

FROM FORUM SELLING TO FORUM MARKETING

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ABSTRACT

Forum selling is a legal term used to describe the practices of courts and judges geared toward attracting cases. Studies reveal that forum selling courts use various techniques in order to make themselves attractive to litigants, such as increasing the predictability of their judgments, speeding up trials, or adopting pro-plaintiff approaches. Despite evidence of forum selling courts, forum selling largely takes place “behind the scenes”. However, do courts also go beyond a passive forum selling and actively reach out to litigants in order to attract cases? This Article tells the untold story of how international commercial courts actively market themselves in order to attract cases. It studies a novel phenomenon and coins the term “forum marketing”. Forum marketing is defined as the use of strategic communication and advertizing by forum selling courts. This Article focuses on international commercial courts and shows that forum marketing is especially evident among them. Drawing from an extensive analysis of documents and interviews, it explores why international commercial courts engage in forum marketing and shows how exactly these courts market themselves in order to attract cases. The reasons underlying forum marketing are intrinsic to international commercial courts as being relatively recent entrants in the dispute resolution market. These reasons lie specifically in the increased competition in the dispute resolution market, the active involvement of academics and legal practitioners in the establishment of international commercial courts, and in the fact that international commercial courts are reputation sensitive. This Article constitutes the first detailed inventory of the marketing techniques employed by international commercial courts, such as the use of brand names, the endorsement of internationally renowned legal figures, and the establishment of a worldwide network of commercial courts. In addition, international commercial courts adopt what are referred to as brand features: namely, procedural features that lack tangible innovations and therefore mainly contribute to the marketing of international commercial courts by sending signals of quality and familiarity to prospective litigants.