



# Customer Lists By Another Name Social Media and Trade Secrets – Part 1

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Employers are well aware of the various implications that the social media explosion has on the workplace. The various issues created by Facebook, LinkedIn, and other similar platforms lead to constant requests for input by management-side employment lawyers. Likewise, employers – especially those in industries with a heavy emphasis on relationships and/or research and development – are also focused on protection of their trade secrets and other confidential information. However, the intersection between social media and trade secret protection represents a new frontier, one with relatively little case law, but with substantial implications.

The most notable area in which social media can affect a company's protection of its confidential information comes with the most common form of a trade secret: a customer list. Employers often encourage their sales personnel to use LinkedIn or other social media platforms to establish and strengthen relationships with actual and potential customers. Social media can be a great way to stay on a customer's mind, update a customer on what the sales person and the company are doing, and project an image of success.

That said, what happens to that social media account when salespeople leave and go to a rival company? They are walking out the door with a de facto customer list. It is likely that the names and contact information of some or all of a salesperson's key client relationships will reside on that social media account. It used to be that salespeople would have to sneak their customer lists out from under the watchful eyes of their employers, first in a physical file, then on some type of data storage device or by an e-mail to a personal account. Now, they simply need to maintain access to their social media accounts and they have a list without having to steal anything.

In order to deal with this situation, an employer needs to take certain steps to ensure that it isn't allowing its trade secrets to drip out the door with every salesperson who departs the company:

## **1. Make clear that the company owns the contents of or additions to a social media account.**

This can be accomplished either by agreement or by a written policy preferably one that employees sign. In the best of all worlds, an employer will have its salespeople set up new social media accounts when they commence employment so the company can deactivate or transfer the accounts when the employee leaves. However, many employees bring existing accounts with them when they start employment and prefer to add to their existing accounts. In that case, the employer should

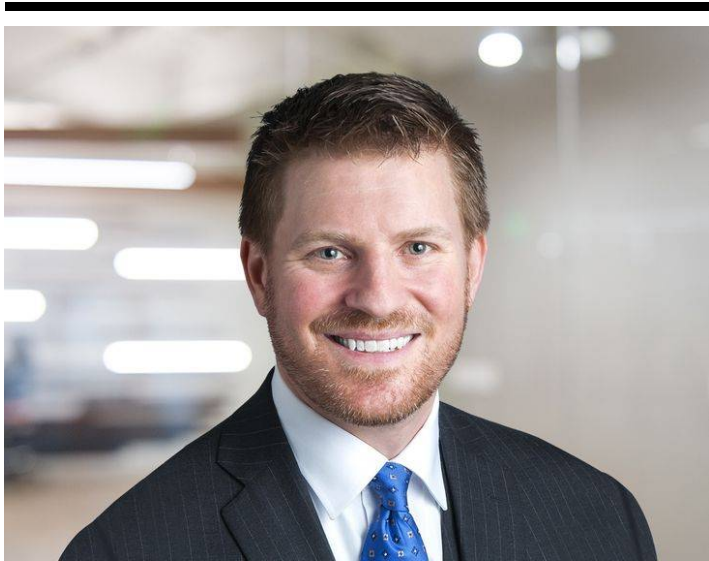
have the employees agree that at the end of employment, they will delete any business contacts that they established over the course of employment.

**2. Have the employee set privacy settings.** One good defense in a trade secret action concerning a customer list is that an employer does not take reasonable means to protect its trade secret because anyone can look at the contacts of the company's salespeople on LinkedIn and find the relevant contents of the customer list(s). In other words, the information is not a secret. The solution to this problem is simple: require employees to make their contact lists private on any social media account that they use for business.

This article examines whether a social media account can contain a stealth trade secret. The [next article](#) in this two-part series considers the question of status updates and whether they can constitute customer solicitation.

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