

Ready Set Grow

Season Two Webinar Three

Session Summary

Invading the U.S.A: Taking your Offering to the World's Largest Market

May 13, 2009

Presented by:



In collaboration with:

CATAAlliance

Sponsored by:



ready, **set..**

grow.

Introduction

The Ready Set Grow series presents webinars featuring subject matter experts and Canadian tech execs discussing topics of interest to the executives of young Canadian technology companies.

On May 13, 2009, Ready Set Grow looked at the topic of penetrating the US market through a session featuring a panel of experts and questions from the audience.

This document captures the content of this session.

Speakers

Yvonne Gruenthaler,

Deputy Director (Acting) Investment & Innovation with the Department of Foreign Affairs and International Trade Canada

Mrs Gruenthaler is a first generation Canadian from Alberta, born of German immigrants. After 5 years in Switzerland where she received a French baccalauréat (Sciences sociales et économiques), Mrs Gruenthaler attended the University of Alberta where she obtained a B.A. in History and French in 1990.

Before joining the Canadian Foreign Service Mrs Gruenthaler spent a number of years working for a national furniture importer-distributor-retailer. She joined the Department of Foreign Affairs and International Trade (DFAIT) in 1994 and served abroad in Japan, before returning to Ottawa to undertake assignments in the Northern Europe Division and the Science and Technology division. Mrs Gruenthaler joined the Ontario Regional Office of Foreign Affairs and International Trade Canada December 2005 where she has provided international business development support to the biotechnology and health industry sectors, managed delivery of DFAIT's Community Investment Support Program in Ontario, and successfully piloted the role of the Science and Innovation officer in the Regional office.

Ms Gruenthaler is currently the acting Deputy Director, Investment and Innovation within the Ontario Regional Office.

Brad Limpert,

*Partner, Barrister and Solicitor
Cameron MacKendrick LLP*

Mr. Limpert practices principally in the areas of intellectual property litigation and technology contracting. He has been involved in litigation, dispute resolution and licensing across a broad range of technologies including pharmaceuticals, industrial equipment, food processing, software, signal processing, telecommunications, and biotechnology. He also provides clients with opinions in relation to the infringement,

ready, set..

grow.

validity and scope of rights relating to patents, trade secrets, trade-marks, industrial designs, copyright and domain names. Mr. Limpert also advises clients in relation to the commercialization of technology, venture capital finance, and intellectual property strategies.

Prior to practicing law, Mr. Limpert worked at IBM Canada in software development, project management and marketing. He is also a registered patent and trade-mark agent.

Mr. Limpert has taught patent and trade secret law as an adjunct professor at the Faculty of Law, University of Toronto. He has also lectured in relation to trade-marks and intellectual property at the Faculty of Law (University of Toronto), the Rotman School of Business (University of Toronto), the Ivey Business School (University of Western Ontario), the University of Windsor, Queen's University, and Osgoode Hall, Faculty of Law.

Mr. Limpert's loose-leaf book *Technology Contracting: Law, Precedents and Commentary* is published by Thomson-Carswell.

Martin Glass,

Partner

Goodwin Procter LLP

Martin Glass is a partner in Goodwin Procter's Business Law Department and a member of its Corporate Practice. He focuses on securities transactions, mergers and acquisitions, and general corporate representations. Mr. Glass represents issuers, underwriters and other participants in the full range of securities transactions, including global and domestic public offerings, Rule 144A and private equity transactions. He also has significant experience in representing Canadian and other non-U.S. companies in their securities activities in the U.S.

In addition, Mr. Glass frequently advises both U.S. and non-U.S. issuers with respect to their disclosure obligations under the U.S. federal securities laws, including requirements under the Sarbanes-Oxley Act, and their compliance with the rules of the New York Stock Exchange and the Nasdaq Stock Market. He regularly assists issuers in the preparation of their annual reports and other U.S. filings.

Mr. Glass is the author of "Continuous Reporting for Foreign Private Issuers" in *U.S. Securities Law: What Canadian Practitioners Need to Know* (2007). He has also been a featured speaker on "U.S. Securities Law and Cross-Border Issues for Canadian Issuers, Intermediaries and Their Counsel" at the Canadian Institute's 15th Annual Securities Superconference, and "What are Business Trusts and other Special Purpose Vehicles?" at the International Finance Forum 2005: Business Trusts and Similar Financing Structures.

ready, set..

grow.

Hersh Forman,

Co-founder and Managing Partner of The Stratebrand Group

Hersh I. Forman is an accomplished senior marketing and sales professional who has gained extensive experience in all aspects of business both on the client and service side.

Hersh's career spans over 25 years including 10 years of progressively senior packaged goods marketing experience at such well-known multi-national companies as General Mills, H.J. Heinz, Campbell Soup and Sterling Health (now Bayer Consumer Care). In addition, Hersh operated his own consulting company for 5 years prior to co-founding Stratebrand providing marketing consulting services to such well-known companies as Microsoft, Coca-Cola, Allard-Johnson Communications, Carter-Horner (now Church & Dwight) and FutureBrand (Inter-Public Group).

Hersh has an MBA in Marketing from the Schulich School of Business (York University), an Honours Certificate in Broadcasting (Humber College) and a BSc. (Hon.) in Psychology (University of Toronto).

Andrew Maxwell,

Director Business Partnerships, Canadian Innovation Centre

Andrew Maxwell's experience includes the founding of two environmental technology companies, the creation of a wireless, medical device and web company and a technology incubator that helped create 30 technology businesses. He is currently with the Canadian Innovation Centre and pursuing a Ph.D. in the area of new venture creation at the University of Waterloo. He teaches at UTM and Waterloo in the area of technology entrepreneurship.

ready, **set..**

grow.

Invading the U.S.A: Taking your Offering to the World's largest Market

Why do I need to address the U.S. market?

Why do people rob banks? Because, that's where the money is. Why take your offering to the U.S. market? Same reason. For most technology related offerings, the U.S. is the largest and most lucrative market on the planet.

Canadian companies find themselves in an interesting position. The Canadian domestic market, while attractive in many ways, is often not large enough to support a product. At the very least, ignoring the U.S. market can mean an enormous opportunity missed. But more significantly, it may be necessary to succeed in the U.S. market in order to be viable in Canada or any other market. (It has often been said, in many fields, that in order to succeed in Canada, you first have to succeed in the U.S.)

"Canadians are a nation of traders. Taking our products to the U.S. market is natural for us."

Yvonne Gruenthaler
DFAIT

The U.S. market can be intensely competitive and attempts to penetrate it may be unsuccessful or at least unprofitable. However, if you choose not to address the U.S. market, your U.S. competitors may eventually invade the Canadian market and leverage the advantage of superior economies of scale to displace you.

Bottom line – if you plan to be viable long term, and if the U.S. is an important global market in your offering space, then eventually you will have to address it.

Considerations

Despite the cultural similarities between Americans and Canadians, the U.S. and Canadian markets are significantly different. The most obvious difference is size. As a rule of thumb, the U.S. market for a product or service is 10 times the equivalent Canadian market, although for technology related offerings, the factor may be 15 times or more. This is because U.S. companies, on average, tend to invest more in technology than Canadian companies, and top tier U.S. companies tend to be larger than their Canadian equivalents.

Also, it is important to recognize that the U.S. is not a single market, but a collection of markets. The U.S. market can be segmented many ways; by region, by industry, by customer size and others.

ready, set..

grow.

Regional differences are important. Business is not conducted the same in the northeast as it is in the midwest, northwest, the south or the southwest. In fact, there are at least 10 major regional markets in the U.S. and a presence in one does not automatically mean you are positioned to address the others.

One of the first challenges facing a Canadian company planning to enter the U.S. is to answer the strategic questions; Is there an opportunity for my business?, DO I have a unique offering that will allow me to be successful? Where is the first market and and how can I get to it?

Once these strategic questions are answered, there are an abundance of practical issues to be considered, including legal, financial and logistical issues.

Legal, Tax and Regulatory Considerations

There are many legal considerations when starting to do business in the U.S. One way to approach this area is to think about what will actually cross the border. Generally speaking, this could include people, products, money and/or information.

People could be crossing the border to make sales calls, provide services or warranty support or to manage in-country operations. If you will have people crossing the border, you need to consider issues such as the need for visas, tax implications and liability issues.

When selling a product into the U.S. for the first time, product liability is an issue that needs to be looked at, especially as the U.S. is a more litigious society than Canada. You should check with your current insurer about the issues to consider when selling to US customers. In addition, there may be trademark, patent and other IP-related considerations that are different.

If money will be crossing the border, you need to look at withholding taxes. And if countries other than the U.S. and Canada are involved, you need to look at the restrictions on the movement of funds. Also, you will need to look at foreign exchange impacts and the possible need to hedge your financial arrangements.

Information (or data) may also cross the border, raising issues of privacy, ownership and Intellectual Property (IP) protection. In particular, there will be

Things to Consider when entering the U.S Market

- *Target Market Segmentation*
- *Channel Strategy*
- *Legal, Tax and Regulatory*
- *Export Financing*
- *Business travel*
- *Standards*
- *Packaging and shipping*
- *Border security*
- *U.S. Customs*

ready, set..

grow.

sensitivity around information related to military, surveillance or nuclear energy situations. For example if you cross the border with a laptop, US customs can seize it if they believe there is data that might affect security.

When dealing with legal agreements with companies in the U.S., such as licensing, distributorship or agency agreements, one of the most fundamental considerations is whether to develop a comprehensive agreement that identifies all risks and situations, or a framework agreement that allows for more options and changes. A comprehensive agreement is more work to create and less flexible, but given the litigious nature of the U.S., it may be the best choice. You need to get advice from your lawyer as to how to balance these issues.

Also, when creating these agreements, you need to consider your ability to enforce the agreement. Court costs in the U.S. can be high and, for a small company, may be beyond your financial resources. Therefore it may be a good idea to define "self-help" remedies in your agreement to allow settlement of disputes without going to court.

In all situations when going into the U.S. you need to look at what local laws will apply. Even if your agreement specifies a Canadian province as the governing law, in many situations local, federal or state, laws may unavoidably apply. These include tax and securities laws, as well as money laundering, bankruptcy and insolvency laws. For example, boycott rules are important to consider. If you are doing business in both the US and Cuba, there are very specific regulations that come into play. In all cases, the most important thing is not to get caught in a situation where a local law conflicts with terms in your agreements.

What Local Laws will apply?

- *Tax laws*
- *Money Laundering*
- *Currency Restrictions*
- *Bankruptcy & Insolvency*
- *Export Controls*
- *Boycott Rules*
- *Contract Bidding*
- *Securities Law*
- *And many more!*

*Brad Limpert
Cameron MacKendrick*

As you prepare to enter the U.S. market, you need to consider the more complex situation around patent, trademark and IP rights. In general the larger size of the U.S. market means there are ten times as many potential problems. For example, a trademark search, that in Canada generates dozens of results, in the U.S. might generate thousands of results, which adds extra time, cost and risk for you.

In addition, as you build your business and develop partnerships, you need to make sure that you secure your IP rights. You need to ensure that there is no possible claim on your IP from any employees or contract workers that helped develop it, or from any US partners involved that many have been involved in bringing it to market.

Profile: Stratebrand Group – Experiences Entering the U.S. Market

The Stratebrand Group consists of two operating companies:

Stratebrand Marketing & Sales Inc. acts as exclusive sales agents and distributors for a number of well-known licensed brands including Subzero®, totes®, XOXO® and Eco-Highway™.

Stratebrand Product Development Inc. sources, develops and markets new and innovative consumer products. Stratebrand Product Development currently owns patents on a number of new products that are in varying stages of commercialization.

Managing Partner Hersh Forman on the Challenges of Penetrating the U.S. market:

On brand awareness: “Building brand awareness and a sales presence is one of the key challenges for Canadian companies in the U.S. One of the strategies we have used is to license a known brand. This has allowed us to climb that curve very quickly. If you have to build a brand from scratch, it can be very costly and take a long time.

On dealing with partners: “Our partner in the US sells a very similar product to what we do under a brand that we license from them in Canada, but do not have access to in the U.S. Therefore there is the very real possibility of us butting heads as we call on similar reetailers to sell our product in the U.S. therefore even though we use a different brand name. This is a risk we have to manage.”

On protecting brand equity: “If you use a distributor or agent, it is very important to establish that you own the brand and trademark – your distributor may try to take over your brand equity.”

On establishing a U.S. presence: “The U.S. is very different from Canada. You can cover all of Canada from just a few sites, but you can’t do the same in the U.S. You also have to be very cognizant of your U.S. tax situation. Just by having a representative with a business card who is based in Idaho, you could be triggering the need to file an Idaho tax return. Even if it is a nil return there can be a significant cost. If you trigger the need for returns in multiple states, the costs can really add up. Most companies choose to establish beachheads in a few key states.”

On international sourcing: “One of our products is manufactured in China. It has been very successful in Canada, but as we look at taking it to the US market we have a decision to make – do we ship directly to the U.S. or do we ship to Canada and try to add some value before shipping to the U.S.?”

ready, set..

grow.

Sales and Marketing

As mentioned earlier the US is not really a single market, but rather a set of markets with significant regional differences. Each of these markets may still be much larger than the equivalent Canadian market. In each of these, buyer behaviour and business practices may be quite different as well.

It is important to do your research and develop an effective market penetration strategy. The first consideration is identifying your target market segment, including verifying that it presents an opportunity that is within your ability to address.

Next you need a channel strategy. How will you get your offering to the market? Most small Canadian companies start by making sales calls to the U.S. from Canada, which can be expensive, but may be cheaper than setting up one or more U.S. offices. At some point however, either economics or customer demands may trigger the launch of a U.S. office.

"A partner can help you enter the U.S market faster, but you have to ask yourself – can they represent your product as well as you could?"

*Andrew Maxwell
Canadian Innovation Centre*

Alternatively, you could strike an agency or distributorship agreement with an appropriate US company. This has the advantage of giving you an instant presence in the market that would otherwise take a long time to develop. However, if you go this route, you are losing contact with your customers, and if your US partner cannot explain your product as well as you can, they may not be successful at promoting your offering.

Brand awareness is often the largest marketing concern for Canadian companies trying to enter the U.S. market. Existing competitors in the US market have strong presence and often, very large marketing budgets that would be impossible for you to compete with. Thus for many young Canadian companies entering the US, word-of-mouth is the most important marketing tool. Tapping into the network of your customers reduces your marketing costs and accelerates your sales cycle.

Another option is licensing your technology to a company that already has strong presence and brand awareness in your target market. You may lose the opportunity to build strong brand awareness of your own, but you are gaining accelerated access to a much larger market than you could otherwise have accessed.

ready, set..

grow.

Another challenge for the small Canadian company entering the US may be financing the business that you secure. For example, if you secure a million dollar contract, it may require \$600,000 in capital for you to deliver on the deal – which may be beyond your current financial resources. The common wisdom is that this is a nice problem to have, but it is a problem all the same.

Sometimes favourable payment arrangements can be negotiated with the customer that can reduce the financing requirement, perhaps in exchange for a discount. Other options include looking for other organizations to provide financing. There are institutions that specialize in financing trade, however, these can be expensive as they charge relatively high rates. There are also Canadian government agencies such as EDC or BDC which have programs that can help. One advantage of these programs is that these agencies have a mandate to help Canadian companies. They will be less concerned with your company's finances and track record and will be more concerned with the customer's ability to pay. Yet another option would be to seek angel capital to finance growth.

Where to go for Help

Fortunately, there are many places to go for assistance as you make plans to enter the US market.

A mentor or advisor is one of the most valuable assets. Being able to tap into the experiences of one who has been through this process before can allow you to avoid many pitfalls. In fact, a network of advisors may be required, as the experience of any one individual may not match your needs, and well-intended, but inappropriate advice can be extremely dangerous and costly.

In the case of lawyers, accountants and other professionals, it is important to find a firm and an individual with the qualifications and experience that applies to your situation. If you are a small company, you do not likely want a lawyer that specializes in Fortune 500 companies. If you are exporting professional services, you do not want an advisor that specializes in exporting goods.

"There is no shortage of good lawyers in the U.S., but it is important to find a firm that understands the lifecycle of tech companies and is used to working with small companies"

*Martin Glass
Proctor Goodwin LLP*

It is also important that these individuals be ones you trust and communicate effectively with.

ready, **set..**

grow.

**Profile: The Canadian Trade Commissioner Service
Of the Department of Foreign Affairs and International Trade,**

The Canadian Trade Commissioner Service, can help your company succeed globally and lower your costs of doing business, through four key services:

- Preparing for International Markets
- Assessing Market Potential
- Finding Qualified Contacts
- Resolving Problems

Whether you're looking to export, invest abroad or seek technology and R&D partnership, our international business professionals, market intelligence and expert advice are available when you need them. We have Trade Commissioners located in more than 150 cities worldwide and in Regional Offices across Canada, as well as our Virtual Trade Commissioner tool at your disposal.

The **Virtual Trade Commissioner (VTC)** is a gateway to a world of information online. With VTC you can:

- Personalize the online experience with a web page that contains country information and business opportunities that match your international business interests.
- Access current market reports, sector-specific news and trade events.
- Receive assistance and request services from Trade Commissioners located in Canada and in your market.
- Be notified when new information is published to your VTC.
- Register today and take international business to a new level.

Where to Start

Contact a Regional Office in Canada, so that a Trade Commissioner can help you:

- Determine if you are internationally competitive
- Decide on a target market
- Collect market and industry information
- Improve your international business strategy

Also, be sure to get a copy of the "**Exporting to the U.S.**" guide available through the VTC website.

ready, set..

grow.

There are a number of organizations and associates that exist to help Canadian companies doing business abroad. These include the Canadian Advanced Technology Alliance (CATA) and the Canadian Manufacturers and Exporters association, each of which can provide information and services to assist Canadian exporters.

There are also a number of government agencies which have the mandate to assist Canadian companies doing business abroad.

The Department of Foreign Affairs and International Trade Canada (DFAIT), offers a number of services, including its Virtual Trade Commissioner service (see the sidebar below).

Export Development Canada (EDC) provides financing, insurance and bonding solutions to Canadian companies that export goods or services. They help Canadian enterprises, mainly small and mid-sized, manage risk and capitalize on trade opportunities.

The Business Development Bank of Canada (BDC) helps develop Canadian business through financing, venture capital and consulting services, with a focus on small and mid-sized businesses.

The Canadian Commercial Corporation (CCC) is a federal Crown corporation mandated to promote and facilitate international trade on behalf of Canadian industry, particularly within government markets. The Corporation's two business lines, a prime contractor service and a procurement service, are structured to support Canadian companies contracting into the defence sector, primarily with the United States, and Canadian exporters contracting into emerging and developing country markets.

In Summary

The U.S market calls to Canadian companies across the world's longest undefended border. But don't be fooled – success is not a given. After all, the world's largest market attracts the world's toughest competitors.

However, Canadian companies have a long history of entering the U.S. market and winning (think RIM). Also, you don't have to go it alone. There is a wealth of assistance available to you – from experienced mentors and advisors, to the many government agencies, such as DFAIT, who are there to help you.

At the end of the day though, it will be your own energy and the strength of your offering which will determine your success.

ready, **set..**

grow.

Results of Real-time Poll

Below are the results of the three polls conducted during the webinar:

Poll #1 Do you currently export to the U.S.A.?

- | | |
|---|-----|
| ○ No, and have no intent to | 4% |
| ○ No, but would like to within 12 months | 41% |
| ○ Yes, but it is a small part of our business | 22% |
| ○ Yes, this is a large part of our business | 26% |
| ○ Other | 7% |

Poll #2 What are the biggest challenges you face in exporting to the U.S.A.?

- | | |
|---------------------------------------|-----|
| ○ Identifying opportunities | 11% |
| ○ Getting good market information | 6% |
| ○ Finding local partners | 9% |
| ○ Regulatory barriers | 7% |
| ○ Tax barriers | 3% |
| ○ Establishing a local sales presence | 7% |
| ○ Establishing local infrastructure | 2% |
| ○ Being competitive | 4% |
| ○ Financing trade | 5% |
| ○ Building Brand recognition | 14% |
| ○ Finding advice and assistance | 4% |
| ○ Other | 2% |

Poll #3 What forms of assistance would be most valuable to you?

- | | |
|--|-----|
| ○ US market research and intelligence | 6% |
| ○ Market penetration strategy assistance | 7% |
| ○ Legal, regulatory and tax information and advice | 14% |
| ○ Local Networking assistance | 11% |
| ○ Trade financing | 11% |
| ○ Stronger Canadian brand recognition | 5% |
| ○ Other | 2% |

Note that questions 2 and 3 allowed multiple answers, therefore percentages will not add to 100%.

ready, set..

grow.

Links of Interest

Guide to exporting to US

<http://www.international.gc.ca/canadexport/articles/90305c.aspx/>

Cameron MacKendrick LLP <http://www.cameronmackendrick.com>
Suite 140, 150 York St, Toronto, M5H 3S5
416-364-1700

Goodwin Proctor LLP <http://www.goodwinproctor.com>

Export Development Canada <http://www.edc.ca>

Business Development
Bank of Canada <http://www.bdc.ca>

Canadian Innovation Centre <http://innovationcentre.ca>

Technology Marketing
Resource Centre <http://www.tmrc.ca>

Canadian Manufacturers & Exporters <http://www.cme-mec.ca>

Canadian Advanced Technology Alliance <http://www.cata.ca>

International Market Access Inc <http://www.ucantrade.com/>

Articles and Books of Interest

Exporting to the USA , Edward G. Hinkelman | World Trade Press | July 16, 1999

ready, **set..**

grow.

Sponsors

We would like to thank our sponsors for enabling this series:



Export Development Canada
www.edc.ca



Business Development Bank of Canada
www.bdc.ca

The Ready Set Grow webinars are presented by:



Technology Marketing
Resource Centre

www.tmrc.ca



Canadian **Innovation** Centre

www.canadianinnovation.ca

In collaboration with:

CATA*Alliance*

Canadian Advanced Technology Alliance
www.cata.ca

ready, **set..**

grow.