The Anatomy of a RipOff Report Lawsuit

Posted by Sarah Bird, Esquire on January 21st, 2008 at 2:27 pm

Search and Legal Issues

May It Please the Mozzers,

Last week, there were several excellent posts elucidating the many ways RipOff Report violates Google’s Terms of Service, and yet manages to stay on top of the Google search results pages. Rand, Chris Bennet, Will Critchlow, and Andy Beal did a great job of bringing RipOff Report out in the open for a serious discussion.

It is no secret that RipOff Report has been widely and universally accused of promulgating defamatory content and then extorting money from the victims of the very libel it publishes. This business model has made RipOff Report the subject of many lawsuits. In fact, I have at least seventeen listed in the Appendix at the end of this post.

Despite the ubiquitous outcry against RipOff Report, it appears to have survived most of the legal challenges unscathed, leaving it free to carry on business as usual. RipOff Report claims never to have lost a lawsuit.

Is it true that RipOff Report has never lost a lawsuit? Is this a failure of the legal system? Are the allegations unfounded? If there is truth in the allegations, then how is the system going wrong? Why can’t RipOff Report be held responsible for its conduct?

As promised, I want to spend Legal Monday digging into these issues. In order to accomplish this, we must take a trip together through RipOff Report’s sordid legal history. In doing so, we will gain a basic understanding of the following:

• Defamation
• The Communications Decency Act (42 USC Section 230)
• The Racketeer Influenced and Corrupt Organization’s Act (“RICO Act”)
• Extortion

Let’s get started!

I. Is It True That RipOff Report Has Never Lost a Lawsuit?

Yes and no. It’s true that none of the cases against RipOff Report has gone to trial. I have created an appendix of cases at the end of this post that indicates the status of each case. There are a lot of reasons for why RipOff Report has "never lost a case."
First, RipOff Report has had pretty good success in getting cases alleging mere defamation dismissed immediately. We’ll see why this is so below.

Second, RipOff Report sometimes has failed to appear to defend a lawsuit against them. When this happens, a default judgment is entered against RipOff Report. For example, RipOff Report failed to respond to a lawsuit in Canada and another one in the Caribbean. Thus, it ‘lost’ those cases, but it doesn’t really count because RipOff Report just gave up and no one ever had to hold a trial.

Third, RipOff Report, like most civil defendants, has settled many cases. When a case settles, the terms of the settlement are not public and it never goes to trial. Thus, it’s very difficult to determine who “won” when the parties settled.

Finally, there are several cases still pending. It is too early to tell how these cases will come out.

II. Why Does RipOff Report Continually “Get Off the Hook” for Spreading Lies?

First, we do not know if RipOff Report has ”gotten off the hook.” Many cases have settled and the terms of those settlement agreements are unknown. It’s entirely possible that significant amounts of cash changed hands and we will never know about it.

For example, Hy Cite Corporation settled its lawsuit with RipOff Report and its negative reports are now out of the title tag and below the fold. (I won’t link to the page, but you know where to find it.) Thus, RipOff Report clearly compromised on that issue.

⇒ Isn't It Illegal to Spread Lies About Someone? What Exactly is Defamation?

In its most general form, defamation is a false statement of fact that is harmful to a person’s reputation. Defamation is defined by each state individually, so your local jurisdiction will have slight variations, but this is a pretty good general definition. For more information about defamation, check out the Electronic Frontier Foundation.

Many, many plaintiffs in the cases against RipOff Report below made the mistake of accusing RipOff Report of posting defamatory content.

⇒ How is Bringing a Defamation Case a Mistake? Isn’t That Exactly What RipOff Report is Accused of Doing?

Well, yes. But thanks to a law known as The Communications Decency Act (“CDA,” 47 USC 230), RipOff Report cannot be sued for posting defamatory content written solely by its users. It's a different story for content that it creates.

⇒ Is RipOff Report Exploiting Some Kind of Loop Hole?

Nope. Most of us benefit from the Communications Decency Act. It makes the Search Engines and Web 2.0 function. We want users to interact with our sites without having to worry about being sued over something a user did. Sooner or later, some crazy person is
going to write something on your site and you are going to be so happy for the Communications Decency Act because you’re not responsible for the crazy person’s conduct.

⇒ Why I Love the Communications Decency Act: Don’t Blame the CDA for RipOff Report’s Success

I’m going to be honest here. As someone who is in charge of handling the legal issues for a website with vibrant conversations driven by user contributions, I am relieved that the CDA exists. Without the CDA, SEOmoz would either have to independently review and investigate the accuracy of every comment posted to the site, or simply refuse to have any third party content altogether. Goodbye comments! Goodbye member profiles! See you later, YOUmoz! SEOmoz as we know it would not exist if it weren’t for the CDA.

⇒ Website Owners Are 100% Responsible for Content That They Have Created

I am an employee and I am posting this content. Thus, SEOmoz is responsible for everything contained in this post. However, SEOmoz is not responsible for your comments. (phew!)

⇒ Website Owners Risk Losing Immunity When They Alter, Develop, Collaborate, or Change User-Generated Content

It makes intuitive sense that when a website owner starts to change user-generated content, he should no longer be allowed to throw up his hands and claim no responsibility for the content.

The unresolved question for courts is where the line is between creating and editing. A certain amount of editing (for spelling, grammar) would not cause a website owner to lose immunity. However, substantial edits that affect the meaning of the user-generated content may cause the website owner to lose immunity. Thus, SEOmoz could lose immunity from suit by soliciting, creating, developing, and over-zealously editing your comments.

Similarly, RipOff Report cannot be held liable for content created by its users. Strangers can write just about whatever they want on RipOff Report and so long as Magedson (the manager and alleged controller/operator of RipOff Report) does not interfere, he cannot be liable. However, what if he substantially alters user-generated complaints? Is he responsible for titles containing defamatory language?

⇒ How Much Does a Website Owner Have to Change a Third Party’s Content Before He Can Be Held Liable?

No one knows right now. The statute creates very broad protection for website owners. However, if a website owner does enough editing to change the meaning of user-generated content, then immunity may be lost. There are several big cases in the pipeline
that may help define this boundary in the next year or two. In the meantime, if you want to know more, you can check out the CDA immunity provisions here.

⇒ If RipOff Report Writes the Negative, Defamatory Titles and Stuffs Them With Keywords, Is That Enough to Make Them Liable for Defamation?

Arguably, yes. There is no agreement on this right now. Several courts have stated that if the plaintiffs can get evidence that RipOff Report is drafting defamatory titles, then there is a viable defamation claim and no immunity. Thus, if you’re going to sue RipOff Report, it is very important to allege that the website created and/or substantially altered the meaning of the content.¹ You need to allege facts that get you around the CDA immunity provisions in order to avoid being thrown out of Court.

There is more than just speculation that Magedson was involved in altering reports. The Declaration of Dickson Earl Woodard Deposition contains the sworn testimony of the Plaintiff’s former employee² and states repeatedly that Magedson drafted fake complaints and manipulated search engines:

Attorney: So what I’ve gathered from all of your testimony, Dickson, is that Ed Magedson has indirectly told you that he is responsible for making posts about companies. He will make these posts. Mr. Woodard: Yes.

Attorney: And then he will manipulate the search engines; is that true?

Mr. Woodard: No question about the search engines. That's where the money is made.

In his Response to Woodard's testimony, Magedson blames Woodard for making the fake complaints.

Magedson’s deposition also throws his credibility into doubt. Read excerpts of his testimony and determine for yourself whether he’s telling the truth when he states that he did not write the email asking a disgruntled employee to write an inflammatory post about his employer.

III. The New [old] Approach: Next Generation Plaintiffs Are Focusing on RICO Act Claims Based on Extortion, Rather Than Defamation

Because the CDA bars RipOff Report from liability for many civil suits, attorneys are shifting their focus. In addition to defamation, attorneys are suing RipOff Report for violations of the RICO Act. These next generation plaintiffs allege that RipOff Report’s conduct is extortion and amounts to racketeering.

⇒ What is the RICO Act?

The Racketeer Influenced and Corrupt Organizations Act was designed to bust up organized crime like the mob. The Godfather, as everybody knows, never did his own dirty work. He had people to take care of his unlawful business. Thus, it was not easy for
law enforcement to pin him with money laundering and murder because he wasn’t doing it himself. After years of mafia domination, the legislature wised up and finally made a law that made it illegal to be the head of an organization that conducts a pattern of unlawful activity. It didn’t matter anymore if the Godfather didn’t pull the trigger. Because he was in charge of the organization that made the murder happen, he could be found liable for a RICO Act violation.

Plaintiffs are now applying this same strategy to RipOff Report litigation.

⇒ The RICO Act is a Favorite with Plaintiffs Because it Allows for Punitive Damages

There is another brilliant thing about RICO Act claims that make them a very attractive avenue to plaintiffs’ attorneys: Punitive or treble damages. If you are found liable of a RICO Act claim and you extorted $50,000.00, the Judge can order you to pay three times that amount! Most civil lawsuits (like defamation, for example) only allow plaintiffs to recover the amount that they were actually damaged. The ability to recover punitive damages is what makes RICO so suave, my friend.

⇒ What Does a Plaintiff Have to Prove to Hold RipOff Report Liable for a RICO Act Violation?

The most common RICO claim makes it unlawful for a person to manipulate an enterprise for purposes of engaging in, concealing, or benefiting from a pattern of racketeering activity. In order to prove a “racketeering activity,” you must essentially prove a crime within a crime. Extortion can serve as a “racketeering activity” under the statute.

In the case of RipOff Report, a plaintiff must demonstrate that Magedson manipulated an enterprise (RipOffReport.com) for the purpose of engaging in a pattern of extortion.

Note: If you want to learn more about the RICO Act, I commend to your attention to Mr. Jeffrey Ernest Grell’s RICO Act in at Nutshell. It’s a thorough review and will tell you everything you want to know and more about RICO.

⇒ What is Extortion: When is it Wrong to Ask Someone for Money?

RipOff Report expressly states on its site that it is not engaging in extortionate conduct. This begs the question, what is extortion? Is paying someone tens of thousands of dollars in addition to a monthly fee to help you communicate with your angry clients the price of good PR, or extortion?

Generally, the term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. In other words, you are committing extortion if you are wrongfully
threatening someone to give you money or property. But it’s not always easy to determine whether the use of force is “wrongful.”

The good news is that the courts have already determined that taking money from a person in order to prevent him from being defamed is extortion. As an example, here's a kooky and highly entertaining case involving the criminal underbelly of the Church of Scientology that's surprisingly on point.

Further, several courts have ruled that the facts alleged against RipOff Report could amount to extortion. The courts in Hy Cite and Cambridge Who’s Who ruled that the allegations in the plaintiffs’ Complaints could result in a finding of extortion against RipOff Report.

⇒ Does the CDA Grant Immunity from a RICO Act Claim as Well as a Defamation Claim?

The CDA grants immunity against more claims than just defamation. For example, the CDA has granted immunity from suits involving negligent misrepresentation, interference with business expectancy, breach of contract, intentional nuisance, violations of federal civil rights, and emotional distress. However, the CDA does not grant immunity for federal criminal law, intellectual property law, and electronic communications privacy law.

The issue over whether the CDA grants immunity from RICO Act claims has not been addressed by a court yet. So far, none of the RipOff Report rulings state that the CDA grants immunity from RICO charges. However, none of the courts have found that the CDA does not grant immunity, either.

The Hy Cite Court ruled, “Here, Defendants operate a website. Plaintiff alleges that Defendants create and solicit false and defamatory complaints against businesses, but will cease this conduct for a $50,000 fee and a $1,500 monthly retainer. Remedyng the publication of false and defamatory complaints, which Defendants allegedly created and solicited, does not give Defendants the right to collect fees. Plaintiff has properly alleged threatened extortion.”

Thus, so far, courts are not bothered by the implications of the CDA on the RICO Act. For one, hope it stays this way.

IV. Where RipOff Report Litigation Should Go from Here

The steady stream of lawsuits against RipOff Report have not slowed down and there is no indication that they will. Plaintiffs have become more sophisticated in order to avoid being kicked out of Court by the Communication Decency Act’s broad immunity provisions. Plaintiffs are being sure to plead that RipOff report was directly responsible for creating defamatory content, not just publishing it.
Because a lot of us have much to gain from a strong CDA, I hope that plaintiffs will continue to press the RICO/Extortion combo. This will direct the conversation away from the CDA and focus it on the extortion elements of the case. This is appropriate because this is what makes RipOff Report’s alleged conduct so reprehensible. If RipOff report were just providing a neutral and organic platform to publish good and bad comments about businesses, no one would be complaining.

What transforms this site from a consumer advocacy site to a menace (allegedly) is its aggressive violations of Google’s terms of service to increase its rankings, and concomitant demands for exorbitant fees to write a few rebuttal posts. It is not the defamatory nature of the posts that are the problem. After all, those are all over the web and probably always will be. The problem here is the apparent intent to damage a person or business’s reputation without regard to the truth of the matter, only to re-victimize the person or business by charging them exorbitant fees.

The legal theories have come a long way. A lot of cases are in aggressive investigation phases right now. I’m hoping that some plaintiff out there will take this case “all the way” so that the public can finally have full access to the evidence and testimony necessary to make a fair decision. If the allegations against RipOff Report are true, I believe the RICO Act is the best method for holding RipOff Report accountable.

Thank you for taking the time to read this Anatomy of a RipOff Report lawsuit. I hope you have found it interesting and useful. As always, I welcome your questions and comments. In particular, please let me know if you know of any cases that are not included in my Appendix below.

Very truly yours,

Sarah

Appendix of Cases

I thought it might be useful to list the cases involving RipOff Report that I have located so far and indicate their status. If anyone knows of others, please let me know so I can add it to my list. For example, I know there is a Canadian case that I’ve left out here. For your information, Xcentric Ventures, Badbusinessbureau.com, RipOffReport.com, and Edward Mageson are all the same party.

**Ottis v. Magedson**—Filed October 18, 2007, in the Nebraska District Court under cause number 4:2007cv03251. Mr. Ottis is asserting both libel and RICO Claims. Case Pending.

**Children of America v. Magedson**—Filed February 2007, in Maricopa County Superior Court in Arizona under cause number CV 2007-003720. The Court ruled that CofA may have a claim against Magedson for creating and developing complaints and/or titles to
complaints. The case is still pending. If anyone has further information about this case, please let me know.

**Xcentric Ventures v. Stanley**—Filed May 20, 2007, in Arizona’s District Court under cause number 2:2007cv00954. This is an unusual case because ROR is the Plaintiff. Further, one of the named defendants is The Defamation Action League. How cool does that sound? There are some very interesting documents in the docket here. My favorite is a police report filed by Magedson regarding threatening letters that he received. He drops the complaint once the police begin investigating. You be the judge: Does it sound like Magedson made the whole thing up? The case is still pending with discovery (disputes) active.

**Global Royalties v Xcentric**—Filed May 10, 2007, in Arizona’s District Court under cause number 2:2007cv00956. The case is still active and pending a decision by the 9th Circuit ruling on the Roommates case (which will interpret the CDA). **UPDATE:** The case was dismissed in February 2008. The District Court granted ROR's Motion to Dismiss, ruling that mere allegations that ROR encouraged third parties to create defamatory postings was not sufficient to get Global Royalties around the broad CDA immunity. Notably, the question of a RICO act violation was not before the Court. Instead, the Court ruled consistently with prior CDA cases stating that if a third party wrote the content, ROR is not liable for defamation. This is true even when the original poster of the defamatory content later admits that the statements are not true and asks ROR to remove them. The Court states, "Unless Congress amends the statute, it is legally (although perhaps not ethically) besides the point whether defendants refuse to remove the material, or how they might use it to their advantage." You can read the Court's entire Order here.

**GW Equity v. Xcentric**—Filed June 1, 2007, in Texas Northern District Court under cause number 3:2007cv00976. This one is the source of some great declarations by a former employee who throws Magedson under the proverbial bus. Magedson’s only retort is that the employee was lying and that it was actually the employee inventing these stories. The case includes a RICO claim. The case is still pending and discovery is active.

**RSA v. Rip-OffReport.com**—Filed April 23, 2007, in the New Jersey District Court under cause number 2:07cv01882-HAA-ES. RSA also sued Google in this case. That was a mistake. Case voluntarily Dismissed in August 2007. The report is still online and there is a rebuttal from the owner.


**Manchanda Law Offices v. Xcentric**—Filed July 25, 2007, in the New York Southern District Court under cause number 1:2007cv06708. Originally failed to plead RICO, but amended the Complaint in October 2007 to include a RICO claim. The lawsuit was never
served and was withdrawn by the Plaintiff in November 2007. The negative “reports” are still on Ripoff Report.

_Magedson v. Sharp_—Filed February 2007, in Maricopa County Arizona State Court under cause number CV2007-001968. The case is still pending. If anyone has further information about this case, please let me know.


_Magedson v. Federated Financial Services_—Filed October 2005, in Maricopa County Arizona under cause number CV2005-015552. Case dismissed December 2005. If anyone has further information about this case, please pass it on.

_Hy Cite v. Badbusinessbureau.com_—Filed December 11, 2004, in Arizona District Court under cause number 2:2004cv02856. The plaintiff amended its Complaint to include defamation, RICO Act claims, and trademark infringement. The Court dismissed the trademark associated claims, but ruled that the RICO Act claims and the claims that Magedson authored and/or edited defamatory statements can go forward. The case includes a thoughtful and well-written Order authored by Judge Earl H. Carroll going through the legal arguments and defenses. Surely, this well-reasoned order created the impetus necessary for the parties to settle in May 2007. Interestingly, Hy Cite is still listed on RipOffReport.com, but unlike other rebuttals to complaints, the rebuttal appears in the title and above the Complaint. I speculate that this could have been part of the settlement terms. [Note: Hy Cite originally filed in Wisconsin. However, that case was dismissed because the Wisconsin ruled that it didn’t have jurisdiction over RipOffReport.com et al.]

_Whitney Information Network v. Xcentric_—Filed January 27, 2004, in Florida’s Middle District Court under cause number 2:2004cv00047. This case is helpful for providing evidence that Magedson solicited reports designed to harass businesses. See document 158-2, which is an excerpt from a deposition with Magedson in which he discusses an email where he invites a disgruntled employee to “post something or part of the e-mail below? This would be great, and it would definitely piss them off!” UPDATE: This case is now dismissed. In February 2008, the District Court dismissed this case after Ripoff Report filed a Motion for Summary Judgment. The only claim before the Court was defamation. There was no RICO Act violation alleged in the Complaint. The Court ruled that RipOff Report cannot be held liable for defamation by having created the drop-down menu of descriptions (such as "scam" and "rip off") from which the person filing the report chooses to describe his or her report. In other words, drop down menus don't make you an author. The Court noted that Ed and other RipOff Report employees submitted signed statements indicating that they had never authored a report. The plaintiff did not submit any evidence that RipOff Report authored the reports at issue in the case. Thus,
the Court held that the case was dismissed because there was no evidence that RipOff
Report authored the reports at issue in this case. You can read the Court's Order here.
Also, you can read Eric Goldman's summary here. While looking for the Court's order in
this case, I found the transcript from Ed Magedson's deposition taken back in August
2007. I'm sorry it is broken up into many many pieces. I'm going to list them here for
those who are interested. Parts 1-9 are the deposition and index; the remaining parts are
11, Part 12, Part 13, Part 14, Part 15, Part 16, Part 17, Part 18, Part 19, Part 20, Part 21,

George S. May Intl v. Xcentric—Filed September 15, 2004, in Illinois District Court

Pritchard v. Magedson—Filed April 14, 2004, in the Western District of Pennsylvania
under cause number 2:04-cv-00567-JFC. Case closed on Plaintiff's Motion on May
2004.

Leavenbaum v. Xcentric—Filed October 2004, in Maricopa County Superior Court for
the State of Arizona under cause number CV2004-020368. Case closed on October 2005
by an Order on Dismissal. If anyone has further information about this case, I am curious.

Alyon Technologies v Badbusinessbureau.com—Filed 2003 in the Eastern Caribbean
Supreme Court In the High Court of Justice Federation of Saint Christopher and Nevis
Saint Christopher Circuit under claim number SKBHCV2003/052. Default Judgment
entered on July 4, 2003 for $27,100,932.00 because the defendants failed to appear and
defend themselves in the suit.

MCW v Badbusinessbureau.com—Filed December 2002, in the Northern District of
Texas District Court under cause number 3:06cv0179. There is a valuable opinion from
this unpublished case that states Magedson is not entitled CDA immunity to the extent
that he is developing and creating “report titles, headings, and some of the defamatory
messages posted on the websites.” Case closed and the report is still online with no
rebuttal.

Magedson v Village Voice Media—Filed January 31, 2008, in Maricopa County State
Court under cause number CV2008-002416. Unfortunately I don't have access to the
Complaint that was filed. However, I imagine that Magedson is suing because of this
article written in the Phoenix New Times News. Ironically, he may be suing the news
paper for defamation-related claims. If anyone has a copy of this Complaint, please send
me a copy. UPDATE: ROR write defensive letter about filing this case.

1 It was brought to my attention on March 21, 2008 by David Gingras, an attorney for
RipOff Report, that this comment may "invite people to make knowingly false
allegations." Although I don't think my article does this, I want to make sure that the
reader understands I am not advocating dishonesty. Please do not make knowingly false
allegations against any person or company at any time.
Previously, inaccurately reported as RipOff Report's former employee.

3 It was brought to my attention on March 28, 2008 by Maria Crimi Speth, another attorney for RipOff Report, that Ed Magedson is not the owner of RipOff Report. Xcentric Ventures is the legal owner of RipOff Report. Ed Magedson manages Xcentric. Many Complaints allege that he operates and controls Xcentric and RipOff Report.