

## **Slander to Goods in social media – Relevant legal protection to businesses in digital era and related issues**

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### **Abstract**

*Goodwill is an intangible asset of a business which is usually associated with the goods and services provided by business entity. It provides identity and value to the product of the trader. When a person makes transmits or publishes some false statement or representation to the public in general about the goods and trader suffers loss as the customer did not purchase goods from him, is called as slander to goods. In the digital era, social media marketing is a powerful means of building reputation and identity of goods. Even small businesses also use social media for the promotion of their products. Law relating to social media is govern by Information Technology Act,2000 (IT Act,2000) in India. Section 66A in IT Act was added to provide punishment for making any false statement by use of any electronic means. However, it was found insufficient to address above issue. At present there is no specific law in India to provide adequate protection to businesses against false statements about their products and unfair trade practices in social media. This paper addresses the issue of false statement in social media about the product as unfair trade practices. It also gives an overall outline of related legal protection against slander to goods and related issues. This research paper aims to highlight the requirements of fair practices in social media marketing to protect the interest of consumers and seller.*

**Keywords :** Consumers, digital era, goods, goodwill, IT Act ,slander, social media, unfair trade practices.

### **Introduction**

In the digital era, social media marketing is a powerful means of building reputation and identity of goods. Electronic communication is a new tool for communication. Even small businesses also use social media for the promotion of their products. When a person makes transmits or publishes some false statement or representation to the public in general about the goods and trader suffers loss as the customer did not purchase goods from him, is called as slander to goods.

Injurious falsehood or slander of title may be defined as false or fallacious statement in writing, printing or by words or any other form which is injurious to a person's title to property, whether movable or immovable and causes damage to such person.<sup>1</sup> Earlier, the term slander of title was used to disparagement of a person's title to real property only, but in modern time it is used in the generic sense for disparagement of property whether movable or immovable, corporeal or incorporeal. The disparagement may, however, not relate to title but may be of any description.

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<sup>1</sup> Paranjape N.V., Law of Torts, Central Law Agency, Allahabad, Third edition, 2015, pp301

There are two forms of injurious falsehood, namely, slander of title and slander of goods. In the former there is a false or malicious statement about a person's title to property or business and it does not necessarily relate to his reputation. Such an injurious falsehood relating to a person's title to property or business obviously adversely affects his material interests. On the other hand, if the disparaging statement relates to goods, it is called slander of goods. The disparagement may be by depreciating the quality or pointing out some other defect such as the goods to be an imitation of some other trader's product or warning customers not to buy from the plaintiff.

Slander to goods is one of facets of common law torts relating to deceit and negligent mis-statements and also known as injurious falsehood. The origin of the tort of deceit is to be traced back to early writ of deceit known as *breve de deception* which could be available only in case of fraud committed in the course of legal proceedings. Later on, the scope of this writ was extended to certain cases of breach of contract. Thus, deceit remained associated with the law of contract for a long time. But it broke the shackle of contractual relations and came to be recognized as an independent tort for the first time in the historic case of *Pasley v Freeman*<sup>2</sup> wherein it was held that an action would lie for damage caused by fraudulent representation though there was no contractual relation between the parties. Thus deceit in slander may arise by false representation of facts made with the knowledge of its falsity or without belief in its truth, or reckless statement whether it be true or false, with intent to induce a person to act upon it.

### Conceptual significance of injurious falsehood

The main ingredients of the tort of injurious falsehood or slander of title are as follows-

1. Falsity- the disparaging statement about the slander of plaintiff's title or goods should have been made by the defendant maliciously and intentionally with the knowledge that the disparagement is false.
2. Malice- the injurious and false statement must have been made by the defendant maliciously so as to cause damage to the claimant's material interest. Absence of belief in the truth of statement will be a conclusive evidence of malice, but a mere careless statement without malice will not be sufficient to make out a case of injurious falsehood.
3. Disparagement of claimant's property or business- the claimant has also to show that the false statement made by the wrongdoer was calculated to disparage his property or business. If it is also disparaging his reputation directly or indirectly, then an action for defamation will also lie against the defendant. As stated earlier, a person is entitled to 'puff' his own goods by praising its quality as compared with other rival traders, but he should not make disparaging statements about the goods of others. Thus where a person puts labels on his packed product that it was the "healthiest and most nutritious food than any other preparation yet offered", it will not be an injurious falsehood by itself.<sup>3</sup>
4. Special damages- the claimant has also to show the special damages caused to him due to slander of title or goods by the wrongdoer. This may relate to loss of customers or business or injury to his material benefits of interest or bargain and costs incurred in defending his cause of action.

Generally, the traders and businessman resort to slander of title or goods in order to promote their own trade, business or sale by showing the rival's title or goods to be defective or sub-standard or of an inferior quality as compared with their own. But a mere puff (i.e., praising, one's own goods) is not actionable as injurious falsehood. Hence, it requires to prove that the statement made by the wrongdoer contains defamatory words about the goods and title of the claimant. This statement must be false and made

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<sup>2</sup> (1789)3TR 51

<sup>3</sup> White v. Mallin, (1895) AC 154.

deceitfully. Further, the wrongdoer's statement containing defamatory words refers to his goods or title over the goods. Statement should not be a general statement. Claim against slander will be maintainable only if it is published. Statement is said to be published when it comes to the knowledge of the third person i.e. other than claimant and wrongdoer. If there is no publication, there is no slander and inducement. In the digital era, use of electronic devices for the purpose of communication is the cheapest, easiest and fastest devices.

Electronic device includes various forms of communication devices such as telephone voice transmission, email via the internet, text message via cell phones, IM (instant messaging), message sent via the internet, recorded information on a tape or CD, pen drive or DVD. The information is recorded on the physical medium and that is sent to the recipient physically, such as mail, fax (facsimile) transmission where a visual image is scanned, encoded and sent via telephone wires to a recipient where it is decoded and printed on another paper. All these communications can be transmitted through different methods like multiplexed wire, radio link, satellite or towers, etc.

### **Analysis of legal framework in India**

In India, as such there is no specific legislation or provision provided in any of the laws including Information Technology Act, 2000 regarding slander of goods in cyberspace. Section 66A is inserted by the Information Technology (Amendment) Act 2009 to impose punishment for sending offensive messages by any communication devices. However, this section was declared unconstitutional by the judiciary<sup>4</sup>. New consumer protection laws provide certain safeguard to e-consumers against deceptive practices. No doubt, Consumer Protection Act, 2019 (CP Act) is an important consumer movement in the history of consumer protection in India. It provides simple, effective, inexpensive and speedy justice against unfair trade practices and restrictive trade practices. The rights given to consumers under CP Act are also available to the e-consumers. However, with the evolution of World Wide Web (www) in 1990, the scope of consumer protection in electronic medium certainly has widened. For example, when a consumer deals with a Bank or any Company, the transaction is generally recognized by digital signature. The complete mechanism of Digital Signature is provided in the Information Technology Act 2000. However, the Act makes it clear that liability of all parties are limited if all acts reasonably. Moreover, these laws only talk about the protection of consumers and not about the rights of traders against injurious falsehood.

Another issue of passing off which is one of the forms of unfair competitive practices, considerably addressed in Trade Marks Act, 1999 the Patents and Designs Act, 1970, but still provides remedy where the law of trade makes is inapplicable or where there has been no registration of trade mark or the registration is invalid. Similarly, passing off claims may be brought in cases of infringement of copy right. However, wrongs of passing off differs from slander. In passing off the claimant is required to prove that there is a misrepresentation; it should be made by a trader in the course of trade; the misrepresentation should be made to prospective customers of his goods or services supplied by him; it should be aimed at injuring the business or goodwill of rival trader; and it should cause or threaten to cause actual damage to a business or good will of the trader by whom action is brought against the wrongdoer.

Thus, it would be seen that in an action of passing off against the defendant the claimant is not required to prove latter's fraud, i.e., that anyone was actually deceived, nor is he required to prove actual damage, a mere possibility of loss of sale would suffice to succeed in the action. In an action for passing off the main issue involved is regarding the misrepresentation by the wrongdoer which is likely to cause a confusion in the public mind that the goods or business is that of the claimant. A common form of passing off is imitating or copying the claimant's registered trade mark. In digital era, with the use of domain name cyber squatters often seen using unregistered domain name with the use of trademark. It is easy to use in

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<sup>4</sup> Rodney Ryder, Prudent decision, The Week, April 5, 2015

cyberspace by imitating the get-up of appearance of owner's label, sometimes they use owner's trademark to sell of his own goods.

The present structure of Internet system can be linked with economics, social, political and educational aspects. India is a democratic and welfare State. Persons who use the Internet are subject to laws. The analyses of Indian cyber law show that a proper mechanism is provided to every possible crime on Internet. The Information Technology Act 2000, after amendment of 2008, has given a list of offences and contraventions punishable under the Act. A new dimension has been given to section 43 by adding new clauses in it. Section 43, thus, now has civil as well as criminal consequences.<sup>5</sup>

Amendment made in chapter XI, added a number of offences with different characteristics, out of which some are typical cybercrime such as tampering source code, identity theft, cheating by personation etc. Further, cyber security of country is well provided under Information Technology Act 2000, especially after Amendment of 2008. The Act has taken protected system, critical information infrastructure within its ambit. There are good number of provisions devoted to security of data and information stored on computer.

The laws enacted to regulate cyberspace in India are rational and effective. Yet, several issues need to be addressed in present law. With the fast pace at which technology is advancing, it is likely that new more issues relating to crime may crop up with time. It is difficult to predict those issues. Hence a wider scope of cyber law is needed to cover all those possibilities.

To certain extent wider meaning is given to the provisions relating to crime in Information Technology Act 2000. Yet, regulation and control of use of Internet to prevent probable crime is not included anywhere. For example, popular use of social networks which is used as the medium of communication is sometimes under the guise of freedom of speech and expression, is used in posting defamatory materials for the commercial gain. However, there is no regulation prescribed for use of these sites.

## Conclusion

India has drafted a model law with relation to electronic commerce that appears to be a mix and match of the provision of various statutes around the world. Information Technology Act 2000, is a good blend of provisions in harmony to other laws. Section 66A of IT Act completely failed to address this issue and provide protection against slander to goods. Intellectual property is a comprehensive term which includes all creative activities relating to original ideas and helps in building the identity of the products. It recognizes the commercial value of these products. Moreover, the laws relating to patents, trademark has its limited scope with respected registration under the relevant laws. At present there is no specific law in India to provide adequate protection to businesses against false statements about their products and unfair trade practices in social media.

In view of the above discussion, provisions under IPC for defamation under section 499<sup>6</sup> can be referred in absence of any specific legal protection to businesses against slanderous remarks to their goods by compotators. In many crimes, IPC and Information Technology Act 2000 are simultaneously applicable and have proved complementary to each other in punishing the criminal.

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<sup>5</sup> Sharma Vakul,( 2007) Universal Law Publishing Company Private Limited, Delhi, second edition.

<sup>6</sup> Ratan Lal and Dhirajlal, wadhava and company Private Limited, Nagpur

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