

How to Protect Content and Control of Your Company's Social Media Accounts

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A client recently called with an issue I had not encountered before, but soon came to realize was far more common than one might expect. It had an employee who set up the company's Facebook page. Because Facebook is primarily intended for people (i.e. "friends") and not businesses, when a company's Facebook page is established, it must be linked to a user's personal page. That person becomes the administrator and can name others as administrators as well.

In my client's case, the employee linked the company account to his own, and made himself (but no one else) the administrator. After he left employment, he refused to turn over control of the page to the company. The company attempted to work with Facebook to regain control, but these efforts yielded nothing. Because Facebook was not set up for companies, and despite more and more businesses using it, Facebook's rules and protections for businesses are practically non-existent. So, the company was left with the choice of threatening or actually suing the employee, or just starting a new Facebook page under a different – and less desirable – name.

Although the possible bases for litigation will vary from state to state and from company to company, some litigation options may include trademark and copyright infringement, conversion, theft or misappropriation of trade secrets, tortious interference with business relations, and seeking a temporary restraining order or permanent injunction, to name a few.

Short of litigation *after* the fact, what can a company do, proactively, to protect itself from this Facebook issue, as well as issues with any other social media accounts, such as Twitter and LinkedIn? Here are a few ideas:

- First, companies can include a statement in its policies that clearly establishes ownership of the account as the company's, as well as ownership of the content and the relationships and contacts established through the account. This statement should also include a requirement that company and personal accounts be kept separate from one another whenever and to the greatest extent possible. If the company has an existing account, the company should have the current administrator sign an acknowledgment that the company owns the account, its content, and contact list, and that the administrator relinquishes all rights and claims to those items.
- Second, the company should designate someone who is not likely to simply leave employment (such as an owner or officer) to open the account and be the administrator. That person can then designate others as administrators and can remove administrators when they are no longer with the company. (If the account is already established, it is not too late to switch the primary administrator and link it to a different account). This step also helps establish the intent of the company to maintain control over the content and contacts should an issue later arise. Whenever possible, the company should also set up any social

media account to only be linked with the company as opposed to an individual, such as with LinkedIn and Twitter.

- Third, a company can include in its policies (such as a handbook or stand-alone technology policy) the requirement to turn over all accounts, passwords, handles, and the like upon leaving employment, as well as defining “confidential” or proprietary information to include any information that relates to the control or maintenance of the social media account, as well as related to the company’s contacts established through the account.

Of course, our Firm is always available to consult on these issues or help draft policies or statements on these topics.