

WHILE YOU ARE SLEEPING YOUR BRAND COULD BE DESTROYED

Franchisors who embark on international franchising have to monitor and handle the impact of social media on their brands on a daily basis as a brand can be destroyed overnight. Facebook is a useful tool but it can be very damaging to any brand and something can go up overnight which has major impact. How do you deal with it?

A typical clause in a franchise agreement might read as follows:

"The franchisee acknowledges that in relation to the business and the franchisor's intellectual property it will act with care when using any social media and it shall always do its utmost to look after the best interests of the franchisor and anything to be published, circulated, transmitted or disseminated in any way by or through social media shall be subject to the franchisor's prior written approval."

Consideration should be given to many factors including the need for a franchisor to manage, update and control the content of all electronic communication which includes all websites and social media. In the online world the lines between public and private and personal and professional are blurred. By identifying themselves as an employee of your business, your staff are creating perceptions in the minds of customers and the public at large.

It is important to have a social media policy in place which should include the following:

- (i) Staff are personally responsible for the content they publish on blogs, wikis or any other form of users-generated media. Be mindful that what you publish will be public for a long time so you must protect your privacy.
- (ii) Avoid posting work issues or frustrations in public forums. If franchisees have any concerns in this area, then the franchisor should deal with them privately.
- (iii) Always respect your audience and don't use words that can be construed as racist or discriminatory.

Despite the increased activity and budget allocation focused on social media, only a small percentage of franchisors who utilise social media to attract franchise buyers can actually attribute franchise sales directly back to their social media efforts.

Lawyers should draft social media clauses very carefully. Most franchisors allocate specific funds to cover social media and should be aware that all social media postings have the potential to impact the brand, both positively and negatively, so all social media content and posts should be frequently checked and updated.

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When comparing options such as Facebook, LinkedIn, and other social media sites, franchisors need to recognise that social media which consumers use is likely to be different than social media that franchise prospects will use. While many people may look to social media for deals and discounts, in the area of franchise sales, it is mainly used as a first stop on the way to the franchisor's website. Recent data shows that social marketing is not replacing traditional media but rather enhancing it. Franchise industry surveys show a relatively low percentage of franchise sales can actually be attributed to social media which cannot be relied upon alone and should instead be blended with a variety of other media options. Usually franchisors will allow franchisees to establish their own local social media sites rather than having one central site for the brand. However, even with policies in place, franchisors need to continually monitor a franchisee's use of social media much like they would any other form of local marketing.

Technology is finding its way into many of the matters we deal with. Some of the terms you may come across include the following:

Bit v Byte; Deepweb and Darknet; Distributed Denial of Service Attack (DDoS); domain name; internet of things (IOT) and Voice Over Internet Protocol (VOIP).

In the Australian case of *Seafolly v Madden* social media and brand damage are discussed. In this case the owner of a small swimwear business posted on her Facebook page a number of extracts from the Seafolly catalogue of the Seafolly designs with the question: "*The most sincere form of flattery?*" and the equivalent names for her designs. The owner also contacted various media outlets and the story quickly spread. Seafolly sued the owner, Madden, for misleading and deceptive conduct in breach of the Australian consumer law. Madden maintained that her comments were personal in nature and not business related but the Court disagreed and found Madden liable for misleading and deceptive conduct. Because Madden posted comments on her Facebook page there was also brand damage. Social media poses a significant reputational risk to companies and negative online content can go viral very quickly. Just as I said earlier, it is crucial for every franchisor to have policies and procedures in place to deal with any attack on its brand.

The manuals of a franchisor should also cover social media and they may prescribe what should happen on a day to day basis. If you ignore social media and do not monitor it closely you will do so at your peril as while you are sleeping your brand could be destroyed.

A few examples of recent negative comments on social media are:

"It looks nice in the picture but nothing like that when you buy it!"

"Not as good as what I had thought, not that hot either - was disappointed."

"I made a complaint online a few weeks ago and still no reply. Very disappointed and a waste of money and a waste of half our meal!"

Social media, including networking sites like Facebook, Twitter and LinkedIn, has increasingly become an HR issue around the world. While such online tools have created opportunities for employees to connect with other people and share information and ideas, both within and outside the organisation, they also pose a number of risks to the business. The issue of who has ownership of professional social media accounts has emerged,

particularly who gets to keep them when the employment relationship ends. There have been several cases in USA where ownership of such accounts has been in dispute. In one case involving a tech review company called PhoneDog, the employee gathered 17,000 followers while tweeting on behalf of the company. When the tweeter left, he changed the Twitter handle to his own name (removing the PhoneDog part) and thus took the followers with him.

In conclusion, social media in the 21st century is a powerful tool to be used by franchisors in making the brand more well known and by obtaining direct and time feedback from franchisees and members of the public. From a legal point of view, it must be carefully monitored and franchisors should have a dedicated person on the team to monitor and control social media on a daily basis. Negative comments can destroy the brand and dealing promptly with customer complaints is essential.

It is often said that social media and websites have developed faster than the laws of many countries. Privacy laws are catching up but lawyers should always be proactive in ensuring that their franchisor clients do not take social media lightly, and that clauses in franchise agreements are both robust and unequivocal in relation to the use and control of social media.

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