

Legal Profession and Marketing in Malaysia: Direction towards Hybrid Profession.

Wong Hua Siong

Abstract: *Legal profession and marketing in Malaysia are inter-related although both are from different disciplines. Marketing including promotion and advertising, placing, pricing, product and etc while legal profession is concerns about legal matter which includes punishment, prevention, deterrent and etc. Legal Profession Act 1976 ('LPA') in Malaysia is the main statute which governs the legal profession in Malaysia. In addition thereto, we have certain provisions in the some statutes which prohibits legal firm in doing the marketing especially in promoting their services to public. Lawyers in Malaysia are restricted to solicit the clients, promoting their legal service and expanding their business in doing their marketing strategic. There are few justifications on our legislature to impose these limitations in legal profession. Thus, this paper will study the restrictions and issues encountered by legal practitioners, i.e lawyer in promoting their legal services. This paper also studies the accommodation between marketing area to the present regulations and to find the balance between marketing in legal profession. To conclude, the study will contribute to some suggestions on potential methods for legal practitioners, particularly lawyer in their marketing strategy to promote their services in order to achieve the achievement of their business. Various methods have been applied by the writer to achieve the findings on the possible method to be use by the legal practitioner, namely study of documentary and public record, historical archives . This is to ensure the successful of the legal business in Malaysia and not restricted by the law and regulations.*

Index Terms: *Hybrid, Legal Profession, Marketing, Recommendation, Restrictions.*

I. INTRODUCTION

At as 12th February 2018, there are 7,824 legal firms registered with Bar Council Malaya with total membership of the Bar as 18,327.¹ This number will be increasing from year to year and it means that the competition among the firms to get the business and clients will be increased as well. On the other hand, the number of establishments surged by 12.1 per cent per annum for professional services with a value added of RM24.3 billion (DOS, 2016).² Findings of the census showed a total of 34,045 establishments operated in professional services compared to 19,215 establishments in 2010, increased by 14,830 establishments. The annual growth rate was 12.1 per cent annually. Value of gross output

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Wong Hua Siong, Faculty of Law, Multimedia University, Melaka, Malaysia, wonghuasiong@yahoo.com.

¹ Source: Bar Council Malaya's website.

² Department of Statistics. 2016. Economic Census Malaysia-Professional Service. <https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=418&bul_id=a2dwREo3dzlUaDZJS1NRRN2pWOFJPQT09&menu_id=b0p1V1E3RW40VWRTUKZocEhyZ1pLUT09>. Accessed on 12 September 2018.

generated by this services in 2015 was RM40.4 billion, increased by RM19.5 billion or 14.2 per cent per year. In line with value of gross output, the value added recorded an increased of 15.6 per cent annually posted at RM24.3 billion. Professional services comprise activities of architectural; engineering; land & quantity surveying; accounting; legal; advertising; management consultancy and market research; veterinary; scientific research & development and technical testing & analysis; and other professional. Legal service has also become one of the largest contributors to Small and Medium Enterprises (SMEs) in professional services. In fact one of the success factors for legal service is marketing strategy.

Marketing activities including these 4Ps, namely, promotion, product, price and placement. Most of the business activities will success because promotion activities especially advertising has been more emphasised by the businessmen. Legal practitioners are restricted by certain rules and regulations in advertise their legal services. There are few laws and regulations particularly govern the conduct and manners of the legal practice including the marketing activities. These laws and regulations include Legal Professional (Practice and Etiquette) Rules 1978 (Practice and Etiquette Rules 1978) and Legal Profession (Publicity) Rules 2001 (Publicity Rules 2001) which could be said that it limits the marketing activities in legal profession.

Thus, this paper intends to study the restrictions and limitations faced by the current legal practice and the challenges of marketing activities by the legal service firms. At the end of the discussion, this paper also aims to explore and suggest several marketing approaches that legal practitioners could be adopted by them.

II. RESEARCH BACKGROUND AND PROBLEMS

Many legal forms have misunderstood that marketing exercise must be related to advertising task. As discussed earlier, advertising (promotion) is part of marketing. Since the number of legal firms is increasing from year to year, there are more competitors and in order for the small and medium legal firms to be survived in this industry, it is arguable that legal practitioners have to know the knowledge in marketing. Unlike other professions, Malaysian Bar Council expressly prohibit advertising activities of legal services from its members. Rule 4(1) of Publicity Rules 2001 states as follows:

“(1) *No Advocate and Solicitor shall publicize his practice or the practice of his firm, or permit or allow any of his employees or any other person to publicize that practice, in*



any manner except in accordance with these Rules.”

It is submitted that the above Rule 4 permits the legal practitioners to advertise but the contents are still restricted to the approved disclosed information, such as the legal firm’s name, contact address, telephone and fax numbers.³ Other creative marketing methods such as radio advertisements, personal selling and etc are strictly prohibited. However, due to market competition in the current legal profession, the practitioners are required to have certain knowledge in marketing in order to learn how to ‘market’ their legal firm (Winroth, 2000).

It is commonly known that nowadays clients can be reached via advertisement and promotion activities via mass media or social media, i.e. Facebook and Instagram. For those who have not made extensive use of legal services and have no knowledge of legal services, they may rely on these advertisement activities to find the suitable legal practitioners to represent them to solve their legal problems. The issue that we need to look into is whether posting a message or notice in social media will be governed by Rule 4(1) of Publicity Rules 2001? Furthermore, Rule 21 of the similar Rules 2001 further provides that any publicity via electronic media shall only be carried out in such manner as determined by the Bar Council and it shall only contain approved information.

The law practitioners in the current situation in fact required the knowledge in marketing to compete with other competitors. The Bar Council Malaya explicitly prohibit certain advertising activities of legal services from its members. For example, even though the Publicity Rules 2001 allows the legal practitioners to advertise, but its contents are still restricted to the approved disclosed information, such as the legal firm’s name, contact address, telephone and fax numbers. Other creative methods of marketing such as the billboards, personal selling, radio advertisements and others are strictly prohibited.

However, the question arises when the law practitioners are sharing some news or events in the social media. Does this activity amount to publicity? According to Rule 2 of Legal Profession (Publicity) Rules 2001, “publicize” means to make known to the public through any form of advertisement, including an advertisement-

- a. published in any newspaper, journal, magazine, book, booklet, directory or other publication;
- b. contained in any letter, brochure, bulletin, business card, leaflet, nameplate, newsletter, notice, pamphlet or letterhead or stationery used for professional purposes; or
- c. placed in, stored in or transmitted through any electronic media accessible to the public or to any section of the public.

III. LITERATURE REVIEW

There are several laws and regulations which governed the legal profession and subsequently bring a big impact on the

performance of the legal firm (Demirbas, 2005).⁴ Businesses endeavors are fueled by the quest for financial gain, while the legal profession is supposed to be fueled by a desire to serve the public. Thus, there should be a strict distinction between business field and legal few. Advertising is still needed to ensure the continued existence of the legal profession. However, many studies found that these laws and regulations hinder the growth of businesses particularly the SMEs (Poisson et al., 2002; Wang, 2003; Indarti and Langenberg, 2004). Beck et al. (2005) confirmed that legal constraints affect the firms’ growth but the extent of the effects depends on the firms’ size.

In Malaysia, the legal constraints in marketing may be pointed out by virtue of certain provisions. *Section 94 (3) (h) of LPA 1976* and *Rule 52 of the Practice and Etiquette Rules 1978* prohibit the act of procuring business through a tout, while *Rule 48 of the Publicity Rules 2001* prohibits the lawyers from publishing photograph. *Rule 4 of the Publicity Rules 2001* provides vividly that the legal practitioners cannot publicise their practice or practice’s firms except in accordance with the *Publicity Rules 2001*. Any act which is not in line with the rules will be liable to misconduct that warrants disciplinary proceeding as envisaged in *Section 94 of the LPA 1976*.

Darden et al. (1981) also agreed that personal selling is an ethical question for lawyers. In Malaysia, *Rule 51 of Practice and Etiquette Rules 1978* and *Section 94 (3) (h) of the LPA 1976* provides that no legal practitioners shall do or cause any tout. Even though there is a rule prohibiting touting, this act is still prevalent and this *Rule 51* is not strictly enforced by the Bar Council (Hashim, 1981). This shows that touting is prohibited but it is illegally practiced by certain group of lawyers in conducting their legal business.

IV. FINDINGS AND RECOMMENDATIONS

Most legal firms are attempting to market their services in a new, different and creative way. However, the legal firms are bound to adhere strictly to its governing laws and regulation namely, the LPA 1976, Practice and Etiquette Rules 1978 and Publicity Rules 2001. These laws have restricted certain marketing activities in legal service particularly in the use of electronic media such as television and radio.

Therefore, it is suggested that the laws and regulations governing the legal service in Malaysia be reviewed and revised to keep abreast with the current need of the legal practitioners as well as the public.

A. Public Relations

Through public relations, legal firms can provide free legal

³ Rule 5 to Rule 9 of Legal Profession (Publicity) Rules 2001.

⁴ Demirbas, D. 2005. Environmental Performance, Public Interest Theory and Economic Theory of Regulation: The Case of Turkish SMEs with a Longit Model, Annual Conference of the European Public Choice Society, Durham”.

education and advisory in newspaper columns which aim to build up a client based relationship and public awareness.⁵ Word of mouth, customer stories, testimonials,

workshops, training courses and management seminars help in spreading the word while gaining reputation from the market. Even sponsorships can also be chosen to spotlight the firm's pre-eminence in its field.

B. Brand Awareness

In the legal sector, service differentiations that can separate a firm from its competitors are very little. However, a brand could help the public to identify a firm and its services, in theirs of their images and names. If a direct marketing is not possible, legal firms should focus on ways to build public awareness of the firm's name, logo, trademark, landmark etc. Some ways that could be implemented by legal firms in developing branding strategies.

C. Association with other Affiliations

Law firms are simply an outgrowth of the need for economies of scale and requirements to provide clients a range of services. The law firm is a network of professional contacts and information. Each partner and associate, and all of their clients and contacts, are part of the network. The network expands as the firm opens branch offices and creates additional relationships. From a multi-disciplinary point of view, law firms which only practice law may not be able to meet their clients' expectations. The consultants, who are not lawyers, may not know the clients' business and may, therefore, not recognize the opportunities or identify the problems. Likewise, firms which contract out for other services must charge their clients additional fees. The fact is that other professions, such as the accounting firms, can offer different services; in some places they have demonstrated that they are in a better position to meet the clients' expectations.

D. Online Marketing

Many legal firms see Internet marketing as a daunting task which requires a lot of effort and time. When it comes to the marketing on the Internet, including social media, such as Twitter, Facebook, Instagram, most legal firms do not understand exactly what they need to have for a successful Internet marketing campaign. Most legal firms fail to incorporate the vital elements that are crucial to successfully marketing their firm on the Internet.

In the recent development, pursuant to section 57(a) of the Legal Profession Act 1976, the Bar Council has revoked Ruling 2.07 of the Rules and Rulings of the Bar Council, which provided as follows:

“Bar Council Ruling 2.07: Building Named after Law Firm

An Advocate and Solicitor shall not use, or permit or acquiesce to the use of, the name of his/her law firm or part of the name of his/her law firm as the name of a building.”

The revocation of Ruling 2.07 takes effect on 1 Oct 2018. With this revocation, we can see there is a room for publicity

in legal profession currently.

In we look at the publicity law by law practitioners in other common law jurisdictions, such as Singapore, Australia and United Kingdom, they have their own law on publicity by the law practitioners in which they do allow law practitioners to advertise themselves but with limitations.

E. Common Law Jurisdiction

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(i) Singapore

The Legal Profession (Publicity) Rules (“Publicity Rules”) were brought into force in 1993. They have been liberalised over the years to allow solicitors to publicise their law practices in any manner as well as to participate in any third party or client publicity, so long as they comply with the general ethical principles set out in the Publicity Rules. Under the recent PRACTICE DIRECTION 6.2.1, it is not improper for a legal practitioner to present a news show on the radio or TV. A legal practitioner should ensure that a TV commercial advertising his law practice is not reasonably regarded as misleading under rule 44(1)(b) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) (‘PCR 2015’) because the commercial, which is usually brief, is primarily viewed by laypersons who can easily form misimpressions that are difficult to correct. Meanwhile, it is not improper for a law practice to accept an offer of complimentary advertising in a newspaper, so long as the law practice ensures that the advertising complies with rules 43 and 44 of the PCR 2015. In particular, the description of the specialisation of the law practice in the advertisement must be in accordance with rules 43(1)(a) and 43(2) of the PCR 2015.

(ii) Australia

Advertising and marketing are regulated by Schedule 2 of the Competition and Consumer Act 2011 (Cth) (the Australian Consumer Law or ACL), which contains the general overriding obligation on advertisers to ensure that advertisements are not false, misleading, or deceptive. All products and services advertised in Australia must comply with the Australian Consumer Law. This law is enforced by the Australian Competition and Consumer Commission (ACCC), an Australian government body, but competitors and consumers are also able to take legal action against advertisers for breach of the law under the ACL.

It is an offence to represent or advertise that a person is entitled to engage in legal practice if the person is not an Australian legal practitioner holding a current practising certificate. Lawyers may not advertise themselves as a “specialist” in a particular area of practice unless they hold appropriate qualifications. Advertising services that refer to or depict personal injury or work injury (including circumstances in which an



injury might occur) or services to recover compensation for personal injury or work injury are prohibited or restricted in some states and territories. See individual state legal practitioners acts, regulations, and professional and conduct guidelines.

(iii) United Kingdom

In England and Wales, in November 2001, the Solicitors' Publicity Code of 2001 replaced the

Solicitors' Publicity Code of 1990. Deleting "bad taste" as a prohibition of publicity along with detailed rules about the manner of advertising, the Solicitors' Publicity Code 2001 simply states that "[p]ublicity must not be misleading or inaccurate." The new Code prohibits unsolicited visits or telephone calls to members of the public, however, "member of the public" is narrowly construed, targeting lay individuals in its prohibition, rather than professional or business entities. Solicitors in England and Wales who advertise in jurisdictions outside of England and Wales must comply with the Solicitors' Publicity Code, as well as the rules relating to publicity in the jurisdiction where they advertise.

In Scotland, advertising by solicitors is governed by the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1995. In Northern Ireland, Solicitors in Northern Ireland are currently permitted to advertise, barristers are not. The Solicitors Practice Regulations of 1997, which are a consolidation and simplification of "early regulations with the principal aim of regulating the message, not the medium,"

V. CONCLUSION

The legal practitioners are bound to adhere strictly to its governing laws and regulation namely, the LPA 176, Practice and Etiquette Rules 1978 and Publicity Rules 2001. These laws have restricted certain marketing activities in legal service. The legislator should review and revise the current laws pertaining to legal service marketing to accommodate the current needs and demands of the public as well as the practitioners. On the other hand, the legislator should review and revise the current laws pertaining to legal service marketing to accommodate the current needs and demands of the public as well as the practitioners.

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