VORYS

Publications

Competitor Defamation: How to Overcome Damaging Content Posted Online by Competitors

Related Attorneys

Whitney C. Gibson

CLIENT ALERT | 8.20.2014

Today, anyone who wants to cause damage to a business can easily do so simply by going online and harming them in one of many different ways. Online attacks on businesses and their professionals may originate from a number of parties, including business competitors.

Realizing the potentially devastating effects that damaging content such as false reviews can have on another business, more and businesses are using this tactic in hopes of getting a leg up on the competition. And many have become quite good at generating false and misleading content for the internet, despite its illegality.

Posting harmful content on review-based and gripe websites

Common online platforms for executing competitor attacks, such as defamation, include review-based websites such as Yelp and gripe websites such as Ripoff Report and Pissed Consumer. Each of these websites requires users to register accounts, yet not one of them prevents users from using aliases and posting false or misleading information under them.

As a result, many competitors go on review websites or the "consumer complaint"-branded gripe websites and pose (and post) as disgruntled customers, former employees, investors, and the like, with the sole purpose of harming other businesses and/or their professionals.

Poor reviews on websites such as Yelp can greatly harm a company and its bottom line. In fact, a 2011 Harvard Business School study of restaurants revealed that a one-star rating change on Yelp could lead to a difference in revenue of five-to-nine percent.

Speaking of Yelp, it has a 94 out of 100 domain authority on Open Site Explorer. This means that a business listing on Yelp will typically rank among the top results when anyone uses a search engine to find out information about that particular business.

Ripoff Report and Pissed Consumer, meanwhile, have domain authorities of 82 and 62, respectively, which is still high. Sure enough, we have seen several false and defamatory Ripoff Report posts about our clients rank as the top search result on Google for their business' names or the executives' names.

If you are a business owner, what if you have spent years building up goodwill with your customers, only to find false internet posts dominating search results? Naturally, prospective customers will see the false reports and opt not to do business with your company. If a competitor (or someone hired by a competitor) authored those posts or reviews, chalk that up as a major victory for them.

Another tactic: false positive reviews

Alternatively, other businesses have also gone the route of actually creating false reviews about themselves. False positive reviews can wrongfully boost a company's own reputation at the expense of others in their industry.

These may come in the form of traditional reviews, such as a five-star rating and overwhelmingly positive text on a website such as Yelp. But we have also witnessed another trend in the realm of false positive reviews: misleading and "independent" review websites or blogs.

One example of this disguised paid content is a website or blog dedicated to a particular industry or type of product where several are rated but the author ultimately recommends the goods or services of one allegedly superior company: the company that paid him or her. This type of review is more deceiving than one filled with hyperbole and language that would immediately alert a consumer that it is potentially fake.

False and deceptive reviews were the subject of a recent New York investigation, in which 19 companies were hit with a combined $350,000 in fines for their misleading behavior, The New York Times reported in September 2013.

"What we've found is even worse than old-fashioned false advertising," Eric Schneiderman, the New York attorney general, told The New York Times. "When you look at a billboard, you can tell it's a paid advertisement — but on Yelp or Citysearch, you assume you're reading authentic consumer opinions, making this practice even more deceiving."

Recovery and removal tactics

In the same article from The New York Times, Aaron Schur, senior litigation counsel for Yelp, told the newspaper that the investigation "show[ed] that fake reviews are a legitimate target of law enforcement."

Unfortunately for businesses, there has been little else to date that publicly demonstrates law enforcement has expressed widespread concern about fake reviews. Nevertheless, when a company does publish a false review or related content about a competitor, this may violate state unfair competition laws or the federal Lanham Act.

The Lanham Act, specifically, prohibits false advertising by competitors and allows businesses to potentially recover significant damages, disgorgement of competitors' profits, costs of corrective advertising, and attorneys' fees if the publication of a false review is willful – which, overwhelmingly, it is.

With so many competitor attacks conducted anonymously, it is often necessary to first identify the unknown competitors in order to hold them responsible for these bad acts. Once a harmed company is able to identify a competitor that has posted bad content online – typically through the subpoena process – they can also attempt to obtain an injunction from the court and submit a court order to the website hosting the false content and/or search engines to facilitate removal.

In addition to potential recovery on false advertising grounds, removing the harmful content, when possible, can help limit the amount of damage caused and potential business lost.

For more information, contact Whitney Gibson at 855.542.9192 or wcgibson@vorys.com. Read more about the practice at http://www.defamationremovalattorneys.com, or follow Whitney on Twitter at @WhitneyCGibson.