

The High Cost of Free Stuff

Make sure you understand the rules governing contests and giveaways on social media.

The upside of social media marketing can be terrific for small business. Small businesses are wise, however, to be aware of the legal issues involved with using technologies like Facebook, Twitter, Instagram, Pinterest, LinkedIn, YouTube, blogs and podcasts in marketing.

Terms of Use

When you created your business's profiles, you agreed to the stated terms and conditions of the various social media platforms. If you're like most people, you probably didn't read the terms before clicking "Agree." Each social media platform has its own set of guidelines. Most are easy and quick to read—a few minutes well spent. A breach on your part can lead to suspended or banned accounts (and a lot of lost work).

Facebook's promotions guidelines (tinyurl.com/c8pvkj7) outline how to run or promote a giveaway or contest on your Facebook page. Did you know, for example, that any giveaway, sweepstakes or contest your business runs via its Facebook page must include a complete release of Facebook by each entrant or participant?

Don't miss the global giant's Advertising Guidelines (tinyurl.com/3tgwsn8) as well.

Trademark and Copyright Issues

Social media has run amok with trademark and copyright violations. Most social media sites prohibit this infringement in their terms of use, and they are generally responsive to

complaints of infringement. Most sites have established procedures for the reporting, investigating and taking down of offending profiles or posts. This procedure can provide the platforms with some immunity for any infringement under federal law.

Take measures to ensure that your own marketing does not infringe on others' intellectual property rights as well. "Right-click-and-save" images posted to your profile are almost always in violation of copyright.

If your company's marketing team rolls out any campaign that includes user-generated content (i.e., inviting followers to submit a photo, post

Social media has run amok with trademark and copyright violations.

a video, share an image), be sure to establish enforceable rules prohibiting trademark and copyright infringement in any submissions and include appropriate consent, release and disclaimers.

Compliance

Regulations aimed at curbing deceptive advertising and business practices are now applied regularly to social media marketing, primarily via the Federal Trade Commission (FTC). Rules violations relating to truth-in-advertising and substantiation of claims are still the most frequently seen. Making scientific claims or comparisons to competitors, for example? Be prepared to back up your statements with data or risk sanction by the FTC.

The FTC has also issued endorsement and testimonial guidelines. If your business provides money, products or services to a blogger, social media influencer, employee or customer in exchange for a post, tweet or review, that incentive may create a relationship that requires disclosure. It may be in your best interest

to advise endorsers and employees of their responsibilities via well-drafted contracts and employment policies.

Interested in how this plays out in real life? Search "Cole Haan and FTC" on the Internet for a look at the endorsement guidelines as applied to a Pinterest contest campaign.

Sweepstakes, Giveaways and Contests

On that note, online giveaways, sweepstakes and contests ("promotions") can be a very effective way to extend the reach of your company's marketing. Many businesses do not realize, however, that any such promotions are restricted by specific state sweepstakes laws and potentially carry income tax implications.

A specifically-tailored set of Official Rules, as well as review by your attorney of the mechanism of the promotion itself, will help protect a business from conflict or litigation involving state governments and potential entrants.

Privacy

Depending on the nature of your business, your company may be bound by a host of federal and state statutes and regulations regarding privacy. These laws include the Health Insurance Portability and Accountability Act (HIPAA), the Federal Trade Commission Act, the Gramm-Leach-Bliley Act, the Children's Online Privacy Protection Act (COPPA) and the Fair Credit Reporting Act.

With a little attention and planning, the liability concerns related to social media marketing can be mitigated in favor of tremendous upside for your business. ■



Kate McKinney is an attorney with the Martin Pringle law firm in Kansas City and Overland Park.

kbmckinney@martinpringle.com // www.martinpringle.com