

Module 20 Lesson 1

Transcript

This may be one of the most important lessons in this entire unit. This lesson is all about protection, protecting your business from improper operation, legal liability, copyright infringement, and so much more. This is where we make sure your business is set up correctly, insured properly and operating legally.

Now to be clear, I'm not a lawyer. Did I need to be clear about that? You probably know that, and everything we discuss should not be misconstrued as legal advice. I encourage you to find your own lawyer and work with them directly so you can obtain proper legal advice for your business.

This lesson is about educating you on the reasons you need a lawyer, the questions you should ask that lawyer and topics you may not have otherwise thought about that could literally shut your business down if not handled the right way. We're going to cover how to set up your business, and if you should operate as an LLC or a sole proprietor. We'll also cover what types of insurance you may need, touch on trademarks, copyrights, terms and conditions for your website and we'll tackle working within your scope of practice depending upon your credentials.

In an effort to bring you the best information possible. I'm turning to a legal expert who also won't be giving you legal advice as your lawyer, but will be an amazing resource with proper legal expertise to help you navigate these confusing and sometimes scary topics. I am so happy you are here for this one.

Hey guys, I'm Sam Vander Wielen and I'm so excited to be with you here today, learning all about how to legally protect and grow your wellness businesses. As Keri said, I'm Sam Vander Wielen, founder of Sam Vander Wielen LLC, where I help women just like you learn how to legally protect and grow their online businesses through my DIY legal templates and my Ultimate Bundle program.

I'm so excited today because we have a lot of really good questions. I'm going to dive in and start answering those questions. But I also want to let you know if there's ever anything that you need some more info on, I have plenty of resources for you that Carrie's going to make available to you and you can always reach out to me through Instagram. I'm just @SamVanderWielen on Instagram. Let's get started.

The first question, which is a great one because it's really where we start when we're legally protecting our businesses, is how does make sure that you're setting up your business properly and deciding between different types of business entities like LLCs or sole proprietorship or partnership. There are all these different types. First and foremost, when you hear people saying things like, I want to form my business, start my business, register my business, get a license, those are really all the same thing. They're kind of all in the same category. The language that I will use today is register your business.

When we start out, when we are starting our own businesses, it's really important, if not required, that we register our businesses in the state where we live and work. And when you're registering your business in your state, you're really just deciding what type of business entity you're registering. And the different kinds of business entities are things like LLCs, sole proprietor, all of those things that I just mentioned; and really there are different types of business structures. You're deciding how to register your business; and when you're picking that business entity, it gives you certain rights and responsibilities, certain limitations depending on which one you pick.

For example, if you register your business as a sole proprietor, you can only ever own your business by yourself, right? There can just be one owner of a sole proprietor. Whereas for a partnership, for example, you have to have two or more people to register your business as a partnership. There are certain limitations even just within the structure of businesses that you will maybe not qualify for, that aren't advantageous for you, all that kind of stuff.

When it comes down to it for most wellness business owners, we're deciding between a sole proprietorship and a LLC, and that's because they are the two most popular, the two most accessible. They're relatively easy to get started. I would encourage you to Google, what is a sole proprietorship in your state and what is an LLC in your state. Look at the pros and cons. This is really what I help women to kind of walk through these first initial steps is figure out what does that even mean for you in your state? What does the process look like and the registration? What are the fees? What are the differences?

But really where I come in and what's most helpful I think to you today is to pay attention to the fact that an LLC grants you personal liability protection, whereas a sole proprietor does not give you any. And what that means is that you are personally exposed if you've registered your business as a sole proprietor. Whereas when you register your LLC, if you then act like an LLC online, which is part of what I'm going to teach you a bit about today and what I teach women to do every day, then you are granted this personal liability protection, which essentially means that you are separate from your business.

And that's really important because if anything ever happened in your business, if you ever got sued or something like that, you don't want to be sued personally. You want your business to be sued because we can contain that, but we don't want you personally to be exposed. So really that's what we're looking into. It's really important that you find out which one of those is best for you personally with your personal financial situation, your business, your tax situation, all that kind of stuff. And that's something we could talk about all day, but I really just wanted to highlight that issue for you so at least it got the wheels turning.

Okay, the next question is a very good one. It's about how to make sure that your business name, that your name of a program or your website or your brand is not actually infringing on someone else's or violating someone else's trademark or intellectual property. That is such a great question, and there are kind of a couple of phases that I typically recommend that you go through whenever you're going to name something, right? Even if it's just the name of your program, let alone the name of a business.

First off, I just start with kind of the layman's search. It's Google search the name. Always test out a couple of variations of the name if you have a name that could easily have a couple of words here or there that would look or sound the same. I want you to look on Google. Some other good places are obviously to check all the social media channels, to search Amazon. That's a good one too because sometimes people will have books that are certain titles or it leads you to realizing that someone's written about a program or something like that. Looking anywhere that you could too that's made me more community specific to you if there's some resources that you have available. That's always a great place to start.

For the more official way to look, I want you to go to [uspto.gov](https://www.uspto.gov). That's the United States and Patent Trademark Office and at the top of the page you can click trademarks, search trademarks, and then you have to click search trademarks again. And when you do that, you can search for words and logos. You can search for someone's business name or you could search for taglines or just phrases. Like Nike's Just Do It, for example, if you type that in, that will come up as Nike's trademark. You can look there for more official, this person has gone and registered something as a trademark. However, there's a big but here.

Just because something's not there doesn't mean that somebody is not using something, right? And so all that that list shows you, the one that I'm talking about through the US PTO website is whether someone has taken the steps to federally register their trademark, right? And we still get trademark protection in America even without registration. That's why it's really important that you kind of take both approaches here and you look on your own plus you look there.

There are still cases, however, even with doing both of those steps that you will miss something, right? And so sometimes I've had clients come my way in the past who will say, "I did all of this search. I didn't find anything. I put the program out there and then someone came after me." That's always a possibility. You can always look into hiring an intellectual property attorney near you who can do a more thorough and in depth search. They usually hire companies to do the search for them. And so that's something that you could think about. But I think for more of the day-to-day stuff, my approach that I've just given you is a good place to start. Just remember, it's not a guarantee.

Okay, so let's talk about business insurance. Because once you've registered your business, to me at least the very next step is business insurance. When we say business insurance, we're kind of talking about a main umbrella. There are, I think, about nine different types of business insurance. But really for what we do, there are two major types and like a third bonus type.

The two major types are general liability insurance and then professional liability insurance, which is also sometimes called errors and omissions. You sometimes hear those policies called E&O, errors and missions, or professional liability. It's all the same thing. For us, for what we do online if offering services, maybe even selling products online, working in the wellness field, we're looking at those two major types of insurance to protect our business.

And what business insurance does is that if you were ever sued or if your business was actually even threatened to be sued for something that's covered by your business insurance policy, by either one of those two policies I just mentioned, then your business insurance provides you with a defense attorney, so someone to defend you, and then they pay that attorney's hourly fees, which is, I can tell you as a former litigator myself, is huge, right? They're paying the hourly fees, and then if there's a judgment found against you or a settlement that's reached in this dispute, and remember judgment is just the amount of money that's found against you in a lawsuit so it's the amount of money the other person wins, then your business insurance would pay that minus your deductible, right? It's just like any other insurance.

You want to find out if you already have business insurance. It's really important that you find out what your deductible is. You want to find out what your policy limits are. You want to get familiar with what your policy actually covers. Because remember the first part I talked about business insurance is great because it kicks in for anything that's covered by your policy. Sometimes when women come and to start my program, they will see, "Oh, I thought I had a business insurance policy that covered stuff, but it actually didn't cover anything that I do." It just was kind of a general policy. It's really important that you have the policy that covers what you actually do.

You want to work with a business insurance agent who will listen to you and hear about how you work with people. That's especially important for the women in my community where you might be only working online or you're speaking on stages, you're holding workshops, you have a YouTube channel. It's really important that you get specific with how you work with people and make sure that your policy actually covers you and what you do. But that is the purpose of business insurance. It is very different than an LLC.

I get a lot of questions about like, if I have an LLC, do I still need business insurance or vice versa? Yes, absolutely. I hope you understand after talking about both of these today, that these are two very different things. The business insurance is what pays the bills to put it simply, and your LLC is what separates you personally from the business, right? But now that we've separated you personally from the business, we want business insurance for the business so that you're not paying for it. Your business is not about paying for it. It's very important that we have both.

Personally, when I left the law and at first I started my own health coaching business, I had these two things in place right away. I did not wait because I did not want to work with anyone or even market my business without either of these, the LLC or business insurance. And when I three years ago shut down my health coaching business and started my legal business, I did the same thing. I had this in place at the same time I was building my website. I just wanted to share that because I know a lot of people have questions about timing.

Okay, so the next question was all about what legal issues you should be aware of from the start. I think we've gone over a couple that are really good ones, which is just that it's really important that you are legally separated from your business, that this is not a personal brand in the legal sense, that you have the business insurance in place. And I would say next is just making sure that you have contracts in place and website policies to protect your website, which we're going to talk a little bit about, so that you're ready to work with people and ready to take on all these incredible people visiting and reading your content because I like to take a very well-rounded, kind of holistic approach. I call this the Legally Legit Method. We've now protected you personally, we're paying the bills with your business insurance and then we're kind of shoring everything up with contracts and website policies so that we actually have proof that you've done all of these things right.

I think all-in-all I would just say the other part is, in my experience now having worked with thousands of women over the last three years to legally protect their businesses, the more of this that you just have in place and appear and actually be professional, the more you will call in legit clients as well, right? A lot of the legal issues that you'd be worried about when starting your

business are kind of calmed by having the right things in place because people are not going to sign up with you and be like fly-by-night clients if you're sending them a legit contract and they see that you're actually registered business and you have all this stuff in place. You're going to look really professional and actually be professional, but then you're going to call in professional clients. That's really important.

Okay, so does everyone need a lawyer on retainer or how to find a lawyer? That's a really good question. You don't necessarily need to. I think as your business grows, for sure I've had now several women in my program who have grown well past seven-figure businesses, and I think at that point, yes, it's been really helpful to them to have a lawyer on retainer. I like to think that in the meantime I'm a nice alternative, in the sense that if you try my program you have access to all of the information that you would need so that you would be able to continue going back to it.

But if you want to establish a relationship with a local attorney, I would look for a small business lawyer. I would shop around and ask about their hourly rate. That's the most important thing. You want to know what they're charging you per hour, and just know that typically they will require a retainer, which is essentially where you send them a chunk of money, and then they draw upon that every time you send them an email, every time you call them, every time you ask any question, meet with them, anything, they're going to be drawing from that money. That's something that you could do if you're in that position already in your business. Obviously having someone on tap to be able to review your contracts and policies, to ask questions if something comes up, it can be really, really helpful.

I would say don't forget about other members of your team though. A business insurance agent, it's really important to have a good business insurance agent, and a really good CPA or accountant equally as important. Remember that you want kind of a well-rounded, professional team there.

Okay, so if you're hiring subcontractors, what kind of contracts do you need to get in place and what legal issues should you be aware of? Who owns your content? Are they an employee or an independent contractor? How do they get paid, all that good stuff? That is such a good question because it is really important when hiring a subcontractor or an independent contractor that you legally protect yourself. When I say subcontractor or independent contractor, I'm talking about people like a VA, maybe somebody who you hired just to do copywriting work for you, a website designer, a branding or graphic designer, those kinds of people that you bring in relatively temporarily to work on something in your business. Or maybe it's to work on a specific project or area of your business.

And it's really important that in America that we clearly delineate between this person being an independent contractor versus an employee. Because in America, as business owners, we owe employees, and in your state, you owe employees a number of different rights and responsibilities that you don't necessarily owe to someone if they are properly classified and treated as an independent contractor. When someone's an employee, for example, in your company, they could be eligible for perhaps paid time off or disability leave, unemployment, Worker's Comp, all of these different issues, right, that maybe your state has laws on or the federal government has laws on about how employees are handled. You also process them through payroll and the taxes come out of their paycheck if someone's an employee. Just like if you've ever worked at a company, you know your company gives you your paycheck every week, but you already see the taxes taken out because that's something that your employer used to handle for you.

If you bring in someone as your employee in your business, those are the kinds of things you have to do for them. Whereas when someone is hired as an independent contractor, you basically are paying them the lump sum of whatever it is. Like I'll give you \$1,000 to do this copywriting project, and then it's on them to report that \$1,000 to the federal government for tax purposes. It's kind of out of your hands at that point. However, when you take on someone as an independent contractor, it's all fine, but they have to actually be treated like an independent contractor. And there's a really good list, it's a little bulleted list on the IRS website, of all places, I know.

But on the IRS's website there's a little list about making sure that you're actually following the federal guidelines for treating someone like an independent contractor. In a nutshell, it is basically about them having independence, hence the independent part, of where they work, what time they work, how they get it done, the manner in which they get it done. And so typically when we're hiring people in our industry to do this kind of stuff, it makes sense and it's a good fit because it's like if I hire a copywriter, I'm not telling her how to do her job. That's the whole point of why I'm hiring her. But she's doing it on her own time. Yes, she has her deadline of like, "I need this in 30 days," or something like that, but she could work at two in the morning. She can work from Seattle, Washington. She can work from Florida. It doesn't matter. It's that she's getting it done for me, right?

All that being said, it's really important that we memorialize this relationship through a contract. You always want to use an independent contractor contract when you're taking on a VA or any kind of person that's should be classified as an independent contractor. Because not only do we have the language in that contract about this person is an independent contractor, not an employee. You understand you don't get time off, you don't get benefits, you don't get disability, all of these

things through your company because they're just an independent contractor for you. You're also outlining all the things about how they get paid, for example.

What counts as work? I think that's probably the biggest day-to-day issue. It's like, if they're attending a meeting with you, does that count as work or if they're doing some research on a project, does that count as work? You want to outline what the work even is. Because if you're paying them, let's say for a chunk of hours, for example, then you don't want them going and spending all of those hours doing something that you didn't even ask them to do. It's really important that your contract goes through all of these issues as well as a number of other legal issues. I'm just kind of highlighting a couple of the major touch points of a good independent contractor contract.

Okay, so what's the deal with privacy policies and terms and conditions and more importantly, a website's disclaimer. Do you really need it? Can you use a template, a freebie, all that good stuff? It's really important to legally protect your website because nowadays your website is like your online business card, right? People are coming right to your website. They're looking for you. Hopefully, they're finding content through a lot of like SEO-driven stuff and landing on your website or clicking through from Instagram or Pinterest.

And so we want to set the stage necessarily for what you do, right? How do you work with people, how you qualify, what do you offer or not offer, all that good stuff. And so based on that, there are three major website policies that every legally, legit website should have. That's a privacy policy, a website disclaimer, and terms and conditions. Your privacy policy is going over how you collect people's personal information, what you do with it, why you're even collecting it, how can they get it out of your hands or change it, all of that good stuff. That's simplifying it, to put it lightly. But I just want to go over these briefly. That's a privacy policy. You're federally required to have a privacy policy. It needs to have all the right things in it. And nowadays it has to be GDPR compliant, which is this European union regulation that came out about two years ago because all of our websites are accessible by people who live in the European union. So yes, it actually applies to us. Crazy, I know.

The second is your website disclaimer, and that is really important for us in the wellness industry because you want to make sure that that is where you are disclaiming liability for who you are, what you do. And as I always say, more importantly, what you don't do right? And so if you're a coach, you're not a doctor, you're not their nutritionist, you're not their RD. Or if you're their RD, you're not their doctor and all that good stuff, we need to lay that all out. But we also want to just disclaim liability more generally for our business, for the content on our website, for our affiliate

links, our third party links on our website, all of that kind of stuff. I go through all of that in a website disclaimer.

The last one is terms and conditions, and that policy is really important because that's really where we set the terms of our business more generally. We go over payment terms and refund policies, content sharing, all of that kind of stuff is addressed in terms and conditions. I would not recommend going and getting a freebie version of these things because they just generally don't have anything close to what you even need. It's kind of a waste of your time. I definitely don't recommend copying and pasting or borrowing from a friend, stealing from somebody else's website. Because not only are you violating their intellectual property, you could be violating the intellectual property of the attorney who drafted it for them. I have seen, personally, a lot of people get in trouble this way.

But I think even more important is that when you steal from somebody else's or copy and paste, you're not getting what you need. What's most important is that you actually have policies that cover you, not this girl over here who you might think did it right. You're kind of assuming that she did it right or has the right things, but we don't really know. We want you have the right kind of stuff. Yes, I think you could get templates. Obviously, that is what I do. I have website policy templates and contract templates. I like to think that they are helpful to you. They're super easy to fill in, so that you have something of your own. Or obviously, you could also go to a local small business attorney and have them draft it for you. Obviously, that would be the most expensive option, but if that's in your wheelhouse then, yes, of course, that's something that you could do.

Okay. Anything you should know about photo sourcing for your site or for social media? Absolutely. Unless a photograph is completely open to being able to be used, so if you go on some of these websites, I think I used to use pixelz.com or something like that, you could find photos that had no attribution requirement. And so if that's the case, they will tell you right there in the photo, you can use this without citing me or without tagging me or something like that. Then that's great if you find those kinds of stock photos. Just make sure that it has those no attribution rights. Though, otherwise, if you see a photo that you want to use, the very first step really for anything in intellectual property, even beyond photos, is consent. And so what you want to do is reach out to the person.

Let's say you want to share a recipe on your website from somebody else's food blog. You would reach out to the owner of that website, ask him or her if you can use the photo. And that's always the first step. But it is not a free pass to just, like if the person doesn't write back or if you

don't feel like reaching out, to just use the photo and credit the person. You can't do that. You have to ask for consent.

The other thing you can do sometimes is look at people's website policies because it's built into my website policy template. They might have a little note in there and that says something about how you can share their content. Sometimes some of my food blogger clients will have a policy that it'll say like, "You can use my photo, but you have to tag me twice, one link to my site and one link to the recipe," or something like that. You can look in their sharing policy that should be buried somewhere in their terms and conditions or terms of service. Sometimes people call it something different so you can look there as well. But for me, the very first step is always to reach out and ask for consent or just use your own photos. That makes things a lot easier, that's for sure.

Okay. Any legal issues that you should be aware of when putting yourself out there on social media? Absolutely. I think it's really important for you to know that when you're putting yourself out there on social media, you're marketing your business. A lot of women will say to me, "I'm not going to get my legal stuff in order until I start to get clients," or "until I get more clients," or "make more money," right? And I always want to remind them or let them know that when you're your business on social media, you're essentially asking for clients. You're kind of putting your hand out there. It might be that someone's not putting their hand back yet, right. And they will, don't worry about that.

But in the meantime, you are essentially asking for clients. Because hopefully when you're going on social media, you're talking about you and what you do, your marketing your services or your products, you're telling people, "Come on over here," right? And so with that being said, you want to be legally protected. Because in America you can get sued for something that you say or do or suggest to someone, not just for working with a client. And I think that that's a big misconception in our industry where people will say to me, "I'm waiting until I have more clients or make more money." I'm like, "Why?" Because clients aren't the only people that can sue you, right? Someone could say, "I read something you wrote on Instagram. I tried to hurt me; and therefore, I'm suing you." It's important to think about that in just in terms of timing.

The other part I want to talk with you about, about protecting yourself on social media is that in legal, in general, it's just really important to be consistent and true, right? What I always say is that legal, having all this stuff in place that we've talked about today, like an LLC or business insurance or contracts, it is not a pass for bad behavior. And so it's really important that we are consistent in online in general, whether it's on a blog post or an Instagram post or Facebook Live, we want to be consistent with what we're saying in our policies.

Here's an example. If you're a health coach, for example, and now all of your policies and your contracts say, "Hey, I'm a health coach. I can't diagnose, treat, cure, prevent disease. I'm not going to be helping you with that. You need to be seen by a doctor while we're working together, blah, blah, blah," then you can't be on Instagram giving medical advice, right? These things have to be consistent. We can't say, "I'm not a doctor. I don't give medical advice," and then post medical advice online.

We want to be as consistent with our content as we are in our policies and contracts because that's how you ultimately get protection. Because if you have a contract that says, "Hey, I'm not a doctor. I don't give advice," or "I'm not a lawyer. I don't give advice," or "I'm not an accountant. I don't give advice," any of that kind of stuff, but then you're actually doing the thing you're actually giving the advice, you'll still get in trouble anyway. It won't matter at all that you had a contract. It'll actually be worse because it will be like, "But you said you're not here, but you're actually doing it," right? It's really important that we're consistent with this stuff.

And I think just to that effect, the last thing I'll say about it is that we also want to be consistent with our language. The way that I teach women to kind of set up their business and act online is to be really consistent in your messaging and your marketing, about what kind of work you do, right? When you're in talking about things online, you're positioning yourself as an authority and you're teaching in an Instagram story, what's the point of teaching something that's classified as medical advice when that's not the kind of client that you can take on, right? I want to see you doing the kind of marketing that matches up with the actual work that you can do, so that it's consistent and you're calling in the right people. Hopefully, that part is helpful.

Okay, we have two more to go. Any scope of practice issues you should be aware of and how to find out what you can and can't do with your credentials? Absolutely. Scope of practice is essentially a set of state laws. Every state has laws around this and regulations about what you can and can't do based on your credentials on how you're qualified to do work online or in general. You need to look at what your state's laws are on this. Your area, like if you're a health coach, for example, might not be defined by your state. That is not a free pass, right?

What you want to do is look at, what I call, the surrounding professions. You want to look at like what a nutritionist might be defined as, or a registered dietician or a doctor or a nurse or a physical therapist. You want to look at these other related professions. Because what's equally as important is that you don't do anything that falls into the scope of practice of another profession, right? And so same goes if you're an RD or a nutritionist, you want to make sure you're not doing

something that's qualified as a doctor or a nurse or something like that. It's really important to learn about what your scope of practice is. It's important to learn what your scope is not.

And if you're working virtually online, I generally recommend building out a business that's safe across the board. Because if you're in Pennsylvania and you're working with someone in California, I don't want you to be doing work that's considered the unauthorized practice of medicine or of nursing or something like that in the other state because they might define it differently. I generally recommend just building out of safe business across the board that works for everyone.

Okay. Last but not least, using your customer's testimonials, how can you go about using them? How do you know it's okay? Well, the best way to do this is by making sure that your customers know that you're going to use it ahead of time and getting their permission. Remember, consent is pretty much always the first option, and really spelling it out for them. I have a testimonial template, like a release template, but you can also build this into your form.

I teach you how to do that in my program about how to build this into your testimonial form, making sure that they know where you're going to share it, getting some form of written consent that you'll have proof of later to be able to go back, making sure they're okay with using their photo, how they want you to use their name, all of that kind of stuff. But once you get all of that permission and you have some proof, you should go ahead and promote your customer's testimonials as much as humanly possible. It's really good social proof.

With that, I hope that these questions give you a good foray into legally protecting your business. I hope that this all made sense to you today. I know that it can feel like a lot, but I want to reassure you that this stuff is all very doable and it does not have to take up a lot of your time or energy or anything like that. My goal is really for you to just get the stuff in place so that you can go on and start building your incredible empire.

I'm obviously here to help you as much as you need. I know Keri's going to give you all of my information. You can learn more about my business or my legal templates and Ultimate Bundle on my website was just samvanderwielen.com. And in terms of social media, I would love for you to send me a message on Instagram. I'm just @SamVanderWielen on Instagram. I would love to connect with you there and help you to legally protect your business. Thank you guys so much for watching today and I'll talk to you soon.