

Social Networking Websites and Blogs: New Dimension in Due Diligence Inquiries



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A March 29, 2007, article published in *The Plain Dealer* details a recent college graduate applicant who withdrew his employment application due to pictures on his MySpace page. Researchers found what “looked like a 32-ounce glass of beer in his hands” and commentary on “how smashed he got at a recent party and references to the fact that they were smoking marijuana at the party.” A May 29, 2007, article in *The Boston Globe* details an applicant at a consulting firm having a MySpace page with pictures of the applicant Jell-O-wrestling. As one employer is quoted as saying in this article, “When you’re comparing two or three people, everything matters.” Countless other media articles discuss similar experiences encountered by recent college graduates due to compromising pictures and comments posted on social networking websites. Information or pictures of activities unrelated to an employer can have a negative effect on a company by linking that company with activities counter to its company culture and the reputation that it strives to maintain.

The review of Internet profiles should not be limited to entry-level or recent college graduates. More seasoned employees, including senior executives, have been known to maintain Internet profiles that may be considered damaging to a company’s reputation or counter to its company culture. In August 2005, it was reported that the Automobile Club of Southern California fired 27 employees at one of its San Diego offices after receiving complaints from other employees about feeling harassed by comments written by the fired employees on MySpace. The comments apparently concerned weight and sexual orientation of certain employees of the Automobile Club of Southern California. Published discrimination by employees of an entity can result in a negative reputation for that organization in addition to possible litigation for the type of work environment the entity fosters.

In addition to Internet profiles containing damaging reputational information, these profiles can also contain proprietary information. In January 2005, Mark Jen, a former Microsoft and IBM employee, was hired by Google and began recording his impressions of his new employer, including criticism, in his blog, Ninetyninezeros. Eleven days after being hired by Google, Jen was fired for his blogging activity. Some media and Internet sources claim that Jen was fired for distributing Google trade secrets; however, Jen has stated that he only blogged about Google’s new employee orientation procedure and removed the inappropriate content before he was fired. Some Internet references allege that Jen complained that Google’s health plan was less than generous and that the free food offer at Google was merely an enticement to work past dinner time. In 2003, Microsoft Corporation contractor Michael Hanscom was fired after posting pictures online of computers from Microsoft’s rival Apple arriving at a Microsoft loading dock. Microsoft claimed that since Hanscom described a building in his online posting, he violated security. In early 2005, Apple, Inc. accused three online publications—Appleinsider.com, Powerpage.org, and ThinkSecret.com—of revealing confidential information about certain Apple products. Apple filed lawsuits seeking to obtain the identity of the sources used by the three online publications to learn if any of the sources were Apple employees. Employers need to be cognizant of the type of information their employees, as well as others, are writing on Internet blogs and other social networking websites. These blogs and social networking websites are for the most part available on the Internet for anyone to view and read. Thus, employees (current and potential), as well as competitors, investors, and media outlets will have access to the information posted on these websites.

In July 2005, the *New York Sun* reported that Nadine Haobsh, an associate beauty editor at *Ladies’ Home Journal*, was fired after it was discovered that she was the author of an anonymous blog called Jolie. *Ladies’ Home Journal* claimed that Haobsh blogged about trade secrets, but Haobsh claimed that she only discussed

issues known to all industry insiders. For example, when discussing the many gifts from beauty companies that her boss received on a daily basis, Haobsh wrote, “[She] regularly gets Marc Jacobs wallets and coats, plane ticket vouchers, iPods, overnight stays at the Mandarin Oriental, yearlong memberships...”. In addition to *Ladies’ Home Journal’s* firing Haobsh, the magazine *Seventeen* rescinded an employment offer to Haobsh after learning of the blog. The type of information posted online by Haobsh was more than likely not known to those outside of the industry. Thus, entities or individuals interested in entering into business deals in unfamiliar industries may find these types of online postings useful when evaluating all aspects of a company.

As apparent from the above example, reviewing an individual’s Internet profile can be difficult, as many individuals maintain profiles or blogs under pseudonyms. Recently, it was made public that John Mackey, the CEO of Whole Foods Market, Inc. and frequent blogger on Whole Foods’ corporate website, made online postings as “Rahodeb” on the stock market forums of Yahoo Finance for about eight years until mid-2006. According to the *Wall Street Journal*, Mackey criticized Wild Oats, an entity Whole Foods was then attempting to purchase, in a January 2005 posting and also was critical of its former CEO. According to Associated Press Newswires articles (July 16, 2007), the Securities and Exchange Commission began an inquiry into whether Mackey violated securities laws with these online postings. Whole Foods Market’s stock price was down 1.63 percent on the same day as the regulatory inquiries were announced.

Another famous pseudonym blogger is Jessica Cutler. In 2004, Cutler was a 24-year-old mailroom clerk working in Washington, D.C. for Senator Mike DeWine when she was fired for using Senate computers to post her Internet blog / online diary under the name “Washingtonienne.” This blog chronicled her sexual relationship with six different men in Washington, including government officials who reportedly gave her money for sexual services. Cutler had been posting the anonymous blog to amuse herself and her closest girlfriends when the blog was published by *Wonkette*, a popular online gossip column that was read by some of the men referenced in Cutler’s blog.

Companies should consider monitoring the blogging activity of employees, especially when they are using company computers, as well as online postings for the type of information that is being reported about the company. As noted in the above examples, some of this information can be proprietary or confidential. The untimely release of confidential corporate information can have significant adverse consequences, both legal and financial. In November 2006, intellectual property attorney Ilan Barzilay stated on ipfrontline.com, “If an overenthusiastic employee inadvertently discloses a company trade secret on his or her blog, the company loses its rights forever. Any competitor can now legally use your former secret.”

Social networking websites and blogs can provide an Internet profile of an individual and useful knowledge about a company when conducting due diligence or pre-employment inquiries. Employers should be cognizant of the type of information contained on Internet profiles, which may include information deemed unprofessional or unethical. This questionable online behavior can also have a negative impact on a company’s reputation, contain proprietary information, or even result in costly litigation.



For more information, call, email or visit us online.

877.230.9082

edd-contactus@kroll.com

www.kroll.com