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***Practical Considerations for Public and
Private Companies Using Social Media***

Theodore P. Augustinos, Esq.

Partner

Edwards Angell Palmer & Dodge LLP

Shy S. Baranov, Esq.

Partner

ZAG/S&W LLP

Agenda

- What is Social Media and how is it used?
- What are the unique characteristics of Social Media?
- Legal and Regulatory Implications of Using Social Media
- What are the Choices for a Business Organization?
- Advantages and Disadvantages to Company and Employee Use of Social Media
- Legal and Regulatory Implications of Social Networking by Companies and Employees
- Particular Public Company Issues
- Elements of a Social Media Policy
- Summary and Issues to think about

What is Social Media and how is it used?

- Definition:
 - Websites established for social networking, such as Facebook and LinkedIn
 - Other technologies that link people together like Twitter
 - Other means of electronic communication, including blogging and IM

What is Social Media and how is it used? *(cont.)*

- How is Social Media used?
 - By Companies
 - Due diligence in hiring
 - Marketing
 - Public Relations
 - Customer Relations
 - By Employees, Agents and Others
 - Personal
 - Professional
 - Employment

What are the unique characteristics of Social Media?

- Whether you want it or not – you have to deal with Social Media
 - Two main uses of social media – when used by, or on behalf of the business; and personal use
 - The spectrum of Social Media means and uses
 - New area, with new opportunities and issues

What are the unique characteristics of Social Media? *(cont.)*

- The use of social media creates new opportunities for businesses, such as
 - New means to reach out to clients, vendors and the industry
 - Ability to create discussion and build communities around the business
 - Opportunity to position the business in a new way – less formal, less ‘corporate feel’ and more personal

Legal and Regulatory Implications of Using Social Media

- Intellectual Property Issues
- Employment Law Issues
- Privacy and Data Protection
- Regulatory Issues
- Torts and Crimes

What are the choices for a Business Organization?

- Permit
 - Many companies permit, even encourage or actively invest in the use of Social Media
- Prohibit
 - Not on company time and company equipment
- Restrict
 - You can't "Just Say No"
 - The need for a Social Media Policy
 - Restrictions and Guidelines
 - In the course of employment
 - On personal time and equipment that may reflect on work

Advantages and Disadvantages to Company and Employee Use of Social Media

- Advantages
 - It's Free and Constant
 - Publicity/Advertising/Marketing
 - Intelligence
 - Customer Feedback
 - Competition
 - Employees
 - Counterparties
 - Recruiting Tool

Advantages and Disadvantages to Company and Employee Use of Social Media *(cont.)*

- Disadvantages
 - Two uses – on behalf of the Company and personal use
 - In both cases, there are no established ground rules or precedents to rely on

Advantages and Disadvantages to Company and Employee Use of Social Media *(cont.)*

- Use by, or on behalf of the Company
- New resource that needs to be managed. There is an inherent challenge in controlling it
 - Usually informal
 - Existing solutions do not always work
 - Potential for damages and embarrassment is huge
- Most of these issues are usually addressed in a Disclosure Policy

Advantages and Disadvantages to Company and Employee Use of Social Media *(cont.)*

- Personal use by employees
 - Employees have a platform to make public announcements they did not have before
 - There are many uses of social media and it is not clear where to draw the line between personal use and one that is attributable to the company
 - While using social media, employees might be deemed to be talking on behalf of their employer
- These issues are usually addressed in several company policies, including a Social Media Policy

Legal and Regulatory Implications of Social Networking by Companies and Employees

- Intellectual Property Issues
 - Do you have the right to post (*i.e.*, publish) the written, photographic, video graphic, audio graphic and other materials?
 - Do you own the page?
 - Does the social network have rights to retain and republish content?
 - Have you protected your name and marks?
 - Register your name with Social Media
 - Monitor the use of your name and marks on social media

Legal and Regulatory Implications of Social Networking by Companies and Employees *(cont.)*

- Employment Law Issues
 - Due Diligence or Too Much Information?
 - Supervisor-Subordinate interaction
- Privacy and Data Protection
 - On-line postings of information concerning customers, fellow employees and others
 - Personal Information
 - Personal Health Information
 - Other Confidential and Proprietary Information

Legal and Regulatory Implications of Social Networking by Companies and Employees *(cont.)*

- Regulatory Issues
 - Responsibility for what your employees, agents and others say
 - About your company and its products and services
 - About your competitors and their products and services
 - Endorsement/FTC issues

Legal and Regulatory Implications of Social Networking by Companies and Employees (cont.)

- Torts and Crimes
 - Libel, Slander, False Light and Invasion of Privacy
 - Unfair Competition and False Product Claims

Particular Public Company Issues

- Main Securities Laws Issues
 - Distribution of material information and social media
 - No selective disclosure
 - References to third party information
 - Specific issues that relate to Twitter

Particular Public Company Issues

- The Disclosure Policy as the main tool to address issues that public companies face
 - What is a Disclosure Policy?
 - How the Disclosure Policy should address company use of social media?

Elements of a Social Media Policy

- Start by looking at existing company policies and manuals
 - Employee Handbook – Conduct, Ethics, Etc.
 - Privacy and Data Security Policies, including WISP
- Can't rely on existing policies and manuals, because people don't think they apply to Social Media
- Consistency with existing policies and manuals is important, but a stand-alone Social Media Policy is warranted.

Elements of a Social Media Policy (*cont.*)

- Topics to Consider in your Social Media Policy
 - Definition of Social Media
 - Use of Social Media on Company Time and on Company Equipment
 - Use of Company Name and Marks
 - Privacy and Data Protection Issues
 - Prohibit Disclosure of Confidential or Proprietary Information
 - Interaction with Customers
 - Interaction with Supervisors and Subordinates
 - Reference to Customers, Competitors, Fellow Employees
 - Prohibit Disparagement
 - Response to Questions from Bloggers and Others
 - Use of Third Party Content
 - Disclaimers for Personal Use
 - General Conduct

Summary and issues to think about

- The world has changed – this is a revolution, no less. You need to adapt to the change
- On the company level
 - Check the possible exposures
 - Check existing company policies and procedures
 - Stay updated – this area constantly evolves and changes
- On the employee level
 - Educate the employees – nothing has changed, except that each employee now has a megaphone

Questions/Comments

Theodore P. Augustinos, Esq.
Edwards Angell Palmer & Dodge LLP
20 Church Street, 20th Floor
Hartford, CT 06103
taugustinos@eapdlaw.com
Tel: 860 541 7710
Fax: 888 325 9082



EDWARDS
ANGELL
PALMER &
DODGE

Shy S. Baranov, Esq.
ZAG/S&W LLP
One Post Office Square
Boston, MA 02109
sbaranov@zag-sw.com
Tel: 617 338 2932
Fax: 617 338 2880

