

Social media: legal concerns

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About Motor Law

- Law review for motor industry managers
- Established 1988 by Anthea Worsdall and Peter Groves, both ex-SMMT legal advisers
- Bi-monthly newsletter
- Annual conference
- Other publications e.g. Complete Guide to the Block Exemption
- Seminars and training

Where to find Motor Law

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About me

- Solicitor since way back
- Consultant to CJ Jones Solicitors LLP, London EC1
- Acted for many vehicle manufacturers, dealers, even a motor industry PR company
- PhD thesis on block exemption
- Author of over a dozen books

Problems with social media

- Company's social media presence
- Employees' social media presence
 - ◆ At work
 - ◆ Away from work

What's new about social media?

- In some ways, nothing
 - ◆ The media is not the important thing
 - ◆ Printed media
 - ◆ Broadcasts
 - ◆ Blogs and online novels
- Email, bulletin boards, usenet ...
- Blogging and micro-blogging – no legal distinctions

What are the legal issues?

- Employment issues
 - ◆ Fiduciary duty
 - ◆ Confidentiality
- Intellectual property issues
 - ◆ Copyright
 - ◆ Trade marks
- Defamation (libel, not slander)
- Trade descriptions, advertising
- Data protection, privacy

Employment issues

- What does the contract of employment say about what employees may do?
- Implied fiduciary duty, duty of confidentiality
- Obligations do not end at 5 o'clock
- Must not bring company into disrepute

Case study:the barmaid

- Abused by customers
- Posted offensive comments about them on Facebook
- Dismissed
- Claimed unfair dismissal
- Argued that only a limited group of Facebook friends could read
- Tribunal held dismissal was fair

Case study: La Petite Anglaise

- Secretary in Paris office of UK accountants wrote personal blog about office life
- Disguised names but included her own photo which employers claimed meant firm could be identified
- Dismissal was considered unfair under French law
- She argued that firm's email and internet policy was not watertight

Case study: Woolamaloo Gazette

- Watersone's employee's personal blog
- 'Bastardstone's' and 'Evil Boss'
- Disciplinary hearing
- Sacked for gross misconduct
- Company argued that he brought it into disrepute
- Successfully appealed against the dismissal with TU support
- Offered reinstatement

How to control staff

- Conduct outside employment can justify disciplinary action depending on
 - ◆ Nature of the conduct,
 - ◆ Nature of employee's job and
 - ◆ Potential damage to employer's reputation
- Terms of employee's contract and any applicable policy will be relevant
- Appropriate procedures must be in place to ensure that all staff are aware of the policy and understand it

Case study: Virgin

- Virgin Atlantic sacked 13 members of staff
- Comments made on Facebook
 - ◆ insulted customers,
 - ◆ claimed that the planes were full of cockroaches and
 - ◆ cast doubts over the planes' safety
- Virgin Atlantic said this was "totally inappropriate", against staff policies.
- Important to make sure to have policies which deal with workers' online behaviour, and that these policies are up to date

Blogging policy

- When is it allowed? Is it actually encouraged?
- How much use? None at all? Not excessive?
- Give clear guidance on what material an employee is allowed to post regarding the employer
- Make it clear that this is not limited to postings which are made on work time or when using office systems.
- Point out obligations in contract of employment or other policies on confidential information and personal data

Enforcement

- Disciplinary procedures if
 - ◆ Clear policy or guidance that inappropriate blogging etc may be breach of contract or misconduct,
 - ◆ This has been brought to attention of employees and
 - ◆ It reasonably appears that the rules have been breached
- Employer obliged to
 - ◆ Conduct investigation which is fair and reasonable in the circumstances

Case study: Argos

- Tom Beech was sacked by Argos after managers saw comments he had posted on Facebook after particularly bad day at work
- Originally comments would have been seen by 3 members of Facebook group
- His dismissal attracted publicity so story became much more widely known

Copyright

- Who own it? Was it made by employee in course of employment?
- There will be copyright in -
 - ◆ A message, including a Tweet
 - ◆ An image, including a Twitpic
 - ◆ Other written material
 - ◆ Music
 - ◆ Film

Infringing copyright

- Infringements may be committed by uploading material or including it in a blog post or message
- What is on the Internet is NOT free from copyright!
- Copyright law permits certain uses (eg fair dealing for reporting current events) but copyright bullies and absolutists will pay no attention

Trade marks

- Trade marks are not copyright
- They should only give owner the right to prevent misleading statements about origin of goods or services
- Absolutists likely to stretch this
- Comparative advertising defence
- Nominative fair use

Defamation

- Libel, not slander
- Recent Twitter libel in local election campaign:
£3,000 damages, £50,000 costs
- Fair comment and justification defences

Trade descriptions, advertising

- Possible to commit offence using social media to make false claims about goods or services – just like other media
- Advertising Standards Authority is policing social media as well as traditional media

Data protection, privacy

- Any use of personal data might create trouble
- Data controller (employer) can be liable to £500,000 penalties and audit requirements
- Breach of another's privacy can lead to claim for substantial damages

The bottom line

- Make sure you have a comprehensive policy and keep it up to date so employees know what they can and can't do
- If you want employees to blog, make sure they have guidelines
- Watch out for the pitfalls in your own social media activities!

Thanks for listening

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