

Is Social Media Right For Your Business?

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Do you post on Facebook? Follow your favorite celebrity or sports figure on Twitter? For several years now, many of us have used Facebook to monitor our childrens' activities or re-connect with an old friend from high school. While these personal uses continue, social media websites such as Facebook, Twitter, and LinkedIn have also emerged as powerful marketing and public relations tools for businesses.

"Social media is changing everything," said Debra Jasper, co-founder of Mindset Digital, a social media training company based in Columbus, Ohio. "Business leaders are recognizing these new channels can help you enhance your reputation, build stronger relationships with clients, and spread the word about your services."

According to a survey performed by the Pew Internet and American Life Project in September 2009, 72% of Americans aged 18-29 who use the internet visited a social media site. The survey found that 30% of Americans aged 30 and over who use the internet visited a social media site. Of the adults over the age of 30 who use social media, 73% maintain a Facebook page, 48% maintain a profile on MySpace and 14% use LinkedIn. According to Facebook, there are more than 500 million active users on Facebook.

Knowing that their customers are on-line and using social media with increasing frequency, many businesses have turned to social media as a mechanism to promote their products and services. According to the *Small Business Monitor*, a semi-annual survey of small businesses performed by American Express, four out of ten small businesses use social media for marketing purposes.

A growing number of business consultants now specialize in developing strategies for companies to maximize exposure on these social media sites. "At a time when everyone is so busy and hyper distracted, business leaders are recognizing they have to adopt a new tone and new approach to break through the noise and get attention," said Betsy Hubbard, co-founder of Mindset Digital. Hubbard said the payoff for companies can be big. "People are increasingly tuning in to the informal," Hubbard said. "For a lot of firms, that can be a big shift, but it's worth it to reach more clients."

The low cost of developing a presence on social media websites, combined with the recent challenging economic climate, has driven many companies to market their products and services through social media websites as an alternative to traditional marketing channels. Methods for social

media marketing differ, but often include placing advertisements on social media sites and building a network or community of followers on a social media website.

Even if you choose not to develop a social media presence, you may wish to monitor social media websites to avoid damage to your company's name and reputation by negative postings and to stop infringement of your intellectual property.

Creating and maintaining a business presence on social media websites is not without risk. The legal framework applicable to using social media websites, particularly for commercial purposes, can be very complex. Postings to a social media website can originate from anywhere in the world, so determining applicable laws and how to enforce your rights can also be a challenge. To avoid problems associated with the use of social media, it is important to understand that the laws regulating advertising and intellectual property protection applicable to your business off-line apply similarly to the conduct of your business in the social media world.

As you start to develop a presence in the world of social media, you should keep the following issues in mind:

1. Understand the Terms of Use and Privacy Policies of the Social Media Website.

Each reputable social media website has Terms of Use and Privacy Policies that apply to use of the website. These policies are often lengthy and complex. The primary objective of these policies generally is to limit the financial and legal exposure of the website provider.

Most of these website policies provide that the individual who posts content on the site retains ownership of the content. The content owner typically must agree that it has the right to post the content, that the content does not infringe on the rights of others, and that the content is not defamatory or obscene. The website provider often grants itself the right to use the posted content.

If you are posting content on a social media website, make sure that you either own the content or have obtained prior permission (preferably in writing) to use the content. If you wish to use content that has been posted on a social media website by others, particularly for commercial purposes, you should obtain the prior written permission of the content owner.

If you are advertising on a social media website, many of the websites have specific provisions in the Terms of Use that apply to your advertising activities. You should review and comply with these provisions.

It is important to follow the Privacy Policies of the social media website if you access personal information of third parties. If you develop your own social media platform, you need to develop and comply with Terms of Use and a Privacy Policy for your site. Many states have laws regarding privacy and data security laws with which you will need to comply. If your marketing campaign targets children under the age of 13, you must also consider the requirements of the Children's Online Privacy Protection Act.

2. Follow Advertising Rules.

Advertising in the U.S. is generally regulated by the Federal Trade Commission (the "FTC"),

particularly by Section 5 of the FTC Act, which protects the consumer from unfair or deceptive trade practices. Additional state laws also apply. These laws apply to advertising through traditional channels as well as online activities.

Under the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising (the “Guides”), which were released on October 5, 2009, you are required to disclose if you are compensating someone for an endorsement of your products or services. In the Guides, the FTC specifically states that when a blogger receives any type of compensation for posting a favorable blog about a specific product or service, this conduct constitutes an endorsement that must be disclosed to the public.

3. Protect Your Intellectual Property; Do Not Misuse the Intellectual Property of Others.

It is important that you monitor the online use of your intellectual property, such as your copyrights and trademarks. Law firms and third party service providers offer this type of monitoring services to businesses.

The Terms of Use of most social media websites have policies prohibiting the misuse of the intellectual property rights of users. For example, Facebook provides that “you will not post content or take any action on Facebook that infringes or violates someone else’s rights or otherwise violates the law.” Twitter provides that “using a company or business name, logo, or other trademark-protected materials in a manner that may mislead or confuse others or be used for financial gain may be considered a trademark policy violation.”

If you learn that someone is misusing your intellectual property rights on a social media site, the Terms of Use of most social media sites provide a mechanism for reporting the misuse. For example, if you believe that a Twitter user is using your content in a manner constituting copyright infringement, you may follow the procedures set forth in the “Copyright Policy” section of the Twitter Terms of Use to report your claim. Twitter reserves the right to remove any content it believes to be infringing and it may terminate a repeat infringer’s Twitter account. You may also pursue injunctive and other remedies through legal channels.

4. Manage Your Employees’ Use of Social Media.

In the past, many companies dealt with employees’ use of social media sites by prohibiting use of social media websites during work hours. Companies are now re-thinking this position given the increasing use of social media by businesses. It is important that any company establishing a social media presence amend its employee handbook to establish policies for social media usage. The guidelines should address how an employee represents your company on social media sites, and should apply to all communications (during or after work hours) on all devices (whether company-owned or personal).

5. Beware Of Special Regulations.

Certain industries and certain types of conduct are or may become subject to additional regulations. For example, the Food and Drug Administration (“FDA”) and Financial Industry Regulatory Authority (“FINRA”) have recently become involved in the regulation of the use of social media. In November, 2009, the FDA conducted a public hearing regarding social media and FDA regulated products. The

FDA is soliciting comments and has indicated that it will issue a guidance document regarding use of social media. FINRA issued a Regulatory Notice entitled "Social Media Web Sites" in January 2010. Financial firms are required to have a policy prohibiting an associated person from engaging in business communications in a social media site that is not subject to the firm's supervision.

On-line sweepstakes and contests are highly regulated activities. If you wish to run an on-line sweepstake or contest, you are required to comply with the rules of the applicable social media website as well as the applicable sweepstakes laws, which vary from state to state.

While the requirements outlined above may appear daunting, with effective advance planning you can turn social media into an effective marketing tool for your business.

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