



Clapp Business Law, LLC

## TOP 15 CONSIDERATIONS IN DEVELOPING A SOCIAL MEDIA POLICY FOR A FRANCHISE SYSTEM

As the information age continues to progress, increasingly more advertising occurs and customer loyalty is built through the use of social media and an online presence. The increase in online social media activity is both a blessing and a challenge to Franchisors. Franchisees and Franchisors are able to quickly communicate specials and news concerning the brand, which often increases consumer loyalty, but negative reviews or issues in a particular location can spread quickly to cause damage to the entire system. There are also many laws and regulations that can be implicated by improper use of social media. Accordingly, Franchisors who are looking to protect the brand and its national, and sometimes global, image and reputation often struggle with how much freedom to allow franchisees with respect to social media.

Many franchisors restrict franchisee use of social media and handle social media at the Franchisor level or require Franchisees to contract with a third party social media company vetted by the Franchisor. These restrictions provide the franchisor with more assurance that laws and regulations are being followed, but the restrictions may not fit with the culture of many brands. Franchisees located in the geographic area of the franchise location are likely to know and understand the things happening in the community, and prohibiting their use of the brand on social media can result in missed opportunities for connection with consumers.

For Franchisors who choose to allow franchisees to participate in social media, we recommend that the Franchisors put together a comprehensive social media policy. There is no one size fits all approach, but in developing your

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policy, we encourage you to discuss with your legal counsel the following Top 15 Considerations in Developing a Franchise System Social Media Policy:

1. Consider restricting use of social media or other online accounts using the brand until approved by the Franchisor (Have a signed agreement for Franchisee use of the brand on all social media sites including but not limited to Facebook, Twitter, Pinterest, Instagram).

2. Consider requiring that the Franchisor have administrative access to and passwords for all social media or other online accounts using the brand. (This allows the Franchisor the ability to take action when a crisis arises with respect to a particular Franchisee or geographic location. Remind Franchisees that passwords should be unique and not the same as any other personal passwords).

3. Consider ensuring that you, the Franchisor, have person(s) on staff to periodically monitor Franchisee social media sites and online brand presence. (If you don't know what is happening, you cannot protect the brand).

4. Consider specifying that use of the brand on social media be considered "advertising" subject to the Franchisor's advertising policy (i.e. use of the brand/logo should be approved by the Franchisor, advertising must be truthful, etc.).

5. Consider requiring Franchisees using social media to commit to regular updates and use of the accounts (Stale accounts can cause more harm than no account. What makes sense for your system?).

6. All postings must be true and not defame or libel any person or company.

7. Franchisees using social media must be trained in the proper responses to negative reviews or comments posted: (Quick response, polite response, non-argumentative, offers to discuss with the complainant off-line, Knowing when to contact the Franchisor).

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8. Consider prohibiting using the name or marks of a competitor or any other company in any post.

9. Prohibit threats of any kind online (including nonviolent threats).

10. Prohibit fabricated reviews or astroturfing.

11. Consider restricting reviews of the brand's products or services or of the Franchise location, directly or indirectly, by any employee, agent or insider of the Franchisee or Franchisor. At a minimum, require any employee, agent or insider of the Franchisee or Franchisor to identify him/herself and his/her connection with the Franchisee/Franchisor before making any postings discussing the brand, the location, or the brand's products or services. Caution must be exercised in drafting the restrictions related to employees to ensure that the policies do not unlawfully prohibit collective bargaining rights of employees.

12. Ensure that the social media policy is properly communicated to employees of the Franchisee.

13. Consider requiring any online or social media contests be pre-approved by the Franchisor.

14. Consider requiring that SEO companies be approved vendors. (The SEO companies should be reputable and provide assurances that they are following the FTC and state rules for ethical advertising and will comply with the Franchisor's policies).

15. Prohibit offering free goods, services, gifts, gift cards, promotional items, or anything of monetary value to social media influencers without first reminding the influencer to disclose the gift in connection with any postings.

If you need assistance in developing a social media policy for your franchise system, please contact us.

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