A Case Juniper Can't Win?

A long-shot libel lawsuit against anonymous writers on a Web message board could hurt the tech company more than it helps

Juniper Networks filed an unusual lawsuit recently. On Dec. 14 the networking equipment maker filed a complaint with the Superior Court of the State of California, County of Santa Clara, accusing 10 posters on an Internet message board of libel. The message boards are hosted on the telecom news Web site LightReading.com. As yet Juniper hasn't determined the defendants' legal names, and for now, it lists two of them under their aliases, "infranet.ruiz" and "exJuniper981."

According to the complaint, in April, 2005, one poster allegedly wrote about Juniper (JNPR) that "the man at the helm seems to be paying [off] attorneys all over the bay area to cover up the scandal which resulted in the terminations of many at the top including VP of HR." Another post listed in the complaint states: "This is a very unethical company." Sound like your usual message board ravings making an elephant out of a mousehole, right? Juniper apparently didn't think so. As a result, it could be making its own elephant.

SUSPICIOUS READERS. Many industry insiders believe the lawsuit was a bad public relations move. "Most message boards have few readers," says Peter Rojas, co-founder of tech message-board site Engadget.com. "Su ing that person might be the best way to publicize the negative statement."

That has already happened in the Juniper case. The posts have been cited on numerous Web sites, such as Slashdot.org. Light Reading, faithfully reporting on the fracas, has had its article on the lawsuit downloaded 25,000 times a day, vs. 4,000 downloads for a typical story, says Stephen Saunders, president of Light Reading. More than 1,100 people have participated in the company's poll between Dec. 22 and Dec. 29 -- a normally quiet holiday week -- about whether Juniper made the right move.

And the poll seems to show that Light Reading readers have become suspicious of Juniper's motives. Thirty-five percent of the poll takers call Juniper "paranoid." An additional 34% believe it "has something to hide." Some 20% of the respondents haven't changed their attitude toward Juniper, and 11% support its move.

DIE QUIETLY. "It appears like the big guy is going after the little guy, and everybody loves the little guy," says Jacques Chevon, founding partner of branding consultancy JRCA & in La Grange, Ill. That's troubling for Juniper, since Light Reading, which attracts some 400,000 unique visitors a month, caters mainly to telecom professionals. "That's a great litmus test of what the telecommunications industry thinks of Juniper's actions," says Saunders.

In fact, Juniper's reputation could suffer more from filing the lawsuit than from the allegedly libelous postings. "I do not know if filing a lawsuit will damage their brand," says Chevon. "But overreaction about the insulting posts of a couple of idiots, and the fact that it reveals the company's ignorance about [how the Internet works], might." Juniper declined repeated requests for comment on the suit.

Instead of hiring lawyers, Juniper might have engaged in a public dialogue with the posters, or even done nothing and let the allegations die quietly on their own, Chevon says. "Some people think you can print anything on the Web these days, and it feels pretty frustrating," says Engadget.com's Rojas. "We get trolls on our comment boards, too. But rather than respond to them, we just ignore them."

DID THEY KNOW? That makes a lot of sense, since historically, most similar cases haven't made it far in the courts. Juniper's first challenge will be to track down the identity of each poster. This will require persuading the court to subpoena Light Reading to release its IP addresses.

To get there, Juniper will need to prove that the court to that its case can succeed, that the postings' writers made statements that were false, and (this is the really tricky part) that they knew they were false. In the five years that the Stanford Center for Internet & Society, a part of Stanford Law School's program, has offered free representation to message board users of sites like Yahoo (YHOO), it has always managed to prove to the courts that such a subpoena wasn't warranted, says Jennifer Granick, the center's executive director.

What's more, Juniper would also need to grapple with the issue of jurisdiction. These posters might be located in Russia or China. Juniper will have to prove that California is, indeed, the proper location to try the case, says Mike Lynn, a partner at Lynn Tillotson & Pinker in Dallas.

TOUGH TO WIN. Then Juniper would need to prove that, as it alleges in its filing, the postings "could lead to a material decline" of its profits. That might be all the harder to do since, partly following a series of acquisitions Juniper made in 2005, its revenues for the third quarter, ended in September, rose 46% year-over-year, to $546 million, while its profits went up 72%, to $84.1 million. Over the same time (all postings Juniper referred to in its filing took place between April and September of 2005), the company also managed to gain market share, says Lee Doyle, an analyst with tech consultancy IDC.

Even if Juniper succeeds in getting the subpoena, it might not win the trial. Most similar cases that have gone to trial have gone in favor of the message board posters. Two years ago, Lynn represented Visa, one of whose vice-presidents posted some 432 messages over a six-month period on Yahoo message boards, making inflammatory allegations against a company called Zixit, whose technology protects sensitive information as it travels over the Web.

Zixit, currently called 2ix, sued for $1 billion in damages and $1 billion in punitive damages. But Visa still won the lawsuit "because the jury found Visa was not responsible for this guy," says Lynn.

SCARE TACTIC. Still, Juniper is already seeing some benefits from its filing. While Light Reading wouldn't comment on the steps it has taken to regulate its message board, as of Dec. 30 the site appeared to have stripped out most user comments made about Juniper in 2005. And, chances are, Internet users will be more careful about what they say about the company for fear of getting sued.

Civil rights experts caution that that's dangerous in itself. "Companies will often use the legal system to scare people away from attacking them," says Lawrence Lessig, professor of law at Stanford Law School and a popular blogger on the topic of cyberlaw. "But we all should be free to make critical statements about anybody, unless those statements are malicious."

As discussions about the case heat up, it's already clear that Juniper's attempt to quiet message board discourse -- it is asking for an injunction -- has failed.