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I Didn’t Go To Law School To Become A Salesperson – The Development Of Marketing In Law Firms

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Abstract

The legal profession has undergone greater transformations during the past few decades than in the last few centuries. Deregulation and liberalization, increasing consumer expectations, new information technology, as well as a growing global marketplace have resulted in a significantly changed, increasingly competitive marketplace. Services that were once considered highly specialized are being treated today more and more like commodities. Most lawyers no longer have the luxury of waiting for business to come to them. ‘Technical’ competence alone is insufficient or not a guarantee of success in winning new business or keeping existing clients.

There is general recognition in business and business school academia that marketing provides the answers for organizations faced with such challenges and that the implementation of the marketing concept is not only highly recommendable, but necessary to ensure an organization’s long-term ability to survive. Marketing is important since organizations need to be aware of their competition and aim to satisfy their customers in order to be successful. This is particularly true for service firms due to the direct interaction with their customers. While the rationale for marketing might be unquestionable, numerous studies and articles stressed that law firms often resist the diffusion of the marketing concept or the adoption of a marketing culture throughout the organization.

This paper examines the underlying reasons for the advent of marketing among law firms. Both barriers and drivers are explored to understand why an industry like the legal profession starts to embrace marketing. While barriers to a market orientation are somewhat poorly understood, the development of marketing is explained with macro-environmental factors: political, economic, technological, societal, and the underlying implications of micro-environmental factors: the legal profession, law firms, and individuals fee earners.
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If I asked them, the majority of lawyers would probably answer that they do not ‘do’ marketing.¹ And most law school students would likely say that they did not go to law school to become salespeople. After all, marketing is for toothpaste, cars or soft drinks, but is inappropriate for the profession. While the most recent recession may have influenced the point of view of some to be more positive about marketing, the legal profession has long withstood the idea of marketing its services. A normal and accepted discipline in the corporate world, only the last three decades have seen the advent of marketing in the profession.

What has happened? The legal sector has undergone greater transformations during the last three decades than in the last two centuries. Deregulation and liberalization, increasing consumer expectations, new information technology, generational differences and globalization have resulted in a significantly changed, increasingly competitive marketplace. The recent recession has further contributed to this situation. Many services that were once considered to be highly specialized are being treated today more and more like commodities. A once elite and learned profession is now operating in a competitive, cutthroat business environment much like any other profession. Lawyers no longer have the luxury of waiting for business to come to them. “It’s more than possible—it’s extremely common—for law students to graduate into the real world in immaculate innocence of any exposure to economics or to how for-profit businesses actually run. Given that AmLaw 200 firms are multi-hundred-million dollar per year enterprises, this naïveté can be dangerous to one’s career. After all, the most solid foundation for figuring out what partners really want from you is to understand what you can do for them; they’re the owners and they take home the profits. If you don’t understand the connection between that and what you do as a lawyer, I wish you luck.”² Law schools teach students how to think like lawyers, but in today’s highly competitive world, it is imperative to bring more to the table. Technical legal competence alone is either insufficient or not a guarantee of success in winning new business or keeping existing clients. Traditional conduct and approaches no longer ensure success and survival and consequently, force law firms to compete in new ways.

There is general recognition in academia and practice that marketing provides the answers for organizations faced with such challenges and that the implementation of the marketing concept is not only highly recommended, but necessary to ensure an organization’s long-term ability to survive. Marketing is important since organizations need to be aware of their competition and aim to satisfy their customers in order to be successful. This is particularly true for

¹ See Samantha K. Graff, “Marketing” at Wachtell, Lipton, Rosen & Katz, HARV. BUS. SCH., Case Study No. 9-496-037, Nov. 29, 1995, at 1 [hereinafter Graff, Wachtell] (“When The American Lawyer published the 1995 results of its annual ‘Am Law 100’ survey, Martin Lipton was pleased to see that Wachtell, Lipton, Rosen & Katz had reclaimed the top spot in revenue per lawyer and profit per partner. The survey reported that Wachtell, Lipton, Rosen & Katz had grossed $990,000 per lawyer—over $200,000 more than the second place firm. A few days after the survey was released, two case writers from the Harvard Business School interviewed Lipton about his firm’s marketing practices. Lipton’s initial response to their questions was that the firm did not do any marketing of its services.”).

² Bruce MacEwen, President, ADAM SMITH, ESQ. (Fall 2011), AdamSmithEsq.com.
service firms due to the direct interaction with their customers. While the rationale for marketing might be unquestionable, professional services firms, in particular law firms, often resisted the diffusion of the marketing concept or market(ing) orientation. Little marketing used to occur in the legal profession and lawyers began to adopt marketing ‘unenthusiastically’ or not at all.

I. ORIENTATION

This article discusses the reasons why law firms started to adopt marketing despite long-held resistance. First, the novelty of and rationale for the research will be explained. The topic will then be examined from both a real-world practice context as well as an academic research context. Forces causing the nascence of marketing in the legal profession will be studied first in regards to the general environment of the profession, the so-called “macro-environment” (see 3b “Research context”), then in the “micro-environment” of the profession and its participants, law firms and individual lawyers.

II. RATIONALE FOR THE RESEARCH

It has been argued that from a microeconomic point of view a law firm is essentially a service business like any other: it renders services to clients for whom it receives payment. Like any other business, a law firm combines resources in order to produce services and adheres to the basic principles of economics: profitability and financial liquidity, to ensure continuity. The “growth in the size of the profession, the size of firms, and the volume of the market, has led … lawyers having to treat the practice of law as a business.” Access to justice requires not only that the legal advice given is sound, but also “the presence of the business skills necessary to provide a cost-effective service in a consumer-friendly way.” Customers are the lifeblood of any commercial organization. Without them, it has no revenues, no profits and therefore no market value. In fact, the basis of a business is its ability to create and keep a customer. “[T]he law is a service business, and satisfaction can only be measured by the client.” As the satisfaction of customer needs is the main business goal, businesses have only two basic functions: marketing and innovation.

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5 See PEPELS & STECKLER, supra note 3, at 1.
6 STEPHEN MAYSON, MAKING SENSE OF LAW FIRMS 15 (1997) [hereinafter MAYSON, MAKING SENSE].
8 See PETER F. DRUCKER, MANAGEMENT, TASKS, RESPONSIBILITIES, PRACTICES 20 (1974); see also THEODORE LEVITT, THE MARKETING MODE 10 (1969). Both sources emphasize the importance of focusing on the customer, and hence, the importance of marketing within any organization.
10 See DRUCKER, supra note 8, at 20.
The marketing concept simply holds that the way to corporate success lies in continually meeting customers’ needs. Marketing is linked to a number of benefits, including improved business performance, customer perception, and loyalty.\(^{11}\) Marketing is of particular importance in highly competitive environments. Lawyers need to keep in mind that clients are the reason for the existence of the legal profession and not vice versa.\(^{12}\) If one firm cannot or does not supply the services desired, its competition probably will.\(^{13}\) Some have argued that market orientation is necessary to provide an organization with long-term direction.\(^{14}\) Changed circumstances force firms to “learn to compete in a completely different manner. Those that do not, or that cling tooth and nail to the past, will not survive.”\(^{15}\)

Nevertheless, lawyers historically have not embraced marketing. Marketing is almost non-existent among lawyers as it was not only ‘disliked’, but also considered profoundly ‘unprofessional’ and ‘inappropriate’.\(^{16}\) While these observations are now dated, the strong influence of tradition and history in the legal profession and its consequences in terms of the understanding of the value, the perception of and the attitude towards marketing were substantial barriers to the advance of marketing in this field. This may be in part due to marketing often having been equated to advertisement among lawyers. As this is not an uncommon misconception, the Chartered Institute of Marketing stressed in its definition that

“\[m\]arketing is sometimes wrongly defined within the narrow context of advertising or selling, but this is not the whole story. Marketing is a key management discipline that enables the producers of goods and services to interpret customer wants, needs and desires and match, or exceed them, in delivery to their target customers”.\(^{17}\)

Marketing authorities acknowledged distinctive challenges or barriers to marketing of professional services, but were confident that lawyers “are finding that marketing is not inherently unethical or manipulative nor is it defined by the field of advertising.”\(^{18}\) In fact, they believed that ‘enlightened’ professionals consider market orientation “to be a practical tool for the achievement of competitive advantage.”\(^{19}\) It was cautioned that there “should be little debate that

\(^{12}\) See ROBERT N. HILL, HOW TO SURVIVE YOUR ARTICLES 12 (1986).
\(^{16}\) See Harris & Piercy, supra note 3, 20.
\(^{18}\) PHILLIP KOTLER, THOMAS HAYES & PAUL N. BLOOM, MARKETING PROFESSIONAL SERVICES 20 (2nd ed. 2002).
\(^{19}\) Alper Özer, Akin Kocak & Orhan Çelik, Determinants of Market Orientation in Accounting Firms, 24 MKTG. INTELLIGENCE & PLANNING 591, 592 (2006).
marketing and quality service plays a central role in legal firms’ operations… [o]f concern is the effectiveness of any marketing undertaken.”20

III. CONTEXT
A. PRACTICE CONTEXT

Developments in recent years have drastically changed the external environment in which law firms operate, the collective legal sector as well as the self-conception of individual lawyers. Increasing numbers of lawyers, international competition and new entrants from outside the traditional legal field have considerably challenged the traditional modes of operations of law firms and the legal sector has become increasingly competitive and market-driven. The legal profession–once driven by the practice itself–today is driven by the clients.21 With clients becoming more demanding and less loyal, firms increasingly have to compete to attract and retain clients. Law firms need to be aware that clients seldom feel obligated to inform firms of their reduced status. “Law firms never get fired, … [t]hey just don’t get more work.”22 Marketing can potentially help focus attention on service delivery and offerings in chosen market segments.

In addition, professional services are increasingly bought as commodities. A professional service is considered high or low in importance depending on the relationship of the service to the organization’s core business activity and substantial exposure to risk if failure occurs.

“The AA [Automobile Association] and HBOS [Halifax Bank of Scotland] are doing [legal] work on a massive scale. There aren’t that many law firms around that can compete. Are we going to roll over, or think about consolidation? … The one thing that makes an industry vulnerable is the incumbents not changing. Thinking like lawyers could spell the end.”23

Clients increasingly expect to benefit from a firm’s accumulated experience and methodologies, its efficiencies (and therefore cost advantages) that come from dealing with providers who have solved similar problems before.24

A. RESEARCH CONTEXT

The presence of professional managers and marketing departments in law firms has become increasingly common. Marketing in law firms, however, is said

21 See DAVID H. MAISTER, MANAGING THE PROFESSIONAL SERVICE FIRM 62 (1993); see also STEPHEN MAYSON, LAW FIRM STRATEGY: COMPETITIVE ADVANTAGE AND VALUATION 3 (2007) [hereinafter MAYSON, LAW FIRM STRATEGY]; Vickerstaff, supra note 3, at 356.
22 Dick Dahl, Disgruntled Customers: Survey Reveals Companies Dissatisfied with Outside Counsel, 3 MID-WEST IN-HOUSE 1, 22 (2006).
24 See DAVID H. MAISTER, TRUE PROFESSIONALISM 3 (1997).
to be under-researched and therefore warrants further academic investigation. This call for further research was not answered. Other studies—which, however, are also now dated and merit a re-examination—suggested that marketing of solicitors’ services is in an ‘embryonic stage’ and generally poorly understood.

This paper examines the underlying reasons for this development. Environmental factors are seen to influence marketing orientation. To understand why an industry such as the law started to embrace marketing, both barriers and drivers need to be explored. These barriers and drivers are typically explained by reference to macro-environmental factors or the underlying implications of micro-environmental factors. The macro-environment consists of forces that originate outside of an organization and generally cannot be altered by actions of the organization. In other words, a law firm may be influenced by changes within this element of its environment, but cannot itself influence the environment. Macro-environmental factors include political-legal, economic, sociocultural, and technological variables. Organizations need to understand macro-environmental factors in their respective changes to understand opportunities and threats created by the changes in the factors and thus how they need to adjust their strategies. The micro-environment consists of elements in an organization’s immediate area of operations that affect its performance and decision-making freedom. These elements include competitors, suppliers, customers, and employees as well as other stakeholders. This paper examines forces in the macro-environment and then in the micro-environment that influence or hinder marketing orientation in the legal profession.

IV. FORCES IN THE MACRO-ENVIRONMENT

Demographic, economic, social, technological, legal, and political forces create significant changes in the fabric of our society. The ‘open system’ school of thought explained the significance of the environment for the advent of marketing with the constant interaction between an organization and its environment. Macro-environmental forces have great influence on the level of competition in a market and can force organizations to adopt a marketing strategy.
Critical shifts in the traditional business environment have driven firms to develop strategic marketing programs. De-regulation and increased competition have created pressure for firms to seriously consider the role that marketing can play as the number of ways in which firms can now compete with each other has increased. In addition, changing professional standards, such as changes in the advertising regulations or codes of ethics, a downturn in the economy, increased expectations of clients, new information technology and a growing global marketplace together with decreasing client loyalty make marketing increasingly important. These factors contribute to more competition in the marketplace, as for example, they allow new ways to compete with one another.

A. POLITICAL, LEGAL, AND REGULATORY FORCES

Political, legal, and regulatory forces are closely interconnected and affect marketing-related decisions and activities. The legal services sector has a long history of self-regulation that had been largely untouched until recent revisions of the legal and ethical framework. Since the 1980s, nations have started to shift their respective stances towards more open competition. Restrictions against the use of advertising, solicitations, competitive bids, and other promotional tools have essentially disappeared in the last 20 years.

Pro-competitive legislation is enacted to preserve competition and end practices deemed unacceptable by society, such as monopolies or restrictive trade practices. Deregulation advocates argued that removing, reducing or simplifying restrictions encouraged efficient operation of markets. The rationale is that fewer and simpler regulations will lead to a raised level of competitiveness, therefore higher productivity, more efficiency and lower prices overall. They may also lead to new competition from outside the traditional law firm world. Such liberalizations ‘blur’ the boundaries among professionals and other commercial businesses.

While many marketing activities were never forbidden by professional codes and legal restrictions, in the legal services sector, marketing was often confused with advertising or sales. Advertising, however, constitutes only a fraction of the possible marketing activities of any organization, typically has

32 See Mangos et al., supra note 25, at 69.
34 See Kotler et al., supra note 18, at 1.
36 See O’Malley & Harris, supra note 4, at 875.
little to no influence on the buying decision of (corporate) clients. However, allowing advertising represented eradicating a barrier to marketing in law firms.  

B. ECONOMIC AND COMPETITIVE FORCES

Economic and competitive forces influence decisions and activities on both the demand and supply side. Changes in economic and competitive conditions have a broad impact on the success of an organization and are considered the main reason for the advent of marketing in an organization. They affect how easy or difficult it is to be successful and profitable at any time since they affect capital availability, cost and demand, which are ultimately crucial for the probability of marketing activity. Market turbulence, technological turbulence, competitive intensity, and performance of an economy are the factors impacting market orientation. In uncertain environments, a pro-active and innovative marketing conduct is more likely or at least, recommendable.

Competition in an industry is not a matter of coincidence, bad luck, or does it only depend on the immediate competitors. Competition depends on the collective strength of ‘5 Forces’. These forces determine the profit potential in an industry and thus the attractiveness of a market, which in turn, contributes to the likelihood of marketing. Changes in any of the forces require an organization to re-assess its position. The forces comprise (i) Rivalry; (ii) Threat of substitutes; (iii) Buyer power; (iv) Supplier power; and (v) Barriers to entry. Each of these forces will be discussed individually as they apply to the legal services sector.

1. FORCE 1 (RIVALRY/INDUSTRY CONCENTRATION)

The legal services sector has seen tremendous increase in rivalry within the profession, which goes beyond firms failing to demonstrate their unique value to clients. Oversupply conditions are prevalent in terms of increased number of practicing lawyers in most Western countries and per capita numbers. When supply exceeds demand, there will be more competition for customers. Insufficient demand for their services leads many professionals to intensify their marketing efforts to attract clients. The number of newly qualified lawyers in many jurisdictions multiplied during the last 30 years and is fuelled by the still continuously increasing output of law schools.
At the same time, increased consolidation is taking place in the legal sector.\textsuperscript{42} The size of individual firms has contributed to lawyers having to treat the practice of law as a business, which is likely to increase the probability of marketing.\textsuperscript{43} While the growth in firm’s fee income has been impressive for many years, the volume and nature of legal work is increasingly retained in-house. Since the downturn in the economy, many firms have seen their fee income decrease. This trend is only now starting to reverse again. In addition, other aspects of concentration are present in the legal services sector, such as high fixed cost, low switching cost and low levels of service differentiation, and therefore present high probabilities for marketing to occur.

The continuing trend towards globalization could be seen as a force that increases rivalry. The magnitude of this contributor to competition necessitates a separate discussion. Globalization is described as the increasing interdependence, integration, and interaction among people and corporations around the world.\textsuperscript{44} During the last two decades of the 20th century a global marketplace had been created. By reducing barriers to trade, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) paved the way for globalization. Although this globalization of world markets has increased opportunities for marketing services internationally, at the same time it significantly increased competition, with the legal sector being no exception.\textsuperscript{45}

For law firms, globalization had several consequences. Clients are likely to have new needs for international legal advice, which might result in additional work if the firm is able to provide and communicate such international legal skills. At the same time, these clients might be under additional competition due to globalization (in particular due to the still challenging economies in many countries) and thus need to closely monitor or even cut legal costs. Another consequence of globalization is that just as domestic law firms advise companies abroad, new competitors from other countries—foreign law firms—start advising clients in the domestic market, open offices and offer services to domestic clients, thus increase competition. The combination of globalization and technology can be the basis of new, possibly more competitive or profitable, models of business, such as online legal services. Finally, globalization may affect the organization of law firms, which also potentially influences a firm’s competitive advantage and profitability. Just like other businesses, law firms can outsource (parts of) their operations abroad. A number of UK and US firms already outsource or offshore IT (information technology) and other back office operations. Further-reaching development in regards to technology influencing the delivery of legal services

\textsuperscript{43} See generally Mayson, Making Sense supra note 6, at 12.
have been predicted.\textsuperscript{46} While lawyers have traditionally lagged behind their professional services counterparts in their use of outsourcing in core services, some firms are increasingly moving towards a leaner business model. Law firms are have been outsourcing business operation and legal support work to India and other lower-cost countries such as the Philippines.

2. FORCE 2 (THREAT OF SUBSTITUTES)

The legal sector has seen increasing competition from outside its immediate core. A further intensification is possible due to the addition of paraprofessionals into the fields (e.g., paralegals) who are able to provide services that in the past were only provided by licensed professionals. Modern technology and recent regulatory changes are also the reasons for the further blurring of boundaries among professionals and other commercial businesses.\textsuperscript{47} Susskind emphasized the disintermediation of legal services, where for a number of legal services, lawyers are no longer needed.\textsuperscript{48} In addition, not only are certain professions competing heavily internally, they are also facing new sources of competition from outside their traditional boundaries, such as accounting firms. Lawyers have been criticized to be the ones who are to be blamed for accountants having taken much company work away from lawyers as they show more client-centrivity in their approach, a characteristic of marketing: “[Accountants] are accustomed to the smooth management of company meetings, submission of forms and so on, which are unfamiliar to some solicitors”.\textsuperscript{49} New competitors to traditional law firms are law firm franchises, national chains providing low cost legal services for an annual fee, other professions, such as tax advisors and chartered accountants, which market themselves as ‘one-stop-shops’ to clients, and new competitors from outside the legal sector’s traditional boundaries, such as banks, insurance companies, consumer interest associations etc., and online legal services. As will be discussed in Force 3, rising cost pressure in companies has increased the inclination of many clients to accept such substitutes and to shop for price (e.g., some clients even use e-tendering). Again, due to the increase in competition, these factors are powerful drivers of marketing in law firms.

3. FORCE 3 (BUYER POWER)

Ever-increasing cost pressure in companies has shifted the power from the law firms to the clients. Lawyers today no longer receive cases from their former college-friends and often no longer have ‘cozy’ relationships as they used to: “Senior corporate managers and senior partners belonged to the same country clubs, and the legal bills that the firms submitted were seldom subjected to close scrutiny”.\textsuperscript{50} Clients today ‘shop around’ and want more value for their legal

\textsuperscript{46} See, e.g., RICHARD SUSSKIND, THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES 1 (2009) [hereinafter SUSSKIND, END OF LAWYERS].
\textsuperscript{47} See O’Malley & Harris, supra note 4, at 875.
\textsuperscript{48} See SUSSKIND, END OF LAWYERS, supra note 46, at 6.
\textsuperscript{49} ROGER BIRD, STARTING IN PRACTICE: A GUIDE FOR ARTICLES CLERKS AND TRAINEE LEGAL EXECUTIVES 122 (1984).
\textsuperscript{50} Dahl, supra note 22, at 1.
budget and demand greater financial accountability from the law firms they hire. Long-term relationships marked by mutual loyalty between lawyers and clients have broken down. Clients have become customers, expecting and demanding quality service delivered on time. Their main driver is price. Since clients are dynamic and do not stand still, it is essential for law firms to understand their business and help them with the challenges they face. While relationship marketing argues the importance and rationale of close collaboration and key client teams, and some practitioners see the return of strong lawyer-client relationships, others see a breakdown, as more clients are treating outside professionals as vendors. The rising influence of procurement among large(r) companies, to negotiate billing rates is contradictory to clients wanting law firms as partners.51 “We’ve moved from a model where … the law firm was housed in the building of its major corporate client and the senior partner’s daughter was married to the CEO’s son, all the way to a new ethos that says, ‘We hire lawyers, not law firms’, and where companies assemble virtual teams from various law firms”.52

In addition, clients have become more sophisticated buyers who clearly understand their needs. This is due to now widely available comprehensive legal information on the Internet, as well as companies increasingly employing former private practice lawyers.53 Over the past 25 years, the legal market has matured from a relatively inefficient market with great asymmetry of information, little information regarding price or quality or efficiency of service to an increasingly robust and efficient market with lots of information and sophisticated clients, which results in diminished client loyalty, increasing use of formal competitive processes and changed expectations in terms of service. With clients becoming more demanding and less loyal, firms increasingly have to compete to attract and retain clients. Marketing can help focus attention on service delivery and offerings in chosen market segments.

Other elements of demand and therefore buyer power include government interventions as well as the stage of economic development that may drive or hinder the development of marketing in a given industry. A school of thought among marketing scholars agrees that market orientation represents the ultimate stage of economic development, drawing a parallel to the economic development of a country, based on the assumption that market orientation develops through certain phases of orientation, that is, production, sales, and market orientation.54 Market orientation reflects an advanced stage of economic development. When basic production needs are satisfied, consumer income has risen parallel to the increased number of competing companies, and consumers have reached a level at which they require a variety of goods and services to satisfy their needs in a given industry. Similarly, market orientation has also been linked to the maturity of an

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52 Elaine McArdle, Harvard Launches Ambitious Study of Legal Services Purchasing, 4 MIDWEST IN-HOUSE 6, 6 (2006).
54 See Dulic, Evaluation, supra note 31, at 47.
industrialization process. Only when a society reaches the phase of having satisfied production and sales needs, it passes into a market(ing)-oriented stage. The focus shifts from a general desire to buy goods to a desire for variety and volume. New market segments develop, tastes become more varied, and marketing appears. Although plausible, these theories have been criticized as ‘evolutionary’ approaches lacking empirical proof, and being based solely on logical reasoning.\(^5\)

Economic forces can also be looked at in the sense of level of employment, average income, and incorporation of businesses, as they might influence the size of the market for legal services.\(^6\) Such economic conditions or the stage of an economy in the economic cycle, affect whether and how participants in the marketplace will market their products and services. The strength of buying power and spending behavior are two economic factors related to the economic cycle concept that may drive or hinder marketing in organizations. The special nature of legal services signifies that the effects of the economic cycles are not unequivocal in the legal services sector.\(^7\) Some legal services such as transactional M&A work or employment contracts generally move with the economic cycle. Other legal services, e.g., insolvency law and redundancies, tend to be counter-cyclical: they are required more during a recession or depression–even though this was not necessarily the case in the most recent recession. Thirdly, there are legal services, which demonstrate a relatively constant pattern of demand, such as environmental law. Consequently, the phase of the economy combined with the type of legal service might act as a driver or barrier for marketing in law firms.

However, it needs to be taken into account that there is a difference to ‘normal’ consumer products in the sense that demand for legal services cannot easily be stimulated by increased marketing activity during adverse economic times as today. Law firms have limited possibility to motivate their current clients to buy more legal services of a certain kind to capture a larger market share. This has been disagreed with, due to the notion of latent legal markets: A latent market for legal services is commercial clients who could benefit from legal services, but are not presently being served. These clients could be reached with automated ‘expert systems’ that do not necessarily replace lawyers, but supplement them, and bring new business and new profits to a law firm.\(^8\) A second ‘latent legal market’ is consumers of moderate-to-low income who could benefit from legal services, but presently avoid lawyers for a variety of reasons, including high fees and fear of high fees.

4. **FORCE 4 (SUPPLIER POWER)**

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55 See id. at 47.
56 See MAYSON, MAKING SENSE, supra note 6, at 17.
58 See SUSSKIND, END OF LAWYERS supra note 46, at 13.
Due to the nature of services, supplier power, i.e., the influence of the suppliers of resources or raw material, does not play the same role in the legal sector as it would in other industries, such as manufacturing. However, since the primary resource in (legal) services is human talent, supplier power may be seen as the market for legal talent for which firms are competing. While there seem to be too many qualified lawyers for the volume and value of work available, which is likely to have increased since the downturn of the economy, law firms found it difficult to attract and retain ‘good’ people. Despite the increasing numbers of law school graduates, ‘good’ lawyers were spread among too many law firms and were often out of the price range for many firms. This resulted in a ‘war for talent’ that may be seen as a driver for marketing among firms competing for new hires. In addition, there was also competition for talent from outside the legal market that intensified the competitive situation. This vested significant ‘power’ for the ‘suppliers’ of legal talent. The reverse is true now in the current economic climate, in particular since the vast majority of law firms have significantly reduced the number of incoming talent.

5. FORCE 5 (BARRIERS TO ENTRY)

Recent regulatory changes significantly intensified the competitive situation for legal services providers by removing many of the former barriers. Such changes are likely to be a driver for marketing. In highly competitive markets, building mutually beneficial relationships, ‘win/win situations’, needs to be the objective as it may erect barriers of entry for potential competitors and help maintain long-term profitability and customer retention. While some believe that the relationships between law firms and their clients are disintegrating, for example, a relatively higher turnover among in-house counsel is seen as presenting a challenge to the building of long-term relationships between firm and client, others feel that relationships have become closer, increasingly emphasizing teamwork. Partnering with a client is the key to a successful service relationship. Switching costs can also act as barriers to entry as clients may face a number of barriers that make it difficult to leave one legal services provider and begin a relationship with another. Switching costs include investments of time, money, or effort, such as setup costs, search costs, learning and contractual costs.

C. SOCIETAL FORCES

Societal forces can significantly impact not only the need for legal services and thus potentially drive marketing, but clients’ expectations regarding the delivery of the services. Law firms must be aware of changes in society to be able to adapt, react and anticipate new needs and expectations. These forces encompass non-economic criteria and demographics such as structures and dynamics of individuals and groups, the issues that engage them, their priorities,

59 See MAYSON, MAKING SENSE, supra note 6, at 11.
the long-term interests of a society, as well as living standards/quality of life. Changing demographics typically affect the demand for services in consumer markets. Population numbers give a rough idea of the size and development trend of a market, thus indicate its attractiveness.

Over the last few decades, the U.S. population has been continuously increasing, which is likely to translate into more transactions, more litigation, more clients, and ultimately, more business for law firms as more people mean more potential issues, more potential conflicts, more potential commercial activity. Consequently, one would expect the market for legal services to gradually increase. A larger market typically means a reduced level of competition, however, although not a barrier to marketing activity, such a situation most certainly would not ‘drive’ marketing.

Although this may be a less important factor in the current economic climate, affluence as a societal factor affects what people do in terms of health care, investment, and leisure activity. The ability to move home more often, to acquire second homes, to make more (expensive) holidays, or to spend money on consumer goods effect potential needs for legal services. ‘Affluent’ activity can directly lead to the need for legal services (e.g. international real estate transactions) or to new needs for legal services (e.g. traffic or vacation related litigation). In addition, if only incrementally, increased affluence also possibly influences the expectancy towards the way services are provided, the level of service. Marketing might help law firms find ways to reach such a clientele, understanding and anticipating their needs to best cater to this group.

Services require that cultural influences and variations are well understood. In terms of cultural values, the U.S. would classify as a culture with small power distance, prevalence of individualism and masculinity, it ranks relatively low uncertainty avoidance and high on short-term orientation. This means its citizens assume equality between people, have a preference for ‘accessibility’ of others, generally welcome innovation, and expect quick results. Wanting to be ‘best’ is considered normal. Expressing disagreement and criticism is not unusual. Task usually prevails over personal relationships and relationships of trust should be established with the business. Translating cultural framework into a lawyer-client relationship context, this might suggest that clients demand an open and steady flow of communication and close involvement in the decision-making regarding their legal issues. Trust may be embodied in the professional who links the client to the firm (a personal relationship between lawyer and client, or the lawyer as a ‘trusted advisor’), while in other situations trust is embodied in the organization itself. Only if clients develop trust in organizations, law firm ‘brands’ can be established. An individual professional does not necessarily

63 See Naveen Donthu & Boonghee Yoo, Cultural Influences on Service Quality Expectations, 1 J. SERV. RESEARCH 178, 178 (1998).
receive respect owing to her position, but must earn the client’s respect by demonstrating expertise and at the same time show trustworthiness by knowing and admitting limits when not possessing the requested knowledge. Competitiveness and a certain aggression (albeit not openly emotional) when promoting ones services are likely to be accepted as normal in such achievement-oriented societies. Business contracts in individualist cultures tend to be longer than in collectivist cultures as they have a strong preference for spelling out in detail rules between businesses and individuals. This suggests comparatively huge demand for law firms. The masculine tendency to ‘fight things out’ might suggest a predisposition towards litigation, which again can translate into relatively high demand.

A higher level of education of society is likely to influence the expectations clients have of the delivery of legal services. In the past clients tended to look to the learned professions for help and assistance in an unquestioning way. The barriers created by years of training made the public dependent and unquestioning.\(^65\) Clients appear to generally have become less tolerant of the air of mystery with which professional advisers historically sought to “cloak their craft”.\(^66\) Their new expectancy of open communications drives the need for marketing as a means of communication with existing and prospective clients. In particular, corporate clients have become more sophisticated buyers and consumers during the last decades, often having received the same training as external legal services providers. Such clients increasingly question and challenge the views of outside providers. They want to be involved in the process, understand what is going on and why, be kept informed of their options, up-to-date on the progress, and tend to be relatively less loyal.\(^67\) Since firms need to pro-actively address this new situation, once they are aware of the issue, it is likely that it will have to be addressed through marketing.

The rise of the knowledge society on the back of the information revolution has impacted the consumption and provision of knowledge-based services.\(^68\) It has also impacted the behavior and role of consumers/clients and changed the nature of the consumer/client-professional relationship by having created a more sophisticated and ‘empowered’, as well as less loyal clientele. The knowledge gap has started to decline as would be expected in modern societies that are increasingly knowledge-based and value is created by productivity, innovation, and application of knowledge to work.\(^69\) Such ‘professionalization’ of clients has contributed to fewer services being bought as if they were ‘unique’, suggesting an increasing commoditization of legal knowledge. This has led to the

\(^{65}\) See \textsc{Laurie Young}, \textit{Marketing the Professional Services Firm: Applying the Principles and the Science of Marketing to the Professions} 20 (2005).

\(^{66}\) See \textsc{Mayson}, \textit{Making Sense}, \textit{supra} note 6, at 4.

\(^{67}\) See \textsc{Dean E. Headley} \& \textsc{Bob Choi}, \textit{Achieving Service Quality Through Gap Analysis and a Basic Statistical Approach}, 6 \textit{J. SERV. MKTG.}, Jan. 1992, at 5, 8; see also \textsc{Mangos et al.}, \textit{supra} note 25, at 77.

\(^{68}\) See \textsc{Angus Laing, Terry Newholm} \& \textsc{Gill Hogg}, \textit{Crises of Confidence: Re-Narrating the Consumer-Professional Discourse}, 32 \textit{ADVANCES IN CONSUMER RESEARCH} 514, 514 (2005).

\(^{69}\) See \textsc{Cynthia J. Bean} \& \textsc{Leroy Robinson Jr.}, \textit{Marketing’s Role in the Knowledge Economy}, 17 \textit{J. BUS. \& INDUS. MKTG.} 204, 205 (2002); \textsc{W. Chan Kim} \& \textsc{Renee Mauborgne}, \textit{Strategy, Value Innovation and the Knowledge Economy}, \textit{Sloan MGMT. REV.}, Spring 1999, at 41, 41; \textsc{Keith M. MacDonald}, \textit{The Sociology of the Professions} 157, (1995).
creation of volume businesses. Procurement departments are increasingly in charge of buying legal services and ask firms to participate in formal (or even electronic) tendering. At the same time, firms manage legal work in bulk through IT systems where the work is carried out by paralegals, legal executives and chartered insurers and only overseen by qualified lawyers. Such structural change moves legal services away from the core profession to services businesses, therefore likely to drive marketing.

D. TECHNOLOGICAL FORCES

Technology is argued to be at the root of market orientation since it enabled efficient production, which then shifted the focus away from manufacturing and paved the way for marketing. The Internet-driven information revolution is widely perceived as having transformed the way businesses and consumers operate. However, some law firms have already started modifying their traditional approach to legal advice. It is likely that it has not reached its full potential in the legal services sector. However, advances in (information) technology so profoundly affect the practice of law to cause a ‘shift in paradigm’, transforming both supply and demand side. Technology has revolutionized lawyer’s communication and information-seeking habits and created greater efficiency and lower costs. “[I]f you took away a firm’s accounting, knowledge management, billing and word processing systems, the firm ‘would die within a day’”.

In professional services, and legal services in particular, the Internet was viewed primarily as an information resource rather than a distribution channel. Web sites allow law firms to provide information online and promote their services, and can grant clients the opportunity for immediate access to the firms’ resources. The widespread use of the Internet fundamentally changed the way in which clients interact and communicate with their legal services providers through emailing, instant messaging, wireless emailing. While in 1987 two-thirds of the profession did not use computers, less than 40 percent had word processors and just over four percent a fax. By the turn of the millennium, the internet had firmly established itself as the main form of communication between lawyers and their clients, and by 2004, every partner and large firm associate had a BlackBerry to ensure availability. Today, constant availability is the norm for most rather than the exception. “You’re never off-duty now, never off-call”. Technology therefore provides lawyers with new ways to (better) serve their clients and has driven marketing into firms.

Technology also potentially enhances client relationship management through sophisticated contact management systems that enable lawyers to

70 See STEVEN J. SKINNER, MARKETING 3 (1990).
72 Id.
73 Id.
leverage relationship held by other lawyers in the firm as well as to monitor the satisfaction of key accounts and leverage the firm’s knowledge about its client relationships. However, changing lawyer attitudes about sharing contact information is critical. Given that a law firm’s business is essentially concerned with the retrieval and dissemination of information, electronic technology offers an opportunity to improve service provision. Any form of technological advancement that enhances these key components is essential. A number of large firms have launched extranets for their clients with online ‘deal rooms’, where lawyers from both sides of a deal can exchange and manage documents and conduct secure, private conferences, in particular, in major merger and acquisition and corporate finance matters.

‘Virtual lawyers’ or legal advice systems of modern web sites contain the knowledge of lawyers without needing to be accessed exclusively by traditional human consultation. Larger firms have been found to typically be more advanced integrating new technologies and working methods than smaller firms. An example is UK Magic Circle firm Linklaters that utilizes the Internet by offering standardized legal services. The firm introduced a second brand, Blue Flag®, to avoid confusion with the main brand. The firm promotes scope (in-depth legal advice and information), quality (Linklaters’ expertise, constantly updated), consistency (all users across the clients’ organizations can draw on the same source of legal expertise), and efficiency (cost effective access across the clients’ organizations, for unlimited users; using technology to improve the clients’ business process). Such offers are likely to be attractive to companies as well and pose significant competition to other law firms and may therefore drive marketing.

Also e-commerce or ‘e-lawyering’ has the potential to fundamentally change the way in which lawyers operate and compete, and how they deliver their services. The information available online, e.g. articles, ‘do-it-yourself’ books, and ‘legal kits’ as well as the scope for interaction (e.g. virtual discussion forums and consumer communities) have impacted former informational asymmetries, and empowered clients by increasing their knowledge. Online legal advice such as Legal Zoom target the same clients as small private practice firms, and reduce or even eliminate the client’s need to pay for the same information or services from a law firm. Online technology is therefore likely to drive marketing activity by law firms as a way to ensure their survival, e.g. through emphasizing the added value of tailor-made solutions and individual care.

Technology that enables firms to ‘export’ their services has had divergent effects on law firms. While some firms send aspects of their legal work (e.g. due diligence) to lawyers overseas, large companies also increasingly outsource legal

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74 Id.
75 See Angus Laing et al., Predicting a Diverse Future: Directions and Issues in the Marketing of Services, 36 EUR. J. MKTG. 479, 484 (2002).
services to low-cost providers in India, the Philippines or similar locations. Mayson hence cautioned that lawyers should reflect on how much of their work is or could be conducted through a screen and a telephone, as technology has the potential to substitute people and places. What is worse, the increased use of technology can lead to a substitution of capital for labor, thus potentially increasing the output of each lawyer, which again might raise the level of competition. On the other hand, IT platforms might bring efficiencies to firms that could enable these new players to significantly out-perform the market as transactions now run at unimaginable speeds and complexity compared with 20 year ago.

V. FORCES IN THE MICROENVIRONMENT

The ‘outside-in’ approach of macro-environmental factors has been criticized for being based on historical observation and the experience of marketing practitioners instead of rigorous empirical research. Researchers disagree: some have found no direct relationship between macro-environmental factors and marketing practices, while others discovered evidence that market orientation of an organization did not necessarily only depend on macro-environmental factors, but (also) on organizational factors. Studies in the legal sector came to similar conclusions, identifying micro-environmental factors as barriers or drivers for marketing.

Barriers to the development of a marketing orientation are not isolated problems that can be ‘tackled’ individually. They are by nature complex and interrelated and need to be dealt with concurrently to increase support for marketing. It is difficult to distinguish cause and effect of barriers to and drivers of marketing. To ensure a more complete theoretical discussion, micro-environmental drivers and barriers in the legal sector will be examined on three levels following a framework of organizational variables and include drivers and barriers on the level of the legal profession, the firms as organizations, as well as individual lawyers.

On the organizational level, McKinsey’s 7S model serves as the framework, which identifies a range of factors that influence cultural and behavioral change within an organization. Since many law firms have started to embrace marketing in the last decades, it appears safe to say that most barriers eventually do not act as complete impediments to marketing, but rather delay the marketing orientation in a firm or hinder ‘effective’, strategic marketing once a firm has decided to embrace marketing.

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79 See Neil A. Morgan, Corporate Legal Advice and Client Quality Perceptions, 8 MKTG. INTELLIGENCE & PLANNING, no. 6, 1990 at 33, 33; Harris & Piercy, supra note 3, at 25; Vickerstaff, supra note 3, at 356.
81 See TOM PETERS & ROBERT H. WATERMAN, IN SEARCH OF EXCELLENCE 9 (1982).
A. FORCES SPECIFIC TO THE LEGAL PROFESSION

The professional culture of lawyers may create a barrier to the acceptance of marketing: lawyers are said to have always been eager to defend their position by developing and promoting attributes that they felt set them apart. Some lawyers see a conflict between lawyers as professionals and lawyers as business people. It was often argued that the legal sector was dissimilar from conventional businesses due to the fact of being one of the three ‘historic’ professions (the other two being medicine and the clergy), therefore it is one of the few occupations socially acceptable by the aristocracy. The Latin word ‘professio’ refers to the taking of vows upon entering a religious order. Lawyers traditionally do not see themselves as ‘vendors’ of legal services and have a strong dislike of competition, advertising, and the profit-focus of other sectors.

The notion of marketing professional services used to be seen as unacceptable. In fact, lawyers used to deny that marketing occurred. A number of practitioners have been critical of the legal profession for rejecting marketing due to a lack of understanding of what marketing is and what it entails. For example, advertising is a synonym for marketing in the legal profession and responsible for equating marketing the practice of law to the selling of cars and toothpaste.

A marketing challenge specific to the legal profession is the tendency to apply legal practice standards to marketing. An example is the treatment of complaints. In marketing theory, complaints are an opportunity to learn from mistakes in order to improve the service offering and to show clients how much a firm cares and therefore strengthen relationships. The legal profession, however, typically does not attempt to provide redress for complainants. There also appears to be a cultural difference leading to a clash between the careful ‘precedent-driven’ nature of the profession (‘Who’s done it before?’; ‘How do we know if it has worked?’) and the ‘we should be the first to do this’, ‘let’s try it out’ drive of marketers. The legal profession seems to be driven by the fear of “if you don’t do it you are likely to be left behind” instead of embracing marketing out of conviction. ‘Me-too’ is a frequent approach in the legal profession as marketing has typically meant ‘let’s see what everyone else is doing, and do that, too’. Not knowing how to market legal services, lawyers presumed that their competitors did, so they copied the competition. Other factors that might drive marketing in the legal profession include the transparency of lawyers’ salaries. With the advent of legal publications, lawyer salaries were published and lawyers migrated to the

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82 See KOTLER ET AL., supra note 18, at 2.
85 See Graff, Wachtell, supra note 1, at 1; see also O’Malley & Harris, supra note 4, at 874.
86 See Mark Diamond, Be Careful in Marketing, 72 ABA JOURNAL 45, 45 (1986).
87 Aaron Cohen, Against All Odds, LAW FIRM INC., Dec., 19, 19 (2007).
88 See Vickerstaff, supra note 3, at 359.
money, which increased competition among and within the firms. Firms understood that they needed an advantage, a way to connect to clients and attract more prospects, typical applications of marketing.

A decline in the public esteem of lawyers that has taken place in recent years is also likely to have impacted the competitive situation and the demand for legal services. Clients have become more aggressive in challenging lawyers through negligence claims. In such a comparatively hostile environment, marketing is more likely to commence as it can help create more understanding and goodwill.

B. FORCES SPECIFIC TO LAW FIRMS

Literature suggests marketing as the logical step or strategic option for organizations when former business practices are no longer possible to rely on to sustain prosperity or to emerge as a business philosophy out of the realization of the inadequacies of alternative approaches. Whether marketing is ‘driven’ or ‘hindered’ by an organization depends on top management’s emphasis on market orientation; calculated risk taking and willingness by top management to accept occasional failure of new products and services; inter-departmental dynamics, connectedness and conflicts; market-based rewards system and centralization; formalization and departmentalization within the organization.

Rather than being good at change, most law firms are resistant to it. A literature review identified a number of barriers to the diffusion of marketing within firms. Previous research, however, could not discern a single common denominator to explain marketing orientation in law firms. To analyze firms in their entirety, this paper applies McKinsey’s ‘7S’ framework to law firms. The model describes organizations in three ‘hard’ S’s: strategy (direction and scope of the firm over the long term); structure (basic organization of the firm, its departments, reporting lines, areas of expertise, and responsibility); systems (formal and informal procedures that govern everyday activity, in addition to four less tangible, ‘cultural’ ‘soft’ S’s: skills (capabilities and competencies that exist within the firm); shared values (values and beliefs of the company); staff (how people are developed, trained, and motivated); style (leadership and operating approach). The ‘7S’ framework can be used to explore the extent to which an organization is working coherently towards a distinctive place in the mind of clients. In other words, to what extent it encourages effective marketing.

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91 See Kotler & Kohli, supra note 78, at 56.
92 See Maister, supra note 24, at 157.
93 See Kotler & Connor, supra note 33, at 71; Philip Kotler et al., supra note 18, at 5; Christopher H. Lovelock, Services Marketing 2 (3d ed. 1996); Vickerstaff, supra note 3, at 356.
94 See Peters & Waterman, supra note 81, at 9.
1. STRATEGY

To be effective, marketing needs to be based on an organization’s business strategy. Law firms, however, traditionally are not known for their strong strategic orientation. They appear to have trouble embracing strategic marketing planning even after realizing that strategic change was necessary. While strategic planning is the logical approach to defining appropriate business actions, law firms are said to believe that it requires an onerous effort and substantial written documents, and therefore do not conduct effective marketing planning.

In addition, strategy execution is different. Top-down delegation works in the hierarchical structures of corporations, but in professional services firms such as law firms that are organized as partnerships, the subordinates of practice leaders are also the owners, whose approval is necessary before leaders can make strategic decisions. For strategy to be effective in such firms it must be understood by the professionals and they must be prepared to execute it. The necessary process however, takes time, and creates tension as lawyers have to ‘produce’ as well as manage. The result is that firms’ leaders often find it difficult to either push through strategic action or get professionals in their firm to focus on developing and executing strategy. However, with the increasing acceptability of new ownership possibilities in some jurisdictions such as the UK, Australia, or South Africa, “there has been greater acceptance of the need to manage law firms professionally, and to adopt accepted business techniques”, including effective management of marketing.

2. STRUCTURE

Structural aspects, such as high levels of interdepartmental connectedness, appear to have a positive effect on market orientation and the gathering of market intelligence has been identified as the basis for any marketing activity. Other research suggested that it is not the existence and availability of information, but the diffusion of such information. Successful marketing in law firms is often impeded by a lack of inter-departmental cooperation, a team approach and partners having trust in other partners, which raises important organizational issues outside the marketing function, or by a lack of internal communications and sharing of information. Law firms are said to have ‘antiquated’ structures

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99 MAYSON, LAW FIRM STRATEGY, supra note 21, at 8.
100 See Narver & Slater, supra note 14, at 21; Magnus Soderlund, Business Intelligence in the Post-Modern Era, 8 MKTG. INTELLIGENCE & PLANNING, no. 1, 1990, at 7, 7-10.
that impede marketing, including fee structures and the partnership form itself.\textsuperscript{102} Marketing depends on the firm’s general structural framework, in the sense of whether it is a professional partnership or a managed professional business. Managed professional businesses are likely to drive marketing to increase profitability while partnerships frequently resist marketing.\textsuperscript{103}

Law firms are traditionally not governed like ‘normal businesses’ in terms of management power and authority. This is due to the ownership structure of a firm. At the most basic level, the need of publicly traded firms to report results to the financial markets means that leaders must be more disciplined about forecasting and reporting revenues than those operating in private partnership. These public companies tend to use more systematic marketing than professional partnerships. Once a course of action has been identified, the CEO can make it happen.\textsuperscript{104} Decision making in law firms, however, is compared to the consensus decision-making in ancient Grecian (Athenian) democracies. Law firms tend to be federal structures where partners are their own masters.\textsuperscript{105} A corporate, hierarchical approach is uncommon and individual partners can be barriers to or drivers of marketing. “Law firms are loosely-tied groups of over-achievers. All want to speak and be heard. Sarcastic, critical commentary about anything and everything is second nature and entertainment”.\textsuperscript{106}

In many law firms marketers have a great deal of responsibility with limited authority, which makes it hard for them to succeed. Due to decisions and revisions being made in large committees, in which every lawyer has complete veto power over every plan, proposal and period, “[t]he lowest common denominator prevailed, as the most conservative lawyers volunteered to marketing committee duties, to make sure the image and integrity of the firm wasn’t sullied and nothing was tried that might actually work”.\textsuperscript{107} The situation would be vastly improved if the law firms were run more like ordinary corporations, with a vertical, top-down management structure, instead of a horizontal, multi-headed one. Marketers have too many very demanding ‘masters’ in a law firm. “You have to be able to juggle the egos and personalities and produce ideas that are pretty darn near perfect”.\textsuperscript{108} All wanting to make their voice heard and making changes to marketing material independent of everyone else’s changes, is an ‘exasperatingly inefficient’ way to get out the news and therefore hinder effective marketing.

However, while this might be true in some firms, it has to be taken into consideration that some firms might be managed less top-down than others.

\textsuperscript{102} Marcus, supra note 96.
\textsuperscript{103} See Christoph H. Vaagt, Presentation at the Professional Management Network Marketing Meeting: Marketing der Marketing-Abteilung in Anwaltskanzleien, Hypothesen zum “Sonnenschein-Phänomen” [Marketing the marketing department in law firms hypotheses of the “Sunshine-phenomenon”], Sept. 27, 2007. [copy available]
\textsuperscript{104} See YOUNG, supra note 65, at 12.
\textsuperscript{106} Joline Overbeck, Clear, Compelling and Consistent, MANAGING PARTNER MAGAZINE, Feb. 2006 at 16, 16.
\textsuperscript{107} Ross Fishman, A Personal View of Legal Marketing’s Long Strange Journey ’First, Let’s Sell All the Lawyers’, in LEGAL MKTG. ASS’N, 20TH ANNIVERSARY COMMEMORATIVE GUIDE 5 (2005).
\textsuperscript{108} Cohen, supra note 88, at 25.
Marketing orientation and firm size have been found to be positively correlated: there is a connection between the larger size of law firms and the presence of a marketing department.\textsuperscript{109} This may be due to ‘professionalization’ or ‘institutionalization’ of law firms that increase in size. Large firms generally not only generate more total fee income, but also significantly more fee income per fee-earner, which impacts available resources that can be used for marketing.\textsuperscript{110} Similarly, marketing is likely to become more sophisticated due to increased corporate decision-making and centralization of management within firms, which has been a recent trend.\textsuperscript{111} However, previous research did not identify a significant relationship between the level of marketing orientation and firm size and the age of firm, and suggested that other variables may be influencing the level of marketing orientation.\textsuperscript{112}

3. Systems

Legal services are delivered to clients through systems, i.e. formal and informal procedures that govern everyday activity. A system has been defined as an organized method of completing a recurring set of tasks that helps to solve problems by providing a method for resolving the problem the same way every time.\textsuperscript{113} Systems give life to institutional memory and can be communicated to others, replicated for others to use, taught, reviewed, analyzed, and modified. A good system builds quality into the process, eliminates redundancy by leveraging knowledge and reducing error costs, as well as identifies critical dates and times. Systems are therefore able to contribute to the (marketing) aspect of service delivery.

Systems have three components: forms, instructions, and information.\textsuperscript{114} The process of creating a system begins with the recognition that the firm is handling repetitive tasks. Once a system is in place, it needs to be adopted and implemented. If a firm does not have a system for marketing, it might examine what other firms do, refer to books and articles on the subject, or simply brainstorm about what they need to. However, people are often fearful of and resistant to change, so modifications to ‘the way we have always done things’, such as not having marketed the firm’s services in a strategic manner, is likely to be met with some resistance and are therefore a barrier to the development of marketing. In order to gain commitment to change, it has been recommended attempting to give professionals and staff an opportunity to provide input during the planning stage as buy-in at every level of the organization is critical. “Firm leadership should introduce the new system in a positive way. Schedule meetings to explain how the system, or at least the changes, will work. Explain the rationale

\textsuperscript{110}See Mayson, Making Sense, supra note 6, at 12.
\textsuperscript{111}See Prof’l. Serv. Mkgt. Grp. [PSMG], PERCEIVING AND DEMONSTRATING VALUE 5 (2005).
\textsuperscript{112}See Vickerstaff, supra note 3, at 359.
\textsuperscript{113}See Gary A. Munneke, LAW PRACTICE MANAGEMENT: MATERIALS AND CASES 286 (3d ed. 2007).
\textsuperscript{114}See Roberta C. Ramo, HOW TO CREATE A SYSTEM FOR THE LAW OFFICE 2 (1975).
for system changes; describe how the system will make people’s lives better, not more difficult”.

4. SKILLS

Marketing has been called the management function that causes professionals more problems than any other. Misconceptions about what marketing involves—as it is typically equated with advertising and selling—have resulted in the formation of significant barriers to the development of marketing. A lack of marketing skills, capabilities and competencies, in particular at the structural level, are likely to impede marketing in law firms. Future business is often taken for granted and firms count on their “rainmakers—the partner who could go into a telephone booth alone and come out arm in arm with a new client—but in today’s competitive marketplace, one or two rainmakers are not enough. The firms themselves must be turned into marketing machines—to have a culture that understands and supports a marketing effort. ... For people in professional firms, the relationship between what they do and the outreach to the marketplace is rarely understood, and is tenuous at best”.

Without the understanding and active participation of the lawyers, marketing will not be able to progress to a shared organizational culture. However, the majority of firms have problems in understanding and handling their marketing activities, which other research confirmed for the law firm sector. While businesses typically understand that the purpose of a company is to create a customer and that they are involved in marketing even though it may not be their specific job, there is no comparable attitude in traditional law firms. Without a better understanding of marketing and a more supportive culture, it is unlikely that there would be any increase in the resources directed to marketing activities. Law firms appear to not (yet) apply crucial business reasoning: What is our business?, Who is the customer?, What does the customer value? Rather, they apply their own version of the early manufacturing mindset, defining their products as ‘hours of advice’, ‘relationships’, or ‘studies’, however, this is not what (corporate) clients value.

The effective implementation of the marketing concept throughout the organization comprises an understanding of and concern for delivering customer satisfaction, which is shared by all employees and informed by market and competitor awareness, with a view to generating long term profitability. Even after law firms have started ‘marketing’, the level and quality of the marketing professionals brought in to advise law firms influences the implementation of

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115 Munneke, supra note 113, at 289.
116 See Morgan, supra note 25, at 5.
118 See Nigel F. Piercy & Neil A. Morgan, Marketing Organisation in the UK Financial Services Industry, 7 INT’L J. BANK MKTG., no. 4, 1989 at 3, 5; see also Vickerstaff, supra note 3, at 359.
119 See Drucker, supra note 8, at 24.
effective marketing. Law firms “must be the only large-scale business sector in the world run by untrained managers.”\textsuperscript{120} In the past, many firms promoted secretaries, who had no training in marketing disciplines, or recruited marketers from industries so different that consultant and marketer and lawyer simply could not understand one another. Such bad experiences have hindered marketing, as law firms experienced marketers who understood neither the business of law, nor the unusual management and partnership structure of law firms.

5. \textbf{SHARED VALUES}

The distinctive culture of law firms, defined in terms of shared values and ways of working appear to be a barrier to marketing. Previous research identified six key barriers which operate both at the organizational and the individual lawyer level: (i) ‘Culture’: comprising financial orientation, attitudes and lack of financial incentives, general insecurities and lack of team culture; (ii) ‘Time’: fee earners saying they are ‘too busy’ doing legal work to be involved in marketing initiatives; (iii) ‘Resources’: the view of marketing as an expense not an investment, spending money; (iv) Internal communication: spreading of client information across departments and offices, as well as interdepartmental communications; (v) Awareness and understanding: general understanding of concepts, historical misconception of what marketing is; and (vi) Expertise and skills: lack of individual skills, lawyers having no experience or aptitude for marketing.\textsuperscript{121}

Market orientation appears to be dependent on managerial choice and resource allocation–influencing individual lawyer’s behavior by setting expectations and providing support with compensation and evaluation tools.\textsuperscript{122} Remuneration systems of partnerships have often been cited as a barrier to the development of marketing as the desired marketing behavior will only be accomplished with the right reward systems.\textsuperscript{123} Reward mechanisms reflect a firm’s priorities and in turn influence behaviors to affect change. A strict focus on a certain amount of billable hours hinders marketing as fee earners see billing hours and developing business as to opposing activities. The lack of procedures to track involvement in marketing or business development projects imply a lack of tracking marketing expenditure and effectiveness, which are likely to impede the implementation of more sophisticated marketing.\textsuperscript{124}

There is a difference between what \textit{ought} to happen in a firm (culture) and what actually \textit{does} happen (climate). “[A]cceptable (or at least tolerated) attitudes and behavior are the result of many influences, and how people actually behave

\textsuperscript{120} John Malpas, \textit{No Ads Please, We’re Lawyers}, \textit{LEGAL WEEK}, June, 12 2003, at 2.
\textsuperscript{121} See Vickerstaff, supra note 3, at 358.
\textsuperscript{123} See Ben Maiden, \textit{Marketing Moves on From First Principles}, \textit{WORLDLAW BUSINESS}, March 1999, at 29-31; MAISTER, \textit{supra} note 21, at 268.
\textsuperscript{124} See PSMG, \textit{supra} note 111, at 11.
will not necessarily be consistent with how they are expected to behave”. Therefore, the climate, he argued, will always be more influential than culture. It can be concluded that rather than culture, climate will determine whether there will be obstacles or drivers for the development of marketing in a firm. This may also be influenced by the purpose, for which lawyers are in business together, which was described as the 3Cs: for convenience, to complement each other, and to combine together. There is no role for business strategy or management in a convenience firm, which would hence be a barrier for the development of marketing. In a complementing firm, management provides infrastructure support. However, normative and corporate strategies are more often accidental, which is unlikely to drive a (planned and intentional) marketing orientation. In combination firms, investments are made in and benefits are realized from people and practice areas, new offices, training, etc. The role of management is to provide leadership and direction as well as ensuring effective use of infrastructure. The paper did not explicitly mention that a combination firm drives the development of marketing, however, the combined purpose is likely to provide the necessary preconditions for the development of marketing in a firm.

6. STAFF

The development, training, and motivation of lawyers and staff to market are closely related to the culture of a firm and depend on the resources made available by management. Often seen as a cost rather than an investment with limited financial support available, a lack of resources is a significant barrier to marketing.

7. STYLE

Instead of appointing the person most capable of managing a practice group (or the whole firm), firms tend to see such appointments as a ‘reward’ for the most eminent, most senior partner, who might not necessarily be the most able to manage. However, management and leadership should be seen as a role or a responsibility, not a title, a promotion, or a reward. The leader of a firm or practice must be a good professional, but not necessarily the best ‘player’ in order to coach well. Most firms might have put in place the right management structures, but are criticized to have failed to provide the necessary leadership to empower, encourage and enable people to adopt marketing’s client-focused view. At the same time, being in charge of marketing (as a partner) is almost seen as punishment. Marketing partners appear to sometimes be chosen “simply because he was the only one to miss the meeting that was discussing the issue”, and was therefore unable to ‘wriggle out’ of it.

125 MAYSON, LAW FIRM STRATEGY, supra note 21, at 61.
127 See Marcus, supra note 95.
C. FORCES SPECIFIC TO INDIVIDUAL FEE EARNERS

Some of the influences on marketing appear to be motivational, others are linked to the individual fee earner’s role and/or motivation similar to the framework of organizational variables.\textsuperscript{129} Values and beliefs embedded in the lawyers hinder the implementation of market orientation.\textsuperscript{130} Many lawyers resist change and try to find excuses why they cannot or should not do marketing. “Lawyers by their very nature are predisposed to being skeptics and most, if not all, try to be logical and conform to a traditional modus operandi. It is then easy to understand the anxiety and apprehension that many lawyers face when confronted with a new, untraditional, ‘business’ concept that risks taking them beyond their comfort zones”.\textsuperscript{131}

Lawyers typically view marketing as unprofessional, unethical, an ‘offence’ and incompatible with the (dignity) of the profession, as well as not able to add value to the profession.\textsuperscript{132} Lawyers have described marketing as “a zero-sum game, adding no value to humans or society” and working “against the public interest”.\textsuperscript{133} It was deemed appropriate for consumer goods, but not for lawyers: “We don’t need to attract people–they need us”.\textsuperscript{134} Some lawyers were convinced that marketing a firm would downgrade it and not enhance a good reputation. A ‘disdain’ for commercialism and the equating of marketing was identified with selling as barriers to the adoption of market orientation among professionals.\textsuperscript{135} Some lawyers were uncomfortable with marketing’s ‘intrusive’ and at times commercializing aspects.\textsuperscript{136} “I didn’t go to law school to become a salesperson” appeared to be a typical statement among lawyers.\textsuperscript{137} “[F]or some lawyers, selling their services simply isn’t a part of their self-image as a learned professional”.\textsuperscript{138}

Unclear perception and historic (mis)understanding of the marketing concept are a barrier preventing lawyers from marketing. Among lawyers, the term ‘marketing’ was often equated with advertising, hard selling and price wars or ‘going out to lunch’.\textsuperscript{139} The frequent misperception that marketing equals advertising or cold-calling sales leads lawyers to reject it as something too

\textsuperscript{129} See HANDY, supra note 80, at 60.
\textsuperscript{130} See Harris & Piercy, supra note 3, at 26; Nexhmi Rexha, Tamara Kirk-Burnand & B. Ramaseshan, The Impact of Technically Focused Values or Market Orientation of Professional Service Firms, 21 J. PROF’L SERV. MKTO., no. 1, 2000 at 45, 46.
\textsuperscript{132} See Thomas et al., supra note 20, at 104; Harris & Piercy, supra note 3, at 27.
\textsuperscript{133} Vickerstaff, supra note 3, at 359.
\textsuperscript{134} Harris & Piercy, supra note 3, at 28.
\textsuperscript{135} See Kotler & Connor, supra note 33, at 71.
\textsuperscript{137} See Wesemann, supra note 137, at 69.
\textsuperscript{138} Margaret Daisley, Sales - Firms Move Beyond Marketing and Build Their Own Sales Forces, Supplement to Law Firm Inc., Vol. 3, No. 3, May/June, p. 2 (2005).
\textsuperscript{139} See Harris & Piercy, supra note 3, at 28; see also KOTLER ET AL., supra note 18, at 5; Vickerstaff, supra note 3, at 359.
commercial and hence unacceptable. Traditionally, lawyers believe that their knowledge and expertise speaks for itself and it would be a sign of defeat to start marketing. Few lawyers have yet to grasp the concept that the purpose of a company is to create a customer and that general business acumen applies to law firms as well. A client should be able to feel free to call the lawyer with ‘all sorts of queries’ and have them answered quickly and sympathetically, adding that “[t]his may well become a nuisance but it is the price one has to pay for doing this kind of work”. 140 This is a strange remark considering that clients are the business, and that without them, there is no business. Viewing them and serving them as a nuisance seems to miss the point of the rationale for why lawyers are doing the work.

Due to the lack of a marketing tradition in the professions and marketing not being a part of their traditional university curriculum, lawyers mature in their professions without marketing training and therefore are often ill prepared to handle both the business and the professional part of their profession simultaneously. Consequently, they must be taught to be marketers. Before marketing programs can be successful, there must be a behavior modification of sorts, and a marketing culture must be engendered. Charles O’Donnell, COO of Duane Morris confirmed:

“One of the biggest issues in a law firm is that most of the professionals are not formally trained business people. Most partners were not business majors in college and don’t have advanced degrees other than law degrees. And one day they become partners because they do a good job of practicing law and being bright, but they really don’t know what’s involved running the business of law”.

While lawyers are consummate professionals in their chosen field, business skills are not always directly linked to those abilities. Due to their ‘marketing disorientation’, lawyers also consistently underrate the importance of clients’ selection cues and criteria. 142 Although lawyers often stress the personal nature of the lawyer-client relationship, lawyers are said to not understand how consumers select law firms. The lack of congruence between lawyers and consumers in evaluating the importance of the cues and criteria indicates that they cannot be marketing efficiently as they do not place the same importance on the criteria that consumers utilize.

It appears that profound cultural differences between lawyers and marketers form a barrier to marketing. Lawyers take pride in their formal education, professional qualifications and certifications, and see being a lawyer as a virtue unto itself. In marketing, however, “a B.A. is often sufficient, and the ease of entry, particularly when you’re likely to be hired by someone to whom

140 BIRD, supra note 49, at 120
142 See Bob Cutler, Rajshekar Javalgi & Kurt Schimmel, Selection of a Legal Services Firm: The Differing Perceptions of Attorneys and Consumers, 25 SERV. MKTG. Q., no. 1, 2003 at 1, 2.
marketing is opaque, is astonishing." Consequently, lawyers tend to think of marketing as a ‘lightweight’ activity anybody can do and lawyers resist being consulted by non-lawyer marketers that they do not perceive as peers. It is little surprising that a common complaint among marketers in law firms is that they are not given sufficient authority and respect. In fact, firms frequently employ professional marketers, and then elect not to take their advice. Partners believe they know best when it comes to marketing and pulling rank on their marketing advisers, instructing them to do what they feel is best, even when the marketer recommend otherwise. This is akin to consulting your doctor and then telling them both what the diagnosis of your illness is and what the treatment should be.

Perhaps the difference in the thinking and reasoning between successful marketing and successful ‘lawyering’ may be too different. While most lawyers like to think of themselves as “open-minded and objective people, more often than not it is precisely the type of thinking that makes lawyers highly effective at practicing law that can make them ineffective at marketing.” The discrepancy between the qualities necessary for marketing and for the provision of legal services appears to be one of the biggest challenges. Effective marketing is about identifying assets, not liabilities. However, lawyers are trained to find what is wrong with something, not what is right. In addition, while client satisfaction is of utmost importance in marketing, instead of making a sincere effort to satisfy the clients, lawyers are said to have trouble apologizing for mistakes they might have made, get defensive, patronizing, and often deny that they are in the wrong.

In addition, there appear to be discrepancies between the nature of professional services and the professionals. When a company sells a product to a customer, the product remains with the customer, the company however is no longer directly in touch with the customer. When a lawyer sells her services, lawyer and client inevitably stay in contact. Products are manufactured and distributed by people who normally stay anonymous. The product thus is the interface between the customer and its producers. The interface between the law firm and the client is the lawyer herself who performs the service. Marketing for companies involves a marketing department. While marketers in law firms can build and run programs, no legal marketing program can be run without the active participation of the lawyers involved.

Another characteristic is lawyers’ fear of having to move outside their ‘comfort zones’. Lawyers typically preferred practicing their trade to undertaking marketing. Many lawyers hoped that ‘glossy’ brochures and seminars would do the marketing for them. Some lawyers appeared to perceive a personality mismatch for marketing, claiming to be too introverted to market in a face-to-face

144 See Maiden, supra note 123, at 29.
146 Bedlow, supra note 89, at http://www.lawgazette.co.uk/features/from-zero-hero.
147 See Ferguson, supra note 137, at 20.
This often results in lawyers spending their time on more remote marketing activities that they are most comfortable with, such as speaking at conferences, issuing press releases, and participating in/hosting in-house events. But to bring in new business, firms must focus on getting lawyers to leave the office, meet with prospects, and advance their relationships. In addition, due to their lack of (formal) marketing knowledge, lawyers focus on the practical experience which may not always be sufficient. Instead, marketers who (ideally) also refer to marketing theory should lead to more sophisticated marketing.

Lack of time acts as a barrier to marketing among lawyers. As marketing is typically not embedded in the fee earner’s daily work, marketing is perceived as an option, that due to a lack of time cannot be committed to on a regular basis. Many marketing activities necessitate lawyers’ involvement, but are frequently viewed as a time consuming exercise, an additional task that is not part of the scope of ‘normal’ work of a lawyer. The need to bill time and market their practice creates time-management problems. However, this may be a ‘widespread avoidance reaction’ and used as an excuse rather than a real reason. Asking lawyers what they would do if the biggest client gave them another project, typically, they would make time for the project. Lawyers often state, “if I get paid for doing other things, I’m not going to give much attention to these new [marketing] topics”.

On a similar note, lawyers were found to lack a long-term perspective and patience for marketing to produce results: “[M]arketing is about positioning. You’ll get work, but it may be three years down the road. Lawyers don’t understand that”. This impatience also shows with regard to the tenure of the heads of marketing in law firms. Since crucial relationships take time to develop, short tenure keeps marketing officers from obtaining a critical mass of trust and buy-in from partners.

While individual fee earners’ characteristics more often than not appear to act as barriers to marketing, this seems to be changing. “The arrogant partner waiting for deferential client to dutifully hand over work is a thing of the past, according to research that shows that more than nine out of 10 lawyers back the need for formal business development”. Previous research found that the adoption of marketing was cited as a particular problem for older professionals, most likely reflecting historical attitudes towards marketing within the profession, and possibly suggesting age as a barrier. Similarly, other research identified age as a barrier to marketing development. Once a lawyer has reached ‘senior partner’, ‘mentor’ or ‘ambassador’ in his or her professional life cycle, there is likely to be more of self-interest to maintain the status quo. Fresh approaches to
marketing get stopped by: ‘We have never done that before/it will not work with our clients/it is different in law/I know what my clients like’. Younger lawyers see growth and attracting new clients as the key to the future and a benefit to ‘jump start’ their careers with the help of marketing. They consider marketing as a critical component of the firm and are driven to marketing by the very real fear that clients will disappear with retiring seniors. Young lawyers are aware that clients always have a choice of lawyer “they don’t have to come back to you–and don’t have to recommend you. It is part of your job, however, to ensure that they do”. Previous research empirically confirmed the threat of job losses to be a possible driver for marketing.156

Some argue that lawyers’ vanity might propel marketing in law firms. Once law firms started to hire publicists to get their names in the paper, they wanted to be in “any paper, on any subject. It wasn’t strategic, but PR firms discovered that lawyers loved seeing their names in print”.157 The success of law firm directories and rankings and the legal press may as well be an indicator for this phenomenon.

VI. Conclusions

Lawyers used to practice the law without having to worry about a steady flow of business. Typically, a lawyer or two of the firm who were known in the marketplace brought in enough business for the entire firm. Dramatic changes in the macro-environment have significantly influenced the legal services sector, both on the demand as well as the supply side. Few legal services providers have the luxury to ignore the changes.

While many marketing instruments were never forbidden, an increasing number of lawyers realize that what the changes mean is that they can compete with one another and pursue each other’s clients. Clients today have many choices, and they are aware of it. Lawyers’ advice is critically questioned, fees are under close scrutiny. The lawyer who thinks that marketing is a waste of time for her practice has not understood what marketing means, nor has she grasped the power of effective communication to promote the services to existing and potential clients. Assumptions that clients will return for more and that new clients will walk through the door are both naïve and dangerous. There is a clear need for lawyers to actively market the services which they offer. While personal contacts still have an important role to play, there is no question that proactive marketing offers more opportunities than the limited ‘old school tie’ network that has hindered innovative marketing ideas, and in some cases has meant that many firms are without a dedicated marketing person at all.

155 Hill, supra note 12, at 12.
156 See Vickerstaff, supra note 3, at 359.
157 Fishman, supra note 108, at 5.
There are many signs that law firms are increasingly accepting marketing as a fundamental cultural change worthy of serious investment and capable of impacting positively on the bottom line. While most legal services firms in the U.S. today have embraced some sort of marketing, drivers of legal marketing appear to typically stem from outside forces, rather than being a proactive choice, made out of true understanding of and conviction about the potentials of marketing. With marketing becoming accepted in the profession, lawyers, however, are starting to realize they would be better off if they started to market their practice. A basic notion of marketing is that perceptions drive choices, and perceptions can be influenced, which would be unwise to ignore. A failure to be able to articulate clearly why one’s services are better in terms of client needs than the competitors hinders the application of marketing and means that one will end up competing primarily on price.

There appears to be a paradox that merits investigation and needs to be better understood, namely that professionals appeared to be better ‘marketers’ when not intending to market, but poorer ‘marketers’ when consciously deciding to use ‘marketing’ as a way to operate in increasing competitive markets. However, in order to market effectively, firms need to aspire to have a marketing culture embedded in the values of their firm culture, independent of whether the firm is a professional partnership or a managed professional business. This requires top management support; good marketing professionals; education; and a marketing structure within the firm. In addition, it also requires a measure of behavior modification in the sense of an understanding that for marketing to succeed in a professional firm, every professional must participate and every professional must understand the competitive advantages of participating. Effective measurement processes need to be in place to help drive behavioral change. ‘What gets measured get done’ and ‘what gets measured and rewarded gets done even more’, particularly when the measures are directly related to the firm’s strategy. A serious challenge appears to link specific outcomes to specific marketing activity and therefore be able to demonstrate marketing return on investment.

158 Silvia Hodges & Laurie Young, Unconsciously Competent: Academia’s Neglect of Marketing Success in the Professions, 8 J. RELATIONSHIP MKTG. 36, 46 (2009).