

Social Media Accounts

Employer or Employee Property?

January, 2012

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MODERN TREND IN CORPORATE MARKETING

An unprecedented number of companies are now using social media to reach their consumers. According to a recent study, 72% of the largest companies in the U.S. maintain a corporate Twitter account while 69% have Facebook pages. And it's not just large corporations -- another study found that 81% of small businesses now use some form of social media marketing. With the expanding use of social media by businesses, one legal issue has become increasingly important: who owns a Twitter or Facebook account, the employer or the employee?

PhoneDog v. Kravitz



The case of *PhoneDog v. Kravitz*, filed in a California federal court last year, illustrates the importance of this question. In that case, employee Noah Kravitz began working for PhoneDog in 2006 as a product reviewer and a video blogger. As part of his employment, he maintained a Twitter account titled “@PhoneDog_Noah.” Mr. Kravitz built up a Twitter following of approximately 17,000 people while he worked at PhoneDog. When he left in 2010, the company requested that he relinquish use of the account. Instead, Mr. Kravitz changed the account name to “@noahkravitz” and continued using it. PhoneDog has now brought a claim against Mr. Kravitz for \$340,000, which reflects an estimated value of \$2.50 per follower per month. Although the case is still pending, the judge recently denied Mr. Kravitz’s motion to dismiss several of PhoneDog’s claims, including those for misappropriating trade secrets and for conversion. As the case proceeds, it may provide interesting insight into how courts will analyze both ownership and valuation of social media accounts used for business purposes.

“...COMPANY THEN GAINED UNAUTHORIZED ACCESS TO HER LINKEDIN ACCOUNT...”



In the similar case of *Eagle v. Morgan*, filed in a federal court in Pennsylvania, a CEO named Linda Eagle was involuntarily terminated shortly after she sold her company, while supposedly retaining an executive position. She alleged that the purchasing company then gained unauthorized access to her LinkedIn account, changed her password, and put the new CEO's photo and name on the account. The company responded that Eagle had developed and maintained the account as part of company business and, therefore, the account and its contact list were company property. It counter-claimed against Eagle, who had regained access to the account after filing the lawsuit. Although this case is also still pending, the court has denied Eagle's motion to dismiss the company's claim for misappropriation and unfair competition. Interestingly, the judge seemed to disfavor any analogy comparing LinkedIn connections to customer lists, which are often protected company trade secrets. Under Pennsylvania law (as well as Texas and the law of most states), customer lists are only trade secrets if they are not generally known, and LinkedIn connections can be seen by anyone who views the account.

SOCIAL MEDIA OWNERSHIP RIGHTS



As the *PhoneDog* and *Eagle* cases demonstrate, the increased use of social media marketing has the potential to create costly disputes between employees and employers over ownership rights to social media accounts. Given the uncertain state of the law, companies that invest in this type of marketing should adopt clear social media policies that establish ownership rights to these online accounts before a dispute arises. Otherwise, if employees maintaining social media accounts leave, their Twitter followers could follow them to their next job.