

Considerations When Using Trademarks in Social Media

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Social media has experienced tremendous growth in the past few years. Along with that growth has come a rise in the use of trademarks in social media – and its associated problems. These problems emanate from activities both inside and outside a company. Internal threats relate to activities by support staff, marketing staff, executives and others who provide social media content. External threats relate to management of trademark use and preservation of goodwill associated with products. Fortunately, there are tools available from social media sites that assist trademark owners in managing these threats.

Twitter® maintains a Trademark Policy. It defines a Trademark Policy violation as using a company or business name, logo, or other trademark-protected materials in a manner that may mislead or confuse others with regard to its brand or business affiliation. This includes not only traditional trademark infringement, but also name squatting and impersonation. When Twitter receives a report of the violation of its Trademark Policy from the holder of federal or international trademark registrations, it reviews the account and may take the following actions: (1) suspending the account and notifying the account holder when there is a clear intent to mislead others through the unauthorized use of a trademark; and (2) giving the account holder an opportunity to clear up any potential confusion when it determines that an account appears to be confusing users, but is not purposefully passing itself off as the trademarked good or service. In order to report a Trademark Policy violation to Twitter, specific information is required including the username of the reported account, the reporting company's name, website and trademark, a description of the confusion and the action being requested of Twitter, such as removal or transfer of the account.

Facebook® maintains an online reporting system and provides an automated IP infringement form. In order to report a trademark violation, a company must provide its name and address, description of the rights infringed, description of where the infringement occurred, description of how the rights were infringed, and declaration that the information is submitted under penalty of perjury.

YouTube™ provides a trademark policy that governs only video. The complaint procedures are provided as a courtesy and may be used only by a YouTube Promoted Videos Advertiser.

It may be surprising to learn that very few complaints have been filed under these policies. Two complaints filed against Twitter were resolved and dismissed immediately. In *Oneok v. Twitter*, Case No. 4:09-CV-00597 (N.D. Okla. 2009), Oneok accused Twitter of assigning its name to a party other than Oneok, and that that party sent out tweets containing information regarding Oneok, which promoted the false impression that these statements were “official” statements from Oneok. Twitter transferred the username to Oneok and terminated the false subscriber's account.

When using social media, companies should become familiar with the social media sites and their policies relating to trademark use. They also should take steps to protect their trademarks. One way of being proactive is to obtain account names (also known as vanity URLs) containing their trademarks before third parties can obtain the account names. This defensive measure is a good way in which to counter unauthorized use and can reduce enforcement costs. The bottom line is that social media sites will only go so far to assist a company in protecting its trademarks, after or in addition to which the company may have to revert to traditional methods of protection, including cease and desist letters and trademark infringement litigation.

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