



## Social Media Advertising in the Retail Space – Share This with Your Friends

Matthew V. Wilson

“Tweet,” “share,” “pin,” and “like.” If you spend any amount of time exploring the social media universe, these are the buzzwords that you are certain to encounter along the way. To the digital marketer, these words translate into a cheap and efficient method to reach a very large audience. Indeed, the inherent viral nature of social media presents marketers with an unparalleled direct gateway to the consumer marketplace. However, while the benefits of using social media to tap new and existing customers are many, individuals and retail businesses that use the medium for commercial purposes must be aware of the potential legal pitfalls that lie in wait for the careless user. To be certain, utilizing social media in connection with retail advertising may trigger a range of legal issues, including, copyright, and trademark infringement, defamation, and rights of privacy and publicity, in addition to a host of advertising related rules and regulations.

Usually, posting a photograph to your Facebook page is a benign activity that involves almost no risk of liability. In the commercial context, however, that same photograph must be owned by or licensed to the poster, and it must not depict any unsanctioned copyrightable images, trademarks, persons, or brands. Similar assurances are also necessary for the use of any designs, graphics, music, video, or other artistic content. The availability of such materials online and the fact that similar content is freely linked or posted by users via personal social media accounts does not mean that those materials may be used by a commercial business. Specifically, the Digital Millennium Copyright Act, together with various other federal and state laws, address infringing use and prescribe the procedures and penalties applicable to such wrongful activities.

Legal issues may also arise from the use of personal and celebrity endorsements or the utilization of so-called “native advertising.” Generally, these techniques are employed without concern as long as they are accompanied by substantive disclosures designed to mitigate the likelihood of consumer confusion, deception, or unfairness. However, compliance with these disclosure mandates is difficult given the space, format, and usage limitations inherent with micro-platforms and/or the ever-shrinking screen size of consumer devices. Fortunately, the Federal Trade Commission has offered helpful guidance concerning the required content and format of disclosures, along with best practices for the use of consumer, celebrity, and expert endorsements.

Retail advertisers must also consider the potential implications of using social media to dialogue directly with consumers. For example, inviting users to contribute content to a public forum may present risks involving the disclosure of confidential information, defamation, or brand-image issues. Some related legal issues that arise in the user generated content context involve the misuse of #hashtags, unsanctioned hyperlinking, and unintentional intellectual property infringement. Accordingly, the decision to engage the public via social media will inevitably require a site administrator to weigh the benefits and risks associated with monitoring and editing such public forums.

Finally, it is equally important to be aware of the platform-specific terms of use and restrictions that apply to advertising and commercial practices. For instance, certain platforms prohibit the administration of sweepstakes and contests on their platforms except in limited circumstances, while others prohibit the dissemination of unauthorized advertising and promotional materials. Complicating the matter even further, site and platform terms are in a state of almost constant flux requiring the careful attention of diligent advertisers.

In light of the risks involved, legal counsel can offer helpful guidance and advice to retail marketers seeking to harness the next online fad and reap the benefits of viral advertising. The dynamic character of the medium and the resulting pace of change necessitate, if not demand, the counsel of seasoned experts. Understanding the ever shifting landscape will not only minimize the potential costs, risks and liabilities associated with digital marketing activities, but may also help to avoid the unwanted attention and embarrassment entailed in making a very public blunder on the World Wide Web.

## Authors and Contributors

---

**Matthew V. Wilson**

Of Counsel, Atlanta Office  
404.873.8551  
matthew.wilson@agg.com

not *if*, but *how*.<sup>®</sup>

## About Arnall Golden Gregory LLP

---

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit [www.agg.com](http://www.agg.com).

**Atlanta Office**

171 17th Street, NW  
Suite 2100  
Atlanta, GA 30363

**Washington, DC Office**

1775 Pennsylvania Avenue, NW  
Suite 1000  
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2016. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.