



# Litigation PR

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Reporting on court cases has long been a mainstay for journalists generating good copy for stories. But nowadays, reporting takes place in an environment of 24-hour news, increasing public scrutiny on companies and individuals, and everyone having a means of sharing information publicly at their fingertips.

Litigation PR is a specialist branch of legal PR, all about managing the reputation of a client – company or individual – through the litigation process. Before the claim is issued, before it reaches court (in the event it does) and through the timeline of the court process. And then managing the PR when the case closes.

Any individual or company involved in a dispute should be thinking carefully about how the case is going to impact their reputation – because it will impact their reputation.

Moreover, you and your client should consider carefully what your overall aim is in engaging litigation PR in the first place. For instance, is your aim to maintain a dignified silence? Is it simply to rebut the aggressive stance advanced by your opponent, or to discredit your opponent? Is it to pressure your opponent to settle a claim before it

reaches court? Or is it to raise awareness among others that they have a recourse to justice?

Taking a reactive stance to litigation PR simply doesn't work; you need to have a strategy in place. For instance, anticipating when and how you might be attacked by the other side, what your key rebuttals are and how you would respond if allegations were being made about you that were not true. The better planned in relation to thinking carefully about pre-trial, through-trial and post-trial in litigation PR you are, the better your outcome in terms of media and public perception will be.

You also need to consider your client's perceived identity in terms of the media and, by extension, the public. Are they the David or the Goliath? The nasty bank or the victimised family? Or are they a global corporate who until now has enjoyed an unblemished record of wholesome brand values, but whose reputation could be severely tarnished by the litigation in front of them.

In some cases, your starting point can define the overall effect on your reputation. Being fully conscious of where your client currently stands will enable you to better predict the initial challenges you might face with PR. The reason to do this is simple: you can win your case in the court of law, but lose your case in the court of public opinion. For example, if Sir Philip Green was involved in a court battle against one of his business interests now, furore around recent #MeToo allegations made against him and his controversial use of NDAs would make any positive PR for him challenging. How much public sympathy would he really get, despite the strength of his legal case?

This means taking into account where your cli-

ent is in the eyes of the media and the public as soon as you're called in.

These considerations ultimately lead us to a point of caution: your litigation PR strategy can only ever be as good as the legal case which underlines it. An aggressive PR strategy cannot make up for the pitfalls of what is essentially a weak case. Take the example of Stella English, a former winner of *The Apprentice* who lost a claim in an employment tribunal against Lord Alan Sugar. English had brought a fiery PR campaign against Lord Sugar, but Lord Sugar strongly rebutted and used the media in his defence. The tribunal resulted in a unanimous ruling in Lord Sugar's favour. And it was later reported by the tabloids that she lost a very high-profile job as a result of the media she had courted, which painted her as a troublesome employee throughout the tribunal.

Yes, litigation PR can be a tool to put pressure on the other side; a tool where embarrassing incidents unrelated to the court case are brought into the public domain. Yes, you can use litigation PR to gain influence amongst key stakeholders, including the media, politicians and other social influencers. But ultimately, the court decides on the legal facts and merits of the case before it.

So what does it take to manage litigation PR effectively? Here are my tips for implementing a proactive strategy from start to finish.

## **Pre-trial: Build a narrative**

### **—Invite journalists on key trial dates**

There will be peaks and troughs of when the press are going to be interested in reporting the

case, so think tactically: plot on a timeline key dates of when you should be getting press interest to bolster your arguments. For instance, you should invite journalists to the opening pleadings, when the witness statements are sworn in, to give them an overall picture of the dispute.

Or you could use the highly pressured situation of when the opponents are under cross-examination by your legal team to again generate media interest and increase chances that more public scrutiny centres on your opponent than it does your client.

### **—Take the pulse on your and your client's reputations**

Just as you check your own media perception, do the same for your opponent. Look at who's involved, what their backgrounds are, what their reputations are, whether they've been involved with anything else controversial outside the litigation. An awareness of this, in tandem with knowledge of your own perception, will help you predict how different publications will report your case and the additional reputational pressure points you can squeeze your opponents on as part of your offensive strategy.

### **—Make sure you know the court rules**

You need to be fully apprised as a litigation PR. A key rule of engagement is knowing when you can start to speak about the case to the media in a meaningful way. Most national newspaper journalists will rely on the Particulars of Claim being made publicly available way before any physical court date, which, as a litigation PR practitioner, allows you to start building a public narrative around your client's case.

Flouting these rules could land you and your client in contempt of court, which has very serious ramifications. But an acute awareness of the status of legal documents and information and

knowledge of when they can and can't be discussed are essential apparatus in the armoury of the litigation PR. Make sure you follow the rules of engagement.

#### **—Plan your strategy around the facts**

Ally your litigation PR narrative to legal documents and be sure you know where the strengths and weaknesses of your case are. To build a compelling litigation PR strategy, you have to centre on the facts of the case and take a forensic eye to its weaknesses that could be exposed by the other side.

#### **—Build a suite of documents**

Assemble your documents so that everyone's on the same page. These should include: Q&As, scenario planning, a timeline of the court hearing dates and witness timetable and lists of journalists who would be interested in the case.

### **Through-trial: Be tactical**

#### **—Lead the news on the case**

Take all opportunities to distribute factual information about the case. For example, after they become public, release court documents accompanied with your narrative on what the documents show. This will help details of the case that you want to emerge make it into public consciousness.

#### **—Know the rules of engagement**

Litigation PR should never be thought of as a tool to circumvent the court process. Judges look very poorly on that. So no matter what the other side might throw at yours, you must tread within the lines.

#### **—Delegate spokespeople for your client**

This will also help you shield your client's reputation, create a sense of power and coordination around the case, as well as limit association between key company actors and the case itself.

Ensure the continuity of business-as-usual PR. Litigation PR, without ongoing PR, can consume the agenda of a business's public profile. It's therefore important that not all news about your client revolves around the case. Use PR on non-case related matters to ensure stakeholders know about your broader good news.

#### **—Think beyond the end of the case**

What is the narrative you want to build if you win the case? What is it if you lose? Will there be an appeal? Remember that even if you win the case, it's still not necessarily a victory from a reputational standpoint. You'll need to think about how your client's reputation will be affected in the long-run and start working out your strategy for repair.

### **Post-trial: Rebuild**

This is where the law stops and the PR starts. How much work your client has to do ultimately depends on how the litigation PR was conducted throughout the case, and its outcome. At this stage, it's good to assess your position and the reputation rebuild work that is required to reestablish your position to where it was before the litigation event.

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Litigation has the potential to cause serious damage to companies' and individuals' reputations, regardless of the outcome of the case. But having a strategy in place for the communications around a dispute is an essential part of preventing (unnecessary) reputational damage and, if used effectively, can be a key lever for advancing your position in a litigation scenario.

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