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By Caryn Freeman

Feb. 17 — Some employers, looking to gain more control over what's written about them online, have taken to the courts, seeking the identity of anonymous employees who post negative company reviews on sites such as Glassdoor.

Such employers say misinformation generated by false reviews makes it difficult to recruit and that some statements are defamatory, and they are asking courts to compel review sites to reveal reviewer identities.

An attorney representing a client seeking to have Glassdoor remove a reviewer's content and reveal the reviewer's Internet protocol, or IP address, told Bloomberg BNA that often people misunderstand their right to free speech and are surprised that subpoenas can be issued for their identity. An IP address is a numerical label assigned to a device using a computer network.

Not All Speech Is Protected

"The first caution to those making statements online is that free speech does not protect all speech," Charles Lee Mudd Jr., principal at Chicago-Ill. based Mudd Law Offices, told Bloomberg BNA Feb. 16.

Mudd is representing Stahulak & Associates and Thomas Stahulak in a complaint alleging defamation, false light and tortious interference for alleged false reviews on jobs website Glassdoor (*Stahulak & Assocs. v. Doe a/k/a Lakhani.erum@yahoo.com*, Ill. Cir. Ct., No. 2015-L-010859, *complaint filed* 10/26/2015). The suit, filed in the Circuit Court of Cook County, in Illinois, is seeking compensatory damages, punitive damages, injunctive relief, and other relief for reviews posted on Glassdoor in December 2014 and February 2015.

Mudd said most employers believe their first remedy is to address online reviews "head-on" in the forum in which the comment, post or review was issued.

He didn't discuss his case, but Mudd advises employers to consider public perception before engaging an anonymous reviewer online, "particularly if you know the statements are false and antagonistic."

Responding to Negative Reviews

"A lot of these forums will say 'that's your remedy, we're not going to remove anything, your remedy is to respond online.' From my perspective it's not the best advice or best remedy. If somebody is intentionally maligning and defaming [your company] they are not going to respond to the company defending itself and it can only possibly get worse," Mudd said.

He said the next step, if you know the identity of the reviewer, is to consider sending a demand letter, a formal letter sent by an attorney requesting an action. But Mudd advised employers to first consider the content of the statements made online.

"By sending a demand letter, you are only compounding the problem," he said. "Again, this person can publish the demand letter and say 'Look, I've been threatened with litigation. This is how [this company] handles these things.' And if it's a ludicrous [review] to begin with and someone looks at the ludicrous post, the demand letter and now a threat of litigation, perhaps the business looks a bit foolish."

He added that if an employer is considering sending a demand letter to a reviewer or review website, "always think about how this is going to appear if it finds itself on the front page of the New York Times or Wall Street Journal."

Site Seeks to Protect Anonymity

Tom O'Brien, deputy counsel for Glassdoor, told Bloomberg BNA Feb. 17 that employers are sometimes surprised by Glassdoor's commitment to defending the site's community guidelines, which promise its users anonymity.

"Because of the nature of our website, we take the defense of users' identities very seriously. People are talking about their employers anonymously, and we understand that if someone's identity gets out, they may be fired. To the extent our members are exercising legitimate free speech, we are going to do what we can to protect their identities from court-ordered disclosure," O'Brien said.

Thus far, Glassdoor has been successful in opposing nearly all subpoena requests from companies seeking to compel production of an anonymous author's IP address or other information that could reveal user identities.

Reviews are always pre-screened to ensure they adhere to our community guidelines. If reviews are found to not meet guidelines or terms of service, they will likely be rejected in total and sent back to the user who can choose to modify and repost the review. In some instances, statements might meet guidelines, but still include strong claims or opinions. Depending on the circumstances, the review might be approved and posted or, in other extreme circumstances, we may follow up with the user to verify they still stand by their claims as accurate reflections of their experience

Dawn Lyon, vice president of corporate affairs at Glassdoor, told Bloomberg BNA Feb. 17 that requests for user identities are not common and of the more than 500,000 companies that have been rated or reviewed on Glassdoor, requests for user identities represent a "very small percent."

"The vast majority of employers recognize that our world has become more transparent and that having greater transparency in the workplace is beneficial from a recruiting standpoint in helping get better qualified candidates," she said.

Lyon added that before a review goes up, all reviews and content are pre-moderated. "Over time we've advanced our technology and have pretty significant machine learning so content is always going through pre-moderation. It's a combination of technological reviews as well as human review," she said.

O'Brien also said Glassdoor's approach is not anti-employer. "It's really us saying 'people have a right to express their opinions, and the courts typically agree. Employers have the ability to respond to any review at any time, but if a company tries to pursue a user they need to be prepared to go to court because Glassdoor will aggressively defend our members' anonymity.' "

Anti-SLAPP Legislation

In June 2015, Robert Hohman, founder and chief executive officer of Glassdoor, penned a letter to Congress urging members to support the Securing Participation, Engagement, and Knowledge Freedom by Reducing Egregious Efforts Act.

H. R. 2304, or the SPEAK FREE Act, was introduced in May 2015 and is sponsored by Rep. Blake Farenthold (R-Texas). The legislation would amend the federal judicial code to allow a person against whom a lawsuit is asserted to file a special motion to dismiss claims referred to as strategic lawsuits against public participation (SLAPP).

Glassdoor hopes the measure will help curb SLAPP lawsuits it says are used to intimidate workers and discourage employers from bullying employees into silence.

"That's exactly what this bill [H.R. 2304] is intended to protect—those who post on the Internet without the threat of expensive litigation," Farenthold told Bloomberg BNA Feb. 19.

"That's why anti-SLAPP legislation is so important," Lyon said. "Even when a user by choice has removed a review, some employers dig their heels in and still want to fight to get their identity. They're doing that to

pursue an action in order to make an example out of someone and that's where it goes beyond reason and why we feel so strongly, like others do, that having anti-SLAPP legislation is so important."

Pursuing Reviewers Not Always Worth the Risk

Adam S. Forman, attorney in the employment, labor and workforce management practice at Epstein Becker & Green's Chicago office, told Bloomberg BNA Feb. 16 that employers that take legal action seeking reviewer identities are risking "an outcome that could be more harmful than the benefits they are going to achieve through the lawsuit."

He said companies have to make the decision to pursue an anonymous reviewer based on what makes the most sense for their organization while still considering the stakes.

"I wouldn't assume that litigation is going to be your option every time. I would look at it on a case-by-case basis and do an analysis of all the factors with key stakeholders and try to reach a consensus that makes the most sense for your organization," Forman said.

He said if hiring managers are fielding comments from job seekers or candidates about negative online reviews, human resources should have a strategy for responding to those concerns.

"My response to any client who would call asking me about this is 'don't forget the tools that are already in your tool chest from an HR, public relations or legal compliance perspective,'" he said.

In the case of negative reviews by employees, Forman said, the issue is one of scope and duration. "Online, you're seeing comments and reviews that are there forever so your scope is bigger and your duration is bigger; that's a lot different than the circle of influence you may have from word of mouth," he said.

Forman advised employers to say something like, "Yes, we're aware of that and we don't think it's accurate. We'd love to demonstrate to you these counter facts that belie that."

"I think that if you're perceived as an employer who in every situation as a default goes after and brings a legal action, I think that's going to do more harm than good," Forman said.

Review Forums for Workers, Not Employers

Karen Doyne, managing director and leader of the U.S. crisis practice at Burson-Marsteller, a global public relations and communications firm, told Bloomberg BNA Feb. 17 that another point for employers to remember is that online forums that offer insight for job seekers are not for employers.

Doyne said it's important for companies to have well-designed internal channels where employees can register concerns or complaints, preferably anonymously. She added that the more employees feel the company is listening to them, the less they'll "feel the need to post on outside social channels."

"It's important to remember that the people who post on these sites are looking for peer-to-peer communication; they see it as their space, not yours," Doyne said. "So when you respond to them it's as if you're intruding on your employees while they're at a local bar commiserating about work. It's fine to walk over and say hi, but you don't want to over-stay your welcome."

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