

Your business needs a social media policy and this is why

It is foolish to not have one. Having a social media policy is like having a Will for your businesses' branding and marketing efforts and the cost of getting that policy will likely be less than the bill for the first day in litigation if you do not!

Social media is the next big thing when it comes to branding and marketing your business. Actually, it is already here. This has been one of the biggest news stories of 2011 and it is not going away anytime soon. I am a believer. I love it and I encourage all of my clients to find ways to implement it in their businesses. It is free to sign up and free to use (for the most part) with only time and effort being the primary investment. Businesses usually have their social media being managed by employees, independent contractors, or outside "experts". The key to success with social media is to have many "connections" with others and develop relationships with them. But, who really owns those connections and relationships?

That is a good question—do you *really* know who owns your businesses' social media connections and relationships?

This is a question that has been brought to the forefront because of the recent lawsuit *PhoneDog v. Kravitz* that is pending in federal court in the Northern District of California.

The essence of this case is pretty simple: PhoneDog used social media such as Twitter, Facebook and YouTube to promote its services and Kravitz worked for PhoneDog as a product reviewer and video blogger and, in conjunction with the duties of his job, Kravitz used a Twitter account with the handle of @PhoneDog_Noah that had approximately 17,000 followers (wow, @shawnetuma only has 1,130 if you'd like help me out). As always seems to be the case in today's ever changing job market, Kravitz resigned from PhoneDog and PhoneDog asked him to turn over the Twitter account but, instead, he simply changed the handle to @noahkravitz which now has over 24,000 followers and, for its bio says "People are not property. Love over gold." (it's ok, I followed him also)

PhoneDog sued Kravitz and Kravitz filed a Motion to Dismiss which is a long and costly way of saying "judge, they have no case so please throw it out." The court, however, did not see it so clearly and in its [Order on Defendant's Motion to Dismiss](#) allowed PhoneDog to go forward with the key claims of misappropriation of trade secrets and conversion. That does not mean it will be an easy battle for PhoneDog or that it will ultimately prevail. In fact, based on traditional principles of trade secret law I have a feeling it will not, and have previously written about these issues in other blog posts that I would encourage you to read:

[Are LinkedIn Contacts Trade Secrets?](#)

[LinkedIn: think before you sync!](#)

The issue is not, however, whether PhoneDog will win. The

real issue is why is it even having to fight? Let's assume for the sake of argument that it does win. At what cost will that victory come and, at that cost, will it truly be a victory?

How much will it cost your business to win?

Take a look at the 10 page [Complaint](#) in *PhoneDog v. Kravitz* and take a guess at what it cost in legal fees alone just to prepare and file it. Add to that a [\\$350 filing fee](#), costs for service of process, and lots and lots of your time and your attorneys' time which costs lots of money. But, you're not done yet—not by a long shot. Filing the lawsuit is just the beginning. Go here and take a look at the [Docket Sheet](#) for *PhoneDog v. Kravitz*; they have been fighting over this since July, have addressed over 30 documents filed in the record of the case, and are still not past the initial stages of the lawsuit. Do you want to take a guess at how many thousands of dollars PhoneDog (and Kravitz) have spent so far?

Let me stop here and make something clear. I love being a trial lawyer and I love trying cases. I love technology and technology related cases. There is nothing I would enjoy more than being the attorney handling a case like this. Moreover, I would love for someone to pay me a lot of money to do it! Do you have an interest in having a part of how this body of social media law develops? Would you like to sponsor my efforts to shape it? If so, let's get rolling!

If your interest, however, is focused on the financial strength of your business and not on shaping the future of social media law, this is probably not a wise use of resources. But if you do not have a policy addressing these issues, it is likely that you could end up doing exactly that though not by choice.

"An ounce of prevention is worth a pound of cure"

That old saying could not be more true than when it comes to having a social media policy for your business. All of the issues that are being litigated in *PhoneDog* could have been addressed and agreed to from the very beginning in a written social media policy, along with a host of other issues that arise concerning the use of social media. What is even better is that the cost of obtaining such a policy will probably be less than what it would cost for just the first day of litigation! It really is a wise investment for your business and all you have to do to get started is just give me a call. But, ...

If you don't want to do that, then give me a call anyway and we can start planning our litigation strategy — this is going to be fun!

-Shawn E. Tuma
12/30/11