

Winning Without Fighting: Protecting Corporate Reputation in the Age of Online Megaphones

Brad Bakker

Baker, Donelson, Bearman, Caldwell & Berkowitz

211 Commerce Street, Suite 800

Nashville, Tennessee 37201

(615) 726-7325

Nature of the Problem

Vanderbilt University Employer Reviews

Company Attributes

- ★★★★☆ Compensation/Benefits
- ★★★★☆ Management
- ★★★★☆ Job Security/Advancement
- ★★★★☆ Job Culture
- ★★★★☆ Job Work/Life Balance

★★★★☆ Vanderbilt was a great experience

LIBRARY ASSISTANT II (Former Employee), Nashville, TN – June 8, 2013

Pros: working on a college campus Cons: no enough money

Working on Vanderbilt campus was great. The library was vast and always exciting. My co workers were great people.

Was this review helpful? [Yes](#) (1) – [No](#) – [Comment](#)

★★★★☆ A great place for a foreigner worker

Research Assistant (Former Employee), Nashville, TN – April 22, 2013

I learned a lot from the job, such as communication and research skills.

Was this review helpful? [Yes](#) – [No](#) – [Comment](#)

★★★★☆ Great place to work with great people

Supervisor, Materials Management (Current Employee), Nashville, TN – April 17, 2013

Pros: knowledge learned Cons: no room for advancement

A typical day at work for me is to ensure my team, of 20 staff members, perform their daily tasks and have inventory completed in a timely manner. I am in charge of timekeeping for all my staffs time and attendance.

I also am charged to help nursing management maintain their supply areas and run reports for usage in order for them to reduce inventory – [more...](#)

Was this review helpful? [Yes](#) – [No](#) – [Comment](#)

★★★★☆ Excellent employer, professional environment

Administrator, Emer. and Recon. General Surgery (Former Employee), Nashville, TN – April 11, 2013

Expected level of professionalism at all levels. Even with budget cuts and other constraints, you feel as if your work is for the greater good. Pay scale is a little bit lower than local competitors, but the benefits make up for it...and the overall environment is worth it all.

Was this review helpful? [Yes](#) – [No](#) – [Comment](#)



VANDERBILT

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About Vanderbilt University

Vanderbilt University is a private research university located in Nashville, Tennessee, United States. Founded in 1873, the university – [Read more](#)

Vanderbilt University Jobs

[Administrative Assistant III \(CE Strategic Planning Admin\)](#)
Nashville, TN

[Project Manager - HR Systems](#)
Nashville, TN

[Registered Nurse 2_VPNPP - Transplant & General Surgery_ 7p-7a](#)
Nashville, TN

[Registered Nurse 2_VPNPP,Transplant & General Surgery_ 7p-7a](#)
Nashville, TN

[Registered Nurse 2, PreOperative Evaluation Center](#)
Nashville, TN

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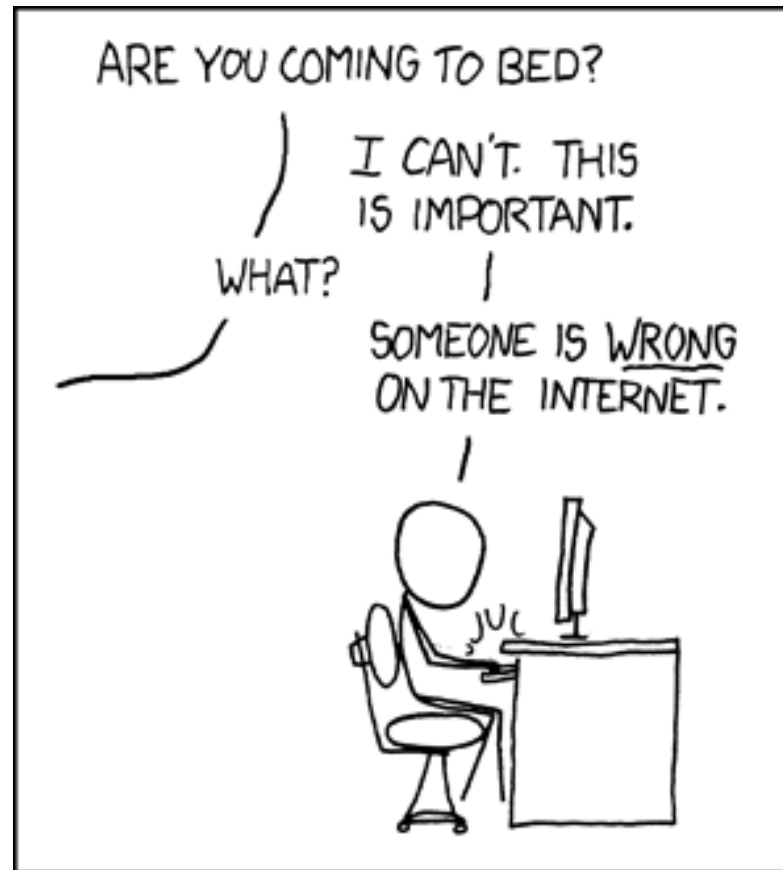
Why is this a Big Deal?

- 63% percent of employers polled in a recent survey report their competitors are trying to recruit their top people.
 - Right Management, which conducted the survey, noted that technology is driving the trend. “Social media and Internet job boards expose the human resources of every company to outside parties.”
- 56% of employers are using social media tools to communicate and build community with employees.
 - Are these efforts effective?

Overview

1. Problems Companies Have Encountered and Case Studies
2. How to Respond? Litigation and Alternatives
3. Proactive Steps to Address These Issues

Dealing with Internet Trolls



What do you want me to do? LEAVE?
Then they'll keep being wrong!

Investigation: “A Video Game Studio from H***”

“Seven-day work weeks. Sexist decisions. An office environment so toxic, employees are terrified to speak up for fear of losing their jobs.”

- On June 7, 2013, allegations about Trendy Entertainment’s President appeared on the Kotaku blog and quickly spread to business journals
 - Constant overwork, “crunch time” hours, and atmosphere
 - Fear of asking for vacation time, or even weekends off

Investigation: “A Video Game Studio from H***”

- Public berating of employees
- Allegations of discriminatory and sexist attitudes
 - Men = \$3,850 **starting** salary offer
 - Women = \$3,000 **non-negotiable** salary offer



Shake Up at “Studio from H***”

Not a simple article, but a massive expose:

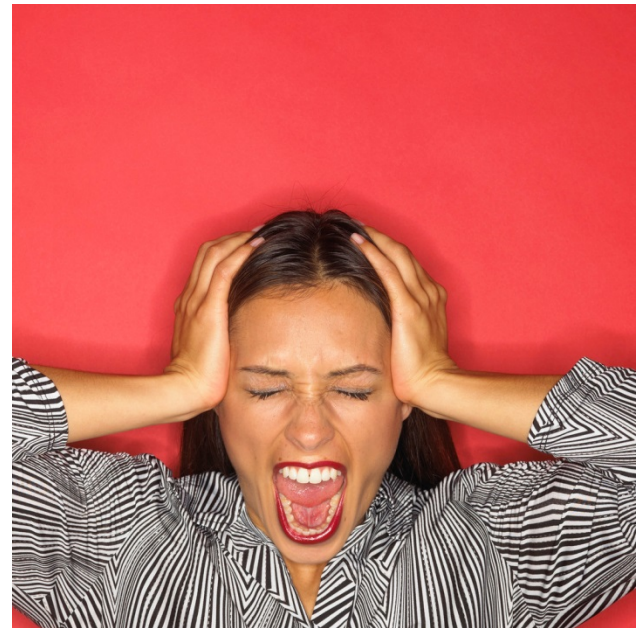
<http://kotaku.com/investigation-a-video-game-studio-from-hell-511872642>

Kotaku article noted: **“Anonymous employee reviews on GlassDoor echo everything I've heard.”**

- On June 8, 2013, Trendy was in damage control mode and
 - Although the President remained with the company “he will no longer supervise staff on their next game”
 - Investors stepped in to make changes

Shake Up at “Studio from H***”

- Employees then began publically asking consumers to not pass judgment on the company and the majority of its employees as a whole, solely based on the allegations against the President
- This article and derivatives of it are now in the top page of hits when Googling the company



What to Do When Your Organization Encounters a Post That Damages Your Reputation?

- Assess the situation:
 - Determine the potential damage and framework of the post
 - Decide if the subject matter is “protected” by the NLRB or the First Amendment and if you are required to act
 - Discover who posted the content
 - managing v. non-managing employee
 - Think about YOUR reputation before proceeding

How to Respond?

- Fight back directly? – may or may not necessarily be the best option
- Internet lawsuits regarding defamation are becoming more common and serious, but many still fail due to the 1st Amendment's protection
- Communications Decency Act – protects websites, such as Yelp.com, focused on providing public reviews of businesses from being victims of defamation suits due to material posted by third parties
- It's almost certain that filing a lawsuit will amplify the online statements and make more people aware of it!!!

What do defamation (libel or false light) lawsuits require in Tennessee?

- Libel requires (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement.
- False light requires (1) the false light in which the other was placed would be highly offensive to a reasonable person, and (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

What do defamation (libel or false light) lawsuits require in Tennessee?

- A significant difference between libel and false light invasion of privacy claims is that in a libel case, truth is a defense to the claim.



Tennessee Anti-SLAPP (Strategic Lawsuits Against Public Participation) Act of 1997

- Tenn. Code Ann. 4-21-1003. Immunity from SLAPP suits -- Exceptions -- Costs.
 - (a) Any person who in furtherance of such person's right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

Tennessee Anti-SLAPP (Strategic Lawsuits Against Public Participation) Act of 1997

(b) The immunity conferred by this section shall not attach if the person communicating such information:

(1) Knew the information to be false;

(2) Communicated information in reckless disregard of its falsity; or

(3) Acted negligently in failing to ascertain the falsity of the information if such information pertains to a person **or entity** other than a public figure.

(c) A person prevailing upon the defense of immunity provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

How to Respond? – Swartz v. Does

- 2008, Davidson County, Tennessee Case
- Three anonymous individuals created an online blog to “call out” a local couple who were politically active, actively engaged in real estate, managing rental properties and operating a half-way house
 - The blog, “Stop Swartz,” attacked and criticized the professional, personal and political aspects of the couple’s lives

How to Respond? – Swartz v. Does

- The couple subsequently filed a lawsuit for defamation and invasion of privacy
- After an arduous (and expensive) process the couple was able to obtain the identifications of those sought after
- How did the couple obtain such information?



How to Respond? – Swartz v. Does

- The court applied a five-part test to analyze and determine whether the identity of those who wish to remain anonymous must be revealed in a lawsuit
 1. “... a plaintiff must attempt to notify an anonymous online defendant that he or she is the subject of a subpoena or application for order of disclosure.”
 2. “... a plaintiff must give the defendant a reasonable time to file opposition to the application.”
 3. “... a plaintiff must identify the exact statements purportedly made by each anonymous online defendant that gives rise to each claim.”

How to Respond? – Swartz v. Does

4. “... a plaintiff must make a *prima facie* or substantial showing of proof for each element of each cause of action.”
5. “If a plaintiff has successfully complied with the first four requirements and the court concludes that a substantial showing of proof has been made ... the fifth and final step is for the court to balance the First Amendment interests of the anonymous defendant against the strength of the plaintiff’s *prima facie* case and the need for disclosure to allow the claims to proceed.”

How to Respond? – Other suits around the country

- “One-Star” Yelp.com review of work done by a contractor on a house in Fairfax, VA - Resulted in \$750,000 internet defamation lawsuit, filed by the contractor
 - Alleged false accusations about the contractor and his performance
 - The complaint claimed accusations prevented customers from using the contractor’s services and cost \$300,000 in business
 - The reviewer since deleted her “One-Star” post on Yelp.com as it was reflecting negatively on herself when she would Google her name

How to Respond? – Other suits around the country

- A 2011 Harvard University study quantified just how big an effect negative Yelp postings can have: A one-star increase among reviews of Seattle restaurants led to a 5 to 9 percent growth in revenue.
 - The effects of online negative reviews are real
- In a similar suit, a California judge ordered a dentist to pay the legal bills of the defendant parents of a patient he sued for defamation over a negative review one of them posted on Yelp.

Problems with Fighting Directly

- As noted above, Communications Decency Act shields websites from defamation suits over content posted by third person
- Filing a lawsuit is expensive, and these cases in particular are difficult to prove (especially damages)
- Discovering who the defaming person is can be expensive in and of itself
- The Tennessee Anti-SLAPP statute creates serious difficulties in prevailing in these lawsuits

React by Reaching Out

- Appreciate any and all feedback received
- Engage employees, former employees, and reviewers into conversations, but be prepared to provide an educated defense if necessary
- If there is an easy resolution, try to pursue it (sometimes minor complaints about work environment)
 - a resolution could lead to possible removal or rectification of a negative post or review

React by Reaching Out

- Encourage employees to provide positive feedback on public sites, and provide an outlet for negative feedback privately
 - If employees feel their concerns are being addressed, they are more likely to avoid airing their grievances in public
- Remain vigilant on social media outlets
- Create and keep a strong, positive online presence in order to help prevent negative search results

What Do Companies Need to Do to Be Proactive?

- Update social media policies
- Use internal personnel and Google alerts to monitor your company's online reputation
- Engage outside companies to help monitor and/or address your online reputation



Update Social Media Policies

- Adapt to conform around the recent NLRB rulings
- Keep your social media policy relevant
- Remain as specific as possible
- Aim for easily understood limitations



Use Internal Personnel and Google Alerts

- If your company is large enough, consider assigning social media management responsibilities to a particular employee
- Google alerts – can set monitors for specific key terms or even on specific websites to stay aware of new postings



Use Companies to Help Monitor and/or Address Your Online Reputation

For example:

- Reputation.com, Dexone, and other marketing firms offer Online Reputation Management
 - Provides options for subduing negative or outdated search results
 - Can monitor sites to keep your private information out of the public eye

Going Forward

- Potential changes that we will continue to monitor:
 - CISPA (Cyber Intelligence Sharing and Protection Act) and SOPA (Stop Online Piracy Act) bills are currently stalled in Congress due to concerns about privacy
 - In addition to many other provisions, the bills would potentially broaden the ability of companies to gather information about anonymous online commenters
 - Passage currently unlikely due to certain high profile opposition and veto threat from the Obama administration

Winning Without Fighting

Questions?