

Your Company Sucks Dot Com: Taking Swipes at Gripe Sites

By Sarah Feingold

Introduction

Today, the Internet is an integral means to most individuals and businesses for obtaining and distributing information. The Web also provides anyone with access to an Internet connection an outlet to communicate opinions, both positive and negative, with a worldwide audience. While the average consumer may choose to voice concerns directly to a company representative, some publicize their complaints on dedicated Web sites. These complaint-driven forums are frequently known as “gripe sites” and can raise legal and public relations concerns to both the business and to in house counsel.

Gripe Sites

Generally, a gripe site is an independent Web site that criticizes and encourages others to criticize a specific company, product or service. These sites usually utilize a company’s trademark or trade name.

One of the earliest gripe site lawsuits concerned Bally Fitness health club (*Bally Total Fitness Holding Corp. v. Faber*, 29 F. Supp. 2d 1161 (S.D. Cal. 1998)). Andrew Faber operated a “BallySucks” Web site where he criticized the company and its health clubs. Faber’s site included language that the site was “unauthorized” and not a Bally official site. Faber did not receive revenue from the site.

Bally Fitness sued Faber for trademark infringement and trademark dilution, and in 1998 the federal District Court in California ruled for Faber. The court reasoned that “no reasonably prudent Internet user would believe that ‘ballysucks.com’ was an official Bally site or that it was sponsored by Bally.” Because Faber’s use of the Bally mark was not found to be commercial, Bally’s dilution claim failed as well. The court concluded that the Internet is “an efficient means for business to disseminate information, but it also affords critics of those businesses an equally efficient means of disseminating commentary.”

Legal Remedies

Depending on the content on the site, a company’s legal options to combat gripe sites range from civil litigation like trademark infringement to claims under the Anticybersquatting Consumer Protection Act and the Uniform Domain Name Dispute Policy.

According to the United States Patent and Trademark Office, “a trademark includes any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or

sold by others, and to indicate the source of the goods.” The owner of a registered trademark may bring a trademark infringement suit if the site’s unauthorized commercial use of a trademark is likely to confuse potential consumers.

The owner of a famous mark may also bring a claim under the Federal Trademark Dilution Act (FTDA). The purpose of the FTDA is to protect famous marks from subsequent uses that dilute the mark’s distinctive quality.

Along with civil litigation, a company may file a complaint under the Uniform Dispute Resolution Procedures (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN), the international Internet governance authority, to force recovery of the domain. A UDRP proceeding may be an appropriate action against the site owners who have registered a domain name that is confusingly similar to a company’s trademark or trade name.

Although Bally Fitness argued trademark infringement and trademark dilution, other companies have pursued false advertising claims and trade libel claims against a gripe site owner. Likewise, companies may also bring a claim under the Anticybersquatting Consumer Protection Act (ACPA) if the confusingly similar domain name was registered with the intent to profit from the site.

The Right to Gripe

As shown by the Bally’s court, the First Amendment of the U.S. Constitution offers some protection to gripe sites as forums of speech.

In fact, the right to gripe is likely the reason why many gripe sites exist today. In 2005, Forbes.com published a special report on the “Top Corporate Hate Web Sites” (http://www.forbes.com/2005/03/07/cx_cw_0308hate.html). Forbes examined more than 100 gripe sites and narrowed the field by examining “ease of use, frequency of updates, number of posts, hostility level (angrier is better), relevance, and entertainment value (Hey! Angry and funny!).” The article featured sites like WalMart-Blows.com, PayPalsucks.com and Verizon pathetic.com. The majority of the highlighted gripe sites are still up and running today.

Although many companies refrained from providing Forbes.com with an interview, when asked about UnitedPackageSmashers.com, United Parcel Services (UPS) explained that “[b]ecause we live in a free society, people have the right to their opinion, and we recognize that people will use the Internet to voice their opinion.”

UPS added that it believes “customers can get much more valuable and accurate information from [the official UPS] site.”

Gripe Sites and Your Client

Even though case law illustrates that courts are increasingly protecting gripe sites, the First Amendment does not protect trademark infringement or defamation.

As corporate counsel, before sending a cease and desist letter, commencing a lawsuit or filing a UDRP complaint, David Stimson, Chief Trademark Counsel of Eastman Kodak Company, suggests that you do your homework. Stimson recommends that counsel examine the site, the site’s popularity, the use of the company’s trademark or trade name, and the legitimacy of the complaints. According to Stimson:

[C]ompanies should look at the larger picture of the gripe site because even with a legitimate legal basis to remove a site, attempts to take down a gripe site frequently gives the complainer attention and credibility. A cease and desist letter

circulated on the Internet may encourage copycat sites or result in a “David versus Goliath” type of publicity that may bring negative press to a company.

In a borderline case, an attempt to remove a gripe site may result in more headaches than simply keeping an eye on the domain.

Conclusion

The Internet is a powerful information distribution tool for both individuals and companies. A company may use the Internet to obtain a customer base, and a customer may use the Internet as an outlet to voice an opinion. When faced with the issue of a gripe site, there are many legal options available to the griped-about company. Counsel must examine the gripe site’s characteristics in order to analyze the legal and business issues and best advise the client.

Sarah Feingold is general counsel for www.etsy.com, an online venue to buy and sell all things handmade.