

Intellectual Property ADVISORY

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Social Networking: Balancing Intellectual Property Concerns with Your Business Model

“Tweets” from Twitter and “friend requests” from Facebook have taken the world by storm. The growing popularity of social networking Web sites that allow users to monitor, connect and message others are impacting individuals and businesses in meaningful ways. Currently, the major social networking players are Facebook (over 250 million users), Twitter (over 10 million users, with a growth rate at 30 percent per month), LinkedIn (over 35 million members), YouTube (over 6 billion videos viewed in January 2009) and MySpace (over 110 million users).¹ Each of these online communities allows people and organizations to share information and interests through photo and video sharing, comment posting, status updates and blogging. These mechanisms have revolutionized consumers’ expectations, and it is important that corporations determine whether entering the social networking Web site world will contribute to their success.

Many corporations are currently using social networks as a marketing tool to communicate with customers about products and services. For example, a leading cable company uses Twitter for real-time communication with its customers regarding faulty cable connections. A major pizza chain used both Twitter and YouTube to reach its customers to combat damage to its brand caused when two employees posted videos of themselves preparing food in an unsanitary manner to YouTube. Most top brands have Facebook, LinkedIn and YouTube corporate pages. Companies use these Web sites to advertise and market to both a global and targeted community, expand business contacts globally at a low cost, manage customer relationships, maintain knowledge about competitors and provide prompt communications and customer service. Using social networks, however, comes with several intellectual property concerns that could put corporate brands and other protected material at risk.

¹ Facebook.com, Facebook Statistics, <http://www.facebook.com/press/info.php?statistics> (last visited July 27, 2009); Posting of Nick O’Neill to Social Times, Twitter Has a Big Month, Grows to Over 8 Million U.S. Users, <http://www.socialtimes.com/2009/03/twitter-us-growth/> (Mar. 6, 2009 12:10 PM); Compete Profile on Twitter.com, <http://siteanalytics.compete.com/twitter.com/> (last visited July 27, 2009); A Collection of Social Network Stats for 2009, Web Strategy, <http://www.web-strategist.com/blog/2009/01/11/a-collection-of-social-network-stats-for-2009/> (Jan. 11, 2009) (citing Abbey Klaassen, *LinkedIn Skyrockets as Job Losses Mount*, Advertising Age, Mar. 2, 2009, at 1); Press Release, comScore, YouTube Surpasses 100 Million U.S. Viewers for the First Time (Mar. 4, 2009), available at http://www.comscore.com/Press_Events/Press_Releases/2009/3/YouTube_Surpasses_100_Million_US_Viewers; Social Network Stats: Facebook, MySpace, Reunion, Web Strategy, <http://www.web-strategist.com/blog/2008/01/09/social-network-stats-facebook-myspace-reunion-jan-2008> (Jan. 9, 2008).

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Tips for Protecting Your Company's Intellectual Property Rights When Using Social Networking Web Sites

As a company participating in social networks, there are several issues to consider. Some of the most common preliminary recommendations include the following:

- Reserve key permutations of company trademarks and names on the major social networking Web sites to reduce the ability of squatters to create social networking accounts incorporating company marks and names.
- Link to social networking Web sites from official company Web sites and have a link to the company's official Web site located on all social networking Web pages that are maintained by the company.
- Assign an employee or employees to maintain and monitor the company brand on the social networking Web sites (e.g., the employees would be responsible for posting on Web sites as a part of a marketing campaign, updating fan pages on Facebook and tweeting on Twitter).
- Establish, or consider trying to obtain control of, fan pages for your company on social networking Web sites.

Tips for Protecting Your Company's Brand and Intellectual Property from Employee and Third Party Misuse

- Monitor postings on social networking Web sites to see what consumers are saying about your corporate brand. The major social networking Web sites encourage users to report defamatory or abusive postings via easy-to-use links.
- Revise employee manuals, best practices, procedures and termination policies to provide specific guidelines for employee participation in social networks and blogs as it relates to company information, including policies to guard against infringement of your company's and third party intellectual property rights, and disclosure of your confidential or trade secret information.
 - Seek legal counsel to address the maintenance of employees' First Amendment rights in the employee manual or policy.
 - Advise against the disclosure of confidential information, libel and the disparagement of your company on these Web sites.
 - Inform employees who use social networking Web sites for either personal or professional use that they should reference employee manuals in light of the fact that employee posts may be construed as a statement from the employer. Employees should also consider personal liability issues for their behavior.

- Understand the terms of use and the process under the Digital Millennium Copyright Act for removing infringing content from social networking Web sites. The instructions for submitting a notice of copyright infringement are usually located in the Help or Support sections of each social networking Web site.
- Understand the trademark policies of each social networking Web site. The major social networking Web sites allow trademark owners to report trademark violations online, and those social networking Web sites have the authority to suspend or terminate accounts that engage in trademark infringement.
- Be prepared with a plan of action that considers legal as well as public relations implications to respond to unauthorized or defamatory use of your brands and business names, trade secrets or copyrighted material.

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