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# Fighting Back Against Internet Defamation

The internet is a tempting forum for employees and competitors to get revenge by posting negative reviews. Many consumers read websites such as Yelp when choosing a businesses to patronize. We business-owners should understand this new phenomenon and deal with its repercussions, especially negative reviews.

In this article I discuss how to fight back against negative Yelp reviews and other forms of internet defamation. You fight online defamation using laws that prohibit trade libel and defamation.

### Trade Libel and Defamation

Before going to war, determine whether defamation actually occurred. Defamation is a false statement of fact that harms someone's reputation, which is published with fault. "Published with fault" means that the person making the statement acted through malice or negligence. Trade libel is defamation against the goods or services of a business.

There are two basic defenses to defamation:

1. The statement is true. Truth is an absolute defense to a defamation claim.
2. The statement is mere opinion. The law does not consider an "opinion" to be defamatory. To determine if a statement is opinion, courts ask whether the statement is an assertion of verifiable fact. An assertion of verifiable fact is not an opinion. For example, an ex-employee of a dentist might say that the dentist uses substandard and dangerous cleaning materials. One can prove whether this statement is true or not → therefore the statement is not an opinion → therefore you can sue for defamation.
  - o Note: Prefacing a defamation with, "I believe that..." or "It is my opinion that..." doesn't save the statement from being a defamation.

## How to Fight Back

*First*, directly contact the website where the defamatory statements are posted, e.g. Yelp. Demand that the website remove the comments. Sometimes this works, sometimes not, but it's worth a try.

*Second*, figure out who made the internet posts. You usually have suspicions about who the speaker is, even if he hides behind anonymous reviews on Yelp. Take action when you feel reasonably certain about the identity of the speaker. It is important that you move quickly to stop the speaker from doing more damage. In addition, most internet service providers do regular data dumps. Act quickly before you lose the evidence to permanent deletion.

- Note: If you're not reasonably certain as to the identity of the speaker, you can file a "Doe" complaint in court. A Doe complaint lists "John Doe" as the defendant. This starts the case, and gives you access to the discovery process in litigation (see below).

*Third*, send a cease & desist letter to the speaker. A cease & desist letter tells the speaker to take down the defamatory statements and stop posting new ones.

*Fourth*, if the cease & desist doesn't work, sue the speaker. Only sue, however, if the damages that you'll suffer from the defamation outweigh the costs of litigation. Don't step lightly into litigation because it wastes time, money, emotional energy and other resources.

One benefit of litigation is that you can use the discovery process to get more information. This is especially true if you filed a Doe complaint. Through discovery, you send subpoenas to Yelp, internet service providers, etc. Their responses to subpoena will give you proof of who did it. For example, if the speaker made the attack on Yelp, you subpoena Yelp for the speaker's IP address. Next, you subpoena the applicable Internet Service Provider and send it the speaker's IP address. The Internet Service Provider should respond with the identity of the speaker.

Lastly, don't sue Yelp. Interactive websites like Yelp and Facebook usually are not responsible for defamatory statements posted by their users.

## Handwriting

Handwriting [unlike typing on a computer] forces us to make an investment. The words are there on the page; we can't change them, except to scratch them out. It inclines us thus to compose the sentence in our heads first — and the sort of sentence you can compose and keep in your head is likely to be shorter and clearer than otherwise. Your readers will generally thank you.

That's one of the reasons the Beatles' songs were so memorable: they had to compose them in their heads. Neither Lennon nor McCartney could read or write music. So if they weren't finished a song by the end of a day, they had to remember it until the next. If they couldn't remember it, chances are it wasn't worth remembering. --Andrew Coyne



"Walk, bell—I gotta dance!"