

Crain's Chicago Features Article by Benesch Partner Kate Watson Moss on Protecting Businesses' Reputations and Brands from Defamation

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Key Strategies for Protecting Your Reputation and Brand from Defamation

Defamation risk for businesses has never been higher. Today, most consumers obtain information from digital sources. Once information is published online, it is effectively permanent - indexed by search engines, cached by web archives and recirculated across social media platforms indefinitely.

The emergence of large language models (LLMs) has compounded this problem. LLMs are trained on vast corpora of online content, meaning false or defamatory statements about a business can be absorbed into AI systems and reproduced long after the original publication has been addressed or retracted.

In light of these realities, businesses should take a proactive approach to protecting their reputations and brands. Here are five key considerations for businesses and counsel to keep at the forefront of any reputation-management and defamation-response strategy:

1. Know your pain points before publication.

Not all negative content poses the same level of risk. Some publications will have little practical impact, while others can cause significant disruption to operations, customer relationships and revenue.

The critical first step is to identify, in advance, which topics and issues are most likely to cause harm. This requires the business to assess vulnerabilities, including product claims, competitive positioning, key personnel, regulatory history and other areas where a false statement could resonate with customers, investors or regulators.

Context matters. A claim that may be dismissed by a sophisticated audience could cause significant alarm among consumers or other stakeholders unfamiliar with the issue.

2. Put a strong monitoring protocol into place.

A robust monitoring protocol is essential. Monitoring should be built around targeted keywords tied to the topics most likely to cause harm and focused on the forums where damaging content is most likely to gain traction.

Designate personnel responsible for reviewing alerts in real time. Businesses should also establish a rapid-response task force that can mobilize quickly when monitoring identifies a publication warranting escalation.

3. Focus on the impact of publications, not their content.

When confronted with a false or misleading publication, businesses often focus too heavily on the content of the statement itself. The more immediate question is whether the publication is causing real, tangible harm.

If the statement is false and causing harm, the business need not resolve the legal question of whether it is technically “defamatory” before acting to protect itself. That assessment should instead inform the next step: engaging counsel quickly.

4. Loop in counsel quickly.

Early legal involvement helps ensure that the business’s response is both timely and strategically sound.

Counsel can help assess response strategy, disclosure obligations, downstream litigation risk, evidence preservation and publisher communications. When a potentially defamatory publication surfaces, a few hours can make an enormous difference.

5. Take control of your own narrative.

If a false narrative begins to proliferate, businesses must respond affirmatively and take control of the narrative. The worst course of action is to assume it will blow over.

One effective tool is to publish a direct, substantive rebuttal through a press release, a dedicated section of the company’s website or both. A publisher who continues to disseminate a false statement after receiving an evidence-backed rebuttal is in a significantly weaker position to argue that it acted without actual malice.

Finally, businesses should also leverage information from neutral third parties and independent experts.

By keeping these five considerations in mind, businesses can be more prepared to identify reputational threats early, respond effectively and protect their brands in a fast-moving information environment.

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