FOUNDER™ FOCUS

Patterson Belknap

The Billion-Dollar Interview: How the Wrong Hiring Process Can Create Personal Liability for Founders

The right talent can make or break a startup, and effective founders build recruiting processes to land exceptional people. But a process built to win talent can, if run the wrong way, expose a founder to personal liability to the competitor they are hiring from. A recent lawsuit by Apple shows how.

Tang Tan spent 24 years at Apple, rising to vice president of product design for the iPhone and Apple Watch. After co-founding startup io Products and selling the company to OpenAI, he was tasked with building OpenAI's hardware team. He turned to the engineers he knew best: Apple's.

Tan's interviews were hands-on. Candidates explained their contributions and engineering decisions and brought physical components from Apple to illustrate their work at Tan's request—a way, according to Tan, to find out who could build a hardware business from scratch.

Apple saw it differently: as a concerted effort to extract its secrets. In July 2026, Apple sued OpenAI and Tan personally in California federal court, alleging that he had current employees disclose proprietary hardware, used interviews to draw out unreleased product plans, and encouraged recruits to conceal their departures, retain system access, and exfiltrate confidential information. (Apple's allegations have not been proven, and both OpenAI and Tan deny them.) *Apple*. *Inc. v. Liu et al.*, Case No. 5:26-cv-07078 (N.D. Cal.).

The Personal Stakes for Founders

Many founders are surprised to learn that trade-secret liability can attach to individuals, not just the company that benefits. The federal Defend Trade Secrets Act and state laws prohibit acquiring, disclosing, or using another company's trade secrets through improper means, including by inducing someone else to disclose them. Designs, prototypes, supplier information, and unreleased plans can all qualify as trade secrets if the owner takes reasonable steps to keep them confidential. A founder who solicits, encourages, or uses a competitor's secrets can face personal liability, and acting on behalf of the company is no shield.

The consequences can be immediate: a founder may need their own lawyer, face emergency court proceedings, turn over personal devices for forensic review, and sit for deposition—all before the merits are decided. Exposure can include damages, court orders restricting future work, and damages keyed to the value of the trade secret.

How to Stay on the Right Side of the Line

Most founders in trade-secret litigation never set out to steal. When you hold the leverage—a job offer, a contract, an investment—people may overshare, and a conversation intended to gauge knowledge and experience can look sinister in hindsight. A few simple habits can keep your process clean:

- Probe acumen and expertise, not secrets. Ask candidates what they worked on, what their role was, and how they approach problems—but not questions that call for another company's confidential technical information, designs, pricing, or processes.

- Keep other companies' materials out of the room. No prototypes, components, code, CAD files, internal decks, or customer data, no matter who offers them. Test know-how with hypotheticals or your own exercises.
- Set the boundary up front. Tell candidates, vendors, and your own team that you don't want anyone else's confidential information. If it is volunteered anyway, don't use, share, or destroy it—call counsel.
- Do not coach the exit. When talking with a recruit about leaving, don't suggest that they keep the move quiet, review or take documents before they go, or hold onto devices, files, or system access.
- Stay disciplined beyond recruiting. The same risks arise with suppliers and consultants, and at trade shows, dinners, and catch-ups with former colleagues. Stick to public information and general industry knowledge.

Your Company's Lawyer May Not be Your Lawyer

If you face a trade-secret allegation, remember that your company's lawyers represent the company, not you. Indeed, the company's best defense may be that you acted outside your authority. Founders facing these allegations, or worried about past conduct, should consult their own lawyer early.

Patterson Belknap has a multi-disciplinary team of lawyers who are focused on the legal needs of founders and entrepreneurs. A description of the full range of our services and attorney contacts can be found here. Please visit the Founder Focus Resource Center for more content on a broad range of topics of interest to founders and their professional advisors.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact the following attorney or call your regular Patterson contact.

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