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Venting Online, Consumers Can Find Themselves in Court



Stephen McGee for The New York Times

Justin Kurtz with his car, which was towed from his apartment complex parking lot near Western Michigan University.

By DAN FROSCH
Published: May 31, 2010

After a towing company hauled Justin Kurtz's car from his apartment complex parking lot, despite his permit to park there, Mr. Kurtz, 21, a college student in Kalamazoo, Mich., went to the Internet for revenge.

Outraged at having to pay \$118 to get his car back, Mr. Kurtz created a [Facebook](#) page called "[Kalamazoo Residents against T&J Towing.](#)" Within two days, 800 people had joined the group, some posting comments about their own maddening experiences with the company.

T&J filed a defamation suit against Mr. Kurtz, claiming the site was hurting business and seeking \$750,000 in damages.

Web sites like Facebook, [Twitter](#) and [Yelp](#) have given individuals a global platform on which to air their grievances with companies. But legal experts say the soaring popularity of such sites has also given rise to more cases like Mr. Kurtz's, in which a business sues an individual for posting critical comments online.

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The towing company's lawyer said that it was justified in removing Mr. Kurtz's car because the permit was not visible, and that the Facebook page was costing it business and had unfairly damaged its reputation.

Some First Amendment lawyers see the case differently. They consider the lawsuit an example of the latest incarnation of a decades-old legal maneuver known as a strategic lawsuit against public participation, or Slapp.

The label has traditionally referred to meritless defamation suits filed by businesses or government officials against citizens who speak out against them. The plaintiffs are not necessarily expecting to succeed — most do not — but rather to intimidate critics who are inclined to back down when faced with the prospect of a long, expensive court battle.

"I didn't do anything wrong," said Mr. Kurtz, who recently finished his junior year at Western Michigan University. "The only thing I posted is what happened to me."

Many states have anti-Slapp laws, and Congress is considering legislation to make it harder to file such a suit. The bill, sponsored by Representatives Steve Cohen of Tennessee and Charlie Gonzalez of Texas, both Democrats, would create a federal anti-Slapp law, modeled largely on California's statute.

Because state laws vary in scope, many suits are still filed every year, according to legal experts. Now, with people musing publicly online and businesses feeling defenseless against these critics, the debate over the suits is shifting to the Web.

"We are beyond the low-tech era of people getting Slapped because of letters they wrote to politicians or testimony they gave at a City Council meeting," said [George W. Pring](#), a University of Denver law professor who co-wrote the 1996 book "Slapps: Getting Sued For Speaking Out."

Marc Randazza, a First Amendment lawyer who has defended clients against suits stemming from online comments, said he helped one client, Thomas Alascio, avoid a lawsuit last year after he posted negative remarks about a Florida car dealership on his Twitter account.

"There is not a worse dealership on the planet," read one post, which also named the dealership.

The dealership [threatened to sue](#) Mr. Alascio if he did not remove the posts. Mr. Randazza [responded in a letter](#) that although Mr. Alascio admitted that the dealership might not be the worst in the world, his comments constituted protected speech because they were his opinion.

While the dealership did not sue, that outcome is unusual, said Mr. Randazza, who conceded that sometimes the most pragmatic approach for a Slapp defendant is to take back the offending comments in lieu of a lawsuit.

In the past, Mr. Randazza said, if you criticized a business while standing around in a bar, it went "no further than the sound of your voice."

Now, however, "there's a potentially permanent record of it as soon as you hit 'publish' on the computer," he said. "It goes global within minutes."

Laurence Wilson, general counsel for the user review site Yelp, said a handful of lawsuits in recent years had been filed against people who posted critical reviews on the site, including a San Francisco chiropractor who sued a former patient in 2008 over a

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negative review about a billing dispute. The suit was settled before going to court.

“Businesses, unfortunately, have a greater incentive to remove a negative review than the reviewer has in writing the review in the first place,” Mr. Wilson said.

Recognizing that lawsuits can bring more unwanted attention, one organization has taken a different tack. The group [Medical Justice](#), which helps protect doctors from meritless malpractice suits, advises its members to have patients sign an agreement that gives doctors more control over what patients post online.

Dr. Jeffrey Segal, chief executive of Medical Justice, said about half of the group’s 2,500 members use the agreement.

“I, like everyone else, like to hear two sides of the story,” he said. “The problem is that physicians are foreclosed from ever responding because of state and federal privacy laws. In the rare circumstance that a posting is false, fictional or fraudulent, the doctor now has the tool to get that post taken down.”

The federal bill, in the House Subcommittee on Courts and Competition Policy, would enable a defendant who believes he is being sued for speaking out or petitioning on a public matter to seek to have the suit dismissed.

“Just as petition and free speech rights are so important that they require specific constitutional protections, they are also important enough to justify uniform national protections against Slapps,” said Mark Goldowitz, director of the [California Anti-Slapp Project](#), which helped draft the bill.

Under the proposed federal law, if a case is dismissed for being a Slapp, the plaintiff would have to pay the defendant’s legal fees. Mr. Randazza would not disclose specifics on the legal fees he has charged his clients, but he said the cost of defending a single Slapp suit “could easily wipe out the average person’s savings before the case is half done.”

Currently, 27 states have anti-Slapp laws, and in two, Colorado and West Virginia, the judiciary has adopted a system to protect against such suits. But the federal bill would create a law in states that do not have one and offer additional protections in those that do, Mr. Goldowitz said.

In Michigan, which does not have an anti-Slapp measure, Mr. Kurtz’s legal battle has made him a local celebrity. His Facebook page has now grown to more than 12,000 members.

“This case raises interesting questions,” said the towing company’s lawyer, Richard Burnham. “What are the rights to free speech? And even if what he said is false, which I am convinced, is his conduct the proximate cause of our loss?”

On April 30, Mr. Kurtz and his lawyers asked a judge to dismiss the suit by T&J, which has received a failing grade from the local Better Business Bureau for complaints over towing legally parked cars. Mr. Kurtz is also countersuing, claiming that T&J is abusing the legal process.

“There’s no reason I should have to shut up because some guy doesn’t want his dirty laundry out,” Mr. Kurtz said. “It’s the power of the Internet, man.”

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