

GETTING TO YES

BUILDING THE RIGHT TEAM TO INSURE SOCIAL
MEDIA SUCCESS

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IT TAKES A TEAM TO BE SUCCESSFUL

- HR: The Evolving Area of Law And Regulation On Ownership Of Social Media Contact Lists
- Marketing Supervision: A Blueprint To Establish Clear Lines Of Internal Communications With Pertinent Stakeholders
- Compliance: A Template For A Successful Social Media Team By Drafting Easy-To-Follow Policies And Procedures With Metrics For Compliance

IT TAKES A TEAM TO BE SUCCESSFUL

Business Owners: Why They Need To Be In this Space;
What Others Are Doing And Why It Works – Or Does Not
Work

IT: “Technology Makes It Possible For People To Gain
Control Over Everything – Except Technology.” John Tudor

Legal: Regulatory and Legal (Including International)
Guidelines And How To Get Legal On Your Side

WHY IS A *LAWYER* LEADING THIS WORKSHOP?

- Educate Legal: “*The technology of the digital revolution is forbidding to most lawyers, who after all went to law school because they could not do math or science.*” Goode, Steven, The Admissibility of Electronic Evidence, 29 Rev. Litig. 1 (2009)

WHY IS A *LAWYER* LEADING THIS WORKSHOP?

- Legal Raises Red Flags And Must Be Won Over By Showing That The Following Risks Can Be Mitigated
- Win Over Legal And Build Consensus By Thinking Like a Regulator: What Are the Risks and Pitfalls?
 - FDA, FTC
 - Privacy (U.S. and International)
 - Trademark/Copyright
 - Trade Secret Disclosures
 - Litigation

Social Media Environment and Specific Legal Risks

- **Go-No Go. Do you have a choice?**
- Legal risks in acting/ not acting
- What the company can do to protect itself
- ***Recruit Champions And Facilitate the Dialogue***

START AT THE VERY BEGINNING: DIALOGUE

- Dialogue is collaborative: two or more sides work together toward common understanding.
 - *Debate is oppositional: two sides oppose each other and attempt to prove each other wrong.*
- In dialogue, finding common ground is the goal.
 - *In debate, winning is the goal.*
- In dialogue, one listens to the other side(s) in order to understand, find meaning and find agreement.
 - *In debate, one listens to the other side in order to find flaws and to counter its arguments.*
 - Daniel Yankelovich, *The Magic of Dialogue* (Touchstone 2001)

STEP ONE: LISTENING TO DOUBTERS

- Financial
- Employees Concerned About Internet Usage Monitoring Related To Social Media
- “Protodigital” Senior Executives and Business Owners
- Others?

STEP ONE: LISTENING TO DOUBTS

- Cost
- “Not What We Do”
- Control/Lack Of Control
- Trade Secret Leakage Risk
- Others?

STEP TWO: REALIZE THE RISKS ARE REAL

- Scenario One:
 - Amanda Jobbers, second-year employee, finds and posts “before-and-after” photographs of facial dysmorphia patients that show positive results from therapy regimen with new product
 - Several of the patients are from France, Germany and Spain

THE PRIVACY MINEFIELD

- HIPAA: Few Pharmaceutical Companies and Biotechs Are Covered By HIPAA And HITECH *BUT THEY WILL APPLY THESE STANDARDS.*
- Physical Likeness Is An Identifier (Recent “Funny Looking Patient” Photos Posted to Facebook And Hospital Sites By Medical Residents; Recent Bellevue Case)
- Physical Likeness Is Protected “Personal Data” In the European Union and Beyond

TRAINING AND COMPLIANCE POINT: PRIVACY AWARENESS IS GENERATIONAL

- “BOOMERS:”
 - Watergate
 - Wiretaps (J. Edgar Hoover and M.L. King, Kennedy, etc.)
 - Stasi and KGB
 - Visual Theft of ATM PIN’s

TRAINING AND COMPLIANCE POINT: PRIVACY AWARENESS AS GENERATIONAL

- Millennials, Etc.:
 - Facebook
 - FourSquare
 - Gawker
 - School Networks and Sites
 - Collaborative Applications
 - *NB: 72% of Physicians On Social Networks On A Daily Basis*

ADDRESSING THE CONCERNS

- What Are The Privacy Settings and Policies For Your Sites:
- Facebook Settlement Raised Public Awareness: What Are The Defaults?
 - 2009 Privacy Changes “caused harm to users including, but not limited to, *threats to health and safety* and unauthorized revelation of their affiliations.” (emphasis supplied)
 - Public Disclosures Have Consequences!

THE HUMAN RESOURCES DIMENSION

- Scenario Two
 - Joe Jones, Assistant Marketing Director, announces his departure after six years. During that time, he has “friended” and otherwise connected with customers. The Company asks for his social media contact list. He refuses, saying the list is intertwined with “personal” contacts. Can the Company compel him to provide the list?

THE HUMAN RESOURCES DIMENSION

- New York: Social Media Contact List is Not a “Trade Secret.” *Sasqua Group Inc. v. Courtney*, 2010 WL 3613855 (E.D.N.Y. Aug. 2, 2010) (report and recommendation adopted by court on Sept. 17, 2010)
- UK: Social Media Contact List Is an Asset Of The Employer: *Penwell Publishing*, [2007] EWHC 1570 (QB)
- Law Is Evolving. Address Concerns By Confidentiality Agreement and Restrictive Covenants

THE HUMAN RESOURCES DIMENSION

- Concern: Employee Complaints and “Rants” on Company Sites
 - “Rants” On Non-Company Sites
 - NLRB Decisions: Individual Statements, Not Intended As “Protected Concerted Activity” Not Protected. BUT, Decisions Are Fact-Specific, and Often Focus on Site Rather Than The Statement (i.e., Posted On “Worker-Community” Site?)
 - Generally, Discussion Between Employees About Working Conditions, Including Supervision, Protected

TREND: MORE ISSUES DUE TO MORE COLLABORATION

- Company in Europe (Atos) *Bans Email* In Favor Of Collaborative Applications Similar to Rypple And Yammer
- Will “Social Business” Applications Catch On?
- “Speech” Issues Will Nonetheless Proliferate

SOME COMPONENTS OF THE SUCCESSFUL SOCIAL MEDIA TEAM

- Clear, Documented Lines Of Communications With Stakeholders (Assure They Are Not Out Of The Process)
- Formulation of Policy and Procedure Work Team
 - Social Medial Marketing
 - Business Owner Representatives
 - Compliance
 - IT
 - Legal (Inside And/Or Outside Per Organization Culture)

POLICIES AND PROCEDURES

- SHORT, IN PLAIN ENGLISH
 - Most Social Media Policies Rarely Exceed Five Pages
 - Refer To Obligation To Comply With Existing Information Policies
 - Consider Inclusion Of A Statement Of Ethics (I.E., Accurate And Factual Postings, Maintaining Company Credibility, Etc.)

POLICIES AND PROCEDURES

- REVISIT POLICIES OFTEN AND UPDATE AS NEEDED
 - ***PROVIDE FOR FLEXIBILITY*** IN THE POLICIES:
CONTENT, ACCESS (WHO CAN CONTRIBUTE), MEDIA CHOICES, NON-COMPANY MEDIA USAGE, ETC.
 - REMEMBER MOBILE DEVICE PROTOCOLS

TRAINING AND MONITORING

- THREE MODES: CLASSROOM, ON-LINE, COMBINATION

- -House Vs. Outside Trainers
 - Document Training: Necessary If Problems Arise To Show Defensibility By Reasonable Steps In Compliance
 - Deploy Reminder Pop-Ups Periodically, And Hold Reminder Sessions
 - Periodic Compliance Audits

ARRIVE AT YES

- DIALOGUE
- INCLUSIVENESS AND FLEXIBILITY
- INTERDISCIPLINARY PROTOCOL DRAFTING
- DRAFT POLICIES TO USES, NOT THE TECHNOLOGY
- TRAINING
- MONITOR COMPLIANCE

QUESTIONS?

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