



Who Owns Social Media Accounts? It Depends.

November 18, 2011

PhoneDog v. Kravitz, 2011 WL 5415612 (N.D. Cal. Nov. 8, 2011)

Social Media continues to be the topic of discussion lately in the labor and employment field. On November 8, 2011, the Northern District of California joined the discussion in addressing, among multiple issues, who owns social media accounts – employees or their employers?

In *PhoneDog v. Kravitz*, the Plaintiff brought an action against one of its former employers based on his continued use of a Twitter account that the Plaintiff alleged it owned. Before the Defendant's resignation, he worked as a product reviewer and video blogger for the Plaintiff. One of his tasks was to use a Twitter account (@PhoneDog_Noah), which was provided by PhoneDog, to disseminate information and promote PhoneDog's services behalf of the company. After the Defendant resigned, PhoneDog requested that he turn over the password and relinquish use of the Twitter account. Rather than doing as the company asked, the Defendant changed the account's display name to "@noahkravitz," and continued using it as a personal account. In response, PhoneDog filed suit, claiming, among other things, that by refusing to relinquish control of the Twitter account, the Defendant stole its trade secrets, proprietary information, and confidential information, as well as converted the Twitter account to his own property under California's conversion law.

In deciding whether to grant the Defendant's motion to dismiss, the Court held that at the current stage of the proceedings (pre-discovery), PhoneDog has adequately alleged that it owned or has the right to possess the Twitter account. The Court reasoned that because the company simply gave the Defendant permission to use the account during his employment, upon the end of that relationship the account should have been returned back to the employer. However, this determination did not settle the matter, since the Court also held that the case should continue through discovery because the present record did not provide the court with enough information to make a determination as whether the account was owned by the Plaintiff or Defendant.

In the past, we have expressed our concern for employers who allow their employees to use social media in the workplace without a social media policy. This is just one example of how failing to have a social media policy may harm your company. One way the employer in this case may have been able to avoid this situation was by having the employee sign an agreement whereby it is agreed that the owner of a company social media account is the employer and the employee is limited to use of the account on behalf of the employer.

Generally, if a social media account is in the employee's name, it will likely be considered the employee's personal account. However, if the account is in the employer's name, and the content is generated as part of the employee's job, then the account will likely belong to the employer. This theory is grounded in the long

established laws of principals and agents. When the employee is posting content on behalf of the employer the employee is acting as an agent of the employer and the content will likely be considered the employer's property.

Although a final decision has not yet been issued by the judge in this case, the matter is one in which we will keep an eye in order to see how the court will decide who owns a social media account created by an employee on behalf of the employer.