



Differentiate

WHO'S DOING IT RIGHT?

SCOTT WINKELMAN
Executive Committee Member
Crowell & Moring
Washington, DC
Photo: Lawrence Dortch

BY RITCHENYA A. DODD

Can law firms truly differentiate themselves from the competition in these dour economic times? The short answer, experts agree, is yes. In fact, firms that manage to do so have a big advantage in an economic downturn.

A firm's ability to differentiate itself helps cement existing client relationships, increases the firm's odds of being placed on the short list for new work, and can help position the firm to receive more premium work. In addition, firms that successfully brand themselves are better positioned for growth as the economy improves.

Yet despite the distinct advantages, few firms appear to be doing a good job of it. "I would not give firms a good grade at all on their courage to stand apart and differentiate themselves," says Burkey Belser, president of the brand design agency Greenfield/Belser Ltd. "Only a few firms have really done so."

Michael B. Rynowecer, president of The BTI Consulting Group, agrees. While corporate clients recognize firms by name, they often still consider firms fungible, he says. Last year his group released the *BTI Survey of National Market Awareness*, a survey of legal services purchasers from more than 500 Fortune 1000 companies. The purpose was to assess law firm awareness by

name, as well as how clients differentiate firms—"if in fact they do," he says.

"Awareness is actually pretty good, especially for the large firms," notes Rynowecer. "Differentiation is lower. So even though a client may know of a law firm, that does not mean that the client has an opinion about them. All they know is that it's a law firm."

That's not good news, he adds. "If [prospective clients] don't have an opinion about you, you're not going to be hired."

Part of the challenge is that there's no magic formula to successful differentiation, of course.

Some firms have focused relentlessly on becoming known for certain practice areas. Think Skadden, Arps, Slate, Meagher & Flom—which ranked first in BTI's *Awareness* survey for successfully branding itself as "the transactions firm." Other firms have chosen to spotlight their business models. Jones Day, which ranked second in BTI's survey, is recognized for client service, value and experience.

Regardless of the path firms take, though, experts agree on one factor. The firms that differentiate themselves most effectively are those that identify aspects of their culture that make them superior service providers in their areas—and successfully communicate those advantages to the market.

With that in mind, here are studies of four firms that are very different in multiple respects, but they do have one thing in common: All have become known as more than good firms—they've become known for being good at something in particular.

Getting Inventive with Planes and Playgrounds

The 14-lawyer intellectual property firm Marger Johnson & McCollom may be small—but it also may have one of the coolest Web sites associated with a law firm. And cool is just what the Portland, Oregon-based firm was going for when it launched the current version of its site.

"The patent area is a pretty hip

area of law. We see stuff every day that the general public won't see for years," says Julie L. Reed, one of the firm's directors and its current president. Comprised solely of patent lawyers, the firm works with clients to protect components of their inventions and technology, enabling clients to monetize their products. While the patented components themselves may not be sexy, the products they make possible often are.

So, despite its small size, Marger Johnson hired the big-name creative agency Greenfield/Belser Ltd. to re-brand the firm *à la* "cool." The result was a Web site modeled after a Sharper Image catalogue, featuring crisp flash imagery of the products Marger Johnson lawyers have helped bring to, or keep on, the market.

The site features, for example, a photo of a military jet, accompanied by a pull-out telling about the work the firm did to protect the power semiconductors produced by

the client for military technology. Other products and services featured include a playground, a unique type of bicycle and a new online elder-care monitoring service. Each photo is accompanied by a description of how the firm helped protect or bring the technology to market. The photos and accompanying pull-outs of the patents at issue support the tagline developed by the firm, "Turning invention into advantage."

In addition to being eye-catching, the focus on client technology reinforces a key differentiator for the firm—that its lawyers are more than lawyers and are inherently at home in their clients' space.

"Our firm brochure and our Web site speak to the fact that we were working engineers and scientists prior to coming to patent law," Reed points out. "Many of our clients were drawn to us because of that experience." Marger Johnson lawyers, she says, have developed a reputation for

being able to work well with both in-house counsel and inventors. "We understand both the requirements they have for us and the requirements under which they work internally."

The firm's technical capabilities are further underscored by the firm's domain name, www.techlaw.com, and its logo, which is modeled after an old-style computer punch card.

The rebranding effort "was a huge project," Reed notes, "and it obviously was expensive." Obtaining client permissions wasn't difficult—the firm works closely with its clients, so most were happy to provide permission, graphics and access to their products—but gathering high-resolution art for every product was time-consuming. Nonetheless, the rebranding has proven to be a worthwhile investment, she reports. Firm lawyers have received positive feedback from clients and prospective clients that have found the firm via its Web site.

"I think there is a tendency to remember us because we have more hip materials," says Reed. The firm, in fact, is so satisfied with the message of its brand identity that it has no plans to make major changes to the site, which launched in 2005, or the accompanying marketing materials.

Instead, with its business identity platform in place, Reed says the firm now is devoting more marketing resources to targeted initiatives designed to reach out directly to clients and prospects, in keeping with the current economic climate. For example, the firm is making greater efforts to ensure its attorneys attend events that it sponsors so they can meet attendees in person.

Despite the shift in focus to personal business development, Reed says she's grateful for the investment



Marger Johnson's Web site features crisp flash imagery of the products that firm lawyers have helped bring to, or keep on, the market, underscoring its reputation for being able to work well with both counsel and inventors.



Marger Johnson & McCollom's directors Scott Schaffer, Julie Reed and Alexander Johnson, Jr.

in a cohesive business identity, as it continues to bring an essential return.

"It further bolsters the position that we are modern, flexible and we understand what's going on. We're in the moment."

Lining Up the Ducks to Send a Creative Message

All too often, big firms with big corporate clients are seen as stuffy and aloof. But 471-lawyer Crowell & Moring, which has an international reach and represents big-name clients such as Alcoa, CSX Corporation, DuPont and Nestlé, hardly fits that image. If you walk into the lobby of Crowell's Washington, D.C., office, you'll immediately see evidence that this firm is different—there are rubber ducks floating in its lobby fountain.

The ducks, in fact, have become so emblematic of the firm's DNA that they're displayed on the "Our Culture" page of Crowell's Web site.

What years ago began as a joke—someone dropped a duck in the fountain under cover of night—multiplied

into a flotilla that now serves as a visual cue of the firm's commitment to a different type of practice. One in which being creative and down-to-earth is just as important as being smart.

"We decided that rather than fight the duck, we'd embrace the ducks," says Scott Winkelman, a member of the firm's three-person executive committee. "When you have ducks in your fountain," he continues, "that's sort of a daily reminder that we're not hot shots—our clients are hot shots."

The firm has built its reputation on its ability to be innovative, flexible and responsive to clients' needs. And since creativity lies at the core of its brand, naturally it's one of the three words in the firm's tagline: "experience. creativity. results." The front page of the firm's Web site features several flash images that drive this home, including one in which a man in a suit jumps from one circle to another in the sand. The caption reads: "You expect your lawyers to be smart. But what about creative?"

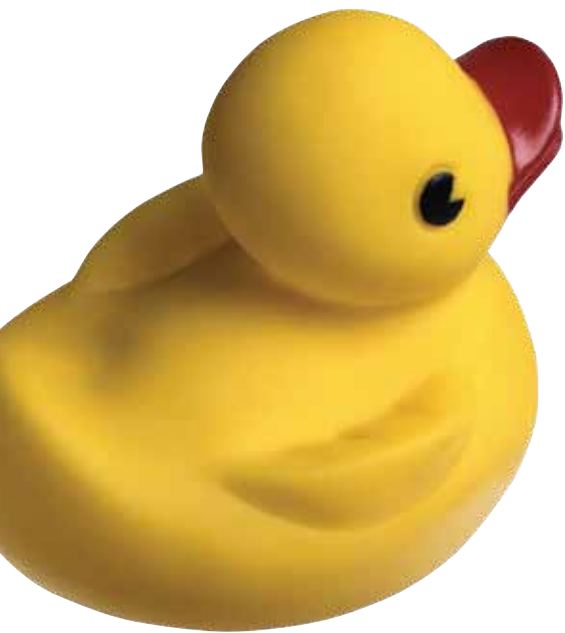
The emphasis on creativity manifests itself in the ready ability of Crow-

ell's teams to deliver cross-practice solutions. Recently, for instance, a client called with what the client thought was a matter involving the Federal Communications Commission. Crowell delivered advice from those knowledgeable in Food and Drug Administration, Federal Trade Commission, European Union and Canadian regulatory issues as well.

"It truly took a village to put that client and that product out of harm's way and we did," notes Winkelman, who also serves as co-chair of the firm's tort practice.

The firm's client-focused creativity has resulted in the development of new services, too. For example, the firm has launched a Product Risk Management counseling practice, which provides cradle-to-grave counseling on all the relevant issues involving a particular product.

Crowell's culture also helped put the firm in front of the recent momentum to move to alternative billing. At a time when many firms are still exploring this territory, some 40 percent of



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the work Crowell performs is done through alternative fee arrangements.

The firm fosters its culture of creativity and teamwork by prioritizing client communications and by encouraging strong internal ties. Even with six offices on the East and West Coasts and in Europe, the partners still meet for lunch on Fridays, a tradition that dates back to the founding of the firm, although it’s now done via teleconference across timelines. Plus, Crowell holds regular “town meetings” and votes on every lateral acquisition.

“We have a community, we’re not just a bunch of ragtag lawyers,” Winkelman says.

So how successful is Crowell in communicating its brand to the marketplace? According to BTTI’s *Awareness* survey, the firm is “very strong in being differentiated in innovation,” Rynowecer reports. “They’ll do things in ways that other law firms don’t. We hear about Crowell that they’re more flexible in approach to the legal matter at hand.”

When he’s told that’s precisely the message Crowell seeks to send, Rynowecer responds with this: “Then they’re doing a very good job. Our interviews are all independent.”

Sharing Risk and Going Full Court with the Press

One of outside counsel’s primary missions is to limit the client’s business risks. Perhaps consequently, law firms traditionally are known to be rather risk averse. But not so with Boies, Schiller & Flexner LLP. A principal theme that runs throughout the firm’s approach to client relationships is the amount of risk the firm is willing to bear—in court, across the table, and in fee-setting and payment agreements.

Founded by David Boies and Jonathan Schiller just 12 years ago, the firm has grown to 230 lawyers in 11 offices and made the AmLaw 100 list for the first time this year. While Boies Schiller is regularly credited as a pioneer in alternative billing arrangements, the firm set out to distinguish itself through the type of legal work it took, rather than through its fees model.

“From the day we started ... David and I planned that 25 percent or so of our docket would be contingent work. We were going to be shirts as well as skins,” says Schiller, who serves as one of three co-managing partners. The original plan was to attract two basic streams of work, he adds. One would come from a core group of clients, which would turn to the

firm for their most difficult matters.

The second goal was to become a go-to firm for other clients with single matters considered to be high-stakes, premium work, such as “risk-the-company” and other key cases, says partner Philip Korologos, who has been with the firm since the year it was founded.

“The firm developed a business plan and fee structure to capitalize on how we wanted to differentiate ourselves, which was in our legal work,” Korologos says. The risk-sharing arrangements were created as a way to maximize the potential returns for both clients and the firm. “We really like having our interests aligned with the clients.”

The firm takes some plaintiffs’ cases on pure contingency, and in defense matters, it strikes agreements that mix billable work with payments for winning motions, or flat fees for winning. Such agreements reward the firm for its aggressive litigation tactics. “A lot more of our cases go to trial, and that’s by design,” Korologos says.

Of course, the willingness to go to trial can bring big results for clients as well. For example, in an antitrust case brought against the Sotheby’s and Christie’s auction houses, interim lead counsel had proposed a settlement of between \$80 million and \$120 million. Boies Schiller was appointed lead counsel and prepared the case for trial—making it clear to opposing counsel that it was ready to go and that it would push for treble damages. The case settled for \$512 million, Korologos reports.

The model is similar on the corporate side, says partner Christopher Boies, who heads the firm’s 30-lawyer corporate group: “We have developed and put in play a corporate group that does the most interesting, chal-

lenging work that is available.” While the group does work ranging from M&A, securities, tax and corporate governance to executive compensation, it will never be a “one-stop shop,” he adds. Instead, the firm is focused on creating small teams of solution-oriented people that develop personal relationships with clients.

The goal is to succeed where others can't, says Boies. “There are lawyers who get deals done and there are lawyers who don't. We will try to find creative ways to do them.”

In keeping with the firm's commitment to risk sharing, the firm has some long-term relationships with clients whereby it gets paid upon the completion of successful transactions and takes a reduced “broken deal” fee for deals that don't get done. For other clients, the firm has structured single-transaction arrangements whereby it takes a discounted fee up front with an additional success fee if the transaction closes.

“The firm has a healthy appetite for risk,” as Boies sums it up. “A lot of people are talking about alternative fee arrangements but few are doing it on a systemic basis. In order to do it on a systemic basis, you have to be able to evaluate and price risk. And you need to get that right.”

In line with its original goal to position itself through its work, Boies Schiller markets itself primarily through its wins. Having litigated high-profile cases such as the government's antitrust case against Microsoft, *Gore v. Bush* and the vitamin price-fixing case, firm lawyers are not lost for media opportunities either.

The firm, in fact, has grown through a culture that is comfortable speaking to the media. “We've always been accessible to the press

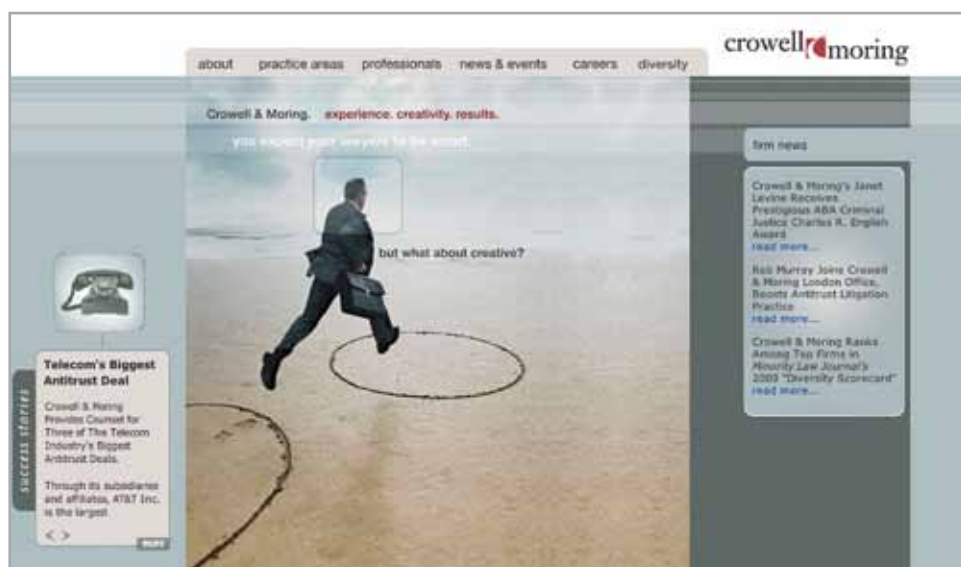
where it was in the interests of our clients to do so,” says Schiller. Often, he says, “it's imperative to the client that their story be told, that their financial position be safeguarded.”

The publicity also reinforces the firm's brand as a top-tier legal services provider. Schiller, though, makes this key point: “Using the media is not for branding our name, although that clearly is an indirect result.”

As the firm has grown, so has its commitment to staying in front of the news—so much so that it has an

with the practice of law? Plenty if you're a lawyer at Ford & Harrison LLP, a labor and employment firm with 200 lawyers in 18 offices spread across the United States.

The firm is known by many as the sponsor of the blog *That's What She Said*, a tongue-in-cheek dissection of *The Office*, which puts a litigation price tag on the antics of the show's characters. In highlighting the liability potentially incurred at the fictional Dunder Mifflin paper company, the blog provides a venue for Ford



in-house communications director who spends much of her time placing stories on behalf of clients. And interestingly, the firm has no separate marketing department—the communications department also oversees marketing functions, which speaks to how the firm wins its business. The majority of it comes through word of mouth, Schiller says.

Putting a Price on Laughter— But No Price Tag for First-Years

What does a sitcom have to do

Since creativity lies at the core of its brand, naturally it's one of the three words in Crowell's tagline: “experience. creativity. results.” The front page of the firm's Web site features several flash images that drive this home.

& Harrison to tout its expertise.

“It's lighthearted and yet it's educational. It points out what the employer did wrong and how they can prevent this behavior in the future,” says Lynne S. Donaghy, the firm's director of marketing and client service. So when Ford & Harrison's public

relations firm, Hellerman Baretz Communications, suggested the blog idea, the law firm was receptive. "What we liked about it was that it fit in well within our culture," Donaghy recalls. "We take a creative and innovative approach to problem solving." This goes for the firm's approach to the practice of law—and its approach to business development as well. "We have a strong

Importantly, the firm invested in a major media blitz when the blog, which is hosted by the human resources law site HRhero, was launched in 2006. The blog has now garnered more than 100 mentions in the media, earned a spot on the *ABA Journal's* Blawg 100, and won several marketing and PR awards. The resources spent to publicize it were a great investment,

says Donaghy. Referring to the media hits it has garnered, she notes, "If we were to place ads in those publications, the costs would far exceed the investment we had in promoting the blog."

Ford & Harrison's culture of innovation and creativity also has garnered it recognition in another area—namely, its leadership in addressing client concerns regard-

new associates receive frequent client contact, hands-on work experience and mentoring. Moreover, clients are not billed for time "Year One" associates spend in clinical training, though they may be billed for actual work performed by these associates.

Not only has Ford & Harrison received positive feedback from clients, but the program has served to further strengthen the firm's brand as an innovator, Donaghy reports. Notably, too, the firm invested in a PR push on "Year One" that resulted in it being credited by the legal media for being "forward-thinking." While other firms recently have announced similar training initiatives, Donaghy notes that Ford & Harrison launched its program in 2007 in direct response to client concerns, rather than as a reaction to the economic downturn and resulting excess associate capacity.

That's the type of client-centered thinking that gives credence to the firm's tagline, "The right response at the right time."

Ultimately then, it seems the best way for firms to differentiate themselves is by putting a cultural emphasis on their target clients and how their lawyers interact with them.

"The interaction, whether it be direct or indirect, between corporate counsel and an outside law firm is the single biggest differentiator," notes BTI's Rynowecer. Yet, he says, "it's not clear that all law firms view the power of that interaction. Some law firms emphasize client service much more than other firms." Those firms are doing differentiation right. **LP**

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In highlighting the liability potentially incurred at the fictional Dunder Mifflin paper company, the "That's What She Said" blog provides a venue for Ford & Harrison to tout its expertise.

marketing culture. We are always looking for ways to market our expertise."

A firm associate—and avid fan of *The Office*—came up with the idea of developing a dollar amount for the HR infractions on the show. She became the blog's original author. And, as with all good blogs, the firm continues to regularly update the blog, even when *The Office* goes on hiatus (revisiting old episodes to identify and discuss new issues).

ing the costs of first-year associates.

"We were getting comments from GCs that they did not want to see first-year time on their bills," says Meg Holman, director of professional development at the firm. "More and more clients were including something in their billing guidelines to that effect." The firm took that client directive and turned it into an opportunity by creating its "Year One" program.

Through the "Year One" program, the firm eliminated its billable hours requirement for first-years and replaced it with a clinical hours requirement. Modeled after medical internships, the associate development program was designed to ensure