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The Maturation Of Competitive Intelligence in Law Firms

By **Rod Osborne**

When I was a young lawyer — and all I ever was as a lawyer was *young*, having run screaming from the practice, if not the profession, as a fifth-year associate — I was given a project that didn't have a proper name at the time, but today would fall under the loose heading of "competitive intelligence." This was many years before that term was commonly used in the legal industry, way back before the Internet came along and kicked over all the tables. I was asked by a partner I often worked for to find out all I could about a client's rival company, which was then represented by a rival law firm in town, one with which we had somewhat friendly but also highly competitive relations. That both our client and the target of my inquiry were greyhound dog racing tracks, populated by Runyonesque

Rod Osborne is the Managing Director at Major Lindsey & Africa, resident in the Boston office.

characters who proudly referred to themselves as "Dog Men," probably says more than I'd like to admit about how I was tracking as an associate at a firm that otherwise specialized in corporate tax and mutual fund work.

In any event, I set off to find out all I could about that rival dog track. God knows what I dug out of the law library — maybe racing commission filings and whatever I could glean from available dog track trade publications, if such a source even existed. Lexis-Nexis did exist in some primitive form at the time, so maybe I found something buried in there. I really don't recall any specifics, except that my cloak-and-dagger investigation came to very little and the project was promptly shelved.

The point here is that the desire to compete and learn all you can about your competition has been around ever since capitalism first crawled on its belly out of the oceans. The maturation

of meaningful competitive intelligence functions in the rapidly evolving world of law firm administrative operations is more about the proliferation of useful tools than it is anything else. Those tools just happen to have become widely available at a point in time when market conditions have amped up competition between law firms to levels unforeseen before the tsunami of the Great Recession.

LAW FIRMS AND INTELLIGENCE GATHERING

Historically, intelligence gathering by law firms (if you could call it that) was handled on an ad-hoc basis, usually in an on-demand and reactive fashion. Researchers attached to the library would respond to specific requests for information made by the attorneys, generally in preparation for a client pitch, to support an identified media opportunity, or as background information for an event — anything that could quickly give them

the patina of being more well-versed about something than they actually were. Then came the information explosion in the 1990s, and suddenly there were so many more options available — and consequently more activity. Libraries started to keep track of the requests made and the results realized in order to track return on investment, which led in time to the marketing department taking over, since it was involved throughout the process and in a much better position to fully understand how all the pieces were fitting together. As law libraries — once the literal and figurative center of the firm — shrank in size and importance, with more research being handled by attorneys on their desktop computers, the business intelligence research function at many firms was increasingly co-opted by expanding business development operations.

DRAMATIC CHANGES

Over the past few years, the competitive landscape in the legal industry has changed dramatically. There are plenty of reasons for this trend, including globalization, legal outsourcing options, and flat legal spending by clients who have become much more sophisticated consumers of legal services. Consolidation has bred stronger competitors, and clients have become much more willing to unbundle services and spread work around rather than maintaining

the convenient one-stop shopping model that made life in large law firms so comfortable for so long.

Advances in technology have given clients more information about the cost of legal services and where else that client might go looking for them, leading to increased demand for discounts and other alternative fee arrangements at a time when in-house legal departments are under rising pressure to cut costs. Everywhere you look, increasing competitive pressures are squeezing law firms, and very few believe that this is anything other than the new normal that the legal industry had better get used to.

In such an environment, it follows that firms must do everything they can to stay ahead of the wave, and improve their competitive position. As a consequence, firms are attaching ever-increasing importance to developing and improving their business development operations, and that effort spills directly into building up their competitive intelligence capabilities. Post-recession firms need to put more time and attention into evaluating their strategic plans, their market position, and their client relationships so they can better understand where opportunities exist and where the landmines are buried.

Better intelligence allows firms to be more nimble and flexible and react more quickly and confidently, and ultimately, it helps

them to differentiate themselves from their competitors. Employed properly and proactively, a strong competitive intelligence function represents a great opportunity for an innovative, forward-thinking firm to stay ahead of the competition through a better understanding of the evolving business environment.

WHAT IS COMPETITIVE INTELLIGENCE?

Competitive intelligence is much more than the mere customer information or data that the library used to provide on demand in the old days. It has been defined as “the tactical gathering of market and competitive information that can be used to identify risks, opportunities, and changing conditions in an industry.” Another definition is “knowledge and foreknowledge of the competitive environment refined to the point where it can be useful in making a business decision.” The second comes closer to how competitive intelligence is understood and valued by law firms in that it contemplates the refinement of the data gathered and the information thereby generated. The word most commonly used in this regard is “actionable.” There is no end of data out there; it is more easily and widely available than at any time in history. Separating the wheat from the chaff, organizing and analyzing what is deemed most useful, and distilling it into

“actionable intelligence” that can be presented in a concise, easily digestible form to be used in making strategic business decisions is the goal of any competitive intelligence program.

Clients

With respect to a firm’s existing clients, competitive intelligence should be gathered to identify which are most strategically valuable and which relationships might be at risk. But primarily, a better understanding of the business and industry realities of the firm’s clients is valuable in and of itself, especially in terms of better servicing those clients, which is always the very best kind of business development activity. Law firms need to know what truly concerns a client and what pressures and risks a client is facing in order to provide the best possible legal advice — in short, they all need to get “closer” to their clients.

When law firms reach out to their clients for feedback, what they hear over and over again is that those clients would like their law firms to better understand their business. Better and deeper knowledge of the client can give the firm a leg up on where and how to get more business from that client and can keep the firm one step ahead as that client shifts legal spend into new areas of need. This goes hand-in-hand with the development

of client outreach programs and expanded client interviewing, which are obviously tremendous intelligence gathering opportunities. By learning more about the business realities facing its clients and advancing its thought leadership profile, the law firm will put itself in a better position to cement and enhance its client relationships. And at the same time, and for the same reasons, it will be learning more about the client’s industry and raising its profile within that industry, leading to more opportunities to generate new clients.

As an example, monitoring patent applications, domain name registrations, and trademark and service applications and analyzing what the changes and trends mean in terms of advancing new technologies will help the law firm to target new or potential clients, and also shape how best to approach them. Competitive intelligence can also be helpful when it comes to understanding the role and impact of the client’s other business advisors, such as bankers, accountants, and consultants.

Competitors

Intelligence gathering is obviously valuable when it comes to assessing strengths, weaknesses, and current activities of direct law firm competitors, as well as new entry competitors that may not be competing head-to-head

but are nonetheless siphoning business from the firm, such as legal process outsourcing providers. The value of this intelligence is found both in terms of “knowing your enemy” (Sun-Tzu is mentioned often in discussions of competitive intelligence) and correspondingly how the firm gathering the intelligence can better position itself in the market with respect to those competitors. This goes beyond learning as much as possible about the legal work that a competitor firm is handling and how well it’s handling it. For example, it would be very helpful to understand how the competition is managing the tricky delta of pricing, productivity and compensation in a legal industry that is less yoked to the billable hour.

Better intelligence not only tells a firm where its competition is heading, but helps that firm find ways to meaningfully differentiate itself. This is important because just being an “excellent lawyer” is basically table stakes in this game; it’s more or less assumed, because anything less than excellence would take the firm out of the game from the outset. Making that argument is comparable to touting an airline’s safety program — it’s critically important, without a doubt, but not necessarily what guides the decision-making of a customer or client.

Industry Trends

Finally, apart from the firm's clients and competitors, competitive intelligence gathering is also critically important when it comes to identifying industry trends and analyzing the general economic framework in which the firm, its clients, and its competitors operate. This not only involves identifying and analyzing general industry trends and risk factors, but also specific trends in litigation, legislative and regulatory developments, M&A activity, advances in technology, etc. Freely available sources include regulatory filings, patent applications, domain name registrations, trademark and service applications, annual reports and other public or semi-public disclosure documents, competitors' marketing materials and online blogs, trade show visits and industry events, talking to customers who do business with competitors, new employee interviews, trade publications and so forth.

The range of tools that can be used in this intelligence gathering is immense, giving rise to the term "infobesity." There are so many sources, and those sources have become so sophisticated and specific, that a law firm realistically needs someone with expertise in the area — and plenty of time and energy to devote to it — just to be able to intelligent-

ly wade through what's on offer. In addition to the free sources referred to above, such as the USPTO website, FDA drug data bases, and regulatory filings and activities, the last several years have seen an explosion in data and analysis that's available for a price, by subscription.

Examining a given source's methodology for collecting data, and determining which sources are the most relevant and reliable is an important part of the competitive intelligence practitioner's overall role. For example, there's Pitchbook, which focuses on private equity and venture capital, and Prequin, which focuses more specifically on the alternative assets industry. Lex Machina, which is a leader in the IP space, "mines litigation data, revealing insights never before available about judges, lawyers, parties, and patents, culled from millions of pages of IP litigation information." Whew. Or a firm could turn to Capital IQ, which covers global financial markets, and/or Merger Market, which "analyzes volumes and values of M&A activity in specific regions or sectors to discover deal patterns and identify trends ahead of the competition."

Monitor Suite "aggregates legal information, sophisticated functionality, real time filtering, company data, and vast docket

coverage into an intuitive and highly graphical interface." And then there's the vaguely unsettling promise from Ravel Law to provide its clients with "Judge Analytics [that] help you navigate millions of documents to parse how your judge thinks, rules, and is influenced."

Well, we've certainly come a long way since the dog track, and I for one can only imagine the advances we will continue to see in competitive intelligence as the technology continues to develop.



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