CLIENT ALERTS & INSIGHTS

Key Considerations for Businesses facing Defamation Issues: Strategies for Protecting Your Reputation and Brand

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Defamation risk for businesses has never been higher. Even five years ago, unfavorable press could be expected to fade from public memory as the news cycle moved on. That assumption no longer holds. 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 in ways that businesses and their counsel are only beginning to appreciate. LLMs are trained on vast corpora of online content, meaning that false or defamatory statements about a business can be absorbed into AI systems and reproduced in responses to user queries long after the original publication has been addressed or retracted. A single defamatory blog post or review can thus metastasize, not only persisting in its original form, but also by being synthesized and redistributed through AI-generated content at a scale that was unimaginable just a few years ago.

In light of these realities, it is more important than ever for businesses to take a proactive approach to protecting their reputations and brands. Waiting for a crisis to develop before responding is a strategy that virtually guarantees avoidable harm. This article identifies five key considerations for businesses and their counsel to keep at the forefront of any reputation-management and defamation-response strategy.

1. Know your pain points before publication

The volume of information about any given business that is available online is larger than it has ever been. Some of that content will be positive, some neutral, and some negative. 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 for any business is to identify, in advance, which topics and issues are most likely to cause the greatest harm. This requires a clear-eyed assessment of the business's vulnerabilities-its product claims, competitive positioning, key personnel, regulatory history, and any other areas where a false statement could resonate with customers, investors, or regulators.

Context matters. If a business markets to an extremely sophisticated, knowledgeable, or specialized clientele, a false statement that is facially outlandish may be quickly dismissed without material impact. Consider, for example, a blogger who publishes a post accusing a medical device of malfunctioning in a way that is physiologically impossible. Surgeons who routinely install the device will recognize the accusation as baseless, and the post is unlikely to influence their purchasing decisions. By contrast, the same false claim directed at a consumer audience unfamiliar with the device's mechanics could generate significant alarm.

Equally important is understanding which forums and platforms present the greatest risk. For businesses operating in the B2B space, publications on business-focused platforms-trade journals, industry blogs, and professional networking sites-are likely to be more harmful than posts on general consumer forums. Conversely, for consumer-facing businesses, traditional and mainstream media outlets, consumer review sites, and social media platforms may pose a far greater threat than niche industry publications.

Businesses that identify these vulnerabilities in advance and develop prepared responses will be positioned to react far more quickly when a threat materializes. Practical steps include compiling evidence that refutes anticipated false claims of particular sensitivity, and drafting template responses to publishers on topics the business expects to become contentious. The goal is not to predict every possible attack, but to ensure that the organization is not starting from scratch when the most foreseeable ones arise.

2. Put a strong monitoring protocol into place

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Even the most thorough advance preparation is of limited value if a business does not learn about a harmful publication until the damage has already been done. A robust, systematic monitoring protocol is essential.

The foundation of an effective monitoring program is a carefully curated set of keywords and search terms tied to the topics most likely to cause harm-the very pain points identified in the first step. Monitoring should be targeted at the forums and platforms where damaging content is most likely to appear and to gain traction. Casting too wide a net risks burying actionable alerts in noise; too narrow a scope risks missing critical publications.

Once the monitoring framework is in place, it is imperative to designate specific personnel who are responsible for reviewing alerts in real time. Monitoring tools are only as effective as the people reviewing their output. Delays in human review can mean the difference between catching a harmful publication when it has been viewed by hundreds and discovering it after it has been viewed by hundreds of thousands.

A range of companies and professionals specialize in online reputation monitoring, and new AI-assisted tools have become available that can streamline the process significantly-automating keyword tracking, flagging anomalous spikes in mentions, and providing real-time dashboards. These resources are well worth evaluating, particularly for businesses with broad digital footprints.

Finally, businesses should establish a rapid-response task force that can mobilize quickly when monitoring identifies a publication warranting escalation. The task force should include relevant subject-matter experts, communications personnel, and-critically-legal counsel. The protocols for escalation and response should be defined in advance so that the team can act decisively when time is of the essence.

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

When confronted with a false or misleading publication, many businesses make the mistake of focusing almost exclusively on the content of the statement itself-parsing its language, debating whether it meets the legal definition of defamation, and agonizing over its precise wording. While legal analysis of the statement's content is certainly important, it is a task best left to counsel. Whether a particular statement constitutes actionable defamation is a complex and nuanced legal question that depends on jurisdiction-specific standards, the distinction between fact and opinion, and a host of contextual factors.

For the business itself, the more immediately important question is whether the publication is causing real, tangible harm. If the statement is false and is causing harm, that alone is sufficient to justify taking affirmative steps, including retaining counsel. The business need not resolve the legal question of whether the statement is technically "defamatory" before acting to protect itself.

Practically, this means tracking the downstream effects of the publication with specificity and rigor. Is the publication causing customers to cancel orders or decline to renew contracts? Are competitors citing the publication to gain a competitive advantage? Is it affecting the company's relationships with investors, partners, or regulators? Are employees raising concerns? These are the questions that should drive the business's response-and the answers should be documented meticulously.

Businesses should also monitor how the public is reacting to the statements online. Comments, shares, consumer reviews referencing the publication, and social media discourse all provide valuable evidence of the statement's real-world impact. In defamation litigation, courts evaluate the "ordinary meaning" of a statement-that is, how an ordinary reader or consumer would understand it. Online comments and consumer feedback provide compelling, contemporaneous evidence of ordinary meaning that can be highly persuasive at trial.

4. Loop in counsel quickly

One of the most common-and most costly-mistakes businesses make when confronted with a potentially defamatory publication is failing to engage legal counsel early enough. In the midst of a reputational crisis, internal teams are understandably focused on "putting out fires": managing customer inquiries, fielding media calls, and attempting to contain the spread of the false information. In that rush, legal consultation is often deferred until the situation has already escalated significantly.

This is a critical error. Early involvement of counsel provides a range of benefits that can materially affect the outcome:

Legal implications of action and inaction. Counsel can advise on the legal consequences of various response strategies-including, importantly, the risks of not responding. In some circumstances, silence can be construed as acquiescence to the truth of the false statement, or it can allow the statute of limitations on a defamation claim to begin running without the business having taken steps to mitigate its damages.

Disclosure obligations. For publicly traded companies or businesses subject to regulatory oversight, false publications may trigger disclosure obligations to shareholders, regulators, or other stakeholders. Counsel can help navigate these requirements to ensure compliance while minimizing unnecessary exposure.

Downstream litigation risk. A defamatory publication can give rise to a cascade of legal issues beyond the defamation itself-including breach-of-contract claims from customers who relied on the false information, securities fraud inquiries, or regulatory investigations. Counsel can identify and manage these risks from the outset.

Evidence preservation. In the digital environment, content can be edited, deleted, or moved with remarkable speed. Counsel can ensure that critical evidence-the publication itself, metadata, screenshots, and records of dissemination-is identified and preserved before it disappears.

Publisher communications. Counsel is well positioned to manage communications with publishers and their legal representatives, ensuring that correspondence is appropriately calibrated, legally sound, and does not inadvertently waive privileges or create admissions.

When a potentially defamatory publication surfaces, a few hours can make an enormous difference. The earlier counsel is engaged, the more options the business retains and the more effectively it can protect its interests.

5. Take control of your own narrative

If a false narrative begins to proliferate, the worst course of action is to assume it will blow over. In today's information environment, it almost certainly will not. Businesses must be prepared to respond affirmatively and take control of the narrative.

One of the most effective tools available is to publish a direct, substantive rebuttal-whether through a press release, a dedicated section of the company's website, or both. When a false story is circulating, customers, investors, and other stakeholders will actively seek out information. The business's own account of the facts should be prominently available and easy to find. If the only information available online is the false narrative, that narrative becomes the default truth in the minds of those searching for answers.

A public rebuttal serves an additional, often overlooked, legal function: it creates evidence relevant to a potential actual malice analysis. Under the well-established framework of New York Times Co. v. Sullivan and its progeny, a defamation plaintiff who qualifies as a public figure must demonstrate that the defendant published the false statement with knowledge of its falsity or with reckless disregard for the truth. A publisher who continues to disseminate a false statement after the subject of that statement has published a detailed, evidence-backed rebuttal is in a significantly weaker position to argue that it acted without actual malice. The rebuttal thus serves as both a corrective measure and a litigation tool.

Counsel plays a key role in this process as well. An attorney can formally direct a publisher to the business's rebuttal and any supporting materials, ensuring that the publisher is on notice of the full body of available information-not merely whatever pre-conceived narrative drove the original publication.

Finally, businesses should consider leveraging information from neutral third parties and independent experts. Statements from industry authorities, scientific experts, regulatory agencies, or other credible, disinterested sources can lend significant credibility to the business's position and ensure that accurate information is readily available to anyone seeking it. Third-party validation is particularly powerful in contexts where the business's own statements may be viewed with skepticism.

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In an era in which information is permanent, instantly accessible, and increasingly amplified by artificial intelligence, the reputational risks facing businesses are both greater and more complex than at any previous point. A false statement that might once have faded from public consciousness in a matter of days can now persist indefinitely-embedded in search results, archived on third-party sites, and woven into the training data of large language models that will reproduce it for years to come.

Businesses that approach these risks proactively-by identifying their vulnerabilities, establishing robust monitoring protocols, focusing on measurable harm rather than legal technicalities, engaging counsel at the earliest opportunity, and asserting control over their own narrative-will be far better positioned to protect their reputations and mitigate the damage when false statements inevitably arise.

The five considerations outlined in this article are not merely best practices for crisis management; they are essential components of a sound, forward-looking corporate governance strategy. The businesses that will weather reputational crises most effectively are those that have done the work in advance: they know their pain points, they are monitoring the landscape, they have counsel on speed dial, and they are prepared to respond swiftly and decisively. In defamation matters, as in so many areas of business and law, the cost of delay almost always exceeds the cost of preparation.