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June 21, 2019, New Delhi, INDIA

### ***CYBERTURFING – SHROUDED PERILS IT POSES AND THE APPLICABLE LAW***

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### **CYBERTURFING – SHROUDED PERILS IT POSES AND THE APPLICABLE LAW**

'Cyberturfing' is the online equivalent of the off-line 'astroturfing', a term said to be coined by a US Senator back in 1985 and is understood to be a *type of deceptive marketing or practice designed by marketers to create a false impression that a campaign has developed authentically and organically but in reality is powered by someone else behind the scenes*<sup>1</sup>. Classic astroturfing involves the use of paid agents to falsely represent popular sentiment surrounding a product or a service<sup>2</sup>. As a result, consumers 'follow the herd'<sup>3</sup> as against the authentic grass root movements which operate at local level with community volunteers having a primary goal to support a local or a global cause considered good for the society or environment<sup>4</sup>.

#### **Emergence of Cyberturfing in the Digital Age**

Cyberturfing has become a powerful and efficient strategy of many organizations. Internet has offered a broader arena to practice Cyberturfing which has a larger impact on consumers' behavioral pattern in general and upon organizations in specific, thereby diminishing authentic opinion in the consumers' ecosystem and promoting unfair trade practices in the market. On the one hand, cyberturfing threatens the reputation, image and authenticity of the organizations including private businesses, since there are many organizations that have been caught cyberturfing. On the other hand, organizations can find themselves at the receiving end of cyberturfing and can significantly suffer from cyberturfing practices, when for instance, false information is being spread by competitors about them. Astroturfing/cyberturfing campaigns usually involve spreading legally grey, or illegal content, which can be defamatory and false advertising<sup>5</sup>. The focus has largely shifted to online actions, such as false online reviews.

There have been instances in the USA, where organizations were caught cyberturfing. When Microsoft was planning an astroturfing campaign, the company hired one of the largest PR companies in the USA to run the campaign. The



campaign, however, did not go as planned as the prepared documents were leaked to a leading publishing newspaper in Los Angeles even before the campaign could even begin<sup>6</sup>. Wal-Mart and their PR firm also used this method and created a blog called “Working Families for Wal-Mart” in order to counter the negative press Wal-Mart had received online<sup>7</sup>.

### Related Emerging Concepts

Various concepts related to astroturfing have come to the fore such as sock puppets (sock puppets are fake online identities created solely to support an argument, used for deception, are typically untraceable and are essentially paid PR agents), 50 Cent party (a special group operating in China, refers to people who are called “50 Cent bloggers” to post “Government-defending posts” on their blogs and get paid 50 Cents per blog by the governmental authorities), online water army (Chinese people who are paid to post content online, also called as hidden paid posters, who aim to flood the internet with their comments and articles), social bots (social bots are user profiles controlled by software that algorithmically produce and disseminate content having fake origination). Another emerging concept is Crowdturfing, which is a combination of crowd sourcing and astroturfing<sup>8</sup>.

### Overview of Law

The acts amounting to cyberturfing or astroturfing may not seem per se illegal and may go undetected in general, but they are inherently unethical, running the risk of damaging the very foundation of public opinion qua a service or a product and promote a false sense of genuineness. The aspects of law which may get involved include the consumer protection laws, advertising laws and competition laws as such practices eventually impact the consumers at large on the one hand and/or private businesses on the other. The position of law on this issue is still largely unregulated.

For instance, the Canadian Competition Bureau defines astroturfing, when used in the context of advertising as *referring to the practice of creating commercial representations that masquerade as the authentic experiences and opinions of impartial consumers, such as fake consumer reviews and testimonials*<sup>9</sup>. The Bureau also observed that if the practice of astroturfing continues unchecked, it will seriously erode consumer confidence in the authenticity of online reviews, at a cost to both customers and business. The ‘misleading advertising’ provisions of the (Canadian) Competition Act, 1985, prohibits the advertisers from making a representation, by any means whatsoever, that is false or misleading in a material respect. In a 2015 Canadian case, while imposing a first of its kind penalty in response to deceptive online reviews, the Competition Commission Bureau of Canada imposed a \$1.25-million penalty upon a telecommunications giant, Bell Canada (BCE Inc.) after the company’s staffers wrote online reviews of Bell products and services without disclosing their ties to Bell.<sup>10</sup>

In USA, the Federal Trade Commission (“FTC”, the statutory authority for regulation of advertising) introduced the Federal Trade Commission and Endorsement Guides, 2009 (“Guides”, further updated vide the Revised Endorsement and Testimonials Guides, 2018), which inter alia, provide the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with these Guides may result in corrective action by the FTC under the Federal

Trade Commission Act, 1914. Interestingly, in 2015 Amazon sued four websites to stop them from selling fake, positive product reviews claiming that these *“reviews threaten to undermine the trust that consumers, and the vast majority of sellers and manufactures place in Amazon, thereby tarnishing Amazon’s brand.”*<sup>11</sup> In a fairly recent and first of its kind action by FTC, Cure Encapsulations, Inc. and its owner, Naftula Jacobowitz (defendants), who paid a third party website to create and post fake reviews on Amazon of their products, were fined by FTC to the tune of \$12.8 million, which was suspended upon payment of \$50,000 to FTC and the payment of certain unpaid income tax obligations. But the FTC ruled that if the defendants are later found to have misrepresented their financial condition to FTC, the full amount of the judgment will immediately become due.<sup>12</sup>

In India, Consumer Protection Act, 1986 (“Act”) is the applicable law from the standpoint of protection of consumers and Section 6 of the said Act obligates the Central Consumer Protection Council to promote and protect the rights of consumers to be informed about the quality, quantity, potency, purity, price and standard of goods and services, as the case may be, to protect the consumers from unfair trade practices. The definition of “unfair trade practice” under the Act covers the gamut of unfair and deceptive practices and methods including misrepresentations, misleading assertions and false allurements about a product or service. Redress against such unfair trade practices pertaining to false claims or misleading representations, which could possibly include cyberturf campaigns, may be sought by consumers under the Act against organizations caught cyberturfing/astroturfing. However, it is yet to be seen if this Act will be an efficient and effective tool for redressal against the acts of cyberturfing or the legislature will need to bring new guidelines to deal with the nuisance of cyberturfing.

Private businesses or organizations which run the risk of being impacted adversely can also have recourse in law in cases where a statement made is untruthful, damaging, infringing the intellectual property rights or other proprietary rights, etc. Possibly an action for defamation lies where the reputation of a business has been tarnished due to the disparaging false statements or a suit for injunction and damages can be initiated seeking prohibition of publication of statements having a negative effect on trademark, copyright, brand value, image, etc. of a business. Further, possible action can also lie against the intermediaries (including telecom service providers, network service providers, internet service providers etc.) under the Information Technology Act, 2000. However, legal sustainability of these actions and the ability to reasonably establish the connection between the acts of cyberturfing and the organization alleged to have engaged in such behind the scenes campaigns, will largely depend on the strength of the evidence adduced.

Suffice it to say that the international as well as Indian laws are still evolving qua the negative onslaught of cyberturfing and it would be interesting to watch how the governments across the world will step up to deal with its growing challenges from legal, social and technology standpoint. Nevertheless, increasing social awareness of such acts among public at large and its potential negative impacts is the first step towards dealing with the challenges and misrepresentations of cyberturfing.

**Endnotes:**

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- [5] Wang, G., Wilson, C., Zhao, Y., Mohanlal, M., Zheng, H. & Zhao, B. Y. 2011. Serf and Turf: Crowdturfing for Fun and Profit. WWW 2012, April 16–20, 2012, Lyon, France.
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- [11] <https://www.reuters.com/article/us-amazon-com-lawsuit-fake-reviews-idUSKBN0N02LP20150410>
- [12] <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-brings-first-case-challenging-fake-paid-reviews-independent>

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