

Sticks and Stones May Break Your Bones, But Words Will Hurt You More

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The risks of becoming a victim of online harassment or cyber-slander have never been more serious. Increasingly, small- and medium-sized businesses that pursue online advertising, marketing, and business development efforts realize that it is important to build an Internet presence, but even more critical to ensure that the Internet presence is *favorable*. In an age when "word of mouth" business is generated increasingly through Internet searches and online reviews, bad publicity can be crippling to businesses looking to gain footing or market share.

On the Internet, a consumer can be a critic without factual support, repercussions or responsibility. Often online "reviews" consist less of neutral or dispassionate facts than they do of rants, self-serving exaggerations, or grousing invective. Hurtful comments are everywhere. They can be authored by disgruntled ex-employees, impossible-to-satisfy customers, competitors, and even ex-spouses. As commentators have noted, a grateful customer who had an exceptional experience will probably not blog or post about that positive experience more than once, if any positive feedback is posted at all. One dissatisfied individual, on the other hand, can author an entire library of damaging content that can overwhelm even the most conscientious business.

Businesses can no longer turn the other cheek and hope that the jibs and jabs of negative online reviews are ignored or overlooked by consumers. Some research suggests that people actually trust the opinions of their peers, even if those opinions are anonymously posted by complete strangers. A stunning 82 percent of individuals surveyed in a recent Deloitte study responded that their purchase decisions have been "directly influenced" by the user reviews. Not only do online consumers believe what they read – they *spread* those opinions. According to the same study, 69 percent of those who read reviews share them with friends, family or colleagues, thus amplifying their impact.

Some businesses choose to address the issue directly by allowing consumers to post comments, positive or negative, directly on the company's Web site, and some provide responses to the negative comments, in hopes of mitigating any damage. Department chain store Kohl's, for example, who has one of the largest Facebook fan-bases among retailers, believes that allowing criticisms to remain on

a company-sponsored Web page will help harness and control complaints made by dissatisfied consumers. The philosophy behind this approach is that allowing consumers to post on the company's Web site might alleviate the need to post in another setting where the company may not know about the comment or have little or no opportunity to respond fairly and accurately. Consider for example, the Internet sensation created by Canadian musician Dave Carroll, who alleged United Airlines workers smashed his \$3,500 Taylor guitar when he was changing planes at O'Hare on March 31, 2008. Carroll spent the next nine months reasoning with United agents in Chicago, New York, and India. After the carrier refused to pay \$1,200 in repair costs, Carroll channeled his ire into a song, "United Breaks Guitars," which he performed with his band Sons of Maxwell, filmed, and put on YouTube, drawing more than 6 million viewers. If Carroll's complaint were posted on United's online Web site (and not YouTube), it is highly unlikely that it would have generated such unfavorable publicity.

Of course, consumers are not required to post on a company Web site, and there are many other options available. Innocuously termed as "customer reviews," "feedback," or "product ratings," there are now hundreds of Web sites that provide outlets for individuals to vent about their "experiences" with companies and businesses of all sizes and in all industries via "online reviews."

Business Naivete. Still one of the biggest problems businesses face in addressing the risks posed by cyber-slander is a lack of preparedness or the absence of a strategic plan to prevent against and control reputational damage on the Internet. Recent studies have estimated that only about one-third of businesses actively manage their online reputation. The failure to acknowledge and prepare for these risks can result in further victimization and harm to the business. For example, one Ice Miller client was faced not only with the possibility of becoming a victim of reputational damage via the Internet, but received threats that negative reviews would ensue *if money was not paid* to placate the troublemaker. The lesson learned is that businesses who are unprepared to handle such practices could find themselves caving into such demands, which will only embolden and reinforce bad behavior by unreasonable customers or serial extortionists.

Hunting Down Negative Anonymous "Reviews." Not surprisingly, responding to negative online criticism involves the expenditure of time, money, and resources. Holding negative reviewers responsible for their comments, especially those that may be libelous, can be more time-consuming and expensive. It can also result in exactly the opposite effect being sought by drawing even more attention to the offending post. Consider for example, the comments made by Amanda Bonnen, an Illinois resident, regarding the condition of her apartment located at 4242 N. Sheridan, in Chicago. On May 12, 2009 Amanda tweeted "Who said sleeping in a moldy apartment was bad for you? Horizon Realty thinks it's okay." Horizon Group Management LLC, the company that owned Bonnen's apartment, responded by suing Bonnen for libel over the tweet, asserting the tweet was published "throughout the world" and seeking \$50,000 in damages. According to Google's records of her now-deactivated account, Bonnen had 17 followers at the time of the tweet. Horizon Realty's suit, however, resulted in nation-wide attention being drawn to the matter and of course, emblazoning those comments in general Internet news sources, some of which may keep archived stories *forever*.

Horizon Realty was at least lucky enough to have the identifying information of its negative reviewer. Although some online review sites require users to use their real names and provide identifying contact information, other sites do not, allowing posters to leave negative feedback anonymously. There is no dispute - tracking down anonymous posters or bloggers can be cumbersome and ultimately unsuccessful for a variety of reasons. Typically, the Web site containing the offending post must be subpoenaed to disclose the IP address and other information belonging to the computer responsible for publishing the post. If an IP address is identifiable, it will be linked to an Internet service provider, which must then be subpoenaed to disclose the identification information of the subscriber and individual associated with that IP address at the date and time of the offending post. This process, however, can present challenges. Some Web sites claim not to retain or intentionally purge IP addresses associated with posts. ISPs, on the other hand, especially those providing dynamic IP assignment, may reuse or recycle from a pool of IP addresses that are randomly assigned its subscribers, making it difficult to determine which subscriber was using which IP address when. The information or logs providing such tracking information may be retained for only a short time by ISPs, especially ISPs that cannot practicably maintain extensive records of IP address assignment and distribution, such as large companies or colleges/universities. In other cases, when IP address assignment and distribution is done at a hardware and not software level (such as via routers and not via services running on a server), even the most sophisticated equipment may not be manufactured to retain more than a few hours or days worth of data linking IP addresses to particular users.

The challenges to tracking down anonymous critics are not limited to hardware or network limitations. Web site operators and ISPs sometimes side with their users and pose challenges resisting requests for disclosure. Some sites, such as RipoffReport.com, simply refuse to remove any content whatsoever – even content alleged to be defamatory and libelous - and have survived numerous lawsuits brought by aggrieved businesses suffering from unfair online reviews. That site actually contains an informational section explaining why filing a lawsuit against RipoffReport or its founders is not a good idea.

Some businesses have yielded to the hurdles posed by tracking down anonymous reviewers; others have pressed ahead. In 2009, there were a number of suits brought against online reviewers by businesses. A California dentist brought claims against a couple who left negative comments about cavities he filled for their son's teeth. Another lawsuit involved a chiropractor aggrieved by the online comments made by a patient about his billing practices. Like many lawsuits that tend to involve the public disclosure of facts better left private, these types of suits are often settled.

Desperate Times and Desperate Measures. Some businesses unprepared for negative online criticism have turned to any means necessary to cover up or hide bad publicity – even writing fake positive reviews to drown out negative criticism. These practices, however, can lead to dire consequences. Earlier this year, for example, a surgery clinic in another state was fined \$300,000 after an investigation by the state's attorney general office found that glowing reviews of the clinic were actually written by employees. Small businesses are not the only ones succumbing to desperate measures such as these. Another well-publicized example involves Comcast, who

apparently paid individuals to take up seats at an FCC hearing at Harvard University that was intended to examine Comcast's business practices. These individuals applauded on cue, fell asleep, and took up so much room that a number of critics and opponents of Comcast were shut out of the hearing.

Critics Be Gagged. Other businesses have been responding to the war of words by nipping unfavorable feedback before even agreeing to provide services. A number of industries, specifically for example, physicians and doctors, have begun requiring "gag agreements" in which patients promise not to post online gripes, reviews, or feedback about their experience with the physician. In fact, an entire industry of "reputational management services" has arisen to help businesses handle the damage posed by negative online reviews. Businesses should, however, be equally wary of these services, which could promise more than they may ever be able to deliver. Some online reputation management service providers flood search engine results with "positive" content so as to push negative content past the first few pages of search results. Others service providers charge fees to write "positive" reviews to counterbalance negative feedback. These practices will now be limited and controlled, however, by new Federal Trade Commission rules that went into effect on Dec. 1, 2009. The new FTC guidelines, in short, require greater disclosure between bloggers and their advertisers, so that there is greater transparency of "endorsements" that are really paid advertisements.

In today's complex world, businesses have much to consider whether it is promoting their brand and services online, or ensuring that brand is not tarnished by adverse online reviews.

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