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**That's right, folks. Don't touch that dial.**

Years ago, law firm practice and marketing for many lawyers became a business like any other. (Image from U.S. Postal Service's website). Today, even many large corporate law firms pursue aggressive, public advertising campaigns. Not long after I was assaulted by low-grade ads by a personal injury lawyer at the Albuquerque airport a dozen years ago, I saw a dignified yet very public poster-size ad at National Airport by a large corporate law firm that pays some of the biggest starting salaries for new lawyers coming from top law schools with the most polished grade transcripts and law review credentials. Then came the Internet, and yellow page salespeople began to sweat that plenty of advertisers would recognize that many Internet users would not even want a bulky yellow pages at home; so they added online yellow page listings to their shtick. In 2002, a lawyer named Robin Ficker -- whom I have frequently seen in local courts, and who would heckle opponents of the then-named Washington Bullets from his season's seat -- won a well-deserved First Amendment victory against a Maryland law severely limiting when lawyers could start sending direct-mail solicitations to criminal defendants. *Ficker v. Curran*, 119 F.3d 1150 (4th Cir. 2002). This opened up the floodgates for lawyers in Maryland and other states in the federal Fourth Circuit to send out direct mail to criminal defendants not long after the ink has dried on criminal charging documents. My law partner Jay and I have managed to limit our marketing primarily to keeping active in the legal and non-legal communities, our frequent media appearances, and our web presence. We have avoided direct mailing, broadcast advertising (other than the weekend legal radio show we previously hosted), and large marketing budgets. Nevertheless, as a First Amendment zealot, I have always supported erring on the side of providing too much free expression protection for lawyer advertising -- and all other advertising -- than too little. Many members of the public probably look askance at the ads here (thanks to TNCLS for the link), here, and here (and another one I saw while in Norfolk to take the bar exam, with currency falling from the sky) that have appeared for Lowell "The Hammer" Stanley's firm. Lowell's website -- I know and like him from the Trial Lawyers College -- includes coverage of his advertising approach. His ads seem mild compared to this one and others from Jim "The Hammer" Shapiro in Rochester. The First Amendment being the First Amendment, it goes without saying that I firmly dissented when the District of Columbia Trial Lawyers Association got behind a somewhat weak law against lawyers' use of runners to find personal injury clients. The approach of many of the runners apparently was to monitor police radio runs, go to accident scenes, and offer a ride to the hospital (sometimes followed by a ride to the runners' lawyer's office), sometimes in a luxury vehicle to go in style. I know and like a lawyer whose law firm has frequently used runners, and also know and very much like one of the lawyers who spearheaded the DCTLA's anti-runner effort. It has been a hot button issue. Another side of lawyer marketing is one that consumers rarely know about, involving lawyers marketing to other lawyers. Where I practice law, the governing professional responsibility rules do not permit fee splits with referring lawyers without the referring lawyer's only taking a fee commensurate with the work s/he has put into the case, or if the client consents to the fee-splitting arrangement in writing and if the referring lawyer shares responsibility over the case. In any event, some lawyers market their claimed referral arsenal with a vengeance, often seeking hefty percentages running as high as one-third of the attorney fee. Many calls also originate from people claiming to be lawyers or from firms (but not law firms) looking to refer cases in the geographic area of the lawyer they are calling, only for the caller to reveal much later in the call that the referrals would be from people responding to generic ads (and perhaps outrageous ads, too) on late-night television, or that "exclusive" geographic areas are being sold on marketing websites. We have rejected all such cold calls, and the caller's purpose usually becomes obvious early in the phone call. I have heard the theme that established and establishment lawyers can easily push for clampdowns on lawyer advertising, because they already have established reputations or can communicate their services in alternative ways to potential business clients (e.g., by speaking at their conferences and getting articles into their professional journals), as opposed to the absence of such communications avenues for criminal defense, personal injury and divorce lawyers. Curiously, in that regard, last year, the New Jersey Supreme Court's Committee on Attorney Advertising issued its ethics opinion number 39 barring lawyers "from advertising they are in the 'Best Lawyers' or 'Super Lawyers' rankings and participating in the voting for such honors." Such a ban -- clearly in violation of the First Amendment -- certainly would affect lawyers from huge corporate white shoe operations to the smallest of firms. The ban was stayed pending state Supreme Court review. More articles on the ban are here and here. I have not found any developments on this stayed ban since this January 2007 article. How much money and time do lawyers need to spend on marketing rather than on spreading their reputation through delivering excellent service to clients while looking out for the public interest at every turn (including providing pro bono publico services, and working for a fairer and higher quality justice and judicial system)? Some lawyers' names are so big that they do not need to do much marketing. On the other hand, I know a very capable and respected local criminal defense lawyer in practice for fourteen years who publicly and unabashedly says that direct mail is a key way for him to assure he can earn a living. I doubt that he is alone in that view. On the other hand, as with all people marketing their services, not all lawyers stop their marketing at the line between earning a decent

living and an opulent one, and many lawyers (like those in many other professions) find themselves saddled with larger overheads and loans to satisfy as they earn more income, as well as feeling the need to make and save as much money as possible today, lest the well dry up later. In any event, any lawyer who does any marketing needs to keep abreast of governing ethics rules and bar counsel actions affecting marketing, even if the lawyer is intent on challenging marketing limitations that trample on the First Amendment. Moreover, if lawyers ignore assaulting consumers' sensibilities with their marketing, the backlash will boomerang to all lawyers. Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:05