

Businesses accusing Yelp of extortion lose another round in court

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ConsumerWatch: Court sides with Yelp in lawsuit from small business owners

Can a business buy itself an amazing rating on Yelp? Maybe.

The influential ratings website denies tampering with any reviews, but a federal appeals court ruled that it can if it wants to — saying it would not amount to extortion.

The decision by the U.S. 9th Circuit Court of Appeals in San Francisco was in response to a lawsuit filed by small businesses alleging Yelp manipulated ratings to extort businesses into advertising.

"The business owners may deem the posting or order of user reviews as a threat of economic harm, but it is not unlawful for Yelp to post and sequence the reviews," Marsha S. Berzon, a member of the court's three-judge panel, wrote in the ruling Tuesday to uphold a lower court's dismissal of the lawsuit. "As Yelp has the right to charge for legitimate advertising services, the threat of economic harm that Yelp leveraged is, at most, hard bargaining."

Yelp has long been dogged by accusations that it strong-arms businesses into advertising.

The lawsuit, which had previously been dismissed by a district court, alleged that Yelp would remove positive reviews or write negative reviews to pressure the companies to pay for advertising.

Yelp "would have us believe their reviews are honest and accurate, yet the truth is that the almighty advertising dollar reflects who keeps the good reviews and who loses them," Lawrence Murray, attorney for the plaintiffs, said in a written statement.

Small businesses and their employees stand to lose in the long run as a result of the ruling, Murray said..

Yelp applauded the ruling and fired back at the accusations.

"For years, fringe commentators have accused Yelp of altering business ratings for money," the company said in its blog Tuesday. "Yelp has never done this and individuals making such claims are either misinformed, or more typically, have an axe to grind."

John Mercurio, one of the plaintiffs, said Yelp removed 14 five-star ratings for his auto repair shop in Santa Clara, Calif., after he declined a sales pitch from a Yelp representative to spend \$500 a month on advertising.

Not only did the glowing reviews disappear, Mercurio said in a phone interview Thursday, but also a 1-star review appeared at the top of his Yelp listing. Sales for the business have dropped 30%, Mercurio said.

"I can't believe they got away with it," he said of the latest ruling. "It's mafia of the Internet. You're basically a hostage: pay up or die."

Mercurio has since filed for personal bankruptcy and is considering hiring another attorney.

"There's just so many business owners frustrated by this, I can't bow down," he said. "If the three judges had families with businesses, they would have seen this totally different: 100% extortion."

Two other plaintiffs, the owners of Cats & Dogs, an animal hospital in Long Beach, and Renaissance Restorations in Daly City, declined to comment.

Murray said his clients are considering "all options," including an appeal.

Paul Alan Levy, a lawyer at the consumer advocacy group Public Citizen, said cases against Yelp are unlikely to succeed until one of the businesses is able to produce specific evidence that Yelp is deliberately altering ratings.

"There's strong protections for websites that accept user reviews," Levy said. "If a company like Yelp knows it's going to be dragged around by any business owner, then it would create an enormous disincentive for them to allow negative reviews, and then what good does a review site do at that point?"

Defamation would be a better legal claim than extortion, he said.

As a consumer, Levy said he takes reviews with a grain of salt and tries to avoid looking at the extremes.

"If you don't know the person, how do you know you can trust their judgment?" he said. "But if I'm in a strange city, it does provide some utility."

About 138 million people visit Yelp each month, and the company expects revenue of as much as \$375 million this year.

The court ultimately decided the plaintiffs did not have preexisting rights to positive reviews and failed to prove that Yelp wrote negative critiques.

"We conclude, first, that Yelp's manipulation of user reviews, assuming it occurred, was not wrongful use of economic fear, and, second, that the business owners pled insufficient facts to make out a plausible claim that Yelp authored negative reviews of their businesses," Berzon wrote. "Accordingly, we agree with the district court that these allegations do not support a claim for extortion."

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