

## LEGAL ISSUES FOR BUSINESSES TO CONSIDER WHEN USING SOCIAL MEDIA

*By: Marcus Lee*

**Moore & Van Allen PLLC**  
**100 N. Tryon Street, Ste 4700**  
**Charlotte, NC 28202**  
**marcuslee@mvalaw.com**  
**www.mvalaw.com**



---

Businesses are seeing the huge potential benefits from using social media. Companies increasingly are using Twitter, Facebook, MySpace, YouTube and other social media sites to promote their products and services, find employees, disclose information, receive customer feedback, and respond to negative publicity. However, companies need to understand that, along with the many benefits, there are many legal risks associated with using social media. The following is a list of legal issues companies should consider when using social media:

***Social Media Policy.*** If your company is using social media, then it should adopt, implement and enforce a social media policy. The purpose of the social media policy is to set the rules for how a company's employees may use social media sites. Once you have adopted a social media policy, it is very important to train employees so that they understand the policy rules and to enforce the policy once it is implemented.

***Compliance with Applicable Laws.*** Companies often find themselves inadvertently violating laws when they allow their employees to use social media. Defamation laws, laws regarding unfair competition and deceptive acts (e.g., false advertising), laws regulating promotions, sweepstakes and contests, and securities laws are types of laws that can easily be violated if you are not careful.

***Protecting Your Brand.*** It is often too easy for anyone to use your company's trademarks in connection with social media. For example, registering your brand as a user name. Even if your company isn't using social media yet, you should consider registering your trademarks as usernames on the popular social media sites.

***Compliance with Social Media Site's Rules.*** Before you decide to use a social media site, you need to carefully review the site's terms and conditions. Pay careful attention to any terms that restrict how you can use the site or that involve how your content may be used by others. For example, Facebook requires you to get their pre-approval before you run a contest or sweepstake.

**Monitoring Social Media.** You should implement a monitoring program and assign an employee to be in charge of the monitoring. Alternatively, you can hire a third-party to provide the monitoring services. The purposes of a monitoring program include ensuring that your social media policy is being complied with, ensuring that your company is not violating any laws or the terms and conditions of any social media site, finding potentially damaging comments about your company or its products and services, and finding people infringing on your intellectual property rights (e.g., misuse of your trademarks).

**Third-Party Bloggers.** If your company uses third-party bloggers to endorse your products or services, you need to be sure to disclose the relationship between your company and the blogger. Otherwise, you risk violating advertising laws. See the FTC's guidelines concerning use of endorsements and testimonials in advertising for more information (<http://ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>).

**Employment Practices.** If your company uses social media to learn about potential job candidates and then acts on that information, then you may inadvertently violate an employment related law. For example, if you learn about a job candidate's religion via social media, and then decide not to hire the individual based on that information, then you may be found to have violated anti-discrimination laws.

**Insurance Coverage.** If you are using social media with your business, then you should review your insurance policies to see if you are covered for claims arising out of your use of social media.

**Consent of Employees and Third-Parties.** If you use an employee's or third-party's name, image or information when using a social media site, then you should first obtain that person's written consent.

---

© 2010 Marcus Lee. All Rights Reserved

The information contained herein is provided for informational purposes only and should not be construed as legal advice on any subject matter. Neither your receipt nor use of the information contained herein shall create an attorney-client relationship. You should not rely upon this information for any purpose without seeking legal advice from a licensed attorney in the state where you reside.