

December 15, 2009

Volume 2, Issue 3

Dunner Law Dicta



Dunner Law PLLC, 3243 P Street, N.W., Washington, D.C. 20007
202-298-6002, www.dunnerlaw.com

Dunner Law PLLC

Small IP Practice specializing in trademark and copyright law; IP counseling, domestic and international protection of IP portfolios; internet-issues; IP audits and strategies relating to IP portfolios; drafting and negotiating IP and IT-related agreements

Lisa A. Dunner, Esq.
Founder
ldunner@dunderlaw.com

Adam W. Sikich, Esq.
Associate
asikich@dunderlaw.com

© 2008-2009
Dunner Law PLLC

Protecting Your Brands in the Twitter Age

Social networking websites continue to grow in popularity as more people use Facebook, Twitter, LinkedIn and other sites to interact and connect with each other. Not surprisingly, businesses and organizations use these sites to reach out to fans to keep them informed of events, product launches, and other organizational news items of interest. The customers of these businesses likewise are reaching out in their own way by creating unofficial fan pages – pages run by and maintained by people outside of the organization – to interact with others who share an interest in the organization about which the page has been set up.

Both the official organization pages and unofficial fan pages raise a number of legal issues such as freedom of speech, defamation, privacy, and intellectual property that organizations should be aware of especially in a time when information—good and bad—is so easily transmitted online. This issue of *Dicta* addresses the intellectual property issues related to social networking sites.

Official Social Media Pages

Official organization pages are typically used as an advertising medium for businesses, but unless the outgoing mes-

sage and content is properly maintained and controlled, the organization risks a weakening of its brands. The best way to prevent this is to establish and follow a protocol for managing official pages. This need not be overly elaborate as long as it includes the following:

- Selecting an easily identifiable user name, when available, so fans know how to reach the organization's page by entering the web address;
- Designating one person within the organization to manage and update the page;
- Ensuring that trademarks and copyrighted works are used properly and consistently within the official page; and
- Linking from the organization's web site and email signatures to the organization's official social media pages to ensure that users are directed to the correct page.

Proper use of the business's trademarks is important because it

“Proper use of the business’s trademarks is important because it will help to ensure that the strength and distinctiveness of the trademarks are maintained.”

will help to ensure that the strength and distinctiveness of the trademarks are maintained. Specifically, trademarks should be used as adjectives rather than as nouns (e.g., “the ABC software keeps your computer system running virus-free” vs. “the ABC keeps your computer system running virus-free”); the ® symbol should be used on federally registered trademarks (those in which a registration has issued and are not pending) and the ™ symbol should be used on every other trademark; and trademarks should be used in the same font, style and/or colors that the organization uses in other settings.

With respect to the business’s copyrighted works, be sure to post only works that the organization owns or has express permission to use. If there is any question as to whether you are entitled to post content not owned by the organization, ask before you post it—just because linking is widely used on social media sites does not mean that it is always legally permissible.

Unofficial Fan Pages – Friend or Foe?

Unofficial fan pages should be welcomed by the organization under certain parameters. Even the best-intentioned fan page could create legal headaches for your organization if that page reflects a misuse of the organization’s trademarks (which could ultimately weaken the strength of those trademarks); unauthorized posted copyrighted content; or a passing off as an official representation of the organization. To avoid these potential pitfalls, organizations should do the following:

- Allow fan pages to use organizational

trademarks only upon written consent from the organization. Before granting permission, require the fan to adhere to the proper parameters of use which can be memorialized in a short, one page term sheet. After permission is granted, be sure to monitor compliance.

- Monitor fan pages for copyright misuse. No organization-owned works should be posted on a fan page unless express permission has been granted by the organization.
- Encourage the use of an ownership disclaimer on fan pages that clearly states that it is not an official page nor is it endorsed by the organization.
- If employees create or use fan pages, do not allow them to use company email addresses to post comments. This restriction can be written into an employee handbook/manual.

Organizations must strike a delicate balance between promoting the free exchange of ideas and protecting its intellectual property and overall reputation. Remember that many fans will be unfamiliar with the legal ramifications of using organizational intellectual property. So, if you identify infringing conduct within a fan page that warrants a letter or phone call from your attorney, consider taking a respectful and cordial approach. More often than not, this approach will elicit cooperation from the fan pages without damaging the reputation of the organization.