

## **Region's companies play role in muzzling Web chat rooms**

**John T. Fakler**

For some executives, reacting to stock bashing has become a case of spare the rod and spoil the investors.

While a move is underfoot to protect the free speech of online critics, thousands of message board mavens who slam the reputations of CEOs and the companies they serve may be doing so at their own peril.

That's because corporations and their lawyers are using strong arm tactics to curb this new communication forum. They are looming large over everyone from stock traders to financial hobbyists who routinely hammer and sometimes libel public companies – whether the information spewed is true or not-so-true.

Legal representatives of several local firms including Hvide Marine in Fort Lauderdale and AnswerThink of Coral Gables are among more than 100 firms that have filed suits against anonymous chat-room denizens in the past two years.

While experts say these cybersuits have historically been used as scare tactics, either settled or dismissed out-of-hand, a ruling last week in Miami may challenge free speech and privacy protections on the Internet. The goal of victimized companies: put the cabash on stock bashing once and for all.

### **Raising the stakes**

The stakes were raised on message board posters last Friday after a closely watched lawsuit was resolved in favor of a former Hvide Marine executive, who sought to unmask the identity of cybersmearers. A three-judge panel of the Third District Court of Appeals in Miami rejected arguments that the posters' identities should be protected until a court could evaluate a defamation case filed against them by ex-Hvide executive J. Erik Hvide, son of the company's late founder.

A lower court ruling allowing Erik Hvide to obtain information from America Online (<http://www.aol.com>) and Yahoo (<http://www.finance.yahoo.com>) to unmask the posters' identities will now stand.

The results of the Hvide case, according to some civil libertarians have the potential to set a precedent that puts the right to anonymity and free-speech protections for online posters on the line.

Hvide filed a lawsuit against the anonymous posters in September 1999, alleging that false statements on Yahoo and America Online bulletin boards damaged his reputation and led to his termination as chairman and CEO.

Hvide's case was one of the first to reach an appellate level.

Bruce Fischman, Hvide's attorney, told the Wall Street Journal: "[The decision says] anonymous posters are not provided any greater level of protection under the First Amendment than anyone else."

However, the ruling is troubling to some. Lyrissa Barnett Lidsky, a University of Florida law professor who helped represent the defendants, said the court's action doesn't give any guidance. That means future courts may not have direction on the issue of free speech on the Internet.

The Internet postings questions about accounting practices and whether the company is being investigated by the SEC. Hvide has denied the allegations. The SEC doesn't comment.

In June 1999, three months before the company filed for protection from its creditors under Chapter 11 of the U.S. Bankruptcy Code, Hvide was fired as chairman and CEO of Hvide Marine. The company, which is under new management, emerged from bankruptcy protection in December.

In another recent incident, a long-time "basher" of Boca Raton start-up etravelserve.com (OTC BB: TSER) attempted to elicit sympathy from fellow posters by pasting a cease-and-desist order brought against him by the company alleging slander, libel and tortuous business interference.

Some of the poster's brethren said they would be happy to see him off the board.

And there were warning signs all along: a previous anonymous message warned that a private investigator had been hired by

the company to patrol for slanderous or libelous activity on the board.

## **Intense taunting called the exception**

But intense taunting or hounding is more the exception than the norm, said Les French, whose civil liberties group, John Does Anonymous (<http://www.johndoes.org>) serves as a sort of protectorate for online chat rooms.

Most postings are nothing more than crude annoyances, French said. They have not been shown to move stock, litigation is often launched solely for the purpose of identifying the offender, and rarely do cases make it to court. French said the suits are "frivolous" and often filed by firms already in trouble, both financially and legally.

"The intent is to chill the boards," he said. "There seems to be some paranoia and finger-pointing going on and many of these companies are under investigation."

Companies are calling unwanted attention to themselves, French added. He used Systems of Excellence of Fort Lauderdale as an example. The firm went to the SEC complaining about negative postings on AOL's message board – a move that attracted the agency's attention. It turned out that the poster was a former employee who then cooperated after an investigation was launched. The CEO now is in prison. The company is shut down and out of business, French said.

"We as Americans have to grow thicker skins," French said. "There's going to have to be some evolution taking place. We were hoping the [Miami] ruling would be a step in that direction. Now we need to attack it from the legislative end to give the courts some guidance."

French, who has recruited the American Civil Liberties Union and Public Citizen to his cause, said he's been targeted by small, bulletin board companies. He's already been sued for taking a stand, he said.

Posters also face losing their jobs.

Recently, a former consultant with AnswerThink of Coral Gables filed a lawsuit against Yahoo, accusing the Internet giant of wrongfully revealing his identity – a move that caused him to be fired by AnswerThink shortly before he was to receive a large cash payment and block of stock.

In a lawsuit filed in California, the consultant was listed only as John Doe. He is known on Yahoo message boards as Aquacool\_2000. The case is still being litigated.

## **Higher visibility**

Big companies aren't immune from cyber attacks. Last year, Lauderdale Lakes-based The Sports Authority (NYSE: TSA) sought a subpoena from a Miami-Dade court to learn the identity of an alleged culprit. Yahoo! complied, and no further action was taken by the company.

The SEC is taking stock online chat rooms serious, too.

Chairman Arthur Levitt told a crowd at a recent Investors Forum meeting in Davie that he would be appearing on CBS News' 60 Minutes to take on the notorious 14-year-old pump-and-dumper who allegedly defrauded online investors on a message board. The boy will also be appearing on the show taking the other side of the issue.

"I regard the Internet chat room as graffiti," Levitt said. "The stuff you hear there is outrageous."

But French regards online postings as free speech entitled to protection under Fourth Amendment privacy rights. He admitted the ruling in the Hvide case caught him by surprise. But what bothers him the most, he said, is that the plaintiff will know the identity before the merit of the suit was demonstrated.

"There's been no verdict or court finding ever made [in these cases] in favor of a plaintiff," he said. "The vast majority of these cases never go to trial because they are dropped by the plaintiff or a settlement is made, usually for the defendant."