

Combating False Reviews: Beware of 'Independent' Review Website Scheme

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When the New York attorney general's office cracked down on 19 companies in September for false reviews, it sent a loud and clear message to many businesses. For others, the combined \$350,000 in fines may have simply been a wakeup call to get more creative with their deceptive online advertising practices.

In Sept. 2012, research firm Gartner estimated that by 2014, 10 to 15 percent of social media reviews would be fake, paid for by companies. While it is uncertain how many are actually fake here in 2014, there continue to be a large number of bogus reviews online, many from competitors or drafted on their behalf.

With the crackdown on false reviews, many people have gotten better at knowing how to make false reviews sound authentic. Thus, some are employing sneaky strategies – and sometimes other people – to help them stand out among the competition in a particular industry.

A New Type of False Review

One new tactic we have seen is utilizing “independent” review websites or blogs. A company may create, or pay someone to create or post to, websites in which they pretend to be objective but actually make veiled attacks on competitors.

For example, the owner of a website claiming to be an independent review site for local landscapers might be paid by one of the local landscaping companies. His review of other companies might provide some legitimate information about them, gathered from other websites. His review might even give some tepid approval of them, concluding that they may do a fine job or that some people appear to be happy with the companies' work.

But the review will end with a conclusion that those companies still do not match up to the level of expertise, value or experience provided by the company that – unbeknownst to the consumer – is paying him, which remains “his” top choice in the field.

This kind of review is often more harmful than the traditional fake review. When people disparage companies or services with harsh and hyperbolic language, some readers may suspect the review is fake.

But when a review appears to be more balanced in its assessment, the semblance of objectivity causes readers to believe it is authentic. And the trust this establishes with the reader makes it more likely he or she will be swayed by the conclusion of the reviewer, which is that the companying secretly bankrolling his efforts is the best bet.

Legal Claims

Fortunately, there is recourse for those harmed by these deceptively false reviews from competitors. One possible course of action is bringing a claim under the Lanham Act, the federal trademark statute. According to 15 U.S.C. § 1125(a)(1)(A), anyone who:

"in connection with any goods or services ... uses ... any false designation of origin, false or misleading description of fact, or misleading representation of fact, which ... is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person..."

can be held liable for causing damage to another. Similarly, § 1125(a)(1)(B) prohibits misrepresentations of "the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities" in advertisements.

Consumers and businesses are also protected by the Federal Trade Commission, a government agency. Under § 255.5 of the Code of Federal Regulations, when there is a material connection between an endorser and seller of an advertised product, that connection must be fully disclosed. In some cases, the websites do include reference to there being some compensation. But the text is very vague, such that it does not fully disclose the relevant affiliation.

Furthermore, § 255.1 (a) requires that endorsements "reflect the honest opinions, findings, beliefs, or experience of the endorser."

There can also be relief at the state level, as each state has its own laws governing deceptive trade practices and unfair competition.

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