

Challenger Strategies: How To Compete Against A Dominant Player

by Patrick J. McKenna

For some time, I have been both a curious observer and an active advisor on behalf of upstart firms intent on building a position against some dominant competitor. I have learned that while market clout, deep pockets, and name-brand status can confer a decided advantage, there are always ways to take on a goliath. And at the heart of challenging any dominant competitor are two things: understanding where that particular giant may have an exposed and soft underbelly, and where you may have a position of strength.

That dominant competitor just may be afflicted with some debilitating behaviors that you can exploit.

This Spring, Edge surveyed firms with respect to their strategic planning processes and learned that while all firms with over 500 lawyers today have a formal strategic plan, only 25% of those firms could claim that their strategy was largely “external focused” – enhancing client service, pursuing meaningful differentiation, and similar activities. Many large law firms have become severely addicted to over-managing their internal challenges rather than exploring their external opportunities.

Secondly, in our survey we made a rather startling discovery when we asked how much of a firm’s strategic plan had been implemented. To our surprise, only 43% of those law firms between 50 to 150 lawyers claimed to have implemented “much of their plans” (none claimed to have implemented “almost all of the plan”). Those results then looked rather impressive compared to the implementation success of the larger firms. A mere 24% of the largest firms claimed to have implemented much of their plans.

Finally, with few exceptions, once a market player reaches the top, it stops making waves. A dominant firm owes its success to a certain way of operating. The good news for you, if you’re a challenger, is that the established firm does not want to change and will resist changing at almost all costs. The dominant player in any market may just have been around long past their “freshness date.”

So how do you effectively compete against a dominant firm? What follows are a number of specific tactics, any one (or a combination) of which you may be able to employ given the situation you’re facing.

Reach For The Stars

Perhaps the most commonly used approach, but also quickly becoming one of the most difficult because of the intense competition for desirable candidates, is to recruit a strong lateral hire – or better yet a complete team – to bolster both your practice and your market profile.

The UK firm of TLT Solicitors won some high profile work concurrent with attracting a new team of competition specialists to complement their existing focus in this area. The irony is that TLT is not a name many outside of the UK would recognize, not a name that

one would typically associate with competition law, and not a UK firm that is even based in London. As one commentator expressed it: “How refreshing that a firm of just 19 equity partners is competing with Freshfields and Slaughters for the cream of European competition work.”

I am always struck by how many laterals move for ambition, rather than just money. If you can present a candidate with an attractive opportunity to build something new, your ambitious growth plans may be just the thing that this candidate’s been looking for, to spark the next stage of their career. A recent case in point may be Houston’s Bracewell & Patterson. Bracewell is a major regional player in Texas with a keen desire to establish a legitimate presence in New York. The right opportunity emerged when the firm spotted the chance to recruit the former New York City mayor and a high-profile name to lead their effort. Rudy Giuliani is now head of the firm’s New York office and a name partner in Bracewell Giuliani.

And even in those cases where a client might be reluctant to abandon their name-brand favorite, conflicts will force clients to turn to other firms. Your laterals previous relationship puts him or her in a great position to be this client’s back-up choice.

Beg, Borrow or Steal That Next Major Deal

One of the observable traits of dominant firms is that they get the lion’s share of the best, most lucrative and largest client matters. So when any significant deal is announced, you expect that it will go to one of a handful of dominant firms in the appropriate practice area. Imagine what happens if you can do something, as a challenger, to disrupt that conventional behavior.

Consider Latham & Watkins. Latham was the upstart West Coast interloper when it established its New York office with only a handful of lawyers. Within a few weeks of opening its doors, the firm landed a headline deal, representing Ted Turner in his hostile bid for CBS. By all rights, that deal should have gone to one of the established New York-based firms, but in Latham scooping the case, it helped the new office gain rapid momentum.

Up until the announcement of Enron’s doom, the majority of the major bankruptcy cases in the nation went to a handful of Goliath firms known for their work in this particular specialty. Enron became, with more than \$13 billion in direct liabilities, one of the biggest corporate bankruptcies in U.S. history. Whether because of conflicts, prior representations or the execution of some brilliant strategy, among the choices of counsel to represent Enron was a relative unknown on the national bankruptcy scene. As a result of that representation they were considered for a number of other national cases, and have since grown their bankruptcy presence into one of the top ten largest in the country – still a challenger, but having made significant progress.

Accordingly, it follows that if you can somehow land a high profile case, you’ve taken a significant step toward competing with the dominant players.

Use Exceptional Value To Influence Client Attraction

A common suggestion for how to compete against larger incumbents is to provide great service; to ensure that the client understands how from a smaller, hungrier law firm, they will

receive personal, responsive attention, and a knowing, caring professional always sensitive to their every need. But frankly, I believe you would be making a big mistake to bank on great service *alone* for your competitive advantage. Dominant firms know that in order to maintain signature clients, they too need to offer exceptional service.

That said, I believe there are a couple of areas where many firms still don't get it – and it has to do with providing clients with value added services. Lots of firms offer what they call “value-added” such as a clippings service, access to the firm's library or extranets and more. But what I'm talking about goes to helping clients satisfy their unmet needs. For example, your firm may be in a terrific position to make introductions on behalf of (and perhaps between) other clients that can help this particular client achieve its business goals. Perhaps a company is looking for private equity dollars, a different bank lender, portfolio acquisitions, or a new accountant. Sometimes, simply by acting as a matchmaker your firm can meaningfully differentiate yourselves and deliver value that transcends legal services.

In 2002, prior to its eventual merger into what is now DLA Piper Rudnick, the west coast firm of Gray Cary Ware & Freidenrich began an initiative known as ‘Venture Pipeline.’ Venture Pipeline, as it continues to exist today, is a separate business unit run by experienced entrepreneurs and non-lawyers, designed to help early-stage companies. The unit's representatives screen and scrub business plans, give companies feedback, and then work with the law firm's numerous contacts to find appropriate funding, benefiting both the venture capital organizations and the company. Entrepreneurs starting businesses say that finding capital is often their first priority; but most law firms, at best, play a limited role in this process. In the last two years, this group, to its credit, has processed over 900 business plans and provided valuable input to most of these companies, regardless of whether they decided to work with them.

Additionally, those firms that command a strategic plus over dominant competitors are the ones that focus obsessively on putting themselves in their clients' shoes and thinking about how to help them reach *their* customers. With one challenger firm we had the lawyers invest the time to speak with a number of their client's customers. We had the lawyers survey them, and develop insights into the customers' buying habits and preferences. Our attorneys were thereafter able to talk to their client about their customers' needs and wants. The strategy: Walk in the client's shoes (understand your client's customers) by conducting systematic (ear to the ground) market research. The dominant competitor didn't stand a chance!

Finally, work to convert your best clients into glowing testimonials. So few firms use testimonials effectively. Your existing clients already trust and respect your capabilities. Offer them some form of tangible gratitude in exchange for agreeing to take calls from prospects.

Create Your Unique Place To Be The Best

Any challenger can compete against the big boys by focusing on a specific niche within the larger market. That niche can be based on geography, practice area, industry, or some other market segmentation. What you specialize in isn't nearly as important as making sure it is profitable (now and longer term) and that your firm delivers it better than anyone else. The dominant firm, by virtue of size alone, may find it hard to compete with those who have cornered a market niche.

Wherever you happened to practice, be it a major metropolitan area or even a smaller city, chances are that some industry cluster has grown up in that area. Following from that it is worth examining to what extent your firm has developed experience serving companies in this industry, how fast this industry may be growing, what other opportunities may be available as a direct result of your building some knowledge about this industry's particular challenges, and most importantly, whether there is the potential for being perceived as the go-to firm – starting at a local level and then moving beyond.

One of my recent strategy engagements involved helping a firm to attract higher value Corporate work. As part of the analysis we examined the industry cluster development in their home city and found no less than 10 different clusters that were progressing, both through a result of geographical import and governmental encouragement. In this case, we researched deeper into the Information Technology cluster to discover that it was comprised of 26,000 companies employing 512,000 employees, generating \$200 billion in revenues and comprised 14 distinctive segments, including the fast growing “Photonics” niche.

Now as it happened, Photonics represented over 200 companies with a Photonics Consortium supported by Federal Government funding and 10 established Research Institutes, obviously a serious government commitment to supporting the development of this sub-industry. Also obvious, was the fact that no other law firm had thus far targeted or been perceived to have developed a visible presence within this niche. Less obvious was our client's experience in having already done some substantive work for two of the five major players. (See my 2004 article: *Firm Strategy And Industry Clusters*)

Position Yourself Alongside Competitors.

One tactic that can be used to help in your attack on a goliath is to ‘be perceived’ in the same weight class as the dominant players. One firm determined that the best means by which to be seen as a credible player was by becoming a financial support and intellectual partner in a new, high-profile, national Industry Symposium. Because this was the first major event of its kind within the industry, an event that eventually became annual, and because the firm had the good sense to established an agreement that protected its position as the only law firm on the program, this endeavor allowed the firm to be positively compared to the leading professional service firm brand names from across the country.

Positioning of this nature need not be a tactic accomplished only through high profile events. You can also position yourself alongside a dominant competitor in such a way as to show how the two of you might coexist.

We once had a client who was looking to profitably build their employment practice in a way that would differentiate it from some of the stronger competitors in their marketplace. Following some in-depth research into their client experience and track record, we discovered that the firm had handled a number of complex post acquisition and merger situations, which required sensitive reconstruction of the combined human resource functions. It was decided that the firm should position itself as the go-to experts to handle post merger integration. In that way, the lawyers could easily tell prospects that they should continue using the traditional provider for their more routine employment matters, but for the highly complex merger integration work, they needed specialists.

‘Opposition’ Yourself To Competitors.

Law firms typically charge based on hourly fees. When everyone takes that for granted, one way to challenge the dominant players is to change the rules by taking a completely different position – in this case perhaps moving from a payment model based on time spent to a model based on value generated, results obtained, or some measurement other than hourly fees. First coined as a principle of differentiation by an adjunct professor from Northwestern University, *oppositioining* refers to a promise or position that runs exactly opposite to what other competitors in the market are saying or doing.

By way of illustration, McGuire Woods is a firm with 15 offices. The firm’s second largest office outside of its Virginia home base is in Chicago where it has about 175 lawyers – not an insignificant number – but not in the big leagues when one compares the dominant Chicago-based competitors. So what is McGuire Woods to do? In a bold move to disrupt the Chicago status quo and raise the firm’s profile in that particular market, the firm commenced a communications initiative designed to draw attention to its willingness to offer alternative fee programs for clients. While many of the dominant Chicago firms may be prepared to provide their clients with alternate fee arrangements, McGuire Woods is the first to publicly promote their offering. In this pricing example, McGuire Woods can be effective against any dominant firm reluctant to adapt because of that firm’s insistence on measuring lawyer success by individual billable hours.

Meanwhile, for many small firms, focusing on a key area in responding to an RFP is an important way of getting a foot in the door with large clients most of whose work is serviced by the incumbent mega-firms. Yet one boutique corporate firm, I’m familiar with in New Zealand, with fewer than 10 lawyers simply declines to participate in RFP’s. They have deliberately chosen to take this action to send a strong message that their firm is at the top of its game in the work it specializes in. Since being established only a few years ago, the firm has been retained in a number of the most complex and challenging merger & acquisition transactions in that country.

Use Alliances To Build Your Relative Strength.

If you are perceived to be somewhat weak in some area, you can always leverage your strength through active alliances. In one instance, a law firm partnered with an accounting firm and an engineering consultancy to form a multi-disciplinary, multi-location triumvirate that successfully sold its services as a total solution to clients who would otherwise have to make three separate procurement decisions.

Going up against a dominant firm in a competitive RFP? Look older and wiser by bringing in an acknowledged academic or some recognized luminary as an adjunct consultant to supplement the resources of your team. Recruit a recognized expert when it’s needed. Many of the accounting and consulting firms are masters at this.

When new market sectors and growth opportunities emerge, a number of firms scramble to set-up, beef-up, or redefine their area of practice in an effort to position themselves as the “go-to” firm. When faced with this challenge and a number of bigger players attempting to develop a presence within a new emerging sector, we had our client hire a retired industry executive to brief the lawyers on the intricacies of the industry, identify key players, make introductions, and help the lawyers land new business.

Turn The Competitors' Strength Against Them.

Take a close look at the marketing and strategy of the giant. Can you find the “areas of pain” that clients feel when dealing with your larger competitor?

One of our European clients, a dominant firm in their country but an independent player by European standards, was set to go into direct competition with a global UK-based law firm for a major cross-border financing deal. This transaction would require on-the-ground capabilities in London, New York and Brussels. The UK-based competitor had the required resources and touted expertise in all locations, while our Brussels client had nothing more than recognized “best friends” relationships with two major firms, one in New York and the other in London. Both firms were known to the Bank having represented the Bank in previous transactions. The UK firm was clearly perceived to have the upper hand in winning this RFP. Our client recognized that if they were to have any chance to compete they would have to find and exploit some weakness within the global firm’s architecture.

One of the hidden problems of convergence for large Banks, like the one in this situation, was in relying on multiple offices of a few core firms that comprise their primary panel. Some of these Banks then discover that some offices of their primary firms don’t quite measure up to the high standards of the main office with whom they have been used to dealing – and upon which, in truth, their original selection was made. In other words, many firms do not have the processes or methodologies to guarantee their client that the service or quality of their outlying offices will meet their promises of seamless service! (See my article: *The Quest for Seamless Service: Ensuring Consistency with Multioffice Law Firms* published by the Association of Corporate Counsel - *ACC Docket*, January 2005.) The winning proposition of our European firm consisted of submit evidence of their ability to offer seamless service between their best friends, while creating doubt that the global firm was capable of performing to promise.

Maximize The Application Of Technology.

New and innovative communications and data tools can help instill giant-killing performance.

At a time when nothing upsets clients more than having some firm quote them one amount and then bill them another (usually far higher), U.K. law firm Wragge & Co. has invested considerable hours developing a fee prediction and transaction management tool. Recognizing that clients want fee certainty, excellent communications and closely managed relationships, Wragge uses its extensive database of past projects concerning hours worked and fees billed to develop a tool that can quickly answer how much a new legal matter is going to cost and determine how best to staff the particular project. Where it might normally take a lawyer the better part of a day or more in calling around the firm to get the input of different people in estimating the hours required on a complex legal matter, Wragge can now come up with a pricing structure in minutes. The technology also analyzes historical performance and provides details on what percentage of past matters have been handled by what mix of associates, partners and staff; and gives the firm projections for how to better manage a client’s project.

Then there is this corporate boutique of only about 20 lawyers that asked clients what it could do to make their service delivery even better. What the clients told them was that they wanted more visibility as to what was on the clock at any given time. So in response, the firm launched its client intranet work-in-progress (WIP) reporting service. This innovation allows each client to view all of their unbilled time details on a secure site on the firm's extranet. Ironically, in a time of ever increasing pressure on legal budgets, we know of hardly any other law firm, anywhere, that has used a similar service to their advantage in appealing to sophisticated clients.

Minimize The Client's Risk

The marketing literature of most firms is full of claims about the quality of offerings and the firm's dedication to client results. Many clients however remain skeptical. They need some reassurance that if they were to choose a firm other than the established incumbent, they will not suffer significant risk.

One means of assuaging the client's fears may be to put some teeth into your assertions. Offer a guarantee to assure the potential client that if they are not completely satisfied you will reduce your fees accordingly; then take steps to ensure that your client won't need to exercise their guarantee. Most in the profession already know the story of Ungaretti & Harris in Chicago. Ungaretti was the nation's first law firm to offer clients a written guarantee of satisfaction. That guarantee was in direct response to market research that showed that a huge portion of midsized companies, defined as having sales of \$25 million to \$74 million annually, said they would be more likely to select a firm with a written guarantee than another equally qualified firm. Ungaretti made, and continues to make, their guarantee visible on their web site and within their marketing literature.

Is there a way in which a Challenger firm can play a variation on this theme? In one instance we had a client firm manage to outmaneuver their more dominant competitor by proposing a limited-risk initial engagement. This engagement was a negotiated arrangement with the client company wherein the law firm targeted only one discrete aspect of a huge and time sensitive proposed transaction, and provided staggered guarantees of performance such that the client had the option of imposing penalties on the firm if certain milestones were not achieved. The guarantee was real, upfront, and allowed the firm to secure some initial work from a major client that they were later able to grow.

Many challenger firms capitalize on the fact that some partners were until recently partners with the dominant "go-to" firm. As a consequence, they offer the same level of "safety" without the trappings; that is, top-notch expertise without the perception of being "over-lawyered" by teams of attorneys "learning on the job."

Leverage Your Firm's Intangible Assets

A special ingredient that most firms and practice groups have is something I've come to call their intangible assets – competitive qualities that we don't readily think of. Two of those qualities are your "special relationships" and your "proprietary processes."

Special relationships are the industry thought leaders, the key governmental and regulatory officials, the media dignitaries and other such contacts that you have an enviable relationship with, such that your relationship can accrue some special advantage to your firm.

Meanwhile, proprietary processes are those rare and valuable tools, templates and methodologies that you have developed and that are relatively unique to your approach in handling a legal matter and solving problems.

For one of our clients concerned with developing their life sciences practice in the shadow of some established competitors, the special relationships consisted of a couple of partners who had left the firm under positive conditions – one to become General Counsel with a pharmaceutical industry leader, and the other to become a top government official within a related government department. Meanwhile, a close examination of proprietary processes revealed state-of-the-art expertise in data privacy having been developed elsewhere within the firm together with an IP audit process different from anything the competitors were offering. These intangible assets provided the basis of an offering that the law firm could aggressively take to the market and sell to prospective companies not yet aware of the firm's services.

Lock The Competitor Out Of The Market.

If you're a regional firm and some industry giant enters your market, chances are that you'll be more than just a little paranoid. Lacking their resources, you worry that you won't be able to compete effectively. Surprisingly, however, that's not always the case – and the exceptions can be instructive. When a new competitor enters your market, it may be efficacious to turn the competition into a test of strength. Look tough and aggressive and be prepared to outspend your opponent and target retaliation.

In one of the European capitals, a large U.S. firm decided to set up an outpost. It started with sending in a couple of its own lawyers (a partner and associate) and quickly made a lateral raid on a couple of the local firms successfully acquiring another four lawyers. One of the resident firms viewed this invader as a significant competitive threat. It counterattacked by literally spending the next few months going client-by-client to each of the U.S. firm's known clients, basically saying, "Tell us what it will take to have us do your legal work?"

Combinations & Permutations

A single tactic is likely not going to be enough to win you the battle. So you need to look for where you might combine a number of these propositions into a focused strategic attack.

Imagine one firm combining: 'creating their own unique place to be the best', with 'using alliances to build their relative strength'; and also 'minimizing the client's risk'. The battle that I'm referring to is taking place within the business litigation market and represents new players entering this space that are well experienced trial lawyers. The alliances are between notable plaintiff firms. And the minimizing clients risk comes to bear where contingency fees are suddenly now introduced into business-to-business litigation.

A case in point, two of the nation's leading plaintiff law firms, Madison IL-based Simmons Cooper and NYC-based Hanley Conroy have initiated a joint-venture to represent businesses in litigation against other businesses. This joint venture is one of the few to handle business litigation on a contingency basis, which has traditionally been the domain of personal injury cases. These two firms are expecting that their business model will allow

smaller companies with limited financial resources to pursue litigation against larger organizations by which they have been harmed.

As plaintiff firms are spurred by tort reform and medical malpractice caps to look for innovative new ways to maintain their revenues and their litigation skills, it will be interesting to see how the dominant litigation firms will respond to these challengers.

A Couple of Caveats.

First, you should note that low fees was NOT one of the proposed strategies. You shouldn't be caught off guard defensively trying to explain how your team "can do it better, faster and cheaper." Consider: nobody goes to a firm who is the second lowest price – so for any firm to attempt to make low fees their strategy, they had better be prepared to go all the way down – and there will always be some chump trying to out-bid you.

Secondly, the lessons of history are filled with tales of the humble, hardworking underdog, who struggles and perseveres against all odds to become a champion . . . only to then forget from whence they came! I remember all too clearly a time, many years back, working in Philadelphia with one of the city's major firms. We had just completed a lengthy afternoon session that was intended to focus on what aggressive measures one particular practice group could take to move their team forward. The session had not gone all that well. It seemed that whenever an idea was proffered, it would be followed by any number of reasons as to why that particular approach wouldn't work. In the debriefing that followed, one of the name partners who had observed the discussions commented, "This is a very sad day for me. I now see that we have somehow become the very same dinosaur that I was attempting to escape, when I first set up this firm some twenty years ago!" The annals of history have not been too kind to insurgents that take on the very characteristics of those incumbents that they replaced.

The lesson here is to take an offensive position and detail why you may be the better choice for this particular client's unique transaction and needs. Then to be a successful challenger you must develop an environment where your lawyers are prepared to invest a portion of their non-billable time in working on projects that are designed to advance the best interests of the practice group or the firm – not just their own billable work. Demand action steps at the end of each and every meeting, be it practice group, industry group, client team, or executive committee. And establish a "by-when" date to define specifically when results must be achieved on the defined issues.

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Patrick J. McKenna is a partner in Edge International where since 1983 he has worked exclusively serving law firms and has worked hands-on with at least one of the top ten largest law firms in each of over a dozen different countries on issues associated with developing competitive strategies, improving profitability, client service excellence, and systems for effective practice group governance. He is available at mckenna@edge.ai

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