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Are you getting enough? marketing mediation

Tom Altobelli

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Marketing mediation

Are you getting enough? Marketing mediation

Tom Altobelli

To Fellow Labourers in the Vineyards of Discord,

This brief article deals with something which is very dear to the hearts of all of us — getting enough mediation to satisfy whatever your particular appetite for mediation might be. I do not wish to be dogmatic about this topic — indeed one cannot be dogmatic in an area which is so untested and new, particularly in our unique Australian setting. But I would like to make a few points which I hope will stimulate discussion.

Marketing theories and how they apply to mediation

I consulted my concise edition of *The Bluffer's Guide to Marketing* — a rather unforgettable text, partially because its subtitle is *The Dedicated Dork's Dictionary of Marketing*. It talks about products having a certain lifecycle. Now we have to acknowledge that mediation, like any other professional service, is a product. Just as the marketing of legal services has undergone a revolution in the last decade, so too might mediation undergo its own marketing revolution.

In 1986 when I established my legal practice at Hurstville, there was hardly another legal firm with a shopfront office, large attractive signs, a registered trade mark protected logo, extended hours, a professionally designed letterhead and extensive advertisements in the local newspapers. Nowadays, however, these marketing features are commonplace in legal practice, and that is in merely 12

years. The point is that mediation services may undergo a similar revolution in the next decade.

Marketing theory states that there are four stages in the product lifecycle:

- stage 1 — introduction;
- stage 2 — growth;
- stage 3 — maturity; and
- stage 4 — decline.

With mediation we are only in the introductory stage 1. The potential market for mediation, the prospective users, have only a very low level of awareness of the product. Take heart, because if this marketing theory is correct, and if mediators play their cards right, there is a promising future for the mediation industry, and it is probably not too far off. The key for moving from introduction to growth is *education*, and we'll come back to that factor.

Now from the consumer's perspective there is also a cycle, this time with five stages:

- stage 1 — awareness;
- stage 2 — interest;
- stage 3 — evaluation;
- stage 4 — trial; and
- stage 5 — adoption.

In the *awareness* stage, the consumer has heard something about mediation (or meditation, medication, levitation, and so on) but lacks useful information on it.

In the *interest* stage consumers, having obtained some information, want to find out more. They might read up about it, talk to someone who has had experience with it, or perhaps do a mediation course. ➤



Editorial Panel

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➤ In the *evaluation* stage, the consumer thinks, 'You know, I might just try this one day.' They have decided that they will experiment at some time in the future.

In the *trial* stage, the consumer does give mediation a go, usually by sending either a really small case, or a really hard case, to mediation and evaluating how it goes.

In the *adoption* stage, the consumer, if they have had a positive evaluation, decide that they are going to try it again.

My *Bluffer's Guide* description of the consumer's perspective actually accords with my own direct experiences in mediation. In 1994 I was representing some clients in complex litigation in the Family Court. There were three parties to the proceedings, with three sets of lawyers, and the case looked like it was going to take a week and cost the parties more than what they were arguing about was worth. I persuaded the barristers and solicitors on the other side to try mediation. They all told me that they had heard about and knew something about it (though I cringed when one of the barristers turned to his client and said, 'yes, why don't we try arbitration?') but none of them had tried it. I told them more about it and they agreed to give it a go. Two very experienced mediators were appointed, but after almost two days the matter had not settled.

What was interesting about this episode is that since 1994, at least 12 mediations have been referred to the mediators who conducted the mediation by the lawyers involved, and eight have been referred to me even though I was not the mediator! Why? Because the other solicitors and barristers in the case were *aware*, they were *interested*, they *evaluated* it, they *tried* it, and even though the matter did not settle, they have *adopted* this product called mediation and continue to use it.

Now, how do we go from the introduction stage in the product cycle to the growth stage of mediation? How do we go from moving the consumer from awareness of mediation to adopting mediation? I believe that the answer is in education or, to use what some might regard as a less noble term, marketing. The responsibility for education, I submit, is not just that of mediation providers or professional associations — it is yours and mine.

Having a masterplan — where are we going?

There are a few wonderful lines in Lewis Carroll's *Alice in Wonderland* when Alice comes face to face with the Cheshire Cat. Alice says timidly, 'Cheshire Puss, would you tell me please, which way I ought to walk from here?' The cat replied, 'That depends a good deal on where you want to go.' Alice said, 'I don't much care where.' 'Then it doesn't matter which way you walk' said the cat.

The first step in moving from the introductory stage of mediation in Australia to the growth stage is to have a clear plan, the foundation of which is education. The first step in getting the consumer to go from awareness to adoption is to have a clear plan, the foundation of which is education. Whether we talk about promoting the industry as a whole or marketing the services of individual or collective mediation providers, the first step is to have a plan involving education.

This involves asking: who are the consumers of mediation today, and, more importantly, who will be the consumers of mediation services tomorrow? Who is the consumer anyway? Is it the referrer of disputes to mediation (for example, the legal profession) or is it the end-user (the client or disputant)? Obviously different strategies might apply to different consumer groups.

Whether you are an organisation providing mediation services or an individual mediator, you need to have a marketing plan. This will involve identifying your consumers and deciding how to reach them.

The Big Picture: marketing the mediation industry itself

Any planning for marketing the mediation industry must be based on educating consumers. Perhaps our definition of consumers is too narrow. Are we focusing too much on the legal profession? Should we be targeting more resources on other gatekeepers in dispute situations such as accountants, doctors, psychologists, social workers, counsellors and religious leaders? ACDC has invested much time and effort in local government and state government instrumentalities, with significant success. ➤



➤ The emphasis is still on education, but it is not confined to the legal profession.

It is encouraging to see the industry being promoted in the context of contemporary events which have the potential to impact on many people. For example, the Law Society of NSW has been active and vocal about the potential for disputes arising out of the Sydney 2000 Olympic Games and how ADR can be used to prevent, manage and resolve those disputes. LEADR, among others, has considered the possible applications of ADR in native title disputes.

Whenever there are stories about court delays and obstacles to access to justice, the industry should rise up through its spokespeople and seek to educate the public about the benefits of ADR.

I wonder if part of the problem of seeing the Big Picture and marketing the industry is the fundamental human dilemma of whether it is better to cooperate or to compete. Are the various industry organisations involved in mediation today too busy in their respective corners of the vineyard telling their customers of the advantages of cooperation over competition, while not perceiving that they themselves are competing with other labourers in the same vineyard? After all, it is a small vineyard.

But *is* it a small vineyard? When you did your mediation training you may have done an exercise, the point of which is to demonstrate that in developing creative options for resolving issues and meeting the interests of the parties you had to think 'outside the square' — remember the exercise with the dots and the lines? You can only draw the lines by going outside the square. Think about that: is it a small vineyard? The boundaries of the vineyard in which we labour might be imaginary ones: the boundaries of the mediation industry are only where we let our minds draw them. For example, so much of our marketing efforts to date are focused on who we *think* our consumers are *today*. But what if, instead, we started focusing on who our consumers will be in the next decade — beyond 2000? Let me give you two examples of how the industry is being marketed to tomorrow's consumers, as

opposed to those of today.

- SCRAM — The Schools Conflict Resolution and Mediation programme — is aimed at a broad cross-section of tomorrow's citizens; and
- mediation education and training in many of the country's law schools is aimed at an important group of prospective gatekeepers to dispute resolution.

Marketing yourself — in your corner of the vineyard

What is your personal marketing plan? If you are concerned that you are not getting enough, what are you doing about it? Who is your target market? I can tell you mine — it is Sydney family lawyers. How do I reach them?

- Editorial writings: the *Law Society Journal* is a very effective marketing forum;
- professional journals: *Alternative Dispute Resolution Journal* helps with profile; and
- public speaking: Continuing Legal Education seminars, conferences, talks.

Other avenues include:

- brochures on mediation and ADR;
- advertising in community newspapers;
- exposure in Yellow Pages; and
- networking among a range of groups and organisations.

What do you need?

- persistence (it takes time!);
- professionalism; and
- don't give up your day job!

Beyond 2000 — the next wave in marketing issues

I am very optimistic about the future of the mediation industry. I think there will be a great deal of mediation work around. I am encouraged by how the legal and other professions are learning. I see great enthusiasm for ADR in the law schools. I see governments legislating for ADR in amazingly diverse areas. I see business and industry looking for ways to deal with conflict constructively and cheaply. I see organisations like LEADR, ACDC, Mediate Today, the Institute of Arbitrators and Mediators and others doing great things to promote the industry of mediation. But what are the challenges? Just a few to think about:

- Ethical marketing: is it an oxymoron?
- Will the drive to mediate more mean that inappropriate cases are sent to mediation?
- How will we maintain professional standards in a rapidly growing industry? ●

Tom Altobelli.

This has been adapted from a talk presented at a meeting of the NSW Chapter of LEADR in 1998 and is published with permission. The writer lectures in Dispute Resolution at the University of Western Sydney, Macarthur and conducts a mediation and legal practice. Diverse sources were drawn on in the preparation of this piece.

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