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# Four PR and legal strategies and tactics to battle online defamation

With the ever-expanding role of social media and the Internet, negative reviews can spread virtually unchecked. Some negative reviews are limited to statements of opinion, which generally are legally protected. However, companies and individuals increasingly are subject to attacks that include false statements constituting online defamation. The best strategies for combating online defamation involve both savvy legal and PR counsel, working in tandem, to provide effective relief.

The legal avenues for addressing defamatory comments and obtaining their removal from websites can be difficult to navigate. Generally speaking, the Communications Decency Act of 1996 protects websites where reviews may appear, including Google, Facebook, Twitter, Glassdoor, and Yelp, from liability for content posted by their users. This significant limitation of liability on the “publishers” of the defamation creates little incentive — and, arguably, a disincentive — for these entities to self-police their sites. Because of this, many sites require a court order or judgment before removing allegedly defamatory comments.

Some sites simply refuse to remove any posted material without a specific court order finding the material is defamatory. Even then, some sites may remove only the limited portion of the online review deemed defamatory. Because reviews frequently are posted in multiple places, or reposted by numerous sites, it can be difficult and expensive to obtain orders relating to every unique occurrence of the information. Search engines can be asked to de-index defamatory material to remove the content from search results, though compliance is voluntary.

Another complicating factor is that online defamatory statements frequently are posted anonymously or by a pseudonym. That means the actual person who is the author of the defamation — the named defendant in any lawsuit — must be identified before the victim of the online defamation named in a court action, let alone before the victim of the defamation can obtain a judgment or court order. To add yet another roadblock, California recently passed a law striking down any contractual provision that penalizes customers or clients from seeking to post negative comments about a company, person, or their products or services.

In New York, two procedures aid efforts to identify anonymous online commentators:

- Filing for pre-litigation disclosure, for the limited purpose of obtaining disclosure or discovery of certain key information.
- Filing a “John Doe” complaint, which can be done prior to discovering the identity of a defendant.

These two procedures can be used to seek discovery from entities that possess information (such as IP addresses and customer details) needed to identify the poster.

Here are four tips if your company, your client or you are subject to online defamation:

- First, determine if there has been a violation of the site’s terms of service. The terms of service are listed on the sites themselves. If there has been a violation of the terms of service, the site often will remove that review without any legal process.
- Second, PR counsel should be hired by the lawyer seeking to obtain the court order to remove the defamatory statements. Doing so is the best way to aid in the overall legal strategy and fight the defamation in both the courtroom and the court of public opinion. Doing so may also extend the attorney-client privilege to the PR consultant, [which I discussed in a prior column](#).
- Third, a court order that identifies the false statement typically will suffice to obtain removal from many reputable websites.
- Finally, the best way to effectively neutralize defamatory postings from sites that refuse to remove the material is to request that search engines (Google, Yahoo!, and Bing) voluntarily de-index the pages with the defamatory material from their search index. Although the information will continue to exist, searches will not reveal it. ■

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