

## Technology Focus



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### Expert Insight

# In social media world, protect your trade secrets

By Peter J. Toren



Once the province of college students and 20-somethings, social media platforms have become an established means of communication for businesses that want a better and more efficient way to connect with their customers and clients.

But like almost any new technology, it is not without pitfalls, not least among them a greater risk of loss of trade secrets and the

potential dilution of a brand's trademarks.

Trade secrets are an important part of a company's intellectual property portfolio and almost every company, regardless of size, has information worth protecting. This protection can exist for virtually any business information as long as the trade secret provides value and is not publicly known.

A trade secret can include everything from the method to bake Thomas English muffins

with their famous "nooks and crannies" to more mundane things such as customer lists or pricing information. The only real requirement is that reasonable steps be taken to keep the information confidential. What is "reasonable" depends on the value of that information.

While trade secret protection may be easy to obtain, it can just as easily be lost through public disclosure, even if accidental.

Businesses must remain vigilant, and failure to do so might result in significant financial losses. Additionally, inappropriate actions could potentially damage a company's reputation, image, goodwill and, most importantly, its competitive advantage.

Social media increases the risk of loss of trade secret protection in a number of ways.

First, many companies do not fully understand how their employees are using social media professionally and privately. Employees may be using social media to interact with customers and potential customers without fully understanding what sort of information can be used in this process. Before the rise of social media, information provided to third parties did not become viral, and it was easier to monitor such contacts.

Second, because social media is in its infancy, norms that govern the use of the technology have not been developed and employees may not understand how easy it is to inadvertently reveal confidential information. Without proper education, employees can give away trade secrets with an innocent Facebook post, tweet or LinkedIn announcement. These posts, although not meant to be a reflection of the organization at large, can make the company liable.

Similarly, the improper use of trademarks by an employee on a social media website can cause great harm. Trademark owners traditionally have gone to great lengths to ensure their marks are not diluted and no longer serve to distinguish the business's goods or services.

One of the ways this can happen is for the trademark to become generic. Instead of being associated with a particular brand of goods or services, it becomes synonymous with the goods or services themselves. Escalator, aspirin, kerosene and trampoline all began life as trademarks before becoming nouns for a type of product. It is important to make sure that employees and third parties are not using valuable trademarks as nouns.

In the abbreviated world of Twitter, it is far easier to refer to a product in abbreviated form using only its trademark than to describe the product in full. Why would people refer to Thermos brand vacuum bottles when they can simply call them "thermoses"?

These potential problems do not go away for businesses if they are ignored. Companies must educate employees about the potential risks related to the use of social media and provide guidelines for reprimands and termination if necessary.

Employees must understand that trade secret protection can be lost through inappropriate disclosure of confidential information and trade secrets cannot ever be used in connection with online platforms. The policy must also create clear expectations for the employees and detail who is authorized to speak on behalf of the company. It is critical for a social media policy to be updated regularly to reflect changes.

Peter J. Toren is a partner at Shulman, Rogers, Gandal, Pordy & Ecker PA.

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