

Q&A: Avoiding social media legal pitfalls



David Lilenfeld, of Lilenfeld P.C., is an intellectual property attorney who specializes in trademarks, copyrights, patents, trade secrets and other IP legal issues relating to business.

Q ■ What are the biggest legal pitfalls of social media for most businesses?

A. The biggest is the threat to intellectual property. It is good that social media facilitates free, fast and wide distribution of content, but that also means that trademarks, copyrighted material and proprietary information, like customer lists, can be compromised in minutes. Another pitfall is the posting of defamatory or offensive content, which could be attributed to the employer. Offhand comments about job openings or the hiring process can later be misconstrued. Also, we are seeing cases in which workplace harassment occurred on these sites.

Q ■ How can businesses avoid these pitfalls?

A. No single solution is right for every company. Start with understanding how you and your employees are making use of social media, from a business perspective. Don't ignore social media; it is here for the long haul. Once you understand how it is being used, identify which pitfalls are a risk for your business. Then tailor policies to address those risks.

Q ■ One of your recommendations is to make an employee policy stating that social media accounts and contacts, such as an employee's LinkedIn profile, are the property of the company?

A. Yes. The question here is, "Who owns the social media account?" Traditional thinking is that the employee owns it, but remember that often the information which makes the account meaningful was procured by the employer. That account likely contains the identity of company customers, prospects, vendors and suppliers.

Q ■ Doesn't such a policy conflict with an employee's rights, especially if the employee had the profile prior to joining the company?

A. No, I don't see a conflict if the employee agrees with the policy by accepting or continuing the employment. One way to lessen the impact such a policy has on employees is to require they have two accounts, one personal and one for business, and prohibit commingling. The goal is to protect business information, not to encroach on the employee's personal life.

Q ■ Which social media tools create the most problems for business owners? Why?

A. LinkedIn seems to be the most challenging. First, it is enormously popular and has a heavy business focus, yet the accounts are for individuals. A LinkedIn account usually contains a treasure trove of business information.