



NEWS

Defamation on Facebook - protecting your professional reputation

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Michael Axe looks at the first High Court case to address the use of "fake profiles" on Facebook, as well as other recent developments in relation to defamation on the internet.

In the recent case of *Applause Store Productions Limited & Mathew Firshet v Grant Raphael*, Mr Firshet initiated proceedings after discovering that someone had created a fake profile in his name on Facebook (at the time, Mr Firshet did not have a Facebook profile of his own). Mr Firshet was a relatively well-known figure in the television industry who ran a successful company (the other claimant). The fake profile included a genuine photo of Mr Firshet (copied from his brother's Facebook profile) and a mixture of true and false statements about private matters such as his date of birth, sexual orientation and religious/political views. The fake profile also included a link to a Facebook group called "Has Mathew Firshet lied to you?", which included false and defamatory allegations regarding the ability of Mr Firshet and his company to pay their debts.

Facebook removed the fake profile and group after Mr Firshet complained, by which time they had been accessible on Facebook for 16 days. Mr Firshet was then able to obtain a Court Order requiring Facebook to disclose all of the registration information in relation to the fake profile and group. Helpfully for the claimants, Facebook was able to provide the IP address of the computer(s) used to create the profile/group, as well as detailed records of the activities on Facebook of the computer(s) using that IP address.

Mr Firshet was then able to trace the IP address, through a broadband provider, to the Defendant's flat. The Defendant was an old school friend and colleague of Mr Firshet's, although the two had fallen out and had not spoken in years.

At the trial, the Defendant alleged that on the night that the fake profile had been created, he had had a party at his flat and a number of strangers had stayed overnight. He alleged that they must have created the fake profile, and then created the Facebook group the following afternoon. However, the information provided by Facebook not only confirmed when and for how long Facebook had been accessed from the Defendant's flat, but also what activities had been carried out. These activity logs confirmed that on the night that the fake profile had been created, the user had spent some time searching for acquaintances of the Defendant, and on the following afternoon when the group had been created the user had switched between the fake profile and the Defendant's own profile. This information, coupled with the other inconsistencies in the Defendant's evidence, led the judge to find that the Defendant's case was "built on lies" and was "utterly implausible from start to finish".

At the trial, Mr Firshet was only able to prove that five people had actually accessed the fake profile during the 16 day period. However, Facebook was not able to confirm one way or the other how many people had viewed (rather than accessed) the fake profile. The Judge found that, given the nature of social networking sites meant

that people regularly search for acquaintances, and given that the fake profile had been signed up as a member of the "London network" on Facebook (which had around 850,000 members at the time), it was likely that a "not insubstantial number of people" would have viewed the fake profile/group during the 16 day period.

The Judge also put weight on the fact that the defamatory allegations of dishonesty were of a nature that was both serious and credible, meaning that they could potentially be easily believed by the reader (rather than dismissed by a reasonable reader as being merely a defamatory "rant").

The Judge ultimately found in Mr Firsh's favour and ordered the Defendant to pay:

- £15,000 in damages to Mr Firsh for the defamation (which included an element of aggravated damages, awarded because the Defendant maintaining his implausible defence through to trial)
- £5,000 in damages to Mr Firsh's company for the defamation (a lower amount as the defamatory statements only applied to the company "indirectly" by virtue of its association with Mr Firsh)
- £2,000 in damages to Mr Firsh for misuse of his personal information.

The Defendant was also ordered to pay Mr Firsh's (probably not inconsiderable) costs on an indemnity basis, with an immediate interim payment of £30,000 to be made within 14 days.

This case clearly illustrates the dangers of posing as someone else (or otherwise defaming someone) on Facebook, as it appears that Mr Raphael will have to pay at least £52,000 in damages and costs for a fake profile and group which could, potentially, have only been seen by a very small number of people. This case also illustrates that people and/or companies that find themselves the subject of defamatory statements published via Facebook may be able to obtain quite extensive information from Facebook which could allow them to track down the anonymous author. However, commercial caution must always be exercised to ensure that a heavy-handed approach does not exacerbate the potentially limited nature of the original publication, and to also ensure that disproportionate costs are not incurred tracking down a defendant who may ultimately not have sufficient funds to be worth suing.

Nature and Extent of Publication

Two other recent cases have also addressed questions relating to the publication of defamatory statements on the internet.

In the case of *Carrie v Tolkien*, the Court ruled that because the Claimant had failed to remove the Defendant's allegedly defamatory posting from the Claimant's own blog site after he became aware of it, the Claimant had effectively consented to the continued publication of the Defendant's posting. The posting had only been live for around four hours before the Claimant became aware of it, and there was no evidence of "substantial" publication during this brief period. The Judge therefore dismissed the claim as an abuse of process.

In the case of *Smith v ADVFN plc & Others*, the Judge provided some interesting remarks in relation to comments posted on internet bulletin boards. Until now, it has been presumed that all defamatory statements published on the internet are considered "libel" (i.e. written defamatory statements) rather than "slander" (i.e. spoken defamatory statements). There are differences between how the Courts treat libel and slander, to take account of, for example, the transitory nature of slanderous statements.

However, in this case the Judge suggested that the characteristics of bulletin board comments (such as the fact they are read by a small number of people, they are in effect a casual conversation where people note a comment and move on, and they are often uninhibited and ill-thought out) meant that any defamatory statements contained in such comments were more akin to slander than libel. He also noted that such comments were not made in a vacuum, and that the other readers on the bulletin board would know the context and background to any comments made (for example, distinguishing a remark that was to be taken seriously from a comment that was "mere vulgar abuse").

Although these remarks were only made during an interim hearing, they are nevertheless the first indication that the Courts may be prepared to consider some defamatory statements posted on the internet to be slander rather than libel. This can be an important distinction, as with slander (but not libel) the Claimant will often have to provide evidence to show that it suffered an actual financial loss as a result of the slander.

Whilst the law in relation to defamation published on the internet is constantly evolving, the recent Facebook case has again shown that internet posters cannot hide behind the apparent anonymity the internet seems to offer.

For further information on this or any other issue relating to defamation, please contact [Michael Axe](#) by emailing [Michael](#) or by calling him on 08450 990045, or speak to your usual contact in the [Commercial Disputes](#) Team.

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