

NEW PERSPECTIVES



Photo by Lukasz Król, courtesy of DMS

Magdalena Małocha, Justyna Karsz

AmCham.pl Quarterly Editor Tomasz Ćwiok talks with DeBenedetti Majewski Szczesniak's **Justyna Karsz**, counsel specializing in IP law, and **Magdalena Małocha**, counsel specializing in M&A transactions, about how they fare professionally in the man's world of legal profession; how they manage to distinguish themselves; and about their perspectives for the next year.

How would you characterize the firm, in a few words?

JK: DMS was established in 2004 as a boutique law firm by partners wishing to combine high quality legal practice with academic expertise and international reach. Now with its 20th anniversary later this year, the firm is a full-scale law firm offering a variety of legal services to companies, investment funds, start-ups and individuals.

MM: DMS is a member of Globalaw network of close to 100 firms worldwide, and its partners continue to share the same values as they had in 2004, which is to offer the highest quality services similar to large law firms but with a personal touch, which is possible in smaller ones.

The partners in DMS are all distinguished lawyers. But you are accomplished lawyers involved in

diverse professional activities. Don't you feel that your work maybe sometimes overshadowed by your male colleagues?

JK: Not at all. We all—man and women—at DMS work in such a diversity of legal areas that everyone has their moments of glory. In addition to representing clients in court disputes, I publish articles related to intellectual property protection, on my LinkedIn profile, twice a week. The aim is to encourage people to think that human creativity is worth respect and protection. I also support activities undertaken by the Court Watch Foundation. I am a member of the jury in the competition for the best commentary to a court judgement, which is addressed to young students. I also serve as a judge in the Oxford debate tournaments for high-school students, which is meant to help

young people learn how to build a fine and merit-based public speech in court. In fact, all these initiatives are also a great opportunity for my own personal development.

MM: Well, it is difficult to argue otherwise. All partners are men but, quoting Michael Jordan, talent wins games, but teamwork and intelligence wins championships.

In my opinion, this is exactly how it is in DMS. We all have our own field of expertise in which we feel most comfortable and we can always consult others as regards other areas of law. This cooperation is something I appreciate a lot.

Personally, I believe in mentoring and helping younger lawyers, which is why I am a mentor to young lawyers at the Women in Law Foundation. A mentoring program is also something important for my own development because it allows me

to look at my working methods from another perspective, look for inspiration from younger generation lawyers and have this feeling of giving back the good that I have at some point received.

How important for you is a positive, stimulating and friendly work environment for women lawyers offered by law firms in Poland and how does DMS stand in this respect?

JK: I would say that a friendly and positive work environment is priceless for anyone. We spend almost half of each day at work, so the better atmosphere, the more efficient you are. It should not be underestimated that apart from knowledge and experience, creativity is the third important value of an effective lawyer, and it is a work environment that can build up or undermine each

human creativity. I have worked in other places and law firms for years and I know this simple truth does not seem so obvious for everyone. Now, after almost a year at DMS, I may say that this is really a place where women and men and their work are treated equally.

MM: The legal profession is still pretty much a "man's world". However, this has been changing over the past 10 years and though you might say that there is still a lot to be done, I guess we at DMS are moving in the right direction.

Having worked at DMS for many years, I may say that what I appreciate most is the support women are offered in various areas. This is demonstrated in many ways, which includes the opportunity to handle projects on their own, the possibility to get involved in initiatives that support development of female lawyers, such as the Globalaw Leadership Programme or Globalaw Women Initiative.

What I would like to emphasize is that DMS is a law firm where, especially young lawyers who are at the start of their careers, are not afraid to ask questions and consult their ideas or doubts, and can work without the fear of being criticized by more experienced colleagues. Such an atmosphere stimulates faster and more effective development and certainly gives you a good dose of comfort.

Regarding your fields of expertise and looking at the country's legal framework affecting business, would you say that Poland is a good country for foreign investors?

MM: Poland continues to be an excellent investment destination for foreign investors in various fields, from services and support centers to industry.

Based on the transactions that DMS helped to conclude over the past few years, I have noticed an increased interest in investments in manufacturing companies and real estate.

Investments in manufacturing con-

firm that Polish companies are technologically advanced as various improvements have been implemented in recent years. They are also well organized and still have relatively low labor and production costs. The combination of these factors makes investors be interested in Poland and other Eastern markets that are close to Poland and will open up in the future.

Another field of interest for foreign investors is the real estate market, where changes are evident not only in terms of ownership, but first and foremost, in the redevelopment and adaptation of real estate to the current social needs such as the re-assignment of commercial property to residential use, the renovation of old post-industrial buildings and their commercial or residential use, as well as the redevelopment of commercial buildings that were built in the 2000s and no longer meet the modern office buildings requirements.

Finally, we must not forget that one of the most important Poland's assets is its population and that includes Generation Z. They are well educated, with Polish and international degrees, fluent in foreign languages and the use of new technologies.

In January, a popular Polish actor said he would file a law suit against the advertiser who used his image in a commercial he was never involved in making but was created with the use of artificial intelligence. Earlier, a renowned surgeon also complained that his voice and visuals, generated by AI, were used without his knowledge and consent in an internet commercial. Is the AI a new threat to the protection of intellectual property and how it can be combated?

JK: The practice shows that the use of AI is as helpful as it is sometimes harmful to creators, including writers, artists, graphic designers, and others. The development of AI requires specific regulation of the basic principles of copyright and the defi-

inition of the conditions for the right to exclusivity regarding the work in which the participation of AI, as an intermediary instrument in the production of the final work, is significant. The AI Act, drafted by the European Union, clearly emphasizes the differences between creativity generated by humans using artificial intelligence and creativity generated independently by AI. Such protection would only apply to the former. One can think of likely future regulations in the EU, including Poland, according to which, if third-party materials protected by copyright are used in the creative process, it should be done with the consent of the third-party concerned. Similar issue is in the US where there is a case against chatGPT filed by the *New York Times*, for using NYT articles in chatGPT "trainers". The involvement of AI in the process of creating a work may also lead to extending legal protection over ideas and discoveries as a purely human element, leaving outside the protection of the technical results generated by AI involvement in the final work. According to Polish law and the judicial practice, using someone's image for commercial purposes, without obtaining his or her prior consent, is unlawful. The participation of AI in such a practice does not change the nature of the breach. However, a separate issue is whether and to what an extent the image of a given person altered by AI can be considered equivalent to the use of the original image.

What are other top issues in IP and copyright protection in Poland?

JK: The IP system in Poland has improved significantly in recent years thanks to dedicated IP courts established in 2020. They have speeded up the decision making process and resulted in judgments being issued faster and in greater legal certainty. Faster processing of patent applications at both the search and examination stages have given greater certainty in exploiting IP in Poland.

It is important because Poles are creative and the Polish government as well as the EU support programs that boost the innovativeness. Poland is perceived as a place where very interesting initiatives and inventions take place. I agree with the latest OECD reports which stated that the awareness of IP and its value for business grew mostly in larger and more sophisticated enterprises. What we are still missing, in my opinion, is the awareness of the value of IP as a strategic issue. This is the main reason why small and medium enterprises hesitate to register IP rights. The implementation of solutions spreading the awareness of IP that are already in other countries would be beneficial for Poland as well.

What we are also facing in Poland is the need to implement the Copyright Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market. In Poland, its implementation has been delayed by 2.5 years already. While the previous government prepared, it failed to adopt a relevant draft amendment to the Polish Copyright Act. The implementation is crucial for audiovisual creators so they can receive royalties from streaming.

What are the DMS plans for 2024?

MM: It is difficult to speak for the entire firm, but from my perspective it is going to be—and in fact already is—a busy year. After the recent parliamentary elections, the investment atmosphere has been improving and we get many signals from international companies and investment funds we cooperate with that Poland is in the spotlight again and that investors are looking for opportunities. So, we will see...

JK: I will develop and strengthen the IP practice at the company. I have received a lot of support and enthusiasm from the Partners so I believe this can be achieved.

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