



To Succeed for Your Client, Think Like Your Client by Joanna Ardalan

As attorneys we are taught, either by our law professors or at our first job, to ask the client about his or her goals and expectations. Success in any litigation, negotiation, or transaction is relative to the client's goals. Even if an attorney negotiates for a substantially larger settlement monetarily than initially thought possible, it is no victory if the client has different priorities. Therefore, the better one understands the client's goals, the better one can navigate and create success for the client.

Unfortunately, it seems like some of us just get the general idea of our client's needs and simply offer available options hoping one will stick.

One experience that has assisted me in understanding client goals is starting and managing a software company before I became an attorney. By going through the process of creating a business plan, developing product, negotiating distribution, and planning for the company's long term success, there are a number of steps I took that clients have probably taken as well. As an attorney, there is value in thinking about and asking some of the same questions as entrepreneurs typically do because it will assist you in asking thoughtful questions that will help you and your client define what should be the end result and what would be the worst case scenario. Equipped with a more focused definition of success, you may be able navigate your litigation, negotiation, or transaction to a stronger result for your client.

Understand the Product and the Marketplace

Although this is usually the first step to starting a business, sometimes entrepreneurs who have already worked in the industry for a significant amount of time have a ready-made understanding of the marketplace. Understanding the product and marketplace may give you keen insight into questions to ask the client. For example, asking your client whether he is open to licensing technology on a nonexclusive basis is certainly an important question in some contexts.

However, I contend this question is incomplete. A stronger approach would be to first ask whether licensing his technology on a nonexclusive basis will negatively impact his own sales or another potential licensee's sales that may have a greater share of the marketplace. Although initially nonexclusive licensing may sound like a good

idea, it may not be if it undercuts potential profits from the client or another potential licensee who has a greater profit potential for the client. Thinking about these concerns ahead of time and following up during your client discussion gives you and your client the opportunity to have a more meaningful discussion about licensing than merely asking whether nonexclusive licenses are or are not acceptable.

Examples of questions you may want to consider:

- What types of outlets are the products or services sold through?
- Are these outlets or the products themselves susceptible to changes in technology, and if so, how do you predict technology will affect these outlets?
- Does the client hope to expand its distribution beyond its current outlets?
- Is the marketplace filled with many competitors or only several larger ones, and what is the relative size of your client?
- What are the competitors' resources like, as compared to the client?
- Does the product require consumer "education" or is it a "need" for consumers?
- Is the product protected by a patent, and if so, how many more years does the patent last?
- Is the product dependent on licensing from another business?
- Is the client open to licensing his/her product to others? Would licensing to one company cannibalize the client's products or other potential licensees? What are the margins of the client's products that are being cannibalized and how do they compare to the revenue of potential licenses?

Understand what Drives Your Client

It is unfair to assume that all business owners or managers prioritize immediate net profits. Although that is certainly a driving force for many, there are other economic factors that may influence your client's decision making. For example, your client may be more interested in making stronger long-term profits in aftermarket products and is less concerned about immediate short-term net profits.

Some clients may have non-economic goals which are important for you to understand throughout your representation. Following Richard Branson's strategy, some entrepreneurs want to appear as the under-dogs who are up against industry heavyweights, in part, as a marketing tool. Others are more concerned about the availability of their product to people who need it.

If the client has a mission or value statement, I would study those as well as any press releases or marketing programs that the client has released. The better you can

understand the company, the products, and the marketplace, the stronger of an advocate you will be for your client.

Feel free to contact me with any questions or comments.



Whether an intellectual property, entertainment, business, employment, or real estate dispute, Joanna Ardalan advocates for her client with a business perspective in mind. As the founder of a company in the entertainment, music, and software industries, she understands the benefits and costs of litigation beyond the bottom line. Having taken her company's products from development to worldwide distribution, she has been in the position of the client and appreciates the personal investment required of entrepreneurship. Prior to joining Kulik, Gottesman & Siegel, she was a law clerk and worked on IP and employment cases.

Ms. Ardalan's practice encompasses entertainment, copyright, Lanham Act and trademark, patent, unfair competition, UDRP actions, right of publicity, breach of contract, general business, employment, and real estate litigation.