

Client Alert

Intellectual Property Group

March 2012

New Social Media Site Can Pose Significant Intellectual Property Issues

The new social media website known as Pinterest has exploded in popularity in recent months. On the Pinterest site, users can “pin” images found on the Internet to their “Pinboards.” Pinterest describes itself as a “virtual pinboard” that allows a user to “organize and share all the beautiful things” the user finds on the web. According to Pinterest, “[p]eople use pinboards to plan their weddings, decorate their homes, and share their favorite recipes.” The Pinterest site is becoming much more than a location where individuals can plan weddings or decorate homes, however, and is now being used by companies as a promotional and social networking tool. This type of commercial use of Pinterest carries with it a number of potential legal pitfalls. In addition, companies can find their own intellectual property being used without their consent in the Pinboards of others.

Many companies are now using Pinterest to set up their own Pinboards to “pin” images they find on the Internet to share with their customers. For example, a fashion company may create a Pinboard containing various types of “inspiration” for its new seasonal line, combining photographs of its new products together with photographs of people, places or things that inspired the line. Another example may be a food company that uses the Pinterest site to create a Pinboard featuring recipes mixed together with photographs of exotic locations that relate to the ingredients in the recipes. Companies can also use Pinterest to ask their customers to create Pinboards that can be used in connection with company-sponsored contests or other promotions. As with Facebook, Twitter and other social media sites, there are countless ways that Pinterest can be used for virtually any business.

From an intellectual property perspective, the main areas of concern for any company using Pinterest are copyright, trademark and the right of privacy/right of publicity. Regarding copyright, if a company creates a Pinboard and “pins” photographs from the Internet that were taken by others, the company could infringe the copyright of the owner of the photographs or of copyrighted works depicted within the photographs. Also, if the company “pins” a photograph that depicts a trademark or logo of another company, a claim for trademark infringement could be made. Finally, the company could also be liable for the unauthorized use of someone’s image (whether a celebrity or private person) in connection with the company’s Pinboard.

As far as their own intellectual property is concerned, companies should also be concerned that images from their own websites may end up on another’s Pinboard. Pinterest does have a means by which a company can block its images from being “pinned” by a Pinterest user, but if a company does not use this, it could find that its images are being used in ways that damage the image of the brand or in other objectionable ways.

Pinterest and other social media sites have become very valuable and cost-effective means of reaching customers and potential customers. However, given the informal nature of these sites and the ease by which they can be updated and used, companies often forget that most of the same laws and restrictions that apply to traditional advertising and promotion also

apply to these new social media platforms. Companies concerned about the unauthorized use of their images should block such use on Pinterest. Any company thinking of setting up its own Pinterest Pinboard or encouraging its customers to use Pinterest for company promotions or contests must consider all of the potential intellectual property implications before doing so.

If you would like to discuss the client alert or any matter regarding your company's advertising and promotional or intellectual property policies and procedures, please contact the Olshan attorney with whom you regularly work or the attorney listed below.

Mary L. Grieco
mgrieco@olshanlaw.com
212.451.2389

This publication is issued by Olshan Grundman Frome Rosenzweig & Wolosky LLP for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. To ensure compliance with requirements imposed by the IRS, we inform you that unless specifically indicated otherwise, any tax advice contained in this publication was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein. In some jurisdictions, this publication may be considered attorney advertising.

Copyright © 2012 Olshan Grundman Frome Rosenzweig & Wolosky LLP. All Rights Reserved.