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Could your business be facing a lawsuit over Internet search results?

Any business would jump at the chance to dictate the order of organic Internet search results that include its name. But that's not so easy.

Still, a judge in Florida recently told a well-known, international company that it must find a way to do exactly that. And in the vast world of the web, it's a cautionary tale for businesses of all sizes.

The case involves a Gainesville, Fla., company, Uber Promotions, which has a regional trademark that supersedes the more well-known ride-sharing service's trademark.

The smaller company is an ad agency that does event planning and offers transportation services, among other things. But searching the web for "Uber Gainesville" turns up the bigger company first.

When the Florida company sued the bigger Uber Technologies for trademark infringement, the court said that this search conundrum led to "consumer confusion." That's especially due to the larger company's UberEVENTs division.

The court issued a tall order. It said that Uber must be sure that its listing doesn't rise above Uber Promotions. Specifically, it said that Uber must ensure that a search with the keywords "Uber Gainesville phone" or "Uber Gainesville phone number" returns a result that includes its own local phone number and words that show it's the ride service. And, the judge said, Uber has to make sure that this search result doesn't replace the current result for Uber Promotions with Uber Technologies' phone number. Plus, the flipside must also be true. A search using the keywords "Uber promotions Gainesville phone" or "Uber promotions Gainesville phone number" may not yield the bigger company's phone number.

The end goal is to avoid consumers looking for the smaller company finding the bigger Uber instead, but still allow the latter to continue operating in the area.

But that leaves Uber in a bit of an online pickle. How can Uber — or any company for that matter — possibly control organic search results on the web?

One way for businesses to exercise some amount of control over their search engine ranking is through search-term advertising **—** by paying a search engine to be associated with certain keywords, such as Google AdWords. The judge in the Florida case said that Uber might have to realign its pay-per-click advertising to achieve the desired result.

The problem is that even with a big spend in AdWords there is little to no way to curtail the confusion that might arise from organic search. The process that yields organic search engine results is quite complex, involving hundreds of elements in a multi-faceted algorithm, such as keywords on the website, how new the content is, the region the company is based in, and more. What's more is that currently, search engines allow companies to purchase AdWords for their competitors' trademarks and they don't bar choosing trademarks as keywords even if a trademark complaint arises. But a ruling like the one in Florida might be a sign of tighter rules in the future.

If your business plans a move into another region, take care to seek out any companies with similar names in advance. And to avoid these challenges in the first place, if you launch a new business do your due diligence to avoid selecting a name with similarities to other regional businesses.

Review your retaliation policies in light of EEOC guidance

It's even easier for employees and former employees to sue businesses for retaliation under the Equal Employment Opportunity Commission's new enforcement guidance.

For the first time since 1998, the agency has updated its guidance on the claim, which is already "asserted in nearly 45 percent of all charges … and is the most frequently alleged basis of discrimination," it said.

Needless to say, preventing a claim is much better than defending one, and retaliation often occurs even when the underlying discrimination claim doesn't have merit. So businesses must take action to avoid retaliation in the first place.

The guidance clarifies the definition of what actions by employees are protected from retaliation, integrating seven related U.S. Supreme Court decisions issued on the topic over the past 18 years.

"Protected activities" include an employee's participation in an employment case against the business or "reasonably opposing" illegal conduct by the business. That means a business can't punish an employee or job applicant for stating his or her disagreement with possible discrimination violations. And that may include complaints about things the business does that *could* become discriminatory.

The guidance also makes clear that the list of actions considered retaliation is long, and includes disparaging the person to others or in the media and threatening reassignment, among others.

The rub for businesses is that nearly anything could be considered a "protected activity" or retaliation. To help businesses comply, the EEOC has laid out some best practices it recommends.

Now is a good time to review your policies to ensure you're following these suggestions:

- **Be sure to have a written non-retaliation policy**: Your policy should include examples of what to do and what not to do, as well as ways to avoid retaliation. Include a requirement to report "perceived" retaliation, noting that any retaliation will lead to disciplinary action. If your retaliation policy is mixed into your other policies, that might still meet the standard. But you must ensure that these elements are clear.
- **Train all employees and supervisors on retaliation**: In your annual harassment training, require separate training on the policy surrounding retaliation and how to avoid it. Provide ways to report any possible retaliation. For managers, give guidance on avoiding any actions that could be construed as retaliation.
- **Have a procedure in place for proactive follow-up after any retaliation complaint**: Speak with both the employee and his or her manager to assess the situation in a timely manner after any complaint is raised and address issues as they come up.
- **Review all employment actions to ensure compliance**: Have someone involved in human resources pay close attention to any changes related to a complaining employee, such as performance evaluations or pay changes.

Can you sue if a customer posts a bad online review?

For a business, a bad online review can help determine whether new clients flock in the door. But if someone writes such a review on Yelp or any other website, you might be out of luck.

In a recent case in California, a federal appeals court decided that an angry business owner who got a one-star rating from a customer couldn't sue Yelp.

The case involves Douglas Kimzey, owner of a locksmith business. A customer named "Sarah K" wrote a Yelp review of the business in 2011 which said, "THIS WAS BY FAR THE WORST EXPERIENCE I HAVE EVER ENCOUNTERED WITH A LOCKSMITH. DO NOT GO THROUGH THIS COMPANY." And she gave the business a one-star rating.

A year later, Kimzey's company commented under the review and said: "Yelp has posted a fraudulent review [of] our business." The comment linked to a very similar review Sarah K posted of a company with a similar name. Then, Sarah K posted an updated review explaining that the original review was intended for Kimzey's company, and that she accidentally posted the similar review on the other company's page.

Kimzey was not happy at all about these negative online comments. But a provision of the federal Communications Decency Act (CDA) protects providers of interactive online services such as Yelp against liability related to content posted by third parties.

So Kimzey tried to get around it. He filed a lawsuit against Yelp, claiming that by creating the 5-star review, Yelp essentially turned its users' reviews into its own content.

But the federal appeals court in California told Kimzey he couldn't sue.

It's important to understand when you have any recourse in a situation like this.

According to the "safe harbor" provision of the federal CDA, the following parties are protected from being sued for online content: interactive Internet service providers, electronic bulletin board providers, social networking sites, bloggers and websites, as well as businesses that provide email services to their employees.

As legal questions over online reviews have arisen over the past few years, court decisions have given a range of guidance on situations when you can and can't sue.

Here are some examples of when business can sue:

- When the online provider does something to encourage defamatory or illegal content, such as posting protected private information.
- When the online provider makes measureable changes to content created by a third party. That includes examples when the site adds its own opinion into the edits.
- When the online provider allows third parties to post copyrighted work, trademarks or patents of another business. (There are other federal laws that might bar a suit if the provider takes the posting down.)

Here are instances where a company couldn't sue:

- When the online provider edits content merely for spelling, grammar and length.
- When the online provider posts or reposts third-party content, such as reviews or blogs. That includes situations when the provider pays for the content.
- When the provider includes tools for creating content, such as the Yelp star ratings at issue in the California case, chatrooms, etc.
- When the online provider screens and removes content, usually even if that content was fraudulent, defamatory or untruthful.

Injury and illness records may become public

Most businesses with 10 or more employees must keep records of serious work-related injuries and illnesses. This OSHA rule is intended to help businesses identify and address occupational hazards.

Under new OSHA rules, however, many businesses will also have to submit their records to OSHA itself, which apparently plans to make them public, at least in some form.

Businesses with 20 or more workers must begin submitting OSHA Form 300A starting July 1, 2017. In addition, businesses with 250 or more workers must begin submitting OSHA Forms 300 and 301 starting July 1, 2018. Starting in 2019, all information must be submitted by March 2. OSHA says the availability of this information will help employers to benchmark their own safety performance against other companies in their industry, and help employees and job seekers to identify workplaces with a lower risk of injury and illness.

Many requests for businesses to take goods off Amazon or eBay fraudulent

It's pretty common for businesses of all sizes to sell products on sites like Amazon or eBay. So imagine one day receiving a "take-down notice" informing you that the site is taking down your listings because another party has demanded it under a federal law called the Digital Millennium Copyright Act ("DMCA"). According to the notice, the other party says your goods infringe its copyrights.

If you ever receive such a notice, be sure to look carefully into the matter. That's because it's become more common for these demands to have no valid copyright infringement claim to back them. Or worse yet, sometimes the demander doesn't own any copyrights at all.

Based on Google's Transparency Report, approximately 40 percent of take-down demands stem from invalid copyright claims. And some requests don't even come from real people. They come from automated Internet bots developed by people who want to get money from businesses to stop the take-down.

Meanwhile, under the federal law companies like Amazon and eBay aren't on the hook for deciding whether the demands are fair. They're only required to make sure the notice includes certain required information and to send it along to the business in question. After the demand is made, the provider will delist your goods and let you know it has done so.

The good news for businesses is that the law gives you a useful way to get your products back online. What you have to do is send the provider a "counter notice," indicating that you have a good faith belief that your items were taken down "as a result of mistake or misidentification." The provider is then required to send your counter notice to the demander saying that your products will be re-listed within 10 days, unless he or she has filed suit against you to bar you from selling the items on the site. If no suit has been filed, the site must put your items back up within 10-14 days of receiving the counter notice.