



SOCIAL MEDIA PROMOTIONS –CAN WE RESTRICT IT UNDER LAWS?

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Abstract:

Social Media, today, is the best way for companies for connecting with their prospective consumers. Social media is the medium to mix with people. These new media prevail the trust of consumers by connecting with them at a higher level. Social media marketing is the new mantra for several brands from few years. Marketers are taking note of many different social media opportunities and commencement to implement new social initiatives at a higher rate than ever before. Social media marketing and the businesses that make use of it have become more primitive. One cannot afford to have no existence on the social channels if the competitor is making waves with its products and services. The detonation of social media phenomenon is as mind boggling as that and the pace at which it is growing is infuriating. International companies have recognized social media Promotions as a latent marketing platform utilized them with innovations to power their advertising campaign with social media marketing.

Social media is used for Promotions of various things .at certain points it is a very good medium to promote the things but in dark side it is misused .Here the question arises that can we restrict it under laws? Can we control these things? What are the things which we can keep in mind and through which we can try to avoid its effect. This paper is an attempt to enlighten these things.

Keywords:

Social Media; Social media Promotion; laws; misuse of Social Media;

1. INTRODUCTION

From last so many years, we have experienced a drastic change in business and our society. The introduction of personal computers, the Internet, and e-commerce have had a incredible impact on how businesses operate. The introduction of social media technology has open new doors for all of us to promote, to share, to spread their things with more and more people in short span of time & at minimum cost. We can expect a higher growth into the future.

As new technologies became available, mostly businesses that learn to use new technologies gain great benefits. Some of the best-known examples include technology-driven companies such as Flip cart, eBay, Mantra, Amazon etc. In a short span of time, social media has become one of the most appreciated mediums for the Indian today. Social Media promotions are the hottest new concept and everyone wants to know how social media can generate value for their



things. People are social by nature and collect or share information that is important to them. Social Media promotion is about knowing and understanding how technology is making it easier for people to connect socially with their social networks and how any business can get profit from that understanding. More and more customers are using it for personal use, business-to-consumer or business-to-business reasons in every phase of their daily life. Apart from uses people are misusing the social media or we can say that the strength of social media i.e. quick response” & quick spread is also become its weakness. Now Government is trying to taking it seriously & trying to restrict these kinds of things on social media.

2. SCOPE OF THE STUDY

The scope of the study has been limited to social media promotions & just tries to enlighten the legal laws and actions to restrict wrong promotions only.

OBJECTIVES:

- To enlighten the misuses of social media which affect the society and common man.
- To enlighten the legal steps taken by authorities to avoid & restrict these wrong promotional activities.

RESEARCH METHODOLOGY:

This Research is completely based on Secondary data.

SOCIAL MEDIA PROMOTIONS:

Social Media promotions are great for making people aware about the innovation and new things which are running in the society. According to Ms. Sisira Neti “India has 71 million active internet users. Social Media is really picking up new heights in India. According to the 2010 Regus Global Survey of business social networking, India tops the usage of social networking by business – it has the highest activity index, 127, far more than the US’97, and 52% of the Indian respondent companies said that they had acquired new customers using social networks while 35% American companies managed that. Many Companies are coming big way for Social Media Optimization for their Product or Services nowadays.”

Pooja Shelke and Ashish Badiye said that Social networking can sometimes result in negative outcomes, some with long-term consequences. There are millions of people on the internet who are looking to meet other people and to gather and share information and experiences on a variety of topics. Hundreds of social networking sites have been created, and have attracted millions of users. Most of the key features of these sites are very similar, yet the cultures that form around the social networking sites vary in many different ways. Some of the sites target diverse audiences, while others attract people based on common language, race, sexual preferences, religion, or nationality. The sites also vary the ways in which the show and



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incorporate new information and communication tools, like mobile access, blogging, and photo and video sharing.

SOME NEGATIVE EFFECTS OF SOCIAL MEDIA:

It may encourage exploitation and abuse which may lead to the very antagonistic effects on the life of the people.

Sometimes social networking will be responsible to behavioral tendencies and consequences. The impact of social media and social networking sites on the behavior of children and teens is very disturbing. We're not saying that social media is bad in and of itself. The misuse of such technology is what makes it bad.

Social networking sites can be very addictive. People who use social networking sites for their daily communication are hooked to a point that they neglect health responsibilities, especially their diet. The addictive nature of social media leads to eating disorders, obesity, heart problems, sleep disorders, and other pertinent health issues. Additionally, constant exposure to the internet because of social networking addiction prevents a child or teen from engaging in physical activities and socialization.

USE AND ABUSE OF SOCIAL MEDIA:

The use and abuse of social media also saw the registration of various cases in India. The Muzaffar Nagar incident has shown how social media can be manipulated so as to increase and escalate communal tensions and violence. The Muzaffar nagar riots, coupled with the Bangalore cyber terror attack of 2012, has brought forward the need for having in place effective legal provisions to deal with the misuse of Social Media.

The 2013 state elections were the most tech savvy elections to date. The increased use of social media in elections gave rise to the debate of how to regulate social media in the context of elections. This is all the more relevant as the Indian Information Technology Act, 2000 does not provide any assistance in this regards.

The 16th December, 2012 Delhi Gang Rape Case was instrumental in providing the backdrop for the passing of the Criminal Law (Amendment) Act, 2013. The said law which has been passed and implemented in the year 2013 is significant because of its massive coverage of digital stalking and other digital crimes including Voyeurism and sexual harassment.

The year 2013 also saw online rumors gaining ground more so in the context of rumors about alleged death of celebrities. These included cases where a report surfaced recently that Actor



Ayushmann Khurrana died in a snowboarding accident. The news of the Madhuri Dixit's death went viral, but soon was found to be a hoax.

Till a few years ago, the Jessica Lal murder case was the only example of the media playing a central role in keeping a case alive and doing its best to bring justice. Ever since social media came around, there have been many more people and cases whose battles are being fought in the courts of law because the layman raised a voice on social media. Deaths of Keenan Santos and Reuben Fernandes stunned Mumbaikars and the entire cyberspace. The case was fast tracked and the four accused were booked after the social media raised a strong voice. Kshama Chopra Shetye, Sanjay Gulati, Loitam Richard, Chhavi Gupta, Dana Sangma are just some of the cases which, but for the social media would have been long forgotten.

These are very few examples of use/misuse/negative effects of Social media Promotions. We all are aware of this fact that social media is quite enough capable of modified the contents. The information which we see on this media is not completely correct these are tailored, along with that the measure issue of social media is "users Privacy Concern". This thing is increased at very high level. Private information of the user is not safe they are misused by other people and even organizations.

Now here the question arises that can we put this social media under any legal restrictions? Can we control on it & its contents? Can we control its privacy policies? Let's have a look on it legal framework.

COMPLIANCE OBLIGATIONS:

Compliance-related concerns pose some of the biggest challenges with social media activities. By their nature, compliance obligations require a company to do -- or not do -- specific things to avoid running afoul of a legal obligation imposed by an applicable statute or regulation. Some of the more pressing marketing-related compliance issues a company may encounter is noted below.

- *THE FTC ACT*

The Federal Trade Commission (FTC) regulates "unfair and deceptive trade practices." Since the advent of the Internet, the FTC has been keenly focused on curtailing deceptive practices, even if unintentional, by businesses engaged in online commerce. While businesses should always ensure that their online advertisements are truthfully conveyed, a business with a social media presence should take particular note of the FTC's recent efforts concerning online privacy, security and advertising.

- *E-MAIL AND TEXT COMMUNICATIONS*



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The interactive nature of social media tools in most cases includes multiple communication elements. Frequently, e-mail and mobile device text-messaging capabilities are integrated into a company's interactions with customers and prospects when using such tools.

Two federal statutes dealing with electronic communications, the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) and the Telephone Consumer Protection Act (TCPA), require particular attention with social media use, especially if there is no pre-existing relationship between sender and recipient, or if the recipient has not affirmatively opted to receive e-mail or text messages.

Section 79 of the amended Information Technology Act, 2000 provides the broad principle that intermediaries providing social media facilities are generally not liable for third party data information or communication link made available by them.

PROVISIONS RELATED TO PERSONAL INFORMATION & SECURITY:

Under the Information Technology Act 2000, the Central Government has enacted various rules and regulations which impact social media. Some of the most important in this regard are as follows:

The Information Technology (reasonable security practices and procedures & sensitive personal data or information) Rules, 2011 define provisions for personal information & security and what constitutes sensitive personal data. Sensitive personal data or information of a person means such personal information which consists of information relating to; —

- password;
- financial information such as Bank account or credit card or debit card or other payment instrument details;
- physical, physiological and mental health condition;
- sexual orientation;
- medical records and history;
- Biometric information;
- any detail relating to the above clauses as provided to body corporate for providing service; and
- any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise:

Provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules.

The Delhi High Court in an ongoing battle against Social networking websites and other similar web forums has ruled that unhealthy content on such websites is required to be removed, failure



of which would lead to a total ban of the same. The Indian Government also sanctioned the court's stance after reviewing all the evidence and being satisfied that they can be proceeded against as per section 153-A, 153-B and 295A of the Indian Penal Code. As with every fast-growing technology, security and privacy have not been the first priority in the development of such sites. As a result, along with the above benefits, significant privacy and security risks have also emerged. Although this case involves the question of integrity of our nation however it is a welcoming order in respect of pressurizing such multi nationals to consider privacy and security issues and built mechanism to control information on their respective websites.

Other relevant provisions of the Information Technology (Amendment) Act, 2008 Which cover new offences are as follows -

Section 66: This Section is attracted when the imposter fraudulently and dishonestly with ulterior motive uses the fake profiles to spread spam or viruses or commit data theft. The act is punishable with imprisonment for a term which may extend to three years or with a fine which may extend to five lakh rupees or with both.

Section 66A: This section is attracted when the imposter posts offensive or menacing Information on the fake profile concerning the person in whose name the profile is created. Further, the fake profile also misleads the recipient about the origin of the Message posted. The offence is punishable with an imprisonment for a term which may Extend to three years and fine.

Section 66C: When the imposter uses the unique identification feature of the real Person like his/her photograph and other personal details to create a fake profile, the Offence under Section 66C Information Technology Act is attracted which is punishable With imprisonment for a term which may extend to three years and be liable to a fine This may extend to one lakh rupee.

Section 66D: When the imposter personates the real person by means of a fake profile and cheats then the provision of Section 66D Information Technology Act is attracted which is punishable in the same manner as preceding Section 66C.

Section 79 has been modified to the extent that an intermediary shall not be liable for any third party information data or communication link made available or hosted by himIf;

(a) The function of the intermediary is limited to providing access to a communication System over which information made available by third parties is transmitted or temporarily stored or hosted;

(b) the intermediary does not initiate the transmission o select the receiver of the transmission and select or modify the information contained in the transmission; (c) the intermediary observes due diligence while discharging his duties.



Section 85 marks the liability of a Company if it commits an offence. Every person who, at the time of the contravention, was in charge of and was responsible for the Conduct of the business of the company would be guilty of the contravention. However, He shall not be liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent the contravention. Further, where a contravention has been committed, and it is provided that the contravention took place with the connivance or consent of or due to any negligence on the part of any director, manager, secretary, or other officer of the company, such officer shall be deemed to be guilty and shall be liable to be protected against and punished accordingly.

The two most important statutes to consider when discussing the legal liabilities and obligations of the social networking sites are Section 512(c) of the Digital Millennium Copyright Act and Section 230 of the Communications Decency Act.

Section 512

Section 512(c) removes liability for copyright infringement from websites that allow users to post content, as long as the site has a mechanism in place whereby the copyright owner can request the removal of infringing content. The site must also not receive a financial benefit directly attributable to the infringing activity.

Section 230

Section 230 of the Communications Decency Act immunizes website from certain liability resulting from the publication of information provided by another. This usually arises in the context of defamation, privacy, negligence and other tort claims. It does not however, cover criminal liability, copyright infringement or other intellectual property claims.

3. CONCLUSION

Social media Promotions are potentially useful business tools, but only if one approach them with an adequate amount of caution and common sense, but still we can say that we cannot put it completely under laws. Laws, particularly common laws, are still trying to catch up with the social media revolution. Courts and legislators are trying to address the problems that have surfaced surrounding social media Promotions. This is an extremely fast-paced medium and the courts and legislators may have intricacy, at least in the instantaneous future, catching up. While some states have addressed lawyers' professional involvement in social media, others have not. This has created a wide continuum of dos and don'ts on social media Promotions.

It is important that individuals maintain a working knowledge of social media as change inevitably continues. It is also important not to let a fear of social media prevent utilization of its



limitless potential. Undoubtedly, care must be taken as we continue to travel down the information superhighway, but terrorization of what lies ahead should not force us into the breakdown lane.

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