

Business First of Columbus - April 14, 2008
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COLUMBUS BUSINESS FIRST

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Focus on Internet communications flourishing as legal practice area

Business First of Columbus - by [Scott Rawdon](#) For Business First

A collegiate gossip Web site called "juicycampus.com" began at **Duke University** as a relatively harmless blog about relationships between college students and campus issues, promising anonymity for bloggers. It didn't take long for it to degrade into very explicit, personal and mean-spirited passages about individuals whose names were plastered over the Internet at many campuses.

John Marsh, a partner with Columbus law firm **Hahn Loeser & Parks LLP**, said the well-publicized incident clearly illustrates how Internet defamation is destructive to the unsuspecting. The same holds true for businesses. Companies, like individuals, may be subject to defamatory statements and must protect themselves, he said.

Marsh said he's had several clients who were confronted with competitors or former employees using the Internet - through blogs, Web sites or MySpace links - to disseminate false or defamatory information about those clients or their employees, or to disclose potentially proprietary or personal information. Unfortunately, he said, there's not much legal recourse for these situations, which are becoming more common.

"It's lurking in the consciousness of a lot of people," said Marsh.

It's a fascinating and developing area of law, he said, given the natural tension between balancing legitimate First Amendment protections against forms of speech that are injurious or proprietary. While legal options may be limited, there are steps companies can take immediately to protect themselves.

The first is to define what information is confidential or proprietary and what information cannot be included in blogs, MySpace profiles or other Web sites.

"Such policies and procedures will enhance your credibility if and when a problem arises," said Marsh.

In the event of an Internet incident, Marsh's initial advice to anyone is to calm down, take a breath and play nice. "Try to exhaust informal means," he said.

Contact the appropriate administrator of the Web site or bulletin board and request removal of the information or to take down that particular site. If that doesn't work, litigation to prevent further dissemination may be necessary.

"That's where I come in," said Marsh.

Intent makes a difference

The identity of the blogger as well as the type of information disseminated will determine whether a court will issue a restraining order. A judge will want to know if the blogger is an existing or former employee, a whistleblower or a competitor, said Marsh. And, a judge will ask if the information is proprietary or trademark protected. Is the blog an attack on managers or private individuals bordering on defamatory, or is it information concerning legitimate issues of public safety or concern?

Generally, if the injured party can prove the information in question is protected or it is an attack on an individual, chances of court intervention are good, said Marsh. But, if the information is coming from a whistleblower who can prove it's true, or the information addresses a larger social issue, the courts may step out of the way.

Kegler Brown Hill & Ritter associate Brendan Fehely advises businesses to be open about blogging with their employees and, if possible, convince them to tell management about their blogs.

Sometimes inappropriate information is posted accidentally. If the employer has access to the blog, the employee can be asked to remove it. If the employee is posting negative information about the company, such as a wage complaint, Fehely suggests telling the employee the posting is hurting the company.

"You must make sure employees know what's confidential," he said.

Scott Rawdon is a freelance writer in Columbus.

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Attorney John Marsh uses a laptop in his Columbus office where his focus is Internet communications.

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