



How will the TripAdvisor defamation action impact social media?

Hundreds of hotel and restaurant businesses are said to be eyeing a group defamation action against travel community TripAdvisor in response to what they view as 'unfair' reviews. Will it backfire on the companies, do review sites have a case to answer, and what are the implications for social media if the legal action is successful?

It was recently revealed that over 400 hotel and restaurant businesses in the UK and US are exploring the possibility of **joining a 'group defamation' action against TripAdvisor**, in response to what the firms complain are 'false' and 'unfair' reviews being posted on the travel site.

While the news was a major surprise, it clearly demonstrates the power of the 'voice of the customer' – and the concern that some organisations harbour about the potential for misuse of user generated content.

"The importance of user generated reviews in influencing consumers' holiday decisions should not be underestimated," says Nick Oram, joint managing director of **Total Media Ltd**. "Our own research found that holiday reviews written by strangers on websites such as TripAdvisor are more influential than brochures, advertising, media reviews and even advice from travel agents. A quarter of British travellers say that online reviews by strangers help determine their travel plans compared to 14% for online advertisements, 13% for TV travel programmes, 11% for travel magazines, newspaper supplements and 9% for TV advertising and direct mail."

However, Oram adds: "It's worth remembering that as well as allowing people to voice their complaints, it also rewards those hotels and resorts that excel. The fact that TripAdvisor does allow for hotels to reply to complainants explaining how it's tackled the problem, makes it as much, if not more, of an opportunity as a threat."

Out of step?

Indeed, the general reaction from many impartial observers has been surprise that the hotel and restaurant businesses are trying to control user generated content. In the age of social networks, where the public seek out like-minded people as new voices of authority, any move by a business to try and manipulate or control messages can backfire spectacularly. Whether the decision to threaten legal action is borne out of stupidity or naivety, the businesses are being recommended to think twice about their heavy handed approach.

"Hotels and restaurants are going about this in the completely wrong way, and showing themselves to be particularly old fashioned and unenlightened. If this campaign is successful, the hotels and restaurants which will come out on top will actually be the ones still willing to allow customers to review them, showing them to be transparent and trustworthy. Banning customer reviews suggests that the other chains have something to hide," says Louis Halpern, CEO of **Halpern Cowan**.

"The best thing to do is to engage online with customers who have written negative reviews or comments about their experiences in a professional and friendly way. If they are citing a factual inaccuracy then correct them, or if they have had a bad experience then apologise for the mistakes and outline next steps."

On the face of it, the suit would seem to be seriously out of step with the modern customer. The rumours of legal action arrive in the wake of recent Institute of Customer Service research, via its UK Customer Satisfaction Index, which reveals that customer review facilities top the UK consumer wish list of social media tools. The UKCSI found that nearly half (41%) of the British public view an onsite facility to provide reviews of products and service as a standard element of any good corporate website, with more than half (54%) of consumers using such a facility when it is provided.

Public battle

But the mooted legal action wouldn't be the first time that organisations have attempted to curtail or influence community content, of course. Last year, for instance, a **Belkin employee was found soliciting people** to write positive reviews for one of its products on Amazon, with the story rapidly becoming national news leading to huge criticism from the online community.

The difference this time, however, is that if the action should proceed, and indeed even prove successful, the implications of the suit for social media could be extremely significant. "This is one of the first public battles against a company based online and automatically sends a warning signal to those who may be open to defamatory claims, and particularly where the accusation is that some of the information published on the site by anonymous third parties is untrue and misleading," says Andy Burton, chairman of the **Cloud Industry Forum**.

Guy Levine, CEO of **Return On Digital**, adds: "We now live in a world where people can tweet about a bad hotel experience before they have even reached their bedroom, and it is starting to hurt the hotels. This instant feedback loop is something 'Generation Y' live every day as they share their news and views on Facebook, and they are not scared of sharing their opinion online. TripAdvisor was the first place that people could leave real reviews about hotels that was accessible by the general public. If this kind of site was shut down by a class action it would open up a major issue for all sites that accept any kind of user input. Could Amazon be sued by an author because someone reviewed their latest book and said it was awful?"

An unlikely scenario

While this is an extremely unlikely scenario, organisations that feature user generated content such as reviews on their sites may now be encouraged to provide a more equitable 'right to reply' tool and look into the authentication of user identities and comments.

"Despite not having a physical presence, organisations operating online need to ensure they have full accountability and control over the information they provide access to and should also abide by industry regulations and good practice," says Burton. "This situation centres around whether it is acceptable to have anonymous commentary that complains about a company or hotel without any evidence to support the claim or identity of the alleged complainant. Whilst CIF clearly supports the freedom of speech and the use of the internet, there also needs to be accountability and transparency to ensure that inaccurate, unjustified, unsubstantiated or malicious claims are not aired as if they are valid and genuine.

"The need for a clear code of practice and best practice for website content and associated Cloud Service Provider operations coupled with tighter control will not limit operators but will enable them to enhance their services credibly and avoid misleading the public, especially around content purporting to be legitimate and valid third party complaints."

James Miles, head of planning at **Equi=Media**, adds: "It makes sense to more tightly regulate entries, and forcing contributors to post comments in their own name might help to reduce the likelihood of exaggerated or defamatory claims. It could prove difficult to include a caveat on every review that said 'This is the subjective opinion of a TripAdvisor member and not of TripAdvisor LLC', but this might be necessary.

"If this caveat were to be introduced it would have a massive impact on review sites. The additional resource required to administer the volume of reviews received would be very costly. It could also have broader implications on all kinds of user generated content with regards to censorship. If TripAdvisor had to screen every possible entry I would also expect some serious consumer backlash from people who saw this as encroaching on their freedom of speech. Consumers see social media, and sites such as TripAdvisor, as a key form of communication and a way for them to express their opinions to their friends as well as wider online communities and the public.

"This action could lead to an opportunity for networking within TripAdvisor, which could mean that you are only able to share your experiences with your friends or connections, but this would make the whole proposition much weaker. TripAdvisor enables holidaymakers to see what previous visitors thought of a hotel, helping to inform their decision. If this content was only available from your friends or connections, who may not have visited the hotel you are looking at, then you miss out on that review, devaluing the usefulness of the site. If TripAdvisor was forced to introduce a networking format it could impact on forums everywhere."

Dangerous ground

At the time of writing, there remains confidence that the legal action will not progress. Some are suspicious that the legal threat may be little more than a publicity stunt, while many others feel that the firms involved will recognise the futility of the exercise. Paul Harrison of **Carve Consulting**, for instance, highlights: "Users love

ranking/reviews/feedback tools, and they already form the bedrock of trust systems like eBay, Amazon stores, etc, as well as dominating the travel/tourism space. Even if this case goes ahead (which I don't think it will) it will have zero impact on the existence of these tools/sites: they just facilitate the basic human desire to share - both good and bad stuff.

"In fact, of course, the opposite is the case: there are a huge range of platforms that have entered (Yelp.com) or are entering (Glassdoor.com for employer reviews is brilliant) the mainstream. We predict that by 2011/2011 everyone and everybody – from consultant firms to hairdressers to estate agents, across the B2B/B2C/C2C spectrum - will be ranked and rated. We call this 'Reputation 2.0', driven by social sharing technologies like opengraph, FB Places, OAuth, Smartphones and managing it is going to be a major challenge/opportunity."

Maia Honan, board account director at **Positive Thinking**, is more circumspect about the case, but agrees that the businesses bringing the action would likely face an uphill struggle. "TA quote themselves as providing 'unbiased reviews, articles, recommendations and opinions' and if somehow this approach is challenged and found not to be true there may be a case to take TripAdvisor to task and ask for greater transparency in terms of author sourcing," she says. "However, if the businesses involved in this case are challenging UGC as a whole, they will have a much tougher (and riskier) job on their hands. TA will almost certainly play the freedom of speech card, and it would be hard to say reviews are defamatory if it's found, that as published, someone has experienced these services and is giving an opinion."

"It's likely that if this case continues, other big names such as Google could swing their considerable weight behind freedom of opinion as searches for independent reviews on a number of products are a significant use of search engines. In fact, search engines revolve around people's opinions, whether this is explicit (in searches on reviews) or implicit (in gauging trends based on searching habits and website usage). Ultimately if individual cases can be brought against proven examples of 'black-hat SEO', e.g. people deliberately forging false and negative reviews to damage a competitor, then the challengers have a chance, but as a collective moving against UGC and the power held by TripAdvisor and similar sites, this is very dangerous ground indeed."

A lasting legacy

Nonetheless, even if this case never reaches the courts, it may yet leave a legacy. It may result in some organisations running closer checks on the validity, authenticity and transparency of their user generated content and community postings for fear of reprisals. And it may also encourage some businesses to reflect on how they can approach negative reviews on community sites in a manner in keeping with social media's open dialogue.

"It would be nice to think that everything said online about your business came from an objective and constructive standpoint. However there will always be those who use online communities to have a rant and moan merely for the sake of complaining, or more worryingly those who do so for malicious reasons," says Michelle Batten, a travel technology consultant for social business at **Amadeus**. "The approach to both instances of complaint though should remain constant. By taking the time to engage with the individual and enquire as to the nature of their negative experience, you will soon weed out those who are complaining without any genuine basis, and make those with false motives apparent to other online users."

"When it comes to those with genuine grievances by engaging on the same social networking forum you can be seen to be taking a proactive approach to remedy problems. By offering customers the opportunity to try your restaurant or hotel again you will find that many will post a second positive review. Travel suppliers should be thinking about how they can create online communities themselves and engage with their customers to encourage constructive opinions. This is by no means an easy solution, even the companies who are doing this successfully are few and far between. But by taking steps to actively engage with individuals and contribute to the online conversations it will allow you to proactively turn negative comments into a positive opportunity for your business."

TripAdvisor is understood to be receiving the first round of documentation later this week. How far this will progress remains to be seen, but the online community will be watching with great interest.