



Ownership of Social Media Accounts

Insights

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It is becoming increasingly common for issues to arise relating to employer vs. employee ownership of a social media account and the names, addresses, etc. that go along with that account. Business-related social media accounts typically contain useful information developed over the course of employment that can give a departing employee a head start in competition with an ex-employer. While there has been a lot of litigation about these issues, there are relatively few reported decisions. One such decision can be found in *CDM Media USA, Inc. v. Simms* (Cause No. 14 CV 9111, N.D. Ill., March 25, 2015), in which the court does not resolve issues relating to social media ownership, but it does highlight some important steps a company can take to safeguard its information. The opinion is a response to a motion to dismiss filed by the defendant.

Background: Plaintiff/ex-employer sued defendant/former employee for breach of contract and misappropriation of trade secrets based on the fact that defendant, while an employee of plaintiff, was the contact person for a special LinkedIn group started by the plaintiff containing plaintiff's customers and potential customers. After defendant left the employ of plaintiff, plaintiff wanted the group contact switched over to a current employee of plaintiff and also requested that defendant relinquish any names, addresses, conversations, etc. The defendant refused to provide the information, apparently asserting that the company had no property rights in the information and that the defendant was not contractually required to transfer the information because the transfer of control of the LinkedIn group was not covered by the confidentiality provision in the defendant's non-compete agreement. The defendant also argued that the LinkedIn group account and pertinent communications do not fall under the Illinois Trade Secrets Act claim.

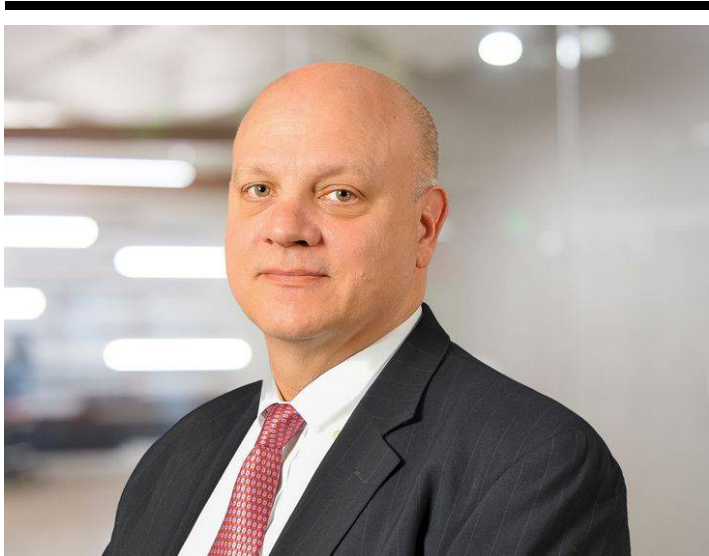
Outcome: The judge split the baby on the motion to dismiss but essentially left all causes of action intact. Both sides argued/acknowledged the fact that the ownership or control of the LinkedIn group account was not covered by the ex-employer/plaintiff in any agreement or policy it had relating to the defendant/ex-employee. If there had been some concrete proof of ownership, then the fact issues the judge described in his opinion would not exist.

Takeaway: At the very least, employers should have a social media policy, covering the ownership of and access to business-related social media accounts, as well as all information and communications associated with the accounts. Employees should sign the policy, or at least a handbook acknowledgment of the policy is contained in a handbook. The policy should make clear that any posting on company social media is the property of the company as are the accounts

that any posting on company social media is the property of the company, as are the accounts, names, etc. associated with the accounts. Further, the policy should be clear that when an employee leaves, all account information and communications should be transferred to the company and it should describe what, if any information the company considers to be confidential. This way, when an employee leaves, the account information stays with the company. Employers should also consider putting language regarding the ownership of social media accounts in the "Confidentiality" section of an employment agreement. Proactive drafting of policies and agreements concerning social media accounts will let employees know where they stand when they leave the company and also give the company extra ammunition in the event of a fight over the increasingly valuable accounts.

[CDM Media USA Inc v Simms \(Social Media Ownership\).pdf \(60.69 kb\)](#)

Related People



Arthur V. Lambert

Partner

214.220.8324

Email