

Businesses Face Obstacles to Legal Efforts to Confront False Internet Reviews

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In days gone by, consumers primarily relied on word of mouth, advertising, and reviews from authoritative sources such as print publications in deciding which businesses to frequent. In today's Internet age, however, consumer decisions have become "crowd-sourced," as consumers search for businesses online and read customer reviews on websites like Yelp, Trip Advisor, Open Table, or Angie's List.

These online reviews are influential; many would avoid a restaurant or hotel after reading reports of insect or rodent infestation or steer away from an auto repair shop accused of cheating its customers. For all of their importance, however, online reviews are often posted from anonymous accounts, leaving consumers with no way of knowing whether the review is motivated by the reviewer's own agenda or just plain false. As poor reviews can counteract a business's marketing efforts and impact its bottom line, many business owners may wish to explore their legal remedies against false reviews.

In one recent case in the Washington, D.C. area, Hadeed Carpet Cleaning investigated several negative reviews on its Yelp page and found that the reviewers' descriptions of Hadeed's services did not match its records of the work it performed around the time periods identified in the reviews. This led Hadeed to believe that the Yelp reviews were planted by a competitor to harm Hadeed's reputation. Because the Yelp accounts in question were anonymous, Hadeed filed a defamation lawsuit in Virginia state court naming several "John Doe" defendants and served a subpoena on Yelp to compel identification of the anonymous reviewers.

On April 16, 2015, the Virginia Supreme Court dealt Hadeed's lawsuit a major setback and ruled that the Virginia state court did not have the authority to compel Yelp, a California-based business, to produce user information that was stored by Yelp in California. Instead, Hadeed would have to open legal proceedings in California to obtain this information. The Virginia Supreme Court's decision highlights one practical obstacle that businesses face in seeking to hold online reviewers accountable for their reviews. An Internet company can be based anywhere and in state court litigation there are procedural hurdles to obtaining information from out-of-state entities. Plus, social media companies like Yelp are often well-funded litigants that are motivated to fight to protect their users' privacy.

The fact that Hadeed's lawsuit failed in Virginia is notable because Virginia is the most favorable jurisdiction in the Washington, D.C. area in which to bring this type of lawsuit. Maryland and the District of Columbia have both enacted SLAPP (Strategic Lawsuits Against Public Participation) laws designed to protect the public from defamation lawsuits. Maryland's SLAPP statute provides that a defendant may not be held liable under most circumstances for exercising his or her constitutional right to free speech about any matter of public concern. It also creates an expedited procedure for a defendant to seek the dismissal of an alleged SLAPP lawsuit. While the SLAPP statute does not create a "license to lie," it does increase the burden on a plaintiff to show at an early stage of the case that the defendant's review is false. The District of Columbia's SLAPP statute is even more stringent. It permits a defendant to file a special expedited motion to dismiss and requires the plaintiff to show that his or her claim is likely to succeed on the merits to avoid dismissal. This standard is much higher than the typical motion to dismiss standard. If the motion to dismiss is granted, the plaintiff is required to pay the defendant's reasonable attorney's fees, meaning that a lawsuit in the District of Columbia to counter a negative online review could easily backfire and end up with the business itself facing liability.

Businesses understandably want to confront damaging and false online reviews, some of which may be posted by competitors. Doing so through a lawsuit can be a risky decision, however, and careful consideration should be given before choosing that option.