

Legal issues in BYOP: Bring Your Own Persona

Abstract

Increasingly businesses are requiring or encouraging employees to maintain a presence on social media either through personal media use or control of a corporate account. This paper defines this kind of social media use as Bring Your Own Persona, as corporations are using the social media popularity of their employees for potential economic gain. But issues surrounding employee use and control of social media are emerging, causing businesses to go to court to assert social media account ownership, or to defend against claims of unauthorized access. This paper examines the court cases that have arisen connected to BYOP.

Keywords

social media, appropriation, property, privacy

Introduction

In December 2010 Jill E. Maremont, a public relations professional, filed a lawsuit against her former employer, Susan Fredman Design Group (SFDG), claiming the company violated the both Lanham Act and the Illinois Right of Publicity Act, and invaded her privacy when SFDG employees made posts to her personal social media accounts, as well as posted to the business social media account in her name (*Maremont v. Susan Fredman Design Group, Ltd.*, 2011). To be sure, Maremont is not the only individual suing or being sued by their former employer for social media related issues. A man was sued by his former employer for changing his Twitter account name and password, thus taking the 17,000 followers, many of which he amassed while working for the company, with him to his new employer (*Phonedog, LLC v. Kravitz*, 2011). That case settled in 2012, but it, along with the *Maremont* case and others demonstrate an emerging issue for all businesses using social media: the problems with “Bring Your Own Persona” (BYOP) policies.

BYOP

The researcher defines Bring Your Own Persona as the requirement that employees have and maintain their own online social media presence, as well as the act of a business placing an employee in charge of running a social media account connected to the business, though not necessarily the business’ official account. The researcher calls this phenomenon BYOP as a reference to a related trend in business, “Bring Your Own Device,” in which companies allow employees to use their own smart devices or provide employees with smart technology in the workplace, and as a direct invocation of the marketing practices from which business social media usage has its foundation (Oliver, 2012).

The definition of “persona” has a Latin origin and means the face the individual wears in public or during social interaction (Perlman, 1986). Carl Jung described the persona as “a kind of mask, designed on the one hand to make a definite impression upon others, and on the other to conceal the true nature of the individual” (Jung, 1953, p.190). Beyond psychology, the idea of the persona is used in marketing as a character or archetype created to represent a targeted population. Marketers create a persona in an attempt to attract potential customers (Mayfield, 2005; Pike 2010). This includes the creation and maintenance of social media accounts.

Businesses have adopted a similar marketing strategy and are increasingly asking their employees to maintain presences on the major social networking sites including, Twitter, Facebook and Tumblr. In fact, some media organizations have begun using the number of social media account followers as a barometer for prospective employees. Businesses believe that the corporate brand and consumer base may grow with the addition of employees with strong social media presences (Miller, 2012). An employee’s social media presence may also be a cause for concern should that employee ever decide to leave the company.

Although researchers have and are currently studying the impact of social media on business and the use of social media strategy by business, little research exists concerning the legal issues related to having employees create and maintain social media personas related to their work. This paper aims to fill in the gaps in this research.

Methods

The researcher used legal research methods, which involves the analysis of trends and precedents in court opinions. This research examines the trends in the cases involving businesses and their employees, current or former, over the ownership, use, or access to a social media account. More specifically, the researcher analyzed these cases to establish the kinds of issues emerging from BYOP and how the courts are ruling in these cases.

Findings

The cases found in this research trended into three categories: ownership, appropriation, and access.

Ownership

Cases grouped in the ownership category usually involve a conflict between the business and former employee concerning who owns social media information. The information at issue may be the social media profile, the followers or connections related to the profile, or the information published in connection that profile. For example, in *Phonedog v. Kravitz*, a case that the parties settled in December 2012, a company sued its former employee over ownership of a Twitter account. The company claimed that it owned both the employee's Twitter account name and the followers connected to that account. Other cases also involve the ownership of social media account followers with businesses claiming quasi-property rights by way of trade secret.

Appropriation

Cases categorized under appropriation deal with the unauthorized use of an employee's social media account. The *Maremont* case mentioned above demonstrates the kind of claims that former employees have made against businesses. In *Maremont* the plaintiff claimed that her employer had made posts to her personal as well as the SFDG Facebook and Twitter accounts promoting the business. Because of this, Maremont argued that the business had violated her right of publicity under both federal trademark law and state statute. The right of publicity recognizes the economic value in the personas of those who have attained a certain level of fame or notoriety, and allows the individual to control who uses their name or likeness for a commercial purpose (McCarthy, 1995). Other cases under appropriation involve similar unauthorized use of a social media profile such as the taking of the LinkedIn profile of a former employee.

Access

Both the ownership and appropriation cases involve the issue of access, whether it be access to information, profiles, or social media connections. In the ownership cases a specific issue concerned who, the former employee or the business, should have access to the social media profile and, therefore, the connections to that profile. For businesses the connections are viewed as potential customers, and lack of access to those customers removes the ability to profit from those connections. Another important access issue concerned who should have the ability publish posts or updates to a social media profile.

Conclusion

The various kinds of legal cases found, and that lawsuits exist, demonstrate the possible issues with BYOP. In spite of the risks, the continuing popularity of social media and business use of social media will mean an increase in BYOP usage. Because of this, it is imperative that businesses take steps to avoid the lawsuits by instituting BYOP policies. The policies would offer guidelines and expectations for employees using social media. A BYOP could go so far as to create a contract between the business and the employee addressing the issues of ownership, appropriation and access mentioned above. The policies may not prevent all possible issues related to required or encouraged employee social media use. Without such policies, however, business and employees are open to conflicts similar to those mentioned above.

References

Jung, C. (1953). *Two Essays on Analytical Psychology*. London: Routledge & Kegan Paul, Ltd.

Maremont v. Susan Fredman Design Group, Ltd. 772 F. Supp. 2d 967 (2011).

Mayfield, B. (2005, February). Rainmaking: Business development and retention techniques. *The Practical Lawyer*, 24, 45-47.

Selected Papers of Internet Research 14.0, 2013: Denver, USA

McCarthy, J.T. (1995). The human persona as commercial property: the right of publicity. *Columbia Journal of Law & the Arts*, 19, 129-148.

Miller, N. (2012). Who has the right to a Twitter account and its followers?. *Journal of Intellectual Property Law & Practice*, 7(1), 39-43.

Oliver, R. (2012, November). Why the BYOD boom is changing how we think about business IT. *Engineering & Technology*, 7(10), 28.

Perlman, H.H. (1986). *Persona: The Social Role and Personality*. Chicago, IL: University of Chicago Press.

Phonedog LLC v. Kravitz. No. C 11-03474 MEJ (2011).

Pike, B. (2010, November). Persona Management. *Computer Fraud & Security*, 11, 11-15.