

## Five Takeaways: In the Trenches with Social Media

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Written by

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**Barry M. Benjamin**, partner in the New York office and chair of Kilpatrick Townsend's Advertising and Marketing group, was honored to present to the 2016 INTA (International Trademark Association) Leadership Meeting. Mr. Benjamin appeared on a panel with international legal practitioners, and their presentation was titled **"In the Trenches with Social Media."** The panel focused on a number of real-life based hypothetical challenges companies and brand owners face in the social media context, and the best ways for responding. Takeaways from the presentation include:

- The social media platform itself is often the most appropriate, fastest source for a resolution to a problematic social media post. Most, if not all, court systems around the world are simply not equipped to respond quickly enough to resolve issues associated with legally problematic social media posts. As such, lawyers advising clients in this area are well-advised to familiarize themselves before problems arise with complaint procedures for the most popular social media platforms.
- Problems can be made worse by addressing them. Marketers must be aware of the "Streisand Effect" which recognizes that attempts to take down or specifically address a problem may wind up bringing far more attention to the problem than if no action were taken in the first instance. It is wise to push back on clients demanding immediate action and ask whether problematic content posted on social media is truly harming the brand or the company, and whether the potential success of taking down the post is worth the potential spotlight, and far greater publicity for the problematic post, that may shine on the takedown request.
- When entering into settlement agreements with those who have posted problematic content on social media, attempts should be made to specifically address the remedies, tools, and penalties available to the company in the event of a breach of the terms of the settlement agreement. As indicated above, court systems are often not an appropriate venue for resolving a social media conflict as it can be slow and costly. A properly constructed settlement agreement may be the best tool by which to address problematic content.
- Former employees can often be a source of problems. Ensure when all employees start work – at the time they are most amenable – that they sign appropriate documents acknowledging the company's legal position and rights. Furthermore, for employees that operate a company's or brand's social media

accounts, ensure that the account credentials are held in the company's name and known to others, not just one employee who could be terminated and hold the account credentials hostage.

- Plan ahead. Having a social media resolution plan in advance of an issue can avoid a host of problems, both internal and external. High-level company executives who have not been involved with the team or thought through the various consequences of problematic social media posts may have unrealistic expectations of how difficult it may be to take down offensive posts. Additionally, categorizing the types of social media posts the company will expend resources responding to is an excellent way to make sure all company stakeholders' ideas and thoughts are aligned.

Social media engagement is an absolute necessity in today's always-connected, always-sharing environment. Yet social media platforms can be a minefield of problematic posts, potentially damaging opinions, infringing content, and uncontrollable consumer griping. Legal counsel overseeing a company's or brand's social media engagement efforts must ensure that all company executives are coordinated, and must be well-versed in the most effective ways to respond in the event of a problem. Being prepared by engaging in the trenches of social media before problems arise can ensure that your company does not get bogged down in costly and long-lasting battles when they do.