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Reputational Risk: Managing Perceptions with Image Repair

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I. Introduction

On April 18, 2016, an Austin resident and local pastor sued Whole Foods Market in state district court alleging intentional infliction of emotional distress accusing Whole Foods of writing an anti-gay slur on a personalized cake the plaintiff had ordered for a member of his congregation.[1]

The plaintiff, identifying himself in the suit as openly gay, alleged that he went to the bakery counter at the Whole Foods flagship store at 6th & Lamar in Austin on April 14, 2016, selected a blank, pre-frosted cake, and asked the bakery associate to inscribe it with icing reading, "Love Wins." The plaintiff alleged that the bakery associate took the cake to the prep table, made an inscription, sealed the box with a Whole Foods sticker, and gave it to the plaintiff. The plaintiff alleged in the suit: "Once it was sealed, there was no way to alter the cake without breaking the Whole Foods sticker." The plaintiff alleges that he paid for the cake and left in a rush but that, in his rush, he failed to notice what the inscription said until he had left the store and was stopped at a stop light. It was then, according to the suit, that he saw through the clear plastic lid, that the cake said, "LOVE WINS FAG."

The suit alleges that the plaintiff called the Whole Foods corporate office and left a detailed voice message. Not hearing back, plaintiff alleges he called the 6th & Lamar store, reached a Team Leader, and explained his version of events. According to the plaintiff's suit, the Team Leader apologized, offered the plaintiff a gift card, promised to investigate, asked the plaintiff to email pictures of the cake, and promised to terminate whoever was responsible. But later that day, according to the plaintiff's suit, the Team Leader told plaintiff that Whole Foods had determined that its bakery associate had done nothing wrong.

The plaintiff filed the lawsuit on April 18, 2016. That same day, the plaintiff and his attorney held a press conference during which they described the plaintiff's claims and showed a video the plaintiff made on the day in question emphasizing that the cake was still "sealed" in the box by the Whole Foods sticker. The plaintiff fought back tears as he described how the incident had affected him.

What happened next is very interesting. Whole Foods did not apologize to the Plaintiff. Whole Foods did not fire anyone. Whole Foods did not pledge to conduct more anti-discrimination training or say that it could not comment on pending litigation. Whole Foods, in a rapid response operation involving its Public Relations team and its in-house lawyers, fought back.

The day the suit was filed (April 18) Whole Foods released security camera footage it claimed showed the plaintiff was lying. It issued a public statement claiming the plaintiff was lying. The next day, April 19, Whole Foods' in-house lawyers, who are experienced local Austin litigators, filed an answer and a counterclaim. Whole Foods counterclaimed against the plaintiff for defamation and requested sanctions against the plaintiff's lawyer for filing a pleading that Whole Foods alleged was groundless, brought in bad-faith and intended for the sole purpose of harassment.

Here is the statement issued by Whole Foods' Public Relations team:

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1 *Pastor Jordan Brown v. Whole Foods Market Inc.*, Cause No. D-1-GN-16-001648; In the 250th District Court of Travis County, Texas.

After a deeper investigation of Mr. Brown's claim, we believe his accusations are fraudulent and we intend to take legal action against both Mr. Brown and his attorney. Here's what we know:

- Our bakery team member wrote "Love Wins" at the top of the cake, which was visible to Mr. Brown through the clear portion of the packaging. That's exactly how the cake was packaged and sold at the store. Whole Foods Market has a strict policy that prohibits team members from accepting or designing bakery orders that include language or images that are offensive.
- Mr. Brown admits that he was in sole possession and control of the cake until he posted his video, which showed the UPC label on the bottom and side of the box.
- After reviewing our security footage of Mr. Brown, it's clear that the UPC label was in fact on top of the cake box, not on the side of the package. This is evident as the cashier scans the UPC code on top of the box, which you can view here.
- We stand behind our bakery team member, who is part of the LGBTQ community, and we appreciate the team members and shoppers who recognize that this claim is completely false and directly contradicts Whole Foods Market's inclusive culture, which celebrates diversity.

Yours Truly, Whole Foods Market

Whole Foods had the rare, but not unprecedented, advantage of having extremely strong evidence suggesting that the claim was false.

- Security footage showing the plaintiff checking out at the front counter was available and relatively high quality.

- The footage seemed to clearly show that the sticker was in a different location on the box when the plaintiff checked out than after plaintiff raised his allegation.

- The plaintiff himself had adamantly stated in a video that his lawyers showed at a press conference that he never opened the box. In the lawsuit itself, the allegation that the box was still "sealed" by the sticker was trumpeted as critical proof that the plaintiff had not tampered with the cake since it was handed to him by the bakery associate.

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