

# Winning Is Everything, or So Says a Law Firm

By ANDREW ADAM NEWMAN

AMONG the most derided commercials on television are those by law firms that represent victims of accidents, which often feature tough-talking lawyers promising vengeance, video of car accidents and assorted mayhem, and modest production values.

Now a new campaign by Jacoby & Meyers, a law firm with offices in New York and throughout the United States, is taking the unconventional approach of eschewing lawyers and employing humor.

“Remember that guy?” begins one text-only commercial. “Who came in second in the last New York Marathon? Neither do we. Winning is everything.”

Another commercial opens with the song, “Hail to the Chief,” and shows portraits of the historical figures Horatio Seymour, Charles C. Pinckney, Hugh L. White and Lewis Cass. “Presidential elections are like lawsuits,” says a voiceover, “You’re nobody unless you win.” (The ad does not spell out the victors: Ulysses S. Grant, Thomas Jefferson, Martin Van Buren and Zachary Taylor, respectively.)

“They say,” begins yet another ad. “It doesn’t matter if you win or lose. As long as you tried your best. They probably weren’t rear-ended by a truck. Jacoby & Meyers. Winning serious injury lawsuits since 1972.”

The campaign, by Korey Kay & Partners in Manhattan, started with several commercials on network and cable stations in New York, New Jersey and Connecticut in September, with several more scheduled to be introduced on Nov. 1.

Allen Kay, chief executive of Korey Kay, said legal commercials typically were “told from the perspective of the law firm and not the consumer, and they generally talk down to consumers in commercials loaded with commands: ‘If you’ve been injured, come to me,’ and ‘Come in for a free consultation’ and do this and do that.”

What potential clients are interested in, naturally, is success, Mr. Kay said, so in his agency’s proposal to the law firm, “we told them we believe your strategy is one word and that’s ‘win,’ and your tone is that you’re human beings.”

Using humor, even in relation to the tragic circumstances of accident victims, helps humanize the firm, he said.

“Some of the most serious things are said in jest,” Mr. Kay said.

Andrew Finkelstein, the managing partner of Jacoby & Meyers, said the firm settled 97 percent of its cases

*They say*

*“It doesn’t matter if you win or lose.”*

*“As long as you tried your best.”*

*They probably weren’t rear-ended by a truck.*

before or during a trial, and that of the 3 percent decided with a verdict at trial, it wins about three out of four cases.

On that basis, Allan Ripp, a New York publicist who represents many law firms, said he thought the new Jacoby & Meyers ads “have a very clever concept, but it’s more sizzle than steak.”

Even when settlements are hefty, the firm has not in the technical sense won those cases, especially considering that defendants often stipulate in settlements that they admit no wrongdoing, Mr. Ripp said.

In an e-mail, Mr. Ripp questioned “comparing Jacoby & Meyers’s winning record to a demonstrably, statistically provable event of what constitutes a win-loss contest, such as a presidential election or a marathon.”

In response, Mr. Finkelstein said that his firm’s reputation for winning trials was what prompted insurance companies to offer sizeable settlements, and that accepting such offers rather than going to trial “ultimately is our clients’ decision, not our decision.”

So, he continued, “when clients walk away and accept a settlement and they are happy with it, they feel that they’ve won — it’s a win in their eyes.”

Stephen Gillers, a professor at the New York University School of Law who specializes in legal ethics, said the ads were “fine.” Since 3 percent of cases decided by a verdict at trial constitutes a large number in such a big firm, Professor Gillers said, and because they have won most of those cases, it legitimized the campaign tagline, “Winning serious injury lawsuits since 1972.”

But he did caution against equating a settlement with a win.

“When a case is settled, we say that both sides have won because the case was compromised,” Professor Gillers said.

Jacoby & Meyers spent \$3.7 million on advertising in 2010, according to the Kantar Media unit of WPP, whose data indicates that advertising for the legal services category has grown in recent years. Law firms spent \$789.9 million on advertising in 2010, up from \$691.6 million in 2008, an increase of 14.2 percent.

One agency doing a brisker-than-anticipated business with lawyers is the Levinson Tractenberg Group in Manhattan. In 2010, the agency introduced a campaign for the New York law firm of Trolman, Glaser & Lichtman that also used humor.

“It’s like I had this huge, really sharp machete chopping down on me every time I tried to move,” says an actress in one of the commercials. “It was the worst paper cut I ever had — they made that paper way too sharp.”

The television commercials, which close with the tagline, “There are some cases even we can’t win,” have been viewed more than 200,000 times on YouTube.

After hearing from lawyers across the country seeking to buy the ads for their own firms, the agency and law firm formed Market Movers, and they share revenue for licensing the commercials as “turnkey advertising campaigns.”

Eleven commercials originally made for the New York firm, some serious, can be customized easily because information identifying the firm is limited to a title card and voiceover at the close of the spots.

Joel Levinson, a partner at the Levinson Tractenberg Group, said law firms in eight other cities — including Denver, Wichita, Kan. and Springfield, Mass. — were now using the commercials.

Mr. Levinson said ads that did not rely on “scare tactics” or “take advantage of victims’ misery” appealed to lawyers — and to consumers.

“You don’t need to take such a negative approach, and we chose to take the high road,” Mr. Levinson said.