

Covering Your Ads

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[Why Every Business Should Have A Social Media Policy](#)

Words matter. Words can come back and bite you. Think before you speak. These are all self-evident truths that no one is likely to dispute. Yet, we continue to see examples of people, who should know better, doing just the opposite. This is especially true in the context of electronic communications – first, in work emails, and now, on social media websites. If it was a simple matter of personal embarrassment alone, then there would be no need for this article. This is not the case however.

Social media - Tweets, Facebook posts, LinkedIn updates - can have real legal and economic consequences for businesses. A post may seem as innocent as an employee expressing a personal opinion. However, if the person describes herself as working for a particular company, and then speaks on a highly controversial subject, her post could damage the "good will" of the company. Or, the poster may be recommending a product to all of her Facebook friends without sharing that she happens to work for the product manufacturer in violation of fair advertising practices.

1. A Social Media Policy Is A Good Way To Show Compliance With The Federal Trade Commission's Revised Endorsement Guidelines.

In the last year, businesses have increasingly recognized the need for a social media policy. First, the Federal Trade Commission revised its "Guides Concerning the Use of Endorsements and Testimonials in Advertising" ("Endorsement Guidelines") to make it clear that, in some contexts, truth-in-advertising principles may apply to social media posts: (1) endorsements should not be misleading; and (2) non-obvious connections between the endorser and the marketer of the product should be disclosed if they would reasonably affect how much weight a consumer places on the endorsement.

The connection may include the endorser being paid or receiving some *quid pro quo* from the product being endorsed, and this needs to be disclosed. For example, reviews on social media sites such as Yelp should disclose if the reviewer also happens to be an employee of the business, or if the reviewer is swapping positive reviews with another business owner, or is receiving anything of value in return for their positive review. Similarly, the Endorsement Guidelines would require someone who tweets about a product to disclose if the poster is being paid to endorse the product.

More significantly for businesses, the FTC recognized in its Endorsement Guidelines that a business cannot realistically oversee all of the social media posts by its employees, and ensure that they do not violate the Endorsement Guidelines. The FTC has stated that the employer should not be held liable in this situation if: (1) the employer has a social media policy concerning the "social media participation" of its employees; and (2) the established company policy adequately covered the "rogue" employee's conduct.

Thus, the company can show that, despite its best efforts, the employee violated the Endorsement Guidelines, and the company should not be held liable for the employee's unauthorized acts. In order to do so, however, the employer also needs to establish procedures to monitor compliance with its social media policy. The FTC declined to say how the monitoring should be done, but put the onus on companies to determine for themselves what would best satisfy their legal responsibilities in the context of their business.

2. Businesses Can Better Protect The Value of Their Brand By Ensuring That Employees Do Not Post Unflattering Material In Association with The Business.

Second, businesses should have a social media policy in order to protect the considerable investment they have made in their "brand" and reputation in the marketplace. A social media policy is a proactive way for a business to try and not have its employees post on controversial subjects with the business suffering by association.

A perfect example of this was headline news a few weeks ago. Namely, the CNN reporter who was fired after she posted on Twitter that she had a lot of respect for a recently deceased Hezbollah leader: "Sad to hear of the passing of Sayyed Mohammad Hussein Fadlallah.. One of Hezbollah's giants I respect a lot. #Lebanon."

Octavia Nasr described herself in her Twitter profile as a 25 year veteran of the news business, and the CNN Senior Editor of Mideast Affairs, thereby, turning the personal into a reflection on her news agency CNN. The association with CNN was further highlighted by her Twitter name which was octavianasrCNN.

Ms. Nasr tried to explain the reason for her post a few days later. She said the 140 character limit on Twitter made her message too "simplistic." Her excuse came too late. The damage was done. She was forced out of her job because a single misguided tweet was seen as compromising her position as a CNN reporter.

The immediate public outcry was directed against CNN as well. The Simon Wiesenthal Center called on CNN to make a formal repudiation of Ms. Nasr's comments. On the other end of the scale, editorials have criticized CNN as being hypocritical in its editorial standards, and for caving in to pressure from the Jerusalem Post and conservative blog site NewsBusters. Put simply, Ms. Nasr's tweet has had a negative effect on the public perception of CNN.

On the same day as Ms. Nasr's post, CNN issued its own statement through a spokesman: "CNN regrets any offense her Twitter message caused. It did not meet CNN's editorial standards. This

is a serious matter and will be dealt with accordingly."

This statement however does not go to the essence of the problem. Ms. Nasr was not submitting an article that needed to satisfy the editorial standards of CNN. What was absent from this statement, and is the best long term solution for this type of problem, is the implementation and enforcement of a social media policy.

3. The Barebones For Any Social Media Policy.

Every business should have a social media policy. The posts of your employees reflect on your business, and can result in negative impacts to it. The damage can range from harm to the company's brand and public perception of it to legal consequences such as loss of trade secret protections, unfair competition and deceptive advertising. A social media policy should include the following bright line rules:

DO'S:

1. Stop and think how your post will reflect on your company and its clients or potential clients.
2. Do assume that no matter how restrictive your privacy settings, your posts may become public. Litigation attorneys, professional colleagues, prospective clients and employers are searching these sites for information gathering purposes.
3. Cooperate with your company in monitoring the social network sites by providing a current list of the sites you are using if you are associated with the company in any way on the site. This is not intended to discourage employees from using social media sites. The company favors the use of social media in general provided it is in accordance with all governing laws.
4. Be transparent. Make clear that any opinions you express are your own, and not the views of your employer – don't associate your position at the company with your opinion.
5. Use privacy settings.
6. Maintain business confidences by not posting information that may reveal confidential information – a deal that you are working on, a customer the company is pursuing, a new product that is being developed.

DON'TS:

1. No discriminatory or harassing posts.
2. Do not divulge any non-public private information.

3. Do not endorse the company's products without having your message reviewed by the company's marketing department, and approved for content and necessary legal disclosures. This is necessary to ensure compliance with the FTC Endorsement Guidelines.
4. Do not post defamatory content – don't insult your competition.
5. Do not embarrass and disparage the company.
6. Do not violate the privacy rights of other people by posting their personal image without their permission, or sharing their personal information.

And, finally, businesses should recognize that an effective social media policy is tailored to the particulars of the business for which it is being adopted. Consult with an attorney who is well versed in social media and the laws governing it, so an effective policy can be prepared and implemented.

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