

## Fighting Back Against Anonymous Online Attacks

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When Google users searched for The Bussey Law Firm PC, they were confronted with a scathing review calling founder Timothy Bussey a “scumbag” who “loses 80% of his cases.” Discovery revealed the disgruntled “client” to be a 20-year-old young man named Jason Page, who was living with his parents in Telford, England. Page had no relationship with the law firm and may have been paid to post the negative review. Whether a defamatory review is the work of a competitor or an Internet troll using a computer in his parent’s home, the damage from a reputational attack can be devastating. As detailed below, the case highlights one step available to affected companies and individuals to protect their reputation from such anonymous attacks.



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### Background and Analysis

Anonymous speech has long enjoyed certain protections under U.S. law. Alexander Hamilton, James Madison and John Jay published The Federalist Papers in New York newspapers under the pseudonym “Publius.” As the Ninth Circuit put it, “Although the Internet is the latest platform for anonymous speech, online speech stands on the same footing as other speech.”[1]

On Jan. 27, 2012, a Google Maps user identified as “Jason” described Timothy Bussey as a “scumbag” who “pays for false reviews [and] loses 80% of his cases.” The review appeared any time a user searched for the law firm on Google. The firm found no record of any dissatisfied client named Jason.

Google initially refused to remove the offending review for approximately one year and declined to provide any identifying information about the user. Since the passage of Section 230 of the Communications Decency Act in 1996, Internet service providers like Google enjoy virtually ironclad immunity in connection with content created by third parties. While ISPs remain a critical partner in the fight to neutralize and identify an anonymous online threat, it usually takes a court order to get the ISP’s attention.

Less than two months after the offending review was posted, the firm sued “John Doe, whose true name is unknown” for defamation in the U.S. District Court for the District of Colorado, where the firm is located. The firm served a subpoena duces tecum on Google at its headquarters in Mountain View, California. Ordinarily, ISPs comply with subpoenas within 15 days unless a motion to quash is filed. If a subpoena is

challenged, state and federal courts use variations of the following test to determine whether to unveil an anonymous online speaker. First, the plaintiff must take reasonable steps to notify the defendant about the court proceeding. Second, the plaintiff generally must make a prima facie showing that the review is defamatory.[2]

In this case, Google eventually produced responsive records indicating that the author of the review was Page of Telford, England. Page's review suggested that he was a client of the firm. In fact, he had no relationship with the firm.

The firm sued Page for defamation in London's High Court of Justice. The High Court noted: "It is recognised that a claimant seeking a remedy in this jurisdiction regarding a defamatory publication anywhere abroad must plead, and if necessary prove, that the words in question are actionable under the *lex loci delicti* [the law of the place of the wrong] as well as under English law." The court rejected the defendant's claim that his account was hacked. Citing the sophisticated security measures in place, the court stated that the "overwhelming probability" was that Page wrote the review.

The High Court further noted that "Mr Page advertised on Twitter as being willing to post 'feedback' or 'testimonial' (a description which corresponds to the posting complained of here) for \$5 via the Fiver.com website." In Colorado district court filings, the law firm alleged that Page "was engaged in posting online reviews of various businesses located in the United States in return for payment, and was hired by someone in Colorado Springs, Colorado to post online defamatory statements about Mr. Bussey and his law firm." The U.K. court concluded that the most likely explanation for the review was "purely financial." According to reports, an investigation is ongoing in both the U.K. and the U.S. to determine whether Page was hired to post the review. On March 6, 2015, the court ordered Page to pay £100,000 in damages and costs, reportedly the largest amount ever awarded by a U.K. court in connection with a fake online review.

The case highlights the power of strategic litigation to identify an anonymous threat. The lawsuit in federal court unlocked the discovery tools that ultimately led to the identification of Page. Once the defendant was identified, the ISP took down the review. With the facts in hand, the firm was able to go on offense against an anonymous threat typed on a computer halfway around the world by a troll who thought the Internet allowed him to hide.

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[1] *Anonymous Online Speakers v. United States Dist. Court (In re Anonymous Online Speakers)*, 661 F.3d 1168, 1173 (9th Cir. 2011) (citing *Reno v. ACLU*, 521 U.S. 844, 870 (1997)).

[2] Some courts have taken the additional step of assessing the nature of the speech and the First Amendment implications of unveiling the speaker.

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