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Pitch your case effectively – don't forget to read the EULA

"Selling" your case isn't always easy, and it starts with due diligence.

By Bill Daniels

"Pitching a case is like pitching a movie script," Christine Spagnoli was telling the young lawyer who was describing his idea for a potential class action in terms only a Silicon Valley engineer could love. Or, understand.

Spagnoli, a partner at LA's Greene Broillet & Wheeler and current president of Consumer Attorneys of California, stressed, "You've got to keep it simple and to the point."

I nodded in agreement. "Did you read the EULA?" I asked the young lawyer. I was interested in his subject matter, but I thought I knew of some problems he hadn't considered. I also was pretty sure I knew the answer to my own question before I asked it.

Weirdly enough, we were all seated around a large table in the Polo Room at the Beverly Hills Hotel, which you may know was once a favorite spot for aspiring movie producers. I was sipping an iced tea after yet another industry gathering, listening with interest to the young lawyer, who had been telling us about the various cases he was pursuing in his growing practice.

Spagnoli joined us mid-conversation and somehow the conversation turned to a class action idea the young lawyer was mulling. He had already tried to get one major firm interested in taking the matter on, but explained how the senior partner didn't seem excited by the concept and hadn't appeared to grasp what the young lawyer believed were the essentials.

Getting the message through

On listening to this bright young man recount his failed pitch, I thought it was pretty obvious why his message wasn't getting through.

The ideal case pitch tells the listener in a few short sentences why they need to get involved with the matter.

"I've got a matter with clear liability, large damages and adequate insurance. Would you like to look at the file?" That's a gold standard pitch. It says: I understand the elements, this case has them, and you need to look to see if you agree. Short, sweet, to the point.

Another strong pitch is a variation of: "This case is factually identical to <name of well-known, successful other case here>, except it's with a different company in the same industry."

Or: "The victim was horribly injured and won't be working for the rest of her life. Liability seems tricky, but I know we can prove it if we put in the work." Okay, fine, what needs doing?

When pitches don't work, it's often because either the pitcher doesn't understand his case, hasn't thought it through, or because there simply isn't a case there in the first place.

Which brings us back to reading the EULA

For the uninitiated, "EULA" is shorthand for the "end user license agreement." A EULA comes with just about every piece of computer software and equipment. Most folks don't pay them any attention; they just click a "yes" or "agree" box on their way to installing a program or buying a product and never stop to read the electronic version of fine print.

The problem is, courts will generally find that EULAs are enforceable agreements, and so companies insert all sorts of conditions, limitations and aggravations into them, generally with the specific purpose of limiting consumer rights and remedies. EULAs are where you'll find your arbitration clauses, venue limitations and other contractual ingredients designed specifically to make civil litigation uneconomic on a contingent fee basis. There are legions of IP lawyers who have dedicated their careers to making our lives miserable. They're good at it.

For me, "read the EULA" is shorthand for "do your due diligence." In the case of the young lawyer, when I asked if he read the EULA, he smiled a bit sheepishly and admitted he hadn't. I thought, "Then why are you bothering to pitch this case? You haven't done your homework."

A good pitch is a fair description of the problem to be solved. Reading the EULA ensures that when you make your pitch, you are able to provide a frank picture of just what the real challenges are. Everyone knows that credibility is important in the courtroom. What isn't generally considered is that credibility is just as important when you're presenting a case for consideration by another firm.

So, keep your pitches on target. Read those EULAs. And, thank God for your creativity in thinking up new ways to protect consumer rights. It's what makes the common law so uncommonly valuable to each and every one of us.



Daniels

Bill Daniels is a shareholder with Bill Daniels | Law Offices in Encino, where his practice focuses on serious personal injury, employment and class actions.

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