



Randolph Walker

James Creekmore of the Creekmore Law Firm in Blacksburg

# Weigh Your Response Carefully

Although a customer might fire off an intemperate review on the spur of the moment—even as he's walking out your door into the parking lot—businesses don't have the same luxury. All responses must be carefully considered, says James Creekmore of the Creekmore Law Firm in Blacksburg ([creekmorelaw.com](http://creekmorelaw.com)).

"There's two different types of negative opinions that can be voiced online," he says. "The first is a mere casual negative reference to an individual's personal dealing. The business needs to be calculating in how it responds because that response may get more airplay than the original criticism. When it comes from the business itself, that does directly reflect on the business. An off-the-cuff negative comment by a customer may only reflect on that customer's demeanor or ability to handle something. But when the business demonstrates itself to be unprofessional, that's when the business gets hurt because that's a direct reflection on the business."

"Only if you see a real blow to the business itself, either the likelihood of other customers responding negatively, or something that adversely affects employees within the business, does the business need to step forward and really address it in one of a variety of ways."

Even in such cases, offline communication with the customer, combined with a simple response online, may be the best solution. But in rare instances, legal action may be required. "In another situation we did escalate it as far as a defamation action in court because the customer did inaccurately reflect the facts of the circumstance. The circumstance was videotaped. There was a security camera that absolutely refuted the customer's accounting of the events. In fact, that customer then retreated. We had the review taken off line."

"But one thing that happens is that even though you can secure that relief against that customer, that customer's friends and family can then reflect negatively on the company. 'Oh, big bad lawyer sent us a letter and took us to court, don't do business with this company again.' Even though you may be addressing that one problem, you may have a ripple effect that gives other people a platform to further that critique. So we advise clients, if you're going to go into court, make sure it's a situation that needs to be corrected."

*See Legal Front for more discussion of legal responses to defamatory reviews.*



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Paul Klockenbrink

## The Defaming Game >

### Executive Summary:

*Malicious online reviews—when to take action, when to let it them ride. Legal action is a last resort when companies fear serious damage from an online review.*

By Randolph Walker

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If an actual customer, using his real name, posts a factual review—good or bad—a business has little to object to. But what about a negative review by an anonymous user—especially one that appears ungrounded in fact or poses a real risk of damaging the business?

“There's actually a Virginia code section [8.01-407] that allows people that post on the internet to be identified,” says Paul Klockenbrink, chair of the Gentry Locke's Restaurant & Hospitality Law Group. This allows a review site to be subpoenaed—after other good faith efforts have failed—for the names of reviewers, so a defamation lawsuit can be filed.

In such a case, the plaintiff doesn't know whether the review was posted by a real

customer or is a malicious fake posted by a competitor. The plaintiff may suspect the review was completely fabricated. If they obtain the identity, they may discover that the reviewer had never been a customer.

The plaintiff might also discover that the reviewer can't be identified, says James Creekmore of the Creekmore Law Firm in Blacksburg. The reviewer may have created a bogus identity and posted from public library computer, or used a web service that masks his computer's

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IP address. "You may wind up commencing that lawsuit only to have it go nowhere only because you can't get the requisite information to find out who actually posted it," he says.



A case involving a Yelp review of a cleaning company is before the Virginia Supreme Court. The company is trying to force Yelp to reveal a reviewer's name. "So then the question is whether that code section is unconstitutional, because you have First Amendment rights," says Klockenbrink.


Some companies are suing reviewers knowing that they're probably not going to win. "The goal is not necessarily to win the



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