

# SOCIAL MEDIA CAN WREAK BUSINESS HAVOC

If you don't take charge of your platforms,  
your company is at risk; see how to protect your business



Beth Granger (left) and Kimberly Malerba

By ADINA GENN

Social media platforms are so much a part of the business day-to-day that we forget how vulnerable organizations can be.

And it turns out that there are more clueless digital media dabblers than you might think, experts say.

One poorly executed tweet – an executive, perhaps, tweeting seemingly good news after a meeting and accidentally revealing a company's strategic plan – may be inadvertently broadcast to millions. As a result, the company could face fines or lawsuits. And the person who sent out that tweet might be out of a job.

Couple this with the easy entrée into social media – an account could be opened quickly, information can be reposted just as fast – and it's easy to see why experts warn of hidden risks.

"Companies are not aware of the legal issues until it hits them in the

face," said Paul Rubell, a partner at Meltzer, Lippe, Goldstein & Breitstone, in Mineola, who is also treasurer and general counsel of the Social Media Association.

Sometimes these incidents make headlines, including in 2012, when the CFO of Francesca's, a retailer in Texas, tweeted "Board meeting. Good numbers=Happy Board." He lost his job.

Fast forward to today as organizations adapt to all that social media has to offer – branding, contests, marketing – and there are dismaying surprises companies might encounter: lawsuits over endorsements and social media followers, regulation violations and hassles over attempts to dial back on content that went viral.

If popular social media platforms were people, chronologically they might be considered adolescents, unruly at times, but thrilling in their potential.

“Social media itself is like a teenager – trying to figure itself out, some more mature than others – but the people dealing with it are at all different stages,” noted Beth Granger, CEO of Port Washington-based Beth Granger Consulting and Social Sales Training NYC. “Some platforms are more mature than others too, so Facebook is older than say, MeVee [a new live-streaming platform].”

Keeping in mind some core basics remains key. When the stakes are so high, it’s imperative to be selective about social media standards, no matter how adept you are with digital media.

“Companies have to have a policy in place for using social media,” said Kimberly Malerba, partner and chair of the employment law practice group at Uniondale-based Ruskin Moscou Faltischek.

“If you decide to engage in social media, you need sufficient resources – manpower and funds,” she added. “There are big benefits but there are also risks.”

Risk prevention includes selecting the most suitable person to make the judgment calls about what’s appropriate to post, and what’s not.

“Think long and hard as to who has access – who do you want to be the public face?” Rubell said.

But controlling what gets posted at a time when new platforms come and go, and when the most popular platforms change the rules of engagement, presents challenges.

“Sometimes the people who run the company just give the social media responsibility to an intern because they don’t understand it,” Granger said.

Once it’s determined who has access, Rubell said, “keep an eye on those employees. Monitor their use of social media. And consider what access they have to financial information, trade secrets and software codes.”

As Rubell points out, these platforms are amicable – what with the “likes” and retweets. Which is why he warns about employees being approached by outsiders who try to develop business relationships online.

“Our guard gets let down,” he said. “It’s easier for competition to get friendly with someone who might give out information on new products, or price changes – seemingly innocent information.” One inquiry, and an employee might inadvertently reveal how a program was written, or release other proprietary information.

What is posted online can remain forever. “People think they can delete tweets,”

said Pedram Tabibi, an attorney with Meltzer Lippe, who also teaches social media law at St. John’s University School of Law. “Nothing can be further from the truth. Every tweet is housed in in the Library of Congress.”

And, experts say, it’s not so uncommon when former employees either deliberately or inadvertently – perhaps because of vengeance or carelessness – wind up retaining the keys to an organization’s digital platforms, and as a result hold its social media hostage.

“Logistically, it’s difficult to get control back,” Malerba said.

Sometimes these situations are resolved simply by reaching out to the former employee. Other times it’s a matter of rooting out an old password from a shutdown email account. Still other times the parties can wind up in court.

“I’ve seen lawsuits over who owns the Twitter followers and the likes on Facebook,” Tabibi said.

Still, Malerba pointed out, there are industry-specific regulations to follow. That’s the case in the law field, where advertising disclaimers prevail; in health services where there are patient privacy laws; and in the financial industry where there are Securities and Exchange Commission restrictions on endorsements and testimonials.

Business owners should recognize the value associated with social media and protect themselves accordingly.

“Have employees sign a contract,” warned Jackie Harounian, a partner with the Great Neck-based law firm Wisselman, Harounian & Associates. Along with goodwill attached to an organization’s Facebook page, she noted, customer and email lists are part of the value of the company. “To be proactive, you should have it spelled out. If you leave, you can’t take that with you.”

Effective written social media policies comply with the law, and set forth the ground rules, making it clear that employees will be held accountable, and that the rules apply to everyone at the firm, no matter their position, according to Rubell.

But even something seemingly innocuous – such as a LinkedIn endorsement by a superior – can leave a company vulnerable.

“If a senior manager endorses someone who gets fired, this could wind up being an issue for the company,” Malerba said. “It’s almost a performance review on LinkedIn.”

That’s why when companies put policies in place they should speak with an attorney who can provide guidance on the National Labor Relations Act with regard to setting proce-



Photo by Bob Gigliano

**PEDRAM TABIBI: Some sue over Twitter followers and Facebook likes.**

dures for employee conduct.

Social media contests, which help companies build brand awareness, also require vigilance. Tabibi pointed to Esurance’s sweepstakes contest, which required posting on Twitter #EsuranceSweepstakes – a handle that complied with regulations so that the public knew the tweets “were part of a contest.”

In addition to federal and state regulations with regards to sweepstakes, “platforms have their own contest rules,” Rubell said. “Failure to follow requirements can lead to legal liability,” he added, noting that as a result, a company could be removed from a social media platform.

And as new platforms become popular, established ones change their policies, so be sure to keep current. But for those intimidated by the social media climate, take heart.

“Business leaders are overwhelmed by the number of platforms,” Granger noted. “They think they have to be everywhere. They don’t. They have to be where their clients and customers hang out.”

## 6 things businesses should know about social media

1. Implement a social media policy.
2. Determine who will have access to social media platforms, and monitor their use.
3. Consider “likes” and followers as valuable and protect them accordingly.
4. Think twice about permitting supervisors to post online endorsements of employees.
5. Keep current on contest rules before launching a sweepstake.
6. Get guidance on the National Labor Relations Act when establishing employee conduct procedures.