

Courting Public Opinion

Management Today article

June 2006: Feature

Courting Public Opinion

When an organisation faces legal action, the greatest damages are often paid in the arena of public opinion. But there's a new breed of PR professional whose job is damage limitation. By Chris Sheedy.

Read online at the Australian Institute of Management site.

As CEOs are dragged into the witness box to explain their organisation's financial collapse, as product recalls allow competitors to hijack market share, as class actions against big business become more common, and as the media shines a spotlight on every sordid detail, Australian companies are recognising a fact their US cousins have known for years: they need to communicate effectively in the court of public opinion.

The Australian media has enjoyed its fair share of front page corporate dramas over the past decade. There was the story of the alleged environmental damage for which BHP was forced to settle with 35,000 Papua New Guinean villagers after the 1994–96 Ok Tedi claim. For years James Hardie was dragged over the coals by the media as the asbestos victims' campaign ran its course. It was a field day, of course, when Australian media barons took to the witness box after the collapse of One.Tel. And the Australian Wheat Board (AWB) is very publicly imploding after alleged kickbacks to Saddam Hussein's regime; the organisation's cause was further hurt by the embarrassing photographs of its leading figures, which have been splashed across front pages of newspapers.

But there's a small and quickly growing sector of the Australian public relations industry that is filled with skilled practitioners whose job is to protect the public images of businesses during times of crisis. It's known as "litigation PR".

"The legal team may be running a legal strategy and they'll fight that in the court, but the communications team comes in to fight in the court of public opinion," explains Tony Rasman, Australian Managing Director and Senior VP of Fleishman-Hillard, and head of the company's Asian litigation group. "Companies need a communications team these days because, more than ever, reputation is the most important thing a company has. Litigation PR is effectively the support mechanism for the legal team."

Rather than sticking to the old image of a lone lawyer on the steps of the courthouse speaking to a media scrum, the modern approach to communications in a time of crisis involves a combination of lawyers and PR experts. By working hand-in-hand they deliver a concise, open and consistent view to the media, who then pass the message on to the most powerful jury of all, the public.

"Lawyers are good communicators at the best of times," Rasman says, "But they tend to speak in legalese. Lawyers have to learn to communicate information to the media in the way that journalists need it to be delivered."

Peter Wilkinson, Founder of Wilkinson Media, agrees. "There aren't many solicitors or barristers who really have an intimate understanding of how to work with the media," he says. "A smart lawyer actually knows that he or she doesn't know the media."

Like Rasman, Wilkinson has worked with several large organisations to help them through periods of crisis. A recent case involved an extortion threat against a major business. The threat never actually went to court but if it had, Wilkinson says, the public consequences would have far outweighed any court decision. His job, for cases that do go to the media, is to ensure the public is told the company's point of view. When this is done well, the organisation avoids the public's automatic assumption that "no comment" means "guilty".

"There are some notable cases where public opinion has been a complete disaster although the court process was reasonably successful," Wilkinson says. "The one that's currently running is the [AWB] inquiry, which has been a PR disaster. They might be having quite good outcomes in court but the outcomes in the court of public opinion mean the end of the AWB as we know it."

Rasman cites the infamous 1994 "McLibel" case in the UK, in which McDonald's spent an estimated \$A22.8 million in legal pursuit of "two penniless activists", resulting in an irresistible David v. Goliath story for the media and one of history's greatest-ever organisational PR disasters.

"The case ran for 10 years and McDonald's received an extraordinary amount of negative publicity," Rasman says. "From that point of view it's important that when you embark on a legal strategy you also think through the

communications side of it."

If a solid communications plan is not clearly thought out very early in the piece then there are several possible outcomes, most of which spell disaster for the organisation involved. The relationship of trust and respect with a brand's customers is very easily damaged and very difficult to repair.

"There is a lot of information that the court reporters may pick up that may not give your side of the argument very well, and one point of view could just be completely ignored," Rasman says. "In fact, you may even win the decision in court but you may fail miserably in the court of public opinion."

Andrew Perry, a lawyer who is Director and Founder of legal.consult, a company that offers both legal and communications services, says one of the worst mistakes an organisation can make is to simply stay silent.

"In circumstances where an organisation could at least make a brief statement that shows they're taking the matter seriously, they need to do so," he says. "They need to show they're wanting to ensure all relevant interests are protected. Not being accessible and seeming to have your head buried in the sand makes everyone feel that nothing good is happening."

Perry says demand for law firms such as his, which automatically put PR on the menu for any prospective client, has grown over the past four to five years. There has traditionally been a reticence in the legal profession to give public comment, especially when it might be prejudicial to court proceedings, but there is always a time and a place.

"You'll see government agencies being very proactive in information dissemination during royal commissions or other proceedings," he says. "Bob Carr got himself into trouble being over-enthusiastic when commenting on the Orange Grove inquiry, for example. In that context it is important for organisations that might be coming up against a proactive government media campaign to take steps to ensure their part of the story is well represented."

When an organisation does communicate skilfully and successfully with the media, and therefore with the broader public, the results can be astonishing. PR professional Lisa Llewellyn, from Llewellyn Communications, played a central role in representing Peter Brook and Bill Butterell, from accounting firm Grant Thornton, during the 1998 waterfront dispute.

Brook and Butterell, described by Llewellyn as "two very mild-mannered accountants", were thrown into the lion's den when they were appointed as administrators to run the Patrick companies, which had been put into voluntary administration during a battle with the Maritime Union of Australia (MUA).

Some claimed Brook and Butterell were chosen by Patrick Corp's Managing Director Chris Corrigan because he thought they would fail in their role as administrators, but the opposite occurred. The two did an admirable job, were successful in achieving their goals and, most importantly, as other parties bickered and hid from the media, Brook and Butterell's team constantly fed journalists with pertinent, digestible information.

"The Grant Thornton guys had dozens of media people camping on their doorstep but there were a number of major stakeholders at the time and the administrators were ensconced in winding up the companies. They really didn't have the capacity to deal with the media," Llewellyn says. "So we came

up with a strategy and we kept the media informed the whole time."

"The Federal Government, the MUA and the Lang Corporation were giving the media nothing, but we were having media conferences three times a week and the guys were doing a few one-on-one interviews daily. The phone was running hot for two months. Brook and Butterell became "the" pin-up guys. Their faces were plastered in every magazine and newspaper in the country and they were on TV everyday. Their image, and the image of their company, skyrocketed."

With such a powerful effect on the health of organisations it's little wonder the industry of litigation PR, and its related specialist boutique PR agencies, has blossomed in the dial-L-for-lawyer environment of the US. But it is an industry that, over the past few years, has also begun to bloom in Australia. For its specialist practitioners, the field is one that is filled with great challenges and offers immense satisfaction when a job is done well.

"It's much more specialised than normal PR or issues management, and at the same time it's a field that will grow substantially in Australia over the next decade," Rasman says. "It allows one to exercise more strategic and substantial thinking about how you would approach a problem or issue. I've heard those in my profession described as 'spin doctors', but for those with a background in law and communications, this job is more like being a 'spin surgeon'."

Ignore at your peril

In an extract from a paper he wrote on litigation PR, Fleishman-Hillard's Tony Rasman summarises some of the dangers

of ignoring public opinion.

Big corporations are swimming against the tide in the sea of public opinion at the best of times, and if they are perceived to be arrogant it contributes to erosion of customer support.

According to US-based pollster, Opinion Research Corporation (ORC), 62 per cent of Americans believe business people will do anything they can to make a profit – even if it means ignoring the public's needs.

"When told a large company is accused of wrongdoing in a lawsuit, more than one-third of the population believe that company is probably guilty," ORC says.

"And 58 per cent of the public believe that a large company is guilty when its spokesperson responds ‘no comment' to charges of wrongdoing."

It's not much different in Australia, as the Institute of Public Affairs (IPA) has observed. To demonstrate how widespread vilification of big (and not-so-big) business is, the IPA Review has quoted images from a feature-length children's cartoon, Fern Gully, depicting logging companies as greedy destroyers of rainforests.

While the attacks can come from a variety of directions, there's evidence that a well thought-out, proactive approach will yield results – especially where messages are blocked or distorted by traditional media outlets.

The lesson to be learnt is that companies must not wait for the crisis to end before forming the communications team to resurrect the brand. This must start when the crisis begins.

Chris Sheedy is a Sydney-based freelance writer.