

Legal Services and Marketing Limitations: A Focus on SME in Malaysia

Apnizan Abdullah*, Yusniza Kamarulzaman**, Abdul Ghani
Farinda***

There are some jurisdictions in Malaysia that have extensive prohibitions against legal firms' marketing activities, particularly in advertising legal services. Eventually, the jurisdictions pose some limitations to the SMEs in their attempts to expand their businesses, particularly in the practice of legal firms in Malaysia. This study explores the limitations faced by SME legal practitioners especially in the area of marketing of their services. The study also visits the areas in services marketing that are able to accommodate the regulations in the present state. Finally, the study contributes to some suggestions on possible approaches for legal practitioners in exploiting marketing tools and techniques for their business success.

Field of research: Small and medium-sized enterprises and
Marketing

1.0 Introduction

In Malaysia, amongst professional service firms, the legal service has become the largest contributors in term of the number of establishment which represented 98.3 percent of the total Small and Medium Enterprises (SMEs) in professional services (DOS, 2000).

*Apnizan Abdullah is a Lecturer in Law, University of Malaya, 50603 Kuala Lumpur, Malaysia. , email: apnizan@um.edu.my

**Yusniza Kamarulzaman is a Senior Lecturer in Marketing and Information Systems, University of Malaya, 50603 Kuala Lumpur, Malaysia., email: yusniza@um.edu.my

***Abdul Ghani Farinda is a Lecturer in Tourism, University of Malaya, 50603 Kuala Lumpur, Malaysia. email: farinda@um.edu.my

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Malaysian Bar Council is the governing body of legal practice in Malaysia that is empowered to pass any rulings related to the legal practice in Malaysia as envisaged in *Section 42 of Legal Profession Act 1976 (LPA 1976)*. Other regulations to be adhered to by all legal firms are *Legal Professional (Practice and Etiquette) Rules 1978* (Practice and Etiquette Rules 1978), *Legal Profession (Publicity) Rules 2001* (Publicity Rules 2001). These laws and regulations dictate the conduct and manners of the legal practice including the rules limiting certain marketing activities.

Prior research found that marketing is a success factor of SMEs (Indarti and Langenberg, 2004; Bank Negara, 2006). Promotion activities especially advertising has been the area most emphasised by the most SMEs including legal practitioners. However, firms that advertise their legal services must comply with some laws and regulations. At times the regulations became barriers to legal firms particularly the SMEs (Wang, 2003; Indarti and Langenberg, 2004). Due to the limitation of promoting of their services to the public, legal practitioners have no choice but to be creative in making use of the option available to market their business. For instance, through public relations, legal firms can provide free legal education and advisory in newspaper columns which aim to build up a client based relationship (Darden et al., 1981) and public awareness. Therefore, this paper aims to understand the limitations in current legal practice and challenges of marketing practices faced by the legal service firms. This paper also aims to explore several marketing approaches that legal practitioners could utilise within the constraints.

2.0 Research Background and Problems

In the past, professional service firms, such as engineers, accountants and lawyers were reluctant marketers. They succeed in marketing their professional services in a unique way where they relied on the networks of personal relationships and word-of-mouth which brought them clients to maintain a profitable business. Today, the marketing challenges they face are different from what they faced before (Goffee and Scase, 1995). Thus, in maintaining and expanding their client base, legal firms should not ignore the marketing tools and strategies to generate high quality of service and profit.

Marketing exercise has been misunderstood by many legal firms as merely advertising task. Advertising in fact, is only a small element of Marketing. The current market competition in legal service demands its practitioners to have knowledge in marketing (Winroth, 2000). Though, unlike other businesses, legal services are depicted as a non advertised business such as clinics, accountant firms etc. The Bar Associations in many countries including Malaysia explicitly prohibit certain advertising activities of legal services from its members. For example, even though the *Publicity Rules 2001* allows the legal practitioners to advertise, but its contents are still restricted to the approved disclosed information, such as the legal

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firm's name, contact address, telephone and fax numbers. Other creative methods of marketing such as the billboards, personal selling, radio advertisements and others are strictly prohibited.

Moreover, the firms should be allowed to make known their services not only through reputation but also through other medium such as advertising campaign. Clients can be reached via advertisement, contrary to the practice that a lawyer should not seek clientele. The public need to know about legal services that can be fulfilled through advertisement, particularly for those who have not made extensive use of legal services or have no experience and knowledge about their services.

Thus, this paper aims to understand the dilemma by focusing on the marketing limitations faced by legal firms. Following the services marketing literatures, this paper investigates a deeper understanding how marketing strategies could be applicable to the practice of legal firms within the limitation imposed by the rules and regulations. Some of the literatures make direct sense in this context, while other parts need to be adapted into the context of acceptable legal practice.

3.0 Literature Review

This part highlights the diversified theoretical review, examining a general picture of the above mentioned issues and focusing on SMEs legal service firms in particular. Although there have been a lot of coverage on SMEs, especially on manufacturing sector, entrepreneurial characteristics and business success, studies that focused on legal services are very limited. This paper eventually, contributes to the literature particularly in the context of the legal sector's marketing practices in Malaysia.

1.1 Legal Services and Limitations

The fact that the laws and regulations have a big impact on the performance of the firms cannot be denied (Demirbas, 2005). However, many studies found that these laws and regulations hinder the growth of businesses particularly the SMEs (Poisson et al., 2002; Wang, 2003; Indarti and Langenberg, 2004). Beck et al. (2005) confirmed that legal constraints affect the firms' growth but the extent of the effects depends on the firms' size. The smallest firms are most adversely affected by the constraints. Besnik (2007) stated that the regulation and policies must be addressed differently having regards the size of the firms, i.e. it must be simpler to the smaller firms. In fact, Mead (1991) found that there is an increase in consumers' confidence in lawyers with the increased in lawyers' advertising activities.

In Malaysia, the legal constraints in marketing may be pointed out by virtue of certain provisions. *Section 94 (3) (h) of LPA 1976* and *Rule 52 of the Practice and Etiquette Rules 1978* prohibit the act of procuring business through a tout, while *Rule 48 of the Publicity Rules 2001* prohibits the lawyers from publishing photograph. *Rule 4 of the Publicity Rules 2001* provides vividly that the legal

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practitioners cannot publicise their practice or practice's firms except in accordance with the *Publicity Rules 2001*. Any act which is not in line with the rules will be liable to misconduct that warrants disciplinary proceeding as envisaged in *Section 94 of the LPA 1976*. Despite these limitations, legal service shows a great increase in its establishment (DOS, 2005).

1.2 Legal Services and Advertising

The heart of the concern over legal services' advertisement lies on the fundamental paradox of the origin of legal profession itself. Legal service is being portrayed as a noble profession as opposed to a business. Businesses endeavours are fuelled by the quest for financial gain, while the legal profession is supposed to be fuelled by a desire to serve the public. Therefore, a strict distinction must be drawn between the two by not allowing business oriented practices such as advertisement. However, advertisement is still needed to ensure the continued existence of the legal profession (Christopher, 2004).

In Malaysia, advertising activities among the legal practitioners must conform to the laws governing the profession. The instances of legal provisions limiting certain marketing activities in the legal profession are as in Table 1.

Table 1 shows some examples of certain restrictions in publicity in Malaysia being enforced on the legal practitioners. Even though the limitations seem to restrict certain aspects of marketing activities in legal service, the establishment of legal SME firms has still outnumbered other professional services in Malaysia (Saleh and Ndubisi, 2006). While certain activities in marketing are disapproved such as personal selling, certain activities in marketing are still allowed, for example, public relations. Darden et al. (1981) suggested that the legal advice column may be a good device to the legal practitioners in marketing themselves by giving certain educational advice, for instance what the public can do and cannot do. A study conducted by Lidsky and Peterson (2007) in Florida suggested that the laws restricting the legal practitioners in advertising of their legal practice and service limit the ability of the market of legal service to operate effectively, hence it is a bad policy and should be repealed. However, in Malaysia, Hashim (1981) argued that the laws regulating of legal practice is still acceptable but need to be improved gradually according to the current needs of its practitioners and the society.

1.3 Legal Services and Client Solicitations

Another ethical concern among legal practitioners is the in-person solicitation of a prospective client that may lead the lawyer overbearing the prospective client's will. The two main reasons for this concern are as follows: first, a lawyer is specially trained in the art of advocacy, while the potential client is almost certainly not.

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Table 1: Some Legal Restrictions in Marketing in Malaysia

No	Law/Provisions	Remarks
1	<i>Practice and Etiquette Rules 1978</i>	
1.1	<i>Rule 48</i>	Lawyers are not allowed to publish his or her own photograph as a member of Bar Council in the press or any periodicals unless consented by the Attorney General
2	<i>Publicity Rules 2001</i>	See Appendix 1 for further details
2.1	<i>Rule 4</i>	The act of publicizing of the practice or practice's firm must be in accordance with Rules 2001
2.2	<i>Rule 8</i>	The advertisement of the legal practitioners or their practice firms via legal or non-legal directories which is approved by the Bar Council must contain only approved information that includes the name of the firm, address, telecommunication number, business hours, year of establishment, merger or association, historical data of the firm, designation of advocate and solicitor, designation or Commissioner for Oath or Notaries Public or Agent for Trademark and Patent or consultant, area of practice, language proficiency, name of the legal practitioners, year of admission, academic and professional qualification, award, merit or title conferred to the legal practitioners and any other information which has prior approval from the Bar Council.
2.3	<i>Rule 9</i>	The nameplate of placed outside the practice firm must not be larger than 92 centimetres by 61 centimetres.
2.4	<i>Rule 11</i>	The distribution of business card must be done discreetly and only on occasions at which it is proper for the legal practitioners to establish his professional identity and the business card also must contain only the approved information as defined in <i>Rule 2</i> .
2.5	<i>Rule 12.</i>	Brochure, leaflet or pamphlet mentioning the practice firms and its legal practitioners, which contain the approved information can only be distributed the firms' employees, its clients, unsolicited potential client and can only be distributed in its premises
2.6	<i>Rule 15</i>	The legal practitioners can only mention the approved information while having interviews with press, radio and television.
2.7	<i>Rule 17</i>	The legal practitioners may give greeting card on any occasion to his client or any person that he has professional dealings, but it must only contain the approved information and it cannot be published in any form in any newspaper, journal or other publication
2.8	<i>Rule 20</i>	If the legal practitioner has written or contributed in writing, no information regarding his practice or his practice firm may be stated in any book, newspaper or journal or other publication except the approved information.
2.9	<i>Rule 21</i>	The act of publicity via electronic media can only be done by the legal practitioner by putting in only the approved information and the manner of the publicity must be done in such manner as determined by the Bar Council.

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Source; *Legal Profession (Practice & Etiquette) Rules 1978 and Legal Profession (Publicity) Rules 2001*

Second, the prospective client may already feel emotional and overburdened by the circumstances that induce possible need for legal advice (Christopher, 2004).

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

4.0 Discussions and Recommendations

In this increasingly urbanized environment where the world has no barrier, with shifting patterns of using information technology and fierce competition require firms to try and find new avenues for advertisement and marketing practices. Most legal firms are attempting to market their services in a new, different and creative way. However, the legal firms are bound to adhere strictly to its governing laws and regulation namely, the *LPA 1976, Practice and Etiquette Rules 1978 and Publicity Rules 2001*. These laws have restricted certain marketing activities in legal service particularly in the use of electronic media such as television and radio. It is suggested that legal practitioners should not be restricted in their attempts by misguided regulation (Lidsky and Peterson, 2007).

Therefore, it is suggested that the laws and regulations governing the legal service in Malaysia be reviewed and revised to keep abreast with the current need of the legal practitioners as well as the public. In Malaysia, Hashim (1981) suggested that the *LPA 1976* and the related rules to be always updated and modified to improve its efficiency and enforcement, while Lidsky and Peterson (2007) recommended the abolishment of the law restricting the advertising activities via radio and television as well as the Internet. Hashim (1981) argued that the existing rules are generally good but they need amplification to improve its enforcement.

As the laws and regulations have effects on the growth of the firms and the effects of legal constraint are dependent on the size of the firm, the policies addressing the development of small firms must be much simpler (Besnik, 2007). The government plays a vital role in educating the SMEs (Saleh and Ndubisi, 2006). They should provide an avenue for the SMEs to learn before imposing any rules and regulation to them. For instance, the number of training centres, consultancies and expert services must be increased pertaining to critical areas such as information technology, financial and marketing planning, among others.

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Nevertheless, SMEs of legal firms should not rely on the government agencies to support them. They should be proactive and creative to move forward penetrating and developing new market to increase their market share and revenue. They need to develop a rigorous marketing planning, establishing business networking and strategic alliances (Saleh and Ndubisi, 2006). At the same time, it is vital for them to fully understand their markets and competition, gaining technological know-how (Darden et al., 1981). In term of marketing strategies, there are certain marketing tools that can be exploited by the legal firms but they must be carried out within the limited legitimate spheres.

4.1 *Indirect Television Advertising*

Television is now one of the most powerful media for getting information to the public, particularly to people of low and moderate income. The prohibition of television advertising, therefore, would obstruct the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Advertising concerning of legal services should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the issues related to public matters. Advertising message should be disseminated in an objective and understandable manner and should be relevant to a prospective client's ability to choose a legal firm. The message should not emphasis upon advertising tricks, which serve to hinder rather than to facilitate intelligent selection of legal services.

Although this approach would not directly benefits the firms, this may create brand awareness amongst the public. This approach is within the *societal marketing concept*. The concept has an emphasis on social responsibility and suggests that for a company to only focus on exchange relationship with customers might not be suitable in order to sustain long term success (Kotler and Keller, 2006). Most companies recognize that socially responsible activities improve their image and reputation among customers, stockholders, the financial community, and other relevant publics. Ethical and socially responsible practices are simply good business, resulting not only in favourable image, but ultimately in increased sales (Kotler and Levy, 1969)

4.2 *Viral Marketing*

Generally, viral marketing is a marketing phenomenon that facilitates and encourages people to pass along a marketing message via word of mouth. Viral marketing depends on a high pass-along rate from person to person (Kotler and Keller, 2006). If a large percentage of recipients forward something to a large

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number of friends, the overall growth snowballs very quickly. If the pass-along numbers get too low, the overall growth quickly fizzles.

A law firm is allowed to pay for advertisement permitted by the rule, but not to pay another person for channelling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, legal firms may pay to advertise legal services provided under its sponsorship. Likewise, a law firm may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. This approach may be fitted into the strategy of viral marketing where it relies mainly on clients' recommendation via word of mouth.

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

4.3 Brand Awareness

Brands have long been associated with products, but today both people and services have become the subjects of branding efforts. According to Dibb (1997) a brand is more than just a combination of a name, a design, a symbol or other features that differentiate a good or a service from others. It is a unique set of tangible and intangible added values that are perceived and valued by the customer. In addition a brand is said to have personality, an emotional bond to the customer that grows out of the perceived characteristics (Court, 1997 and de Chernatony 1996).

In the legal sector, service differentiations that can separate a firm from its competitors are very little. However, a brand could help the public to identify a firm and its services, in terms of their images and names. If a direct marketing is not possible, legal firms should focus on ways to build public awareness of the firm's name, logo, trademark, brandmark etcetera. Some ways that could be implemented by legal firms in developing branding strategies. For instance, firms that receive certain recognition, have distinctive image and name, logo and accompanying tagline that could maintain high visibility in marketplace. In this way, the likelihood that consumers can recognise the existence and availability of the legal firms' service is high. The creating of brand awareness is one of the key steps in promoting a product. This higher rate of brand awareness equates to higher sales and also serves as an economic defence that prevents competitors from gaining more market share.

4.4 Niche Marketing

Powerful law practices are built on the concept of specialization. Legal firms need to find a way to make their practice stand out from the competition in a recognizable

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way that can be communicated to the current and prospective clients. No law firm is totally a one-stop shop. Due to the complexities associated with most legal firms today, a law firm is better off by limiting themselves to a niche market. Not only lawyers become more proficient in these areas of the law, it is also easier and more efficient to focus the firm's business development efforts on fewer practice areas.

4.5 Online Marketing

Many legal firms see Internet marketing as a daunting task which requires a lot of effort and time. When it comes to the marketing on the Internet, most legal firms do not understand exactly what they need to have for a successful Internet marketing campaign. Most legal firms fail to incorporate the vital elements that are crucial to successfully marketing their firm on the Internet. These elements are such as web popularity, website design, website content, conversion strength and web analytics or also known as 7Cs (i.e. Context, Content, Community, Communication, Connection, Commerce and Customization) suggested by Kotler & Keller (2007). However, this medium of marketing must only consist of the approved information as envisaged by the law.

5.0 Conclusion

Marketing services is accepted as a more difficult task than marketing products. Some legal firms fail to recognise that only the experienced clients will be able to value the functional quality of the legal service. Even though the laws have placed certain limitations in the marketing of legal service in Malaysia, the legal practitioners on the other hands must be very creative and innovative in fully exploiting other marketing devices or approaches which are still acceptable by the law to promote their services.

On the other hand, the legislator should review and revise the current laws pertaining to legal service marketing to accommodate the current needs and demands of the public as well as the practitioners.

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