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Survey Says: Tread Carefully In Dealing With Negative Reviews

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Surveys indicate that people often trust online reviews as much as personal recommendations. That simple fact is the reason that many companies try to influence what is said about them online. There are many means for a business to do so: social media advertising; the use of blogs, celebrities, and influencers; and sweepstakes and similar promotions, to name only a few.

With those efforts to influence online speakers come compliance issues. No business is immune. Compliance issues touch upon every industry sector in the U.S. economy, including financial services, healthcare and life sciences, retail, technology, hospitality and tourism, transportation, education, media, technology, telecommunications and manufacturing. The Butzel Long Media Team regularly advises on recommended policies and procedures, including social media policies and training practices. And, as businesses seek to limit the harm of negative reviews/feedback from the public, it is easy to stumble and do more harm than good. That happened recently for a law firm that took action against a poster of a Google review.

Gursten v John Doe 1, Docket No. 352225 (Mich. App. 3/18/21) involved a wordless one-star Google review Doe 2 posted under a pseudonym on plaintiffs' Google Review page. Plaintiffs, an attorney and law firm, sued, claiming that Doe 2 posted the review with the intent to cause damage to plaintiffs' reputation or profession and to dissuade potential clients from doing business with plaintiffs. The Court of Appeals agreed with the trial court that "a one-star wordless review posted on Google Review is an expression of opinion protected by the First Amendment." The Court reiterated the longstanding defamation law concepts that context and forum matter when assessing statements. It noted that "[i]n the context of Internet message boards and similar opinion-based platforms, statements are 'generally regarded as containing statements of pure opinion rather than statements or implications of actual, provable fact."

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Indeed, the very fact that most of the posters [on Internet message boards] remain anonymous, or pseudonymous, is a cue to discount their statements accordingly.” The court concluded that a Google Review is “no different than the [i]nternet message boards...it contains purely a poster’s opinions, which are afforded First Amendment protection.”

Gursten demonstrates the difficulty in using defamation law to deal with negative reviews. Other efforts by businesses to mitigate harmful online comments have been met with similar hurdles. For example, in January 2017, Congress enacted the Consumer Review Fairness Act (“CFRA”), which bars and voids nondisparagement clauses in form contracts that prohibit or restrict a party’s ability to engage in written or oral criticism of (among other things) the other party’s performance of services rendered under the contract. In fact, even to offer a form contract would violate the CFRA. The CFRA contains certain exceptions, including for contract provisions that bar the submission of confidential, private, or unlawful information. [Click here to read more.](#)

In 2019, the FTC brought administrative complaints against five companies for violating the CRFA. For three companies, their attempt to silence commenters backfired. Now when people visit the Yelp business pages of the companies, they both see the negative reviews **and** are greeted with a consumer alert on behalf of Yelp warning that “This business may have tried to abuse the legal system in an effort to stifle free speech.”

So where does that leave a business in addressing negative online reviews? Depending on the particular facts and circumstances, a business may have valid legal claims, but the best response is to employ a policy that engages negative reviewers rather than resorting to the law. Marketing experts suggest that disparaging evaluations are actually golden opportunities to respond in a positive and transparent manner. The best response is a genuine, sympathetic one that offers to fix the problem and make amends. Even if you are unable to please that particular customer, it shows potential clients that you’re willing to try. The Butzel Long Media Team can provide guidance on legal compliance, best practices, and practical suggestions on addressing customer complaints.

Robin Luce-Herrmann

248.593.3044

luce-herrmann@butzel.com