

A CONSUMER PERSPECTIVE OF ADVERTISING BY ATTORNEYS

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ABSTRACT

Attorneys in South Africa may soon be permitted to advertise their services for the first time. This recommendation put forward by the Association of Law Societies, though still to be ratified by the four provincial law societies, has come amid increasing competition between attorneys and non-professionals. The marketing fraternity is, however, uncertain as to how members of the public are likely to react to legal services advertising. This study attempts to provide some tentative guidelines for decision-making on advertising by attorneys. Interested parties like attorneys, marketing consultants, and advertising agencies could use the researched information to structure marketing communication strategies which will not transgress the ethical code of the attorneys' profession, but which will satisfy the information needs of consumers. The study reports the findings of a survey conducted among 1 000 members of the public. Indications are that consumers not only think that advertising should be permitted, but also that it will benefit both themselves and the legal profession.

OPSOMMING

Prokureurs mag moontlik binnekort toegelaat word om hul dienste te adverteer. Dié aanbeveling van die Vereniging van Prokureursordes, wat nog deur die vier provinsiale wetsgenootskappe bekragtig moet word, is geneem as gevolg van toenemende mededinging tussen prokureurs en nie-professionele praktisyns. Bemerkingsdeskundiges is egter onseker oor wat die publiek se reaksie sal wees. Dié studie poog om enkele tentatiewe riglyne voor te stel vir bemerkingskommunikasie-strategieë wat nie die regsprofessie se etiese kode sal oortree nie, maar tog voldoende inligting aan verbruikers sal beskikbaar stel. Die bevindinge van 'n opname onder 1 000 lede van die publiek dui daarop dat reklame nie alleen verwelkom sal word nie, maar dat dit moontlik tot voordeel van sowel die publiek as die regsprofessie sal strek.

Attorneys have traditionally resisted the use of advertising, often believing that good attorneys need not advertise, or clinging to the ideal that justice cannot be sold. Legal counsel is a profession, they believe, not a business (Hazard, Pearce & Stempel, 1983, P 112). Other reasons why advertising has been resisted include satisfaction with the status quo and a genuine desire to protect what has been described as the unique client-attorney relationship (Shimp & Dyer, 1978, p.81). Others have resented competition from non-professionals who are not restricted by professional codes of conduct. They argue that the public has a right to – and needs – the additional information to facilitate the proper selection of legal counsel.

Efforts to limit advertising by professional practitioners originated in the United Kingdom (Financial Mail, 1989-09-15, p.79). However, the restrictions on attorneys were partially lifted in England in October 1984 to permit advertising which provides only information, and almost totally lifted from February 1987 (Bobbert, 1988). In Scotland, restrictions were relaxed from March 1985.

In the United States of America advertising by attorneys was permitted until local bar associations began to restrict advertising towards the turn of this century. These restrictions were challenged during the 1970's and 1980's. Attorneys cited the first amendment of the constitution which states: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." (Cohen, 1978, p.59) as the basis of their argument. Free speech was thus protected by law. Others argued that information and opinion expressed in a commercial context, such as advertising, is mercantile in origin and are therefore not subject to the same first amendment protection (Cohen, 1978). However, in 1975 the U.S.A. Supreme Court ruled in *Bigelow v. Virginia* that, because speech appears in commercial form, it does not lose first amendment protection (Hite & Bellizzi, 1986). In a landmark case, *Bates v. State Bar*

of Arizona, the court declared that the rule of the Arizona State Bar banning advertising of legal services violated constitutional protection of lawyers' commercial speech. The court decided that consumers had the right to receive such information (Hite & Fraser, 1988). However, it noted that its decision encompassed only price information of routine legal services in printed media (Smith & Meyer, 1978). Following this decision advertising restrictions were lifted.

In South Africa the issue of advertising by individual attorneys has been under investigation for some time (Bobbert, 1988). Although no finality has been reached, the recommendation to lift the restrictions on advertising has been brought about primarily by the increased competition attorneys face from non-professionals and para-professionals.

The debate on the possible advertising of legal services has centred on a number of important issues. These include:

- the possible implications of advertising for the profession and consumers;
- practical considerations such as the information content of advertising, appropriate media, responsibility for placing advertisements; and
- regulatory aspects.

The potential implications of advertising

Prior to the relaxation of advertising restrictions in the legal profession in the United States of America, the potential implications of such a decision were extensively debated. Arguments in favour of advertising were that the increased competition due to advertising is likely to lead to: an increased demand for legal services; an improvement in the quality of legal services; a decrease in fees; the creation of new job opportunities, and a more effective selection of attorneys because

of the increased availability of information (Shimp & Dyer, 1978; Hite & Fraser, 1988; Smith & Meyer, 1980). Others argued that advertising would increase the public's understanding of those situations in which legal assistance is required and would allow consumers to choose a specialist for a particular legal problem/situation. Several counter-arguments are proffered.

Opponents of the lifting of the restriction argued that the projected salutary effects would not occur. They believed that advertising by attorneys would be wasteful, costly (higher fees), deceptive and anti-competitive as only the bigger legal firms would be able to afford advertising (Bloom, 1977). Dyer and Shimp (1980) mentioned the possibility that advertising would erode the public's confidence in the legal profession; the information supplied would be misleading; and that advertising would lead to client dissatisfaction due to artificially inflated expectations. Further objections include the possibility that advertising could lower the quality of legal services and thus diminish the integrity of the legal profession in the eyes of the public and of attorneys themselves (Smith & Meyer, 1978). Hite and Fraser's (1988) objections include both the charge that advertising is likely to benefit only incompetent attorneys and that the information provided in advertisements is likely to be confusing. They also question the ethics of advertising, citing the possibility that competitive pressure due to advertising may lead to unethical and dishonest behaviour among attorneys. In addition, opponents of legal services advertising believe, advertising will expose attorneys to entrepreneurial risk and lead to a loss of clients if poorly executed.

Practical considerations

With regard to the information content of advertising Shimp & Dyer (1978, p.76) suggest that the possibilities range from general information (name, address, phone number, hours) to complete advertising, including area of specialisation, qualifications and fee schedules. Smith and Meyer (1978), in an empirical study, investigated additional aspects, including amount of experience, law school attended, awards received, endorsements from regular clients and past court performance record.

In discussing the appropriateness of various media for advertising by attorneys, Shimp and Dyer (1978) mention newspapers, the Yellow Pages, law journals, radio and television. Hite and Fraser (1988) in a meta-analysis of previous research, suggest consumer magazines, direct mail, outdoor boards and telephone, while Smith & Meyer (1978) add brochures in offices.

The question of who should be responsible for the placing of advertisements offers three possibilities, namely professional associations, individual attorneys (Shimp & Dyer, 1987) or commercial advertising agencies.

Regulatory aspects

The regulatory aspects receiving attention in the marketing literature concern mainly the degree (if any) of regulation and the possible cost of this.

These issues (the implications of advertising, and practical and regulatory considerations) were all included in the questionnaire which served as measuring instrument in this study.

OBJECTIVES

The primary objective of this study was to investigate the perceptions of members of the public with regard to advertising by attorneys. An attempt was made to:

- establish how consumers view the possible implications of advertising for both attorneys and the public;
- indicate those aspects of advertising which consumers favour or oppose;

- investigate the relationship between the attitude of consumers towards advertising and certain demographic variables, and in this way identify potential target audiences for anticipated advertising campaigns.

METHOD

Questionnaires were mailed to a stratified, systematic random sample of 1 000 members of the public. The telephone directories of Johannesburg, Cape Town and Port Elizabeth served as a sampling frame. The sample was stratified according to population size, based on 1985 census figures. The composition of the sample is described in Table 1 and reveals that questionnaires were mailed to consumers living in Johannesburg (444), Cape Town (417) and Port Elizabeth (139). An overall response rate of 24,4% was realised, after one mail follow-up.

The questionnaire consisted of 69 statements linked to a 5-point Likert-type scale on which respondents could indicate their agreement or disagreement with each statement. The scales ranged from strongly agree (value 5) to strongly disagree (value 1). The statements addressed the issues on which the debate of the possible advertising of attorneys' services centres.

TABLE 1
COMPOSITION OF RESPONDENT GROUP

LOCATION	SAMPLE SIZE	% OF SAMPLE	NUMBER OF RESPONSES	% OF RESPONDENT GROUP
Johannesburg	444	44,4	86	35,2
Cape Town	417	41,7	98	40,2
P't Elizabeth	139	13,9	60	24,6
	1 000	100,0	244	100,0
<u>AGE</u>				
			32	13,1
			71	29,1
			54	22,2
			39	15,9
			48	19,7
			244	100,0
<u>HOME LANGUAGE</u>				
			160	65,6
			81	33,2
			2	0,8
			1	0,4
			244	100,0
<u>GENDER</u>				
			194	79,5
			50	20,5
			244	100,0
<u>HIGHEST EDUCATIONAL QUALIFICATION</u>				
			79	32,4
			66	27,1
			99	40,6
			244	100,1
<u>HAVE USED ATTORNEY'S SERVICES IN THE PAST</u>				
			211	86,5
			33	13,5
			244	100,0
<u>WILL USE SERVICES OF ATTORNEY WHO ADVERTISE</u>				
			233	95,5
			11	4,5
			244	100,0

Table 1 reveals that a slightly lower proportion of respondents from Johannesburg and a slightly higher proportion from Port Elizabeth provided information, compared to their respective proportions of the total populations as established by the 1985 census. The respondent group consisted largely of relatively well qualified English speaking males in the age group 30-49 years. According to Table 1, 86,5% of the respondent group has made use of the services of an attorney in the past. In addition, 95,5% indicated that they would make use of the serv-

ices of an attorney of their choice, irrespective of whether he/she advertises.

RESULTS

The most important possible implications of advertising for attorneys and consumers, as perceived by consumers, are summarised in Table 2. It does not only reveal that consumers

believe that they have a need for, and a right to, additional information about attorneys and the services they offer, but that advertising ought to be permitted. In addition, consumers largely disagree with possible negative implications and agree with possible positive implications presented to them. They also seem to suggest that legal services advertising will be to the advantage of both the profession and the public.

TABLE 2
POTENTIAL IMPLICATIONS OF ADVERTISING⁽¹⁾

STATEMENT	PERCENTAGE			\bar{X}	S.D.
	AGREE	NEUTRAL	DISAGREE		
No A. of any nature should be permitted	18,4	9,8	71,7	2,25	1,19
A. will assist the public to know who specialises in certain areas	85,7	7,0	7,4	4,07	0,86
The information provided by A. will allow the public to make more informed selections of attorneys	82,4	9,4	8,2	3,97	0,83
A. will increase public's understanding of when legal assistance is required	77,9	12,3	9,8	3,85	0,84
A. can create an awareness of legal firms and their services	90,2	6,1	3,7	4,07	0,68
A. can establish, modify or reinforce the image of a legal firm	79,0	13,5	7,5	3,85	0,79
A. will confuse rather than enlighten the public	16,8	12,7	70,5	2,39	1,04
Attorneys should be permitted to A. freely, provided it's true and not misleading/deceptive	70,1	9,8	20,1	3,73	1,19
A. would encourage the public to use services not otherwise used	75,0	12,3	12,7	3,74	0,88
Word-of-mouth is a personal opinion not reflecting the strenghts and weaknesses of all firms in the market	78,7	18,0	3,3	3,92	0,72
A. is an appropriate means of satisfying the public's information needs	81,1	5,8	13,1	3,98	1,03
The public has a right to more information about services of attorneys	79,1	7,0	13,9	3,95	1,06

1) In this Table advertising is abbreviated to A.

The original 5-point scale has been collapsed to a 3-point scale to facilitate easier reporting of results. The mean is still out of a maximum of 5. Keep in mind that some statements were negatively phrased. Only statements with a minimum of 70% agreement/disagreement were included.

Table 3 offers the responses of consumers when questioned about practical and regulatory (what should be permitted) considerations. It shows that consumers are in favour of some sort of guidelines to regulate legal services advertising.

With regard to advertising content, general information (name, address), prices/fees, period established, areas of specialisation and qualifications of staff members appear to be appropri-

ate. The same cannot be said of the use of testimonials by clients and the mentioning of past awards and accomplishments. Advertising media which could be used include newspapers, pamphlets, law journals, and the Yellow Pages but not the radio, television, notice boards outside the office or billboards. Respondents also believe that the responsibility to place advertisements should lie with individual attorneys.

TABLE 3
PRACTICAL/REGULATORY CONSIDERATIONS⁽¹⁾

STATEMENT	PERCENTAGE			\bar{X}	S.D.
	AGREE	NEUTRAL	DISAGREE		
<u>GENERAL</u>					
Only A. within general guidelines should be permitted	59,4	21,7	18,9	3,57	1,04
No restrictions should be placed on contents of advertisements	27,5	14,8	57,8	2,50	1,17
No restrictions should be placed on which media could be used	34,8	13,9	51,2	2,75	1,29
No restrictions should be placed on who may place advertisements	29,5	15,2	55,3	2,58	1,22
<u>ADVERTISING CONTENT</u>					
The following ought to be permissible:					
General information (name, tel. no., hours)	93,3	3,8	2,9	4,32	0,73
Prices/fees	69,3	13,1	17,6	3,71	1,12
Period established	72,1	19,3	8,6	3,84	0,98
Areas of specialisation	92,2	3,7	4,1	4,23	0,80
Qualifications of staff	75,4	13,9	10,7	3,88	1,02
<u>ADVERTISING MEDIA</u>					
The following ought to be permissible:					
Newspapers	87,0	3,9	9,1	3,95	1,00
Pamphlets	72,2	10,4	17,4	3,64	1,16
Law journals	90,4	6,5	3,1	4,16	0,78
Yellow Pages	83,1	7,4	9,6	3,93	0,99
<u>PLACING OF ADVERTISEMENTS</u>					
Individual firms	71,7	20,0	8,3	3,64	1,07

1) Only statements with a minimum of 65% agreement/disagreement are included, except under the heading 'general'. The mean is out of a maximum of 5.

To establish whether common factors existed within the original data set, a principal component factor analysis was performed on the sample correlation matrix of the original 69 statements. The computer programme BMDP4M (Frane, Jenrich & Sampson, 1985) was used, by specifying a Direct Quartim oblique rotation of the original factor matrix (Jenrich & Sampson, 1966).

The application of this programme leads to the rotated factor matrix shown in Table 4, identifying four common factors. Of these, factor 1 explains 50,6% of the variation in the data. Only this primary common factor, measured by 17 of the original statements, is considered for further analysis.

TABLE 4
SORTED ROTATED FACTOR LOADINGS⁽¹⁾

ITEM NUMBER	FACTOR NUMBER				COMMUNALITIES h ²
	1	2	3	4	
34	<u>0,611</u>	-0,261	-0,058	-0,002	0,5709
30	<u>0,601</u>	-0,276	-0,142	-0,031	0,6373
22	<u>0,598</u>	-0,256	-0,071	-0,033	0,5642
63	<u>0,596</u>	-0,199	-0,044	-0,094	0,4903
35	<u>0,581</u>	-0,232	-0,135	0,016	0,5426
19	<u>0,574</u>	-0,309	-0,127	-0,119	0,6702
2	<u>0,572</u>	-0,201	-0,138	-0,172	0,4803
10	<u>0,569</u>	-0,289	-0,103	-0,038	0,5812
33	<u>0,561</u>	-0,134	-0,142	0,059	0,4328
12	<u>0,553</u>	-0,014	-0,088	-0,046	0,3554
66	<u>0,546</u>	-0,184	-0,104	-0,292	0,6235
29	<u>0,540</u>	0,155	0,035	-0,126	0,2863
13	<u>0,536</u>	-0,305	-0,181	-0,049	0,6142
8	<u>0,521</u>	-0,334	-0,074	-0,142	0,6036
65	<u>0,516</u>	-0,025	-0,185	-0,254	0,4860
27	<u>0,508</u>	-0,391	0,097	-0,107	0,5499
5	<u>0,507</u>	<u>0,414</u>	-0,031	-0,069	0,6081
21	-0,014	<u>0,699</u>	0,039	-0,039	0,4933
16	-0,181	<u>0,679</u>	-0,167	0,155	0,6031
20	-0,148	<u>0,643</u>	-0,157	0,227	0,5840
28	0,111	<u>0,636</u>	0,141	-0,135	0,4059
6	-0,048	<u>0,628</u>	0,142	-0,072	0,4648
68	-0,279	<u>0,604</u>	0,028	0,093	0,6105
11	-0,125	<u>0,588</u>	0,021	0,105	0,4653
15	-0,009	<u>0,570</u>	-0,145	0,153	0,3671
32	0,028	<u>0,553</u>	0,064	0,136	0,3810
60	-0,251	<u>0,546</u>	0,205	0,115	0,6394
67	-0,351	<u>0,541</u>	-0,053	0,146	0,5922
9	-0,272	<u>0,523</u>	0,122	0,051	0,5264
3	-0,060	<u>0,517</u>	<u>0,058</u>	-0,004	0,2679
55	-0,031	-0,051	<u>0,756</u>	0,039	0,5735
50	-0,086	-0,039	<u>0,678</u>	0,221	0,5779
48	-0,145	-0,009	<u>0,635</u>	0,287	0,6190
46	-0,067	0,085	<u>0,601</u>	-0,181	0,3723
54	0,004	0,028	<u>0,590</u>	0,126	0,3980
58	-0,147	0,006	<u>0,565</u>	0,228	0,4888
40	0,154	0,059	<u>0,513</u>	<u>0,144</u>	0,3048
43	-0,140	0,048	0,081	<u>0,687</u>	0,6034
44	0,037	0,126	0,148	<u>0,604</u>	0,4705
39	-0,028	0,002	-0,044	<u>0,590</u>	0,3480
42	0,051	0,051	0,022	<u>0,583</u>	0,3995
47	-0,118	0,048	0,379	<u>0,513</u>	0,5539

1) Loadings greater than 0,5 were considered significant.

Factor 1 appears to measure the perceptions of consumers with regard to the general implications of advertising and consists of the following variables:

- 34 – Advertising will create client dissatisfaction due to artificially inflated expectations;
- 30 – Advertising will harm the dignity of the profession among the members of the public;

- 22 – If advertising is permitted, it will eventually degenerate into misleading and deceptive advertising;
- 63 – The public will still use reputation and word-of-mouth sources to select an attorney;
- 35 – Advertising will limit co-operation among attorneys on matters of common interest such as legal research;
- 19 – Public confidence in the legal profession will be harmed by advertising;
 - 2 – Existing information sources available to the public are adequate;
- 10 – Information provided by advertising will be biased and thus of little value to the public;
- 33 – Competitive pressures due to advertising will result in dishonest and unethical behaviour;
- 12 – If advertising is permitted, the large firms will get larger still as only they can afford it and the smaller firms will be even less competitive;
- 29 – If attorneys list fees/prices in advertisements, price fixing will result;
- 13 – Advertising will harm the dignity of the profession among attorneys themselves;
 - 8 – No advertising of any nature should be permitted;
- 65 – Only advertising by the Law Societies should be permitted;
- 27 – The public will not regard the information provided by advertising as credible;
 - 5 – Advertising will be wasteful and unnecessary;

To use the identified factor (implications of advertising on legal profession and consumers) in further statistical analysis, a total score of the 17 items measuring this factor was computed as an improved measurement of the factor itself in comparison with any single items scored. This was used as a dependent variable in a multiple regression analysis reported in Table 5.

To investigate possible relationships between a set of demographic characteristics and the attitude of respondents towards legal services advertising as measured by the total score referred to earlier, a multiple regression analysis was conducted. For this purpose the SAS statistical package (SAS Institute, 1988) was used and the corresponding results are presented in Table 5. It reveals that the exceedance probability of all variables is greater than 0,05. Demographic variables such as age, language, gender, level of education and previous use of the services of an attorney thus have no significant influence on perceptions regarding the possible implication of legal services advertising.

TABLE 5
RESULTS OF REGRESSION ANALYSIS

INDEPENDENT VARIABLE	COEFFICIENT	P > T
Age between 20-29	-1,986	0,0711
Age between 30-39	-0,454	0,5535
Age between 40-49	-1,159	0,1821
Age between 50-59	0,803	0,4258
Language	0,436	0,3641
Gender	-0,444	0,4339
Level of education – matric and lower	-0,676	0,2875
Level of education – matric and diploma(s)	0,993	0,1435
Previous use	-0,748	0,2741

CONCLUSIONS

The finding of this study (that members of the public are generally positively inclined towards the advertising of their services by attorneys) may resolve the anxiety and doubts some attorneys appear to have about legal service advertising. The public appears to feel that advertising will benefit it, provided that certain conditions are met. Such conditions include the provision that advertising should be true and neither misleading nor deceptive.

The empirical results suggest that the selection of a target audience for marketing communication strategies may prove troublesome as perceptions are not influenced by such demographic variables as age, language, gender, and level of education. This aspect may be addressed in future research into the viability and acceptability of legal services advertising.

The current study furnishes some practical guidelines which might be of value to attorneys, marketing consultants, and advertising agencies testing the unknown waters of legal services advertising. The public would apparently value general information (location, telephone number, business hours), and information on areas of specialisation and the qualifications of staff members. Advertising media which are regarded as appropriate to legal advertising include law journals, newspapers, and the Yellow Pages. Members of the public generally feel that individual attorneys should be free to place their own advertisements.

A possible limitation of the study is that the sample was drawn primarily from three urban areas. Rural consumers may have different perceptions than those surveyed. A second possible limitation is that the reliability and validity of the measuring instrument has not been substantiated. Both limitations leave scope for further research.

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