

## FOCUS

## Business Law

# Integrating social media into the workplace

The selection of Mark Zuckerberg as *Time Magazine's* Person of the Year is a strong signal of the increasing importance of social media in today's society. As co-founder of the social-networking site Facebook, 26-year-old Zuckerberg is the second youngest person ever to be chosen as a *Time* Person of the Year. As Facebook crossed the threshold of 500 million users in 2010, and has been proclaimed the largest human interaction in the history of mankind, businesses and the legal profession continue to grapple with issues that are slowly seeping out of this phenomenon.

Social media encompasses any Internet applications that allow users to create and exchange content, blending technology with social interaction. Popular social media sites include Facebook, Twitter, LinkedIn and YouTube. These applications are very accessible at no cost, such that anyone is able to have a global audience with a very low level of technical skill.

With the instantaneous nature of social media sites, there is no lag time between creation and publication, as is the case with traditional forms of publishing. These sites can be used as powerful marketing and networking tools for business, yet they can also be used to destroy goodwill or brand value built up over years by creating electronic records that are universally accessible to an instant audience.

In Canada, there are no specific laws focused on regulating social media sites. For the foreseeable future, lawyers and businesses will have to deal



JEFF LOWE



SZE-MEI YEUNG



— “

**In Canada, there are no specific laws focused on regulating social media sites.**

with issues that arise in creative ways, through laws of general application developed for other purposes. Nonetheless, businesses need to prepare themselves to react quickly and effectively to situations that arise from the ubiquitous nature of social media.

For example, two employees of Dominos Pizza used a cellular phone to video food tampering which was then posted on YouTube. This video was viewed hundreds of thousands of times before Dominos was able to have the video taken down. Although the two employees were criminally charged, the damage was already done. Unfortunately, clips of the video can still be viewed online.

Another example is Dave Carroll, the musician who had his guitar broken by United Airlines. As a result of United

denying his compensation claim, Carroll created a music video and posted it on YouTube. “United Breaks Guitars” has now been viewed just under 10 million times.

Businesses and their advisors should take preventative measures against these types of actions by creating an overall strategy on dealing with social media. Legal counsel can assist by preparing general policies, and advising clients on how to regulate their employees’ conduct when using the Internet, including use of business names on social media sites, during business hours.

Typically, such policies would prohibit videos, media or other Internet activity that is inappropriate, offensive, slanderous, fraudulent, defamatory or unprofessional, while such employees are using company resources. By having employees sign such policies, or incorporating such policies within the employment contract on commencement of their employment, the message should be conveyed that breaches may result in penalties, sanctions, or disciplinary action, including termination of employment.


Employers are free to obtain public information that is posted on social media sites and consider the information in their decisions to hire and terminate employees, particularly if there are established and well communicated policies at the workplace on employee code of conduct and the use of social media tools. However, employee hiring and termination are governed by existing legislation such as employment standards, labour and human rights laws.

Companies should also anticipate and plan to deal with problems. For example, they can monitor social media sites from time to time for positive or negative feedback, and also use such sites to their advantage to respond to a problem by creating their own corporate accounts and posting positive media clips.

In the case of anonymous users posting negative comments online, the law of defamation generally applies. Legal advisors can assist by contacting, and preparing cease and desist letters, to operators of such websites and chat rooms to immediately remove such postings. Canadian courts have recently ordered the disclosure of the identity of anonymous posters or authors in certain cases, particularly in cases involving defamation, if the host of the site has this information.

Social media is here to stay. Businesses need to consider how to integrate social media into their workplace, and be ready to react quickly if they want to protect their brand and reputation in cyberspace. By becoming plugged into the social media network, many businesses may discover that this is a powerful, and yet largely untapped tool. ■

*Sze-Mei Yeung and Jeff Lowe are lawyers in the technology and intellectual property law practice at Richards Buell Sutton LLP in Vancouver. Lowe is also the managing partner of the firm.*

 We want to hear from you!  
Email us at: [tlw@lexisnexis.ca](mailto:tlw@lexisnexis.ca)



*An oddity in Business Law*



## Suit claims shoes don't trim flab as promised

A class action lawsuit against New Balance footwear maker claims the company misled consumers with the promise of a more shapely body through the use of its toning shoes.

The lawsuit, filed in U.S. District court in Boston, seeks damages of over US\$5 million and alleges New Balance falsely represented the physical benefits of its toning shoes. The company promoted its toning shoes with claims that the shoes’ unique sole increases muscle activation and calorie burn, resulting in a more toned body, according to Boston.com.

Unfortunately, it appears that there’s still no quick fix for flab. —Natalie Fraser

ISTOCKPHOTO.COM

# Franchisee class action lawsuits have recently seen a meteoric rise

## Franchise

Continued From Page 9

utes. There is now a sufficient body of case law to conclude that the courts will strictly apply the disclosure requirements of the statutes, the statutes are remedial and should be given a broad interpretation to protect franchisees, and franchisors had better treat their franchisees fairly.

The tentacles of franchise law developments are spreading beyond what one would consider traditional franchise situations. Distributors of products and services who never thought of themselves as franchisors, and had no idea they were required to comply with fran-

— “

**Distributors of products and services who never thought of themselves as franchisors...are surprised to find that the very broad definitions in the statutes could catch their distribution model.**

chise legislation, are surprised to find that the very broad definitions in the statutes could catch their distribution model. These “inadvertent franchisors” are sometimes shocked to find themselves defending a claim from their “franchisees” for non-compliance with a very technical statute.

There has also been a meteoric rise in franchisee class action lawsuits. Canadian courts have spoken clearly and resoundingly that class action legislation provides an appropriate vehicle to address systemic claims by franchisees, even based on claims for breach of the implied covenant of fair


dealing. This area of practice requires a high degree of expertise and experience to bring or defend such actions.

With the rapidly increasing impact of franchising on the Canadian economy comes a rapidly increasing amount of legal work in contract drafting, statutory compliance and litigation of all sorts. Franchising has and will affect many other areas of practice including labour, workplace health and safety, environmental, immigration and competition.

Let anyone feel complacent that these matters do not affect them, consider the modern reality that lenders, landlords and suppliers and those who advise them, find more and more that

they are dealing with a franchisor or a franchisee, who are affected by these legal developments. The times, they are a-changing. ■

*Edward (Ned) Levitt is a senior partner of Aird & Berlis LLP in Toronto and chair of its franchise law group. He served as general counsel to the Canadian Franchise Association from 2000 to 2007 and, as a member of the Ontario Franchise Sector Working Team, participated in the creation of Ontario's franchise legislation. Among his many publications is Canadian Franchise Legislation, published by Butterworths/LexisNexis.*

 We want to hear from you!  
Email us at: [tlw@lexisnexis.ca](mailto:tlw@lexisnexis.ca)