

Brewing Issues in Social Networking Litigation: How to Freak Out Co-Workers and Get Fired

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A barista was fired from Starbucks for “inappropriate conduct and threatening violence to Starbucks and its employees.” *Mai-Trang Thi Nguyen v. Starbucks Coffee Corp.*, 2009 U.S. Dist. LEXIS 113461 (N.D. Cal. Dec. 7, 2009).

The Plaintiff in turn sued for sexual harassment, retaliation, religious discrimination, violations of the California Occupational Safety and Health Act, and the Fair Employment and Housing Act Section 12940(j)(1). *Nguyen*, at *1.

Starbucks brought a motion for summary judgment because there were “no material issues of fact sufficient” to support her claims. *Nguyen*, at *1-2. Federal District Judge Charles Breyer agreed and granted Starbucks summary judgment.

Part of the evidence that justified Starbucks’s concern for the safety of their employees was a posting the Plaintiff did on MySpace shortly before being terminated. The posting stated:

Starbucks is in deep [Redacted] with GOD!! I am now completely disenchanted with humans n I have NO MO Energy left 2 deal w/ their negativity. I've worked Tirelessly 2 not cause trouble, BUT I will now have 2 to turn 2 my revenge side (GOD'S REVENGE SIDE) 2 teach da world a lesson of stepping on GOD. I thank GOD 4 pot 2 calm down my frustrations n worries or else I will go beserk n shoot everyone . . . Prepare to See Crazy Trang in public eye soon IN UR TELEVISION n other news vehicles. I don't know when EXACTLY 'cause only GOD knows of our Exact timing in his PERFECTED-CREATED NETWORK (fate!) BUT all I know is I will fight 2 be heard beyond my death.:) N I will not be happy unless I win because I AM GOD N GOD DON'T LOSE.

Nguyen, at *5-6.

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The “Friend Request” of social networking litigation will only continue to brew in civil litigation and criminal law. Lawyers, clients and experts face several issues on how to collect, preserve and review this electronically stored information.

In the above fact pattern, the easiest option would have been for the Starbucks employee who saw the MySpace post to simply print the page. The analysis required for admitting a printed copy into evidence would parallel the requirements for authenticating a printed page from a website. *For more on admissibility and authentication of electronically stored information, please look at the [CT Summation Whitepaper e-Admissibility](#).*



A party or investigator can also print the suspect profile as a PDF. Conversely, Adobe Professional has a webpage capture feature which would also be effective. There are also numerous screen capture tools that can be used to preserve relevant social networking evidence.

Attorneys should be vigilant in understanding how to collect and preserve social networking ESI. This might require the client immediately preserving the evidence, due to the highly transitory nature of actions on MySpace or Facebook. Other situations may require a third-party who can testify to the collection methodology deployed to collect a "Tweet" or social networking profile.