

Strategies and Tactics to Battle Online Cyber-Defamation

BY INA B. SCHER OF DAVIS & GILBERT LLP AND DANIEL A. DINGERSON OF DAVIS & GILBERT LLP ON MAY 4, 2016

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With the ever-expanding role of social media and the Internet, negative reviews can spread virtually unchecked. Although some negative reviews are limited to statements of opinion that, generally, are legally protected, companies and individuals increasingly are subject to attacks that include false statements constituting online defamation.

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 Internet providers, including Google, Facebook, Twitter, and Yelp, from liability for content posted by their users, which creates little incentive — and, arguably, a disincentive — for these entities to self-police their sites. Accordingly, many sites require a court order or judgment before removing allegedly

defamatory comments.

Moreover, some sites simply refuse to remove any posted material without a specific order finding the material is defamatory, and then they 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 deindex defamatory material to remove the content from search results, though compliance is voluntary.

Further complicating matters, at least one state (California) recently prohibited contractual provisions that penalize customers and clients for posting negative comments.

Another issue is that online defamatory statements frequently are posted anonymously or via a pseudonym. That means a defendant must be identified before a judgment or order finding that an online statement is defamatory can be obtained.

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

- Filing for pre-litigation disclosure, for the limited purpose of obtaining discovery; and
- 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.

Takeaways

- A company subjected to online defamation first should determine if there has been a violation of the site’s terms of service; if so, the site often will remove that review without any legal process.
- A court order that identifies the false statement typically will suffice to obtain removal from many reputable websites.
- 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 “deindex” the pages with the defamatory material from their search index; although the information will continue to exist, searches will not reveal it.

Executive Offices
179 Kinderkamack Road
Westwood, NJ 07675
Tel: 201.594.9985/ Fax: 201.740.9765

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