

SIX STRATEGIES TO WIN IN THE COURT OF LAW (AND PUBLIC OPINION)

By Jeffrey Remsik, President/CEO
Bottom Line Marketing & Public Relations

Certain lawsuits have the potential to tank a business even if the eventual outcome is positive. Without balanced communications, market share, shareholder value and corporate reputation can plummet during the months or years spent in litigation.

"Lawsuits are no longer tried exclusively in the courtroom," said Steve Hantler of Daimler Chrysler and chair of the American Justice Partnership. "With highly publicized lawsuits, the costs resulting from damage to market share, shareholder value and corporate reputation are often more significant than the actual cost of litigation."

Consider a high profile example from last March. Wendy's became the target of a fraudulent claim by a woman who said she found a finger in her chili. Eight weeks of public drama, legal claims and damage unfolded. Despite Wendy's innocence, the company reported a 2.5 percent decline in same - store sales for that quarter, directly attributable to the incident.

By the Time the Reporter Calls ...

Legal counsel and PR professionals can work seamlessly to adapt to today's litigious environment and be ready to communicate within it. When a legal or other crisis strikes, corporate leaders need to respond promptly and decisively.

By the time a reporter calls, there already is information circulating in the public domain about the issue or crisis. If a company wants to ensure the accuracy of what is reported and wants to appear transparent and responsive, it will engage with the reporter. Contributing nothing or stonewalling the reporter lends an appearance of guilt or wrongdoing.

We recommend six strategies for building a solid litigation communications team and winning in the courts of public opinion and the law:

1. Some public comment is essential.

It's easier to disarm a reporter's natural skepticism in the wee hours of a crisis when there is an existing relationship built on trust. It's easier to talk about a difficult situation and frankly state what you can share, what you can't share and why. Good PR people have those media relationships.

2. Attorney-client privilege is essential.

Attorney-client privilege has its limits. Smart PR professionals will work with the lawyers to understand these boundaries well before a crisis lawsuit hits. Almost anything shared with PR a person loses its privilege, and the work product doctrine offers only a thin veil of protection. Follow the lawyers' lead here.

3. Where privilege ends, discovery begins.

Effective PR people will work with the lawyers to research what is and is not discoverable. Under certain conditions, courts have extended the attorney-client privilege and link work product protection to the activities of litigation communications specialists. When a communications professional joins the litigation team to assist with trial preparation, it strengthens the degree of protection for the resulting work product.

4. Counsel and coach.

While PR professionals may not be on the litigation team, the strategic planning and media relations skills remain valuable to the overall crisis management effort. PR people understand the media and can demystify the

BOTTOM LINE
Marketing & Public Relations
600 W. Virginia St., Suite 100
Milwaukee, WI 53204-1551
414-270-3000 414-270-3015 fax
www.blmpr.com

inner workings of the newsroom. Not all lawyers have media skills. Many don't often think about people who might be influenced outside of the courtroom.

5. Talk around and beyond the lawsuit.

According to the Institute for Crisis Management, companies are most likely to face a smoldering crisis, such as a lingering allegation or a lengthy lawsuit. Fewer encounter a sudden crisis, such as a fire or an industrial explosion.

In a smoldering crisis, the public relations professional is best equipped to build coalition support and cultivate public endorsement from third-party supporters. Frequently, business groups and trade groups become natural allies when companies face frivolous claims. An amicus curiae brief from these organizations can be a powerful third-party endorsement in the court of public opinion.

6. Build the dam before the flood.

Begin developing the litigation communication team before you need it. While the legal experts will drive the decisions, it's important that legal strategies include a multi-disciplinary approach to battles that are increasingly waged in print, online and through the airwaves.

Manage the Issue and the Litigation

The companies that best position themselves to win in both the court of law and public opinion manage the issue, not just the litigation. By coordinating the legal, government affairs and public relations response, those companies communicate in a consistent and timely manner. While the legal objective is to win the case, the overall business goal is to limit negative impact on market share, shareholder value and corporate reputation.

BOTTOM LINE
Marketing & Public Relations
600 W. Virginia St., Suite 100
Milwaukee, WI 53204-1551
414-270-3000 414-270-3015 fax
www.blmpr.com