

PROTECTING THE BRAND FROM BAD EVIDENCE



Authored by: Elizabeth Ortega (Founder) - ECO Strategic Communications

Litigators will tell you it's important to avoid being forced to explain where relevant but salacious evidence came from when the primary source is confidential. Yet sometimes we let our worse angel's penchant for winning at all costs override our better angel's forethought and common sense.

Manipulating tainted evidence is nothing new. In 2021¹, a private intelligence agency, was described as an "army of spies"² that used fabricated evidence against innocent civilians, including a Canadian judge and journalists.



Let's explore an ongoing and consequential case:³ The heirs of an Israeli-Belgian diamond trader are fighting over his estate, with the surviving children accusing their widowed stepmother of hiding a virtual treasure trove of assets.

The children's prominent London-based law firm obtained, through noted private investigators, evidence that

the stepmother spirited away over £100M to accounts at private banks in Switzerland, Monaco, and Luxembourg. The PI firm also got its hands on SWIFT messages showing transfers of over US\$140M to the stepmother following her husband's death.

In court all looked promising for the children until bank officials testified they had no accounts associated with the stepmother. One banker noted the purported SWIFT transfers were printed in the wrong format – in other words, they appeared to be forged.

The High Court judge seemed to agree, remarking at a recent hearing, "the evidence of forgery is, as it presently appears, very strong".⁴

1 <https://www.wsj.com/articles/black-cube-was-paid-large-amount-of-money-to-improperly-discredit-judge-court-rules-11617210208>

2 <https://www.npr.org/2017/11/07/562486257/ronan-farrow-on-harvey-weinsteins-army-of-spies#:~:text=With%20the%20latest%20revelations%20in,spy%20on%20actresses%20and%20journalists.>

3 <https://www.ft.com/content/512d879c-1e98-44be-822e-1efd46b15ca3?sharetype=blocked>

4 <https://www.greyhawk-uk.com/russia-based-spies-claim-backdoor-access-to-european-central-bank/>

Now the litigation is in turmoil, with the children's lawyers under the gun to reveal sources their own investigators are trying to shield. The law firm had relied on trusted investigators who, in turn, had relied on trusted sources. But no matter – with reputations on the line, inevitably the buck stops with the lawyers. The negative impact on the lawyers' and law firm's brands, which should have been protected as fiercely as the PI firm protects its sources, is incalculable.

This is only one recent example of lawyers grappling with the reputational fallout of judges questioning the veracity of financial evidence in high-stakes cases.

In another case involving the same high-powered lawyers and investigators, the admission of tainted evidence cost the law firm a freeze order, precious time, and strategic leverage, not to mention what may happen if, eventually, the lawyers are found to have committed any legal or ethical offences.

Takeaways From Cautionary Tales

All of those losses and setbacks are avoidable if law firm leadership prioritises communications and due diligence. Here are some constructive key points:

- Pause and reflect before presenting unusually good documentation, as misinformation always hurts clients and reputations.
- Heed smoking guns. Since all advocates aim to represent their clients to the best of their abilities, they may, with only good intentions, neglect to closely examine potentially game-changing information. Or they may inadvertently rely too heavily on questionable evidence that supports their most helpful courtroom narrative.

- Consider public perception. Once a name has been tainted by an ignominious episode, it can never escape innuendo. In today's digital marketplace, the social media e-highway runs at warp speed.



Mind Reputational Risks

- A law firm can avoid brand deterioration by always questioning results. Does evidence from investigators look too good to be true? This can be especially concerning if it comes from confidential sources. Conservative documents from known sources usually provide the most reliable facts.
- Assuming the law firm's evidentiary situation is already in the public arena, it creates a paracrisis, a turning point that can devolve into a full-blown reputational disaster if nothing is done to halt the downward trajectory.
- The best way to keep this from happening is to face the audience head on, as opposed to denying reality by discounting legitimate inquiries from stakeholders and mainstream media. The law firm may use its own controlled channels (website, social media, podcasts, etc.) to broadcast an exclusive explanation of how the thorny situation unfolded.

- While it is imperative to step forward confidently, one need not have all the answers immediately. It's about respectfully managing and addressing possibly damaging situations as soon as they occur. With the understanding that clarifying particulars takes time the law firm should designate a credible spokesperson to promptly communicate what is known and admit what is uncertain. This representative must remain clear and on point for the duration.
- And finally, the law firm's messaging should repeatedly assert the point that if this can happen to sophisticated litigators, it can happen to anyone.

Credibility is a key influencer of revenue and growth. Positive reputations inspire trust and allegiance. A tainted reputation can be damaging to profitability and retention, but it can also lead to discoveries that can enhance corporate governance and better business practices. Brand reputation maintenance is a continuous process of going over what not to do and internalising key lessons. Primarily, law firm leadership must always prioritise due diligence to maintain corporate reputation through strategic communication.

