

Social Media Lawyer

Managing Your Online Reputation: New Tools, Old Rules

by Jeffrey C. O'Brien, Attorney at Law, Mansfield Tanick & Cohen, P.A.

What in the world does “unicorn meat” have to do with managing the online reputation of you and/or your business? Plenty, so read on.

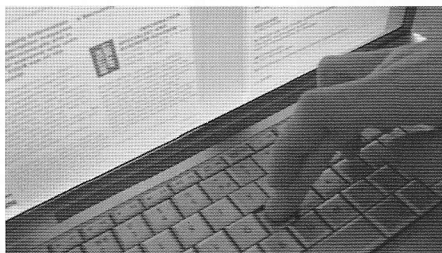
In the last issue of *CIC Midwest News*, I wrote about the importance of the wide array of social media tools to promote your business. As an attorney, however, I would be remiss if I did not follow that article up with another regarding the pitfalls that can result when feathers are ruffled online.

There are limits to what one may say online, and two recent news headlines reflect that fact. The first case involves the National Labor Relations Board (NLRB), which issued a complaint against American Medical Response of Connecticut, Inc., in October 2010, alleging that the ambulance service company illegally terminated an employee who posted negative remarks about her supervisor on her personal Facebook page. The issue? While the company's social media policy prohibited the employee's postings, Section 7 of the National Labor Relations Act provides that “employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” The NLRB decided that “concerted activities” included an employee's right post remarks on his or her Facebook page, notwithstanding the company's social media policy which states otherwise.

The second case is a more traditional defamation case involving rocker Courtney Love, who is the defendant in a pending suit brought by a fashion designer based upon unflattering comments made by Love via her Twitter account. The lawsuit against Love is a fine example of how the new social media tools are still governed by

traditional legal rules (in this case, the law of defamation), and if one tweets or posts something that negatively affects another's reputation, legal action may ensue.

In other instances, especially in the CIC context, managing your or your company's reputation and what is said about you online is not as clear cut. What do you do if residents of your communities post negative statements about your company on a social media site? What if negative information is shared regarding a board member in one of your communities? Should you immediately engage an attorney and proceed with a cease-and-desist

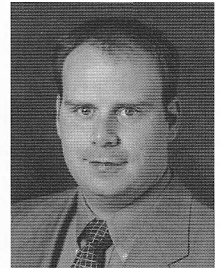


letter? That's the common first step in legal action for defamatory statements. In these situations, a bit of creative thinking is in order, rather than resorting in a knee-jerk fashion to traditional methods of enforcement.

Which brings me to canned unicorn meat. Several years ago ThinkGeek, a Web site devoted to selling gadgets, nerdy T-shirts and brainy games, decided to sell some fake products for April Fool's Day on its Web sites. Now its sale is a yearly tradition. 2010's offering was “Canned Unicorn Meat,” which was billed as “an excellent source of sparkles.” ThinkGeek chose as the tagline for its nonexistent delicacy “Unicorn, the New White Meat.”

Apparently, the National Pork Board, an organization devoted to pork and related businesses and farms, did not find the product ad as funny as the rest of us. Instead, it saw a threat to the national brand of pork, otherwise known as “the

other white meat.” So the organization engaged its large, national outside law firm to send ThinkGeek a cease-and-desist letter, which it did – twelve pages in total.



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Not surprisingly, the cease-and-desist letter was not only ignored – if you go to ThinkGeek's website, the unicorn meat ad is still there – it was lampooned in a blog post entitled “The Best Cease and Desist Letter We've Ever Received.” The whole episode resulted in negative publicity for the National Pork Board and its attorneys (who shall remain nameless in this article for fear of them sending another letter).

I use the unicorn meat story as a humorous way of advising companies that there are likely better alternatives to an online epithet than legal action. Some experts advocate for filling cyberspace with strategically worded online posts containing positive information about your company (in order to push the negative statements onto later pages of Google searches). While others suggest that a strong customer service presence online (one that monitors negative statements about a company and intercedes to quickly address the complaint) is the best option.

For management companies involved in CICs, the new world of social media is inevitably going to create a new set of headaches when it comes to resident relations. Nonetheless, with a proper strategy for responding, these issues can be handled effectively and efficiently. ■

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