

>> **Communication and litigations: teamwork is the correct strategy**

Panama >> 06 >> 2014

In September 2013, the Mexican town of Guadalajara broke the World Guinness Record with 700 mariachi players performing at the same time three different songs. It was a hard task that needed to coordinate 700 voices, different nationalities and several instruments. The key for its success was the perfect and synchronize performance.

One single note out of the tune could have destroyed their objective of breaking the record. This synchronized teamwork is also experienced in all crises when the company's communication direction and the legal team have to set a common goal: overcome the legal process with the tiniest possible impact on the company's reputation.

We are talking about a very ambitious plan since these legal cases have two different aspects to take into account: the legal aspect itself, which is managed by lawyers who worry about the judicial consequences; an another aspect which depends on the communication management and it deals with the reputational risk of the process for the company, its brand, executives, shareholders and stakeholders.

On the legal part, there is always the temptation of acting according to the "ostrich strategy" bearing in mind that any opinion of their executives could be used against them later on the trial. On the other hand, the communication team usually recommends a more timely and transparent communication taking into account our current world, where writing 140 characters can decide how the community will receive the new and will start their own judgment.

We must always bear in mind that these legal cases are not only argued and decided on tribunals but there is also a judgment in the media and the Internet whether we like it or not. These parallel judgments cannot be avoided; therefore the defense may play its role in both stages where the reputation of the company is at stake.

How can this two aspects and different responsibilities work side by side during the company's judicial process? The answer is their common goal: protect the company's reputation through a common strategy. This strategy must take into account:

COMMUNICATION STRATEGY SIDE WITH LEGAL STRATEGY

One of the main points during judicial processes and in most crises is that the legal team sets the strategy for the process. Once the strategy is set, the communication team addresses its recommendations in order to go through the process in the best possible way. It represents an important factor due to their known differences:

- **Legal aspect vs. Journalist aspect:** both aspects flow together during the process and it is important that we recognize the different shades of them. For example, the confidentiality of the case vs. the disclosure of details by one of the parts in the conflict; the use of a more technical language common among lawyers, and more accessible terms for journalists so they understand better and the message reaches its objective. It is also important to see the difference between the legal framework which is more strict and limits the public actions during the process vs. the right of free speech the media put forward in these cases where looking for information and publishing it faces more setbacks than in any other situations.

Ana Maltide Gómez, former Procurator-General of Panama, said that "the time frame of the justice is not the same as the journalist's or media's time frame". This was a clear reference to the fact that media always



want a swift answer about the cases while processes take months and even years.

Regarding this aspect, some actions need to be ready preferably before the litigation is public. These actions are part of the Reputation Management Program:

- **Diagnosis:** being aware of the possible damage a judicial process can have on the company's reputation is a key element before setting and adequate strategy. In pursuit of this goal we recommend to prepare an analysis of the management the company has on its communication and the environment surrounding the case. Those possible risks identified must be controlled during the whole process.
- **Stages and strategy:** we will only be allowed to define our strength, our weakness, how to face possible threats and opportunities by analyzing in detail the possible stages during the judicial process. Once all this information is gathered, we can define the action on the communication aspect. For example, we can decide then if we are going to be pro-active or reactive. Thank to this information we are able to give swift and efficient answers to meet our different public's expectations.
- **Build the "story":** one of the main challenges the communication team will have to face during the litigation is translating the legal defense into a simple argument that can be easily understood by journalists and main stakeholders of the company. One of the key points is building the "story" which tells the details of the judicial case. It is also necessary that we prepare the chronology of the events and other technical annexes which could be useful and without forgetting that communication may change as the process moves forward to different stages.
- **Spokesperson training:** a great part of the success of the communication strategy leads on training. It is the same for litigations regardless the outcome of the process in the tribunals. Therefore, the training of the spokesperson on communication skills is a priority and has to be trained as many times as needed (as it happens with the legal team when preparing their defenses before the judge). There is no doubt journalists will represent a second judge willing to sentence or defend us in a parallel judgment which is almost unavoidable in the media and the social media. A good training will provide the spokesman with the right tools to explain its side of the version, an adequate language and will teach him how to face difficult questions.

IDENTIFYING THE COMMUNICATION MILESTONES AND THEIR IMPACT ON THE STRATEGY

Regardless the type of judicial process the company is facing, they usually have different phases. These phases must be identified and separated in different communication milestones in order to be ready and anticipate how we will face each of them on legal and communicative terms. In every phase we will analyze how the process moves forward or change the strategy according to the outcome of every milestone.

"The way of communicating a legal process has been changed due to the immediacy and the quick spread of a tweet or a video"

- **Milestone 1 Start:** is the first public aspect of the case for both the media and the community in general. Its public interest will be defined by the type of process and its actors. We must bear in mind that anything new, unusual or a conflict will immediately call the attention of the media. We must also add to this point the common "leakage" of information in high-profile judicial cases as well as the strategy of the "victims" of calling the media to present their complaints. The beginning of this phase

starts with the lodging of the complaint, the initiation of an own-initiative inquiry or the admission of the complaint (among other possible actions).

- **Milestone 2. Development of the process.** Some of the events in this second phase are: the taking of evidences, pre-trial hearings and witnesses' testimonies. This stage has usually greater coverage and the case appears longer in the media. Journalists usually wait for hours out of the courts waiting for a declaration or a picture of the main actors on the case. This stage has great importance since the media usually make their own parallel judgment by interpreting the evidences and building their own stories
- **Milestone 3 Ending:** Guilty or not guilty? This is really the new the media is looking for: How does the process ends. In this stage the legal and communication teams must be ready no matter what the outcome is: discharge, sentence, shelve of the case, etc. Regardless the judicial outcome, the objective is to minimize the possible negative effects on the company's reputation. Once this stage is finished, it is important that a second communication stage post-crisis is set so we can quickly restore confidence.

MONITORING 360° IN ALL STAGES OF THE PROCESS

When facing litigations it is also important coverage of 360° of what it is said and done about the process. It is not only about tracking and measuring what is said on the traditional printed media. Nowadays, what happens in the digital world is also very important since we are not talking about a parallel judgment but a circular trial with impact beyond the print world and with great repercussions on the judicial process.

The way of communicating a legal process has been changed due to the immediacy and the quick spread of a tweet or a video. We must take into account this fact and use it to better define our strategy to address them in alignment. Social activism in the digital media does not need a journalist's interpretation of a new in order to create their own story. Not anymore. Individuals create their own story, spread it on the net and they become the main guides in the "virtual library" of the case that is created on the Net.

One of the main risks of the digital media is its durability, since sometimes even when the case has been closed some people and companies are still sentenced in the Internet due to their digital tracks their cases have on the Internet.

With this stage, the development of our strategy should not only be a 360° monitoring but also take into account the way we will manage what happens on the social media.

To sum up: think of all the teamwork and the preparation of all 700 mariachis to break the World Guinness Record.

Teamwork is the best option to face a crisis in the legal aspect, where now the aim is to protect the company's reputation working together and not following the traditional schemes which fought into different teams. The legal team in court and the communication team with the media.



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