

Reputation Protection on Social Media A Company's Guide to Responding to a Reputational Attack

Untrue comments on Twitter, Facebook or other social media, whether made deliberately (sometimes maliciously), or carelessly as to the truth, can inflict serious and long-lasting damage on a brand.

Damaging comments can spread fast on social media and reach a wide audience very quickly. It's therefore important not to delay in taking action to defend a brand and mitigate any damage.

What can you do to protect your company's reputation?

If the offending comments made are 'defamatory', several options may be open to you. A comment is defamatory of a company if it is untrue and causes, or is likely to cause, it to suffer serious harm in the form of serious financial loss.

"Defamation" is an umbrella term covering both libel (a statement in a permanent form, such as in writing or broadcasting) and slander (a more transient form, such as spoken words).

If you believe your company has been defamed online, before any action is taken, it's important to be aware of your options:

Contact the Author

Informally, the author of the defamatory comment could be contacted privately via direct message, and a request be made for the removal of the comment. This option can be effective however it carries risk that you say something prejudicial to your position or the author makes the private message public. Depending upon what is said in the message, this may be particularly embarrassing.

It is generally recommended therefore that initial contact with the author is by way of a more formal, robust cease and desist letter drafted by a solicitor specialising in the law of Defamation. The initial letter is required by the court's Civil Procedure Rules to be in a specific format, containing relevant information, under what is known as the 'Pre-action Protocol for Defamation'.

The initial letter will set out not only the legal basis for requesting a takedown of the defamatory comment, but also the remedies you are seeking from the author which typically include not online a takedown and retraction of the statement but also an undertaking not to repeat the same or similar comments. An apology is generally not available as a remedy from the court at trial, however it can be requested from the other side in the initial letter. Careful consideration of how the letter is drafted is therefore required.

If the author fails to comply with the Pre-action Protocol letter, legal proceedings can then be issued at court.

Report the Comment

If you cannot identify the author of the comment, if they have chosen to remain anonymous, for example, the offending comment could be reported directly to the social media platform. If the comment violates the platform's terms of use, a removal may then follow. In recent years, reporting of this kind has become more common as platforms do not wish to be seen to facilitate online abuse.

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Legal Action

If the above steps are unsuccessful in resolving the dispute, a claim may be pursued through the courts seeking, as appropriate: financial compensation; an injunction; and the court ordered removal of the defamatory content.

It's important to note that there is a short one-year period in which a claim may be issued at court, so delay is not an option in such claims.

Additional/Alternative Claims

In the commercial context it may also be possible to consider alternative or additional claims to Defamation, including:

- Passing Off - the attempt to pass-off one party's goods/services as those of another, which causes damage to the original party's reputation and trade; and
- Malicious Falsehood - commonly referred to as 'Trade Libel' and similar to a Defamation claim, it is generally available where a reputational attack is made, normally by a competitor, with the deliberate intention of causing damage.

The facts of each case will determine the most appropriate claim to bring and remedy to seek.

First Step

If your company is the subject of damaging defamatory statements, as a first step, it is recommended that urgent legal advice is sought from a lawyer experienced in Defamation.

Child & Child can help from the outset: providing strategic legal advice; drafting relevant correspondence; and representing your company in any court proceedings and settlement negotiations.

William Charlesworth is a dispute resolution lawyer at Child & Child, specialising in Defamation. William has experience acting in complex defamation claims for private individuals, public figures and companies.

The law relating to Defamation is complex and constantly developing. The purpose of this note is to assist in providing an overall understanding of the legal context within which such claims operate. This note is not intended as specific legal advice. Each case is judged on its own merits and, against its own particular set of facts.

If you have any questions, or you believe you require further guidance, then please contact William Charlesworth at williamcharlesworth@childandchild.co.uk or on +44 (0) 207 201 1889.