

PBI/e-Commerce: Legal and Practical Issues
December 13, 2011

The Impact of Social Networking Sites
on e-Commerce

Presented by:
Richard E. Peirce



These sites are the hot Internet real estate and most popular television programs rolled into one. In other words, these sites are where the consumers are online.



- Understanding social networking rules;
- Intellectual property (trademarks, copyrights);
- Online defamation;
- Litigation and evidence;
- Social networking policies and other employment-related considerations; and
- Ethical issues for attorneys.



Understanding the Rules

ECKERT SEAMANS

Many of these policies are designed to be contracts between the social networking site and the user.

ECKERT SEAMANS

Some concerns:

- A site may specifically prohibit or have restrictions on commercial activity.
- Control of intellectual property may be tough.
- How fast the information flows and the lack of control over it.

ECKERT SEAMANS

Intellectual Property

**ECKERT
SEAMANS**

Improper use of a company's trade names and marks can confuse consumers in violation of the Lanham Act.

**ECKERT
SEAMANS**

As alternates to litigation, several social networking sites have internal mechanisms that can be used to resolve brand abuse issues such as user name squatting.

**ECKERT
SEAMANS**

Most social networking sites have a takedown procedure where a copyright owner can request that the site remove infringing works. Social networking sites are motivated to comply with the takedown requests under 17 U.S.C. § 512 of the Copyright Act.

ECKERT
SEAMANS

10

Under 17 U.S.C. § 512(c)(3), if a copyright owner believes that one of its copyrighted works is being infringed by a third party, the copyright owner must submit the certain information to the site in order to start the process of getting the infringing work removed.

ECKERT
SEAMANS

11

Social networking sites may also impact how a company manages its right of publicity issues.

ECKERT
SEAMANS

12

Online Defamation

ECKERT
SEAMANS

13

Unless the social networking site is actually responsible for posting the problematic content or otherwise contributed in some meaningful way to the content (as opposed to a third party), the social networking site will enjoy broad immunity under Section 230 of the Communications Decency Act. *See*, [47 U.S.C. § 230](#).

ECKERT
SEAMANS

14

Litigation and Evidence

ECKERT
SEAMANS

15

Perform a social networking “audit” of not only adverse parties and witnesses, but your own client and witnesses.

**ECKERT
SEAMANS**

16

Do not forget about social networking in your discovery requests.

**ECKERT
SEAMANS**

17

Social Networking Policies

**ECKERT
SEAMANS**

18

When in doubt, check with the company.

ECKERT
SEAMANS

19

There should be no doubt that the employee, when using social networking sites other than for official company business, is completely responsible for the postings.

ECKERT
SEAMANS

20

While obvious, employees should be reminded not to engage in any illegal behavior.

ECKERT
SEAMANS

21

Remind employees not to unintentionally disclose proprietary information such as financial data or company strategy.

**ECKERT
SEAMANS**

23

Employees should avoid improper use of company intellectual property.

**ECKERT
SEAMANS**

23

Employees should be professional when communicating through social networking sites.

**ECKERT
SEAMANS**

24

Employees should not be posting other employees' photographs, names or other personally identifiable information without permission.

ECKERT
SEAMANS

25

Employees should be careful when asked for employment recommendations.

ECKERT
SEAMANS

26

Employees should be good lookouts.

ECKERT
SEAMANS

27

Employees should be reminded to use good judgment when providing a link to a third party site.

ECKERT
SEAMANS

28

If employees promote or endorse a company's products through social networking sites, their status as a company employee must be disclosed. See, 16 C.F.R. § 255; <http://ftc.gov/os/2009/10/091005revisedendorsementguides.pdf> (FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising).

ECKERT
SEAMANS

29

The National Labor Relations Board v. American Medical Response of Connecticut
NLRB Case No. 34-CA-12576.

ECKERT
SEAMANS

30

Employers who choose to search social networking sites should exercise good judgment and avoid specific search queries for protected information.

ECKERT SEAMANS

31

Non-compete clauses and social networking. It could be a violation of a non-compete/non-solicitation agreement if a party (former employee) “connected” with his/her former company’s customers or co-workers through social networking sites, even if such connections were established prior to the end of the employment. In that case, would the former employee need to “unfriend” those contacts?

ECKERT SEAMANS

32

Update document retention polices.

ECKERT SEAMANS

33

Who has control of social networking accounts?

ECKERT
SEAMANS

34

Use written agreements with employees.

ECKERT
SEAMANS

35

Ethical Considerations

ECKERT
SEAMANS

36

Remember the duty to preserve privileged information.

ECKERT SEAMANS

37

Communications to clients through social networking sites are dangerous.

ECKERT SEAMANS

38

Watch out for forming attorney/client relationships.

ECKERT SEAMANS

39

Avoid accessing an adverse party's social networking information that is not generally available to all users of the site.

ECKERT
SEAMANS

40

The New GTLD Program

ECKERT
SEAMANS

41

What are we talking about here?

.BRAND? .SEX? .CARS?

ECKERT
SEAMANS

42

Application fee is \$185,000
(estimate around \$500,000
in total costs).

ECKERT
SEAMANS

43

Will these work and overtake
social networking sites in
popularity or will social
networking adapt? Facebook.com
vs. Friends.Facebook?

ECKERT
SEAMANS

44

What are the e-commerce
concerns?

ECKERT
SEAMANS

45
