

Removal Often the Best Solution for Online Defamation

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AUTHORED ARTICLE | 4.27.2016

For businesses forced to deal with internet defamation, in our experience removal of the harmful content is generally the best solution.

Solutions are fact-dependent. However, the longer false content remains online and can be seen by potential customers or clients, among others, the more damage it is likely to cause to a business.

Thus, to the extent possible, businesses should work to get false and defamatory content about them removed from the internet quickly, or potentially risk being indefinitely harmed.

Top search results akin to “storefronts”

For many businesses today, the search engine results pages (SERPs) pertaining to them—particularly each business’s first page on Google—are similar to brick-and-mortar storefronts.

In recent years, the first point of contact for many people with a company has been its first page of Google search results. In other words, many consumers go online to conduct research about unfamiliar businesses and, therefore, first impressions of many businesses are often formed based on what people find atop the search rankings.

Positive and neutral results are obviously good, but negative results—in particular false content—can drive away large numbers of potential customers, not to mention possible employees or investors, among other parties.

Unlike with physical storefronts, however, businesses have limited control over their SERPs.

For starters, the search rankings—and thus, what appears in search results in response to particular searches—are based on algorithms (defined by Google as “computer processes and formulas that take your questions and turn them into answers” and, for Google today, which “rely on more than 200 unique signals or ‘clues’ that make it

possible to guess what you might really be looking for”).

According to Moz.com, Google changes its algorithm more than 500 times per year; primarily “minor” changes, but occasionally the updates can be significant.

Second, businesses also cannot control what customers or other parties—particularly, disgruntled people—will say about them online.

While negative opinion-based commentary is protected under the First Amendment, false and defamatory statements are not and they can cause significant harm to a business. After all, the average reader of negative information—including a mere headline and snippet of information in a high-ranking search result—is unlikely to realize the information is false.

Needless to say, high-ranking false information is likely to dissuade people from engaging with particular businesses, akin to a sign in the window of a brick-and-mortar discouraging people from entering the store.

Removal options

It is easy to comprehend how a company can suffer loss of business due to false and defamatory content online, particularly high-ranking content. However, it can be difficult to quantify this harm.

Unless a company has tangible evidence of loss of business—such as someone cancelling an existing contract or communicating in writing that he or she is choosing not to do business with the company because of what they read online about it—it is traditionally hard to prove damages, which is one of the elements of defamation in most states.

Because defamatory speech is unprotected, a business may have the option to litigate over the false content. However, the longer litigation drags out, such as if the author of the harmful content is identified and the parties get caught in a lengthy discovery period, the longer the false content will remain online and deter future business.

Thus, a company must factor in this risk when weighing potential options.

In other words, with a named defendant, it is often in the best interests of a defamed party to try to reach a settlement with the author of the harmful content to expedite removal. To the extent possible, it is helpful to have the bad actor delete his or her false comments.

When dealing with websites such as Ripoff Report, for example, it might be necessary to have both parties sign an Agreed Order and then submit this court order to Google for potential removal of the harmful search results.

A de-indexed Ripoff Report posting, for example, will still exist on RipoffReport.com. However, not having that Ripoff Report posting sitting there on the first page of the search results is for all intents and purposes as effective as actual removal; few people actually go directly to the website to look up individual businesses.

(Removal via de-indexing from the search results can also be accomplished with a default judgment, noting that Google is never required to comply with a court order but traditionally does if certain standards are met and the court order is legitimate).

Alternatively, some companies consider contracting with online reputation management companies to help generate positive content in hopes of “pushing down” the false negative search results. But this approach can be limited in its effectiveness—especially given the nature of the algorithms—not to mention costs can be ongoing.

In some instances, a positive PR-type campaign can also be the superior choice.

In short, when faced with an online defamation dilemma—particularly involving false content that is ranking highly in search results—a company’s best option might likely be to pursue removal of the content. This approach is often the most efficient and cost-effective, which is important given the state of the internet and the nature of consumers’ behavior today.

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