

### **Controlling the Tweet: What's a Franchisor to do?**



Social media has allowed businesses to connect with consumers in unprecedented ways. The opportunity for businesses to increase brand awareness though comes at the expense of controlling the message being conveyed. Where the message being conveyed is not consistent with that of the business, the consequences can be severe for the individual who posted the message, the target business, or both. This was a lesson learned the hard way by Damian Goddard, a host on Rogers Sportsnet. In response to Twitter posts by hockey agent Todd Reynolds that opposed hockey player Sean Avery's support of gay-marriage, Mr. Goddard's freelance contract was terminated after he used Twitter to express his support for Mr. Reynolds.

In the franchise context, a franchisor should take proactive steps to monitor comments related to the franchise. Specific operational procedures should be established to monitor social media activity. One way of doing so is by setting up a "Google alert" that will send an email notice of online content that is posted with keywords related to their business.

It is prudent for a franchisor to control social media communications related to the franchise but a franchisor cannot prevent a franchisee from posting comments in the franchisee's personal capacity that is not necessarily related to the franchise. Depending on the circumstances, a franchisor may be able to take action against the franchisee by enforcing clauses related to the franchisee's loyalty, good morals, and preservation of goodwill, or similar clauses. Thought should be given to whether a franchisor will require franchisees to disclaim personal comments by stating that their comments are the franchisee's personal views and not those of the franchisor. However, such a disclaimer may do more harm than good by pointing out the connection with the franchisor, where the connection may not otherwise be obvious.

Despite a franchisor's desire to control media messages, the democratization of media has led savvy consumers to expect customized, relevant content that may be impractical for a franchisor to provide. Just as with local advertising, social media content is most effective when it reflects the needs of the local consumer. For this reason, social media content may be most effective if it is generated by a local franchisee.

Nonetheless, if a franchisor decides to prevent franchisees from posting messages about the franchise by centralizing social media campaigns through head office, consideration should be given to whether advertising fund resources will be purposefully diverted away from traditional advertising and promotions, or whether additional resources are required in order to add social media to its existing advertising framework. Some franchise agreements allow the franchisor to increase the amount of contribution to the advertising fund. Social media campaigns may be an appropriate reason for doing so.

Whether or not a franchisor allows its franchisees to participate in social media, franchisors are well-advised to ensure that its franchisees' rights with respect to social media are clearly set-out

in the advertising provisions in its franchise agreement and its operations manual. If a franchisee is allowed to participate in social media, the following essential terms of use should be outlined:

- the franchisee's requirement to use the trade-mark in accordance with the licence;
- the assignment of all copyrights to the franchisor;
- the franchisee's indemnity of the franchisor for any losses related to the franchisee's activities;
- the franchisee's requirement to obtain prior written consent to use any electronic identifiers (e.g. Facebook pages, Twitter accounts, etc.); and
- the assignment of such identifiers to the franchisor upon termination or expiration of the franchise agreement.

By including specific provisions relating to social media in their franchise agreement, franchisors ensure that they have the proper tools in place to protect their legal rights, while showing that they are remaining competitive and marketable in today's fast-changing economy.

**For more information on franchising, please contact Derwin Wong or Dixie Ho at (416) 368-0600 or by email at [dwong@businesslawyers.com](mailto:dwong@businesslawyers.com) or [dho@businesslawyers.com](mailto:dho@businesslawyers.com).**

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