



## 5 Legal Considerations for Your Social Media Campaign

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Most companies enjoy the benefits of having a social media presence, but not every company also appreciates the legal risks that can lurk there. Companies have run into legal problems, and been forced to defend their social media campaigns in public, in front of regulators or in courts.

All of this, however, can be mediated with a little knowledge and forethought. Although each social media campaign should be evaluated individually, there are at least five legal considerations every company should note.

### 1. Be Transparent

It would be great if your customers spontaneously started to praise your product via social media, but that won't always happen on its own. Sometimes, you need to get things started yourself. It's OK to do that, but you need to ensure you do so in a transparent manner so that people know the content is coming from the company and not from consumers. There have been a number of cases in which companies have gotten in trouble when their employees posed as ordinary consumers and praised the company online. For example, in the past year, the Federal Trade Commission (FTC) has entered into settlements with two companies that faked consumer reviews.

The same advice goes if you use bloggers to promote your products. The FTC's guidelines for endorsements state that if there is a "material connection" between an advertiser and an endorser, the endorser must disclose that connection. If you pay a blogger, give a blogger free samples or provide other benefits to the blogger, the blogger may need to disclose that in his or her posts.

The onus doesn't just lie with the blogger. The FTC has investigated companies whose bloggers failed to make the proper disclosure and has made it clear that the companies themselves can be held liable if bloggers fail to comply. It pays to establish guidelines for your bloggers.

### 2. Don't Invite Problems

One of the scariest aspects of social media is that companies can get in trouble for what consumers do in the context of a company's social media campaign, even if a company didn't authorize it. For example, over the past few years, companies have been sued over content that

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consumers posted on their sites when that content allegedly violated someone's copyrights, included false claims or contained defamatory statements. Fortunately, courts have generally held that companies are not liable for problematic content posted by consumers.

But those rulings don't mean blanket immunity. Courts have also determined that companies can be liable if they play a role in developing the problematic content. For example, when [Quiznos was sued](#) over content posted by consumers on its website, a court held that a jury would have to examine what Quiznos did to solicit the content and decide whether the company stepped over the line.

Be careful not to invite problems and consider providing clear guidelines about what consumers can and cannot do. Some of the laws that offer you protection also dictate what you must do to enjoy that protection, so be sure to check with your legal team.

### 3. Remember That Laws Apply

There is a tendency to think that because social media is so casual and campaigns can be launched so quickly, the laws that govern "traditional" media campaigns don't apply in the social media space. Not so. Facebook sweepstakes are usually governed by sweepstakes law spread out across all 50 states. This can dictate how you structure the sweepstakes, what disclosures you need to make and whether you need to register with regulators before you launch.

Keep in mind that the platform you use for your campaign may also have its own rules. For example, [Facebook](#) has issued [promotions guidelines](#) that apply to a variety of promotions on its platform.

### 4. Keep Some Control

It's axiomatic that the more control you turn over to consumers, the less control you have. It's possible that your consumers always play nice and do what you like, but that's not always the case. Imagine, for example, that you run a contest in which you ask consumers to name your newest product and that the winner will be selected entirely by public vote.

What are you going to do when the consumer whose entry you hate the most manages to rally all of his friends to vote day and night? If you turn over complete control to consumers, you may not like the results. Indeed, many companies have found that they were "too successful" in getting consumers engaged and regretted the way their campaigns turned out. Balance your desire to let your consumers speak with your own need to have control over the outcome.



## 5. Think Before You Act

Things don't always work out the way you want them to. In social media, problems often play out in public, so most companies try to address problems quickly to prevent bad news from spreading. Keep in mind that those solutions will also play out in public.

Sometimes an ill-planned solution can be worse than the original problem. There are times when taking down a problematic post is the right answer and times when taking it down may make things worse. There are also times when your customers will respect you for admitting a problem and times when your admission could be Exhibit A in a subsequent court proceeding. When something goes wrong, assemble all of the relevant stakeholders (including the legal team) and carefully think through your options before you act.