

DON'T BE LIKE BASIL

The law can help if you're subjected to a false review – but in today's world of online reviews, there's no place for Fawly Towers, says **NIGEL TAIT**, partner at law firm Carter-Ruck

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Gone are the days – if they ever really existed – when Basil Fawly could mercilessly abuse his hotel guests and still expect them to pay up. To imagine Fawly Towers in the era of TripAdvisor is to stare down the barrel of an insolvent business, one whose “ageing, brilliantined stick insect” owner, as his wife Sybil liked to describe Basil, is unemployed and very likely unemployable. But if the world has moved on, do hoteliers need to do more than behave nicely to guests? And can the law assist when dealing with that uniquely 21st Century double-edged sword, the online review?

Certainly, the online opinion of our peers has never have been more powerful. According to the Competition

and Markets Authority (CMA), 54% of adults – that's 25 million people – use online reviews. The CMA estimates that £23bn a year of UK consumer spending is potentially influenced by online reviews. What's said about your hotel on sites like TripAdvisor and Facebook carries real weight, and, as social media becomes ever more popular, this trend will only increase.

Even in these comparatively early days of online reviews, there is a problem: they are not always what they seem. In June, the CMA announced that it would be starting an investigation into the publication of fake reviews by companies which have been set up to manipulate, influence and, indeed, dupe consumers. In the hotel trade, this might happen if a rival uses bogus identities to damn your hotel, or its restaurant, spa, staff – anything connected with it. Similarly, some unscrupulous hoteliers have been known to retain companies or individuals to publish effusive, but ultimately fake, reviews of their own businesses.

ON THE ASTROTURF

These dubious practices have a name: astroturfing. Like a lot of things in modern life, it comes from the United States, dating back to 1985 when former US senator Lloyd Bentsen used it to describe the “mountain of cards and

letters” he received which promoted the interests of insurance companies. “A fellow from Texas can tell the difference between grassroots and astroturf,” Bentsen said.

A related term is “sockpuppeting”. This means the creation of fake online identities to express a view – and it's not confined to the leisure industry. Orlando Figes, a professor whose specialism is Russian history, indulged in some well-publicised sock puppetry a few years ago when he posted anonymous reviews on Amazon that criticised the work of rival historians – and praised his own efforts. When he was first accused of shoddy practices, Figes instructed his lawyer to threaten legal action, only for this pugilistic gesture to backfire spectacularly. Figes ultimately had to circulate an apology and a retraction, and pay libel damages and costs.

The difference between the real and the fake has long fascinated writers, though few would go so far as to play a starring role in their own drama about it, à la Orlando Figes. But this unusual case reminds us that the law has an important role to play in the nebulous world of online reviews.

THE LAW OF LIBEL COULD HELP

A fake review of your hotel, criticising it without foundation, could be dealt with by

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the law of libel. This is designed to protect not merely individual reputations but those of commercial entities, too. Anything that is likely to make reasonable people think less of you or your hotel would be construed as defamatory; it then needs to be shown that it has or is likely to cause “serious harm” or in the case of a hotel company actual or likely “serious financial loss”.

This might mean showing actual financial loss if your business is suing, though the threshold is not so high if you, as the hotel owner, are the claimant. Better yet, libel actions can be brought on a no win, no fee basis.

Let’s take an example. Imagine that Faulty Showers, a hotel in Torbay, engages a so-called “online reputation

consultant” to post a series of fake reviews of your hotel on TripAdvisor. They are all critical, condemning everything from the service and the spa to the receptionist and the quality of the bedding. Soon enough, you receive emails from various guests saying that as a result of the negative reviews on TripAdvisor, they are now cancelling



LIBEL

their bookings. In this instance, your business has suffered serious harm and demonstrable financial loss, and it could sue for libel. If the reviews went further and named you individually – perhaps saying something like “beware of the owner, Joe Bloggs, who has a criminal record” when no such thing is true – you would easily have the building blocks for an action for libel.

The trouble is – who is really posting the reviews? Can you find them? Help from forensic IT experts might help track them down but even if they have carefully hidden their identities the website hosting the reviews ought also to be contacted. Although operators of websites have special protection if they were not responsible for the posting, that protection may be lost if they do not respond to a formal notice of complaint and make an efforts to pass on the complaint to the poster with a view to getting the post removed. The host site should in any event remove the reviews.

WHEN CONSUMERS BEHAVE BADLY

The law can help, then – as is also the case when consumers threaten to publish bad reviews unless they get refunds or money off. Knowing that even one bad review can result in loss of business, it will be tempting to reimburse your disgruntled customer, and it is unlikely to be good for customer relations to accuse your customer of blackmail. However, if the

threat really is unjustified or malicious, you may not want to play ball. Instead, keep details of the threat and its author. If a negative review is then published, you may be able to take civil action for libel and again ask the host site to remove the review.

The Consumer Protection from Unfair Trading Regulations 2008 are also relevant. These prohibit unfair commercial practices, especially misleading and aggressive practices. The regulations make it crystal clear that companies must not falsely represent themselves as a consumer, or pay for endorsements without the fact that money has changed hands being made clear to consumers. If, then, you believe that your business is being targeted by a rival, you could complain to the CMA. Paid-for fake reviews would undoubtedly come within the definition of an unfair commercial practice, and Trading Standards may be able to bring a prosecution

for breach of the Unfair Trading Regulations.

What if the bad review happens to be true? In most cases, a bad review will be an expression of honest opinion. Taking action for libel would not be wise unless there is clear evidence of a false allegation of fact. Even then, making a constructive public response is likely to be better PR.

Overall, the etiquette for hoteliers remains the same. Be as professional, courteous and welcoming as you can. Don't behave like Basil Fawlty. It never was a good idea in the first place – and now, in the world of TripAdvisor and Facebook, it would be commercial suicide. 🏠

About the Author

Nigel Tait is the managing partner of Carter-Ruck and head of the firm's Defamation and Media Law department. Nigel advises clients on range of issues within the field of media litigation and reputation management. Carter-Ruck is one of the UK's best-known law firms and has a longstanding reputation in the field of litigation and dispute resolution and unrivalled expertise in advising companies, organisations and individuals who find themselves subject to adverse or intrusive media or online interest and who need fast and reliable advice on their legal rights.

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