

Running Head: Marketing tactics of ADR Providers

University of Massachusetts
Graduate Program in Dispute Resolution
The Marketing Tactics of Alternative Dispute Resolution Providers

Christopher J. Friel

July 7, 2006

Advisor: Professor David Matz

Evaluator: Forrest S. Mosten

Copyright 2006, Christopher J. Friel

Acknowledgements

During the course of my studies at the University of Massachusetts – Boston, many people have been responsible both directly and indirectly to my success. I will not immortalize or single out any one person, but every faculty and staff member from the Dispute Resolution Department has at one time or another gone out of their way to assist me and for this I am extremely thankful.

The obstacle course that I negotiated as a full time student and professional during my three years in the program was both challenging and rewarding to me. The ability to instantly apply both theory and practical skills to my work life was likely the most rewarding part of my journey. In a strange way I will miss the fullness and sometimes frantic life of working and then making a rush to class, but as I mentioned before, it is the faculty that encouraged and made me want to anxiously attend class and push myself.

Lastly I would like to mention several people who were instrumental in the finished product you are about to read. Specifically, David Matz, as an advisor he was always upfront, honest and ready to challenge my ideas in an effort to make my arguments stronger. For this I am grateful and would eagerly do it all over again. In addition, to my evaluator Forrest Mosten I am most thankful. As Forrest wrote extensively on my chosen topic, working with him was both greatly appreciated and produced great nervousness as I did not know what to expect as I opened myself up to his criticism. Fortunately, the Dispute Resolution program has prepared me well and my evaluation was a success.

Lastly, I would like to thank my wife who endured hours alone because I spent so many nights locked away reading and writing to produce what you will soon read. Bethany, I owe you big for that one.

Thank you.

Abstract

In this study the marketing tactics and methods employed by alternative dispute resolution (ADR) providers to attract clients to purchase services offered are explored. This area is being explored due to a perceived increase in the use of ADR services and the apparent lack of research in this area. Specifically, the rise in use of alternative dispute will be explored as well as traditional marketing techniques or services and their application to the field of ADR. The study includes interviews of these service providers and an analysis of the transcripts to determine relationships and differences in the use of tactics. The results observed included a high use of personal networking and relationship building to establish a client base and sell these services. In addition, the use of technology including; the World Wide Web and electronic publishing was observed as an effective marketing tool. Although no causality was drawn from this study, a relationship was observed between alternative dispute resolution's use of communication in its services and the predominant way in which the services were marketed. Specifically, a high degree of personal networking and techniques to increase the practitioner's visibility to their audience was observed. From these observations it can reasonably be concluded that the marketing tactics in field of ADR are similar to those of other service oriented organizations with differences stemming from the nature of the services offered.

The Marketing of Alternative Dispute Resolution Services

Imagine you are at a dinner party making small talk with someone you have just met. Inevitably the question of what you each do for work will come up. When asked this question you enthusiastically answer, "I'm a conflict engagement specialist." Your fellow dinner guest will more than likely stare at you with a quizzical expression on their face and ask what exactly it is that you do in a profession like that.

The term "conflict engagement specialist" may be a bit of an extreme job title to describe a career, but it is an idea put forth in the area of Alternative Dispute Resolution. The field of Alternative Dispute Resolution (ADR) is a relatively young area both academically and as a business enterprise. For this reason many of the terms of the field such as "conflict engagement specialist" are relatively unknown. Despite being relatively new, ADR has seen an enormous growth in recent years through federal government legislation and initiatives, as well as the acceptance of ADR processes by private groups (Barrett & Barrett, 2004). Similarly, the concept of marketing has become more main-stream and accepted as integral to a successful business strategy. While the marketing function of a business may at first be thought of as something employed by large organizations with vast amounts of resources, the concepts that comprise marketing of goods and services can also effectively be used by smaller organizations. In this paper, I intend to explore how traditional marketing techniques are applied by private Alternative Dispute Resolution providers in an effort to attract customers to purchase the services they offer. To accomplish this, I will begin by conducting a literature review that broadly defines the concepts of marketing and alternative dispute resolution. I will then separately examine relevant literature in both fields to survey the theoretical writings and practical applications of marketing to the ADR field. The purpose of this research is to identify what methods of marketing ADR service providers are using and comment on the results by analyzing them through a theoretical lens. Suggestions will then be made on further efforts to be undertaken by ADR providers to enhance their businesses.

Literature Review

In this section, I will examine literature from the fields of alternative dispute resolution and marketing theory. Specifically, I will define the two fields and give an overview of the

prominent writings from each area. In addition, I will provide a basis for increased use of ADR as it is central to the idea that the marketing of ADR services is a profitable and worthwhile

venture for practitioners within the field. This review is not meant to be comprehensive, but to

provide a background for my research into how ADR providers market their services. It will also

ground the findings and discussion that I will present later in this paper. An observation of the

literature of marketing an ADR organization finds little peer reviewed academic work on the

subject and instead is composed mostly of anecdotal writings and other secondary research. I

include this literature primarily due to an absence of studies that cite data to backup their claims

and assumptions regarding the marketing and ADR.

Alternative Dispute Resolution

The term alternative dispute resolution (ADR) can be defined in variety of ways

depending on which aspect of the concept the definer wishes to emphasize. For the purposes of this study, I will define ADR concisely and explicitly in an effort to label the participants in my

research. In the context of this research, ADR will be defined by the presence of a third party to

a conflict that attempts to resolve the dispute using a technique outside of the traditional

distributive judicial system.

Pruitt and Kim (2004) state that a third party "is the one that is external to a dispute

between two or more people and that tries to help them end their conflict" (p. 227). The third

party can be an informal interventionist such as a landlord between two angry tenants or can be

more formal and established in the process of helping to end conflict. These more formal third

parties can be mediators, arbitrators or ombudsmen or evaluators. It is these more formal third parties that have come to define what has become known as Alternative Dispute Resolution.

I will also define alternative dispute resolution by pointing out what it is an alternative to. Barrett & Barrett (2004) propose a simply stated view of this alternative to traditional methods. They believe, "It is an alternative to solving problems by power, the courts, violence, or any other forum in which one party's inherent advantages rule out fair settlement" (p. 8). I believe this gives a clear definition to what can be an intangible concept to those unfamiliar with it.

The Rise of ADR Use in the Private Sector. The high cost of litigation in terms of time

and money expended is likely what has caused a gradual acceptance of ADR among the private sector in the United States. According to the United States General Accounting Office the

number of discrimination complaints filed with the federal government in 1994 was 90,000, two times that of 1981 (GAO Report, 1995). This high number of cases that would likely be litigated through the traditional court system is only a fraction of the total number of cases that are filed in courts and litigated in terms of all other types of disputes. However, it shows evidence of the

increased litigiousness in the U.S. during the last twenty years. Although it is hard to determine the exact cost of litigation or its use as a threat resulting in out of court settlements, one estimate is that U.S. businesses spend greater than \$20 billion annually in legal fees for litigation related matters (Allison, 1990).

Several studies and surveys have been conducted recently in an attempt to measure both the use of ADR in the corporate setting and its perceived effectiveness in resolving disputes in a more efficient manner. One such study was conducted in 1997 and showed that of 606

respondents to a survey of the Fortune 1000 organizations in the United States, 88 percent had

used mediation in the past (Lipsky, Seber and Fincher, 2003). The findings of this study appear

to reflect that ADR is being used as a valid alternative to litigation and other forms of highly distributive dispute resolution in the corporate sector. Although this study will focus on alternative dispute resolution in settings both in and out of the corporate environment including private citizen disputes and family law, the majority of the literature and research appears to be concentrated on the commercial aspect of ADR. Due to this factor, this literature review primarily references corporate organizations in an attempt to convey the increased use of ADR techniques. However, I will cite in my discussion section evidence that shows that ADR is being used increasingly in many settings outside of the corporate environment.

Marketing

According to the American Marketing Association (AMA, 2004) marketing is defined as the "an organizational function and a set of processes for creating, communicating, and delivering value to customers and for managing customer relationships in ways that benefit the organization and its stakeholders". This comprehensive definition takes into account the idea that marketing is more than just advertising and promotion in an effort to sell a product or service. In practice marketing is a function that is integrated into a business no matter what the organizations size or their product.

In this study, as the "product" of alternative dispute resolution is not a tangible object such as a pair of shoes and can be classified as a "service", I will survey literature that presents these concepts and later apply them to the ADR field. The assumption in this application is that ADR providers do in fact market their services to their potential clients. This assumption is backed by Kotler and Levy's (1969) idea that the every business performs marketing activities even if they are not directly identified as marketing functions. This will be evident in the variety of tools that ADR service providers use to market their services and promote their business.

Marketing as a Concept. The American Marketing Association definition of marketing is informed by many years of research and inquiry into marketing as a discipline. In an effort to give a brief overview of the marketing function, the work of Phillip Kotler, a noted marketing expert will be presented to provide grounding for the research to be conducted. Kotler (1984) states that "Marketing is a social process by which individuals and groups obtain what they need and want through creating and exchanging products and value with others" (p. 4). In contrast to the AMA definition of marketing, the use of the word social by Kotler seems to clearly indicate that the process does not exist in a vacuum within the organization, but is a dynamic function that is always evolving. In addition to his concise definition of marketing as a social function, he places emphasis on other factors that comprise the idea.

Marketing of Services. The idea of marketing a product such as alternative dispute

resolution does not easily translate into something that can be neatly packaged, placed onto a

shelf and touted as the next best thing. According to Kotler (1984) a service is "any activity or

benefit that one party can offer to another that is essentially intangible and does not result in

ownership of anything (p. 497). If the ADR process of mediation is taken in this context, after

the mediation ends, even if there is an agreement produced, there is no physical representation of

the mediation.

In the United States the service sector makes up a large majority of the economy and as of

the mid 1970's jobs in this area outnumbered those in manufacturing (George & Barksdale,

1974). However, it is still believed that the marketing of services is done in an inferior way to

that of more tangible products. George and Barksdale theorize through their study that "while

service and manufacturing firms do not have significant differences in their goals, policies, audits

and overall plans, marketing differs significantly" (p. 66). This is possibly due to the

intangibility aspect and the inability of many service providers to effectively convey their

message.

Reputation and Referral. When a potential buyer of an alternative dispute resolution

service approaches a provider, aside from a personal referral or a sales pitch, the sale is hinged on

the promised delivery of a service of a certain quality. Levitt (1981) believes that when the buyer

can not personally try the product of the provider the marketing efforts become a metaphor for

the service. He gives the imagery of wood paneled conference rooms of a law office or

established corporation as personifying the image and characteristics of the service that will be

provided (p. 97). While the service delivery is not personified in this imagery, the organization is

trying to cast a certain image of themselves. This concept can logically be extended into mediation where it is possible that glossy brochures of people engaged in active dialogue, smiling approvingly or shaking hands can signify agreement. In an area where the service is not easily visualized, the guarantee and promise of the provider is what appears to give merit to their claims of reliability and qualifications to perform the service.

Defining the Service. Overall, the marketing of services is likely to be more difficult than

a tangible product. Levitt (1960) believes that many business do not define themselves correctly, he proposes that many businesses do not fare well because they define themselves in too narrow a way. An example he gives is Hollywood's belief it was in the "movie business" when it should have defined itself as in the "entertainment business" (p. 45). In terms of the alternative dispute resolution profession, the correct way to define the profession may be in the 'conflict resolution' or 'conflict engagement' realm rather than narrowly defining the business as either 'mediation' or 'arbitration'. However, a criticism of Levitt's (1960) statement that narrow definition is not

helpful to marketing would be that in 2006 specialization is looked upon as an asset and that an expert is by definition more qualified and therefore supposedly able to offer a better service. The discussion of specialization is seen in Melamed's (1999) article that advises an ADR provider to target a niche. He argues that a mediator should identify around two to four areas of specialization and target business in this area. This tactic reduces the target market and lets a mediator focus on a smaller segment with their resources.

Applied Marketing in the Alternative Dispute Resolution Field

In the introduction to this study, I stated that there is an apparent lack of peer reviewed academic literature in the field of marketing as applied to alternative dispute resolution. As it is a relatively young field, this is not entirely unexpected. However, the lack of applied academic

work is supplemented by a number of high quality works on the practical applications of

marketing dispute resolution organizations and other specific recommendations on marketing a service organization. This literature appears to be informed primarily by law firm marketing

given the similarities between the two fields as well as secondary research taken from general

marketing textbooks.

In my review of this literature, several texts devoted to developing a business in ADR

were found as well as several texts with smaller sections devoted to the marketing of mediation

practices. In addition, many electronic articles exist on ADR related websites such as

Mediate.com, a site devoted to resources for mediators and members of the public looking for

ADR practitioners. These sources were evaluated critically and found to be mostly composed of

secondary research, taking the ideas of others in the marketing field and viewing them through

the lens of alternative dispute resolution. In the following section I will outline some of the main

ideas that the authors present in an attempt to identify the nexus between alternative dispute

resolution and marketing.

Intentional Marketing. The services provided in the field of alternative dispute

resolution are highly communicative where people skills, networking and publicity are required

to establish and advance a practitioners standing. Forrest Mosten (2001), a noted mediator and

ADR practice builder, believes that marketing is an important part of the ADR marketing

process. One way he advocates getting yourself established is by getting involved in community

organizations. Specifically, he comments that "the relationships you form from working on a

charity pancake breakfast or serving on the program committee may get you referrals because

you do not seem like a hustler" (p. 179). It is important to note that although Mosten gives this

advice, no empirical data or evidence is cited give validity to his claims. In a business such as

ADR where relationships, trust and confidentiality are such an important aspect, it seems logical that you would want to establish credibility without looking as if you are chasing work. In

addition, Cruz (Cruz, 2004, Forming Strategic Alliances Section, para. 2) expresses the idea that ADR providers should balance traditional marketing with building strategic alliances with local groups of potential clients to educate them about the field. Overall, the idea of promoting

yourself and practice through traditional marketing tools appears to be widespread in the ADR field. This seen in Mosten's (2001) book appears to parallel Kotler's (1984) writings on

marketing. Specifically, Mosten outlines strategic marketing involving deliberate tactics such as direct mail, the use of databases and advertising.

In addition intentional forms of marketing such as article writing, presentations and

direct mail are seen as a way to enhance business and gain visibility. Lovenheim (2004) argues that ADR practitioners should write articles and give presentations at conferences to let other

professionals know about their services. A presentation will give a real face and personality to those who may only know the practitioner from reputation or word of mouth. In addition, a well

written article on general ADR or a specific topic in the area often serves a dual purpose. It can showcase a practitioner's dedication to the ADR field and also can be used for a long period of

time in the form of reprints to market an organization. Mosten (2001) would also agree with this type of marketing and states that reprints of articles can be used "to include in your marketing

packets, decorate your office, and include in your bio and Web site" (p. 181). From these ideas, it is evident that a well written article published in a well known journal or even a local newspaper

can be a valuable asset

Networking. Previously, I mentioned getting to know peers in the ADR field by writing

articles and giving presentations. While these methods will increase name and organizational

recognition, it not likely that these people will be a practitioners clients. Instead, the goal of marketing to peers is to generate referrals to the business through relationship building and education. This is seen in the various articles I referenced that advocate speaking to peer groups including Cruz's (2004) piece which argues that strategic alliances with groups can generate referrals in the long run. A key way to do this would be to market directly towards those most likely to give a reference such as other ADR practitioners, therapists and lawyers. Lovenheim (2004) gives the example of a mediator who practiced extensive networking by taking many mental health professionals and attorneys out to lunch in an effort to familiarize them with her practice. The social networking that is accomplished through one on one meetings and at group events is where people can get to know a practitioner and trust their competency when giving a referral to one of their clients. In addition, Lovenheim states that the mediator who did this networking eventually saw the pay off and now receives many of her referrals from former clients (p. 155).

Internet Presence. In 2006, any marketing plan would be remiss without taking advantage of the rapidly emerging technology of the internet and email. While alternative dispute resolution will ultimately always be a business based on relationships, the internet and email has been able to spread ideas further than traditional marketing tactics at less of a cost. It is able to do this through methods such as professionally designed website's, targeted email and most recently internet journals know as blogs. Melamed (1999) correctly posited that the internet was becoming the "new electronic Yellow Pages" (p.26). Seven years later it is evident that a great deal of advertising is conducted on the internet for its relative ease of use. Mosten (2001) states that "web strategies can yield you new clients" (p. 179). In the course of this study it is hoped that this statement can be qualified.

Overall, it appears that as the internet is being used increasingly and ADR practitioners are able to craft unique and differentiated marketing materials and establish businesses. This unique brand of marketing using the media of the world wide web and the new economy it created by delivering marketing materials and in some cases dispute resolution materials is increasing. Lovenheim (2002) gives the example of two businesses that have specialized in resolving disputes over the internet in regard to commerce and international business (p. 150). When these materials and services are made accessible to a large population on the internet it is possible that it helps ADR providers to establish their niche in the field. In addition, the advent of Online Dispute Resolution, where disputes are settled through various methods in cyberspace has opened up new possibilities for both marketing to a new audience and expanding the population of possible clients for ADR practitioners.

Methods

In an effort to observe specific tactics and tools used by alternative dispute resolution providers, a series of interviews were conducted and the results analyzed to determine if any relationships or commonalities were present among the providers. In addition, publicly available internet material was reviewed that pertained to the interview subjects. In total 5 personal interviews were conducted during January and February of 2006. These interviews ranged in length from 30 to 60 minutes. The notes from these interviews were then analyzed to identify relationships and to compare the data collected.

Participants

A target number of 5 participants were chosen for the study. The sample was selected by identifying potential participants through the use of publicly available sources such as advertisements in the Boston area telephone directory and internet website listings of alternative dispute resolution professionals. The participants were contacted by means of telephone or email to determine willingness to participate in the study. Each potential participant was told why they were being contacted and the method in which they were identified as a potential subject. As part of the initial contact the scope of the study was described and each individual was told that the questions asked would focus on the marketing tactics they used as a provider of alternative dispute resolution services.

Descriptions of the Participants. The participants were all members of what I will define as the alternative dispute resolution community in the Greater Boston area of Massachusetts. Each participant approaches the field of dispute resolution from a different background and has a varied amount of experience in the field. Although specific demographic and biographical data was not explicitly collected at the time of interview, each participant indicated that a form of

biography was available publicly via the internet on an organizational website, so this data was collected after the interview.

The first interview conducted was with a mediator from a large national dispute resolution organization. This interview took place in person at the individual's place of business on January 17, 2006. The respondent is an attorney and retired judge with over 28 years of formal law experience and has been a mediator for over a decade. For the purposes of this study the individual will be known as "Respondent 1."

The second interview was with an experienced mediator and ombudsman with many years of experience in the private sector as a consultant. In addition, this participant is an attorney. This interview was conducted via telephone on January 18, 2006. This individual will be known as "Respondent 2" in this study.

The third interview took place via telephone with an experienced attorney and mediator from an established downtown Boston firm. The respondent has over 20 years of experience as a lawyer and is highly active in the Boston alternative dispute resolution community. He will be known as "Respondent 3" for the purposes of this study. This interview was conducted on February 1, 2006.

The fourth interview conducted was with a dispute resolution professional from north of Boston. Prior to establishing a dispute resolution firm, the respondent was an attorney in a private law firm. This interview was conducted via telephone and the individual will be known as "Respondent 4" for the purposes of this study. This interview was conducted on February 21, 2006.

The fifth and final interview took place in person and was with an experienced divorce litigator. The date of interview was February 23, 2006. This individual had recently established

a dispute resolution organization south of Boston specializing in family mediation. For the purposes of this study, they will be known as "Respondent 5."

Procedure

Prior to any data collection in this study, an application was made to the University of

Massachusetts – Boston Institutional Review Board in order to gain approval to conduct research with Human Subjects. This approval was obtained and afterwards the data collection process

began. In order to collect data for the study 5 participants were identified by the researcher to interview and compose the data set. Each participant was instructed that the questions asked

during the interview would pertain to their involvement with marketing an alternative dispute resolution business. As part of the research process, after a potential participant indicated that

they would participate, a consent form was sent via fax and first class mail to an address the

participant provided along with a letter explaining the study and contact information in the event they had any questions. If the participant was satisfied, they returned the consent form in an

enclosed self-addressed stamped envelope to the researcher and in some cases accompanied it with a fax copy. After this process was completed an interview date was set-up. Given the

sensitive nature of the questions being asked, each participant was reminded that declining to

answer was valid response.

The Interview Process. The interviews were conducted as a conversation between two

individuals with a systematic method of questioning that was "brief and simple" (Kvale, 1996 p.

133). By using this approach, the limited time available to the participants for the interview was

maximized. Two of the interviews were conducted in person and three were conducted via

telephone. Each participant was asked a series of questions regarding how they marketed their

alternative dispute resolution organization and the extent to which they found these tactics

effective (For the interview guide see Appendix A). Each interview lasted between 30 and 60 minutes. Prior to each interview it was stated that notes would be taken for future reference and any objection was noted at that time. No participant indicated an objection to this method of recording information.

After the data set was collected, the notes and corresponding internet material relevant to each participant were analyzed. The first method of analysis used was the coding of the interview notes as described by Miles and Huberman (1994) to identify major associations of codes to the descriptions of the marketing tactics. Analysis was performed by determining any initial major similarities and differences in the tools and tactics used by the ADR providers. After the interview notes were coded and ideas broken down into categories, each individual ADR provider's published biographical and organizational data was analyzed. This data was found on the internet through websites identified during the interview process and analyzed to both reinforce and expand upon concepts and claims made by the participants.

Finally, each participant was assured the confidentiality of their identities and responses. It was explicitly expressed that no direct reference would be made to the participant and no direct attributions would be made. In the study, every attempt was made to convey the responses of the participants and to maintain their anonymity by using alternate naming conventions for their person and no organizational naming was used. In addition, no demographic data other than that learned in the interview and on public websites was revealed.

Literature

The literature presented at the beginning of this study is meant to frame the research in the context of both the marketing and alternative dispute resolution fields. Creswell (1994) states that "One of the chief reasons for conducting a qualitative study is that the study is exploratory, not much has been written about the topic or population being studied, and that the researcher seeks to listen to informants and to build a picture based on their ideas" (p. 21). This study is an attempt to parallel this idea because that little academic work exists on the subject of marketing alternative dispute resolution businesses that actually takes into account the experiences of the practitioners. It can be argued that much of the literature of small business marketing is relevant to the topic; however, almost no applied theory exists in regards to my topic. In addition, many of the authors' of the literature I cite including Forest Mosten (2001) are themselves marketers selling a service so their work has to be viewed with a critical eye by examining what evidence they cite for the marketing methods they present that shows their effectiveness. The books I include in my literature review by these authors are meant to educate potential dispute resolution practitioners and can be viewed as training materials.

Results

Personal relationships and networking seemed to be at the forefront among the ADR practitioners marketing techniques. This was a general consensus among each interview participant in the conversations that were held. While each individual's experiences, professional background and personal history varied, this subject inevitably surfaced during the interview. I will come back to this idea later in my results and discussion; however, I believe it is of high enough importance to mention that this commonality came out in each interview even though the no question explicitly asking about whether personal relationships were an important factor. In this section I will describe some of the commonalities and differences that were observed among the participant's answers to the interview guideline questions. Specifically, I will focus on the ideas expressed relating to personal networking and referrals, technology and internet use by the participants and experiences with direct marketing tactics.

The Personal Aspect of Alternative Dispute Resolution

All five of the participants in the study referenced a strong personal relationship as being an aspect of the practice and marketing of dispute resolution services. This theme came up several times in response to more than one question regardless of the direct language used to ask the question. What follows are the results from the interviews that reference personal relationships, article writing and public speaking. These three concepts were chosen after an examination of the data by the researcher as indicative of the personal aspect because they put a human touch on the ADR practitioner or firm's services. Article and other published works. All five participants stated that at the least they had written one article on ADR for use as a marketing tool. In addition, several were active in

internet publishing and one had co-authored several books. When directly asked the question of whether the participant had written any articles for marketing purposes a variety of answers were given.

A typical response to the question was expressed by Respondent 1 who replied "Over the last 14 years I've published articles that have appeared mostly in law related newsletters." In addition, Respondent 1 offered a further explanation that contrasted later writings with earlier ones saying, "early in my law career I published law review articles." In response to further questioning it was discovered that he had also published a manual on mediation and arbitration for a continuing legal education group. In regards to the marketing aspect of these articles the participant surmised that he was more active in writing articles when he was building his practice but now had reached a point where he was "comfortable" at where the level of his practice was.

A similar yet differentiated response came from Respondent 2. He explained that he was very active in article writing including being recently published in a globally distributed business magazine. He stated that he used this as a marketing tool and the article was posted on his website. What made this participant stand out from some of the others was the fact that article writing was used not only in the form of hardcopy and personal website reprints, but distributed to a larger internet audience via documental portals. These are essentially large collections of articles and information specific to a number of areas where content is publicly accessible on the internet. Due to this method the participant believed that some of the published articles were being seen all in the United States and in Canada because the website marketed to this geographical region.

In response to the question of article writing, Respondent 3 indicated that he had co-authored several books about conflict resolution. In addition, he described himself as

“moderately prolific” when it came to writing articles and liked to put forth ideas for discussion. In reply to further questioning he stated that he believed that articles were a “credibility

enhancing” tool and that was true for himself as well as the rest of the practitioner’s in the field. He also stated that he sent out reprints of articles in mailings and believed this to be a more effective marketing tool than the initial printing of the article. He expressed the idea that regardless of whether the recipient of his mailing and article read the piece, as long as they saw his name on the paper they would continue to recognize him as being available for services.

Overall, all of the respondents expressed the idea that article writing was a part of their

marketing strategy. If an internet search is conducted, it is readily apparent that many

introductory articles and explanations of ADR are available for any member of the general public looking for information. A critical analysis of these articles is that as more and more are

published they become irrelevant and turn into rehashed pieces that are not identifiable from the next article a person reads. In contrast, if an ADR provider gives new insight into a particular area of the practice, it will likely be more effective in capturing the audiences attention and

differentiate itself.

Personal Relationships and Networking. The act of networking within the ADR

community as well as with community groups and other related professions was a common

thread among the participants. Four of the five referenced that the personal relationships they

created and fostered were what a consistent source of business was. What follows are responses

that touched upon this area.

The concept of relationships being an important factor in obtaining business was heard

repeatedly. In one interview, Respondent 2 spoke about receiving a referral from a person he had

not spoken to in over 5 years. He stated "it speaks to the notion of being in touch with your personal network" and "in the short term in our business, it's about trust and relationships..."

This idea was echoed by Respondent 1 who stated "My own personal experience is that I think a lot of peoples mediation practices are built on a personal basis." He followed up by saying in regards to where his clients come from; "they know who I am because they have worked with me in the past or they know someone who has worked with me." The fact that they are cognizant of the personal networks and trust aspect of ADR services show that they likely take advantage of this as a marketing tool.

Further evidence of the personal network and relationship building as being a part of the marketing of an ADR practice was heard in Respondent 4's statement that although he is listed on several mediator panels, he believes that his work is received through referrals or someone who found him on the internet. Overall, the idea of receiving personal referrals through close associates or individuals who were previous clients seemed to be a common theme among the participants. However, all of the respondents still acknowledged that they utilized other techniques rather than just focusing on relationship building as seen through more tangible forms of marketing such as advertising and article public speaking.

A response was given by Respondent 5 that ran counter to idea seen above. He was a relatively new mediator in terms of an established practiced and expressed the idea that due to the mentality that "downtown lawyers" were by nature very litigious, he was choosing to network and market extensively outside of the Greater Boston area. Although he did express the idea of networking, it was used in a context that excluded some potential referrals from his personal network. It can be hypothesized that this occurred because he had litigation experience and was a member of that "downtown" community as he put it, yet was choosing to eliminate it as a

marketing area because he did not feel that this network would produce business opportunities. The respondent did not rule out networking in these new areas outside of the Boston area and will likely use these techniques to become established as a mediator as he had as an attorney.

Presentations and Public Speaking. Every participant claimed to have either given a talk

to a local community group, a lawyer's continuing education society or a conference of dispute resolution professionals. An interest expressed in this type of promotion and marketing was that people would get to know you as a person and be more likely to give a referral in the future.

Two individuals stated that at a point earlier in their career, they would speak with anyone who would listen to them. Now they have become more selective and targeted in their audiences as they claimed to have been able to gauge effectively what type of audiences were likely to

generate potential clients.

Internet and Technology Use

One direct question asked was whether the participant had an internet website and what

amount of time and money had been invested into this marketing tool. All five participants

indicated having at least one internet website with several having more than one. In addition, the

participants were asked about the use of email address lists and promotional or informational

materials that were disseminated in this matter. This question unexpectedly produced a rich

source of material and will be discussed in a later section. This went counter to the assumption

stated that the primary means of marketing would be through close personal communication.

Internet Presence of Participants. As I stated earlier each participant was asked if they had

an internet website that was used as a marketing tool. Each participant claimed to have a website

and as part of this study each site was visited after the interview. It should be noted that of the

five websites, Respondent 1's site was a biographical page within a much larger website

belonging to the large national organization he was a part of and did not require an investment of resources on his part.

In regards to the question of cost of the website, two participants answered this question

and were willing to give a specific monetary amount. These dollar amounts ranged from "under \$5,000" to around \$15,000 for the development of two sites and another \$2,000 – \$2,500

annually for upkeep of the more expensive site. It should be noted that the organizations varied

widely in size with the lower amount spent belonging to a single ADR practitioner, while the

larger amount belonged to an organization with several attorneys and support staff. That being

said each participant indicated that whether they created and maintained the website themselves

or paid someone else to do it, a significant amount of financial and human capital had been spent

relative to the organizations size.

Some specific responses to the website question and its use as a marketing tool elicited

interesting responses and a variety of ideas as to its effectiveness as a tool for marketing.

Respondent 2 stated that he maintained both an internet site and a blog that enabled him to

comment on the business development side of the ADR profession. On his website he uses what

was described as a free educational course pertaining to ADR that is taken via email with him

over a short period of time. This tool enabled him to interest an individual in the organization

and engage them using the technology of internet marketing in the form of the website and email

as a tool for instant communication.

When asked about his organizations use of a website, Respondent 3 stated that the

website had a "particular philosophy behind the design that had to do with marketing." This was

that the site should be a "toolbox" that was "shared with the world." By this it was meant that

various resources were posted to the site such as agreement forms and checklists pertaining to

ADR. The stated reasoning behind this was that the intangibility of legal services and ADR

services led to it being hard for a potential client to evaluate the service. Therefore, Respondent 3

believed that the openness of the material was a kind of "surrogate" for the services the

organization had to offer.

In terms of the perceived success of the website as a marketing tool three participants

explicitly stated that their websites had brought them clients. One participant believed that the

site was primarily there for "lead generation" and that the material provided would result in a

follow up with the provider. Another stated that "The website has brought us a lot of business, a

lot of people hear about us or stumble upon us and they say ok, it looks like these people know

what they are doing." Finally, one participant believed that 80% of clients found his organization

through the internet.

Email and Other Technology. During the interview each respondent was asked whether

they used email for correspondence in terms of mass mailings to keep in touch with clients. This

question was not relevant to the participant who worked for the large national organization as the

majority of the marketing is handled at a higher level. Overall it seemed that although the

participants acknowledged that email was a useful tool for sending out newsletters it was not

used significantly by any of the respondents. The exceptions were the participant's I mentioned

earlier who had created blogs. In this case, when a user sign's on to these blog mailing lists,

automatic emails are periodically generated keeping the "logger" in email correspondence with

the user who is notified of updates to the blog.

In addition to email and graphical websites several other interesting technology marketing

ideas were mentioned by the participants. Respondent 2 expressed the concept of using "pod

casting" a form of internet audio recordings that can be downloaded to a playback device or a

computer to be played at anytime. The idea behind this was that an ADR practitioner could introduce themselves to a potential client and "they could hear how you sound and be comfortable with you." In this context, the relationship and trust aspect expressed by the respondent explicitly as he believed that much of the work of ADR professionals comes from "getting people to engage" and this comes from who the practitioner is as a person.

Direct Marketing Tactics

During the course of the interviews the participants were asked a number of questions regarding whether they used tools such as direct mail or sent regular newsletters to past clients, advertised in local papers or the local telephone "Yellow pages." According to the literature review that was conducted regarding marketing, it was assumed that many of these tools were used regularly. In reality after conducting the interviews, it was found that many traditional methods such as direct mail and advertising had been tried and failed or that these tools were being used in creative ways not encountered in a review of the literature.

Direct mail and newsletters. The question of whether the participant utilized direct mailing was asked during the interview process. Overall, the experience with direct mail was found to be negative or not relevant to their practice. One participant stated that they had not used direct mail because they did not think it would be useful as they had the idea that "everybody" could potentially be a client. At the same time this participant indicated that they would be trying to identify one small specific niche in the future and "may press down real hard on the area" and this may include some direct mail marketing.

In terms of a negative view, a participant stated that he tried direct mailing "a few times early on" and it was a "total waste of time." He believed that people do not want a mailing,

rather, they want a personal referral from someone they respect. Again, this echoed the personal relationship aspect in a completely unrelated topic.

Another participant stated they used mail in the form of a holiday card with a unique theme. However, this was restricted to the organizations current mailing list and was not intended as a cold letter advertising services to someone with no prior history with the organization.

Print Advertising. Similar to direct mail, several of the participants indicated that they

had experimented with print advertising in small newspapers, journals and the telephone yellow pages. Again the overall experience with this was negative. One participant had advertised in a trade journal, but had stopped because the cost became too high and he did not see a good return on investment. He believed that the theory behind advertising was that if you were always

present to the consumer they would find you. However, he concluded that using this approach

was too much of an expense to justify for a small business.

Respondent 1 believed that an inherent failure is present in print advertising done by law firms and other service organizations is because they are good at "blowing their own horn" in terms of telling you how great they are with glossy promotional materials and expressing

superiority of the services. He believed this advertising fails because it is more effective to just show somebody how great you are with actions and other tools such as articles that you provide them with. In this way you are giving substance and depth to your services rather than just

describing them.

In terms of Yellow Pages advertising, Respondent 3, stated that he had experimented with an advertisement in the Boston area phone book. By his measure he only received one call in regard to this placement although he did not have the total number of calls received to contrast other methods through which potential customers were being referred. However, he knew this

because he explicitly asks each caller and potential client how they heard of the organization but did not wish to share the data on these calls as part of the study. Overall, the area of print advertising and direct mail seemed to be not suited for the ADR field with the areas of internet presence and personal networking believed to be effective methods of marketing as evidenced by the respondents.

Results Summary

The results observed through the interviewing and analysis of the respondent's answers is seen below in the following table. While the sample size in this study is not large, the responses show a varied use of strategy and tactics to approach the marketing of an alternative dispute resolution organization.

Table I
Marketing Tactics Used by 5 ADR Providers

Tactic	Number of Providers who have used tactic	Number of Providers currently using tactic
Article Writing	5	3
Public Speaking	5	5
Internet Presence	5	5
Direct Mailing	2	0
Direct Email	0	0
Print Advertising	3	1
Telephone Book Placement	3	1

Discussion

The idea that you can just place an ad in the yellow pages and have a line of customers extending out of your door waiting for you to resolve their dispute is nothing more than fantasy for most mediators. Lovenheim (2002) expressed the idea that mediators can not just sit back and wait for customers. Instead he believes that until the field of mediation is as well known as traditional law, "successful mediators will need an entrepreneurial spirit" (p. 97). In this research project, this concept of the entrepreneurial mindset was seen at many levels in the respondents marketing and approaches to building a successful business. Many creative ideas that utilized technology were observed during the interviews across the spectrum of traditional marketing, as well as newer methods that were employed by the participants to draw attention and clients to their businesses. One example was the integration of online learning into a website to both educate prospective customers about an area of knowledge and to influence their decision to purchase services from the provider

In this section I will analyze the topics I presented in my results section and offer suggestions for further research in the area of marketing and alternative dispute resolution. A high level overview of the data collected showed relationships between alternative dispute resolution service marketing and the marketing tactics of other services as described in the literature review section. However, because the content of ADR services are trust oriented and neutral by definition, nature of alternative dispute resolution tended to favor more social and indirect methods of marketing. It is these observations that I will highlight in an effort to present my findings.

Analysis of Building Relationships as a Marketing Tactic

As the main focus of alternative dispute resolution is the facilitation of relationships between disputing party's and a search for common ground to resolve differences, it is no surprise that the most often repeated idea during the five interviews was the importance of personal relationships and networking to build a client base. While more subtle than a direct solicitation of a customer, it appears to be more effective than a passive method of direct marketing such as advertisements. Whether the relationship building occurred informally through networking at social events or more directly through article writing in an effort to establish credibility, all of the respondents were aware that their efforts needed to be directed towards name recognition and education rather than glitzy and often expensive advertising such as mass first class mailings or trade journal print advertisements.

Many of the respondents indicated that tapping into their personal network was essential. This relates to the type of marketing as described by the American Marketing Association where customer relationships are fostered and value is delivered (AMA, 2004). It can be argued that a personal network in the ADR field can be equated to these customer relationships because in the marketing of the service, you are not strictly targeting buyers but anyone who could recommend the product. After the potential client purchases a service they then become part of the network and have the ability to generate referrals.

Presentations and public speaking. The finding that all of the respondents interviewed had given at least one talk regarding dispute resolution in general or educated an audience about their services specifically shows that a high importance is placed on visibility and an attempt to market through exposure to their businesses by expressing themselves verbally. While presentations to practitioners in regards to referrals and to community groups as potential clients does serve as an educational tool it is believed that every opportunity to subtly reaffirm ones presence in a non-threatening or over zealous manner may be used to as an effective marketing tactic. As opposed to other service providers who may be focusing a consumer's attention on the merits of the product by marketing the efficient delivery of the service such as faster more reliable more

reliable international shipping than a competitor, ADR providers appear to be portraying not so much the service but a visualization of how the service will be provided. Specifically, as the details of many disputes are private matters, the content and resolutions the practitioners achieve often have to go undisclosed.

A negative to this method of marketing would be overexposure to a given market. One respondent noted that they would talk to almost anyone who would listen. While this type of education and reinforcement of the providers public image may be beneficial, unless you have a distinct angle you are approaching your topic from or an audience who is new to the concept of ADR, a general presentation will often not interest many of the people you are attempting to influence and obtain referrals from. However, if the goal is primarily education of community groups or those unfamiliar with ADR, a more generic or dispute specific talk such as landlord tenant issues might spark interest and generate business.

Article Writing. A simple search of the literature in the field of alternative dispute resolution using an internet search engine turns up dozens of articles written by authors who are also ADR practitioners. The majority of these articles are found on sites specific to ADR; others are targeted more towards the law profession and have the dual purpose of educating an audience and introducing the author and their background to them. In this study it was observed that article writing was used by all of the respondents in this way and was explicitly expressed during the interviews. Although articles appear to generally be accepted among the practitioners as a method of marketing, as I mentioned earlier, the large number of generic writings on ADR will likely cause the majority of them to be ignored. A more effective approach to article writing in the future will likely be more focused writing about specific areas of dispute resolution.

Analysis of Internet and Technology Use

As stated before, the cornerstone of the ADR marketing strategies used by the providers appeared to be the personal relationships that were developed and the receipt of referrals in this method. However, several questions that dealt with technology and World Wide Web use provided a contrast to assumptions that the relationship aspect implied. This assumption was

discredited by the discovery of many innovative and creative uses of technology that were being used to build relationships over the internet. Overall, it is apparent that the internet and similar tools will comprise the future of ADR marketing as much of the current media and advertising seems to be moving in this direction. In addition, as evidenced by the responses to the interview questions, technology has been integral to several ADR marketing plans and provides differentiation between the services offered. In addition, the relatively low cost of this medium of marketing, while not always measurable in terms of return on investment, is an effective tool for reaching the intended audience of the provider.

Internet Presence. An interesting observation learned through the interview process was

that nearly all of the respondents had internet websites. While some were more developed than others, each was unique and approached the concept of marketing in various ways. The site that included publicly available agreement forms and steps to reach an agreement seemed to contradict the fact that the organization was in the business to make a profit. However, if the underlying reasons such as transparency and a willingness to show the customer the product are seen, this organization may have an advantage over another because they have displayed their service at a low cost in terms of actual materials given away. It is likely that this organization then hopes that the visitor will contract with them for paid services.

While I suggest that internet advertising and marketing will likely become more common in the future, a danger exists in focusing too heavily on this medium for ADR providers because it currently only provides a one dimensional aspect of the service. This is because the internet is not able to provide the prospective client the type of experience they would receive from a conversation with the provider and instead is usually used as one way vehicle for information. In addition, an expertly designed site can be purchased and made available that showcases the site designers talent, but does little to express the quality of the services offered by the ADR provider. The argument can be made that the more intricate and well designed a site is, the more likely a person is to want to know more about the service or organization. I would assume that a more useful tactic would be in the conveyance of the substance of the services that will be

rendered rather than sheer visual aesthetics. This assumption is based on the idea that a person would have a vested interest in getting the most competent and proficient provider rather than just judging the service based on its portrayal alone. For this reason a provider who educates and informs the consumer is probably more likely receive business from a potential client.

Email and Other Technology. None of the respondents to the survey indicated that they

used email as anything more than a communication tool with existing customers. It was theorized in the formulation of the interview guide and the literature review that the ability of mass mailing technology would provide a cost effective method of reaching a large audience. Possibilities for the lack of its use include its impersonal nature in terms of targeted emails or the avoidance of this tactic as it has become bothersome in regards to the unsolicited emails that clog consumers email boxes.

One notable exception to this was the opt-in email systems used by two respondents. In contrast to unsolicited "spam", this method of email distribution gave the users the preference to receive emails by signing onto the practitioner's mailing list and stopping receipt if they desired. This method appears to allow the user control of the number of emails they receive, but the sender can tailor content and determine the frequency. Even if an email is sent out quarterly to potential customers, it would be a reminder that the ADR provider was still in business and available for hire or referral to a third party.

Lastly, in regards to technology, three of the respondents talked about internet journals or 'blogs' that they created and posted information to regarding topics such as ADR practice, business development and other assorted ADR related news. These are essentially websites that are updated regularly and list journal entry style postings in reverse chronological order. This type of online journaling has been around for several years and allows non-technical internet users to publish online. The benefits of this type of journaling appear to be ease of access to a resource that used to be restricted to people with technical skills and the wide exposure the internet gives to the author. The downside of these journals is the large number of them makes it hard for people to find a specific site. In addition, the unedited style that comprises these journals

may make the reader question their credibility. In addition, because of the free form style of these journals the large picture presented to potential clients could be blurred by multiple topics and viewpoints that are not always consistent with the organizations mission and values.

Direct marketing Tactics

It is apparent through the five interviews that were conducted as part of this study that many of the techniques that are applied to sell tangible products do not work with ADR's often at first abstract concepts. In addition, they do not integrate that well with a strategy to market dispute resolution products because they are impersonal and incapable of summarizing what can be a confusing topic. This was evidenced through the respondent's general negative attitude towards mass direct mailing as well as phone book advertisements. While many of the respondents had tried these techniques they did not believe that the return on investment was great enough. In addition, picking legal or ADR services tends to be a more referral based business as you can not always compare across providers easily.

Conclusion

Limitations of the Study. It is acknowledged that the due to the relatively small sample

size of the study that causality can not be inferred from any of the findings. In addition, it is

noted the sample may be biased towards those who were more willing to volunteer information

about their marketing activities by cooperating in the study. This leads to the question of

whether those who declined to participate had more successful strategies and were not willing to

share these concepts.

Proposed further research. Despite the limitations, the study is of value in that it provides

the basis and frame for a more in depth examination if the time and resources were available to a

researcher. Proposed explorations would be a detailed cost benefit analysis of dollars spent on

traditional marketing techniques versus new and untested entrepreneurial ideas. In terms of a

qualitative study, an interesting aspect of ADR providers marketing strategies would be to

examine what value they placed on more traditional techniques as opposed to the close personal

relationships that appear to drive the field.

Overall, this concept of relationships was repeated throughout all five interviews and is

likely related to the intangibility of the services provided and the needs for the buyers to feel

comfortable and reassured in their choices. One respondent eloquently expressed this saying, "I

could write the most brilliant biography of myself in the world and post it on the web, but what

really matters is when someone calls someone else and say's, "Have you heard of this guy, is he

any good?" If an ADR provider has networked and built a solid reputation, it is likely that this

type of referral would seal the deal. On the other hand, if the relationship were not present, the

provider would likely still be sitting in the office, waiting for someone to notice that Yellow

Pages advertisement and pick up the telephone.

References

American Marketing Association. (2004). Marketing Definitions. Retrieved December 3, 2005 from the World Wide Web: <http://www.marketingpower.com/content4620.php>

Armstrong, P. M. (2005). Georgia Pacific's Adr program: A critical review after 10 years. *Dispute Resolution Journal*, 60(2), 18-22.

Barrett, J. T., & Barrett, J. P. (2004). *A history of alternative dispute resolution: The story of a political, cultural, and social movement* (1st ed.). San Francisco, CA: Jossey-Bass.

Creswell, J. W. (1994). *Research design: Qualitative & quantitative approaches*. Thousand Oaks, Calif.: Sage Publications.

Cruz, Frank. (2004). Promoting Mediation: Challenges of Expanding Your Practice. Mediate.Com: The Worlds Dispute Resolution Channel Retrieved from

<http://www.mediate.com/articles/cruz.cfm>

George, W. R., & Barksdale, H. C. (1974). Marketing activities in the service industries. *The Journal of Marketing*, 38(4), 65-70.

Harvard business review on negotiation and conflict resolution (2000). Five Ways to Keep

Disputes Out of Court. Boston: Harvard Business School Press.

Kotler, P. (1984). *Marketing management: Analysis, planning, and control* (5th ed.). Englewood Cliffs, N.J.: Prentice-Hall.

Kotler, P., & Levy, S. J. (1969). Broadening the concept of marketing. *Journal of Marketing*, 33(1)

Kvale, S. (1996). *Interviews: An introduction to qualitative research interviewing*. Thousand Oaks, Calif.: Sage Publications.

Levit, T. (1981). Marketing intangible products and product intangibles. *Harvard Business Review*, 59(3), 94-102.

Levit, T. (1960). Marketing Myopia. *Harvard Business Review*, 38(4), 45-56.

Lipsky, D. B., Seeber, R. L., & Fincher, R. D. (2003). *Emerging systems for managing*

workplace conflict : Lessons from american corporations for managers and dispute resolution professionals (1st ed.). San Francisco: Jossey-Bass.

Lovenheim, P. (2002). *Becoming a mediator: An insider's guide to exploring careers in mediation* (1st ed.). San Francisco: Jossey-Bass.

Mayer, B. S. (2004). *Beyond neutrality: Confronting the crisis in conflict resolution* (1st ed.). San Francisco, CA: Jossey-Bass.

Melamed, J. D., James C. (1999). Building A successful mediation practice - part I. *Commercial Law Bulletin*, 14(3), 26.

Melamed, J. D., James C. (1999). Building a successful mediation practice - part II. *Commercial Law Bulletin*, 14(4), 26.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook* (2nd ed.). Thousand Oaks: Sage Publications.

Mosten, F. S. (2001). *Mediation career guide: A strategic approach to building a successful practice* (1st ed.). San Francisco: Jossey-Bass.

Pruitt, D. G., & Rubin, J. Z. (1986). *Social conflict: Escalation, stalemate, and settlement*. New York: Random House.

Thomas, D. R. E. (1978). Strategy is different in service businesses. *Harvard Business Review*, 56(4), 158-165.

United States General Accounting Office. (1995). *Employment discrimination*. Washington, D.C. P.O. Box 37050, Washington 20013: The Office.

Appendix A

Interview Protocol – Marketing Of ADR Providers

- Could you describe the types of marketing your organization does to attract clients.
 - Do you have a website; what kind of time, money and effort are invested.
 - Do you use direct mail marketing to groups.
 - Do you advertise in local newspapers.
 - Do you advertise in the local yellow pages.
 - Do you have a regular newsletter.
- Do you maintain a mailing list (postal or email)
- Do you have brochures and other promotional material available in your office.
- Have you ever written any articles or editorials on mediation or Dis Res for any publication.
 - Do you use reprints from these articles.
 - Do you ask new clients if they were referred by anyone.
 - If yes do you ask who.
- Are you on any referral lists for other mediators, lawyers or therapists.
- Are you listed on any mediator panels or publicly available mediator listings for any established organizations.
- Do you regularly attend any conferences or workshops on mediation or other non Dis-Res Fields.
 - Do you actively try to expand your network of contacts at these events.
- Do you belong to any professional groups or associations.
 - Do the members know about your profession or mediation services
 - Have you ever formally educated these groups about mediation or ADR
 - Are you aware of any business you have generated as a result of these contacts.
- What do you estimate is spent on the marketing of your services per year.
 - Is this a significant amount of your budget.
 - What is the percentage if this is available.
- Do you feel you spend enough time marketing your services.
- If you had more time and money what would you do.