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Are We Dealing with an Unhappy Customer or Online Defamer?

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The Bankers' Statement – Spring 2013

The Difference Can Dramatically Impact Your Solution

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It's Monday morning. As you're grabbing a cup of coffee, your cell phone rings. It's one of your fellow executives who asks if you have seen what's being said online about your bank. You hadn't, but you rush to your computer. Your inbox has become full of Google alerts related to your bank. In a typical month, you see a handful of these alerts. This morning, you see 10. As you scan the emails, you're shocked. There are a number of horribly negative reviews. You quickly search online to find two blogs that have been created to slam your bank. In addition, there are a dozen negative reviews posted on the popular Rip-Off Report website. The worst part? These blogs now appear just below the company's main website in Google search results.

The complaints immediately make you question their validity. One reviewer said that a bank teller stole his identity by using the personal information he provided to open a checking account. You would have known about that, and you've heard nothing. Another said the bank charged overdraft fees when accounts were in good standing and refused to reallocate the funds. You know these accusations are false. The problem is there are many more and they are all posted by a variety of anonymous screen names. The same posts are being picked up and replicated by other sites. You are clearly being attacked.

You send an email for everyone to meet in the conference room at 8 a. m. But what are you going to do?

A traditional way to combat false reviews is to start a counter campaign, which is costly to your business and can escalate the issue unnecessarily. Another popular approach is "burying" the content. However, the effectiveness of this approach is becoming more and more questionable due to changes in Google's (and other's) search algorithms.

If it's an intentional attack by someone intending to harm you there are additional options available that could remedy the situation. It's now possible through the use of investigative and legal tactics to identify the attackers, remove the harmful material from the internet, stop them from posting about your bank again and even recover losses. These legal remedies are increasingly being used by businesses across the country.

Online reputation management is crucial in strategic communication and brand management. It is also becoming increasingly complex with the explosion of social media and blogs. According to a survey from Econsultancy, 70% of online consumers trust reviews from unknown users. That's why it's imperative to know the difference between an unhappy customer making a negative review and a person who is defaming your bank by making false statements.

Online attacks are being instigated by not only disgruntled customers, but also by competitors, ex-employees and ex-business partners. Legitimate opinions of unhappy customers are protected speech, just as they should be. The cases in which our law firm typically assist are ones in which attackers are seeking to harm a particular company. The appropriate response should be determined by the type of attack. So how can you tell the difference? Based on our experience, there are several ways to distinguish between unhappy customer postings and those that are defamatory.

Defamatory attacks typically include one of the following:

1. The statements online are known to be false.
2. The statements include outrageous accusations that you don't normally see in regular reviews.
3. The reviews or posts are clustered in time. Your company will have few reviews and then suddenly there are 25 items posted in a single month, often from multiple anonymous screen names.
4. You may have a good idea who has done the damage and why, even though you cannot prove it.
5. The material is causing harm – many times, unhappy customers leave reviews that minimally impact a business, but somebody committed to significantly damaging a business will find a way to substantially harm it online.

It has been our experience that companies victimized by these cyber reputational attacks may have been advised incorrectly by their existing team of legal professionals, simply because these lawyers don't see enough of these types of cases. Unfortunately, missteps in this area can lead to continued damages or worse, prevent a solution from taking place before the statute of limitations runs (in most states this happens in one year). This means that nobody can resolve it for the company in the future.

Other common misconceptions that we see are:

1. It Is Covered By Freedom Of Speech: The courts have repeatedly recognized that the First Amendment does not protect false statements and other illegal conduct involving speech.
2. Nobody Will Take It Down: Oftentimes, we find that with appropriate tactics, the removal of damaging information can occur quickly. However, if these tactics are not appropriate, court orders can often be obtained for removal if appropriate legal claims exist.

3. You Can't Catch Anonymous Posters: For many people, including attorneys, dealing with the anonymous poster of materials can be quite difficult. By using innovative investigative techniques, coupled with court ordered subpoenas, much can be done to resolve most cases.

We've worked with numerous clients, including financial institutions, facing cyber reputational attacks. For example, anonymous individuals were posting false information on various review websites about a financial company. The company hired an investigative and legal team to try to determine the identity of the defamers. As part of that team, we started with research and then used subpoenas to obtain basic information about the anonymous posters, including their names. After this information was discovered, we were able to obtain an injunction ordering the individuals to remove their defamatory postings regarding the financial company from the internet. There are hundreds of companies that have used investigation and legal tactics to identify anonymous posters, stop these posters from continuing to post and have the false information removed from both the internet and from search caches. Knowing when to take these steps is just another tool that you can add to your strategic communications tool box. This will likely become more important as Google, Yahoo!, Bing and others update their search algorithms and make it harder for companies to hide unflattering information on the internet.