

# Social Media Account Ownership: When a Business Relationship Breaks Down, Who Gets the Accounts?

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**S**ocial media accounts are important commercial assets because they reach a loyal consumer base committed to the brand, frequently with low, if any, associated marketing cost. The ownership of these accounts has become fodder for litigation when business relationships break down. Whether in the context of employer/employee, franchisor/franchisee or influencer/brand relationships, who owns and controls the social media accounts and associated goodwill sometimes comes into dispute.

This article provides guidance on the standards courts apply in determining ownership rights over social media accounts, as well as best practices to head off such disputes before they occur.

## Ownership of Social Media Accounts Is a Matter of State Law

It is helpful at the outset to understand what is at issue in disputes over ownership of social media accounts. When courts adjudicate owner-



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ship of social media accounts, they are generally referring to a user's right "to access and use a social media account." *In re Vital Pharm.*, 652 B.R. 392, 396 (Bankr. S.D. Fla. 2023). This may be a distinct analysis from rights in the content posted on the account. See *JLM Couture v. Gutman*, 91 F.4th 91, 103 (2d Cir. 2024) ("[T]he fact that Gutman transferred some or all of

her rights in particular content posted on the Disputed Accounts does not by itself support an inference that she transferred ownership of the Disputed Accounts themselves.”).

Among other things, access to and use of a social media account provides a direct conduit to its followers (*i.e.*, to consumers), as well as an ability to monetize that access. For instance, in a recent high-profile dispute between bridal designer and influencer Hayley Paige Gutman and her former employer JLM Couture Inc., the disputed “Miss Hayley Paige” Instagram account had over 1 million follow-

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ers, and a single post on the account was, by one expert’s appraisal, worth nearly \$30,000. See *JLM Couture v. Gutman*, 24 F.4th 785, 789 (2d Cir. 2022). Like other valuable assets of a business that may serve as manifestations of its goodwill, such as customer lists, ownership of social media accounts is determined by state law. See *In re Vital Pharm.*, 652 B.R. at 406 (citing *In re CTLI*, 528 B.R. 359, 366 (Bankr. S.D. Tex. 2015)); *JLM Couture*, 91 F.4th at 104.

In the litigation context, disputes over social media account ownership often give rise to state law claims, such as conversion. Because these are state law claims, it is important to determine which state’s laws govern and investigate all potential causes of action, and limitations, under that state’s law. See, *e.g.*, *Pan 4 America v. Tito & Tita Food Truck*, No. DLB-21-401, 2022 WL 622234, at \*9 (D. Md. Mar. 3, 2022) (finding

that Maryland does not recognize conversion of a Facebook page).

It also bears noting that—depending on the content or the name associated with the account—alleged misuse of a social media account may give rise to a claim for trademark infringement or misappropriation of name, image or likeness as well. See *JLM Couture*, 24 F.4th at 791–92 (alleging that Gutman infringed on JLM Couture’s trademarks by using the @mishayleypaige Instagram account for third-party promotions (Gutman’s employment agreement gave JLM Couture rights to trademarks in her name)); *Pan 4 America v. Tito & Tita Food Truck*, No. DLB-21-401, 2022 WL 622234, at \*4 (D. Md. Mar. 3, 2022) (denying motion to dismiss claim for, *inter alia*, trademark infringement based upon defendant’s alleged changing of Facebook page to name of new business, such that “past events and posts by La Baguette now appeared to have been posted by Tito & Tita Langley”); *International Brotherhood of Teamsters Local 651 v. Philbeck*, 464 F.Supp.3d 863, (E.D. Ky. 2020) (president of union misappropriated union’s name and likeness by refusing to relinquish social media accounts and changing passwords to prevent access by union members); *Eagle v. Morgan*, No. CIV.A. 11-4303, 2013 WL 943350 (E.D. Pa. Mar. 12, 2013) (defendant company violated former employee’s rights of privacy and publicity by swapping in name and photograph of new employee on LinkedIn page, but without removing former employee’s credentials and recommendations).

### **Factors in Determining Social Media Ownership**

In adjudicating the rights to certain disputed social media accounts, several courts relied upon a combination of the following factors:

- Express contracts governing rights to the account;
- The name of the account (whether it was in the name of the employee or employer, created using personal or employer resources);
- Access to the account (who has access to the account password and the right to post on the account); and
- Use of the account (whether the posts were primarily personal or promoting company products or services, or whether they were designed to promote a persona who may

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in turn have advertised a number of different companies' products or services (e., an influencer account that does not belong to a particular business)).

See *In re CTLI*, 528 B.R. at 368-73 (social media account belonged to the debtor company); *In re Vital Pharmaceuticals*, 652 B.R. 392 at 407-12 (social media accounts belonged to the company, not the former CEO); see also *International Brotherhood of Teamsters Local 651 v. Philbeck*, 464 F. Supp. 3d 863, 872 (E.D. Ky. 2020) (Facebook page was property of the union, not its former president, because its primary purpose was to communicate with union members); *PhoneDog v. Kravitz*, No. C 11-03474 MEJ, 2011 WL 5415612, at \*4 (N.D. Cal. Nov. 8, 2011) (denying a motion to dismiss claims based on the former employee's refusal to cede possession of the social media account).

In determining whether content is personal or business-related, courts recognize that marketing on social media is more subtle than other forms of marketing and may include personal posts that align with and promote the company's brand. *In re CTLI*, 528 B.R. at 371; *In re Vital Pharmaceuticals*, 652 B.R. 392 at 402. This perspective tends to favor businesses—indeed, most of the above-cited cases found for the company, either on a dispositive or preliminary motion.

In a ruling last month, the U.S. Court of Appeals for the Second Circuit rejected this multifaceted approach and instead reverted to first principles of property ownership:

[T]he analysis of social-media-account ownership begins where other property-ownership analyses usually begin—by determining the account's original owner...If a claimant is not the original owner and cannot locate their claim in a chain of valid transfers, they do not own the account.

*JLM Couture*, 91 F.4th at 104. The Second Circuit remanded the case to the district court to determine who owned the disputed accounts upon their creation, including whether the designer/influencer created the account using her personal information and for her personal use.

It will be interesting to see whether the Second Circuit's approach alters the analysis in a way that is more favorable for employees.

### **Best Practices Regarding Ownership of Social Media Accounts**

The clearest takeaway from these cases is the importance of a contract specifically outlining the ownership interests in social media accounts. It is not enough to simply address intellectual property generally; contracts should specifically address ownership interests in social

media accounts, including the terms of use of the account, succession rights following termination of the relationship, administrative controls and access rights.

Parties involved in creating and administering social media accounts should also be mindful both of how those accounts are created and the use of the accounts themselves. An employee or influencer seeking to maintain control over an account should create the account with personal information using personal resources (*i.e.*, a personal email address and phone number, using a personal computer, on personal time). The inverse applies to a business wanting to ensure that its social media accounts are not at risk of being taken if a key employee leaves the company.

Employers should also require that employees maintaining social media accounts use a company password such that access to the accounts is available upon termination of the employee. If such term is in the contract, and the employee fails to abide by it, there is an additional ground for a breach of contract claim. Conversely, employers taking over social media accounts should make sure that

any personal information about the former employee is removed.

With regard to use of the account, linking an account to a business's webpage, including the business's name in the username, and regularly advertising the products and purpose of the business make it far more likely that a court will find the social media account belongs to the business. Employees or influencers seeking to maintain control over accounts should ensure that they are prioritizing cultivation of their *own* persona, and not that of the business. The ratio of personal posts to marketing posts should tip in favor of personal posts. Additionally, varying the products and companies being marketed on an account may undermine a business's claim of ownership in the account.

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