



THINK BEFORE YOU POST - PROTECTING YOUR REPUTATION WHILE REDUCING THE RISK OF DEFAMATION

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It is Critical to Consult Counsel Before Making Statements in Contentious Situations.

Reputation is everything. This is particularly true in today's social media environment where a controversial post by a third-party can damage your or your company's reputation that has been built up at a great cost over many years.

To protect it and your investment in your business, you will likely, at some point in the future, find yourself in a situation where you have to communicate a public statement – usually in a social media post. This need may arise from a public relations firestorm or to save a critical vendor or client relationship.

Responding to this threat and protecting your reputation, however, presents a risk of drawing a defamation claim.

Burke Warren attorneys recently notched a significant win in such a situation, with the Illinois Appellate Court affirming complete dismissal of defamation claims brought against one of its clients. The appellate opinion may be accessed [here](#).

This case arose from posts by a real estate agent of a Burke Warren brokerage client on her Facebook homepage that the agent also used for her business and which disclosed the client's logo and the agent's relationship with the client. On January 6, 2021, this agent posted photos of herself on her Facebook homepage giving the "V for Victory" sign next to the United States Capitol while throngs of protestors pressed toward the Capitol's doors. Later, the agent posted a photo of a glass of champagne on a rooftop deck, commenting "after storming the capital a good glass of champagne is needed!"

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Because the client's logo and relationship with the agent were on the agent's Facebook homepage, the public inundated the Burke Warren client with negative comments. The Burke Warren client thus had no choice but to immediately terminate its relationship with this agent and make a public statement that it was doing so and did not in any way endorse the agent's actions. The client did so by posting on the client's social media pages: "Effective immediately, [the Burke Warren client] is terminating this agent, who acknowledged on social media, that she took part in storming the Capitol. [The Burke Warren client] does not condone violence, destruction or illegal activities."

The agent sued the Burke Warren client for defamation, claiming that the above statement wrongfully insinuated she participated in the violence of January 6, 2021. The trial court, affirmed by the appellate court, disagreed and dismissed the lawsuit, holding that the above statement was substantially true and was posted as a defense of the Burke Warren client's reputation.

What can a business take from this situation?

Most importantly, when the need to make a public statement or communication arises, consult an attorney experienced in law regarding defamation. The attorney can review the proposed statement to ensure it does not run afoul of such defamation law. It is critical that the statement remain in the bounds of being true, as defined in the law, and focus on legitimate interests, which will mitigate the risk of the statement being construed as a false statement of fact causing damage to another – i.e., a defamatory statement. Under the law, whether a statement is defamatory is a fact-specific analysis requiring consideration of several legal principles.

The attorney can also provide advice from experience as to how, or even if, to disseminate the statement to critical audiences.

There will be times when a business must communicate a message to protect its interests, possibly under great pressure. Should you or your business become involved in such a situation, contact Aaron Stanton ((312) 840-7078 or astanton@burkelaw.com) or Josh Cauhorn ((312) 840-7055 or jcauhorn@burkelaw.com) for guidance.