

Facing up to the social media challenge

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When tweets become twibels....

Every business using social media should get to grips with publishing law and advertising regulations if they are to avoid reputation-damaging incidents.

The reminder follows the news that opinion columnist Katie Hopkins has been refused leave to appeal against a recent High Court libel verdict, where she was found to have published defamatory tweets, or what's been coined 'twibel'.

Anyone using social media is a publisher, putting information out into the public domain, but unlike newspapers and book publishers, most businesses don't have a good understanding of publishing law and how to avoid breaching it. Similarly, many businesses are not considering how their social media posts may breach advertising regulations, as the boundaries between paid-for advertising and other forms of communication become more blurred.

It's the sort of confusion that led to a complaint being made that a tweet sent from the account of England football captain Wayne Rooney, as part of his sponsorship by Nike (UK), was not clearly marked as a marketing communication. The tweet read:

"The pitches change. The killer instinct doesn't. Own the turf, anywhere. @NikeFootball #myground pic.twitter.com/22jrPwDgC1".

Although in that case the Advertising Standards Authority found that Nike (UK) had not breached the code of conduct, saying the tweet was obviously identifiable as a Nike marketing communication, it may not always be clear to businesses where the line is drawn.

For Katie Hopkins, the tweets she posted that were found to be defamatory implied that prominent poverty campaigner and writer Jack Monroe had defaced a war

memorial, in a case of mistaken identity. Monroe offered her the chance to publicly apologise or face legal action, but Hopkins refused. When the case reached the High Court, the tweets were found to have caused 'serious' harm to Monroe's reputation. Hopkins must pay damages of £24,000 to Monroe, together with Monroe's legal costs.

In reaching the judgment, the court had to determine whether the tweets met the requirement for harm that is set out in the Defamation Act 2013 and experts say the ruling is the most important case to date involving libel on social media.

Our employment lawyer, Karen Cole, said: *"Controlling social media content is a huge issue for business. It's a fast-moving arena and often posts, tweets, retweets and comments are the subject of instant decision-making. When careful reflection isn't part of the equation, it's not surprising that it can lead to problems. It is important that social media policies are kept under constant review and that everyone understands the boundaries they are operating within, through both the company's marketing strategy and their terms of employment.*

"Staff could also learn from the [26-point guide](#) [page 25 onwards] on how to use Twitter, published by the High Court as an appendix to its official ruling in the Hopkins case, which provides a summary of how the platform works. It makes for useful reading, even for those who think themselves experts, as a reminder of who will receive postings when tweeting, re-tweeting or replying."

Karen added: *"It's important to have a good crisis management plan in place as well, so that if the worst happens and a mistake is made, then everyone knows what to do if something inappropriate has been posted. Taking swift action with a public retraction is a good start and will demonstrate a willingness to tackle the problem. In the case of Katie Hopkins and her mistaken tweet about*

Jack Monroe, if she had been quick to correct herself and made a public apology that reached the original audience of her tweets, it's quite likely the case would not have passed the necessary 'serious harm' test for defamation and the case may never have gone to court."

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.