

The advertising of legal services: A comparison of the perceptions of attorneys and of the public

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Received 27 February 1991; accepted 21 August 1991

Practitioners in the so-called classical professions are increasingly facing competition from non-professionals in what, traditionally, was accepted as 'their' business domains. Non-professionals are, however, not hamstrung by restrictive professional association regulations to the same degree as professionals. Such regulations have limited professionals in their efforts to counteract the 'invasion' of their traditional markets. One such regulation prohibits professionals from advertising. Attorneys in particular have been affected by increased competition in their markets and have questioned the legitimacy of the prohibition on advertising. The issue of advertising has been addressed by both provincial law societies and the Association of Law Societies, but no firm decision has as yet been taken. One concern among attorneys is the possible reaction of the public to advertising by individual attorneys. In this article an attempt is made to shed some light on the issue, by comparing practising attorneys' perceptions of the implications of legal services advertising with those of members of the public. It is suggested that attorneys and members of the public differ significantly in their perceptions of the implications of legal service advertising. Significant differences exist between the two groups in respect of 36 of the 69 aspects investigated.

Praktisyns in die sogenaamde 'klassieke professies' ondervind in 'n toenemende mate mededinging op domeine wat tradisioneel as gereserveerd beskou is. Hierdie nuwe, nie-professionele mededingers word egter nie in dieselfde mate beperk ten opsigte van professionele verenigings se regulasies as professionele praktisyns nie. Hierdie beperkende regulasies lê professionele praktisyns aan bande in hul poging om meer mededingend te wees. Een so 'n beperkende maatregel is die verbod op advertensies. Veral prokureurs het te kampe met dié vraagstuk. Die moontlikheid om advertering deur prokureurs toe te laat, is reeds deur die provinsiale wetsgenootskappe en die Vereniging van Prokureurs-orde ondersoek. Geen finale besluit is egter nog geneem nie. Hierdie artikel plaas advertering deur prokureurs onder die soeklig deur die persepsies van praktiserende prokureurs en lede van die publiek met mekaar te vergelyk. Dit blyk dat prokureurs en die publiek merkbaar verskil oor die moontlike gevolge indien die beperking op advertensies opgehef word. Beduidende verskille tussen die twee groepe bestaan ten opsigte van 36 van die 69 aspekte wat ondersoek is.

Introduction

Members of the so-called classical professions increasingly find themselves in new circumstances which seem to threaten their almost 'protected' and 'sacred' business domains. These developments include deregulation and increasing competition from so-called para-professionals and non-professionals (Financial Mail, 1989-09-15; 1990-04-06). Professionals today find that non-professionals have moved aggressively into market areas traditionally served almost exclusively by the professions. Non-professionals are, however, not hamstrung by professional association regulations, prompting many professionals to question the legitimacy of these restrictions in the modern day business environment. In addition, deregulation and, particularly, the activities of the Competition Board have given impetus to the demand from inside the professions that the status quo need to be reviewed. One area of concern is advertising.

In certain professions, the issue of advertising has been addressed. Accountants are for instance already permitted to advertise albeit only within certain restrictive guidelines (Financial Mail, 1990-12-01). In the legal profession, advertising has been under the spotlight but no finality has been reached yet.

Advertising and the legal profession

Internationally, efforts to limit advertising by professionals have a long history. Restrictive measures originated in the United Kingdom, in the belief that the professions are charged with a sacred duty not to be soiled by mere money-

making (Financial Mail, 1989-09-15). Many, however, see advertising restrictions as a means of restricting professional competitiveness.

The debate whether advertising should be permitted in the legal profession, particularly advertising by individual attorneys, has centred on the possible advantages and disadvantages for both the attorney profession and for the public. Those in favour of advertising believe that they are losing business and clients to non-professionals who are not restricted by professional codes of conduct. They also argue that the public has a right to — and needs — the information which would be available through advertising to facilitate the proper selection of legal counsel. Others have resisted the idea of advertising on the grounds either that good attorneys need not advertise or that justice cannot be sold. Legal counsel is a profession, they believe, not a business (Hazard, Pearce & Stempel, 1983: 1112). Other reasons why advertising has been resisted include satisfaction with the status quo and a genuine desire to protect what has been described as the unique client-attorney relationship (Shimp & Dyer, 1978: 81).

In the United States of America restrictions on advertising by professional associations have been challenged in court. These restrictions have been viewed against the background of the first amendment of the U.S. constitution which states: 'Congress shall make no law ... abridging the freedom of speech, or of the press...' (Cohen, 1978: 59). Thus, although, free speech has traditionally been protected by law, information and opinion disseminated in a commercial context such as advertising has been considered

mercantile in origin, and thus not subject to the same first amendment protection as other forms of expression (Cohen, 1978: 59).

This viewpoint was modified in 1975 when the U.S.A. Supreme Court ruled in *Bigelow versus Virginia* that speech which appears in commercial form is not denied its first amendment protection (Hite & Bellizzi, 1986: 45). In a landmark case, *Bates versus State Bar of Arizona*, the court declared that the rule of Arizona State Bar banning advertising of legal services violated the constitutional protection of lawyers' commercial speech. The court decided that consumers had the right to receive such information (Hite & Fraser, 1988: 95). It is noted, however, that its decision pertained only to price advertising of routine legal services in printed media (Smith & Meyer, 1978: 288). Following this decision advertising restrictions have been lifted.

In South Africa, the Association of Law Societies has decided that individual law firms should be allowed to advertise, subject to certain guidelines. This decision has, however, to be ratified by the four provincial law societies. Surprisingly, at least two of these societies have voted against the relaxation of these restrictions, despite initially advising the Association of Law Societies to the contrary. This about-turn is indicative of the uncertainty reigning in the legal profession. The dearth of empirical research findings which could serve as guidelines to prospective advertisers has not helped attorneys. This article attempts partially to address this issue by reporting the results of two surveys conducted to investigate the perceptions of both practising attorneys and members of the public and then comparing them.

Objectives

The broad objective of this article was to establish how the two groups, attorneys and members of the public, respectively differ in their perceptions of the implications of advertising, by individual attorneys. More specifically the objectives were to determine:

- whether the two groups do differ significantly in respect of the 69 variables investigated as a whole;
- which group of variables among the 69 best discriminates between the two groups; and
- in terms of which individual variables among the 69, the two groups differ significantly.

Methodology

The article was conducted in two phases, the first consisted of a survey among practising attorneys, and the second, of a survey among members of the public. Both surveys were conducted during late 1989.

Phase 1: Attorneys

Questionnaires were mailed to a systematic random sample of 1 000 attorneys in private practice. The registration list of the Law Society of the Cape of Good Hope served as the sampling frame. A response rate of 35,6% was achieved, on one mail follow-up.

The questionnaire consisted of 72 statements linked to a

5-point Likert-type scale on which respondents could indicate their agreement or disagreement with each statement. The scales ranged from strongly agree (value 5) to strongly disagree (value 1). The statements covered the issues on which the debate of the possible advertising of legal services centres.

Phase 2: Members of the public

Questionnaires were mailed to a stratified, systematic random sample of 1 000 members of the public. The telephone directories of Johannesburg, Cape Town and Port Elizabeth served as the sampling frame. The sample was stratified according to population size, as at the 1985 census. The questionnaire consisted of 69 statements linked to a 5-point Likert-type scale on which respondents could indicate their agreement or disagreement with each statement. The scales ranged from strongly agree (value 5) to strongly disagree (value 1). The statements addressed exactly the same issues as those contained in the questionnaire sent to attorneys. Three statements, not applicable to members of the public were, however, deleted. The 69 common statements can be classified into three groups namely:

- the possible implications of advertising for the profession and consumers;
- practical considerations such as the information content of advertising, appropriate media, responsibility for placing advertisements; and
- regulatory aspects.

The Issues

Potential implications of advertising for attorneys and consumers

The potential impact and implications of the advertising of professional services mentioned most frequently in the marketing literature (Bloom, 1977; Shimp & Dyer, 1978; Smith & Meyer, 1978; Hite & Bellizzi, 1986; Smith & Meyer, 1980; Hazard *et. al.*, 1983; Hite & Fraser, 1988) and which are applicable to attorneys include a wide range.

Advertising by attorneys may, for instance:

- create new job opportunities;
- establish, modify, or reinforce the image of a legal firm;
- correct mistaken beliefs about the performance or reliability of a legal firm;
- encourage contact with, or trial of, a previously untried legal service;
- enhance the reputation of the firm or profession;
- allow consumers to make optimal attorney selection decisions;
- ensure increased competition, as prevention of advertising limits competition to the detriment of the public;
- decrease prices/fees;
- enhance the quality of legal services;
- heighten the public's understanding of situations in which legal assistance is required;
- allow consumers to choose a specialist for a particular legal problem/situation;
- intensify client satisfaction after service delivery;
- create an awareness of the services offered by attorneys;

- allow attorneys to specialize;
- impair the personal nature of the client-attorney relationship;
- benefit only the incompetent attorney;
- erode public confidence in the legal profession;
- not be seen as credible information by consumers;
- expose attorneys to entrepreneurial risk;
- lead to less co-operation among attorneys on matters of common interest;
- lead to a loss of clients if poorly executed;
- have a harmful influence on the dignity of the profession;
- create client dissatisfaction due to artificially inflated expectations;
- degenerate into a circus of misleading and deceptive advertising;
- be of little value as the information provided will be biased;
- be of little value as consumers will still rely on reputation and personal information sources;
- decrease competition as only large firms will be able to afford it;
- confuse rather than enlighten consumers;
- result in price collusion among attorneys if prices/fees are listed in advertisements, to the detriment of the small practitioner and thus also fair competition;
- lead to competitive pressures, which may result in dishonest and/or unethical behaviour among attorneys;
- result in higher fees for the client; and
- be wasteful and unnecessary.

Practical considerations

With regard to the information content of advertising the

Table 1 Classification functions

Statement number	Variable/statement	Group	
		Attorney	Public
1	Attorney-client relationship should not be influenced by advertising	1.97	2.51
3	Advertising will increase demand for legal services	2.43	1.94
6	Advertising will create new positions in the legal profession	1.90	2.39
7	Advertising will lead to lower legal fees	0.86	1.24
8	No advertising should be permitted	2.87	3.30
10	Information in advertisements will be biased — of little value	3.88	4.39
11	Advertising will help clients to know which attorneys specialize in which legal areas	3.29	3.82
13	Advertising will harm the dignity of the profession among attorneys	2.69	2.32
16	Advertising information will help the public in choice of attorney	4.93	5.39
19	Advertising will harm the public's confidence in the legal profession	4.10	3.47
25	Advertising will confuse rather than enlighten public	6.19	6.81
31	Attorneys should be allowed to advertise freely — provided the advertisement is true and not misleading	1.89	2.66
41	Attorneys should be permitted to quote fees in advertisements	-0.12	0.65
42	Attorneys should be permitted to indicate how long established	2.99	2.61
45	Attorneys should be permitted to reveal past achievements	0.04	0.40
49	Attorneys should be permitted to use brochures/pamphlets	3.64	3.22
57	Only the law societies should place advertisements	1.39	1.75
60	Advertising will enhance the reputation of the profession	3.71	3.29
68	Public has a right to advertised information	5.91	6.45
69	Attorneys should be allowed to advertise only in areas where they face competition from non-professionals	0.98	0.35
Constant		-87.48	-94.51

possibilities range from general information (name, address, phone number, hours) to complete advertising, including area of specialization, qualifications, fee schedules, amount of experience, law school attended, awards received, endorsements from regular clients and past court performance records (Shimp & Dyer, 1978: 76; Smith & Meyer, 1978: 289).

Advertising media which might be considered, include newspapers, the Yellow Pages, law journals, radio, television, consumer magazines, direct mail, billboards, telephone and brochures in offices (Shimp & Dyer, 1978: 76; Hite & Fraser, 1988: 95; Smith & Meyer, 1978: 289).

Responsibility for the placing of advertisements offers three possibilities, namely by professional associations, individual attorneys (Shimp & Dyer, 1978: 76), or through commercial advertising agencies.

Regulatory aspects

The regulatory aspects receiving attention in the marketing literature concern mainly the degree (if any) of regulation and the possible cost of this.

These issues were all included in the questionnaire which served as measuring instrument in this article (see Appendix A).

Empirical results

Discriminant analysis is particularly useful in explanatory studies such as this one, according to Betz (1987: 393), when the objectives are:

- to describe, summarize and understand the differences between or among groups;

- to determine which of a set of continuous variables best captures or characterizes group differences;
- to test theories that use stage concepts or taxonomies; and
- to examine the nature of group differences following a multivariate analysis of variance.

Accordingly, in pursuance of the objective to determine which group of variables (statements) discriminate the best between the two groups (attorneys and the public) a step-wise discriminant analysis was conducted. The computer programme BMDP7M (Jennrich & Sampson, 1985) was used for this purpose. The results, reported in Table 1, reveal that as a group, 20 of the 69 variables discriminate the best between attorneys and members of the public. Note that the classification function of the two groups is also included in Table 1.

In Table 2 an indication is given of the extent to which respondents are correctly classified if the classification function in Table 1 is used. It reveals that a high percentage of both attorneys (82,3%) and members of the public (86,1%) are correctly classified, with an overall average of 83,8%. In an attempt to determine whether any bias occurred in the classification, this procedure was followed-up by a jack-knifed classification. The results, reported in Table 3, reveal an overall average of 82,0%, which suggests that bias in the classification of respondents is minimal.

To establish the degree of difference between the two groups (attorneys and the public) towards the 69 variables globally, the group means were compared, using the computer programme BMDP 3D (Dixon & Brown, 1985). The analysis of all 69 variables for both groups, concurrently, reveals that the perceptions of the two groups do differ significantly ($p < 0.0$). In addition, an attempt was made to identify these individual variables in respect of which the two groups differ significantly. The hypothesis to be tested was:

H_0 : There is no significant difference between attorneys

and members of the public regarding their perceptions of individual variables measuring the implications of advertising by attorneys.

For this purpose the Hotelling's T^2 test was employed (BMDP 3D; Dixon & Brown, 1985). In Table 4 only the p values of the individual variable with regard to which group differences were significant are reported ($p < 0.05$).¹ It reveals significant differences ($p < 0.05$) between the two groups with regard to 36 of the 69 variables investigated. The null hypothesis is thus rejected with regard to these 36 variables.

According to Table 4 attorneys appear to be significantly more conservative regarding the possible implications of advertising by individual attorneys than are members of the public. The following examples may illustrate the point:

Table 4 Significant differences between attorneys and the public on individual variables¹

Statement/variable number	Group mean: attorneys	Group mean: public	T-values	P-values
1	3.21	3.48	-2.53	0.012
3	3.63	3.36	3.01	0.003
4	2.46	3.13	-6.79	0.000
6	2.97	3.41	-5.26	0.000
7	2.35	3.04	-7.78	0.000
8	2.01	2.25	-2.51	0.013
11	3.59	4.06	-6.23	0.000
12	3.12	2.89	2.68	0.008
13	2.83	2.56	2.69	0.008
16	3.62	3.97	-4.94	0.000
17	3.92	3.57	3.97	0.000
19	2.47	2.24	2.60	0.009
21	3.01	3.21	-2.50	0.013
23	3.91	4.07	-2.61	0.009
28	3.12	3.33	-2.44	0.015
29	3.36	3.12	2.57	0.010
30	2.68	2.46	2.24	0.026
31	2.65	3.73	-10.47	0.000
32	3.52	3.75	-3.23	0.001
33	3.03	2.84	2.01	0.044
38	3.75	3.92	-2.76	0.006
40	2.06	2.85	-8.07	0.000
41	2.37	3.71	-13.74	0.000
43	4.06	4.24	-2.48	0.014
45	2.59	3.47	-8.65	0.000
46	1.86	2.50	-6.87	0.000
48	2.96	3.21	-2.21	0.027
49	3.93	3.64	3.16	0.002
54	1.92	2.39	-4.81	0.000
55	2.17	2.75	-5.73	0.000
56	3.33	3.64	-3.29	0.001
58	2.56	2.92	-3.49	0.001
59	2.10	2.58	-4.91	0.000
64	3.08	3.58	-6.09	0.000
65	3.14	2.80	3.30	0.001
69	2.92	2.44	5.40	0.000

1. Only variables with a p-value < 0.05 are reported

Table 2 Classification table

Group	Correctly classified		Incorrectly classified		Total	
	Number	%	Number	%	Number	%
Attorney	293	82.3	63	17.7	356	100
Public	210	86.1	34	13.9	244	100
TOTAL	503	83.8	97	16.2	600	100

Table 3 Jack-knifed classification

Group	Correctly classified		Incorrectly classified		Total	
	Number	%	Number	%	Number	%
Attorney	288	80.9	68	19.1	356	100
Public	204	83.6	40	16.4	244	100
TOTAL	492	82.0	108	18.0	600	100

Statement 8

Attorneys as a group reflect, through their greater disagreement with the statement that no advertising of any nature should be permitted, a more conservative response than that of members of the public.

Statements 19 and 30

Attorneys' responses to the statements that public confidence in the legal profession and the dignity of the profession among the public would be harmed by advertising are more conservative than those of the public. Members of the public disagree both more strongly and to a greater extent with the statements.

Statement 31

The public appears to afford attorneys more freedom with regard to advertising than what they themselves regard as appropriate.

In Table 4 is also shown that members of the public believe that advertising by attorneys will be more advantageous to the public than what attorneys believe possible. For instance:

Statements 11 and 16

Members of the public believe that advertising will inform them which attorneys specialize in certain legal areas and also allow them to make more informed selections of attorneys — a viewpoint not quite shared by attorneys.

Statement 64

Members of the public, contrary to attorneys, feel that the advertising of fees will ensure that excessive fees are not charged.

With regard to practical considerations, the two groups seem to differ on the inclusion of testimonials by satisfied clients (statement 40), the prices/fees for different legal services (41), areas of specialization of staff members (43) and whether past awards/accomplishments should be permitted in advertisements (45). Despite these significant differences, members of the public are really in favour of only the inclusion of price/fee information and the areas of specialization (the other values are located near or below the central value of three which indicate that the inclusion of this information is not particularly favoured). The use of advertising media also shows significant differences with regard to the use of radio (48), brochures/pamphlets (49) and advertising boards next to public roads (54). Interestingly, attorneys are more in favour of the use of brochures and pamphlets than are members of the public, while both groups seem to reject the use of billboards next to public roads. The question of who should be responsible for placing advertisements also yielded significant differences between the groups. Both groups seem to oppose the use of commercial advertising agencies, but attorneys even more so.

Responsibility for placing advertisements by individual attorneys are more favourably perceived, particularly among the public, but is still only located near the central value of three. An analysis of responses to statements related to practical considerations thus supports the earlier contention that attorneys appear to be more conservative when con-

sidering various aspects of advertising by individual attorneys than are members of the public.

Conclusion

Of major concern to attorneys debating the contentious issue of advertising by individual attorneys is the likely response of members of the public. The empirical findings of this article suggest that attorneys and members of the public differ significantly in their perceptions of the implications of legal service advertising. Differences exist ($p < 0.05$) between the two groups in respect of 36 of the 69 aspects investigated.

Overall, it appears that members of the public have a more positive attitude towards advertising than attorneys have. Consumers seem to believe that advertising by attorneys would benefit them in their search and choice of the 'best' attorney for their circumstances. Attorneys, on the other hand, are more conservative. In general, they perceive advertising in a positive light but not to the same extent as consumers do.

The results of this article suggest that attorneys need not be unduly concerned about consumer reactions should they do decide to lift restrictions on advertising.

Note

1. Due to space considerations only significant p-values are reported. Additional statistics are available on request.

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Appendix A

- | Statement number | Statement |
|------------------|--|
| 1. | The attorney-client relationship is personal and should not be established as a result of pressures exerted by advertising. |
| 2. | Existing information sources provide adequate information to guide potential clients attorney selection. |
| 3. | The demand for legal services will increase if advertising of legal services is permitted. |
| 4. | An important reason the profession rejects advertising is to protect established attorneys and large firms from competition from young attorneys and small firms. |
| 5. | Advertising will be wasteful and unnecessary. |
| 6. | Legal service advertising will help to provide many positions for new attorneys entering the law profession. |
| 7. | Prices of legal services will decrease if the advertising of legal services were permitted. |
| 8. | No advertising of any nature should be allowed. |
| 9. | If advertising is permitted, the increased competition will improve the quality of legal services. |
| 10. | Information provided by legal service advertising will be biased and thus of little value to the public. |
| 11. | Legal service advertising will help potential clients in knowing which attorneys are competent to handle particular problems i.e. are specialists in a particular field. |
| 12. | If advertising of legal services is permitted, the large firms will get bigger as only they can afford to advertise and the smaller firms will become even less competitive. |
| 13. | Advertising will harm the dignity of the profession among attorneys themselves. |
| 14. | The advantages of advertising will be outweighed by the cost involved to police potentially deceptive, misleading advertising. |
| 15. | Advertising will encourage attorneys to specialize. |
| 16. | The information provided to the public through advertising will enable potential clients to make more informed selections of attorneys. |
| 17. | Only advertising within certain general guidelines should be permitted. |
| 18. | Poor advertising could lead to a loss of clients. |
| 19. | Public confidence in the legal profession will be harmed by advertising. |
| 20. | Advertising of legal services will heighten the public's understanding of situations where legal assistance is required. |
| 21. | The advertising of legal services will tend to intensify client satisfaction after service delivery. |
| 22. | If legal service advertising were permitted it would eventually degenerate into a circus of misleading and deceptive advertising. |
| 23. | Advertising of our services can create an awareness of our firm and its services. |
| 24. | Advertising of our services can establish, modify or reinforce the image of our firm. |
| 25. | Advertising of legal services will confuse rather than enlighten the public. |
| 26. | Only advertising within strict limitations should be permitted. |
| 27. | The public will not regard the information provided by advertisements as credible. |
| 28. | Advertising of our services can correct mistaken beliefs about the reliability and/or performance of our firm. |
| 29. | If attorneys list prices/fees in advertisements, price collusion will result. |
| 30. | Advertising will harm the dignity of the profession, among the public. |
| 31. | Attorneys should be allowed to advertise whatever, whenever, whenever they prefer, provided it is true, and neither misleading nor deceptive. |
| 32. | Advertising of our services can encourage contact with or trial of an untried service. |
| 33. | Competitive pressure due to advertising may result in dishonest, unethical behavior. |
| 34. | Advertising will create client dissatisfaction due to artificially inflated expectations. |
| 35. | Advertising will lead to less co-operation among attorneys on common ground aspects e.g. legal research. |
| 36. | A good reputation will ensure that the consumer gets the best attorney, as reputation is more reliable than advertising. |
| 37. | Advertising will be expensive and the client will have to pay for it in the end. |
| 38. | The advice one individual offers the next on the selection of an attorney is a personal opinion of a particular firm and will not reflect the true strengths and weaknesses of all the firms in the market.
If the advertising of legal services is permitted, the following information may be supplied: |
| 39. | General information (name, telephone number, location, office hours) |
| 40. | Testimonials by clients |
| 41. | Prices for various services |
| 42. | How long established |
| 43. | Areas of specialization |
| 44. | Qualifications of staff members |
| 45. | Past awards/accomplishments |
| 46. | If advertising is permitted limitations should be place on the content of advertisements.
If the advertising of legal services is permitted the following media may be used: |
| 47. | Newspapers |
| 48. | Radio |
| 49. | Brochures/pamphlets |
| 50. | Television |
| 51. | Law journals |
| 52. | Yellow Pages |
| 53. | Notices/boards outside office |
| 54. | Billboards next to public roads |
| 55. | If advertising is permitted, no limitation should be placed on the media used.
If advertising is permitted it should be placed by: |
| 56. | Each individual or firm |
| 57. | The law society |
| 58. | Commercial advertising agencies |
| 59. | If advertising is permitted no limitation should be placed on who may be responsible for the placing of advertisements. |
| 60. | Advertising will enhance the reputation of the profession. |
| 61. | Advertising will only benefit the incompetent attorney. |
| 62. | Advertising will expose attorneys to entrepreneurial risk i.e. research on consumers and advertising, paying for advertising that may not be successful, etc. |
| 63. | Information provided by advertising will be of little value as the public will still use reputation and personal information sources (e.g. friends) to select an attorney. |
| 64. | If price advertising is permitted, excessive fees cannot be charged. |
| 65. | Advertising by the law society (informing the public of the various services we offer, enhancing the image of the profession etc, on behalf of all members) is the only advertising which should be allowed. |
| 66. | The advertising of legal services is unethical. |

67. I think the public needs more information about the services attorneys offer and advertising is an appropriate means of supplying it.
68. I think the public has a right to be informed about the services attorneys offer and advertising is an appropriate means

- of supplying it.
69. I think attorneys should be allowed to advertise only with regard to aspects where they face competition from non-professionals e.g. administration of estates by banks.