

The Complete Tweet: Developments in Social Networking and Employment Law

Jenna Mooney and Nick Kampars

Davis Wright Tremaine LLP

April 28, 2010

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.



Online Social Networking Exploding

- **facebook**

- >400 million users worldwide
- 2009 revenue: >\$550 million
- 8 billion minutes spent on Facebook each day
- Increasing corporate marketing use

- **twitter**

- “Tweets” – max. of 140 characters
- Celebrity usage – Lance Armstrong, Brittany Spears
- Corporate use growing exponentially
- Over 55 million users / month and growing

Online Social Networking Exploding

▪ **LinkedIn**

- Facebook for professionals
- Over 50 million registered users

▪ **myspace.**

- Similar to Facebook
- Less than half the users at over 100 million

▪ YouTube

- Online videos

▪ Blogs

- The original social networking tool

What is Social Networking?

- Broad range of internet activities
 - Texting
 - Chat rooms
 - Emails
 - Blogging
 - Videos

- Easily accessible
 - Work computers
 - Home computers
 - Mobile smartphones and other devices

- Inherent risks
 - Immediacy
 - Global reach
 - Searchable
 - “Email is Forever”

Employee (Mis-)Use of Social Networks

- For personal purposes, at work
- For personal purposes, impacting your business
 - Bad-mouthing the company
 - Trade secrets theft
 - Harassment
- At work, for business purposes
 - Monitoring comments on company products
 - Answering consumer questions
 - Promoting products / services
 - Research

Employer Use of Social Networks

- Hiring and firing staff
 - Use as screening tool?
 - “Googling” job candidates
 - Risk of uncovering information not relevant to the hiring decision
 - Possible discrimination claims
- Corporate communications and marketing
 - Internally with employees
 - Externally with customers / potential customers
 - 1.5 million business home pages on Facebook

Facebook for Companies

facebook 1 16 Search Home Profile Account ▾

Full Sail Brewing Company Like

Wall Info Photos Boxes Events Video >>

Beer Buckle Full Sail Brewing to attend the Boulder Brew and Music Festival on May 1st at the FOX Theatre in Boulder, CO! www.BoulderBrewFest.com for tickets!

Home - Boulder Brew and Music Festival
www.BoulderBrewFest.com
2010 Boulder Brew and Music Festival at the FOX Theatre May 1, 2010. Over 50+ beers and live music all day and night.

2 hours ago · Share · Report

Full Sail Brewing Company Let's just say that we take craft beer seriously in Oregon. Check out the abundance of festivals, tastivals, parades and parties happening around the state this year.

The year in beer | OregonLive.com
blog.oregonlive.com
Beer fans who've been on vacation or business trips to that howling beer wilderness beyond the gates of the city know how good we have it here in Portland, which is by any measure one of the best beer ...

4 hours ago · Share

3 people like this.

Paul C Paz Thanks! We "shared" the link with our network. WaitersWorld

The goal of WaitersWorld is to elevate the status of waiters in America to a legitimate professional career of choice in an industry of choice, Restaurant and Hospitality, that offers unlimited opportunity....

See More
11 minutes ago · Report

Tasha Duckering love you guys!! Old Rasputin is delish! Still tryin to get my hands on your Top Sail bourbon imperial!! Oh i bet thats great!
Yesterday at 5:47pm · Report

Full Sail Brewina Company Hev Tasha, thanks! Although

Add to My Page's Favorites
Suggest to Friends

Brewed to stoke. Stoked to brew.

Information
Founded: 1987
3,229 People Like This

Chris Gow Sheina Sim Bruce Campbell
Kristin Kruger Brian Walrath Dee Powell

Favorite Pages
5 Pages See All

Create an Ad
175,000,000/day! ×
VeriSign Trusted
The #1 Trust Mark on the Internet is now available for your small business.
Like

designtheory ×
10% off all pearls, diamonds, and european botanicals through Mother's Day, just mention this ad when you come in!
Jennifer Stenhouse likes designtheory.
Like

Baby Samples in your Mail ×
Get free samples of baby products. E-mail and your baby's birthday required.
Like Chat (6)

Twitter for Companies



Home Profile Find People Settings Help Sign out



AlaskaAir

+ Follow

Lists

Settings

@andreachaplin Are you using a Mac or PC?

about 21 hours ago via CoTweet in reply to andreachaplin

@andreachaplin We're looking into it. Thanks for letting us know. If you have any further issues, please call reservations 1800ALASKAAIR.

about 21 hours ago via CoTweet in reply to andreachaplin

@andreachaplin We've been having some issues. What are you trying to do? book? Check-in?

about 22 hours ago via CoTweet in reply to andreachaplin

@MollieinSeattle Our bag fee is among the lowest in the industry. We're also the ONLY airline to guarantee your bag. <http://bit.ly/bbsbY1>

about 23 hours ago via CoTweet in reply to MollieinSeattle

Some background on how **@AlaskaAir** dealt with Mt. Redoubt eruption Via WSJ **@MiddleSeat**: <http://j.mp/bcbNIY> #ashtag

about 24 hours ago via CoTweet

@floraandflying No, but you will be able to cancel your reservation up to 24 hours after purchase & refund to original form of payment.

10:42 AM Apr 22nd via CoTweet in reply to floraandflying

@xSuperGirx Starting 6/15, we're lowering it to 20 min.

10:18 AM Apr 22nd via CoTweet in reply to xSuperGirx

@HorizonAir also announced new service: 4 daily flights between

Name Alaska Airlines
Location Seattle, WA
Web <http://www.alaska...>
Bio Tweets powered by the genuine and caring service of Alaska Airlines and its employees. Currently listening: @elliottp

7,045 following
17,246 followers
922 listed

Tweets 1,350

Favorites

Actions

block AlaskaAir
report for spam

Following



View all...

RSS feed of AlaskaAir's tweets

Twitter for Companies

twitter

Home Profile Find People Settings Help Sign out



KGWNews

+ Follow

Lists

Settings

Name KGW News

Location UT:
45.313958, -122.668782

Web <http://www.kgw.com>

Bio Where the news comes first.

429 following 6,933 followers 498 listed

Tweets 6,025

Favorites

Actions

block KGWNews
report for spam

Following



View all...

RSS feed of KGWNews's tweets

Raw video: Alaska dog leads troopers to burning building; owner told dog "help!" <http://bit.ly/9ADEeK>

about 1 hour ago via TweetDeck

Gresham one step closer to new, \$20 million courts facility
<http://bit.ly/9pXWxx>

about 3 hours ago via TweetDeck

Smoke on Bull Mountain from TVFR firefighter training burn.
<http://bit.ly/cvo6sm> photos: <http://bit.ly/bLwh2z>

about 3 hours ago via TweetDeck

Ready to Wear: Vancouver designer wins 'Project Runway' ...
<http://bit.ly/apVqv3>

about 4 hours ago via TweetDeck

Seahawks look deep with two Big XII standouts drafted first round
#NFL <http://bit.ly/apFX5m>

about 4 hours ago via TweetDeck

Continued high radon levels lead to emergency declaration in Washougal. <http://bit.ly/bjjg9i>

about 4 hours ago via TweetDeck

Police looking for man who sexually assaulted female student at George Fox University. <http://bit.ly/cR5ePc>

about 4 hours ago via TweetDeck

Deadly airborne fungus reported in Oregon. <http://bit.ly/8VFEuDR>

Why Employers Should Care

- 61% of employees say that even if employers are monitoring their social networking activities, they won't alter behavior
- 74% of employees believe it is easy to damage a brand's reputation via social networking sites
- 53% of employees say "social networking pages are none of an employer's business."

**Per Deloitte's 2009 Ethics & Workplace Survey*

Why Employers Should Care

- Only 17% of companies have programs in place to monitor and mitigate reputational risks
- Only 22% of employers have formal social networking policies

**Per Deloitte's 2009 Ethics & Workplace Survey*

Employer Injury

...by consumers, for consumers ...scams, consumer complaints, and frauds reported. File a report, post your review or experience!



[Register to File a Report](#) | [Login](#) | [Help](#)

Don't let them get away with it.® Let the truth be known! [HOME](#)

[File a Report](#)
[Update Report](#)
[Latest Reports](#)
[Consumer Resources](#)
[Consumers Say Thank You](#)
[Legal Directory](#)
[Corporate Advocacy](#)

[Use Advanced Search](#)
[Latest Reports](#)

Search Results: Latest Reports

Approximately **10047** Reports Found

Legend

Showing 1 - 15

[NEW](#) New
 [UPDATE](#) Updated
 [REBUTTAL](#) Rebuttal
 [PHOTOS](#) Photos

Wondering if a report is missing from this search? **We DO NOT remove reports from our database.** However, as the leading consumer advocacy website, our technology is being continually upgraded to handle the volume of searches from consumers, the media, the authorities and millions of others from around the world. While we are always in the process of upgrading, our search results may not return all reports. This is only temporary and intermittent. If you are an attorney helping victims, the media, or law-enforcement, please contact us to have us run a complete database search.

Date	Title	City, State
1 4/23/2010 11:59 AM 	USA Finance law firm, phone calls, harassment, USA Finance, debt collection Internet Lawyers : USA Finance Internet	Author: Harker Heights, Texas
2 4/23/2010 11:53 AM 	EBusiness Network Home Business Network. The HBN, The EBN. E- Commerce network Sketchy idea, sketchy people Internet Internet Marketing Companies : EBusiness Network Internet	Author: Phoenix, Arizona
3 4/23/2010 11:32 AM 	GE MONEY CARE CREDIT...BE VERY CAREFUL Manipulating the promotional schemes, what a good rip off Internet Financial Services : GE MONEY CARE CREDIT...BE VERY CAREFUL Internet	Author: MORRISVILLE, Pennsylvania
4 4/23/2010 11:32 AM 	country living magazine..Hearst corporation G.L.Valk vice pres. submitted "late Payment" invoice with credit rating threat without my subscription authorization. red oak , Iowa Outdoor Furniture & Equipment : country living magazine..Hearst corporation Iowa	Author: Greenwood, South Carolina
5	KMART.com SEARS Holdings kmart/Sears KMART AND SEARS RIP OFF PUBLIC NOT	

America's #1 Gold Buyer
CASH4GOLD
Sell Your Gold!

[Click Here](#)



Victim of a Rip-off? Don't get mad revenge!
Victim of a Rip-off? Don't get mad revenge!

Sell Your Gold!

Employer Injury

- Injury to corporate reputation
 - Employee "venting" transmitted instantly to ever-growing audience

- Disclosure of trade secrets/proprietary information
 - New product plans
 - Financial results
 - Customer information

Employer Liability

- Possible liability for employee postings
 - Defamation
 - Copyright infringement
 - False advertising claims
 - Discrimination/harassment
 - Medical information (HIPPA/GINA)

Employer Liability

- Electronic discovery issues
 - A new kind of “electronically stored information” (ESI)
 - Social media data is typically not stored on employer’s network or system
- National Labor Relations Act issues
 - Can be “protected, concerted activity”
 - Blogging about unfair employer policies
 - Applies to all employees, not just unionized workers

Employer Liability

- First Amendment issues
 - Primarily for public employers
 - Possibly state constitutional issues for private employers
- Privacy Concerns
 - *Pietrylo v. Hillstone Restaurant Group*
 - Managers accessing private MySpace page of employee group

What Should Employers Do?

- Develop a policy **now** – don't wait for the crisis
- Convene working group to draft:
 - HR
 - Legal
 - IT
 - Marketing
 - PR/Corporate Communications
 - Employee users

Social Media Policy Considerations

- What is your company's culture?
 - Separate or integrated policy?
 - Allow or block access to social media websites?
 - Distinguish between company use and personal use?
 - Extent to which company equipment and networks can be used for social media?
- What are your company's needs?
 - Use of social networking to generate business?
 - Use of social networking in hiring / firing process?

Social Media Policy Considerations

- Duty to bargain with unions regarding policy?
- Cross-reference in other policies?
 - Anti-harassment and nondiscrimination
 - Trade secret/confidentiality
 - Codes of ethics
- Legal review of proposed employee terminations for social networking activity

“Common Sense” Policy Components

- **HR ISSUES:**

- Discriminatory or harassing conduct
- Notification that company uses social media
- Source for answers to questions about policy interpretation
- No oral modification of policy
- Cross reference to related policies

- **IP PROTECTION:**

- Trade secrets/proprietary information disclosures
- References to clients/customers

- **THIRD PARTY LIABILITY:**

- Disclaimers that opinions are the employee’s
- Confidential medical information
- Defamatory or derogatory comments

Finally

- Clearly communicate policy to employees
- Training of employees as appropriate
- Revisit policy annually to keep up with technological changes
- Remind employees regularly