

Strategies for Responding to Internet Gripe Sites

To the chagrin of many companies, Internet gripe sites are becoming a weapon of choice for disgruntled employees, displeased customers, or devious competitors. Anyone with an ax to grind or opinions to air can now cheaply have their voice heard while being emboldened by the anonymity Internet posting provides. Responding to defamatory online content, whether through online reviews, website comments, or dedicated gripe sites, can be challenging. Here are some tips and tools that can help avoid and address problem content:

Actions to take before a problem arises

Purchase domain names incorporating your trademark:

Often gripe sites involve a domain name created from the target's trademark followed by the word "sucks" or preceded by "ihate." Courts have held that such domain names are permissible free speech, provided that the domain name contains some indication that the domain is used for criticism or commentary, rather than for commercial purposes, making legal action against such domain names challenging. One solution is to proactively acquire domain names using your company name and key trademarks. These domains can be purchased relatively cheaply through domain hosting companies such as GoDaddy. Those motivated to criticize your company will still find creative ways to do so, but by controlling obvious domain names, you will make it harder for others to find the gripe site. As one example, Southwest Airlines has registered www.southwestsucks.com and uses the site to provide contact information for lodging complaints at that address, which redirects some complaints in a more constructive way.

Use Internet monitoring tools: It is impossible to address gripe sites or Internet complaints unless you are aware of such complaints. To put your company in the best position to respond, monitor the Internet for discussion of your company and brand. By monitoring the Internet, you will know about the discussion when it is happening and can choose to be a part of it if you want. An Internet monitoring program may be as simple as use of Google Alerts, or may involve monitoring software or a third-party monitoring agency. A range of options is available for all budgets.

Have a social media crisis response plan: The problem with Internet complaints is that they have the potential to take on a life of their own. Before a problem arises, it is important to have a social media crisis response plan that includes the identification of who key decision makers will be, who to contact during off hours, and a mechanism and plan for implementing social media updates or responses.

Actions to take when a problem arises

Collect and preserve defamatory content: Once you identify a defamatory website, copy and preserve it. This can be as simple as printing the website. Any printouts or screen shots should include the URL of the page and the date of printing. If possible, use a registrar identification listing such as whois.com to identify who controls the website. Preserving this information is helpful in evaluating the content and gives you accurate exhibits for future action. Because it is so easy to change Internet postings, it is very important to document the original source of information at the time it is first brought to your attention.

Evaluate and respond proportionately: Before taking action, evaluate the harm caused by the post. Given the volume of content on the Internet, a defamatory post, even though legally actionable, may not have much impact. It may not make sense to take legal action if you cannot identify actual damages in the form of lost sales or a concrete impact to reputation. Instead, it may make sense to simply respond in the forum in which the posting is made. For example, websites such as TripAdvisor.com and other public forms often allow companies to respond directly to negative postings. Responding once, in a manner that stays on brand, can be the best response. Ironically, taking legal action in response to Internet criticism can lead to a significant backlash if the action is perceived as an attempt at censorship. This can lead to further comments and posts, and actually increase the attention and views given to the defamatory post. Thus, in evaluating Internet content, it is important to recognize the fringe factor—a few negative comments will not outweigh the positive.

Increase your own social media presence: The best strategy can be to take control of the media message

about your brand. During times of criticism, it can make sense to strategically and thoughtfully increase your presence on social media with your own on-brand positive messaging. By publishing accurate news and positive postings about your brand, you can take control of the message and often push the defamatory posting down in the search engine rankings. Doing so is often a faster way of resolving the social media problem than any lawsuit.

File take-down requests with content provider:

Facebook, Twitter, YouTube, and the majority of social media platforms have take-down policies as part of their terms of use. It is often faster and more effective to follow the complaint procedures outlined in the relevant terms of use. Following the posted complaint procedures can result in clearly actionable postings being deleted, although some may require that a legal complaint be filed before they will take action.

Evaluate potentially actionable legal claims: If you find that you must seek relief from the courts, evaluate all possible legal claims. Such claims may include the following:

- Defamation
- State law unfair competition or false advertising violations (See Wis. Stat. §100.18)
- Copyright (evaluate whether original text or photos have been copied)
- Trademark (if the poster is using your trademarks in a confusing or misleading way)
- The Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. §1125(d) (if the domain name uses your trademark to divert business)
- Misappropriation of trade secrets (if the poster has disclosed proprietary information)
- Invasion of privacy (if an employee's name is used)
- Breach of contract (if a disgruntled employee has breached a nondisclosure agreement)

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