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WHAT'S WRONG WITH THIS PICTURE?

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7 Rules of Ethical Marketing

How to Market for Cases Without Jeopardizing Your Practice

by Susan Jones Knape

You are plaintiffs' attorneys. As such, you have the revered role of holding corporations responsible—and keeping them honest.

What you do matters, for individuals and society as a whole. You dedicate yourself fully to your clients and would never intentionally do anything that could jeopardize their cases.

But you are also busy. Your expertise lies in the law, not marketing. And you most likely assume that every vendor in the legal space understands and complies with ethics rules. Unfortunately, that's not always the case.

No matter how much you choose to know or not know about your day-to-day case acquisition, your law firm is responsible for the ethics of any marketing partner hired to run your firm's campaigns and procure leads. Full stop.

Ethics violations can result in professional penalties from your state bar, including suspensions and/or disbarment. Violations also can hit you financially through fines for TCPA violations and costly lawsuits. Finally, and most importantly, unethical legal marketing is on the radar of the defense bar. Do I have your attention now?

Let me put it another way: If you are purchasing cheap leads and not paying attention to exactly how they are being sourced, how they appear, and how they are vetted by your intake group, then you are putting yourself and the entire plaintiffs' bar at risk.

Here's what you need to know.

1. Look Before You Spend.

I've been working in the legal industry as a marketing expert for over two decades now, and to say that I am astonished by the gullibility of smart, highly educated attorneys is an understatement. Yes, I know that plaintiffs' attorneys work on contingency, so saving every penny counts. But let's be honest: the old saying of "penny wise, pound foolish" applies here.

If a "deal" seems too good to be true, then it most likely is. Every marketer works with the same media sources, so it is impossible for that guy who just called you up with a "special" to be vastly out of line with the pricing of others.

There's an easy fix here: Ask (actually, demand) to see all advertising components before you hire a marketer. This includes the ads, the landing pages, and the questionnaires.

If you get pushback regarding sharing the actual visual images of all ad components—walk away.

2. Direct Solicitation is Never Okay.

Ambulance chasing hasn't gone away — it has simply moved online. But it is still unethical. ABA Rule 7.3 prohibits lawyers from "solicit[ing] professional employment by live person-to-person contact" when the

solicitation is motivated by the pecuniary gain of the lawyer or law firm.

How does direct solicitation work online? Easy (but creepy). Vendor X purchases a list—sometimes unrelated to the specific tort—and then proceeds to call, text, and/or email people on the list without their consent.



Direct solicitation such as this text is a violation of ABA rules and of the Telephone Consumer Protection Act.

Generally, the emails say something like: "Your name came up for compensation in the XXX lawsuit. Click here to get your award>>>>"

“...when you buy a [third-party] list, you are subjecting yourself to the various ways (ethical or not) that the list was procured.”

This is a flagrant violation of not only American Bar Association (ABA) rules against direct solicitation, but also the Telephone Consumer Protection Act (TCPA), which prohibits unsolicited outreach. We'll talk more about TCPA later, but for now, just know that lawsuits regarding these violations are on the rise.

Bottom line: There are so many things wrong about this and so many ways you could get in trouble. Just don't do it.

3. List Buying is Risky.

At my company, A Case for Women, we have never purchased a third-party list. Why? Because when you buy a list, you are subjecting yourself to the various ways (ethical or not) that the list was procured.

While it might sound appealing—like a “secret sauce”—to think that a special list could allow you to directly contact a pool of individuals who are good candidates for a mass tort, think again. In reality, you are subjecting your firm and the entire litigation to potential TCPA fines as well as professional penalties for direct solicitation.

The methods used to generate leads (and lists) can also fall into ethical gray areas. For example, high-pressure tactics, exaggerated claims about legal outcomes, or vague disclosures

about affiliations with law firms can mislead potential clients and harm the industry's reputation.

Your marketing vendor should be generating leads through their own ethical, transparent advertising—using first-person methods. Additionally, the leads should all show a chain of appropriate opt-ins. Anything less puts your firm at risk.

4. How an Ad Looks and Reads Matters.

Now that you have asked to see the ads and landing pages, how do you evaluate them?

The American Bar Association (ABA) Rule 7.1 states that “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.”

What does this look like in real life? Unfortunately, there are plenty of examples to choose from. The most flagrant violations are those that show checks, rolls of money, or large dollar amounts. Not only are these violations of the most basic legal ethics rules, but they are also off-putting and a cause for late-night lawyer jokes. This is not exactly the image the plaintiffs' bar wants to portray to the public.

These two examples of false or misleading advertising show the practice of prominently display images of checks, stacks of cash, or exaggerated dollar amounts.

Direct Assistance Group Sponsored

Baby Powder LINKED TO OVARIAN CANCER

CHECK ELIGIBILITY

TOWN OF HOLLY SPRINGS
DATE: 03/07/2020
AMOUNT: \$108,559.00
CHECK: 10840

PAY: One Hundred Eight Thousand Five Hundred Fifty-Nine and 00/100 Dollars.

LARRY WEAVER
P.O. BOX 14313
RTP, NC 27709

DIRECTASSISTANCEGROUP.COM
Qualify for Talc Baby Powder Compensation

Learn More

This Helped Ease Some Of The Trauma

Were You Sexually Abused in an Uber or Lyft?

53-8199
21 13
CHECK #: 299187
DATE: 10/11/2020
\$ **2,600.00

Apply Now

2 likes

Like many women out there, I was a sexually assaulted in in an Uber. I didn't want to become a victim, so I reached out to see what kind of legal action I could take to find justice and peace.

If your leads that are coming in seem too good to be true, they probably are.

These two examples of false or misleading advertising show the practice of prominently display images of checks, stacks of cash, or exaggerated dollar amounts.

If your advertisement is false or misleading, it's prohibited under the ethics rules.

This includes utilizing marketing websites that pretend to be non-profits because they use a .org domain. While anyone can purchase a .org, it is misleading and an infraction of ABA rules about transparency and honesty.

5. Opt-ins Are Not Optional.

One of the most scrutinized areas in legal marketing is opt-in communication. Marketers should adhere to stringent regulations like the TCPA and CAN-SPAM Act.

Here's what that means:

Ethical opt-in practices have to make it clear what people are agreeing to. This means that every lead needs to opt into an unambiguous disclosure about how their personal information will be used. For instance, consent forms on websites should:

- Specify that users may be contacted by a law firm or its partners.
- Include detailed terms outlining the nature of communication (e.g., phone calls, emails, texts).
- Offer a straightforward opt-out process that respects consumer preferences promptly.

Failing to provide appropriate and transparent opt-ins that potential clients can sign off on BEFORE speaking with your call center, law firm, or marketing group is a TCPA violation that could lead to a lawsuit, a fine, or worse.

6. Your Law Firm Name Must Be Visible.

Scroll through your Facebook feed and you'll see numerous examples of so-called legal marketers with nondescript names offering quick questionnaires to determine if a potential plaintiff is qualified for a claim. While online questionnaires themselves aren't problematic, the way

many of these ads are constructed often is. They feature page after page of information about said company and how they "help people," but no indication whatsoever regarding who is behind the marketing ads.

Even reading the fine print privacy policies, it is often hard to determine who's doing the marketing.

If your firm's name, address, and the responsible attorney is not on the landing page used for paid advertising—whether you are working with a third party or not—that is a violation of ethics rules. Plain and simple.

7. Follow the Intake Do's and Don'ts.

Your intake team, whether part of your marketing group or not, is an extension of your law firm. Their intake processes need to be vetted as much as or more than ad processes.

Red flags include overseas call centers, call centers that financially incentivize employees to sign cases, an excessively high percentage of "perfect" cases, use of robocalling or autodialing.

And do we really need to say this?

If your leads that are coming in seem too good to be true, they probably are. It takes only a couple of hours of your time to do a random check, and you will immediately know if the cases or potential cases are what you think they are.

Ethical marketing is more than a set of rules—it is a foundation upon which the entire plaintiffs' bar rests.

While the recommendations made here cover the basics, your commitment to ethics shouldn't stop with just checking off these few (but critical) boxes.

Ethical marketing compliance requires proactive oversight to ensure compliance with ABA rules, TCPA regulations, and other similar rules. And because compliance often starts with your choice of a marketing partner, I implore you to choose carefully.

This article should not be construed as legal advice.

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