



PowerScreen Problem

Confidential Instructions for Stanley Star's Attorney

You are a partner in a small local law firm. A friend of yours, Dale Levinson, called to ask if she could refer a client to you. She has been representing HackerStar, Inc. for more than four years, but now that there is a problem between the two principals in that company, she felt she had to bow out and recommend that each retain separate counsel. You agreed to talk to one of the principals, Stanley Star. In the course of a client interview with Star, you found Star to be straight-laced, serious, and apparently honest. The following is a summary of what you learned from Star in preparation for your upcoming meeting with Alan Hacker's attorney.

Your client, who is chairman of the board of HackerStar, Inc., has always been interested in computers as a hobby and as a tool for keeping track of patient records in his practice. When he was looking for a good investment six years ago, backing a start-up software venture seemed natural. Alan Hacker seemed like a good bet. He had a solid professional reputation, a stable client base, lots of experience, and a good product in hand. The figures he presented on potential market and projected sales were impressive. Star's only concerns were whether Hacker had the management and marketing expertise to turn his projections into reality and, if he did have the expertise, whether he would give up programming to do it.

Now it seems that Star's instincts may have been better than his judgment, because it is precisely those concerns that have come to haunt him. When he and Hacker first discussed the possibility of setting up HackerStar, Star suggested that the company should employ a professional manager and marketing person. Hacker was not enthusiastic about the idea, although Star says he could never really tell if this was for business reasons or if it was a matter of pride. What Hacker said was that the money would be better spent on advertising, that he could handle the small staff, and that a good advertising agency could guide the marketing. Star made one last attempt, suggesting that a smart young person just out of a good business school would not cost that much, but Hacker kept talking about how crucial advertising was for a new product. Hacker finally agreed that hiring a sales manager might be a good idea once the company was underway, and Star decided to wait and see.

HackerStar's first year was not an unqualified success. It did make money, which your client realizes is unusual if not unprecedented, but sales were less than half of projections. All year long Hacker wanted to spend more on advertising, even suggesting the company take out a loan to do so, but he never could provide any hard evidence of how much more was needed or

how precisely it would help. Then, suddenly, he told Star that he wanted to write another program, even as the company was struggling to succeed. Star didn't know what to make of it. Hacker's arguments that having a line of products would make the company more secure and generate more recognition among dealers seemed to make sense, but he wouldn't admit that there might be a tradeoff between R & D and current sales. Again, Star says he suggested the need for a sales manager, but Hacker was adamant in his resistance. Hacker wanted the money for advertising, and Star was afraid Hacker might just quit if he didn't get it. Finally, Star just gave up and went along. But he was not happy, and Hacker knew it.

When Hacker came back at the beginning of year four and proposed developing yet another product, your client put his foot down. Sales on both Resource Controller and PortaWord were still way below projections. Star reminded Hacker that Hacker had taken on the job of sales and marketing manager over Star's objections and that it was therefore Hacker's responsibility to see that the job got done right. Star wanted to see increased sales immediately, which took precedence over anything and everything else. At first, he thought that Hacker got the message. But he soon found out that Hacker had just gone right ahead and developed PowerScreen without telling him. Sales did go up in year four but not anywhere near to Hacker's own projections. They went down again in years five and six.

When Hacker finally did tell your client what he had done, Star was not happy. It is clear that PowerScreen is another quality Hacker product with a significant potential market; Star does not dispute this fact. His question is whether its development and marketing by HackerStar really represents a wise business decision.

Like your client, you don't completely believe Hacker's claim that the work to develop PowerScreen was done in his "spare time." Developing a major program like PowerScreen requires a huge creative effort that is bound to be more interesting to someone like Hacker than selling an old idea. Certainly, he spent hours daydreaming about PowerScreen instead of selling the company's existing products. Likewise, you have no doubt that Hacker made significant use of company time and equipment to do the work. Hacker admits to using the powerful and sophisticated PC simulator on the company's minicomputer to debug his program. Developing this program probably cost HackerStar money in the form of reduced sales.

As far as your client is concerned, there is no justification for Hacker's claim that PowerScreen is owned by him exclusively. Star's argument is that, no matter what the language of the employment contract, it is perfectly clear that he and Hacker had discussed, intended, and agreed that, in exchange for Star's initial backing of the company, Hacker would owe all of his creative software energy to HackerStar. Under their agreement, Hacker should have had no spare time to develop his own product. According to Star, this agreement is not limited to products that compete directly with existing HackerStar products but applies to all microcomputer software products that Hacker might develop. You pointed out to Star that, on paper at least, the contract was somewhat ambiguous and that there might be problems proving intent. Basically, however, you agreed with his point of view.

In addition to the issue of the contract, other issues are Hacker's use of company equipment for PowerScreen's development and the fact that the time he spent seems to have detracted from the success of the company's other products. It is certainly not obvious that a reluctance to go forward in the way Hacker proposed translates into a waiver of his employment contract covenants not to compete and to devote his full energies to the company. You can make an excellent argument that his program is HackerStar's, however it is marketed.

Star thinks Hacker is insulted that he didn't fall head over heels in love with PowerScreen and abjectly admit that he had been wrong not to be interested at first. Star is prepared to apologize if that will help, but it doesn't change the contractual reality. Star has the sense that Hacker doesn't really take his judgment very seriously, that he just wants his money. For example, when they were first talking about creating the company, your client suggested developing a program to help Hollywood screenwriters, but Hacker just laughed it off without ever asking him why he thought such an idea might be worth considering. Hacker's high-handed and devious approach to writing PowerScreen is, Star thinks, an indication of this attitude as well as a good illustration of why it needs to be challenged.

What Star wants to do first is to get Hacker to admit the company owns PowerScreen and then work out an effective way to go forward so that the company handles sales effectively and Hacker doesn't go off on his own again. In Star's view, that almost certainly means it is finally time to hire a real manager and to designate Hacker head of R & D. Hacker could also supervise the other programmer's work keeping old products up to date and compatible with new machines.

Your client wants the company to keep going. Despite the fact that it has not turned out to be the cash cow he was expecting, Star is fond of it and feels that it is a respectable company. With proper sales management and Hacker's ideas, it can do much better. Star would be willing, if necessary, to let Hacker take ten or 15 percent of the royalties if that would allow him to save face. However, your client would want to couple that with a clear understanding that, in the future, all Hacker's work would be owed to the company. Another possible alternative is to have Hacker's venture capitalist backers buy into HackerStar to help with its marketing if they are willing. Star thinks this might be a good option, but he would not want to lose real control. First, though, he wants to get Hacker to calm down and look at things realistically. Your client feels that Hacker's petulance and emotional outbursts are entirely inappropriate in a business context. He insists that Hacker conduct himself reasonably, without venomous name-calling, and look at the situation maturely. If Hacker absolutely won't do this, then Star would rather sue him than be left with the feeling that he had been "ripped-off."

Prepare for your meeting with Hacker's attorney. Basically, your client wants to know how best to proceed, whether litigation is necessary (and if so, with what purpose in mind), or whether something can be worked out without litigation. Star has given you full authority to explore any proposal and develop a recommendation, but he will be the one to decide finally what he wants to do. Of course, he will give serious weight to your advice.