

This is Part 3 of our article series entitled “Defamation”. In this Part 3, our focus will be on the development of defamation on social media, internet and the liability of search engines.



A. DEFAMATION ON SOCIAL MEDIA

There are five features that one should know about social media defamation:

1. In general terms, defamation occurs when a person intentionally spreads information about another person, group of people, or small company, that damages their reputation, or can make others think less of them.
2. Defamation is actionable regardless of the medium i.e. a person can be defamed, for example, in print, through photos, web chats, blogs, and internet postings.
3. Defamation cases involving the internet and social media are relatively new, but the same principles apply.
4. Although a person did not create the defamatory material, the courts have held that by posting (eg. forwarding, re-tweeting, and other modes of web posting) he/she will be held to be secondary publisher and thus liable of defamation.
5. The same defences to defamation still apply, including that the statement was true, or that it was an expression of an honest opinion. Consequently, you may be liable for defamation if you spread information which constitutes a hurtful and untrue statement of fact about another person.

B. RECENT CASES AGAINST SEARCH ENGINES AS PUBLISHER

B.1. GOOGLE INC V TRKULJA [2016]

In 2012, Michael Trkulja famously scored defamation victories against Yahoo! and Google for publishing search results arising from searches of his name on their websites. Those results wrongly linked him to the Melbourne criminal underworld. Trkulja won \$225,000 and \$200,000 against these giants respectively.

However, the saga of Trkulja v Google did not end there. He brought further cases against Google and in **Google Inc v Trkulja [2016] VSCA 333** the Court of Appeal in Victoria decided against the Plaintiff Trkulja on the following issue:

1. **On the issue of primary publisher and secondary publisher** the court found that even if a person is not the maker nor took part in the original chain of distribution, a person could still be held to be a primary publisher of material from the date when they were taken to have authorized or acquiesced in the earlier publication of that material by another.
2. To establish this, a plaintiff would normally have to show that the publisher:
 - a. had notice of the matter complained of;
 - b. had the authority to remove that matter; and
 - c. did not do so.



Applying these elements to the facts of this case, the court's conclusion on this issue of publication was that Google was a secondary publisher of the search results and could avail itself of the defence of innocent dissemination at least until it was notified of the material. Failure to remove the material after being notified could result in the service provider (in this case Google) being found to be the secondary publisher.

It is important to understand that, in this most recent case against Google by Trkulja, it is not that the court absolved internet search engines from being liable, only that on the facts of that last case, the court found that there was no defamation as if a reasonable man was one to look at the "search results" it could be seen that it related to his previous successes against the search engines on the same issue.

B.2. DR JANICE DUFFY V GOOGLE

In 2015 the Supreme Court of South Australia awarded \$100,000 in damages plus interest to Dr Janice Duffy who sued Google.

Dr Janice Duffy, 59, claimed articles published on the "Ripoff Report" website from 2007 defamed her and that Google had denied her request to remove the material from its search engine.

Google resulted in the display of extracts from – and hyperlinks to – the "Ripoff Report" material.

In September 2009, she told Google about the material and requested that it be removed. But the court heard Google declined her request. She then launched the lawsuit.

The court heard Google progressively removed the display of extracts from and links to the "Ripoff Report" from its Australian website. Dr Duffy also claimed that autocomplete search terms attached to her name on the search engine were also defamatory. Google fought the case, arguing defences of innocent dissemination, qualified privilege, justification and contextual truth.

In his judgment, Justice Malcolm Blue struck out several of the defences. He ruled that Google did publish defamatory material about Dr Duffy.

Justice Blue awarded Dr Duffy \$100,000 in damages plus \$15,000 in interest.

Comasters is able to advise clients in defamation actions.

© Comasters August 2017 **Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

CONTACT US

Jeffrey T Lee Principal Lawyer
Pauline A Beausoleil Senior Associate Lawyer
Alice Huang Paralegal
Gina Bae Paralegal
Alizeh Ahmad Paralegal

Comasters Law Firm and Notary Public
Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia

T +612 9288 0300
F +612 9288 0399
E comasters@comasters.com.au
www.comasters.com.au