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Facebook or Not to Facebook?



The use of Facebook as a business marketing tool is growing, and the reason is obvious: It's a site where customers are spending more and more of their time. Facebook now has more than 500 million active users, with 70% outside the U.S., giving it a reach that's both massive and global. Moreover, about 250 million people log on to Facebook on any given day, with users spending over 700 billion minutes per month on the site.

Social networking provides a great opportunity for developing effective, creative ways to communicate with customers. It is also a rapidly changing landscape that opens a number of new doors to potential legal and ethical problems that could impact your company and its reputation. If you're thinking about using a site like Facebook to build a stronger online presence for your company, be sure to implement a written policy before launching any kind of social media activity. To be sure, a written policy makes things clear for your employees. A good social media policy should lay out the ground rules as to what the company will and won't do online, as well as what employees, themselves, can and can't do. We've seen many stories in the news about people losing their jobs because of comments they posted online about their employers. To avoid

this kind of problem and protect your intellectual property and competitive information, let your employees know up front what's acceptable in terms of using company computers, visiting social media sites during work hours, and posting comments about the company on the Internet.

A good social media policy specifically should address the issues of privacy, intellectual property, and fraud. Here are a few things to think about as you consider whether or not building a Facebook page makes sense for you and your business:

Privacy. When you create a page on Facebook, you become a part of a community, and you have a responsibility to protect the privacy of that community's members. You also have a legal obligation. But what's private? On Facebook, this is hard to know, because users set their own privacy settings, determining for themselves who can see what information, and those privacy settings are private. So a good rule of thumb is not to post any information on your Facebook page that you have gathered from other users' pages. In other words, if your customers want to post things about themselves on your site that's fine, as long as their comments fall within your guidelines. But it's not okay to pull information from your customers' own Facebook pages and put it on your site. It's tempting when you see someone saying something great about your business to want to share that comment, but a better way to go is to ask the customer to repost the comment on your site.

Intellectual Property. In the social networking world, as a general rule, everything your customers and fellow community members post on their sites should be treated as intellectual property. For example, all photographs fall under copyright protection, and only the person who took the photo has the right to reproduce, distribute or publicly display them. So even if you see a great picture of one of your customers – even if that customer in the photo is using your product or visiting your business – you can't repost it on your site without getting permission. What you can do, though, is post a link to the customer's Facebook page where the photo is located. This gives you the ability to share the photo with other customers without violating copyright law.

Fraud. This is an area where the laws are evolving, and not everything is black or white. But there are two rules that go a long way in avoiding legal problems and ethical questions. First, always be honest and transparent about who you are. Make it clear that your Facebook page is a company site, and when you post on that site, let visitors know that you represent the company. Recently, we've seen a number of embarrassing news stories about "customer" blog posts written by company representatives. Whether or not this behavior is legal, it is unethical and contrary to the values of social media users who demand authenticity. The second rule is to maintain the same standards on Facebook that you would in a print or broadcast advertisement. Web marketing falls under the jurisdiction of the FTC, which means you have to be truthful in any information you post and be able to substantiate any claims you make. Despite the seeming "informality" of the Internet, you have to be just as rigorous in the oversight of your Facebook page as you would with any other marketing activity.

Facebook and other social media sites are great tools for connecting with customers, and they're easy and relatively inexpensive to use. But before you start creating a Facebook profile and inviting friends to join, make sure everyone in your company who will be posting on your page understands the rules. When you're reaching out to a community of 500 million users, even the smallest mistake gets noticed.

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INSIDE

Tax Relief **2**

Act of
2010

Calculating **3**
Net Worth for
Bond Posting

California **3**
Allows Search
of Cell Phones

"Gift of **4**
Life" Award
Recipients

Calendar **4**
of
Events

Tax Relief Act of 2010 by Robert Feiger

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Re-authorization and Job Creation Act of 2010 into law. This tax law provides, among other things, for a short-term extension of Bush era tax cuts made in 2001. The following summary will provide you with key information and highlights from the Act that I hope you will find useful for your personal and business affairs.

A. Reductions in Individual Income Tax Rates through 2012

- * Income brackets remain 10, 25, 28, 33, and 35 percent
- * Capital gains and dividend rates remain at 0 or 15 percent
- * Repeal of the Personal Exemption Phase-out (PEP)
- * Repeal of the itemized deduction limitation (Pease limitation)
- * Marriage penalty relief
- * Expanded dependent care credit
- * Child Tax Credit
- * Earned income tax credit

B. Alternative Minimum Tax (AMT) Relief

- * The legislation increases the exemption amounts for 2010 to \$47,450 (individuals) and \$72,450 (married filing jointly) and for 2011 to \$48,450 (individuals) and \$74,450 (married filing jointly). It also allows the nonrefundable personal credits against the AMT.

C. Temporary Estate Tax Relief and Modification of Gift and Generation-skipping Transfer Taxes

- * Higher exemption, lower rate. The legislation sets the exemption at \$5 million per person and \$10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years, through 2012. The exemption amount is indexed beginning in 2012. The proposal is effective January 1, 2010, but allows an election to choose no estate tax and modified carryover basis for estates arising on or after January 1, 2010 and before January 1, 2011. The proposal sets a \$5 million generation-skipping transfer tax exemption and zero percent rate for the 2010 year.
- * Portability of unused exemption. Under current law, couples have to do complicated estate planning to claim their entire exemption. The proposal allows the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse without such planning. The proposal is effective for estates of decedents dying after December 31, 2010.
- * Reunification of estate and gift taxes. Prior to the 2001 tax cuts, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. The proposal reunifies the estate and gift taxes. The proposal is effective for gifts made after December 31, 2010.

D. Temporary Extension of Investment Incentives

- * Extension of bonus depreciation for taxable years 2011 and 2012
- * Small Business Expensing: increase in the maximum amount and phase-out threshold under section 179. Sets the maximum amount and phase-out threshold for taxable years 2012 at \$125,000 and \$500,000 respectively, indexed for inflation. (Previously-passed legislation raised the 2010 and 2011 max amount and phase-out at \$500,000 and \$2,000,000 respectively.)

E. Temporary Employee Payroll Tax Cut

- * The legislation creates a payroll/self-employment tax holiday during 2011 of two percentage points. The employer's share of the payroll tax remains unchanged. This means employees will pay only 4.2 percent on wages and self-employed individuals will pay only 10.4 percent on self-employment income up to \$106,800. The social security trust fund is made whole by transfers from the general fund.

Sources: U.S. Senate Committee on Finance; U.S. Congress Joint Committee on Taxation

Disclaimer: The comments expressed in this newsletter do not claim to be comprehensive, complete or necessarily correct in all circumstances. The comments expressed herein are general comments relating to the topic discussed. Anyone who feels they may need legal representation with regard to one of the topics discussed herein are encouraged to seek legal advice from one of our attorneys.

Calculating Net Worth for Purposes of Posting a Supersedeas Bond **By Brian Shields**

Ever had a large judgment entered against you or someone you know? Were you worried that you may have to post a large sum of money just to appeal? This article outlines some of the procedures for posting a supersedeas bond not to exceed ½ of your net worth.

Under Rule 24.1 of the Texas Rules of Appellate Procedure, a judgment debtor may supersede a judgment by: (1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment; (2) filing with the trial court clerk a good and sufficient bond; (3) making a deposit with the trial court clerk in lieu of a bond; or, (4) providing alternate security ordered by the trial court.

Texas Civil Practices and Remedies Code Section 52.006 and Texas Rule of Appellate Procedure 24.2 govern the amount of bond that a Court can set to supersede a judgment. Both provisions mirror each other. Section 52.006, "Amount of Security for Money Judgment," states:

(a) Subject to Subsection (b), when a judgment is for money, the amount of security must equal the sum of: (i) the amount of compensatory damages awarded in the judgment; (ii) interest for the estimated duration of the appeal; and, (iii) costs awarded in the judgment.

(b) *Notwithstanding any other law or rule of court*, when a judgment is for money, **the amount of security must not exceed the lesser of: (i) 50 percent of the judgment debtor's net worth; or, (ii) \$25 million** [emphasis added].

Under Texas Rule of Appellate Procedure 24.2(c)(1), when a judgment debtor provides a bond, deposit, or security based upon its net worth, the judgment debtor "must simultaneously file an affidavit that states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained."

The affidavit is prima facie evidence of the debtor's net worth. A judgment creditor may file a contest to the debtor's affidavit of net worth. The trial court must hear the judgment creditor's challenge promptly after reasonable discovery concerning the judgment debtor's net worth is complete.

Net worth is calculated as the difference between total assets and total liabilities as determined by generally accepted accounting principles (GAAP). At the hearing on the judgment creditor's contest, the judgment debtor has the burden to prove net worth. Following the hearing, the trial court must issue an order that states

the debtor's net worth and states with particularity the factual basis for that determi-

nation. Finally, the only appellate court to consider the issue found that the trial court did not abuse its discretion by excluding the amount of the judgment for purposes of calculating net worth because taking the judgment into account would produce absurd results when the amount of the judgment causes the judgment debtor to have a negative net worth. Allowing a judgment debtor to include the judgment entered against them as a liability for purposes of determining net worth only leads to absurd results, such as the judgment debtor having negative net worth, when all other information would show that the judgement debtor has a positive net worth. Allowing a judgment debtor to include the amount of the judgment as a liability would allow the judgment debtor to circumvent the rules of requiring a party to post security in order to stop post-judgment collection efforts while an appeal is pending. The purpose of the bonding statute is to ascertain a judgment debtor's ability to post a bond. But, by including the amount of the underlying judgment, a judgment debtor would be allowed to distort his true ability to post a bond. Thereby frustrating the Texas Legislature's purpose behind the bonding statute.



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California Allows Search of Cell Phones Without Warrant **By Shauna Izadi**

A recent ruling in California allows police officers to search an individual's cell phone when arrested without a warrant. The California Supreme Court issued the ruling in January after a 5-2 vote. It comes after a 2007 incident where a deputy went through a suspect's text messages without a warrant. The deputy discovered incriminating information and the suspect ended up pleading guilty on drug charges. The suspect appealed his conviction, saying the evidence was gathered in violation of the Fourth Amendment, which prohibits unreasonable searches and seizures. The court disagreed, comparing the suspect's cell phone to personal effects like clothing, which can be searched by arresting officers.

"The cell phone was an item (of personal property) on (his) person at the time of his arrest and during the administrative processing at the police station," the justices wrote. "Because the cell phone was immediately associated with the defendant's person, (police were) entitled to inspect its contents without a warrant."

In fact, the ruling goes further, saying essentially that the case didn't involve an exception -- such as a need to search the phone to stop a "crime in progress." In other words, this case was not an exception, but rather the rule.

One of the judges who dissented said the privacy risks associated with searching a suspect's cell phone are too great because of all the personal information stored in a mobile device. This ruling opens up the possibility of broad, warrantless searches of e-mails, documents and contacts on smart phones, tablets, and potentially laptop computers.

Back in 2009 the Ohio Supreme Court ruled that police do not have a right to search a suspect's phone without a warrant. The issue will likely end up before the U.S. Supreme Court.



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The National Kidney Foundation will honor Janelle and Larry Friedman with the "Gift of Life" Award at the prestigious Bonne Sante' Food and Wine Showcase Benefit on February 17th at the Westin Galleria Dallas.

According to National Kidney Foundation President Mary Collins, "Janelle and Larry were selected to win the national award for the couple's incredible altruistic efforts. We are honored to bestow the Gift of Life award to them for being instrumental in not only advancing the cause of both the National Kidney Foundation and transplantation but also for their commitment of time, talent and monetary donations to those in need in the North Texas community. The Friedmans are committed to working towards the prevention and treatment of kidney and urinary tract diseases and improving the lives of those affected by these diseases. We also applaud their recent success with the Friends of Wednesday's Child Luncheon which broke a fund-raising record creating deserved opportunities for thousands of foster children in North Texas."

If you would like to attend, please call Kit Hardy at 214-351-2393 or e-mail kit.hardy@kidney.org for ticket information.

Upcoming Events

Friedman & Feiger Calendar

- February 12, 2011** Janelle & Larry Friedman Co-Chair the 100th Anniversary of The Jewish Federation of Greater Dallas Centennial Gala at the Hilton Anatole
- February 15, 2011** Larry Friedman Speaks at Robson Ranch: "Identity Theft: What You Need to Know" - For information, call Lisa Fassee at 214-706-9465
- February 27, 2011** Paws Cause 2011 Rio Carnival at Sambuca Benefiting the SPCA of Texas
- March 3, 2011** Janelle Friedman Hosts Essential Energy Networking Reception
Speaker Lissa Duty: "Social Media & Your Business"
- April 7, 2011** Janelle Friedman Hosts Essential Energy Networking Reception
Speaker Rozanne Christian: "Universal Principles Affecting Women's Success in Relationships and Business"

