

Protecting Your Firm's Exposure to Statements of Fact vs. Opinion

There are many laws that create liability for disseminating false or misleading statements. And there can be significant consequences for violating those laws. These include potential regulatory action from the Federal Trade Commission, competitor lawsuits and even consumer class action proceedings.

Since the PR pro's job includes disseminating information on behalf of companies, it is important to understand the potential liability.

There are examples of action against PR firms for their role in spreading factually false or misleading content or messages that omitted material facts. For instance, several years ago a competitor brought a [false advertising lawsuit](#) against advertising and PR firms working for Nestlé Purina. The competitor's allegations centered on statements the firms made in a Nestlé Purina advertising campaign as well as public statements.

How You Say It

When it comes to claims for defamation or trade libel, it is not just what you say, but how.

Defamation is a false statement that causes harm to reputation. **Trade libel** is a species of defamation concerning a false statement relating to another company's services or products.

A PR firm and its clients generally will not face legal exposure for statements that are **opinions**, as opposed to actionable statements of **fact**. An opinion is a subjective statement of belief that is incapable of being proven true or false.

Fact vs. Opinion

A case in New York, *Yangtze River Port & Logistics Limited vs. Hindenburg Research*, illustrates this point. In this case, the plaintiff filed suit against Hindenburg, which prepared a due diligence report about the plaintiff.

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Yangtze, the plaintiff, [challenged several statements](#) in Hindenburg's report as defamatory. The offending statements included those indicating Hindenburg's belief that the [plaintiff was a shell company](#). Yangtze was "a total zero," Hindenburg claimed, existing to raise money for its controlling shareholder and chairman.

The New York court [rejected the plaintiff's](#) defamation claims. It found that in the context of Hindenburg's report a reasonable reader would understand the relevant statements were opinions.

In addition, the court noted Hindenburg's report contained numerous disclaimers and other indications that its statements were opinions. The report, the court added, also disclosed the facts on which the opinions were based. It added Hindenburg promoted its allegedly defamatory statements on social media. Courts, it said, are more likely to consider statements on social media to be opinions.

The *Yangtze River Port* case demonstrates the significant legal consequences that can turn on whether a statement is found to be opinion or fact. However, often it's unreasonable for PR firms to be arbiters of whether a company's statements are false or misleading. PR firms should be able to rely on the accuracy of statements provided to it.

The Indemnity Clause

The most concrete step a PR firm can take to protect itself is to re-examine the indemnity provision in its contracts. This provision should provide that companies it represents will be responsible for any liability the PR firm incurs as a result of statements issued on a client's behalf.

In addition, the indemnity should extend to any attorneys' fees and other costs incurred in defending such claims. It also should indemnify the PR firm should it need to respond to a subpoena in connection with a lawsuit or other proceeding. This should be so regardless of whether the PR firm is a party in those actions.