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Outlook 2014: Untruthful posts to consumer review websites could result in lawsuits

GableGotwals shareholder David L. Kearney discusses the legalities of posting negative online reviews.

by [Paula Burkes](#) Published: April 27, 2014



David L. Kearney GableGotwals shareholder

Q. Are customer comments posted on consumer review websites protected speech under the First Amendment or are individuals who post opinions potentially subjecting themselves to a libel lawsuit?

A. While the First Amendment protects us from the limitation of our right to free speech by the government, it doesn't protect us from the consequences of false speech through a libel or defamation action. While anyone is free to publish a negative review, they should be prepared to establish that the review is truthful. Truth is an absolute defense to a defamation action.

Q. Is there legal precedence for a business to sue an individual or another business because of a negative review?

A. In a recent case in Virginia, a homeowner was sued for defamation for posting a negative review of a contractor's work following the renovation of her home. The jury found that the homeowner's statements were defamatory but, because the contractor had also defamed her in his responses, the jury awarded no damages to either party.

Q. Some consumer review websites allow a certain level of anonymity for its posters. Can these sites be required to reveal the reviewer's true identity when a review is disputed?

A. An anonymous review may give the reviewer a feeling that he or she can say whatever they want without consequence. However, in the Virginia lawsuit, the website was required to produce the identifying information of the reviewers in its possession.

Q. Is there any legal recourse allowing a business to require the consumer review website to remove a negative review, especially when the review can be proven bogus?

A. A consumer review website has the same obligations as any publication to avoid publishing false and defamatory statements. If a business can “prove” the review is bogus, a reputable review site should remove that review. Proving the review is bogus would be difficult, since in most cases it will be the word of the reviewer against the complaining service provider. The point of review sites is to allow consumers to provide honest evaluations of the service provider. Sometimes those reviews will be negative and it would be pointless to have a review site that doesn’t provide negative comments. The review site therefore will likely resist removing negative reviews, unless there is a strong case that the review is false.

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