

How To Prioritize Legal Spend

As you launch your start-up, there are so many things competing for your limited dollars. Whether it is marketing and advertising (e.g. Facebook Ads), website design (including mobile), product development or employee/independent contractor costs, every penny counts. So how are you supposed to set your legal budget and prioritize your legal spend? This is particularly true when you are bootstrapping. Even if you are financed, your investors want quality legal work for a reasonable fee. Whatever your situation, a legal budget is a prerequisite and prioritization of your legal needs is an absolute must. Don't trust me as a lawyer saying it? Ask a fellow founder.

Just as you must decide how much and where to spend advertising budget, there are many aspects that should be considered when determining the amount for your legal budget and the necessary legal spend items. An experienced startup or entrepreneurial lawyer can help prioritize legal needs and advise you regarding legal spend, even before you spend your first legal dollar. A one size fits all "startup package" may not be best for you, despite so many firms beginning to offer the same these days.

My firm has prided itself on curated legal services. What does this mean? Rather than providing template documents that may not be applicable (e.g. Proprietary Invention Assignment Agreement where nothing has been done at the time of formation of the entity or an Advisor Agreement that may never be requested or required), the process focuses on the startup and understanding its immediate and long-term goals. From there, a curated startup package that can provide immediate return on investment (ROI) becomes clear, which may include, among other things, items from the following:

1. Incorporation/Formation – entity type, equity structure and ownership/control
2. Intellectual Property – applicable IP (e.g. patent, trademark, copyright, trade secret)
3. Agreements – customer (e.g. EULA), employee/independent contractor, supplier/manufacturer and other agreements
4. Financing – debt/equity structures
5. Policies – content, BYOD, employee, etc.

So how does it work in practice? A couple examples are illustrative. First, a recent SaaS startup that was not initially planning to do a financing came to me, and I recommended the

following: Multi-member LLC with equity and ownership reflective of the co-founder arrangement, a Pilot Agreement with NDA for initial beta users, a Software as a Service Agreement for customers and a service mark with the United States Patent and Trademark Office (USPTO) in order to protect the brand. A patent, provisional or otherwise, was not going to be helpful here. It was all done on a flat fee.

In another example, a software and operating system related to logistics startup required incorporation in order to secure initial financing from institutional investors, a EULA mindful of the license provided by a university and a provisional patent application. I identified an initial fee and alternative fee arrangement moving forward. In both situations, there were additional legal items the company needed, but the initial legal budget would not allow for it. Therefore, we focused on prioritization and working within the initial budget. As revenue comes in, additional legal spend will make more sense, thus ensuring ROI.

It is worth noting that I regularly encounter founders, typically first-time founders, who try to project a minimalist legal budget in hopes of getting some free legal work. They often cite competing “startup packages” that provide them incorporation, a trademark application and a website terms of use, or something similar. While all those items may ultimately be necessary, and apply in some situations, I always challenge the entrepreneur in order to understand why those items are needed now or prioritized over other items. Oftentimes, an educated entrepreneur with respect to the scope of legal needs depending upon business type, industry and goals will ultimately see the value in a prioritized legal budget. I push back, not because I am interested in higher fees but in order to help the founder understand the scope of the legal need, estimate a realistic legal spend and ultimately prioritize those legal needs. If I ultimately am going to offer alternative fee arrangements, I first make the founder aware that my doing so, akin to any investor, depends on the founder and the startup business itself.

In the end, a successful startup will ultimately be able to secure the “nice to have” legal items. Before then, however, founders should be wary of any advice, legal or otherwise, or service offerings that fail to prioritize, for example, a trademark for a lifestyle brand business or a Privacy Policy for a online data aggregation business. A smart founder does not knowingly advertise to the wrong demographic. Similarly, I submit, a smart founder should not spend on legal matters that do not provide an ROI, now or in the future, particularly when compared to other legal needs.

Founders’ Friday is a series published by Austin, Texas attorney [Brian A. Hall](#) of Traverse Legal, PLC d/b/a Hall Law dedicated to legal considerations facing founders and start-ups.