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What to do when the virtual world seeps into your work world

Avatar isn't just a movie anymore. Your employees are living electronic lives, often under your very auspices. Some companies are conducting electronic meetings of colleagues with each employee represented by digital embodiments avatars. In addition, both inside and outside of your company, employees are communicating on Twitter, Facebook, MySpace, LinkedIn, YouTube, Skype and countless other new media.

What happens when one of your employees shows up in the virtual world wearing a spiked collar or leather bikini? What happens when one of your team posts pictures on Facebook from a wild party, and he is prominently wearing your good old company hat? What happens when you violate other companies' rights or they trample yours? New media is increasingly pervasive in the business world. Businesses are taking advantage of new media for a variety of uses:

- Advertising products and services
- Searching for employees
- Making announcements and pursuing related public relations goals, including spreading positive stories and countering negative information
- Advancing aims of clients
- Learning from customers

But your company and your employees, as well as other businesses, may be creating problems especially because we are all dealing with new forms of communication and uncertainty about the new rules.

The New Rules

Some of these are going to be easy and some a lot trickier.

Don't break the law: The easy rules include prohibitions against breaking the law. Don't defame others. Don't create false or deceptive advertising. (Trust me: Some of those pills just don't work!) Also, watch out for laws that limit or prohibit contests and give-aways. These rules are often local (versus national) prohibitions, so you need to do your homework to prevent a national program from getting tripped up by a checkerboard of local regulation. Likewise, some states restrict monitoring or punishing employees' off-duty internet usage.

Watch your mouth: Conversely, what you say on the internet can be held against you. In two recent court cases, people being sued were required to divulge their Facebook and MySpace postings to their opponents. Don't overlook company-killers either. If you're publicly traded or even privately selling equity in your company, you need to consult with a securities attorney about what you can say and when or it might torpedo your ability to raise money.

Go on the offensive: This part of the new rules is all about protecting your turf. For some companies, it means monitoring what is said about you and countering negative information. There are plenty of services out there that will scan for mentions of your company name and products and report almost every instance back to you. This provides your company with the opportunity to respond to adverse info by publicizing the facts and your own positive spin.

Likewise, the response to certain adverse information is a no-brainer. For example, if you find someone illegally using your trademarks, take action. A trademark attorney can guide you, but usually, the first step is a cease-and-desist letter (which is just what it sounds like).

If you are particularly visible in the public eye, you may also want to consider obtaining rights to domain names that can be used to attack your company. For years, angry customers have been establishing "sucks" sites, as in "X-brand Sucks.com" and using them to spout venom against companies. Weary and



now wise companies register the most likely offensive domain names and take them off the market.

Strange Rules

In the olden days, auctioneers and snake oil salesmen (that's not sexist – they were, in fact, all men – devious men) would plant a compatriot in the audience. This anonymous colleague was often affectionately referred to as a "shill." The shill would bid up the price of the auctioned item or swig down the snake oil – with miraculous, crutch-dropping results. Obviously, your good shill increases sales.

Well, this fond tradition has been passed down from generation to internet generation, and now shills, all too often anonymously – and electronically – tout their companies' wares. Shockingly, the government – here the Federal Trade Commission – considers shilling to be deceptive. So, in 2009, the FTC revised guidelines to regulate endorsements and testimonials appearing in new media. First and foremost, your employees must be truthful when blogging about or otherwise using social media to describe your products and services. Second, anyone with a material connection to your company who comments about your products or services must disclose that relationship. In an example provided by the FTC, a product enthusiast who received a company's new products, for free, in order to provide online reviews of same was required to disclose his relationship to the product manufacturer as part of the online critique.

There are other traps, too. Watch out for the fine print on social media sites. By clicking your acceptance of those rarely read terms and conditions, you may be giving up ownership of what you post or allow use of your postings in a variety of other venues.

Likewise, you may think – heck, don't we all think – it's a great idea to check out prospective new hires with an internet background search. There's a word that starts with a "G" and ends with "oogle" that is just on the tip of my tongue when I get this urge. But much to our collective chagrin, too much info can be a bad thing. Make sure that your recruiters don't collect or use information that could be considered discriminatory in the hiring process. For example, if your head of HR comes across pictures of a candidate's baby shower and then decides not to hire the expectant mother because, well, she might miss a lot of work, you done broke the law.

Social Media Policies

So those are some of the new media problems and a few solutions. What else should you do about these issues? One idea is to create a social media policy that guides your

employees and other significant partners. Each policy must be tailored to each individual company, but some common themes abound:

- Be truthful.
- Don't break the law. This could be anything from not discriminating to complying with consumer protection laws and will depend a lot on the nature of your company's business.
- Understand what you can do at work and as part of your work. For example, can your username include your company's identity?
- Don't embarrass your company. Similarly, don't write anything you wouldn't want printed on the cover your local newspaper. (For you youngsters, a newspaper is an old-fashioned form of the internet that was printed on paper).
- However, per many laws, whistleblowing about illegal company conduct is not merely permitted, but it's actually encouraged.
- If you're going to be your crazy self online, eliminate any reference to or association with the company. Similarly, a good policy should detail exactly when you can say whether you work for a particular company and how to describe your role.
- When you are speaking for yourself (and not your company), say so.
- Don't steal others' property, including their intellectual property. Napster wasn't legal. It was just technically feasible. There's a difference.
- Don't disclose your company's confidential information, even things like lists of customers. You can lose special trade secret protection if you don't treat confidential information like a secret.

There's always more. For example, businesses must be careful not to go overboard or overbroad. In one recent case, an employee was discharged for posting negative remarks, on a Facebook page, about her boss. The discharged employee was a union member and took her case up to the National Labor Relations Board. The NLRB determined, among other things, that the employer's blogging and internet usage rules were too broad.

Some would say there is nothing wrong with one of your employee's donning dominatrix gear on the internet during her own time. However, most everyone would agree that you want to keep the company logo off those outfits unless, of course, you sell them.

ABOUT JACK GARSON



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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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