3. The organization may utilize or share the submission without compensation to the person who submitted the idea.

While there may be questions as to the enforceability of these terms (as there is no way to ensure they will be reviewed prior to submission of an unsolicited idea), adoption and publication of such a policy will serve as a first line of defense against the risks associated with unsolicited ideas.

Internal Policy

The second component of a comprehensive unsolicited ideas strategy is the adoption of internal company policy that directs company personnel as to the appropriate steps to take when receiving unsolicited ideas. For example, the policy might require personnel who receive an unsolicited idea to respond with an email directing the person who submitted the idea to read the company's policies regarding submissions of unsolicited ideas. The policy might also seek to limit the flow of such ideas within the organization until a binding agreement is executed between the organization and the submitter.

Regardless of an organization's philosophy and culture, internal and external unsolicited ideas policies should be adopted to manage legal risk arising from ideas submitted by individuals outside the organization.