

Who Owns Your Online Persona? Re: Social Media and Employment Litigation

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Eagle v. Morgan, 2013-11-4303 (E.D. Pa. 2013), represents one of the first trials on the issue of who owns social media accounts: the individual employee who first created the account or the employer whose business was promoted using the account? In *Eagle* a company's founder sued her former employer for the alleged illegal use of her LinkedIn account. The U.S. District Court for the Eastern District of Pennsylvania held that an employer's conduct, absent a company social media policy, resulted in the torts of unauthorized use of name, invasion of privacy by misappropriation and misappropriation of publicity. The court, however, held the employer not liable for conversion, tortious interference with contract, civil conspiracy and civil aiding and abetting. Lastly, the court rejected the employer's counterclaims of misappropriation and unfair competition.

This case illustrates the increasingly common issues surrounding employee use of social media in the course of promoting, selling and marketing for their employers. Specifically, it shows the consequences of not having in place a policy relating to use and ownership of social media and social media accounts. In *Eagle*, the court suggested that the employer may have prevailed if it had implemented a social media policy that covered factors relevant to ownership, such as whether: (1) the

employer paid the social media account fees; (2) the employer dictated the precise contents of the employee's account; (3) the employee acted expressly on behalf of the employer due to her position, role or responsibility; or (4) the social media account was developed and built through investment of the employer's time and resources.

Facts and Claims

Dr. Linda Eagle was a co-founder of a business which was sold to Edcomm. As part of the sale Eagle agreed to continue as an employee of Edcomm. During her employment, Eagle used her LinkedIn account to promote Edcomm's business. She shared her username and password with several Edcomm employees to help respond to invitations and to update the account. Edcomm terminated Eagle's employment on June 20, 2011, and upon doing so, Edcomm changed the password to Eagle's LinkedIn account, thereby locking her out. Edcomm gained exclusive control of the account until July 7, 2011, when LinkedIn took over the account and returned access to Eagle a week later. As of the date of Eagle's termination in June 2011, Edcomm did not have in place a company policy informing the employees that their LinkedIn accounts were the property of the employer.

During Edcomm's control of the account, it changed the account to reflect the name, picture, education and experience of Sandi Morgan, the interim CEO of Edcomm, even though the URL of the account remained <http://www.linkedin.com/in/lindaeagle>, and a Google search of "Linda Eagle" would return results to said URL.

Eagle sued Edcomm for (1) unauthorized use of name; (2) invasion of privacy by misappropriation of identity; (3) misappropriation of publicity; (4) identity theft; (5) conversion; (6) tortious interference with a contract; (7) civil conspiracy; and (8) civil aiding and abetting. Edcomm counterclaimed for (1) misappropriation; and (2) unfair competition.

Plaintiff's first three causes of action

The court held Edcomm liable under claims of unauthorized use of name, invasion of privacy by misappropriation of identity and misappropriation of publicity because it took over Eagle's account and replaced the content with Morgan's information. Specifically, the court found that Eagle's name and likeness held commercial value because of the investment of time and effort in developing her reputation in the industry; and that Edcomm used Eagle's name without her consent for commercial and advertising purposes. The court said "[when searching for Eagle or visiting Eagle's LinkedIn page,] an individual would unwarily be put in contact with Edcomm [and Morgan], despite the fact that Dr. Eagle was no longer affiliated with Edcomm." The court concluded that Edcomm's actions were for the commercial benefit of Edcomm and at the same time deprived Eagle of the benefit of her name.

Even though Eagle established the prima facie elements for the first three causes of action, she did not recover any compensation because she failed to establish with sufficient certainty any damages or a causal connection between Edcomm's wrong and any injury.

Plaintiff's Other Causes of Actions

Eagle failed in her other causes of actions.

First, identity theft was not established because Pennsylvania requires an unlawful possession of a person's identifying information, and the court held that mere use of Eagle's name to direct to Morgan's information and keeping Eagle from her personal account, "while perhaps unscrupulous, is not so clearly an 'unlawful' purpose."

Second, conversion was not established because under Pennsylvania law a LinkedIn account is not tangible chattel subject to a conversion claim, but rather it is an intangible right to access a specific page on a computer; the court analogized the LinkedIn account to other intangible property not subject to conversion such as software, domain names and satellite signals.

Third, tortious interference with a contract failed because it required Eagle to prove damages, which she could not establish. The court noted, however, that all of the other requisite elements of this tort were met, and in particular, Edcomm acted with the purpose or intent to harm Eagle when Edcomm locked her out of her account thereby preventing the Eagle-LinkedIn relationship to continue. The court expressly rejected Edcomm's argument that it owned Eagle's LinkedIn account under Edcomm's policy, because (a) no such policy existed, and (b) LinkedIn's User Agreement clearly indicated the contrary.

Counterclaim For Misappropriation

Unsurprisingly, given its rulings in Eagle's favor, the court held that Eagle's reclaiming of her LinkedIn account was not misappropriation because: (i) "Edcomm never had a policy requiring that its employees use LinkedIn, did not dictate the precise contents of an employee's account, and did not pay for its employee's LinkedIn account."; (ii) the LinkedIn User Agreement expressly stated that Eagle's account was between LinkedIn and Eagle; and (iii) Edcomm failed to show Eagle's contact list was "developed and built through investment of Edcomm[']s time and money as opposed to Eagle's own time, money and extensive past experience."

Importance of a Social Media Policy

This case provides employers with guidance regarding what steps should be taken if they wish to obtain ownership rights to LinkedIn and other social media accounts. Of particular interest, the judgment included an entire email exchange wherein company executives had discussed the importance of LinkedIn accounts and the need to introduce a policy that such accounts were the property of the company. However, despite this email exchange the policy was never formulated and implemented. The lesson is clear: Employers wishing to protect social media accounts which they view as company marketing and branding should act now and introduce clear policies regarding ownership.

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