

CYBERGRIPING: CAN YOU PREVENT CUSTOMER DISSATISFACTION WEBSITES?

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The use of the Internet has expanded greatly over the last several years to the benefit of most businesses. However, the Internet has also provided dissatisfied customers with a highly visible forum to air their complaints. These vocal consumers have used the Internet and the protections afforded to them under the First Amendment to create and maintain "gripe" or "complaint" websites to make their dissatisfaction known to the world. Companies such as Wal-Mart, Lucent and others have been the objects of gripe sites, and your company could be the next target of a dissatisfied customer.

The Typical Content Of A Gripe Site

Customer complaint websites generally set forth a customer's negative experience with a company or its product and often invite other dissatisfied consumers to post their negative experiences, creating a "community" of dissatisfied customers. Such negative websites are potentially devastating to businesses, and the global reach of the Internet only magnifies their impact.

The potential damage such a gripe site can cause raises the question of whether there is any action which businesses can take to stop

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the dissatisfied consumer from posting complaint sites on the Internet. In general, the First Amendment protects websites where customers post complaints about a company or its products, and as a result customers are free to spend hours complaining (unless the website is defamatory).

The "Misuse" of Your Company's Tradename or Trademark

To attract a wide audience, dissatisfied customers maintaining complaint



sites on the Internet will often post their website at a domain name that is identical to the name of the company or product which is the object of their complaint. For example, a customer who has had a negative experience with Mikasa may seek to post a complaint site at "mikasa.com." The effect of posting a complaint site about a particular company at a domain name that is identical to that company's name or trademark is to draw people to the complaint site, regardless of whether or not the audience is interested in the complaint site or the company's website. However, while a customer may be free to criticize, that individual does not need to pass himself off as the "target" company to voice that criticism.

Thus, depending on the facts of a particular case, businesses may be able to take legal action to prevent a dissatisfied customer from posting a complaint site at a domain name that is identical to a company's name or trademark. In some circumstances, maintaining a complaint site using such an identical domain name may constitute trademark infringement or trademark dilution.

In other circumstances, a company may be able to use the Anti-Cybersquatting Consumer

Protection Act (ACPA) or the Uniform Domain Name Dispute Resolution Policy (UDRP) to prevent a dissatisfied customer from posting a complaint site at a domain name that is identical to a company's name or trademark. However, the state of the law as it relates to customer complaint sites is particularly unsettled under the UDRP. For



example, in one case, a panel ordered the transfer of a domain where an individual registered "montyroberts.net" as a domain name and then posted a website at that domain name that was critical of the famous horse trainer. In that panel's eyes, the individual had the right to criticize Mr. Roberts but did not have the right to identify himself or his website as associated with Mr. Roberts. In another case, a panel refused to order the transfer of the domain name bridgestone-firestone.com where the owner maintained a website critical of Bridgestone-Firestone. According to this panel, the website was a legitimate use of the trade names of the companies.

It is even more difficult to prevent a dissatisfied customer from posting a complaint site at a domain name like "lenoxsucks.com". Although there are panels which have ordered the termination of such websites, the majority position is that these domain names are not confusingly similar or identical to a company's name or trademark because no consumer is going to believe that a company's official website can be found at a domain name that essentially consists of "company name+sucks.com." Thus, so long as the "sucks" domain names have not been offered for sale and are not being used to divert users to a commercial website, most panels deciding the issue under the UDRP have allowed individuals to keep domain names such as these. Further, a website maintained at the domain name "enronsucks.com" by its

former employees would likely be upheld as a legitimate use of the trade name "Enron."

All is Not Lost: Your Company Can Protect Itself

So far, the law has protected the right of complaining customers to establish websites using the trade name or trademarks of the target company, and that result is unlikely to change in the future. Your company can protect itself by registering variants of your company's trade name and trademarks that might be attractive to a dissatisfied customer. Top level domain name domains (.com, .net, .org) should be reviewed for possible registration of domain name variants. The cost of maintaining numerous domain names is not necessarily minimal, but you may determine that the benefit of avoiding the negative publicity of a dissatisfied customer's website incorporating your company's name or trademark outweighs the cost.

While it is clear that customer complaint sites can have a negative impact on a business, given the wide range of legal issues that such websites raise, and the fact that the law is somewhat unsettled in this area, we recommend consulting legal counsel before you take any action against customer complaint sites, particularly since legal action could result in negative publicity for your business.

If you have any questions regarding intellectual property issues address them to Gottlieb, Rackman & Reisman, P.C. by fax at (212) 684-3999 or e-mail at info@grr.com. You may also request a copy of our Primer by calling (212) 684-3900, or visit our web site www.grr.com.

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