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PERSPECTIVE

Congrats on that fantastic award

By Arash Homampour

The email comes as a surprise — and it's very flattering. You've been selected as one of the top 40 under 40 *Trial Attorneys in the nation (*substitute here for Trial: Trucking, Auto, Catastrophic Dry-Cleaning Dispute or Whatever), an honor of no small distinction awarded by the National Attorneys of Renown Advocacy Association. Congratulations! To receive your award, just pay this fee, fill out this form, and get an authoritative badge to put on your website and marketing materials saying you are the Top 5 Car Accident Attorney. Act now!

Only problem is that you really don't try cases, or you've only tried a few. So what gives? Do a little digging into this organization and it will trace back to a rented mailbox in a Florida strip mall. Use your Google skills and after a few minutes you will track the ownership to a foreign LLC and a mish-mosh of other rented mailboxes, briefly held business licenses and a plethora of award names.

Vanity awards are defined by Wikipedia as awards "in which the recipient purchases the award and/ or marketing services to give the false appearance of a legitimate honor." They're big business, charging attorneys up to \$1,000 for being listed as a "Top 30 under 30," plus hundreds more for award

paraphernalia and even for that little emblem to post on a website. Several years ago, the Better Business Bureau researched one of these outfits and traced it back to one individual (with no apparent law degrees or legal experience) who runs multiple legal award programs.

What could possibly be the harm in spending money on these awards?

Plenty. All those webpage badges, press release announcements, and gleaming plaques on an attorney's office wall advertising paid-for awards can be misleading to the very client you are being hired to represent and protect. They send "trust signals" to clients in that they are designed to help a potential client feel like they are choosing the most qualified lawyer for their matter. But, are they? Further, these pay-to-play awards potentially violate federal law, state law and the Rules of Professional Conduct.

First, let's take a quick look at what constitutes a legitimate legal award. You can welcome any awards that come from bar associations, legal associations to which you belong, industry publications (such as this one) and trusted, long-established directories. These don't cost anything to enter and winners are determined based on criteria that include peer review, evaluating courtroom successes, interviewing clients, or grading your performance using an objective point sys-

tem. Martindale- Hubbell, for instance, conducts a vetting survey "where a lawyer's ethical standards and legal ability in a specific area of practice is assessed by their peers."

There is intrinsic value in these kinds of awards because they signify actual standing within the legal community. "Vanity" awards, in contrast, only attest to the depth of the holder's pocketbook. They offer no validation of professional expertise or qualification. Yet they seem to thrive in these times of instant celebrity via social media and they are a big business. Many of us have heard of or have encountered experts who list forensic certifications from institutes that allegedly also bestowed those "forensic" certifications on a cat. You can also read about instances where one of these Pay to Play marketing firms allegedly gave a "Lawyer of Distinction" award to a chicken. Kid you not.

Also, ask yourself the same questions a potential client would, if they knew to cross-examine you, as to how you got that award. Aside from the obvious question of "Did you pay for the award?" ask "Do you actually handle trucking cases? Do you write or lecture on trucking cases? Have you successfully taken a number of trucking cases to trial? Have you successfully handled legal issues related to trucking cases? Are you really considered by your peers as a top trucking

attorney or reliable authority in trucking cases?" If not, you are misleading your potential client with these awards. The potential client is seeking to hire someone to handle a specialized trucking case and you really are not what the award says you are. It really is like saying you are a "Top 10" heart surgeon when in reality you are an internal medicine doctor. The consequences to the client can be catastrophic.

But, the tide may be starting to turn against the flood of fake awards and rankings. Increasingly, legitimate businesses across multiple industries are moving away from fake awards or rankings. In some non-professional areas consumers' awareness and education may no longer support the use as "trust signals." Ultimately, these fake awards remain dangerous and deceptive to those that need professional help.

The legal industry is catching up with this trend. The BBB specifically called out legal "vanity" awards: "BBB believes many of these honors — often used by attorneys in advertising or on their websites — are no more than vanity awards and may have little to do with a lawyer's standing or professional ability." Legitimate firms, as well as organizations covering marketing trends in the legal industry, are starting to act. Law firm website designer FirmWise actually keeps a running tab of sham awards

and many firms now restrict the awards they allow their attorneys to apply for and accept. They make their rules clear to firm members.

California Business and Professions Code Section 6157.1 directly addresses falsehoods in legal advertising: “No advertisement shall contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive.” Remedies for breach of the law, according to Section 6158.4(e)-(i), range from voluntary withdrawal of the advertisement to civil action for damages and fees “if the court finds that the action has resulted in the enforcement of an important public interest or that a significant benefit has been conferred on the public.”

The California State Bar Rules of Professional Conduct make it clear that the award itself — not just malfeasance by the attorney who paid for it — is prohibited. The comments to rule 7.1 state “this rule prohib-

its truthful statements that are misleading.” It goes on to clarify that “[a] truthful statement is misleading if it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading” and that “[a] truthful statement is also misleading if it is presented in a manner that creates a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation.”

At the federal level, the Federal Trade Commission is empowered, pursuant to 15 U.S.C. Section 45, to shut down misleading advertising and impose penalties against individuals and businesses that engage in such deceptive practices. The agency relies on reporting by consumers and competitors, and its arsenal of sanctions includes injunctions and costly fines and restitution. The Lanham Act at 15 U.S.C. Section 1125 forbids false or misleading descriptions or representations of fact that are “likely to cause confusion”

or “mistake or to deceive,” including regarding sponsorship or approval of services. Just this month — effective Jan. 15 — Title 16 of the Code of Federal Regulations Chapter 1, subchapter B, Part 255, targets the use of endorsements and testimonials, including “vanity” awards, upon which consumers are likely to rely.

The best advice is simply to avoid “vanity” awards. (Many of us have perhaps unwittingly put them up on our firm’s website thinking that the award was bona fide and not really pay-to-play.)

Now that you know, you really do need to evaluate whether that award is misleading and if it (without disclosure) violates federal law, state law and the Rules of Professional Conduct. So, either take it down or note that you must inform the public — on every platform you use — that this prize was not vetted and provides no assurance of the quality of your work. If enough law firms and individual attorneys turn their backs on these schemes, together we can shut down this shady in-

dustry once and for all. ■

Arash Homampour, of the *Homampour Law Firm*, is a trial attorney who represents individuals in catastrophic injury/wrongful death, employment and insurance bad faith matters throughout California. While passively-aggressively pondering this exact issue, he recently joked on social media that he was voted *Top #1 Best Blue-Eyed Iranian-American Attorney Named Arash In The Universe*. Ironically, he was recently recognized by *Super Lawyers* as one of the *Top 10 Super Lawyer in Southern California*. Go figure.

