



Aggressive Sales Tactics

Ensure employees do not make defamatory remarks

by: Greg Goldberg, BTA General Counsel

Over the last few months, I have received two troubling calls from members about what can only be described as unlawful sales tactics by other members. This month, Legal Perspective examines aggressive sales tactics and draws a line between mere puffery and actionable defamation.

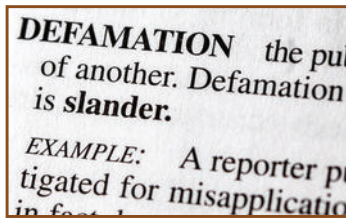
The two calls were strikingly similar. In the first instance, a salesperson wrote to customers of a competitor claiming the competitor's business was in turmoil. He warned customers that the competitor was shedding key employees, losing market share and actively seeking to be acquired. In the second instance, a salesperson wrote to customers of a competitor after the competitor's relationship with an OEM was terminated. The salesperson stated the competitor would no longer be able to service existing machines in the field or provide access to parts and supplies with preferred pricing. All of these allegations were categorically false.

Although it is the Business Technology Association's (BTA's) default position to remain neutral in disputes between members, both situations presented irrefutable written proof of clear wrongdoing. Fortunately, when the respective company owners were made aware of the false claims spread by their salespeople, they pledged to immediately put an end to the practice. But with reputational damage already at stake, deeper questions remain unanswered, such as why were salespeople spreading falsehoods in the first place, and were they aware of the risk of committing actionable defamation?

Defamation

The elements of a defamation claim include: (1) a false statement of fact; (2) published to a third party; (3) fault on behalf of the publisher; and (4) damages or harm to reputation.

In B2B sales, where reputation is currency, even a single email containing a false claim can satisfy the test for defamation. When a salesperson tells a competitor's customer that the competitor is about to be acquired or that the competitor is unable to perform a core service — when neither is true — those are false statements of fact, not mere puffery or opinions. Sending an email to a third party is considered "publication" and if the recipient of the email decides to move his (or her) business based on the misinformation, the harm is both real and measurable. The line between persuasion and defamation is one that cannot be crossed without serious legal jeopardy.



Training salespeople on the legal and ethical limits of competitive messaging is critical. Knowingly or negligently making false statements about a competitor may result in substantial legal penalties, including general, special or even punitive damages. Salesperson training should include clear definitions of defamation using real-world examples

like the cases above and establishing guidelines for reviewing messages before they are sent.

Artificial Intelligence (AI) Implications

AI introduces another important wrinkle in sales-related messaging. In one of the incidents described, a company owner offered a surprising explanation: the emails containing false statements were written with ChatGPT.

While AI can be a powerful tool for sales and marketing, it can just as easily produce false or misleading content. Thus, every organization — especially those in competitive markets — should consider implementing an AI policy that outlines acceptable and unacceptable uses of generative AI content. Key provisions may include:

- Prohibiting the use of AI-generated content without verifying the facts.
- Requiring human review of external communications that were generated using AI.
- Establishing clear accountability for AI-generated communications.

False claims — whether drafted by a human or an algorithm — are no less damaging when sent via email. In a highly competitive industry like ours, the temptation to undermine a rival to gain market share may be strong. But crossing the line and defaming competitors can be a costly mistake that ultimately does more harm to the reputation of the perpetrator than the victim. The solution is not to pull back from competitive marketing; it is to market smarter, ethically and with a full understanding of the risks. Educating sales team members, implementing responsible AI policies and prioritizing truth in messaging should be core to any modern sales and marketing strategy. ■

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