



LITIGATION PR: BLESSING OR CURSE?

Weighing up the objectives and success factors of a relatively young field of communication.

By Alexander M. Schmitt-Geiger

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Is litigation public relations a blessing or a curse? What kind of reply could you possibly expect from a public relations professional specialised in this field? However, I do not want to take the easy way out. As a lawyer and owner of an agency specialised in litigation public relations, I retort: "It depends on a variety of factors!" At the end of this article I will give you an answer, which I hope will satisfy most readers.

PURPOSE OF LITIGATION PR

The legal dispute between Apple and Samsung was for many years a hot topic in the media. It resulted in an import ban, with even President Obama intervening. All because of a patent law dispute between two corporations, something quite commonplace for large

companies. But the dispute's strong hold on the media reflects the fact that legal disputes are more and more frequently fought out in the public sphere. If the media are interested in a particular litigation, the dispute will be resolved in two spheres: before the court and in the media. The same parties clash with one another in both spheres. What happens in one sphere may influence the course of events in the other sphere (though not necessarily). However, it is a problem that the legal and media disputes adhere to different principles. Factual arguments play a predominant role in a court setting whereas decisions in the public sphere are quickly made and driven by emotions. A verdict may comply with current law but still violate the broad public's sense of justice.

Therefore, legal disputes may lead to the seemingly contradictory conclusion that one can win a legal dispute but still lose one's good reputation, and vice-versa. And this is exactly where litigation public relations comes into play, as it guarantees professional reputation management before and after legal disputes.

ROOTS OF LITIGATION PR The use of media in legal disputes is not a novel concept. A famous historical example is the Dreyfus affair which took place in France from 1894 to 1899. The French officer Alfred Dreyfus was accused of treason. As a Jew of German descent, Dreyfus made a perfect bogeyman for French society at the time and was sentenced to life-long imprisonment and sent to the infamous penal colony at Devil's Island off the coast of French Guiana in South America. His wife and brother strongly op-

posed the verdict and rallied intellectuals to their cause. One of them, Émile Zola, composed an open letter on January 13 1898, addressed to the French president, Félix Faure. In this famous letter, entitled "J'accuse", Zola exposed the full range of the lawsuit's inconsistencies. Published in the newspaper L'Aurore, the letter sparked a public debate. In the end, Dreyfus was released, rehabilitated, promoted to the rank of major and made Knight of the Legion of Honour. Zola's article created such a strong public pressure on decision-makers in politics and justice that they felt compelled to completely reverse the judgement.

Despite this continental example, the US remains the cradle of litigation public relations, for this is where the profession of litigation public relations consultant originated in the 1980s. Since then, this discipline, at the nexus of law and media, has become established in the US. It is also gaining a foothold in Europe: the creation of agencies specialised in this field reflect this trend, as does the publication of numerous and university theses. Unfortunately there remains a lack of figures demonstrating this, which may be attributed to the industry's high level of discretion.

AREAS OF APPLICATION Litigation public relations is used in all kinds of legal disputes. For companies, it may become relevant in corporate law disputes, such as product liability suits, capital market lawsuits, insolvency proceedings, merger and acquisition litigation, licensing procedures and employment law disputes. If the focus is on members of the board, criminal and civil proceedings will play a predominant role, centering on the board member's entrepreneurial and private liability. Examples of this are the various proceedings against the former board members of the European private bank Sal.Oppenheim,

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headquartered in Cologne. If, in contrast, the focus is on a legal dispute involving a celebrity, then inheritance or family law-related proceedings come to the fore, alongside criminal proceedings and civil law disputes. The lawsuit must be relevant for the media, irrespective of the legal field. This implies that the legal dispute must meet defined journalistic news criteria. The focal point of the lawsuit should be on (alongside sex and crime) a vast amount of

money or a renowned company; the litigation must be relevant to a wide public or add an unexpected facet to the prevailing public image of a celebrity.

OBJECTIVES For a systematic categorisation of objectives in litigation public relations, it makes sense to differentiate between prosecution and defense mandates. The concepts of prosecution and defense are not meant in a legal way but are to be inserted in a communicative context. It is the communication, not the legal, context that counts.

A defense mandate denotes the situation where claims against a client are being enforced, not just when legal proceedings are instituted against the client. With a prosecution mandate, litigation public relations seeks to legally enforce claims. Here is one example: the buyer of a company accused the seller of deceiving him about the company's total value during negotiations, leading to him being cheated out of millions. A number of civil lawsuits by the buyer that had gone on for years were suspended until the end of the criminal proceedings, and the prosecution wanted to stop proceedings for barely comprehensible reasons. If this had happened, the buyer would also have lost the civil lawsuits and would as such have been financially ruined.

Up to this point the topic had not featured in the media, so the buyer began to use litigation public relations: a single press release drew journalists' attention to the case. They began to research and asked the utterly stunned seller for a statement. He subsequently agreed to an out-of-court settlement. He obviously considered the impending damage to his reputation greater than a disadvantageous court settlement.

As for defense mandates, their primary focus is on protecting the client's image and reputation irrespective of the

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lawsuit's outcome. A strong reputation creates acceptance, trust, credibility and sympathy in people, companies and products. It is therefore a prerequisite for the economic and social capacity to act. Let us look at a negative example: in the mid-1980s the automobile manufacturer Audi fell into disrepute in the US when some of its Audi 5000 automatic cars accelerated unintentionally. The end result: 600 registered accidents, 175 people injured and six fatalities. Although a product flaw could not be established, the com-

EXECUTIVE SUMMARY

The letter of the law

- ➔ Legal disputes are usually fought in two spheres: before the courts and in the media
- ➔ Litigation PR can be relevant in corporate law disputes, and can help influence the outcome
- ➔ Successful litigation PR helps protect corporate reputations
- ➔ Professionals in this field should have legal training as well as journalistic skill to help them deal with the legal ramifications

pany nonetheless fell into disrepute. The decisive communicative mistake was that Audi initially blamed their customers for mishandling the car, confusing the brakes with the accelerator. It goes without saying that this did not go down well with the American public: sales plummeted by 85 per cent from around 75,000 sold vehicles in 1985 to around 14,000 between 1991 and 1995. Audi cars were even prohibited from parking in multi-storey car parks. And even today, nearly 30 years later, Audi still suffers in the US and lags behind BMW and Mercedes. The following adage therefore applies to defense mandates: never hold the client publicly responsible for the damage unless you have sufficient evidence. Failing that, the media will resort to the very easy, circulation-increasing David versus Goliath theme, contrasting the badly injured party and the merciless corporation.

Because we are social beings we feel sympathy for the weaker party. The case of Audi impressively highlights the special importance of reputation. That is why, in the

case of defense mandates, one has to initially protect the reputation at stake.

The secondary goal of prosecution and defense mandates is to influence the outcome of legal disputes with the help of media and the general public. According to a study by Mainz-based professor Hans-Mathias Kepplinger and his colleagues Rudolf Gerhardt and Thomas Zerback, there may be no discernible influence of the media on the judicial assessment of legal issues, but a very clear one on the courts' discretionary decisions. With litigation public relations, one can transcend conventional legal rules to turn around judicial discretionary decisions in favour of the client. Irrespective of this, the question nonetheless remains how such an interference – insofar as it has been planned strategically – is to be interpreted from a constitutional and moral perspective. Adequate answers and solutions must be identified, as social trends are difficult to halt and the media's importance is increasing as a result of on-going digitalisation.

SUCCESS FACTORS The success of litigation public relations hinges firstly on whether the main actors are media-savvy; secondly on whether they are legally competent, and thirdly whether all involved cooperate in an interdisciplinary way. Successful litigation public relations is only possible if these three factors prevail.

I. Media competence implies the mastery of journalistic skills, in particular the ability to present complex facts in succinct prose. It also means that litigation public relations professionals need to know what journalists require from them – fast access to useful information.

Media representatives prefer a central contact person who can quickly deliver information following a press request. Media competence also requires strong contacts with relevant journalists, for they may greatly facilitate the task of conveying the client's arguments and points of view. Journalists should at all times be adequately informed, and in a best-case scenario should be convinced but never manipulated.

II. It is crucial in the communication of litigation matters that public relations professionals know what they are talking about. Furthermore they need to have had legal training, for only with a double qualification is it possible to translate legal facts into succinct journalistic prose whilst using the correct legal terminology. Public relations professionals need to understand the language of lawyers and the nuances of legal terminology.

It isn't always possible in practice to have every statement verified in advance by a lawyer, as in the case of background interviews. That is why the double qualification of litigation public relations professionals is of particular relevance, for those with a journalistic and legal training are much better at gauging whether their words jeopardise the litigation's successful outcome or not.

III. The third success factor is the willingness by all parties to engage in an interdisciplinary cooperation, for successful legal communication implies teamwork from all parties involved. Lack of cooperation within the team can have damaging effects.

BLESSING OR CURSE?

After this short insight into litigation public relations I still owe you an answer to the initial question. And I would like to reply with a quote from my colleague James Haggerty, the founder of litigation public relations in the US: "Good communication cannot always make everything better, but bad communication always make everything worse!"



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