

Short notes on:

PROTECTING YOUR BUSINESSES GOOD NAME IN THE AGE OF IDLE COMPLAINT

“The internet is where some people go to show their true intelligence; others, their hidden stupidity.”

Anonymous

The purpose of this article is to provide some insight into the rights and recourse available to a company when faced with the grim spectre of online defamation on social media or various public comment sites and forums.

South African law has gone through a paradigm shift over the past two decades as it relates to the empowerment of consumers. This shift in the balance of power between consumer and supplier is certainly a positive move but has come at a cost to some companies. This shift has been made more poignant with the continued rise in popularity of social media platforms and the steady growth of access to the internet.

As a result, the once humble opinion has become a powerful tool – easily formulated and just as easily shared with the entire internet. In the hands of individuals with positive intentions and ‘true intelligence’ (whatever that might be), it is difficult to argue against the force for good Opinion may contain. The antithesis is equally true – malicious rumours, exaggerated opinions and insidious half-truths published on social media platforms and opinion sharing websites are just as powerful, for the wrong reasons.

Unwarranted complaints published online are incredibly detrimental, but may attract legal action if they can be considered defamatory. This means that a business can in some instances take legal action against the author of the complaint.

What is defamation?

Defamation occurs when a statement is made public and which has a negative impact on the reputation or good name of a person or company. In simpler terms, if people read a complaint about a company and this complaint leads them to think less of the company, then that complaint is possibly defamatory.

It is important to keep in mind that if a complaint will benefit the public at large; if it is honest and without malice; and is factual and not mere conjecture then the complaint may be justifiable. If your company is conducting itself in such a way that is objectively harmful to the public and the complaint reflects this – then it won't necessarily be labelled defamatory.

The possible negative impact of a well-ventilated complaint made online can have huge ramifications for a company, and swift action should be taken to prevent that complaint from causing further harm. It is then comforting to note that if one takes legal action and the complaint is found to be defamation a court could rule that the complaint must be removed and the original poster be prevented from posting any further defamatory complaints.

Conclusion by way of Case Law

The case of [*Flocutt \(Pty\) Ltd v Eisenberg*](#), the respondent, had levelled a variety of complaints against the applicant on the following social media platforms: *Facebook*, *hellopeter.com* and *reportacrime.co.za*. The court agreed that despite the sanctity of freedom of speech the unjustified or unlawful savaging of a persons' reputation was inexcusable. Where a statement can't be deemed 'fair comment'; in the interests of public benefit or entirely true, then the complaint would have to fall to the proverbial axe of judicial scrutiny.

In *Flocutt*, the court found that the complaints levelled against the applicant, a family-run mechanic, contained half-truths; blatant lies; were not in the public interest and where self-evidently statements consisting of conjecture. As such, the court ruled in favour of the Applicant and directed the respondent to remove all references to the Applicants in all his social media posts and prohibited him from publicising any further denigrating opinions.

Additionally, the court ordered that the Respondent was to pay for the costs of the entire application, which should serve as a fair warning to anyone desiring to share with the internet their 'hidden stupidity'.

If you are faced with possible defamatory statements or are concerned that your online presence may be jeopardised in some other way, contact SchoemanLaw Inc.

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