

# Identification and Regulation of Goodwill Infringement of We-Media

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## ABSTRACT

In order to pursue publicity, we-media often uses exaggerated headlines and stimulating content to attract attention when publishing articles. In the context of such articles being popular on the network, cases of goodwill infringement of we-media are numerous. With the frequent occurrence of goodwill infringement, companies have begun to take up legal weapons to defend their legitimate rights and interests, and the corresponding infringement has been regulated to a certain extent. This study selects the classic cases in recent years in which enterprises have sued we-media for goodwill infringement. Through the analysis of these cases, it is helpful to delineate the boundary between expression freedom of we-media and infringement. This study is divided into four parts. The first part mainly clarifies the purpose and significance, and sorts out the relevant research in the current academic community. The second part analyzes and summarizes the characteristics of goodwill infringement in we-media based on the current situation of goodwill infringement in we-media. In the third part, the existing legal system of China for the goodwill infringement of we-media is faced with the dilemma that the goodwill is not explicitly protected by law, the goodwill is indirectly protected, and the structure of legal responsibility is not perfect. After analyzing the current situation of China's legislation and summarizing the challenges faced by China's laws in regulating the goodwill infringement of we-media, the operational regulation methods are proposed in line with China's national conditions from the "Tort Liability Law and the Anti-Unfair Competition Law" in the fourth part.

**Keywords:** *We-media, Goodwill infringement, Legal regulation.*

## 1. INTRODUCTION

### 1.1 *The Concepts of We-Media and Goodwill Infringement of We-Media*

We-media has brought great changes to society [1]. With the continuous development of this new form of media, the production, operation and sales methods of various industries in society have also undergone great transformation [2]. In order to improve their comprehensive competitive strength, more and more enterprises choose to place advertisements on we-media platforms [3], register corporate accounts for publicity, and cooperate with we-media workers who have a large number of fans for marketing, etc [4]. However, where there are operators [5], goodwill infringement will inevitably occur [6]. In the era of we-media, goodwill

infringement also has new features and forms of expression.

#### 1.1.1 *The Concept of We-Media*

We-media refers to a platform where people can instantly publish, disseminate and communicate what they see and hear by means of modern technology and personal terminal facilities no matter when, where and how they are connected to the network [7]. Common we-media platforms include Weibo, WeChat, Zhihu, Bilibili, Tik Tok and other communities.

#### 1.1.2 *The Concept of Goodwill Infringement of We-Media*

Goodwill is a comprehensive embodiment of an operator's competitive strength, commodity quality, service level, business strategy, marketing methods,

and external image. The goodwill of an operator and the strength of the operator complement each other. Goodwill can give the public a good impression of the operator and thus influence consumers' consumption choices. The economic strength of the operator can enable operators to invest more costs to promote and create momentum for its corporate image. On we-media platforms, the goodwill of enterprises is more uncertain and vulnerable due to the nature of we-media platforms.

The goodwill infringement of we-media refers to the act of we-media workers taking advantages of the instantaneous, interactive and non-physical characteristics of we-media to fabricate and disseminate false or misleading information, distort facts or make misleading one-sided propaganda to defame the reputation of enterprises and products on we-media platforms. We-media platform refers to the platforms in the Internet field that can receive information instantly and exchange information and opinions anonymously, with anonymity, immediacy and interaction. Nowadays, the we-media changes rapidly with passing day, and the goodwill infringement of we-media also presents new features that are different from that of traditional goodwill infringement accordingly.

## **1.2 Characteristics of Goodwill Infringement of We-Media**

### **1.2.1 Difficulty in Proving Proof**

There are many different ways of infringing on the goodwill of we-media, and there are also various marketing strategies, which may give the infringers an opportunity to infringe the goodwill if the operators don't pay attention to it. In general, the goodwill infringement of we-media is manifested in the form of competitors taking advantage of the rapidity of information dissemination on we-media platforms to publish or disseminate false and misleading information about the operator's goodwill on the platform. However, this way of infringement is of great risk to the tortfeasor. The tortfeasor can easily find out the subject of infringement through investigation and prepare relevant materials to claim compensation from the tortfeasor. In practice, goodwill infringement of we-media is more often manifested in the form of defamation of the goodwill of other operators with competitive relationships. Coupled with the outsourcing of the specific act of fabrication and dissemination, this form of commission makes it difficult for the

obligee to find the specific infringer when defending his legal rights. In practice, it is often difficult to verify the interests and organizational relationships through investigation. If the infringer finds that the goodwill has been infringed, it is likely that the infringer will damage the evidence if it is not maintained in time. In addition, it is also a great challenge to recover the evidence from the technical level. "The chain of interests involved in the goodwill infringement of we-media often requires the mutual corroboration of multiple evidences before it can be revealed" [8]. In addition to this, the backstage operation of we-media is highly technical, which becomes another major challenge for victims to prove.

### **1.2.2 Widespread Impact**

The goodwill infringement of we-media would have a great impact in a very short period of time. Today's society is a society with fast information flow. Taking Weibo as an example, the top search function of Weibo will be updated every minute, and the popularity will be further spread during this period. The goodwill infringement information conducted by we-media can cause great damage in a short period of time. The operator's goodwill is likely to be damaged before the infringement is discovered[9]. Goodwill is the basis for operators to secure their lives and maintain their operations. The consequences caused by the destruction of goodwill are reflected in the decline of business reputation, customers and sales, and the market share and future development opportunities will also be hit hard[10].

## **2. INADEQUACY OF THE CURRENT LEGISLATION REGULATING THE GOODWILL INFRINGEMENT OF WE-MEDIA**

### **2.1 Challenges Faced by the Existing Legislation in Regulating Goodwill Infringement of We-Media**

#### **2.1.1 The Legal Status of Goodwill Rights Has Not Yet Been Determined**

In the past, there was a dispute on the legal status of the goodwill right of the operator in the academic circle. First, it believed that the goodwill right was a kind of personality right, which was different from the property right with economic content [11]. On the one hand, the right of goodwill

is a compound right, which has both personal and property properties. On the other hand, goodwill is a kind of property without a specific form. The current legal basis for the protection of goodwill in China is embodied in the "Anti-Unfair Competition Law", which prohibits operators from fabricating and disseminating the goodwill of their competitors. On the one hand, the "Anti-Unfair Competition Law" recognizes that there is property in the goodwill right of enterprises; on the other hand, it only stipulates the prohibitive provisions when goodwill is infringed, and does not protect the right of goodwill as an exclusive right to the world in legislation. As an intangible property right, the right of goodwill needs to be stipulated in the civil law. However, the "General Principles of the Civil Law" of China only stipulates the right of reputation of legal persons, derives the right of goodwill from the right of reputation of legal persons, and protects it with the general right of personality, ignoring the property attribute of the right of goodwill. And this defect is a major challenge to regulate the goodwill infringement of we-media.

### *2.1.2 The Goodwill Right Is Protected Indirectly*

General we-media workers who fabricate and disseminate false or inductive information about operators on we-media platforms are generally regulated by tort law in practice. Competitors' infringement of operators' goodwill right through we-media is not conducive to creating a benign competition order and competitive environment between producers and operators, also harms consumers' right to know, and is not conducive to the healthy and sustainable development of the market economy, so it needs to be regulated through the "Anti-Unfair Competition Law". However, the above legal treatment methods are not direct protection of the operators' rights of goodwill, but indirect protection, leaving a lot of "operating space" for infringers. For example, competitors can contact online spammer, online public relations companies or we-media workers with a large number of fans through a single-line connection on the we-media platform to maliciously slander the reputation of the business operators or the reputation of goods in the consumer's voice; misleading words may be used to guide consumers and we-media audience to have a bad impression on the business reputation of operators; finally, operators may only protect their rights with the corporate reputation because the party issuing the information is not a competitor.

However, their losses are not reduced due to the different infringement subjects, but the compensation they can obtain will be different. There are some defects in indirect protection in regulating goodwill infringement.

### *2.1.3 The Structure of Legal Liability Is Imperfect*

As for the protection of the right of goodwill, there are provisions in China's civil legislation and the "Anti-Unfair Competition Law". In dealing with the problem of general goodwill infringement, the business subject can require the infringers, i.e. we-media workers, and the network service providers, such as we-media platforms, to bear the following responsibilities, such as stopping the infringement, eliminating the impact, and restoring the reputation, apologizing and compensating for losses according to the provisions of Article 134 of the "General Principles of the Civil Law" and Article 15 of the "Tort Liability Law". The standard of compensation for loss is the loss suffered by the infringed or the benefit obtained by the infringer due to the infringement. On the issue of dealing with the goodwill infringement by competitors through we-media platform, Article 17 of the "Anti-Unfair Competition Law" makes a general provision, which provides overall provisions on the illegal implementation of anti-unfair competition acts by competitors, but it only stipulates civil liability, and does not provide general provisions on administrative liability and criminal liability. Article 23 stipulates administrative punishment measures such as ordering to stop illegal acts and fines. However, such problems as too single administrative liability, imperfect civil liability and administrative liability, lack of criminal liability, thin form of liability, and difficulty in determining the standard of legal liability jointly make it difficult for current laws to assume the responsibility of regulating goodwill infringement to some extent, which is obviously not conducive to the protection of market competition order and social public interests [12].

### **3. COUNTERMEASURES FOR REGULATING GOODWILL INFRINGEMENT OF WE-MEDIA**

#### **3.1 *Defining the Goodwill Infringement of We-Media Clearly***

##### **3.1.1 *Expanding the Subject Scope of the Infringement***

At present, operators with competitive relationships, we-media workers without competitive relationships, and ordinary people who infringe goodwill through we-media platform will become the infringers of goodwill infringement of we-media, but the responsibility of the we-media platform has not been fully stipulated. The media doesn't commit fabrication, disseminate defamation information or misleading information directly, but the anonymous environment of "we media" objectively provides convenient conditions for the infringer to carry out goodwill infringement. Under the condition that the impact and damage caused by the goodwill infringement of we-media can be controlled and resolved, they have violated the obligation of information audit, and don't stop the infringement behavior. When the infringer fabricates and spreads false information about operators on we-media platform, the we-media platform knows but does not take any measures such as shielding and deleting links. In fact, the acts of we-media platform belong to an indirect infringement. There is no clear provision in the "Competition Law" on this issue[13].

##### **3.1.2 *Adding Subjective Fault Conditions***

At present, China's "Anti-Unfair Competition Law" stipulates that the way of goodwill infringement is to fabricate and disseminate false information about operators, which is easy to mislead consumers. By analyzing this provision, researchers speculate on the legislative intent of the legislator behind this provision, that is, the infringers slander operators on we-media platform and fabricate false information that is unfavorable to the goodwill of operators, and the dissemination of such information must be carried out in a deliberate psychological state subjectively. On the one hand, although the subjective state of the tortfeasor can be judged by the way, method, time, scale and other standards of the tortfeasor, there is still a problem of inaccurate standards in the specific identification. On the other hand, in many

cases in practice, the infringers don't carry out the infringement with a deliberate psychological state, but the consequences caused by his behavior are no less than those caused by the infringement in a deliberate psychological state. In order to strengthen the protection of operators' goodwill and improve the market competition order, it is necessary to recognize the subjective negligence as the goodwill infringement of we-media in the current legislation, and to include the goodwill infringement in the psychological state of negligence into the regulation [14].

##### **3.1.3 *Distinguishing the Types of Goodwill Infringement of We-Media***

The goodwill infringement of we-media can be divided into several different types according to the different subjects of infringement. The operators with competitive relationships can use we-media platform to conduct commercial defamation, which is the goodwill infringement in the competition law that people are familiar with, and the "Anti-Unfair Competition Law" is generally applicable to regulate such goodwill infringement. In order to seek higher exposure, we-media workers "fabricate" and "spread" false information or misleading information. For example, in the case of Oujie (Beijing) Technology Co., Ltd. publishing false information about JD on multiple official accounts of WeChat, we-media will set off a storm in order to gain attention, even if there is a risk of being sued for illegal infringement. In this regard, there is no competition between the infringer and the infringed, and the infringer subjectively knows that his behavior will infringe the goodwill right of the obligee, and subjectively holds a deliberate attitude towards goodwill infringement. When regulating such goodwill infringement, civil law and "Tort Liability Law" are generally applicable. Ordinary users in we-media platform may become the infringers of goodwill infringement. In this case, the infringers of goodwill are generally in negligent psychological states. For example, blind fans believe in the "Internet celebrity" they pay attention to, and they easily believe and forward malicious defamation of business reputation or misleading information under the aura of authority. In other words, the rights and interests of the infringed are further lost without being aware of it. There is no competition between the infringer and the infringed, and the civil law and the "Tort Liability Law" are generally applicable to regulate this kind of goodwill infringement.

### **3.2 Improving the Structure of Legal Liability**

#### **3.2.1 Perfecting the Protection of the Goodwill Right in the "Civil Code"**

As the basic law to protect civil rights and interests, the "Civil Code" should identify the goodwill infringement of we-media as the requirement for the protection of goodwill right in we-media environment. First, it is necessary to determine the "responsibility of secondary communicators" [15]. We-media platforms have a high efficiency of information flow and a fast speed of communication. For acts that infringe on the goodwill of business operators by means of communication and comments, the "Civil Code" needs to identify such acts of ordinary we-media users. These ordinary users are numerous and have no meaningful contact with each other, and most of them follow the trend when they see the malicious slanders and misleading descriptions on we-media platforms.

The second is to cooperate with various forms of civil liability. At present, the main responsibility of the infringer of goodwill infringement in "Civil Code" is to compensate for losses in China. In this regard, on the one hand, the "Civil Code" can "increase the scope of compensation from the direct profits obtained by infringement to the foreseeable losses in the future, and specify the calculation standard of compensation" [16]. Liability for compensation is only a basic way for the infringer to assume responsibility, but sometimes economic compensation cannot make up for the losses suffered by the infringed. Therefore, on the basis of the liability for compensation for damages, liability forms of "stopping the infringement", "eliminating the impact", "apologizing", and "restoring goodwill" are stipulated to better protect the goodwill.

#### **3.2.2 Perfecting the Protection of Goodwill Right in the "Anti-Unfair Competition Law"**

##### **3.2.2.1 Expanding the Subject Scope of Goodwill Infringement**

"The expansion of infringement subject is the key to the effective protection of goodwill with the provisions of the competition law." At present, the "Anti-Unfair Competition Law" cannot regulate the goodwill infringement of we-media with non-

competitive relationships. We-media accounts can only be regulated through the civil law and the "Civil Code" to fabricate, disseminate false information or maliciously slander information on the platform. However, in actual cases, the influential accounts of the we-media platform will carry out goodwill infringement under the drive of interests more or less, or accept the entrustment of competitors to slander the business reputation of operators in the name of exercising the legitimate rights of consumers in the voice of consumers, and mislead the majority of consumer groups to make one-sided and instructive descriptions. With the help of social hot spots, the influential accounts of we-media platform will fabricate false information that is detrimental to the business reputation of the operator. On the one hand, they can obtain traffic and heat; on the other hand, we-media users will have a negative impression on the operator. In addition, the influential accounts of we-media platform fail to fulfill the responsibility of the media and release the information on we-media platform without ascertaining the authenticity. Although there is no malicious intention subjectively, their behaviors actually cause the loss in the goodwill of the operator. However, compared with the goodwill infringement with competitive relationship, there is no great difference in their harmfulness. Due to the fact that there is no competitive relationship, we-media users believe that there is no interest relationship and they trust the information they publish more and spread it widely, resulting in greater loss and impact. Therefore, it is necessary to regulate we-media workers with no competitive relationship but have caused considerable losses from the perspective of the "Anti-Unfair Competition Law".

##### **3.2.2.2 Establishing a Punitive Compensation System for the Goodwill Infringement of We-Media**

Different from ordinary goodwill infringement, the goodwill infringement of we-media can cause huge losses in a short time due to its huge user base and rapid information circulation, and such losses are difficult to be measured whether in terms of reputation or entity. Building a punitive compensation mechanism has become the best way to prevent such market behavior. The infringers not only compensate the infringed for the loss caused by his infringement, but also bear the punitive liability. This system is conducive to combating the behavior that we-media workers use infringement to infringe the goodwill of operators or make

profits. It is also conducive to building a healthy and orderly competitive environment and social credit system.

### 3.2.2.3 Perfecting the Administrative and Criminal Liability Clauses of Goodwill Infringement of We-Media

With regard to the administrative liability for the business reputation infringement of we-media, the "Anti-Unfair Competition Law" has made relevant provisions in Article 23, such as ordering the relevant infringers to stop the illegal act, eliminating the damage consequences caused by their business reputation infringement and the negative impression of the public on the operators, and paying the corresponding administrative fines. In addition, the "Anti-Unfair Competition Law" can also stipulate other administrative responsibilities, such as revoking the business license to let we-media infringer know that the act of defaming goodwill is not only to compensate for the losses of the infringed, but also to bear the punitive liability, as well as the loss of business qualification. The introduction of personal punishment is also a measure to regulate the goodwill infringement of we-media. Administrative detention clauses are added to the legal liability clauses to impose administrative detention on infringers who cause losses and have a greater impact on the punishment, so as to combat the rampant situation of goodwill infringement of we-media, increase the infringement costs of we-media violators, serves as a warning to the vast number of we-media users and be conducive to building a healthy and orderly competitive environment and social credit system.

In social practice, the person who disseminates false information is not necessarily the person who fabricates information. For example, the account with a large number of followers on the we-media platforms forwards an article that maliciously slanders the business reputation of the operator in order to increase its exposure and spread it widely on the Internet, resulting in a sharp decrease in the social evaluation of the commodity reputation and business reputation of the infringed, and a sharp decrease in sales, and causing a significant loss to the infringed. However, it does not meet the requirements of "fabrication" and "dissemination", and it cannot be punished by criminal law. The criminal law should be modest. In the above circumstances, when the goodwill of the infringed suffers serious losses or even has difficulties in production and operation, it is obviously not

conductive to the protection of the right of goodwill if the infringer is still required to meet the requirements of "fabrication" and "dissemination" at the same time. China's "Anti-Unfair Competition Law" and "Criminal Law" should unify the behavior of goodwill infringement, so as to better safeguard the goodwill right of operators.

## **4. CONCLUSION**

Internet commercial defamation belongs to unfair competition behavior, with the characteristics of traditional unfair competition and unfair competition in the Internet era. It is difficult to carry out the practical work of rectifying and regulating the traditional unfair competition. When it is extended to the Internet platform, it becomes invisible and difficult to identify to the point of being unattainable. It is precisely this responsibility subject that is difficult to establish, which makes slanders more rampant. Against the background of such a chaotic Internet market, it is not difficult to see that today's "Anti-Unfair Competition Law" is no longer suitable for the new pattern of Internet business competition and cannot protect the legitimate rights and interests of Internet businesses. Such defamation is forcing China to improve relevant laws, so that all defamation acts can be legally observed. This study analyzes the actual Internet commercial defamation cases in recent years, reflects on the current legal loopholes of Internet defamation in China, and discusses the existing ways of commercial defamation. In addition, it is necessary to learn from the advanced experience of developed countries in dealing with Internet commercial defamation, and complement the "Anti-unfair Competition Law" in line with China's national conditions, so as to eliminate the disorder of unfair competition in the Internet market and protect the legitimate rights and interests of businesses. It is also necessary to clearly plan the supervision responsibilities of each department, cooperate with each other in management, perform their own duties, and efficiently complete their own work. At the same time, it is suggested to actively improve the determination of responsibility to reduce the impact of the victim merchants due to this responsibility. And then, it is required to establish dignity for the complete rejection of Internet commercial defamation, strictly control the market order, and play a role in regulating the market. This study analyzes the defamation behavior of Internet commercial shopping, explores legal loopholes and proposes relatively reasonable suggestions. The

maintenance of legal procedures for Internet shopping defamation can not be completely solved at the moment, but its regulatory and remediation decisions and research purposes should be clear, so as to create a reasonable, legal and orderly market environment, crack down on illegal competitors and the sender of defamation information, and punish similar behaviors.

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### REFERENCES

- [1] Guo Xingxing. Legal regulation of commercial defamation in the era of We Media [J]. Legal Expo, 2015(15): 211-212. (in Chinese)
- [2] Li Jiabin. Research on the Performance and Judgment of Goodwill Infringement in the era of We Media [J]. SERINDIA. 2018, (9). (in Chinese)
- [3] Wu Xue'an. The lack of law on goodwill infringement of We Media urgently needs to be filled [N]. Democracy and Legal Times, 2016-10-18(002). (in Chinese)
- [4] Meng Ziyang, Li Xin. Challenges to the anti-illegitimate competition law and its response in the era of We Media — taking commercial defamation as an example [J]. Legal Expo, 2015(15): 211-212. (in Chinese)
- [5] Xu Changtong. The influence of We Media on the ideological and political education of college students and countermeasures [D]. Xihua University, 2017. (in Chinese)
- [6] Meng Ziyang, Li Xin. Challenges to the anti-illegitimate competition law and its response in the era of We Media — taking commercial defamation as an example [J]. Modern Economic Research, 2013(03): 69-73. (in Chinese)
- [7] Wu Taixuan, Zhu Jingjie. Research on commercial defamation in the field of Internet shopping and its legal regulation [J]. Competition Policy Research, 2015(01): 49-57. (in Chinese)
- [8] Wu Xue'an. The lack of law on goodwill infringement of We Media needs to be filled [N]. Democracy and Legal Times, 2016-10-18(002). (in Chinese)
- [9] Wu Handong. On the goodwill [J]. Chinese Law, 2001(03): 89-96. (in Chinese)
- [10] Cai Qiusi. On the legal regulation of commercial defamation in China's Internet field [D]. Chongqing University, 2018. (in Chinese)
- [11] Yang Ming. Commercial defamation and its regulation under internet conditions [J]. Electronic intellectual property rights, 2008(01):23-26. (in Chinese)
- [12] Wu Handong. On the goodwill [J]. Chinese Law, 2001(03):89-96. (in Chinese)
- [13] Li Min. Civil law protection of reputation rights in We Media [J]. Journal of Zhejiang Wanli University, 2019, 32(04): 36-40. (in Chinese)
- [14] Wang Lan, Xu Baoqin. Commercial defamation in the Internet environment and its legal regulation [J]. Journal of Hubei University of Economics (Humanities and Social Sciences Edition), 2018, 15(02): 78-81. (in Chinese)
- [15] Fan Dunqiang, Ye Yong. On the protection of anti-unfair competition law of goodwill [J]. Intellectual property rights, 2015(03): 53-57+91. (in Chinese)
- [16] Zhao Liyuan, Shang Jianhui. Legal improvement of anti-unfair competition in the media field in the Internet era [J]. Voice and Screen World, 2014(09): 26-28. (in Chinese)