IFA’s 45th Annual
LEGAL SYMPOSIUM
GETTING AHEAD OF THE CURVE: CONTROLLING THE RISK OF SOCIAL MEDIA

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Panelists:

Olivia Maria Baratta
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Elisa Edlund
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Mindy Golde
Vice President of Sales, Listen360
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Panelist Bios

Michael Daigle, Partner

- Cheng Cohen, LLC
- Chicago, IL
- Spent most of career in house with both business and legal responsibility - has run both franchise development programs (sale to open) and legal departments.
- Popeyes, Church’s Chicken, Blockbuster, Boston Market, Einstein Bagels, Barnie’s Coffee and Quiznos
- Returned to private practice 4 years ago with emphasis on international franchise and licensing transactions
Panelist Bios

Olivia Maria Baratta, Partner

- Kilpatrick, Townsend & Stockton LLP
- Atlanta, GA
- Practice areas: Trademark and IP law with focus on strategic brand management and protection, including domestic and international counseling, clearance, enforcement and infringement litigation. Represents several franchise clients in variety of industries, including QSR, automotive repair and maintenance services.
- Graduate of Duke University and Tulane Law School
Panelist Bios

Elisa Edlund, Staff Attorney

- International Dairy Queen, Inc.
- Minneapolis, MN
- Franchisor of the DQ® and Orange Julius® brands with more than 6,000 locations worldwide
- Focuses on advising Marketing, R&D and IT departments and on preparation of US and Canada disclosure documents
- Co-chair of Minneapolis chapter of the Women’s Franchise Network
- Previously worked in-house at Let’s Dish! International and NOVUS Franchising
Panelist Bios

Mindy Golde, Vice President of Sales

- Listen360 (formerly Systino)
- Alpharetta, GA
- Listen 360 is a customer feedback management solution for franchise brands
- Member of the IFA’s Women’s Franchise Committee and co-chair of the Atlanta chapter of the Women’s Franchise Network
- Frequent speaker on social media, helping audiences understand how to leverage online platforms to grow business and connect with customers
- Graduate of Xavier University
Focus of Discussion

• How do you and your franchisees address consumer complaints on social media?
• How do you control your franchisees’ use of social media?
• Once a franchisee is terminated, how do you take control of the franchisee’s social media sites?
The Preliminaries

• What is the social media universe?
• Why should we care?
• What unique risks does it present? Why do we need to get ahead of the curve?
CFO tweets himself out of a job

“We are disappointed by this situation but we expect our executives to comply with all Company policies,” [the company’s] Chairman said in a statement.

The communications in question may have pertained to [his] Twitter account. On March 7, for example, five days before the company released earnings, [he] tweeted: “Board meeting. Good numbers = Happy Board.”
Risks

• “What Happens in Vegas Stays in Vegas” Doesn’t Apply
• Rogue Posts and Hijacked Accounts
• Loss of Trademark Rights (aka, Oops, There Goes Your Brand)
• Potential Tort Liability
• Federal Trade Commission Violations
The Discussion

How should franchisors and franchisees address consumer complaints on social media?
Addressing Consumer Complaints

Excerpt From Sample Social Media Policy

Tips to keep in mind when/if responding:

• Acknowledge the issue addressed in the entry - whether positive or negative.
• Be sincere: Regardless of the entry, most of the time, customers simply want to have a voice. Apologize for the customer’s inconvenience and frustration and accept responsibility (if applicable).
• Offer a solution: Offer a clear solution on how the customer can address their issue, if applicable.

Unless the entry is old, contains spam or is vulgar, most entries should be acknowledged and responded to. Most of the time, customers simply want a channel to voice their opinion. The majority of people who post on review sites won’t follow up, but by proactively addressing their entries, you build your business reputation and others will be more likely to visit.
Addressing Consumer Complaints

Excerpt From Sample Social Media Policy

Q: Someone left a negative comment on our Facebook page/Twitter/YouTube video!

A: Don’t panic! Assess the comment to understand whether or not it has merit. If the commenter has a legitimate complaint, use this as an opportunity to publically acknowledge the comment and thank them for the feedback that will allow you to improve your business. If the negative comment requires a conversation with the author to address the situation, post your email address in the Comments of the post so they can contact you and it takes the conversation off-line. When your other fans see the comment it will show that you have good customer service on Facebook since you are actively addressing the situation.

There will always be people that leave comments who are beyond appeasing and will not be reasonable. In these cases, the right move may be to simply move on, and not argue back and forth, adding more fuel to the fire. Another thing to remember is that if a visitor sees 10 comments on your page, and nine of them are positive, they are less likely to put any stock in that sole negative review. If someone posts an offensive or profane comment on your page, you do have the option to remove it – no one should have to be subjected to foul language.
The Discussion

How do franchisors control their franchisees’ use of social media?
Controlling Risks

• Educate Employees and Franchisees
• Provide Content for Franchisees
• Monitor and Take Action With Respect to Copyright Infringement
• Comply with Rules of Social Media Sites
• Comply and Require Compliance With All Applicable Laws
• Adopt, Monitor Compliance With, and Enforce Social Media Policies
Controlling Risks

Excerpts from Sample Social Media Policies
Sample Policy Provisions

Respect private matters. For your location, social media should be used to connect with customers so you can communicate about what’s happening at your franchised location. It should not be used to discuss the following:

- Proprietary information (company financials, internal systems, new products, etc.)
- Corporate dealings
- Vendor information (w/o permission from the corporate office)
Sample Policy Provisions

**Do not speak for the company.** All messaging done on behalf of the company should be driven by our senior management team or our communications team ONLY. With the exception of questions directed to a specific franchise owner about his/her own franchise, all social media communication regarding the brand should be directed to the corporate office. Additionally, it’s important to remember that while your social media accounts are specific to your franchised location, they still represent the brand as a whole. Therefore, any products or services you may be offering outside of the brand that are not approved partners should not be promoted on your sites.
Sample Policy Provisions

Facebook Page: The company does not allow individual franchised Facebook pages. Your location has been claimed by the company, and photos, updates, etc., should be shared there. To find your location, visit the company Facebook page and click ‘Locations.’

Twitter: Rather than creating an account for your franchised location, we encourage individuals to create a personal account and join our effort by following the company and retweeting to help spread the word. You should not have a separate Twitter account for your franchised location.

Foursquare Venues: The company automatically claims and maintains all Foursquare venues to ensure consistency across the system, so you do not need to do this locally.

Google Latitude: The company automatically claims and maintains all Google Places and Latitude accounts to ensure consistency across the system, so you do not need to do this locally.

YouTube: We have created a channel on YouTube to house all brand-related video content. There is no action required by you other than to be sure your staff is aware of the corporate YouTube channel.
Sample Policy Provisions

• Any complaints about the brand on social media channels should not be addressed. The brand’s corporate pages are monitored regularly, and responses are handled internally.
Once a franchisee is terminated, how does the franchisor take control of the franchisee’s social media sites?
Taking Control After Termination

- Adopt Strong Contractual Provisions in Franchise Agreements
- Require Discontinuance and Assignments at End of Term
TAKE AWAYS & QUESTIONS