



Protecting Your Company from Online Defamation Liability

THE INTERNET, through websites and social media, connects us in unprecedented ways. Millions of people can be reached regardless of their physical location. Companies instantly become “publishers” by sharing their latest news and product information, recognizing employees, promoting community service activities, and much more. Information is communicated with a larger audience faster and easier than ever. But this “connection” can also increase a company’s risk.

When content is posted on a website, blog, or social media site like Facebook or Twitter, it is considered “written.” As such, any defamatory content could be potentially libelous and open to a lawsuit. So, what constitutes libel? It is written content that contains a false statement that is stated as a fact and causes injury or harm to another entity. Statements of opinion, although traditionally exempt, could be interpreted as defamation in certain circumstances, especially if a “reasonable person” would believe the statement was true.

For example, let’s say a company posted this statement about its competitor to Facebook “Our competitor tests its products on animals” and it is seen

by 20,000 people. If it is a true statement and the competitor does engage in animal testing, then it is a statement of fact and is not defamatory or actionable. However, if the same statement is posted and seen by the same number of people and the competitor does NOT test on animals, then it could be libelous. Especially if the statement causes people to boycott the competitor’s products and protest their operations, which causes a decline in sales and negative media attention that damages the competitor’s reputation.

Although in its infancy, case law is emerging that addresses online defamation. With the onset of fake news and highly personal attacks, the damage to an individual’s or company’s reputation may be actionable. The Communications Decency Act is a federal law that protects Internet Service Providers and website hosts by exempting them from most defamation claims. When pursuing a claim of defamation, the individual who wrote the libelous content is named in the lawsuit. In other words, the lawsuit may name your company or a specific employee in the case of an alleged defamation claim.

One of the few published online defamation cases, *Zerlie Charles v. Vickie D. Vest*, 72A01-1706-SC-01252, sets a substantial precedent as the verdict

extends “libel and defamation liability standards that apply to traditional media” to social media users as well. The defamation case awarded \$6,000 in damages—the maximum allowed in Scott Superior Small Claims Court—to Charles after the judge’s ruling that Charles was defamed by Vest on Facebook.

Another private defamation case in Asheville, North Carolina, resulted in a \$500,000 settlement after Jacquelyn Hammond posted on Facebook content that implied that Davyne Dial “got drunk and caused the death of her child.” That statement was proved false and resulted in an unprecedented settlement that included actual damages of \$250,000 and punitive damages of \$250,000. The case was also a strong public statement about the harm created by online “uncivil behavior.”

If your company is active in online forums, it is important to set up safeguards to protect it and its employees from claims of defamation. Here are some tips:

Create Company Social Media Standards. This should outline the company’s rules of engagement for employees on all online forums—both during work hours and off-hours. Ask your attorney to review it and then publish and distribute it to all employees.

Institute Oversight for Social Media Operations. Consider adding a “checks and balances” system so that more than one employee is responsible for checking social media posts/content to catch and correct anything that might be potentially risky.

Play Well with Others. Although it may be tempting, avoid disparaging remarks about your competition and don’t fall into a trap of engaging with a “troll” that is posting derogatory content about your company online.

Correct Mistakes Immediately. If your company publishes content it shouldn’t, print a correction or retraction as soon as possible.

Review Commercial Insurance Coverage. A company’s business liability policy may contain a section entitled “Employment-related Practices Liability Endorsement,” which could include language that protects the business from employees’ wrongful acts, such as “libel, slander, invasion of privacy, defamation or humiliation.” Meet with your insurance broker/advisor to understand exactly what your company policy does and does not cover. Ask if your commercial policy protects your company and its employees from claims of defamation and also explore what other protections you could include.

Online content and engagement are excellent ways to share your company’s brand and message with a huge audience. It can yield brand awareness, exposure to new customers, showcase community involvement, and many other positive outcomes. However, it is important to protect your company from the threat of litigation. Ensure every post is factual and accurate. Consider implementing social media standards that outline the rules for your company’s strategy. Finally, review your commercial insurance policy to ensure the right coverages are in place. If you have questions about how to best protect yourself and your company online, contact Lyons Companies today at riskmanagement@lyonsinsurance.com or 800.456.5508. ■



Timothy J. Lyons
Vice President, Client Services
Lyons Companies

Great advice. Great people.



Cover & Rossiter

Certified Public Accountants

Proud to be Recognized Again!

Celebrating 80 years of Providing Tax, Audit, Trust,
and Accounting Services in Delaware.



*Directors Peter Kennedy, Marie Holliday,
Loretta Manning, Jennifer Pacilli, and Eric Williams*

Photo by Dick Dubroff of Final Focus Photography



MARVIN S. GILMAN
**SUPERSTARS
IN BUSINESS**

*2018 & 2012 Superstars in Business Winner
2017 & 2011 Award of Excellence Winner*

www.CoverRossiter.com
(302) 656-6632



/CoverRossiter



@CoverRossiter

Little Falls Centre One
2711 Centerville Rd.,
Suite 100
Wilmington, DE 19808



DELAWARE STATE CHAMBER OF COMMERCE

Evening Mixer on the Kalmar Nyckel

Thursday, August 29
5:30 - 7:30 pm

1 Delaware St.
New Castle, DE 19720

Join us for a fun, dockside networking
reception on the Kalmar Nyckel
in historic Old New Castle.

\$35 Members / \$45 Future Members

Hors d'oeuvres and open bar

Due to limited space on the boat, no walk-ins or refunds are permitted

Presented by:



Gold sponsor: BEACON HOSPITALITY

Silver Sponsors:



Delaware Council
on Gambling
Problems, Inc.



*Sponsors as of 6/25/19

**Register online
at www.DSCC.com**