

Drafting Social Networking Policies

Lazar, Bart A. Information Today 27.5 (May 2010): 20.

Abstract

Employers should make clear whether an employee is permitted to blog regarding the company, and there should always be transparency when an employee is actually authorized to blog on behalf of an employer. The reason for this stems from the endorsement guidelines that were enacted by the Federal Trade Commission (FTC), effective Dec 1, 2009. The FTC guidelines specifically require bloggers to disclose any material connections between the blogger and any products or services being described in a posting. By developing and enforcing proper social networking policies by employees, an employer can prevent potentially significant liability and loss to its goodwill.

Full text

Insider's Perspective

[This column lets experts in the information technology industry discuss the challenges and trends in their corner of the marketplace. - Ed.]

In the March issue of Information Today, Lin Gensing-Pophal reported on the care that employers need to take when implementing social media guidelines. Since some of my recommendations were noted in the article, I wanted to drill deeper into the implications of employee blogging and transparency.

Employers should make clear whether an employee is permitted to blog regarding the company, and there should always be transparency when an employee is actually authorized to blog on behalf of an employer. The reason for this stems from the endorsement guidelines that were enacted by the Federal Trade Commission (FTC), effective Dec. 1, 2009. While the guidelines primarily relate to media statements made by celebrities, consumers, and experts, the FTC was also concerned about employers who engage in "astroturfing," or having employees write fake grass-roots support for their company's products or services. So employers should pay particular attention to several concerns: that they follow the guidelines that the FTC has expressed regarding employee blogging, that employees who blog on behalf of the employer are welltrained in company policy, and that employees who are not permitted to blog on behalf of the employer are trained to use appropriate notifications and disclaimers.

The Importance of Disclosure

The FTC guidelines specifically require bloggers to disclose any material connections between the blogger and any products or services being described in a posting. An example the FTC provided is that a blogger discussing an employer's product "should clearly disclose her relationship to the manufacturer [and] to members and readers of the message board" because knowledge of the "poster's employment likely would affect the weight or credibility of her endorsement." Although the FTC has indicated it will not likely enforce against the actions of "rogue employees," its comments state that "the establishment of appropriate procedures would warrant consideration" in the decision as to whether or not the FTC would take action against a company in a particular instance. Moreover, the FTC made it clear that it will be watching, saying that it "has brought law enforcement actions" against companies whose failure to establish or maintain appropriate internal procedures resulted in consumer injury.

So it is important for all employers to review their social networking, blogging, or electronic communications policies and related procedures to make sure that they have reasonable policies and procedures that are designed to prevent employees from making improper or misleading comments about the employer's products or services. With respect to policies, they should at least provide the following:

* Employers should specify whether or not employees are permitted to blog about the employer's products/services.

* If employees are permitted to blog about their products/services (which is considered by many to be the practical approach these days), employees must clearly and conspicuously disclose their relationship with the employer.

* If they are permitted to blog about their products/services, employees should also disclose that they are not authorized to make statements on behalf of the employer.

Watch What You Write

If an employer wants to permit certain employees to make statements on behalf of the company for marketing reasons, the policies should establish who within the organization has the authority to grant such permission and what procedures can authorize statements made on behalf of the employer. Individuals who are permitted to blog on behalf of their employer must also be transparent in terms of disclosing their relationship with the employer, and they should be carefully trained and monitored in terms of the statements that are made, as regulators (and probably competitors) are watching carefully.

Employers should avoid encouraging untrained and unmonitored employees to blog about their company's products and/ or services, just in case the employer is subject to suffer loss to its goodwill or be found to engage in unfair or deceptive practices, such as astroturfing. And even though the FTC guidelines are new, this is neither a brand-new issue nor exclusively an FTC concern. For example, the New York attorney general received a \$300,000 settlement of its claim last year that a cosmetic surgery company had employees pretend to be satisfied customers in writing online testimonials. Similarly, consumers or competitors could pursue claims for unfair or deceptive trade practices or unfair competition based on improper employee posts.

By developing and enforcing proper social networking policies by employees, an employer can prevent potentially significant liability and loss to its goodwill.

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Indexing (details)

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Title

[Lazar, Bart A](#)

[Information Today](#)

Volume

Issue

Pages

Number of pages

Publication year

Publication Date

Year

Section

Publisher

Place of Publication

Country of Publication

[Library And Information Sciences--Computer Applications](#)

ISSN

Source type

Language of Publication

Document Type

Document Features

ProQuest Document ID

<http://search.proquest.com/docview/214824083?accountid=11667>

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Last Updated

Databases:

ABI/INFORM Global, ABI/INFORM Complete, ABI/INFORM Trade & Industry

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