

Protecting your IP: Social media dos and don'ts



Erin R. Conway | Tuesday, November 9, 2021

Social media continues to offer an invaluable platform for brands to engage and expand their customer base. In these times, consumers are using social media more and more—particularly on their mobile devices—to stay informed, explore new products, and *shop*.

This rapt audience allows brands to provide authentic and of-the-moment communications to their customers, develop brand ethos and drive sales. But, even with all the benefits of social media, just one misstep on intellectual property can have significant repercussions.

In today's competitive marketplace, a strong intellectual property strategy—including one or more among patent, trademark, trade secret and/or copyright protection—can lay an important foundation for not only maintaining critical market share, but also generating corporate value in the near and long term.

Here are a few tips for how to properly and safely use — or not use — intellectual property on social media to avoid derailing these goals.

Prevent disclosure of proprietary information

Public disclosure of confidential or proprietary information — even inadvertent, like posting a picture on Instagram of an unreleased product or uploading an internal innovation presentation to a community site like SlideShare — could cause loss of IP rights, lost revenue and a potential breach of third-party confidentiality obligations. Trademarks should be federally registered prior to use in any advertising,

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particularly on social media, where dissemination can be rapid and widespread.

Copyists are out there and without proper protection, your branding could be a prime target of theft. Patents are only granted for inventions that are novel **and have not been previously disclosed to the public**. While the U.S. provides a one-year grace period to get a patent application on file once the invention has been publicly disclosed, best practice is to maintain absolute confidentiality of all innovations and internal R&D processes until an application is filed.

And it should go without saying, but if you want to protect something as a trade secret, don't post it on social media. It must remain a secret!

Ensure trademarks are used properly and consistently

If you've protected your branding through trademarks (and hopefully you have!), you can avoid losing or diminishing your trademark registration by following a few simple rules:

- **Avoid generic usage.** Don't use your trademark as a noun or a verb, in a pluralized or possessive form, or as the generic or common name of your products. For example, say "grab a Kleenex® brand tissue," not "grab a Kleenex."
- **Use proper markings.** Always use the "®" symbol if your mark is registered, or the "™" symbol if it isn't, and consider including a trademark notice on all packaging, brochures and websites to signal to others that the name, phrase or logo is your trademark.
- **Use your mark distinctively.** Use special type, script, capitalization, color, etc. to alert consumers and competitors that you are using your mark as an identifier of your products and services.
- **Use your trademark consistently.** If your trademark is registered, use it as set out in the registration—no additions or alterations of spelling or design.

Implement social media usage policies and training

Educating yourself, staff and partners on appropriate use of social media channels makes employees accountable for their use of social media, both at work and on their own time.

An internal social media policy helps ensure that all advertising and social media activity meets your company's branding and messaging standards and promotes the company's business activities, while also safeguarding valuable IP assets. Trademark usage guidelines should educate staff on the proper use of company trademarks, with clear examples or templates, and touch on all the points outlined above.

Consider developing a style guide or a simple brand standards "one-pager" that can be provided to internal staff and any third-party partners. A good social media policy should also strictly prohibit disclosure of proprietary and trade secret information in any advertising, and employees should be made aware of what types of information this includes. Establish official social media accounts, and regularly monitor them to ensure compliance with these policies and guidelines. Additionally, be sure to review all advertising developed by an outside advertising or public relations firm before it goes live to ensure proper trademark usage.

The prevalence and accessibility of social media present tremendous opportunity, along with some risk. Implementing clear policies and guidelines and educating staff and partners reduces the business and legal risks associated with misuse of social media.

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