



# RISK MITIGATION IN CASES OF LOSS OF REPUTATION

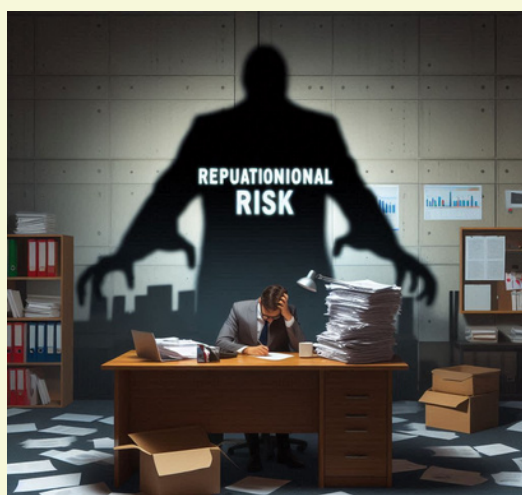
WEDNESDAY WISDOM  
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## REPUTATION[1]:

Earning reputation is like rolling a rock up the hill- it is difficult and takes time, but losing it is as easy as just pushing the rock down the hill[2]. Corporates work hard towards creating sound reputation in the market by providing good quality services or products. This involves a lot of back-end work like successful workforce, proper quality control processes with vendors, detailed policies for ensuring corporate governance and many more.

However, in spite of all this sometimes one is faced with the agony of reputational loss. Causes for loss of reputation can be many arising from a sudden POSH news (which may develop into a me too story), non compliance issues, news about bankruptcy coming out, toxic work culture or any quality related hassles, stress or pressure.

Reputational loss is something which is a culmination of many factors over a period of time and generally results due to the stakeholders and management ignoring the initial signs.



[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] Hitopdesh 1.41



## Case Study :

One can recall the classical case of Maggie. The Food Safety and Standard Authority of India (FSSAI) had banned Nestle's Maggi, the market leader of Instant noodles in India in June 2015[3]. Maggie, a favourite Indian household product, suddenly was caught in a compliance issue, when an inspector from Food Safety and Drug Administration in Uttar Pradesh, spotted information on the label of Maggi noodles packet which stated that, the product does not contain Monosodium Glutamate (MSG). However, after the test conducted in state laboratory of Uttar Pradesh showed that the product not only contains MSG but also the amount of MSG[4] and lead present was over 1,000 times than what was claimed. Nestle had to recall approximately 38,000 tonnes of Maggi noodles from the market in 3 months and suffered major loss of reputation[5].



[3] [Role of reverse logistics in product recall: Case study on Nestle Maggi](#)

[4] MSG is known to be a harmful additive especially for children that causes problems such as liver inflammation, weight gain, nausea etc.

[5] [The Maggi ban: How India's favourite two-minute noodles lost 80% market share](#)



Spreading damaging messages has never been as easy as in current instant world of social media, where a simple message can reach the entire world in a few microseconds and thus risk mitigation is an important factor. Certain definite steps need to be taken by organization heads to ensure that the risk mitigation exercise is undertaken properly. The interest of the organization should be paramount in such cases, instead of focusing on any particular department or employee.

Let's focus on risk mitigation measures to be adopted in case of any possibility of reputation losses.

### **Expert Reports and Analysis:**

The most important step in case of any situation is to have an objective analysis of the situation through an expert.

For example, the crisis is due to poor quality products in the market. An objective analysis by an expert can help as the report can demonstrate whether the crisis is due to any intentional acts or omissions of certain company officials or any sub-contractor or whether the crisis is attributable to a genuine human error. In case it is determined that the liability is due to the sub-contractor's default, the contract with the sub-contractor assumes great importance. Such report can also be used as valuable evidence in possible litigations and communications.

Whether the contract contains an indemnity and a liability on the sub-contractor to reimburse all damages suffered by the company due to such poor material is a relevant question. The contracts with raw material manufacturers should be carefully reviewed, especially in the sector where companies face huge liabilities under the consumer protection legislations. Parties should incorporate detailed indemnities[6] and liabilities for quality breaches.

[6] More information about indemnity can be obtained [here](#)



The contract can also provide for regular inspections and audits by clients (without notice) to ensure that the quality control process is not missed in any manner. The contract can provide for certain Service Level Assurance (SLA) and in case of breach of SLA, a right to terminate and /or right to claim liquidated penalties or damages.

If the parties are operating simply on a Purchase Order (PO) arrangement, without detailed legal terms and conditions, then it would be difficult to recover the damages from the sub-contractor and thus detailed contracts to incorporate proper liabilities and quality control mechanisms can aid the company.

### **Adopting a strong legal position :**

Upon careful analysis of the situation, Company should adopt a strong legal position of either admitting or denying its involvement. For example, if the Company is accused of committing a fraud on its consumers, and the Company is aware about the same and also simultaneously conducting an internal investigation, the Company should definitely adopt a strong legal position and examine its liability from the consumer protection angle, before releasing any denials of the subject.

If the claim is false, then immediate denials and strong legal positioning by filing appropriate defamation claims can help. Reputational loss is considered seriously in India and Courts have come down heavily on persons who are making false and derogatory public statements, especially on social media.



This case involved a transgender social activist, journalist, regional television anchor in Chennai[7]. The defendant was a Youtuber and the plaintiff alleged that the defendant had posted derogatory YouTube videos to maliciously malign and defame her. The plaintiff complained that because of the defamatory articles surfaced on YouTube, several important programmes of the plaintiff got cancelled and the plaintiff suffered.

The Defendant chose not to appear in the matter, and the ex-parte order was passed against the Defendant and awarded Rs. 50 Lakh as damages to the plaintiff. The Court observed that:

*“Merely because a person has a right to post on YouTube, he cannot cross his limit encroaching upon the privacy of others. Though the publication is a right, such a right is subject to reasonable restrictions and cannot be encroached upon the privacy of others. When such statements are surfaced, particularly in social media like YouTube touching upon the character, behaviour and personal life of any individual, it will have serious impact in that particular area.”*

### **Taking bona fide steps:**

In a crisis situation, one must focus on establishing bona fide. Bona Fide implies that the party acted in good faith, fairly and honestly. If the company is accused of something grave then immediate actions of the company go a long way in establishing bona fide. One must remember that it is difficult to lay down clearly what would establish bona fide. As per the situation at hand, Company may choose to take appropriate steps. For example, if a company is accused of non-compliance or fudging its records, then the company can consider taking steps for doing backward analysis for the same and immediately take steps for an alternative expert opinion to handle the situation. Litigations after reputation losses are many, and thus immediate actions are of value to demonstrate bona fide.

[7] Citation: 2024 LiveLaw (Mad) 18 :Apsara Reddy v Joe Micheal Praveen : C.S.No.127 of 2022





### **Communications :**

Communication to all the stakeholders is very important in case of crisis. In case of any untoward incident happening, an entity should immediately alert all the stakeholders and take the employees in confidence. The communications in these times should be consistent and in strict adherence to the social media policy of the Company. It is sometimes seen that anonymous interviews are circulated, and sometimes, employees take videos and publish the same. These should be restricted to the maximum extent possible, as the same may be misused to fire the fumes further.

A proper and detailed Social Media Policy should be in place to handle the crisis immediately so that the employees are aware of their obligations and do not unknowingly make any misleading posts. If the company is facing litigations then appropriate announcements of the matter being subjudice should be made.



While discussing on communications, one is reminded of the huge crisis faced by Cadbury, when the company was accused that its chocolates were infested with worms in 2003[8]. The CEO maintained that the crisis was due to poor storage facilities at the retailers and took multiple steps to avert the crisis including introducing double packaging for the chocolates. It is widely reported that as a part of communication strategy, the trade, and consumers, were reached nationally through a press ad 'Facts about Cadbury', released in 55 publications in 11 languages[9].

### **Insurance**

These days, insurance is also available for reputational losses and may be considered as a valuable risk mitigation measure.

### **REMEMBER :**

As is said, no crisis is unsurmountable, when faced by the right team in the right state of mind. Thus, while a company may be caught in tough situations, keeping one's cool and taking the right steps may be the way forward. Further, if the existing contractual arrangements and policies of the company are strong, then handling the crisis is easier.

To deal with reputational damage crisis, organizations must have detailed contracts, develop robust crisis management strategies, foster positive work cultures, and prioritize customer trust and loyalty, positioning themselves for resilience and sustainable growth in today's dynamic business landscape.

[8] [\(PDF\) CADBURY CRISIS MANAGEMENT \(WORM CONTROVERSY\)](#)

[9] [Case Study: Cadbury Crisis Management \(Worm Controversy\) - MBA Knowledge Base](#)



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