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BUSINESS BRIEF

Guidelines for Promoting Your Business Through Social Networking Websites

Social networks like Facebook, YouTube and Twitter are transforming the way companies communicate with consumers. Facebook, YouTube and Twitter can be powerful business tools, but you must be mindful of certain legal limitations and guidelines.

The words “Facebook,” “YouTube,” and “Twitter” are proprietary to the companies that own them. “Facebook,” “YouTube,” and “Twitter” are all registered with the U.S. Patent & Trademark Office. A trademark is a distinctive word, logo or phrase that is used by an individual or business to identify a unique source of products or services.

Facebook, Inc., Twitter, Inc. and Google, Inc., the owner of YouTube, are entitled to prevent others from using their trademarks, which include logos, or something similar, in a way that is misleading, deceptive or could cause confusion in the marketplace. You must first obtain permission before using another’s trademark.

Both Facebook and Google authorize the use of the Facebook and YouTube trademarks in specified ways. For example, both Facebook and Google prohibit users from modifying their trademarks and from using their trademarks as a verb. These guidelines are set forth in full on each of their websites. Twitter, however, expressly prohibits the use of its trademarks. The Twitter basic terms state, “Nothing in the Terms gives you a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, and other distinctive brand features.” Thus, Twitter users should be wary of using the Twitter trademark to promote their businesses in advertising without receiving specific permission.

Google allows commercial usage of certain YouTube badges by those who make use of YouTube API, which allows users to incorporate YouTube content into the user’s own website or software application. A user is not required to get preapproval to use the YouTube API or to promote API functionality on the user’s website using the “YouTube Ready,” “YouTube Videos” or “Powered by YouTube” badges, all of which are provided on the website for free download and use. But, by downloading the badges, the user agrees to be bound by certain guidelines, all of which are set forth in the Branding Guidelines on the Google website. Google prohibits usage of any other form of the YouTube logo other than the badges provided on the website, as well as any variation of the YouTube trademark such as “YouTubers,” “Tubing,” “You-Tube,” or “YouTubed,” etc. Additionally, it is important to note that the YouTube license appears to only extend to use of a YouTube Badge to give attribution to a YouTube video on a website, blog, or other such means of electronic communication. The license does not specifically address print advertisements, such as billboards.

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Facebook actually recommends promoting one's Facebook page outside of Facebook, assuming very specific guidelines are followed. Facebook's guidelines for both the use of its Brand Assets and for referencing Facebook are located in Facebook's Brand Permissions Center. For example, Facebook allows usage of its Like Button logo to be used in print advertisements and in connection with the Like Button social plugin that Facebook provides on its website. Facebook, however, prohibits usage of the Like Button logo in online advertisements. Facebook also requires users to get special permission to use the Facebook logo. Permission can be obtained directly from the Brand Permissions Center website by accessing the Permissions Request Form. Additionally, Facebook typically prohibits use of its trademarks in connection with merchandise such as clothing, hats, mugs, dolls, and toys. More examples of acceptable and unacceptable uses of Facebook's trademarks and appropriate ways for users to reference Facebook are provided on the Brand Permission Center section of the Facebook website.

Before delving into the world of social networking advertising, take the time to read the permissions and guidelines of whatever social networking site you may be using. These guidelines are typically located on the social network's website. If there are no guidelines, the default rule is that specific permission should be sought to use the social network's trademark to promote your business by incorporating a social network's trademark in commercial advertisements.

Non-profits: Opportunity to Finance Acquisition or Renovation of Property Using Qualified 501(c)(3) Bonds

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Non-profit organizations have the opportunity to finance the acquisition or renovation of property where they do their good works using qualified 501(c)(3) bonds, which often provide better financing terms and rates than those available from traditional lenders. The proceeds of qualified 501(c)(3) bonds may also be used by the non-profit organization for working capital or to acquire other kinds property, within certain limits.

To be eligible for qualified 501(c)(3) bond financing, the non-profit organization must be exempt from taxation under section 501(a) of the Internal Revenue Code. The organization also must qualify as an "exempt organization" under section 501(c)(3). The organization must maintain its exempt status as long as the bonds are outstanding.

A non-profit organization that shares a building with a for-profit entity may still be eligible for qualified 501(c)(3) bonds. Such a "mixed use" or "multipurpose" facility may be financed in part with qualified 501(c)(3) bonds. The portion that is bond financed must be used by the exempt organization for its exempt purposes or by a governmental unit. The portion used by the private entity must be financed with taxable financing or sources other than bond proceeds. The allocations between the different uses of the facility must be made in proportion to the benefits derived, directly or indirectly, by the various users of the facility. The allocations of the bond proceeds and other sources of funds, and the use of the facility by various parties, must be reasonable and consistently applied.

At least 95% of the net proceeds of the bonds must be used to finance facilities owned and used by the exempt organization or a governmental unit for its related activities. As with other types of qualified private activity bonds, qualified 501(c)(3) bonds have some inherent private use. Use by an exempt organization in its related activities counts as a "good use."

What about the other 5% of net proceeds? No more than 5% of the net proceeds of the bond issue may be used for any private business use, known as "bad use." If the exempt organization uses the bond proceeds or bond-financed facilities in an unrelated trade or business activity, it is considered bad use. Costs of issuing the bonds are included in the 5% permitted private business use.

Although exempt organizations cannot use the bond-financed facilities for an unrelated trade or business, or "bad use," they may contract with a private party to provide services, which may result in private business use. The typical example would be a management contract with a private party to operate a portion of the facility. Fortunately, the IRS has provided safe harbors regarding management service contracts.

With respect to debt service on qualified 501(c)(3) bonds, no more than 5% of the payment of the debt service on the bonds may be directly or indirectly:

- secured by an interest in property used or to be used for a private business use, or
- secured by payments in respect of such property, or
- to be derived from payments in respect of property, or borrowed money, to be used in a private business.

Of course, interest and principal payments made by the exempt organization are not included, because the exempt organization is treated as a governmental unit.

Qualified 501(c)(3) bonds are not subject to state volume limits, but the aggregate outstanding face amount of qualified 501(c)(3) bonds that may be allocated to an exempt organization is limited to $150 million. Capital expenditures incurred by a 501(c)(3) organization may be financed with proceeds of tax-exempt bonds without regard to the $150 million limitation. And, this limitation does not apply to qualified hospital bonds.

The general rules regarding private activity bond rules are applicable to qualified 501(c)(3) bonds, including limits on the average maturity of the bonds, limits on the types of facilities that can be financed, notice and approval requirements, limits on costs of issuance, change in use rules, arbitrage and rebate rules, and advance refunding rules.