

Review

Commercial & Dispute Resolution



(Libel) actions speak louder than words

New statistics on legal actions issued show a rise in the number of businesses suing other businesses for defamation (libel and slander). The figures, released at the end of July, show that in the year to May 2008, 5% of defamation actions issued¹ were business-to-business claims. By May of this year, that figure had increased fourfold to 21%.

WHY DOES MY BUSINESS NEED TO KNOW THIS?

Businesses are likely to be interested in these statistics for two reasons. First, they demonstrate that their competitors are now much more willing to invest time and money in bringing defamation claims to protect their reputation as part of their overall PR strategy. Second, they demonstrate that their competitors are now much more likely to bring a defamation claim against them.

WHAT EXPLAINS THE INCREASE IN CLAIMS?

The increase in business-to-business defamation claims is due in the most part to the ongoing effects of the recession. When customers are scarce, businesses are more likely to sail closer to the wind in their marketing activities. A typical situation in which a defamation claim may arise between competitors is where an employee of A makes untrue remarks to an existing or prospective customer of B about the supposed poor quality of B's goods in a bid to win the customer. Businesses on the receiving end are acutely aware that retaining customer goodwill could mean the difference between survival and failure. They are proactively attacking anyone who is, intentionally or inadvertently, damaging that goodwill. In the current climate businesses are particularly sensitive about any allegations concerning their financial stability.

WHAT DOES THIS MEAN FOR MY BUSINESS?

In light of this new wave of defamation actions, businesses should take two immediate steps. First, they should decide as a matter of commercial policy whether to follow the trend and be ready and willing to bring a defamation claim, or at least to threaten proceedings, if appropriate in a particular case. Second, businesses should take action to minimise the risk of being sued for defamation. Employees should receive comprehensive training on the nature of defamation actions and the potential consequences for the business if an action against it was to succeed. They should also be instructed not to make any references to competitors' businesses or products during the sales process unless they have incontrovertible evidence that what they are saying is true. There is, of course, a distinction between a defamatory statement (which is not permitted) and mere trade puff (which is), although the dividing line is a fine one.

Some employees discuss the details of their employment on blogs or social networking websites. This sometimes includes expressing discontentment with their employer, which can occasionally extend into defamatory remarks. Businesses should have clear and workable policies in place to deal with employees who defame the business in this way.

WE BELIEVE THAT A COMPETITOR HAS MADE DEFAMATORY REMARKS ABOUT US TO ONE OF OUR CUSTOMERS. WHAT SHOULD WE DO?

You should seek legal advice from an experienced defamation lawyer. They will be able to advise whether or not you have a claim. This is important as threatening legal proceedings where there is no claim can be commercially embarrassing and may mean costs are incurred unnecessarily.

It is important to get legal advice from a specialist. Defamation is a technical area of law and there are occasions where remarks which initially appear defamatory are, in fact, lawful (in comparative advertising, for example). Statements made about a competitor's product, rather

Businesses are now more likely to invest time and money in suing competitors to protect their reputation

¹ Research by Sweet & Maxwell published on 27 July 2009

than about the competitor itself, which cast no imputation on the competitor's reputation, are also not actionable in trade libel (although they may be actionable in malicious falsehood which is an altogether different claim).

Once it is established that you have a claim it is usual to write a letter to your competitor notifying them of it. Many claims settle at this stage with the competitor issuing an apology and undertaking not to repeat the remarks. If the matter is serious and the competitor refuses to settle, your lawyer will be able to advise on what strategic action to take next to achieve your objective whilst minimising cost. It is not always necessary to issue proceedings.

WE HAVE RECEIVED A LETTER BEFORE ACTION ACCUSING US OF DEFAMATION. WHAT SHOULD WE DO?

You should consult an experienced defamation lawyer without delay. Most claims can be dealt with swiftly and at minimal cost before proceedings are issued.

HOW CAN HAMMONDS HELP?

The statistics above are borne out by our recent experiences. Our defamation experts have seen a marked rise in the number of clients seeking advice on defamation issues.

We have longstanding expertise in this area. We advise businesses of all sizes and in all sectors on defamation matters. We act for both claimants and defendants. Our recent experience includes:

- Acting for a US based multi-national in the energy and automotives sectors in respect of a libellous publication in a trade journal circulated worldwide in hard copy and on the Internet;
- Acting for a nanotechnology company in respect of multiple libellous publications on trade blogs on the Internet, closing down the offending websites;
- Defending a North-West based specialist pump designer and manufacturer against a libel claim brought by a competitor in respect of a product comparison in a customer testimonial press release;
- Acting for a home care provider in respect of a libellous publication in numerous local and national newspapers; and
- Providing pre-publication advice, to ensure that there were no libel issues, to a national renewable energy body in respect of the content of a reply to an attack by an academic published in the Independent newspaper.

We can help your business by:

- discussing any of the issues raised in this article with you;
- providing training for your business and your employees on defamation issues;
- advising on 'live' defamation issues as and when they arise.

For further information, please contact one of our defamation experts:

Victoria Leigh

Partner, Commercial & Dispute Resolution
T: +44 (0)161 830 5058
M: +44 (0)7764 146402
E: victoria.leigh@hammonds.com

Andrew Reeves

Senior Associate, Commercial & Dispute Resolution
T: +44 (0)113 284 7263
M: +44 (0)7825 942704
E: andrew.reeves@hammonds.com

Tristan Duncan

Associate, Commercial & Dispute Resolution
T: +44 (0)161 830 5204
E: tristan.duncan@hammonds.com

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freepost, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Hammonds LLP 2009.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.

**Most claims
can be dealt
with swiftly
and at minimal
cost before
proceedings are
issued.**
