



## Developing a Social Media Policy

**As little as five years ago, you may have snorted at the suggestion that social media would be important for your business.**

**“Facespace...bah! What moron spends his days on that nonsense?” Today, many of your employees regularly use social media during work hours, probably at your urging.**

With the benefits of social media come pitfalls. As the law begins to catch up with technology, social media use has led to lawsuits. For example, singer Courtney Love was involved in one of the first Twitter defamation suits by a fashion designer whom Ms. Love savaged in some tweets. And social media use has spawned employment lawsuits. For instance, in a class action suit filed against the Chicago Police Department, officers are demanding overtime backpay after being issued mobile devices because they were required to respond to messages while

off-duty without being compensated for their time.

Because of the fast-changing technology and legal issues, you should react by implementing a policy by which you communicate guidelines to control the social media activities of your employees. Your employees are probably regularly using social media sites such as Facebook, Twitter, LinkedIn, and many others during work hours, often for business purposes. You should understand the potential legal issues associated with social media sites and should design a policy that will help your dealership avoid those problems.

### Step 1: Know the Issues

Using social media is like any other social interaction, except content that is put online is recorded forever in cyberspace. It is this “forever-ness” quality of the internet that makes it a potential legal hotbed. The following is a list of common legal issues:

- ☀ **Defamation** – posting false facts about a competitor or another individual

- ☀ **Privacy Violations** – putting private information on the Internet, especially non-public personal information of customers

- ☀ **Interference with Business Relations** – making false claims designed to drive a competitors’ business away

- ☀ **Trademark and Copyright Infringement** – Improperly copying and pasting another’s work or confusing customers about a brand

- ☀ **Negligence** – assuming a duty online and not following through

- ☀ **Breach of Contract** – as a result of an unintended agreement

- ☀ **Sexual Harassment/Discrimination** – unwanted or harassing postings

- ☀ **Unlawful compensation** – employees not paid for mandatory use after work hours

*See Media Policy, Continued on page 2*

### Step 2: Develop a philosophy.

Even if you think that you want to prohibit employees visiting social media sites at work, the genie is out of the bottle. Your employees are on social media sites during work hours. But you should use your employees' activities on these sites to the benefit of the dealership because that's where buyers are today. This makes it all the more necessary to employ controls and manage risk.

Develop a clear philosophy about internet use. How much will you allow employees to engage in social networking? Will your rules be strict or liberal? Do you currently or are you planning to have a legitimate business use for social media, such as a dealership Facebook page, Twitter site or company blog?

### Step 3: Implement a Social Media Policy

Once you have established your philosophy, your next step is to design and implement your policy. It should address both your employees' private use of social media, as well as business-related uses. Think about addressing these issues.

#### 1. Require professionalism.

Counsel employees on what is appropriate, how to use better judgment, and, if in doubt, to consult a manager. Tell employees that they will be personally liable for commentary that is considered defamatory, obscene, proprietary or libelous. Tell them to avoid objectionable and harassing topics.

#### 2. Tie in with existing policies.

If you have existing policies, codes of ethics, or behavioral guidelines, tie them into your social media policy. State that any policies already implemented in your workplace (e.g. anti-harassment, professional conduct, protecting trade secrets) are similarly applicable in the context of social media.

#### 3. Put controls on dealer-hosted social media.

Many dealerships incorporate social media into their businesses, usually as a marketing tool. Make sure employees use the same level of professionalism,

customer service and follow-up procedures as they would in any other business interaction. Tell employees that ALL content posted to any dealership site MUST relate to dealership business. Indicate that the dealership reserves the right to request that certain subjects be avoided, to withdraw certain posts, and to remove inappropriate comments

#### 4. Don't waste opportunities.

Social media can be extremely lucrative for your business, but only if it is used systematically and with a focused business purpose. Put a manager in control to keep track of content. If your dealership has a site that requires constant updating, such as a Twitter page, make sure that this is done regularly. Be sure to establish procedures for dealing with leads from your social media sites and that your employees follow up. A customer who "tweets" or "pokes" is accustomed to instant communication. The customer will not wait hours, let alone days, for a response.

#### 5. State clearly what employees CANNOT post.

Whether in an employee's personal post or on a business-related post, the following should be prohibited.

☀ Dealer proprietary information (i.e. anything financial in nature, business secrets, internal information, etc.)

☀ Copyrighted information; Internet postings must respect intellectual property laws. Employees should never cut-and-paste content

☀ Trademarks or Logos (without express permission)

☀ Customer Information

☀ Photographs of customers or vehicles (without express permission from the customer and the dealer)

☀ No Spamming

#### 6. Competitors.

Make sure that employees know that they should NEVER discuss competitors. If a competitor's name comes up, use the opportunity to sell your dealership.

#### 7. In non-business postings where the dealership is mentioned, leave no doubt who

#### the employee is and the relationship to the dealership.

Require that an employee identify himself or herself by name. Prohibit postings about the dealership under an alias. Do not permit postings about the dealership unless they are approved by management, they are consistent with the dealership's positive image, and the employment status of the poster is revealed.

#### 8. Employment information on social networking profiles.

Your employees may indicate that they are employees of your dealership on their personal profiles. Remind them that if they identify themselves as employees they must ensure that the contents of their profiles are consistent with how they wish to represent themselves professionally. Similarly, as business networking sites such as LinkedIn gain popularity, you should put controls on profiles that mention your dealership. If your dealership recommends or requires that employees have a LinkedIn page, consider creating a template or model profile to which employee profiles must conform. You should require company approval when the employee is posting about the company and the industry.

#### 9. Indicate that after hours participation is optional.

State that your dealership is not requiring or encouraging that employees contribute to dealer-hosted social media outside of their regular work schedule. State that any activities after work hours on social media platforms are the result of their own choice and on their own free time.

#### 10. Give your policy teeth.

Have employees acknowledge and sign the policy. Tell them that they do not have an expectation of privacy while using the internet at work and that their postings may be reviewed. Take disciplinary action, if necessary. Violations should have consequences.

Above all, regularly monitor social media use and remind employees that internet postings last forever.

# Is it Time to Sell Your Dealership?

**The auto business is improving. And dealers once again seem bullish. If you have been thinking about selling your dealership, but up to now it just hasn't been the right time, now may be.**

Selling your dealership is not something you decide to do one evening and announce to the world the next day. Maximizing the sales price for your dealership while protecting it through the process requires a substantial amount of work. If you have been thinking about selling, here are some steps you should take.



## **What are your expectations?**

You should not enter the process without understanding the goals you wish to achieve in the buy/sell process. Normally any seller's goal is to walk away with as much cash as possible. But you may have others.

## **Develop pro forma financials.**

The only way for you to understand what you will have after the closing (the final step where you are paid and the keys to the dealership are turned over) and after taking care of all liabilities is to do a pro forma

analysis. Work with your accountant or controller to create a set of calculations of net proceeds from various hoped-for and expected selling prices. This is the time to be brutally honest and do a realistic analysis using the best estimate about the funds that will be coming in at closing and the funds that will have to go out at and after closing. This will help you develop your bottom-line selling price.

**Reductions from the proceeds must be fully taken into account, such as LIFO recapture, taxes, chargebacks, and other costs to settle claims and wind down the business.**

**You cannot do an accurate pro forma**

**analysis unless there is a candid assessment of the assets you are selling.**

What is a realistic goodwill range for dealerships of your brand and how do factors such as your location and past performance affect that? If you are selling the real estate, what is its fair market value? If you are leasing it, what is a fair rental? Do your new cars have damage or excess mileage? Do you have obsolete or otherwise unreturnable parts in inventory? Do you have overaged used cars with unrealized losses? A blunt assessment must be done so that realistic assumptions about what the sale will yield can be used.

**Take a hard look at the assets you will be selling.**

## **CHARAPP & WEISS, LLP**

8300 Greensboro Dr.  
Suite 200  
McLean, VA 22102  
Tel: 703.564.0220 Fax: 703.564.0221  
www.cwattorneys.com

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*See Time, Continued on page 4*

Is your facility clean and well cared for? How about your lot outside? What is the condition of your fixed assets? Inspect your facilities and equipment with a buyer's eyes. Clean up and do necessary repairs.

**Have an environmental inspection done before you even start the process.**

Sources of mortgage financing on real estate for a buyer are easily spooked by environmental issues. Their concerns will lead to buyer concerns. If you have not had an environmental assessment of your property done, do it before you put the dealership up for sale. If you've had one done, have it updated. Know where you may have issues. Remedy them. Sometimes this involves simple clean-up and disposal. There may be insurance coverage or there may be funds available from state remediation programs to solve more serious environmental problems.

**Investigate the contracts to be assigned.**

If you are going to ask a buyer to accept assignment of various leases and contracts such as a storage lot lease, a computer system lease, an environmental services contract and the like, you must do that before the buy/sell contract is signed. Once the buyer agrees and has provided for assumption of these liabilities in the contract it is bound to take assignment at closing. But if you do a contract without providing for this, you run the risk of going to closing having enormous liabilities outstanding with you at the mercy of the buyer. That will clearly cost

you. Before you start the buy/sell process, review your monthly payables. Identify who you are paying on a regular basis. Pull any contracts underlying the payments and determine when they expire and whether you want the buyer to accept them as part of the transaction.

**Know the issues that are likely to be raised by your franchisor.**

If the factory wants more showroom space, or image upgrades, or any number of other commitments, you can be sure that it will demand those and more from a buyer. You don't want to get involved with a buyer, ink a deal, and then find out that the manufacturer's requirements are unpalatable for the buyer. Once you begin negotiations with a buyer, you will want to disclose what the manufacturer has asked you to do prior to execution of the buy/sell agreement. Make sure that the buyer is prepared to be flexible to work with the manufacturer to come to an agreement.

**Prepare a descriptive package, regardless of who you expect the buyer to be.**

It should include information about your location, facilities, and operations. Include financials, pro forma financials that add back expenses that new owner won't experience, and other important materials that tell your story. This will allow you to take control of the process. Sell your dealership like you'd sell a car. Explain the benefits, disclose any problems, and give operational information, pro

formas and an analysis that put your performance in the best light.

**Do not release a package without a confidentiality agreement.**

Confidentiality agreements prior to execution of the buy/sell contract are generally observed. You don't want the world to know your dealership is for sale. A buyer does not want other potential bidders to know of the availability of your store. A sound confidentiality agreement requires the buyer to acknowledge that certain information is confidential, including the fact that your dealership is for sale.

**Develop a list of those to contact who may be interested in your store.**

The best buyers are strategic buyers, those who have a particular interest in your store such as a neighboring dealer or dealer group that has other stores in the area. Others to consider are those who have expressed interest to you over the years and dealer groups including public companies.

**Retain an attorney early.**

An attorney experienced in dealership buy/sells can help you prepare a confidentiality agreement and your disclosure materials putting your business in its best light, assist you in developing your "ask", help you structure and negotiate the deal, develop a solid buy/sell agreement, and work with you to get the deal to closing.