

BRIEFING NOTE

The Oscars. The Legal Guides and Directories. And Other Works of Fiction.**Justyn Jagger****7 February 2023****“And the Nominees for Best Special Effects are.....”**

The annual film industry award ceremony, also known as the Oscars, is, with a nod to Will Smith, in full swing. And so is the back slapping and “humble bragging” that dominates LinkedIn and other social media platforms at this time of year as the legal guides and directories publish their “rankings”. But is timing and commercially driven narcissism all they have in common? And should they both be nominated in the categories for best special effects, or make up?

The Oscars

Whilst the Oscars of 2022 were dominated by controversy on stage, this year the scuffles broke out at the nomination stage, but in a far more illuminating and articulate way. At the centre of the controversy is the nomination for best actress of Andrea Riseborough. Specifically, for her performance as an alcoholic mother who squanders lottery winnings in the critically acclaimed but little-known film, “*To Leslie*”. The controversy is two dimensional.

Taking centre stage is whether a post on social media published by the official “*To Leslie*” account, that contrasted Ms. Riseborough’s performance with that of other nominee Cate Blanchett, breached the Academy’s rules. Those rules prohibit “*any tactic that singles out the competition by name or title*”. But what has gone on behind the scenes is more fascinating.

In response to the controversy, the Academy stated that their goal was to ensure that the awards competition was conducted in a “*fair and ethical manner*”. And here lies the rub.

“*To Leslie*” was an independently produced film that made a total of US\$27,000.00 at the box office. Thousands not millions. It relied on word of mouth and social media to garner support for Ms. Riseborough’s nomination. In contrast, many potential Oscar nominees have expensive campaigns behind them running into millions of dollars. These campaigns are usually funded by the studio that produced the film, thereby promoting the film and the studio’s box office collections by way of nomination at the much-publicised awards ceremony.

According to the rules of the Academy, that being the institution that advocates a “*fair and ethical*” competition, whilst comparison is not allowed, promoting and advertising yourself or your film, otherwise known as lobbying, is permitted. And no financial limits are imposed.

Christina Ricci neatly observed the irony if, in response to the breach of rules, the Academy revoked Ms. Riseborough's nomination in the following post:

"Seems hilarious that the "surprise nomination" (meaning tons of money wasn't spent to position this actress) of a legitimately brilliant performance is being met with an investigation. So, it's only the films and actors that can afford the campaigns that deserve recognition? Feels elitist and exclusive and frankly very backward to me. If it's taken away, shame on them."

The Guides and Directories

Now before the Academy walks off stage with the golden statue, the panel of judges must consider the performance of the global and legal directories, and what a performance it is.

Large law firms, like large film studios, spend millions on client or business development. This comes in many forms of what amounts to lobbying and campaigning to encourage clients and potential clients to give them instructions. Such client development extends to expensive lunches, invitations to major sporting events, sponsorships, internships and other client initiatives unrelated to the work product. To give but one example, certain global insurance companies used to expect their panel law firms to donate door gifts, categorised by value, to the company's end of year dinner dance. A practice now stamped out by compliance rules.

In the run up to the publication of the rankings, the "quos" are now demanded for the "quids". During what is termed the "research phase", the law firms' business development teams shift into overdrive. Clients are contacted to provide law firm / lawyer references to the guides and directories on which they then rely to determine the rankings. To ice the cake, "quotes" for publication are requested. More lunches follow and months later quotes, so lucid and articulate they could have been written by a trained scribe, appear with strong rankings.

Of course, the nature of the research lends support for the adage, "garbage in, garbage out". The request to provide information as to mere size and nature of the matter overlooks the three issues that concern most clients: Will I win? How much will it cost? How long will it take?

By way of an example, and in the context of the research phase, the writer has been asked to assess other lawyers in matters that have closed over five years earlier, indicating that the lawyer has nothing to do. Or to rank lawyers fed work by other offices, not work won on their own merits, suggesting that they are incapable of winning work on their own merits. Or who are so awful as Tribunal members that they have to rely on counsel to draft the Final Award.

But the low watermark has only emerged over the last few years with the introduction of the Insurance Law Firm category. Whether "Local" or "International", the category is stacked with law firms that work only for insurance companies and which, for purely commercial reasons, would never act against the insurance market. In the same way that the Oscars is stacked with household names that work only for the large studios, never for the independents. The independents just cannot pay the bills, which cannot be settled by artistic talent alone.

This gives an entirely distorted view of the legal sector serving the insurance industry and its customers. It promotes one half of the legal sector only, that servicing the insurance market, to the obscurity of the other half, that servicing the cover holders. This is of precious little use to anyone reading the directory. First, because the insurer will have appointed a firm from its panel as soon as a large loss is notified. Second, because the cover holder will find law firms willing to act only for the insurer, and not for the insured now consulting the directory.

It also confuses quantity of lawyers with quality of legal service. Simply because a firm has three lawyers separately conducting claims relating to property damage, financial lines and public liability does not mean that, by reason of sheer numbers, the individuals or the firm should be ranked above the boutique that has successfully litigated all three practise areas over a span of 25 years. But in reality, that is what inevitably emerges on publication.

“Avatar: The Way of the Water”

If you have read this far then you might be wondering how to distinguish fact from fiction.

To justify their rankings, law firms must give examples of the high profile or ground-breaking work that they have conducted on behalf of their well lunched clients. In recent years, various international firms have separately identified acting for insurers in claims arising out of the construction of a power station in Indonesia; the failure of power generating equipment in the Philippines; the construction of an LNG plant in Australia; a directors and officers liability claim in Asia; and various trade credit claims in Singapore and Hong Kong.

And such high-profile work was rewarded with firms being awarded “Band 1” and “Band 2” rankings. For the individuals, “Hall of Fame” status followed, a category recently introduced to discourage the disingenuous from humble bragging in favour of, well, just bragging. Not so much “*All Quiet on the Western Front*” more “*Everything, Everywhere, All at Once*”.

“Top Gun Maverick”

At our law firm, we did not contact our clients to act as referees. We did not request our clients to provide quotes, nor did we draft the quotes for them. And we did not pay the legal directories the fees that they proposed to share their research with us to enable us to improve our rankings next year. We did not pay any fees for advertising space or for providing an expanded biography in any directory. We did not pay a franchise fee for any electronic badge to attach to the foot of our emails. And we did not purchase any plaques, tables or elabels to commemorate our “success”. Frugal, possibly. Complicit, certainly not.

But we did act in all the high-profile matters listed above, and more, on behalf of our clients. Yes, that’s correct. We acted on behalf of cover holders in several major losses impacting the Asia region over the last three years. Not so much the “*Banshees of Inisherin*.” Just banshees. If only Sinyee would change her name to Siouxsie, a ‘70’s rock band may re-emerge.

We were, and continue to be, the firm standing behind, and firmly, for the cover holder. And we secured instructions through recommendations and word of mouth. Recommendations hard won from a tough audience because of the quality of the work we do, not because of the marketing budget or the business development department we do not have. Just like Andrea Riseborough, we deliver a tough performance against a demanding script. And we win the work because we answer the three questions that clients want answering. And we fight, and continue to fight, for our clients against the whole army of those anointed as rankers.

“And the Winner is...”

The only recognition that we ask from our clients is that our bill is paid and we are considered for the next matter. That is all. The only recognition that we received from the legal directories was that as a firm, we are “*One to Watch*”. Well, no thank you. We do not want to be on the radar screen. We want to be out of sight. Right behind our clients. Making them the winners.

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