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FEDERAL COURTS DETERMINE THAT SOCIAL NETWORKING ACCOUNTS CAN CONTAIN TRADE SECRETS

As more businesses take advantage of social networking sites to build their brands and expand their marketing efforts, the question arises: can such promotional tools include protectable trade secrets? In at least some circumstances they can, according to two federal courts considering misappropriation cases involving MySpace and Twitter accounts.

In one March 2012 decision, a federal court in Colorado held that a list of friends on a MySpace account was protectable under the Colorado Uniform Trade Secrets Act. In the case, *Christou v. Beatport*, the plaintiff, a club owner, alleged that an employee misappropriated MySpace profiles containing thousands of "friends." The employee had access to the site in order to promote his employer's club, but when he started his own venture he allegedly continued to access the list of friends to compete with his employer. The court held that, using the same logic for protection of customer lists, a friends list could be entitled to protection if it meets the traditional tests under which customer lists can constitute trade secrets. The court noted that the list could not readily be compiled from public sources, and that the plaintiff had limited access to the employer's login and password information.

In a separate case filed in a California federal court, the court allowed a trade secret misappropriation case to proceed in November 2011 and denied a motion to dismiss. In this case, *PhoneDog v. Kravitz*, the plaintiff alleged that the defendant, a former employee, continued to use a work-related Twitter feed after leaving the company. The plaintiff—a mobile-device reviews and news site—used social media tools such as Twitter, Facebook, and YouTube to market and promote its services. When the defendant refused to relinquish the work-related Twitter account after leaving the company, the plaintiff sued and alleged trade secret misappropriation, arguing that the Twitter password, account information, and followers constituted protectable trade secrets. The court held that the allegations stated a claim, and the lawsuit currently is pending.

These cases tell us that companies that use social networking sites like Twitter, MySpace, or Facebook for promotional purposes should be aware that information relating to such accounts may be protectable as trade secrets, and therefore should be protected as such.

Wilson Sonsini Goodrich & Rosati is actively following developments with respect to trade secrets, and is available to assist companies, employees, newly formed businesses, and investors with trade secrets and employee mobility issues. For more information, please contact Fred Alvarez, Ulrico Rosales, Marina Tsatalis, Laura Merritt, Charles Tait Graves, or another member of WSGR's trade secrets and employee mobility practice.



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