



Social Media Bullying

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Feature Article

Picture this scenario:

Silverman Motors has a psychopath customer who has what he perceives as a bad experience. Mr. Psychopath decides to create a Facebook page to voice his displeasure with the dealership. Unfortunately the law has not caught up with the ability of individuals to quickly spread defamatory messages as depicted in this example. At this juncture, even if a statement is knowingly false, most jurisdictions do not allow any type of prospective PRELIMINARY injunction against the content of future speech until a full and final trial on the merits. Some 1st Amendment fanatics would even argue that such an injunction is still not allowed even after a full trial that determines this speech is false and defamatory (and even made with malice to injure). The Supreme Court was set to resolve this issue in 2005 – when confronted with the decision of a California Court giving Johnny Cochrane a post-trial permanent injunction against a disgruntled former client who chose to engage in a campaign of false, defamatory and harassing statements. Attorney Cochrane passed away in the midst of the appeal and we were deprived of a substantive decision on the merits.

With the infiltration of Social Media into everyday life, the ability and opportunity to abuse the protections afforded to protected speech have never been greater. Facebook, Twitter and other sites provide access to an unprecedented audience for anyone with access to the Internet. In addition, the access to this audience is not buffered by any filter, editor, publisher or producer that usually exist for reporters that typically have access to a wide audience. Additionally, the time between when a message is sent and when it is received is not delayed by



any production time or printing process. Rather, it is instantaneous - a soap-box with immediate access to the world.

Unless the perpetrator fears a resulting finding of damages (and many social media junkies do NOT) then a victim of a social media defamation needs to get very creative in responding to those that wish to spread lies that will irreversibly harm their reputation.

Many businesses (dealers included) are just beginning to learn about the benefits and power of social media and Internet based communications. The focus for most dealers is usually on the marketing side – and learning to adjust and capitalize on how the vast majority of customers now use the Internet for research and analysis before buying or leasing a new car.

Unfortunately, some businesses get schooled on the power of social media on a completely different front - after they are the subject of a negative message published on a social media site. The power individuals have by using social media can be easily abused and dealers can find themselves on the short end of Internet bullying by tech-savvy adversaries (otherwise known as unhappy customers). These disgruntled customers can quickly establish followers with an angry mob mentality that is incredibly difficult to diffuse. The result is a two-headed monster type problem.

First are the public relations concerns. With the goal being to maintain “customers for life” and build on that foundation with conquests, a negative story spread in a dealer’s market can do serious damage. Every dealer is concerned by this problem (no matter how it originates), and the efforts necessary to ensure potential customers do not view your dealership as “tainted.”

Second is the leverage acquired by an unhappy customer. Most customer disputes can be resolved through some good-will accommodations. Some customers are a bit more unreasonable and become a dispute involving legal counsel. Then there are the small but growing number of disputes that evolve into the public relations concern described above. Those customers that are familiar with social media, are also acutely aware (and sometimes over-estimate) the impact of a negative publicity and use the threat of such a message as a negotiating tactic (rather than focusing on the substance, or lack of substance, of the issue that caused the dispute with the dealer).

Most people (and businesses) can quickly decide they want the benefits of that which the internet and social media provides - the ability to publish their message to an incredibly large audience of readers captivated by anything that can be spun as an interesting subject matter. However, everyone needs to recognize the burdens or responsibilities that must accompany such power. Misuse of social media can only exacerbate an age-old maxim best described by Mark Twain, “A lie can travel halfway around the world while the truth is putting on its shoes.”

Traditionally, a newspaper or magazine and thereafter television news station were the tools necessary to spread a message. Today, none of these media are necessary

to tap an incredibly large audience. Now, reporters are not the only people that need to understand the responsibility to fact check before publicizing a statement.

So, what crosses the line in terms of negative statements about others? What is the distinction between free speech and defamation? The answer can involve a complicated analysis – but usually comes down to a simple question, do the published statements contain false statements of fact that could harm your reputation in the eyes of the public? Anyone posting statements on the Internet needs to be very careful when they are critical of others. Simply labeling a statement as “opinion” does not automatically shield words with the 1st Amendment freedom of speech. If negative comments are presented as facts, or even if the context of a statement could be interpreted as a



presentation of facts, those facts better be accurate.

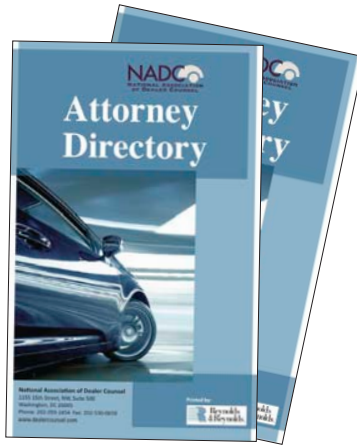
Most dealers have a formal process of follow-up phone calls and e-mails in place for ensuring that they maximize their scores on customer satisfaction surveys. But what happens when a disgruntled customer has a vendetta and “dinging” you on a survey isn’t enough. Edmunds, DealerRater, and Facebook are all examples of forums that never existed before. Before you are the

victim of a social media attack, you should have a policy in place from management describing how to handle such a situation. A quick overreaction by a salesperson publicizing a response online may quickly send a problem in the wrong direction.

The rules for customers apply equally to businesses that use the Internet for marketing and communications with the public. If dealers have a Facebook page and staff that communicates with their customer base through posts on Facebook, Twitter, or other social media sites, they need to be familiar with the law regarding defamation. Even those ignorant of the law tend to be careful about what they write in a letter. However, they should be most careful when sending electronic statements which last longer, and are more easily transmitted, recorded and shared. ■

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