

News from our Technology Transactions Group

Legal Implications of Employee Blogs

Web logs, or “blogs,” have gained enormous popularity over the last few years. From traditional journalism to consumer marketing, few communications channels have escaped their impact. This is particularly the case in corporate America. Many companies have realized that company-sponsored blogs offer a means of communicating with customers in a more direct, personal manner. At the same time, employees are blogging about product strategies, financial prospects and corporate politics with or without their company’s knowledge and/or approval.

While employee blogs may offer compelling business opportunities, they also create significant potential liabilities. You should carefully consider the risks that employee blogging can pose to your company. The most substantial of these risks fall into three categories: intellectual property protection, defamation and privacy torts, and securities laws.

Intellectual Property Protection. Given the wide readership of blogs, companies need to take particular care in protecting their intellectual property. If an employee discusses a company’s confidential information or inventions in a blog entry, it can destroy the “secret” status of such information or endanger the patentability of the invention. At the same time, if an employee posts a third party’s trade secret or copyrighted material in a blog entry that is imputed to the company, the company may be held liable for trade secret misappropriation or copyright infringement.

Defamation and Privacy Torts. Companies could face liability under agency law principles if employees post content to a blog that slanders or invades the privacy of third parties. False or misleading statements about a competitor’s products that cause or are likely to cause harm to the competitor’s business could be grounds for a trade libel action. Companies that collect personally identifiable information may be required to comply with state, federal and foreign privacy regulations, so they will want to take particular care in controlling employee access to such data.

Securities Laws. Blogging poses several risks with respect to federal securities laws. The disclosure of material nonpublic information that could affect investing decisions could be deemed a selective disclosure in violation of the ‘34 Act. Similarly, material misstatements could expose the company to liability for securities fraud under Rule 10b-5. Companies in registration for an initial public offering also need to watch out for employee blog entries “hyping” the company that could be interpreted as a prohibited offer of the company’s securities.

Cooley Godward Kronish advises clients to consider their blogging strategy and take steps to address the risks posed by employee blogs. This may involve adopting an official company policy with clear guidelines regarding employee blog practices and blog entries that relate to the company, or it could simply mean modifying existing employee policies and agreements to address blogging practices and

procedures. Clients will also need to decide what the appropriate consequences are if an employee does not abide by the established rules. Note that federal and state employment law may impose restrictions on employee blogging policies. Please contact an attorney in Cooley’s Technology Transactions Group to discuss the best approach for your business. ■

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