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Labor & Employment

Facebook Fan Page Manager Didn't Own Over 6 Million Likes on Site, Court Holds

The manager of a TV show's unofficial Facebook fan page didn't own the over six million likes on the page, the U.S. District Court for the Southern District of Florida held Aug. 20 (*Mattocks v. Black Entm't Television LLC*, 2014 BL 231994, S.D. Fla., No. 0:13-cv-61582-JIC, 8/20/14).

Peter M. Brody, a partner with Ropes & Gray LLP in Washington, told Bloomberg BNA Aug. 27 that the case showed a need for companies to address clearly in any agreement involving the management of a Facebook brand page what will happen if the employment relationship is severed.

In the matter before the court, plaintiff Stacey Mattocks ran a popular unofficial Facebook fan page about the TV show "The Game." Starting in 2010, Black Entertainment Television LLC paid Mattocks to work part time on the fan page and gave her exclusive content from the show to use on the page. The number of likes on the Facebook fan page grew from around 2 million to over 6 million while she worked part time for BET, Judge James I. Cohn wrote.

BET and Mattock entered an agreement in 2011 that required the network not to remove Mattock's administrative rights to the fan page and Mattock not to deny BET access to the site. The court said that during negotiations to make Mattock a full-time employee, she told BET that she was removing its access to the fan page until negotiations were final.

The court said that BET responded by asking Facebook to move the 6 million likes on Mattock's fan page to its official TV series page. The court said Facebook "migrated" the likes to the official page and shut down Mattock's page. A separate Twitter account that Mattock used to promote "The Game" was shut down, as well.

Ownership of Social Connections. Philip L. Gordon, a shareholder with Littler Mendelson P.C. in Denver, told Bloomberg BNA Aug. 27 that in addressing ownership of a social media account, "employers should consider providing full administrative rights to at least two employees, so that if one employee is discharged, the employer can continue to access the company-sponsored site through the other employee's log-in credentials." Otherwise, Gordon said, a terminated employee may try to hold a social media account "hostage," as he said Mattocks apparently tried to do in this case.

Gordon said the case was "somewhat unusual because Facebook stepped in to effectively resolve the dispute." He said that in cases he had encountered, "the social media site has not been willing to step and remove a terminated employee's administrative rights."

Brody said other cases that highlighted the need to address what happened with social media accounts when an employee no longer works for the company included *PhoneDog v. Kravitz*, No. 3:11-cv-03474-MEJ (N.D. Cal. settlement announced Dec. 3, 2012) (*see related article*), and *Eagle v. Morgan*, No. 2:11-cv-04303, 2013 BL 65986 (E.D. Pa. Mar. 12, 2013) (*see related article*).

PhoneDog involved a dispute over whether a company or its former employee owned a Twitter account and its 17,000 followers. The settlement in the case provided the former employee with the Twitter account.

In *Eagle*, a company's ousted president sued her former employee over ownership of her LinkedIn account. The U.S. District Court for the Eastern District of Pennsylvania held in March 2013 that the company violated the law when it briefly retained ownership of the account, but it awarded the ousted president \$0 in damages.

Court: Facebook Users Own Likes. The court in this case grounded its ruling in the fact that Facebook users control whether they have liked a page. "Any Facebook user who 'likes' a specific Page or posted content remains in control of his or her 'like' at all times and is free to 'unlike' the Page or content by clicking an 'unlike' button provided by Facebook," the court said. Because users can unlike a page, the court ruled that "if anyone can be deemed to own the 'likes' on a Page, it is the individual users responsible for them."

The court referenced *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013) (*see related article*), which held that a public employee's decision to like a campaign page was speech protected by the First Amendment.

Brody said he found it "problematic" that the court rested its ruling on the fact that users can unlike a Facebook fan page. He said a company's subscriber list can be protected under trade secrets law, even though a subscriber usually can end its relationship with a company.

The likes in this case, however, wouldn't be protected by trade secrets law because they are public, Brody said. He added that Mattocks also couldn't obtain protection because of the amount of work she engaged in growing the page's number of fans. Courts haven't provided protections solely because of a "sweat of the brow" argument, he said.

No Breach of Agreement. The court denied the plaintiff's claims that BET breached the letter agreement Mattocks had with the company and breached its duty of good faith and fair dealing.

It ruled that Mattocks couldn't bring a breach of contract case against BET when she already had breached their letter agreement by denying the network full administrative access to the fan page. The court also denied her claim that BET owed her notification of a breach and a chance to cure it because of the duty of good faith and fair dealing. That implied covenant, the court said, can't be used to add an obligation to a contract that the parties didn't negotiate.

The court also rejected the plaintiff's claims that BET tortiously interfered with her contractual relationships with Facebook and Twitter. It said that Florida law required BET to be a "stranger to the business relationship" for such a claim to proceed.

The court said the record "shows conclusively" that BET wasn't a stranger to Mattocks's user agreements with Facebook and Twitter. The network exercised control over content she posted, and BET had an economic interest in how the TV show was promoted online.

Adam Scott Goldman, Peter Glen Herman and Alexander Daniel Brown, of Tripp Scott, P.A. in Fort Lauderdale, Fla., represented Mattocks. Erica Ross and Luke C. Platzer, of Jenner & Block, LLP in Washington, and Susan Kohlmann, of Jenner's New York office, and Karen Linda Stetson, of GrayRobinson P.A. in Miami, represented BET.

By MICHAEL LOATMAN

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