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## What Can a Business Do When It Is Under Attack on Social Media?

By Michael M. Ratoza

Social media makes it so easy to express an opinion.

This is sometimes a problem.

Anyone can tweet, post to a blog, comment on Facebook, Instagram photos and engage in all sorts of instantaneous expression of opinion. But when these public comments turn negative and harm a business, what if anything can the business do?

It is not comfortable being the target of negative comments published to the world on social media. Negative published comments about the quality of a motel, the performance of a pianist, the experience at a restaurant or any other conveyor of goods or services are all made available publically to members of the consuming public. Given the long lasting nature of the Internet, these published comments can live on forever and can have a singularly harmful impact years after the fact.

A reviewer on TripAdvisor.com posted a negative comment under an alias concerning a Lincoln City, Oregon hotel, stating that the "rooms are nasty."

Pianist Dejan Lazic asked *The Washington Post* to pull a negative review of a performance he gave years ago. *The Washington Post* refused.

A couple was surcharged by a UK motel following their negative comments of their motel experience published on social media.

### Reacting to Bad Reviews

There are all sorts of negative reviews published online. What is a business to do? Yelp, the website that encourages reviews, provides guidance to businesses in responding to negative reviews. Yelp's first rule is to "take a deep breath." In reacting to bad reviews, keep the following in mind:

- Just because a negative review is posted online does not mean that the website operator is liable. Federal law (Section 230 of the Communications Decency Act) provides that ISP's and websites are not normally liable when a member of the public posts a message.
- Just because a bad review is negative does not mean that it is legally defamatory. Negative statements, even if harmful, do not create liability under defamation laws when the statements are...
  - Merely opinions,
  - Ambiguous or otherwise not capable of a defamatory meaning,
  - Substantially, though not completely, truthful, or
  - The subject of the negative statement has not suffered special damages directly attributable to the negative statement

### State Law Protecting Negative Reviews

California's new "Yelp Bill" takes effect January 1, 2015 and prevents a business from including a non-disparagement clause in its terms of service or other consumer contracts.



Many states have a media shield law preventing disclosure by media—including a website—of the identity of an anonymous poster. This was the result in the TripAdvisor.com lawsuit mentioned above.

Additionally, many states have enacted anti-SLAPP statutes, prohibiting Strategic Lawsuits Against Public Participation. These statutes prohibit lawsuits relating to public statements in furtherance of the exercise of the public's constitutional right to petition the government or the constitutional right of free speech in connection with a public issue or an issue of public interest.

### **Methods of Dealing with Bad Reviews**

One method of dealing with a bad review is the direct—non-legal—approach. That is, contact the customer/reviewer (assuming this person's identity is available, of course), talk about the negative experience, and try to satisfy the customer/reviewer. You may be able to solve the problem and regain a customer.

But if you want to, or need to, sue over a bad review, make certain that you understand and document all of the facts that you may need to prove your case:

1. Document the particular transaction or service that is the subject of the complaint, and verify the accuracy of the reviewer's claim.
2. Take photos.
3. Line up your witnesses and make certain that you obtain written statements promptly, because witness recall often dims over time.
4. Be mindful of the statute of limitations, and don't wait too long to take action or your claim may become stale.
5. And very critically, document carefully all of your damages directly attributable to the negative review. Because unless you can show a direct connection between the bad review and identifiable and provable damages, your lawsuit may be lost before it begins.