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Negative Online Reviews of Your Business: Disgruntled Does Not Necessarily Mean Defamatory

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If you own a small business, someone has likely posted an online review of your company and its goods or services. From Yelp to TripAdvisor to Angie's List to any number of websites tailored to particular industries or interests, online reviews can have a profound effect on your business. When word-of-mouth is heard around the world and echoes forever on the Internet, even one negative review can be devastating.

Many business owners who see 1-star ratings or blistering comments understandably want to mitigate the damage they can inflict. But how a business responds to a bad online review can be just as impactful as the review itself. Attempts to counter or respond to a vocally disgruntled customer in kind may wind up amplifying the review or subject the business to further scorn, ridicule, and bad publicity in a fickle and fast-moving social media universe.

From time to time, we get a call from a client who is deeply worried, angry, or indignant about a scathing review and wants to sue the poster for defamation. The answer is, of course, yes. You can sue "YourBusinessIsAwful123" or whoever made the post. Anybody can sue anybody for anything, but that doesn't mean a case has merit or is a smart move business-wise. When it comes to suing a person for posting a negative review, the reality is that much of what reviewers write in even the most scathing negative reviews will likely not qualify as actionable defamation.

Additionally, business owners typically cannot pursue legal action against an online review site or search engine where comments appear. Such entities are immune from liability for defamatory comments in reviews as a matter of federal law. [Section 230 of the Communications Decency Act](#) shields such sites from claims based on comments posted by third parties. But the reviewer receives no such immunity. Rather, they are often protected by the law of defamation, which places a heavy burden of proof on a plaintiff.

Elements of Business Defamation in Michigan

In Michigan, a business suing an online reviewer for defamation must prove:

- The reviewer made a false and defamatory statement about your business.
- The statement was an unprivileged communication made to a third party.
- The reviewer was at least negligent as to the statement's truthfulness.
- The business suffered damage as a result of the defamatory statement.

The inability to prove that first element – that the statement in the review was “false” – dooms many if not most business defamation claims.

Provable Fact v. Opinion

To be considered [defamatory under Michigan law](#), a statement must assert facts that are “provable as false.” Opinions, no matter how detailed or devastating, cannot be false. Only false statements of fact can form the basis of a defamation claim, not opinions. Consider the two following hypothetical restaurant reviews:

“The décor was ugly, the service was inattentive and rude, and the meal was disgusting and bland.”

“The waiter spit in my food, and the host called me a racial slur.”

The former comment is a non-actionable opinion, as it cannot be objectively proven that the meal was “disgusting” or that a waiter was “rude.” Those are entirely subjective opinions; neither party is going to present evidence at trial regarding what constitutes “disgusting.”

Conversely, the latter review contains statements of fact. Either the waiter spit in the food, or did not. Either the host used a racial slur, or did not. If the restaurant can prove that either of those things did not occur, they would likely have a successful claim if they can prove the other elements of defamation.

Options Other Than a Defamation Lawsuit

The bottom line for business owners is that a defamation lawsuit in response to outrageous Internet reviews and comments may not be the best course of action. While certain false statements of fact in such comments can be the basis of a defamation claim, business owners and professionals should carefully consider how to proceed in case their response makes a bad situation worse.

If you are concerned about a negative review, you can ask the review website or search engine to remove the review if it violates their terms of service. You can, of course, respond directly to the review where it was posted, but remember, it will be seen by everyone who looks at your reviews. If you get into a tit-for-tat dispute with the customer or come across as hostile or petty, you're not doing yourself any favors.

Instead, you may want to suggest in a response that the reviewer take the conversation offline. If they agree, have them elaborate on their experience. Listen respectfully and hear them out. Often, a civil and empathetic conversation can clear the air, bury the hatchet, and lead the poster to amend or delete their review, sometimes without you having to say anything. If you must reply to what you hear, do so calmly and reasonably.

But be careful. If the reviewer had no qualms about sharing their thoughts with the world, they wouldn't hesitate to share your response if it makes you look bad. Approach every interaction as if the general public will see it. If what you say or write isn't something you want other customers to see, you probably shouldn't say or write it.

When They Go Low, Have Your Other Customers Go High

When one customer goes low and negative in a review, having ten customers who go high and post positive reviews can be the best way to fight back.

Most consumers know you can't please everyone. If you read the reviews of your favorite restaurant, bookstore, or watering hole, you will undoubtedly see at least one post that describes it in a way that bears little resemblance to the business you love.

But if bad reviews are the only ones that people see, they will have an outsized impact. Most of your customers probably have wonderful things to say about your business. Do not hesitate to ask them to share their thoughts with the world by posting positive feedback in a brief review. Provide them with instructions and links to make it as easy for them as possible.

Contact your Bodman attorney, or Jill M. Miller or Jack Carver of [Bodman's Business Practice Group](#), for more information. Bodman may not be able to respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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