

Crabtree Published on How to Protect Your Online Reputation

Visibility Magazine

September 28, 2009

[Travis Crabtree](#), a Member of Gray Reed & McGraw, published "They Can't Do That on the Internet" in the Fall 2009 issue of *Visibility Magazine*, which focuses on online marketing strategy.

Travis Crabtree brings a unique perspective to his emerging media and commercial litigation practice with the law firm of Gray Reed & McGraw. Travis graduated from the University of Missouri School of Journalism and spent several years in television news before taking on a law career.

They Can't Do That on the Internet!

by Travis Crabtree, Gray Reed & McGraw

Online Reputation Management or Sue?

Everyone and everything is reviewed, gossiped about and parodied online with the most damaging comments often appearing on the first page of search results. When that happens, should you file a lawsuit or manage your reputation online?

Actionable defamation generally requires the publishing of a false statement that harms the reputation of another as a result of intentional or negligent conduct by the author.

Cons of suing

Let's start with the cons because litigation is not pleasant for anyone. First, you have to figure out who to sue. Most websites savvy enough to rank high have structured themselves to be immune from defamation claims. Section 230 of the Communications Decency Act provides immunity from defamation and related claims to websites as long as they are not the "content providers." Websites like www.ripoffreport.com have already won several cases on Section 230 immunity grounds. That trend is likely to continue until the law changes or plaintiffs get more creative.

That leaves you with going after the person who actually wrote the review, or the anonymous blog--if you can find out who they are. To compel disclosure of the identity,

you usually have to subpoena the website. Many states are still developing the law in this area, but most are following Delaware's lead in the case of *Cahill v. Doe* which held the person seeking to force the disclosure of the identity must articulate the basic elements of a defamation claim before the court will allow it. Hence, a court will determine whether the comment is defamatory before the website or ISP has to disclose the identity of the anonymous poster.

Even if you know the identity, truth is a defense. That means you will be put under oath and be questioned about the very topic of the post. Although the actual post may not be technically true, if there is a grain of truth to it, the gory details may come out in public pretrial discovery.

That leads to the biggest prohibition to suing—cost. Lawsuits are expensive and after spending more than \$100,000, you may get a piece of paper that says the offending party owes you money. Will angrycommenter@yahoo.com be able to pay? Litigating against people without substantial means seldom makes financial sense.

Finally, there is a non-legal phenomenon known as the “Streisand Effect.” The term comes from Barbara Streisand's effort to prevent the publication of satellite imagery showing her house. Before Streisand complained, the pictures received little attention and there was no special demarcation showing Barbara Streisand's home on the online images. Afterwards, the pictures became popular on the original website and in major traditional media outlets resulting in millions of people looking at the photographs. The same lesson applies to your clients. Although the negative publicity may appear on the first page temporarily when your name is searched, a public lawsuit could result in more wide spread distribution of the original complaint. It can also make the story drag on much longer than it would have had you simply ignored it or addressed it quickly—think Roger Clemens versus Andy Petite and the baseball steroids scandal.

Pros of Suing

Despite all of the cons, there are times when filing a lawsuit is necessary. If the person making the comments is a competitor or a repeat offender, you should consider a lawsuit as a way of fighting back. If the matter is already in the public, then you can publicly defend yourself through a lawsuit and tell your side of the story through free media attention. You can receive monetary damages and sometimes injunctive relief through a lawsuit. More importantly, however, your reputation and integrity are often vindicated through a well-publicized trial. The public will view a victory as confirmation the offending statements were not true.

Pros of SEM

I won't go into too many details about how to use SEM tactics to manage your reputation online because I leave that to the experts, but we will start with the generality that an online reputation management campaign tries to create positive references and search results to push the negative comments off the first pages.

The major benefit of online reputation management is that it does not involve litigation. In addition to pushing the negative comments to obscurity, you get the benefit of the positive references you would often seek through a traditional marketing campaign. Tim Doyle of TopSpot Internet Marketing says, "By continually updating all of the positive happenings within your company through press releases, client case studies, and customer satisfaction ratings etc., and making sure that this information is available on your website, and other websites, you have the power to take charge of your company's reputation online. Online reputation management meshes very nicely with Search Engine Marketing because the consistent addition of fresh, relevant, and positive content about your company and its products and services is a key component in search engine optimization."

Cons of SEM

The biggest con is that moving negative references off the first page is difficult and takes time. There is no guarantee of results and search engines prohibit intentional manipulation. "The key to successful online reputation management is consistency," Doyle said. "You must be consistent in adding positive content to your website and other online vehicles and you must continually monitor the web for negative comments about your company."

The Middle Ground - Using honey rather than vinegar

Sometimes, you should just ask for the negative comments to be removed—just ask nicely. Many of the websites brazenly challenge you to sue and claim they will not take down any reviews. In the past, having the client (not the lawyer) make a simple request has actually worked. In one case, the client sent a simple email stating:

To whom it may concern:

I have viewed the February XX, 20XX posting on your website by XXXX. The posting is inaccurate, misleading and defamatory. I categorically deny XXXX's allegations that I XXXX. As such, I respectfully request you remove this posting from your website. Thank you for considering my request.

Sincerely,

XXXXX

It worked. The post was removed. The client saved both attorneys' fees and online reputation management costs.

In another example, someone impersonated my client through a blog hosted by a popular blog site. This was a violation of the host's terms and conditions. Rather than filing a lawsuit and drawing unwanted attention, we notified the host about the violation of their terms. The site was promptly taken down.

Be warned that whatever request you send to the website has the potential to actually appear on the website. As a result, I'll give the same free advice I give to people about email: Don't put anything in there you wouldn't want your momma to see.