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Ownership of Business-Related Social Media Accounts

13 January 2014 - In their article under the above title, Anelia Delcheva and Aaron Rubin write as follows:

“Social media platforms have become an increasingly important means for companies to build and manage their brands and to interact with their customers, in many cases eclipsing companies’ traditional “.com” websites. Social media providers typically make their platforms available to users without charge, but companies nevertheless invest significant time and other resources to create and maintain their presences on those providers’ platforms. A company’s social media page or profile and its associated followers, friends and other connections are often considered to be valuable business assets.

But who owns these valuable assets – the company or the individual employee who manages the company’s page or profile? Social media’s inherently interactive nature has created an important role for these individual employees. Such an employee essentially acts as the “voice” of the company and his or her style and personality may be essential to the success and popularity of that company’s social media presence. As a result, the lines between “company brand” and “personal brand” may become blurred over time. And when the company and the individual part ways, that blurring can raise difficult issues, both legal and logistical, regarding the ownership and valuation of business-related social media accounts.

Such issues have arisen in a number of cases recently in the United States of America. Although these cases leave open a number of questions, the message to companies who use social media is loud and clear: it is imperative to proactively establish policies and practices that address ownership and use of business-related social media accounts.”

The Authors recommend the following proactive steps:

“Considering how vital social media accounts are to today’s companies, and given the lack of clear applicable law concerning the ownership of such accounts, companies should take proactive steps to protect these valuable business assets.

For example, companies should consider clearly addressing the ownership of company social media accounts in agreements with their employees, such as employee proprietary information and invention assignment agreements. Agreements like this should state, in part, that all social media accounts that employees register or manage as part of their job duties or using company resources – including all associated account names and handles, pages, profiles, followers and content – are the property of the company, and that all login information and passwords for such accounts are both the property and the confidential information of the company and must be returned to the company upon termination or at any other time upon the company’s request. In general, companies should

not permit employees to post under their own names on company social media accounts or use their own names as account names or handles. If particular circumstances require an employee or other individual to post under his or her own name – for example, where the company has engaged a well-known industry expert or commentator to manage the account – the company might want to go a step further and include even more specific contractual provisions that address ownership rights to the account at issue.

In parallel, companies should implement and enforce social media policies that provide employees with clear guidance regarding the appropriate use of business-related social media accounts, including instructions on how to avoid blurring the lines between company and personal accounts. (Keep in mind, however, that social media policies need to be carefully drafted so as not to not run afoul of both the applicable labour legislation in South Africa and applicable laws in South Africa restricting employers, restricting employers' access to employees' personal social media accounts, or the applicable social media platforms' terms of use.) Finally, companies should control employee access to company social media accounts and passwords, including by taking steps to prevent individual employees from changing account usernames or passwords without authorization."

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