

 **Protecting Your Brand and Your Liability in the Social Media World**

Twitter®, Instagram®, Facebook®, Pinterest® and other social media websites and apps are great ways to interact with potential customers. They are avenues for advertising and promotion of one's business and brand. A brand owner can share their latest offerings, get people excited about new products, develop brand awareness, etc.—the possibilities are endless.

**However**, there are a number of pitfalls to avoid. Using social media in relation to a business is not the same as using it for personal, non-commercial use. Just because something is found 'online' does not mean that it is ok to use. *Trouble can and does arise quickly...* Profiting from another's property is what separates the use of social media in business from personal use.

There are three primary legal considerations (which fall in the realm of intellectual property) when using social media:

- a) copyrights,
- b) right of publicity, and
- c) trademarks.

Copyrights protect original works of authorship; this includes photographs, pictures, drawings, designs, songs, poems, etc. Many times, brand owners see pictures of celebrities out in public wearing their clothes on various blogs and websites. Although this can be exciting for the brand owner, *it is unwise to share these photos on social media without clearing it first.*

Pictures found online sometimes have been copyrighted. Photographers may obtain copyright registrations for their photos and retain attorneys to protect their intellectual property. Attorneys can use 'reverse image search software' to find their clients' photos posted online. If the photos appear on a business's social media account, a cease and desist letter will be sent, including a request for compensation of anywhere from \$7,000 - \$14,000. If the user refuses to submit to the demands, there may be a threat of a lawsuit, or worse, the lawsuit may already have been filed.

How does one avoid these situations? *Determine where the photo came from.*

- Get a license for the photo.
- Look to see if the photo is in the public domain.
- Do not just repost the photo (not only with celebrity photos, but also with photos that appear to be stock photos online).
- Be cautious when it comes to posting photos from unknown sources.

Furthermore, there could be a 'right of publicity' claim. Right of publicity is the right to use one's name, likeness or identity for a commercial purpose. It applies when someone uses a celebrity name, likeness, voice, etc. It can range anywhere from a picture or silhouette to a famous quote, and may create a false and misleading impression that someone is endorsing a product. A famous person does not need to be alive for a claim to be made; their estate can still make the claim for them.

The laws vary from state to state and applicable law is determined by where the celebrity resides or died. As a rule of thumb, *do not use the image, name, likeness or even quotes from a celebrity to promote your products*. If it is important to your product, then contact the celebrity, speak with their agent and try to obtain a license or endorsement.

Another social media concern is trademarks. Trademarks protect brands and their identity; they can be a simple word, slogan, logo, design or even sound. Trademarks are used as source identifiers to help consumers identify where a particular product originates from.

It is important not to cause any confusion with a trademarked brand owner. *Do not use anyone's brand name!* Even if there is a plan for a funny slogan as a play on a brand name, there is a possibility that consumers will think of the brand owner and 'be confused'...don't do it! It could bring forth trademark infringement claims, and become an expensive 'joke'...

In sum, if there are any questions or potential confusion in one's commercial use of social media, then it is best simply not to do it, but if you must, consult with an experienced attorney.

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