

The legal profession's Kodak moment? – Part 1

As well as noting that Kodak “invented but failed to commercialise” digital photography, *In-House Community* Thought Leader Kenny Tung, once Kodak’s Greater China General Counsel, gives an account of the fall of the empire whose brand was once valued at US\$11.8 billion, and makes comparisons between this and the current state of the legal industry, suggesting that it too risks becoming a shadow of its former self.

In 1997, when I joined Kodak, then a venerable US\$13 billion FMCG or fast moving consumer goods multinational, it was executing a ‘Grand Plan’ in cooperation with the sensitised materials industry in China, one of the last ‘blue oceans’ for the industry. Along with the launch of a new advertising campaign ‘Kodak Moment’ in China, the company quickly captured significant market share from key competitors. By 2000, Kodak’s share in the consumer film segment was above 70 percent, two times its closest competitor in Shanghai and other major cities. In 2004, the company managed 9,000 branded retail imaging development outlets and a strategic channel supported Kodak’s bargaining power opposite the rising modern trade retail channels like Carrefour.

In the meantime, disruptive forces converged, not only in developed markets but also in emerging ones, landing Kodak as one of the earliest cases to illustrate the ‘innovator’s dilemma’ that has been impacting industry after industry.

The Kodak brand, arguably the company’s most valuable asset, served as a useful indicator of the rise and fall of the business globally. According to Interbrand, in 2000, the Kodak brand ranked 24th

globally, valued at US\$11.8 billion. After a consistently precipitous fall to 82nd in 2007 with its value down to US\$3.9 billion, it dropped below the top 100 ranking and has remained there ever since.

On January 19, 2012, Kodak filed for bankruptcy protection under Chapter 11, from which it emerged on September 3, 2013. In 2014, Kodak’s revenue was US\$2.1 billion and continued to run a net loss of US\$123 million, albeit smaller than the rate of losses that it had been running before filing under Chapter 11.

Today, a visit to Kodak’s website will find the headlines of a number of Oscar winning films shot in Kodak motion picture film, film and paper for professionals and artists, and its legacy printing business. However, Kodak also maintains a toehold in the digital imaging space through partnerships with a number of players. In December 2014, Kodak announced that:

“Kodak and leading mobile device manufacturer Bullitt Group, have announced today that they will launch a range of Android-powered mobile devices offering best-in-class image management software and features

along with great design and UI.

Aimed at – but not exclusively for – consumers who want a high-end experience but aren’t always as comfortable using increasingly complicated mobile devices as they would like to be, the range of smartphones and tablets will come pre-loaded with bespoke image capture, management and sharing features to offer a rich user experience.”

In other words, it appears to be leveraging the brand with consumers to whom it still means something: people who just want a simple mobile device that can capture and share images ... of their grandchildren who are all living in the mobile internet age.

Overleaf is a timeline of the ups and downs of Kodak’s imaging business:

So what does this have to do with the legal profession and service industry?

As Paul Lippe recently commented, “The uber example of Disruption was digital photography, which Kodak invented but failed to commercialise. Kodak could have easily been Facebook, but its profit expectations, culture and cost structure prevented the change.”¹

The numbers in the below timeline correspond to the subsequent table in which the history of Kodak is paralleled with its lessons for legal practice



- **Before 1970s** – 1, 2, 3 (3 overlapping to next time period)
 - **1970-80s** – 3, the rise of Fuji and a few other challengers
 - **1990s** – 4, China Grand Plan over latter half of 1990s
 - **2000** – Brand value begins to fall, 5, 6, 7, 8, 9 (latter two references overlapping to 2010)
 - **2010** – 8, 9, 10
 - **After 2010** – Kodak entered & emerged from bankruptcy, 11]]

| | Kodak's Golden Moment | Legal Profession's Known Unknown |
|--------------------|--|---|
| pre- 1970s – 1980s | 1 Monopoly/duopoly market dynamics with 90 percent plus margin in the middle to high end of the business. | Although no legal service provider comes close to claim a monopolistic position, the field remains to be a fenced-off profession reminiscent of a medieval guild, albeit the emergence of ABSs in the UK post Legal Services Act of 2007, and increasing investments in the field such as litigation financing, adjacencies like LPOs and legal software development; margin in the sector remains attractive enough to support posh offices in CBDs, but the trend shows signs of decline beyond 2008-2010. |
| | 2 During its early years, the company acted on the value of customer benefits over company interest (almost bankrupted the business when it decided on a mass replacement of products upon customer complaints). | A partner/mentor once told us what's good for the client is good for the firm; today most clients would not agree with this view in an era where selling hours becomes the prime directive. On the peripheral, new legal services are offering efficacy as well as efficiency, addressing what clients should care about in achieving short term as well as longer term objectives as the 'horse' and with legal exercises & resources as the 'cart'. |
| | 3 Roots/continuation in innovation tradition (from movable plates/delivery of plates with captured images and developed images over mail to film to minilabs to the first digital cameras in 1980 to organic light emission diodes/OLED, an alternative to LED display - consumer digital business reached US\$1 billion in revenue before the company's decline); not to mention other lesser known business solutions like an equipment that scans at the speed of 200 pages per minute with data feed to document management software. | The Socratic tradition continues to be the crucible of legal eagles but, in the eyes of many clients, the skill set of today's legal population leaves us wanting; the gap in skill set harks back to the time when gentleman lawyers were also trained in the sciences, socio economics and political theory. Today, clients yearn for legal professionals who can marshal data as evidence, quantifying risks and values as root causes, branching out of silo to have the legal wheels turn in a connected manner with the gears of the rest of the organisation. |
| 1990s | 4 Faced disruptive changes in the convergence of quality digital imaging, pivotal emergence of mobile capabilities in miniaturisation, storage, battery, bandwidth, and now social media, all chipping away Kodak's reason for existence - to help capture, manage, store images and enhance user experience in sharing memories and information. | Faces comparable disruption from artificial intelligence (e.g. application of techniques from machine learning to predict the voting behavior of the US Supreme Court with 70 percent success); replacement of document review by junior associates by predictive coding; unbundling (or decomposition) of legal work processes and LPOs (either offshoring and/or around the value net). The profession/sector is rediscovering value delivery such as a balance between prevention and effective remedies in deals and dispute resolution; adopting a more quantitative approach for a grounded handle on risk management and attention to designing legal processes and devices. |

| | Kodak's Golden Moment | Legal Profession's Known Unknown | |
|-------------|-----------------------|--|---|
| 2000 – 2009 | 5 | Betting on the quality of current offering (e.g. colour management, the sine qua non of an image on film that even the highest megapixel device cannot capture) and the orientation toward ever higher end business over the ease of capture and pervasiveness of the product market at the bottom. | Most in the profession continue to believe that quality legal work remains the key to expansion of the less 'bespoke' segments of the legal service industry; many lawyers take issue with alternatives that compete with doing complex, high-end work that only our intellect can offer. |
| | 6 | Attempt to push Advantix, a film that has a strip to accommodate meta data like time and place of capture, as an offering that crosses over traditional (film & paper) and digital imaging. | Many in the profession believe that alternative billing methods (in part driven by the "more for less" pressure experienced by in-house counsel), LPO, predictive coding and managing the legal version of Big Data will solve the problem faced by the profession. |
| | 7 | Retreat to the principal strategy of extending the life of film (and paper). | Some lawyers do have in the back of their minds that should any "new normal" arrive in the profession, it will happen after their retirement; some top tier firms are establishing businesses based on freelance lawyers in a move that some economists would call monopolistic competition. |
| 2010 | 8 | Stakeholders, many tied to a high yielding dividend stock, did not endorse further product and business development in the digital/mobile age. | Professor Susskind once said asking a roomful of millionaires to change is a difficult proposition. Many firms today still pursue the bigger is better business development strategy instead of addressing the root causes of customer discontent. |
| | 9 | Rank & file whose KPIs and reason for existence was closely tied to the old business model simply could not find a business that can be compared to the sacred cow that delivered at the rate of up to 90 percent plus margin nor persuade the company to invest in developing consumers' image printing habits. | Try asking a young partner to invest in the legal service value chain like knowledge management and expert systems, especially ones who might have paid off a student loan, and certainly invested time and sacrificed much in life to arrive at time to "harvest" the fruits of their practise. |
| | 10 | Around 2003-2013, company lived off licensing & suing players like digital camera and mobile phone makers for infringing Kodak's IPR. | Laws and regulations are mostly online public information; secondary summaries and explanations are proliferating; social media share legal development and insights; online content providers abound; players in adjacent space with more industrial (vs traders mainframe) encroached on the legal service sector; but some law firms and in-house legal functions have begun to develop knowledge management and more data linked processes. |
| After 2010 | 11 | Up to today, no one has been able to profit solely from imaging like Kodak did as the market has dissolved into other platforms like smart devices (Apple), social media (Instagram, Facebook) which remain advertising driven businesses, and everything else that makes use of images (displays in cars, document scanning). | Until AI like IBM's Watson completely takes over lawyering (if ever) and perhaps creates a monopoly like service value chain, important roles remain for 'reformed' lawyers to play in the sector; one would hope that the (value) pie will greatly expand to serve more clients than the current paying ones and some lawyers will remain at the table as general contractors of legal services. |

“Lawyers’ reason for existence is not to profit from the misfortunes of clients. We reinvent and reform our profession as in any industry because it makes sense for the whole value net and supply chain, and with malice to none”

Kenneth Tung



Photo: Patrick Dransfield

The previous comparison touches on a number of forces reshaping the legal service industry:

- Human wisdom vs artificial intelligence
- Networked service structure enabling decoupling/re-composition of legal services to better address clients’ problems like never before
- Lawyers’ mind frame as traders vs industrialists²
- Clients’ demand for efficacy in addition to efficiency as table stakes for legal service providers, leading to a great many areas for lawyers to reform themselves. These demands

require the legal service industry to:

- Deliver service and value through a more quantitative and data intensive approach
- Assess values from preventive (other than taking no chances) vs traditional remedies, raising the stakes of capability to:
- Tackle process and knowledge management, which in turn requires lawyers to:
- Design their tasks and delivery of services and communicate in less ‘legalese’ and more in ways that speak a thousand words

Overall, lawyers need to team up with or

else acquire capacities in these areas and appreciate the clients’ objectives, strategy, intent, activities and measures, across many, if not all, of the silos and functions of the clients’ activities.

In a follow-up article, I will discuss in depth how these issues inform the legal profession in the greatest change it has been experiencing as a service industry. Further, the article will also discuss important principles that the participants in driving the ‘New Normal’ in legal services should keep in mind:

Technology should neither be merely disruptive nor leave people behind.

Lawyers’ reason for existence is not to profit from the misfortunes of clients.

We reinvent and reform our profession as in any industry because it makes sense for the whole value net and supply chain, and with malice to none.

Footnotes:

1. Legal Blog, 6 October 2014. The author wonders whether Mr Lippe’s choice of the word “uber” might not entirely be unrelated to current references to the term “Uber lawyers” which represents the networked service economy vector in changes to the profession.
2. For a discussion of the first three “disruptive” forces above, see an article by the author published in connection with a panel discussion at the Corporate Counsel Congress in New York in June 2015: <http://www.lexology.com/library/detail.aspx?g=2eae2fe3-8226-45b2-931e-97b7d66ed7d1>.

kenny@lexsigma.net