

Norwich Pharmacal Relief and Rogue Twitter Accounts

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On 5 June 2020, a well-known global courier service, Fastway Couriers ("Fastway"), obtained *Norwich Pharmacal* relief from the High Court against Twitter to provide information on the identity of the operator of a fake account.

The fake account used Fastway's trademarked logo and contained a number of postings which were potentially abusive and damaging to Fastway. Among the postings were purported responses to genuine enquiries about when parcels could be expected, suggesting that parcels had been "*flung over the rainbow and into fields, left in caves for a few weeks and the contents eaten by drivers*". In addition, the account purported to change Fastway's name on a number of occasions to immature alternatives.

Prior to instituting proceedings Fastway had written to Twitter and requested that the fake account be removed. Twitter's response having investigated the complaint was that as material did not violate its terms of service or rules it was not inclined to remove the account. Once proceedings were brought Twitter's position was that any dispute arising out of the postings complained of was between Fastway and the person(s) who operate the account and would not remove the account in the absence of a court order.

While the operation of the fake account was not considered by the Court as sufficient to establish a claim in malicious falsehood or passing off, the Court was satisfied that Fastway was able to make out a strong case that the postings meant that Fastway were incompetent, inefficient and wrongfully and maliciously held it up to ridicule and were thereby potentially defamatory. The Court also found that the use of Fastway's name and logo by the fake account infringed Fastway's copyright and was satisfied that Fastway's goodwill in its name and logo had been damaged. As such, Fastway's entitlement to relief was made out.

The Court ordered Twitter to disclose, within seven days, any information it possesses in relation to the identity of the individual(s) who created and controlled the fake account. The order was made on the express undertaking by Fastway that that the information disclosed by Twitter would not be used for any purpose other than seeking redress in respect of the wrongs complained of.

It remains to be seen whether Fastway will pursue any defamation action against Twitter. It is arguable that once Twitter was notified by Fastway of the potentially defamatory material, Twitter was liable by failing to remove the offending material.

The judgment will be welcomed by Irish businesses seeking to protect the goodwill of their brand in the face of rogue operators on social media platforms, who will no longer be able to hide behind fake identities and may be held to account for any damage caused as a result.

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