

TRENDS REGARDING LEGAL PROFESSION ADVERTISING

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Abstract: *Legal advertising is the advertisement of legal services provided by a lawyer or a law firm to attract potential clients. The promotion and advertisement of legal services has undergone significant transformation in recent years. The transition from the prohibition of such advertising to the current acceptance and utilization of online platforms has not been without challenges. The rapid pace of this shift raises critical questions regarding the extent to which this abrupt change impacts the fundamental and long-established principles governing the legal profession.*

Key words: *lawyer, legal services, publicity, on line platforms.*

1. Introduction

Legal advertising is the advertisement of legal services provided by a lawyer or a law firm to attract potential clients. Generally, legal advertising is regulated by national bar associations, which often have different rules for defining advertising and restricting the content of legal advertisement.

In the E.U. most national bar associations fashion their rules of legal advertising according to the Council of Bars and Law Societies of Europe (CCBE)'s *Code of Conduct for European Lawyers* adopted in 1988 and amended several times. The *Code of Conduct for European Lawyers* opened largely the doors of legal advertising that had previously been closed to lawyers. In order to align with market practices and European legislation, in 2018 the CCBE also adopted a *Guide on Lawyers' use of online legal platforms*. It's important to underline the fact that the *Code of Conduct for European Lawyers* is a binding text on all Member States: all lawyers who are members of the bars of these countries (whether their bars are full, associate or observer members of the CCBE) have to comply with the *Code* in their cross-border activities within the European Union, the European Economic Area and the Swiss Confederation as well as within associate and observer countries. In fact, this *Code* was applied by a lot of national bar associations as national Code of conduct, as *The National Association of the Romanian Bars* did for a long period of time – January 1, 2007 – December 31, 2017 up to the adoption of *The Deontological Code of the Romanian Lawyer* which came into force on January 1, 2018.

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At the national level, for a long time, the use of advertising media to attract clientele was not allowed. The ban was lifted in 2017 in order to align with European practices and due to the increased competitiveness on the market. Through Law no. 25/2017 which amended *Law no 51/1995 on the organization and practice of the profession of lawyer*, any public communication or any publicity made by a lawyer or any form of exercise of the profession has been permitted if it complies with the professional rules and those concerning the independence, dignity, integrity of the profession, the preservation of professional secrecy and if it is objective and corresponds to the truth. Furthermore, in order to align with *Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services*, a national *GUIDE on the use of online platforms by lawyers* (Annex XXXIII of the Statute of the legal profession) and a *Good practice GUIDE on advertising lawyers and forms of practice* (Annex XXXIII of the Statute of the legal profession) was also adopted in 2021. These Guidelines outline the baselines of legal advertising, also with regard to the lawyer-platform-client relationship, with the aim of protecting the interests of clients and lawyers by raising awareness of the professional risks to which they may be exposed.

In a nutshell, nowadays European legal advertising can take various forms including printing, mailing, television and online advertising. Today's lawyers have to face the challenges of the digital age, in which the market of legal services is, in part, a virtual one with unpredictable trends. Therefore, advertising legal services by using the internet is the most challenging one.

2. Objectives

Given the quote attributed to Edmund Burke "*we must all obey the great law of change because it is the most powerful law of nature*" the present study aims to analyse the current digital means of lawyer advertising and their impact on the principles and ethics of the legal profession.

3. Legal Basis

3.1. European provisions

According to the provisions 2.6. *Personal Publicity* of the *Code of Conduct for European Lawyers* a lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent to which it complies with previous requirements. In this regard, the Commentary on Article 2.6. of the *Explanatory Memorandum* underpinning the adoption of the *Code of Conduct for European Lawyers* explains that the term "personal publicity" covers publicity by firms of lawyers, as well as individual lawyers, as opposed to professional publicity/advertising organized by Bars and Law Societies for their members as a whole. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, the rules governing personal publicity by lawyers vary considerably in the Member States. Lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to

prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers' Services Directive (Directive 77/249/EEC) or the Lawyer's Establishment Directive (Directive 98/5/EC).

3.2. National provisions

The internal legislation distinguishes between the professional advertising, which is part of the profession and the advertising of the forms of exercise of the profession and the lawyer. Professional advertising has as its object the promotion of the legal profession and is carried out exclusively by the bodies of the profession or at their request and under their supervision. Advertising the profession reaches out to the general public so that they understand and are aware that some of the problems they face can be solved with the help of lawyers, and perhaps the most difficult task remains to educate the public that this professional service is particularly important and deserves to be rewarded financially. The publicity of the forms of practice of the profession is constituted by any form of presentation of their activity and legal services, regardless of the means used, for the purpose of promotion to the public. Unlike the advertising of the profession, lawyer advertising is aimed at a more informed and legally educated public and aims to promote and attract clients by differentiating the lawyer from other professionals.

The national provisions stipulate that in his relations with the media, the lawyer is obliged to respect the interests of his client, the honour, image and reputation of the profession. In this respect, the advertising of the forms of practice of the profession and all information publicly disseminated by them by any means, including in cyberspace, concerning the work of lawyers must be transparent, truthful, accurate and must not be comparative with other professionals, equivocal, ambiguous, misleading or disparaging. These conditions must be accomplished under disciplinary sanctions. In all cases, the advertising and information provided by lawyers and the forms of practicing the profession must relate exclusively to the nature and limits of lawyers' professional obligations and comply with the fundamental principles of the legal profession, as regulated by the *Deontological Code of the Romanian Lawyer*.

According to *Deontological Code of the Romanian Lawyer* the advertising of a lawyer or a form of practice of the profession, regardless of the media used by electronic communication or by any other means is authorized to the extent that it does not contain false information or information that could mislead the public or harm the image of the profession or the reputation of colleagues. Any information or images conveyed by communications made by a lawyer must meet objective criteria for ascertaining their veracity. These communications may not contain: fees charged in dealing with clients, guarantee of result, comparative and/or disparaging statements, any reference to functions or activities unrelated to the practice of the legal profession, and any reference to judicial or other public authority roles, references to results achieved, client identity, number of files, turnover or success rate. In promoting his services, a lawyer shall not use the notoriety of his client and shall refrain from any form of publicity which damages the image of the legal profession. To reinforce distinctions between what is allowed and what is not allowed, the *Deontological Code of the Romanian Lawyer*, underlines that whatever means of advertising are used, the

following are prohibited: (a) misleading advertising and disguised advertising, (b) comparative or disparaging advertising and references to other colleagues, (c) reference to names from the portfolio of clients or any indication to litigations in which the legal practice has been or is involved, (d) information on financial achievements or turnover, provided by the lawyer or the legal practice, in breach of competition rules or for comparative advertising purposes, (e) provision of information for inclusion in league tables drawn up on financial criteria, (f) statements relating to the value of the services provided by the lawyer or the manner of payment, in breach of the statutory provisions, or which constitute or are likely to promote dumping policies, (g) any statements contrary to the dignity of persons, the profession or justice.

With regard to deontological rules, the following are also forbidden: (a) the solicitation of clients, consisting of the offering of services, by personal introduction or through an intermediary, at a person's home or residence or in a public place, or the proposal of services in any form of the profession without prior solicitation; (b) the presentation of the legal practice, of the profession or of the lawyers operating within it, by any means of publicity made or associated with the name and designation of a client, with the amendment that the presentation of a successfully accomplished objective for a client, by advice or by litigious means, shall not constitute a violation of the legal and statutory requirements concerning publicity; (c) the promise of the achievement of professional results which do not depend exclusively on the activity or on the manner of practicing the profession; (d) public communication of the positions previously held in authorities by lawyers included in the form of practice of the profession, with the purpose of suggesting that a certain result of a judicial nature is likely to be achieved; (e) publicly inciting or amplifying litigation or conflict by means which are anticompetitive, misleading or denigrating to other colleagues; (f) unsolicited personalized bids sent to prospective clients by mail or electronic means.

4. Remarks

In the digital age, personal branding for lawyers has transcended vanity. It's about specificity and differentiation. The market is fully saturated with goods and services. With the market more saturated than ever, a strong personal brand can be the deciding factor for clients when choosing legal representation. The advice of the experts in the marketing of legal services is that in 2024, the lawyers and the law firms should ensure that their personal brand speaks volumes about their expertise, values and uniqueness (Sheikh, T. 2024, February 6). Top 10 Legal Marketing Trends to Watch in 2024. Retrieved from <https://www.linkedin.com/pulse/top-10-legal-marketing-trends-watch-2024-tariq-sheikh-xn9de>.

Nowadays lawyers are exploring various ways of promotion, including the use of the internet with all its possibilities - websites, online platforms, social media distribution channels on popular profile platforms: YouTube, Facebook, LinkedIn, Instagram, TikTok, social media marketing, podcasts. As the legal industry continues to navigate the complex interplay of tradition and innovation, these digital means offer a roadmap for staying relevant and competitive. Embracing them is not just a marketing tactic, but also an integral component of any professional identity and growth strategy.

The development of the online platforms, also called *multi-sided markets* or *third-party platforms* can also have an important bearing on the way lawyers offer legal services and engage with (potential) clients. Online platforms for lawyer-client relationship intermediation are booming worldwide and represent a new challenge for lawyers and professional organizations, all the more so as the pandemic crisis has accelerated the digitization of markets and the demand for online services. While the use of online intermediary platforms has a number of advantages, allowing lawyers to connect more easily with clients seeking legal services, working online entails social and professional risks that lawyers need to be aware of and take into account when offering their services on online platforms. In Romania the online platform *cautavocat.ro* is the platform managed and insured by *The National Association of the Romanian Bars*.

As far as the internet is concerned, we have to recognize that it helps to find those who have invested the most in online advertising, but this way of searching is not sufficient to find the perfect specialist for a particular situation being pursued. However, urgency presses in decision making, so the information provided can be decisive in influencing the decision to hire a particular lawyer. Often the offered services reach a potential client before he/she is looking for it or is aware of the need. At the same time, it may happen that although a person does not have a legal problem, through the offer presented he/she may see an opportunity for financial gain. On the contrary, it is possible that the financial results from the effort put into promoting in the online may not live up to the lawyer's expectations. Social media distribution is now one of the most accessible and least costly method of promotion, but the lack of specific regulation allows the use of strategies whose compatibility with ethics and deontology of the legal profession is at least questionable. The social media distribution channels represent a public space, where lawyers' 'deontological rules should apply equally'. Even so, a possible inappropriate professional activity on social networking could negatively impact an ongoing contractual relationship or even the society's perception of the professional qualities of the lawyer. Legal podcasts have emerged as a powerful medium for engaging an audience in a personal and in-depth manner. Legal podcasts that delve into current issues, case studies, and expert insights offer a unique way to showcase expertise while engaging with a broader audience.

Besides all of these, it is well known that on the legal market, both online and offline, there have been advertisements belonging to various entities presenting and offering services which are specific to lawyers, which seem to be more attractive due to their predictable and lower prices and to promises of speed and simplicity of working with them. In reality, what determines the potential clients of some lawyers to contract with such entities in the end is rather a lack of awareness of the role of the lawyer and of the importance of a lawyer's understanding and interpretation of an apparently clear law. Thus, it becomes obvious that the main purpose of the marketing strategy for lawyers should be to inform the consumer about the role of the lawyer in the society.

5. Conclusions

The promotion and advertisement of legal services has undergone significant transformation in recent years. The transition from the prohibition of such advertising to

the current acceptance and utilization of online platforms has not been without challenges. The rapid pace of this shift raises critical questions regarding the extent to which this abrupt change impacts the fundamental and long-established principles governing the legal profession.

The promotion via social networking is a small part of the process of convincing a potential client, but in the future, it is expected to become the most relevant. The freedom felt on the social networking should be, for the time being, carefully regulated in order to ensure an appropriate balance between the lawyer's right to promote himself and the respect for the ethics and deontology of the legal profession. We consider that the limitations imposed by national guidelines, although very important as they prevent purely commercial communications, should be complemented by specific regulations for the activities allowed by social networks and it would be necessary to set up a working group to analyse and standardize modern promotional strategies used by lawyers and the purposes they should serve before these activities are carried out on the basis of objectionable customs or before the legal profession is subjugated by unauthorized entities. At this stage, social media should be used for a common and perhaps more important objective than the individual, namely to promote the role and mission of the lawyer in order to safeguard the profession.

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