The StrongFirm Attorneys P.C. StrongPoints

Social Media and Digital Communications

Employer Liabilities in a Digital World

By: Bret Strong

In today's digital world, who isn't on Facebook, LinkedIn, YouTube or Twitter? Who doesn't text or send emails from their mobile devices at all times of the day and night? In today's digital world, social media and instant digital communications have created an abundance of potential pitfalls and traps for companies trying to limit potential exposure resulting from our world of instant communications.

It all seems harmless, right? A funny YouTube video shot at the workplace, a Facebook post about a co-worker or boss, or tweet about what's going on at the office. Unfortunately, with the recent boom in the use of social media, companies are not only using this new tool to reach customers, but also having to take action to protect themselves against social media use and abuse that can cause the company significant harm. In North Carolina, a YouTube video posted by two employees of a national pizza delivery company doing disgusting things with pizza ingredients brought the chain and the local Franchisee some very costly publicity. Not only did it catch the eye of the local health department, but local law enforcement got involved related to food tampering and in the process discovered that one of the perpetrators had a long criminal history. This then attracted local and national media, seriously harming the local franchise and giving the national chain a serious black eye – all from what started as a harmless prank.

So what are companies doing to protect themselves? It has become critical in business to integrate into company policies very strict guidelines on the use of social media in almost all aspects of your company business. Policies prohibiting harassment using social media (as well as other digital communications like email and texting), restricting the use and sharing of confidential information and proprietary information, and providing reasonable limits on the authority to speak (or tweet) on behalf of the company in a digital format are all a must in today's digital world. But be careful. The National Labor Relations Board (NLRB) has made several recent rulings making it clear that it is a violation of the National Labor Relations Act to restrict employees through such policies from being able to express concern about work place conditions or policies. Policies must be carefully written to meet the objectives of company protection but not become an unreasonable restraint on the rights of your employees.

Another area of digital communications which has become a source of potential company liability is the use of smart phones while driving. A study by Monash University shows that a driver who is texting spends 400 percent more time with their eyes off the road. Lawsuit awards

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Bret Strong

***Bret Strong** is the founder and managing shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law before The United States Supreme Court. Bret has achieved the AV® Martindale-Hubbell® Peer Review Ratings™ award and has served as a founding board member of The Woodlands Bar Association.* bstrong@thestrongfirm.com

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The Strong Firm P.C.
10003 Woodloch Forest Dr.
Suite 210
The Woodlands, TX 77380
Phone (281) 367-1222
Fax (281) 210-1361
bstrong@thestrongfirm.com

Visit us at:
www.thestrongfirm.com

Ten Things You Should Know About Assumed Names (DBAs)

Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

1) In the State of Texas, Assumed Name Certificates, also known as "Doing Business As" certificates (DBAs), are governed by the TEXAS BUSINESS AND COMMERCE CODE Title 5, Chapter 71, known as the Assumed Business or Professional Name Act (the "Act").

2) The Act requires that any person (including a legal entity such as an LLC, a Corporation, or an LP [an "Entity"]) that regularly conducts business in Texas under any name other than his or her own name, or under the name of their Entity, file an Assumed Name Certificate.

3) The information contained in an Assumed Name Certificate, including the name and address of the person or Entity filing and the assumed name, is a public record and as such is publically available.

4) The Assumed Name Certificate must be filed in the office of the County Clerk in the county in which your business has its business premises or office. If there are no premises or business office, then you must file in the county in which business is transacted. Additionally, if the filer is an Entity, it must file an assumed name certificate with the Secretary of State using the Texas Secretary of State form 201.

5) The Assumed Name Certificate will not protect your business' name from use by someone else. Remember: the Assumed Name Certificate is only designed to permit you to transact business in a name other than your own and is not designed or intended to restrict or prohibit others from using the same name. Protecting the name can be accomplished by forming an Entity and via state and federal trademark and trade name actions.

6) The Assumed Name Certificate will not shield you or your personal assets from liabilities or debts of the business. An Assumed Name Certificate simply creates an alter ego which allows you to transact business in another name but does not shield you or your personal assets from the liabilities of the business. Shielding your personal assets from debts and liabilities of the business can often be accomplished by strategically forming an Entity.

7) The Assumed Name Certificate may be withdrawn or abandoned if you cease to conduct business under that name.

8) The Assumed Name Certificate must be renewed every 10 years if you wish to maintain it.

9) The Assumed Name Certificate is not a business license. If your city, county, or the State of Texas requires a specific license to conduct your type of business, an Assumed Name Certificate will not suffice or substitute for that license. That specific license must also be obtained.

10) There are both civil sanctions and penalties for failing to properly comply with the Act and even criminal liability (Class A misdemeanor or State Jail Felony) if the failure to comply with the Act was intentional or for the purposes of committing fraud.

***Eric R. Thiergood, Sr.**, Senior Associate Attorney, joined The Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.*
ethiergood@thestrongfirm.com

Clerk's Corner Mediation: Alternative Dispute Resolution at Its Best

Brian Albert

By: Brian Albert

On October 26-27, the University of Houston Law Center held the 2012 Tom Newhouse Mediation Competition. Thirty-two teams of two-student pairs participated in this year's competition, going head-to-head with one another through a simulated mediation. With one team member playing the client and the other team member advising as the client's attorney, the two teams worked through 75-minute rounds of negotiated settlements, guided by an impartial mediator. While the competition ultimately culminated in a championship for my team, I also gained a tremendous amount of experience in the world of mediation.

Mediation is a form of alternative dispute resolution (ADR), whereby two or more parties attempt to resolve their conflicts without going through the time and expense of trial. Other forms of ADR include negotiation, arbitration, and collaborative law. Mediation is extremely common in today's civil disputes, and oftentimes judges will require parties to go through mediation prior to any formal litigation. The main objectives of mediation are to gather information, learn about the strengths and weaknesses of your case, and possibly come to a resolved settlement between you and your adversary, all without the formalities and consequences of pursuing a lawsuit.

In mediation, the mediator, typically a professional agreed to by both sides, plays the role of an impartial, unbiased fact-seeker who helps to guide the discussion. The mediator has no judicial powers, and nothing they say can be used in court. Rather, the mediator tries to elicit information from both sides while highlighting important facts, questions, and answers. While a negotiated settlement of the matter is not always feasible, mediation provides an opportunity for both sides of a dispute to hear each other and to decide whether or not the costs of going to trial will be worth it. Mediation is not a fix-all solution, but it is a very strong tool that opposing parties should consider before taking on the headaches that can come from formal litigation actions.

The Business Duty to Protect Sensitive Personal Information:

What to Do When You Are Served with a Lawsuit

By: Adam Looney

Adam Looney

The exponential growth of computer technology has been a boon to small businesses, who have leveraged this new technology to provide goods and services to customers on a national (or even international) scale in a way that would have been nearly unthinkable two decades ago. But, with more and more businesses maintaining extensive computerized data on their customers, employees, or other individuals, privacy has inevitably become a concern.

Accordingly, Texas implemented the Identity Theft Enforcement and Protection Act in 2009, which, among other things, imposes a duty on businesses to "implement and maintain reasonable procedures ... to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business." Sensitive personal information includes any unencrypted information that contains an individual's first name (or first initial) and last name in combination with any one or more of the following items:

1) social security number;
2) driver's license number or government-issued identification number; or
3) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account.

But what happens if computerized sensitive personal information maintained by a business is compromised? Prior to Sept. 1, 2012, businesses were only required to provide notification to any Texas residents whose sensitive personal information may have been compromised. But, as of Sept. 1, that duty has been expanded to include residents of any state. In addition, where liability for failure to comply with the Identity Theft Enforcement and Protection Act was previously capped at $50,000, failure to provide proper notice to individuals whose computerized sensitive personal information has been compromised could result in liability to the state of $100 for each individual and up to a total liability $250,000.

To put that in perspective, the unauthorized acquisition by a malicious individual of just one computer file containing sensitive personal information on just 2,500 different individuals (which could easily be the customer base of even a relatively small business) could result in the maximum amount of liability of up to $250,000.

In light of this, what can your business do to protect itself against liability under the Identity Theft Enforcement and Protection Act?

- Encrypt any computerized data that contains sensitive personal information — this is especially true of any files sent via email or uploaded to the internet. Once you send a file out, it can sometimes be difficult to control where it ends up (be sure to consult with an IT professional regarding the strength and suitability of the default encryption used by your business software);
- Destroy any physical storage media containing sensitive personal information — many shredders are capable of destroying CDs or DVDs;
- Permanently disable or destroy any electronic devices, such as computers or external hard drives, that contain (or may contain) personally sensitive information — there are companies that specialize in the destruction of such devices (for a lower cost alternative you can use a power drill to drill holes in any used hard drives before discarding them).

If, despite your best efforts to safeguard against it, you have reason to believe that your data containing sensitive personal information has been compromised, you should consult an attorney immediately to ensure that you fully comply with requirements of the Identity Theft Enforcement and Protection Act, as well as any other applicable laws.

Adam Looney *joined The Strong Firm P.C. as Of Counsel in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a litigation associate at the law firm of Baker Botts L.L.P. During his career, Adam has zealously advocated in the courtroom, through alternative dispute resolution, and before administrative agencies to achieve creative and advantageous solutions to his clients' most complicated legal issues.* alooney@thestrongfirm.com

Introducing Wendy Lambie and Renee Glazer

Wendy Lambie has joined The Strong Firm, P.C. as an associate attorney. Wendy is a U.S. Army veteran, who served as an Administrative Sergeant and received the Army Medal of Achievement for leadership beyond expectation. After her service to our country, she obtained her bachelor's degree from the University of Houston in Psychology and then also attended South Texas College of Law where she obtained her Doctorate of Jurisprudence in 2006. While attending law school she made honors in her Mock Trial classes, founded the STCL chapter of Animal Law Society, and served as a law clerk for several firms. Since being licensed in 2006, Wendy has been in private practice with extensive experience focusing on estate planning and probate. In addition, she has experience in real estate transactions and oil and gas matters; with special emphasis on title issues. In addition, Wendy is a trained mediator and is also certified to be appointed as guardian or attorney ad litem for all Texas probate courts. Wendy is an active member in the Houston Bar Association, The Woodlands Bar Association, Animal Legal Defense Fund, The Woodlands Mothers of Multiples and is a volunteer for the National Multiple Sclerosis Society.

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Winter Wonderland or Attractive Nuisance?

D. Joe Griffin

By: D. Joe Griffin

It is that time of year when we often notice people with an extra spring in their step, a generous and caring attitude, and generally a "Holly Jolly" demeanor – that's right, it is the "holidays." Whether you find yourself celebrating Hanukkah, Christmas, Kwanza, Las Posadas or any other winter holiday, you will encounter a variety of holiday decorations no matter where you go. This brief article is meant for homeowners, landlords, tenants, and other property owners or managers who choose to decorate a home, workplace, or common and public access areas for the holidays.

From lawns adorned with reindeer, sleighs, elves, giant candy canes and scenes from the North Pole to extravagant lights, trees, angels, and snowmen, both commercial areas and neighborhoods truly do transform during this time of year. However, these Winter Wonderlands can and do pose a significant risk for what is known as "Premises Liability." Premises Liability is a branch of negligence law that sets forth specific duties an owner or occupier of land owes in protecting those who come on to their property from harm, be it from precarious conditions or dangerous activities. Generally speaking, there is a range of duties owed, depending on whether or not the person on the property is trespassing, was invited, or merely authorized to be there. In this way it is important to make sure that those holiday decorations are both safe and secure at all times.

There are myriad ways that innocent holiday decorations can become safety hazards. For example, no matter how many times we hear Nat King Cole on our radio singing "Chestnuts Roasting on an Open Fire," any decoration that has a flame element could burn someone or cause a fire and should be avoided. Similarly, lights, extension cords and any extra wires or cables should be installed in a safe manner to avoid a fire, as well as a tripping hazard. Additionally, common walkways and access routes should be kept clear to avoid slips, trips, and falls. To this end, use high-quality, non-flammable decorations, purchase lights from reliable vendors, examine and replace old and worn lights and cables, and make sure that decorations are secure and stable and not in walkways or blocking entrances and exits.

One nuance in the law in this area is what is known as the Attractive Nuisance doctrine. In Texas, an owner, lessee, or occupant of real property, generally speaking, has no duty of care with respect to a trespasser, they just can purposely or willfully cause them injury. However, in the case of small children who trespass and who perhaps lack the ability to appreciate the danger, Premises Liability can still apply. This is true in the case of hazardous decorations placed in areas where children are likely to pass by and trespass. Thus insecure or unstable decorations, particularly those with lights, music and moving parts, which children would likely attempt to climb on or play with, when placed in high visibility areas that children are likely to venture into, could be considered an Attractive Nuisance and potentially render the owner, lessee, or occupant liable for harm or injuries which result.

We hope that everyone takes the necessary precautions to prevent and eliminate any dangers which may exist as they decorate for the holidays, so that visitors, tenants, licensees, invitees, and even tender-aged trespassers do not receive the unwelcome gift of injury, and so that as an owner, landlord, or occupant the holiday season is not marred by premises liability. By taking a few small precautionary steps, we can ensure that this is and remains "The Most Wonderful Time of the Year."

***D. Joe Griffin**, Associate Attorney, joined the Strong firm in 2010 after graduating from the University of Houston Law Center. His areas of practice include business law and contracts; corporations, LLCs and partnerships; business and investor immigration; real estate; trademarks; and estate planning and probate. Having lived in Argentina, as well as in Mexico City D.F., Joe is fluent in Spanish and conversational in Portuguese.*
jgriffin@thestrongfirm.com

Social Media and Digital Communications

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against companies whose employees while on company business have injured or killed others while talking or texting/emailing on a smart phone have routinely been in the tens of millions of dollars. Thirty-nine states have made texting or emailing while driving a crime. All companies need to have a policy which strictly prohibits texting or emailing while driving on company business and need to take reasonable steps to enforce this policy including auditing use of any company issued smart phones to assure the policy is being adhered to.

Introducing Wendy Lambie and Renee Glazer

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Renee Glazer has also joined The Strong Firm as a paralegal. Renee has worked as a paralegal for over 20 years providing services in Tennessee and Texas. Her strengths focus on the fields of estate planning, probate, trademarks, patents, franchising, litigation and corporate transactions. Renee is a long-time resident of The Woodlands and is excited to work again with Managing Partner, Bret Strong, having worked with him at other law firms.

The Strong Attorneys in Action

December 2012 - **The Strong Firm** closed on the sale of restaurant and hotel sites in Shenandoah.

November 2012 - **The Strong Firm** provided, finalized and submitted an application to drill for oil and gas in a California coastal city.

November 2012 - **The Strong Firm** represented a buyer in a $10 million purchase of a surgical hospital.

October 2012 - **The Strong Firm** successfully represented a major real estate development company in the mediation of a $3 million contract dispute.

October 2012 - **The Strong Firm** successfully represented an oil and gas company in raising $2 million in working capital for operational expansion through convertible note offering.

October 2012 - **The Strong Firm** successfully represented a group of international investors in an $11 million acquisition of leasehold acreage in the Eagle Ford Shale.

We provide legal services in the all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Business Disputes
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment

The Strong Attorneys in the Community

Le Tour de Woodlands

The inaugural Le Tour de Woodlands, held Oct. 20, 2012, was co-hosted by Interfaith of The Woodlands and The Woodlands Cycling Club. The Strong Firm served as the "Official Law Firm" of this one-of-a-kind cycling event.

Fight for a Cause

Eric R. Thiergood, left, and Joe "Nacho" Griffin

Eric Thiergood and Joe "Nacho" Griffin were sponsored by The Strong Firm, fighting for Texas Downs at the second annual Fight for a Cause charity boxing event held in The Woodlands on Saturday, Sept. 8, 2012. Presented by the Montgomery County Hispanic Chamber, the boxing event raises money for local charities.

Inter-Connect The Woodlands Expo

Joe Griffin discussed choice of entity as a presenter at the 2012 Inter-Connect The Woodlands Expo held at The Woodlands Waterway Marriott, Sept. 14, 2012. Joe also served as the moderator during the keynote presentation.

Joe Griffin, left, with Luis Esparaza