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Social Media Accounts in Bankruptcy: Business or Personal?

By Andrea Davison



A bankruptcy judge for the Southern District of Texas (In re CTLI, LLC, Case No. 14-33564) recently wrote a 30-page opinion – and sent a man to jail for failure to comply with it – over a modern and unlikely issue: his Facebook page. Jeremy Alcede, the majority owner of gun shop and shooting range Tactical Firearms, maintained a Facebook page and a twitter account which shared the shop’s name. He used the accounts to advertise sales or gun shows to the shop’s customers, and often to post

photos of the shop’s outdoor sign outfitted with political slogans and attacks on President Obama.

In June, Mr. Alcede put Tactical Firearms into a chapter 11 bankruptcy to avoid the appointment of the receiver and a foreclosure by its secured lender. The lender moved to terminate exclusivity, and then filed and had its own plan of reorganization confirmed. The plan required Mr. Alcede to “deliver possession and control” of “passwords for the Debtor’s social media accounts” including Facebook and Twitter, for the reorganized debtor’s continued use. Mr. Alcede has, so far, refused, claiming that all Tactical Firearms social media sites belonged to him personally.

The Court disagreed, deciding that business social media accounts fall within the Bankruptcy Code’s definition of “property of the estate.” Section 541, which defines property of the bankruptcy estate, is usually read broadly to include all kinds of property in which the Debtor has a legal or equitable interest, both tangible and intangible. 11 U.S.C. § 541. Courts look to underlying state law for determinations of what constitutes property.

Here, the Court found a business Facebook page – which customers or other Facebook users may “like” to receive notifications or “unlike” to stop receiving notifications – analogous to a subscriber or customer list, which courts have found to be property interest of the debtor. The fact that Mr. Alcede often referenced himself personally on the Facebook page did not convert it into a personal account, the Court found. Instead, the primary purpose of the Facebook page was to generate revenues for the gun shop and range, and though Mr. Alcede never gave another person “administrator” privileges for the page, not only was that option available, but he did allow other employees and a marketing firm to occasionally access the page through his own account.

As for the shop’s Twitter handle, @tacticalfirearm, the Court found that was also a business account and therefore property of the estate, and not a personal account of Mr. Alcede. The fact that the Twitter account was named after the business, included a description of the business, and

was linked to the business's webpage all supported this conclusion. Although Mr. Alcede authored the vast majority of the tweets posted, the Court found that he was simply an employee contributing goodwill to the value of the social media account for the value of the business.

The Court acknowledged in the opinion that he was breaking new ground with his opinion, writing that "the landscape of social media is yet mostly uncharted in bankruptcy." So would the result be the same in Virginia? Maybe not.

In a fairly recent case, *In re Alexandria Surveys Intern., LLC*, 500 B.R. 817 (E.D.Va. 2013), a District Court judge reversed an Order approving the sale of certain assets of a bankruptcy estate, including the Debtor's website address, phone number and fax number. The Court relied on the Virginia Supreme Court case of *Network Solutions, Inc. v. Umbro International, Inc.*, 259 Va. 759, 529 (2000) for the proposition that these items are essentially contract rights with the service providers, not personal property in which the Debtor has an ownership interest. Social network accounts – where users may register for free, but are subject to terms of service agreements with the network providers – could be considered analogous under Virginia's precious few instructive cases on the subject.

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Should Your Company Allow Pets for Take Your Dog to Work Day?

By **Rachelle Hill**



This year's Take Your Dog to Work Day ("TYDTWDay"), sponsored by Pet Sitters International, is Friday, June 26, 2015. In the days leading up to the event, many companies will have questions about the legal and practical aspects of allowing pets in the workplace.

Should we let our employees bring their pets to work?

For most businesses, it depends. Certain businesses, such as food or hospital settings, should not allow pets for sanitary reasons, but for the majority, the answer isn't as clear. A pet policy is best established at the start of your business as a part of the work culture. If you are considering changing your pet policy, this is often best done in small to medium-sized businesses with fewer employees involved.

What is Take Your Dog to Work Day and why might I want to be involved?

TYDTWDay originated in 1996 in the United Kingdom before coming to the United States on June 24, 1999. The event was created by Pet Sitters International. It is estimated that more than 10,000 companies participate in the event each year. The purpose of the event is to celebrate our furry friends and work to raise funds for local shelters. A business might want to get involved to boost employee morale or test whether dogs are a good fit for the workplace. TYDTWDay creates an opportunity to partner with a local shelter or rescue group, allowing a business to form positive ties with its community.

Why would I want to allow pets at work?

Dog-friendly work environments are starting to become more common, and doing so can make your business stand out from your competition. Many businesses, including Google and Replacements, Ltd., allow employees

to bring their dogs to work. Congress has been dog friendly since the 19th century, although it has not allowed dogs on the floor of the House and Senate since 1811 due to a complaint that Virginia Congressman John Randolph's dogs were too intimidating.

Allowing pets in the workplace provides employers a low-cost opportunity to boost morale when many companies are cutting back. For dog owners, this benefit may attract employees and increase retention by providing increased job satisfaction. Pets in the workplace can create a positive environment. Studies show that having dogs in the workplace lowers stress and fosters increased communication among employees promoting a more unified workforce. Finally, allowing pets in the workforce could encourage people to work longer hours, which will increase a company's bottom line.

Are there legal implications to allowing dogs at work?

Yes, there have been legal issues when employers open their doors to pets. These cases range from American Disability Act ("ADA") accommodation to liability for dog bites.

The potential to be liable for dog bites is an important consideration for businesses. The owner of the dog would, in most cases, be liable if the dog were to bite someone, but there is also a possibility the employer would be jointly liable in a personal injury lawsuit. Two cases in Connecticut addressed an employer's potential for liability under the strict liability statute for an "owner" or "keeper" of a dog and found that allowing an employee to bring a dog to work does not make the employer a keeper of the dog (*LaVoy v. Rosenthal, et al.*, 1999 Conn. Super. LEXIS 3250; *Falby v. Zarembski*, 221 Conn. 14, 19, 602 A.2d 1 (1992)). However, the courts concluded that a plaintiff could bring a claim for negligence against the employer for a dog bite occurring at the workplace.

One solution to the issue is to require employees to provide insurance covering any damage or injury by the dog. Many policies have a business-pursuit exception that may result in the insurance company refusing coverage, in which case a plaintiff would seek to recover against the employer. Therefore, it is important to require that an employee have insurance coverage and to review the policy for any exceptions pertaining to the workplace. When in doubt, do not permit the employee to bring a pet to work unless or until you have obtained a business policy that would cover such instances.

There have also been ADA cases involving pets in the workplace. While the courts have not yet found an employer liable for issues associated with allowing or prohibiting pets, this is an area to be aware of when considering a pet policy. Cases in the past have covered whether fear of animals can be considered a disability in animal-friendly workplaces and also whether an employee has the right to bring a dog to work, relating to an accommodation for stress and/or anxiety.

While these cases have shown the courts' reluctance to find liability under strict liability statutes or under ADA accommodation laws, an employer should still take into account the cost and expense in having to defend such suits when deciding whether to permit pets in the office.

I'm ready to allow pets; what do I do now?

Creating and enforcing a comprehensive policy for pets is an important step to avoid issues that may arise from allowing pets in your workplace. Dog bites were previously addressed, but pet allergies must also be considered. It is essential to create a realistic pet policy that fits your specific workplace.

To do so, a business should survey its employees to assess overall opinions on having pets in the office and to inquire into potential allergies. Some companies may be able to rearrange employees to keep distance from other coworkers' pets, but this is not always feasible.

What should be included in the pet policy?

As part of your pet policy, you as an employer should:

- Require the owner be in complete control of the animal at all times,
- Require employees to bring documentation showing the pet is up to date on its vaccinations,
- Require owners to have comprehensive liability insurance covering all injuries,
- Expect employees to sign an indemnification agreement to pay the cost of defending any lawsuit relating to a dog-bite and
- Require owners to have a way to transport the animal out of the office in the event it creates a problem.

What else should I know about pets in the workplace?

Any pet brought to the office must be well behaved and not aggressive. An employer cannot allow pets that are not housebroken or bark excessively. A business should consider a no-tolerance or a three-strike policy that prohibits dogs that break the policy.

Additionally, if the premises are being leased, a company must check with its property owner prior to allowing dogs in the workplace. Ensure you check the lease to determine whether this is covered. When in doubt, ask for written permission.

Opening your office doors to pets is an easy way to keep employees happy and ideally more productive. If you decide to do so, create a comprehensive pet policy that fits your company and fosters a safe and happy environment for all employees. A company should also consider contacting an attorney, before allowing any pets in the workplace, to address potential liability and create an appropriate policy.

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