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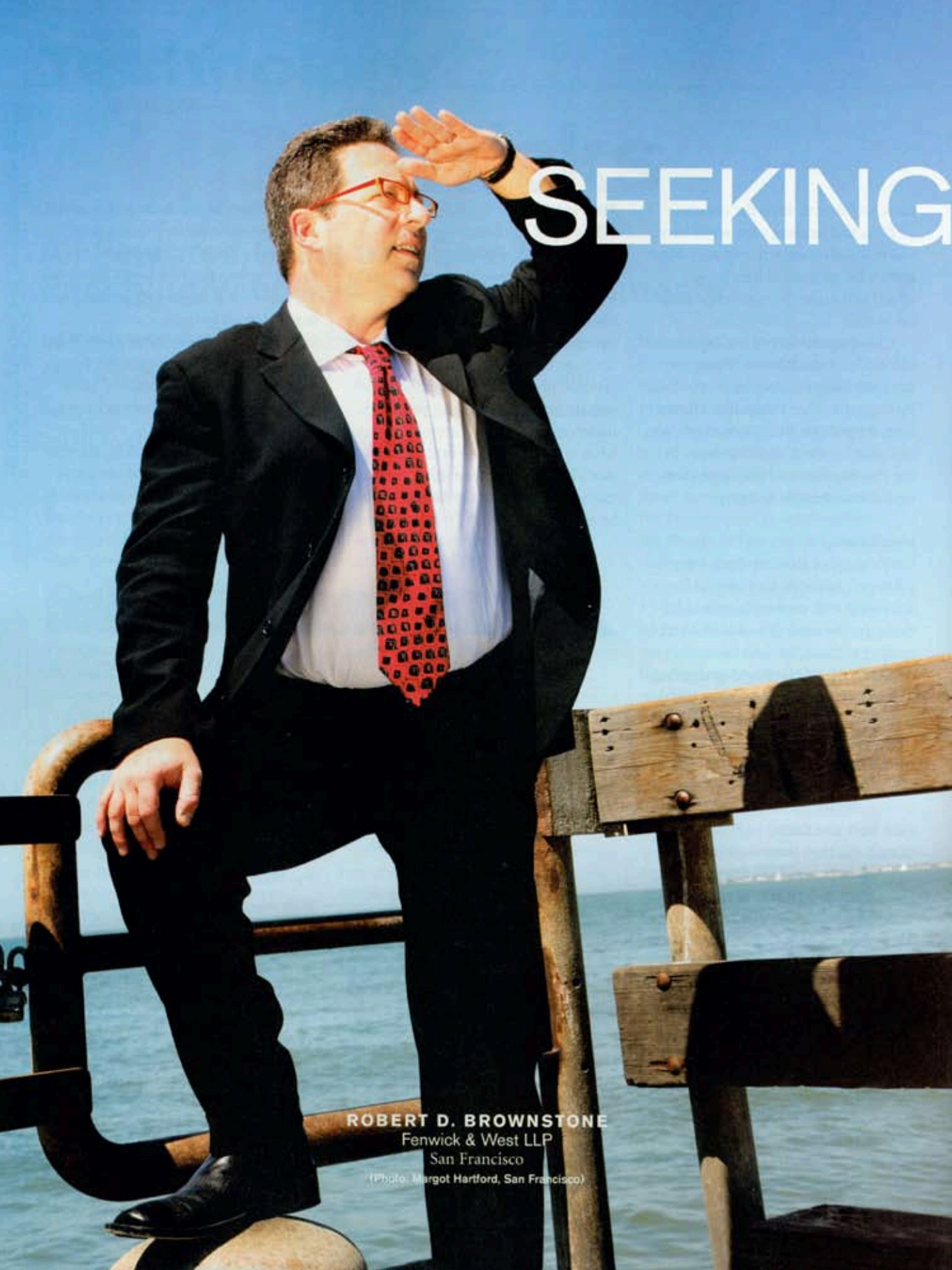

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(Photo: Margot Hartford, San Francisco)

OUT NEW MARKETS

TAPPING INTO CLIENT TRENDS FOR NEW BUSINESS AND BIGGER PROFITS

BY PETER DARLING

Most law firms rely on "mantra marketing"—repeating the same messages to the same clients. But the legal marketplace is changing all the time. New laws create new clients constantly. Too few firms understand how to turn this to their advantage—to create whole new practice areas and serve whole new markets. Here's advice on becoming the next Cirque du Soleil. (Acrobats optional.)

NO MORE MANTRA MARKETING

In many religions, when meditating or praying, believers chant mantras—they speak the same sequence of words, as a sacred verbal formula, hundreds or even thousands of times. Constant repetition of the words has a powerful spiritual impact and is considered a means for becoming enlightened. The sheer sound, endlessly repeated, is hypnotic, transporting, otherworldly.

Law firms have mantras, too. In fact, many have the same one for attaining new business. When asked about their marketing strategy—why a client should retain them rather than a competitor—they say these three magic things, over and over:

"We're outstanding lawyers."

"We're responsive and client-focused."

"We're cost-effective."

This marketing-by-mantra method, which the vast majority of lawyers use, consists of making these same three claims to a predefined group of clients. If, for example, you're a high-tech tax attorney, you repeat the mantra to all the Silicon Valley GCs and CFOs you encounter. If you can, you provide evidence to back up the claims. This is fine, as far as it goes.

The problem is that it doesn't go very far. Dozens of other firms are selling the same thing, and repeating the same mantra. The mantra is not about the client, but about the lawyers. To the client all the firms sound a lot alike, and none of them have a clear advantage. This makes it hard not only to win the business, but also to charge high rates. What you're selling looks a lot like a commodity.

In contrast, the key to real competitive strategy is *differentiation*—a strategy you can effect by seeing what's happening in your targets' markets and then offering distinctive services in response. Let's take a closer look at how it works.

What's the Trick to Being Unique?

Differentiation is all about offering something unique, for which you can charge a premium price. In the case of products this often means reinventing an entire category —like Starbucks did with coffee or Cirque du Soleil did with circuses, to name two prominent examples.

By paying extremely close attention to the needs and interests of its customer base, these companies created and dominated a brand-new market that was strikingly different from what had existed before. Strategically, this is brilliant. And it's vastly more profitable. Cirque du Soleil's tickets run from $45 to $200 per seat. Ringling Brothers charges from $12 to $73. And we all know what people are willing to pay for a Starbuck's Espresso Macchiato compared to a cup of joe at the local diner. (For more on this, take a look at the Harvard Business School Press book

Foreseeing Technology's March Opens Brave New Fronts

On October 9, 2001, a woman named Laura Zubulake was fired. She sued. The now-famous result–in litigation collectively known as *Zubulake*–was five opinion-generating disputes, beginning in 2003, which were pivotal in defining the application of the federal discovery rules to digital information.

Another result was a thriving practice in electronic discovery for the Silicon Valley-headquartered law firm Fenwick & West. Here's how the pieces fell into place.

While the *Zubulake* opinions were being handed down, Robert D. Brownstone, an F&W attorney, was already primed to use his firm's digital expertise on behalf of clients. From 2000 to 2004, Brownstone was the Web master and knowledge manager for F&W's litigation group. He was encouraged by Bill Fenwick, one of the firm's founders, to research and study how technology would affect electronic information management (EIM) in client matters, including litigation discovery.

Concurrently, Matt Kesner, the firm's chief technology officer, deployed his IT department in a David-and-Goliath discovery battle against IBM on behalf of a long-term client, Compuware. Kesner's team handled what morphed into the largest known collection of electronic information in any U.S. civil litigation–the digital equivalent of 180 million pieces of paper. After five weeks of trial, IBM threw in the towel, paying Compuware a $400 million settlement.

Fenwick, Kesner and Brownstone all realized from their differing perspectives that technology's profound effect on client matters had created a completely new market for client services. Moreover, as the Internet grew and computers became increasingly powerful, portable and pervasive–with ever-growing quantities of business information stored digitally, in an ever-increasing range of formats and locations–expertise in this field was rare, valuable and very marketable.

So in early 2004, F&W re-deployed Brownstone to an IT role, as a key member of Kesner's new, now-official "Practice Support" team. They started by providing assistance to clients with EIM needs, including extranet Web sites, such as secure deal rooms.

However, as the prescient trio had foreseen, the scope and complexity of these needs continued to mushroom. In 2005, Brownstone began working regularly with clients to develop and implement document retention and destruction policies and processes in advance of litigation. Along with the widespread impacts of *Zubulake*, this field has now begun to attract the attention of non-clients as well, and it promises to become an even more independent business within F&W. In 2006, the firm launched a full-fledged EIM practice group, led by litigation partner Mike Sands. And quite recently, Brownstone became F&W's new law and technology director. From the collection, processing and hosting of litigation-related and transactional data, it's a short step to a more comprehensive EIM and data retrieval business.

Blue Ocean Strategy: How to Create Uncontested Market Space, by W. Chan Kim and Renée Mauborgne. They literally wrote the book on how this concept works with products.)

Of course, reinventing products is one thing, but you cannot do the same thing in professional services. Or can you? Consider this: In products, to create a new market, you have to invent a new product. This is incredibly expensive and risky—remember the Iridium satellite phone system? Launching a new product is an extraordinarily expensive undertaking. After as much test marketing as you can afford, you have to actually build a factory, manufacture the product and see if anyone actually wants it. Not cheap.

In law, however, your market, by definition, changes all the time. Why? Because the raw material of lawyering—the law itself—never stands still. New laws are enacted every day. New court decisions get handed down. New clients thus get created constantly. It never stops. By using this fact as the basis for business development, law firms can give themselves a major competitive advantage in pursuing, and winning, new business. In other words, they can build a *real* differentiation strategy into business development. The trick is being able to combine the perspectives of three disciplines—law, marketing and strategy—into one panorama.

Finding a Different Point of View: An Illustration

Let's consider this example. In Europe, environmental issues carry an enormous amount of political clout (debatably, far more than in the United States). As a result of this, the European Union (EU) has promulgated a series of tough new directives that

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Connecting the Dots Reveals a Straight Line to New Clients

For David Spector, the key to identifying a new market wasn't simply thinking ahead. It was thinking way, way ahead.

In 1979, Spector was an attorney at Isham, Lincoln & Beale in Chicago. (He's now a partner at Schiff Hardin). In May of that year, Reserve Insurance—an Illinois property and casualty insurance company—was placed in liquidation by the State of Illinois Director of Insurance and subsequently declared insolvent. The insolvency was significant for several reasons. For starters, it was the first modern property and casualty insurance insolvency in the United States. Also, at the time, it was the biggest insurance insolvency in Illinois, eventually costing the state $88 million. And finally, it provided the dots Spector connected to help build a reinsurance practice.

Isham, Lincoln was retained by reinsurance companies involved in a dispute with the state-appointed liquidator of Reserve Insurance. While representing those reinsurers, Spector noticed two things.

First, like many other insurance companies, Reserve sold a lot of policies through managing general agencies (MGAs). The MGAs were paid a flat commission on the premiums they generated, with almost no consideration of risk. As a result, Reserve was legally liable for a lot of incredibly risky policies—the MGAs had insured shrimp boats, gypsy caravans, almost anyone. Paying the inevitable claims of these insureds meant financial trouble down the road.

Second, there was a growing consensus in the industry at the time that insurance companies would soon face enormous payouts owing to policies covering environmental liability, especially asbestos. The plaintiffs' bar was gearing up to make asbestos suits the industry they are today.

The future impact of these two trends on the insurance industry was obvious. But what Spector saw—and others missed—was the impact on the *reinsurance* industry. Insurance company failures were going to put an enormous strain on the reinsurers who stood behind the failing companies, and those reinsurers were going to need legal representation. So Spector began building relationships with reinsurers, and his prediction was correct. The result was a new market in which Spector's firm had an enormous head start and, ultimately, some major new clients.

DAVID SPECTOR
Schiff Hardin
Chicago
(Photo: Michael Schmitt, Evanston, IL.)

deal with the presence of certain toxic substances in new electronics products that are sold in Europe. As of July 2006, anyone selling so much as an electric pencil sharpener in Europe must be in compliance with these directives. They are collectively known as the Reduction in Hazardous Substances Act (RoHS), and they ban the importation into any EU nation of any product containing, for example, unacceptable levels of lead. Which is a key ingredient in solder. Which is a key ingredient in any electronic product.

There are plenty of law firms working on product compliance issues for RoHS, and this vein of business is well mined. While keeping that fact in mind, let's turn our attention to China.

China, to put it mildly, is another enormous market for electronics, and it too is drafting restrictions on the contents of electronic products. They're essentially very similar to RoHS. But the Chinese differ from the Europeans in one important respect—the absence of a loophole for *medical devices*. So if you are manufacturing, say, an MRI machine, you can sell a machine loaded with toxic lead solder throughout the EU nations. But you won't be able to sell it in China. The Chinese have no such exception for your device.

Got all this? Let's review. The basic facts are as follows:

- Europe has passed a series of stringent directives banning toxic substances from electronics sold in Europe as of July 2006.
- These directives do not apply to medical devices.
- There are plenty of law firms assisting electronics companies in complying with these directives.
- China is drafting almost identical directives but these contain no medical devices exception.

Now, let's put all this together. Pretend you are a medical device manufacturer. You're a start-up, and you've gotten your hands on many millions of dollars in venture funding to develop your revolutionary new product. Because both developing it and getting it through the FDA's regulatory obstacle course is so costly and unpleasant, you want to be able to develop and sell your device worldwide. You don't need to worry about Europe's RoHS because those regulations don't apply to you. However, China is an important market and, unlike most of the rest of the world, will not allow you to import your device under its pending version

BRUCE NYE
Adams Nye Sinunu Bruni Becht
San Francisco
(Photo: Margot Hartford, San Francisco)