



Tuesday, October 26
11:00am-12:30pm

610 - Social Media for Novices (Part 2): How Do You Protect Your Company from It?

Michael McSunas

Shareholder

Chambliss, Bahner & Stophel, P.C.

Saleem Raza

Chief Legal Officer

The Coleman Company, Inc.

Sonya Sigler

Vice President, General Counsel

Cataphora, Inc.

James Wong

Vice President of Legal

Chinney Capital Inc.

Faculty Biographies

Michael McSunas

Michael McSunas, an attorney at Chambliss, Bahner & Stophel, P.C., focuses his practice primarily on advertising, marketing and promotional law, consumer finance, corporate law, product distribution law, and mergers and acquisitions. He regularly works with clients on writing and enforcing social media policies and reviews social media campaigns, as well.

He previously served as in-house counsel for an international advertising agency.

Mr. McSunas is a frequent presenter and lecturer before national industry groups, colleges, clients and businesses in the advertising, marketing, and financial services industries. He recently presented a workshop at Ad Age's inaugural Small Agency Conference in New Orleans. He has been interviewed by journalist Mark Glaser for PBS's MediaShift to discuss the uproar over Facebook's privacy policy. He has also been featured and quoted in Advertising Age and on blogs such as Make The Logo Bigger, AgencySpy, AdScam and The Social Path and has been named "One to Follow" by Advertising Week. He has served as a guest on The Beancast and AdVerve podcasts and co-authored "Marketing with Text Messaging" for Currents magazine. He also blogs for the website Adverve. Active in his community, Mr. McSunas serves on the board of directors of the Downtown Council for the Chattanooga Area Chamber of Commerce, is a member of the American Advertising Federation's local chapter and works with the Tennessee Volunteer Lawyers for the Arts.

Mr. McSunas received his BA from the University of California Los Angeles, cum laude, and his law degree from Vanderbilt University.

Saleem Raza

Saleem W. Raza is the chief legal officer and corporate secretary of The Coleman Company Inc. located in Wichita, Kansas. At over 100 years old, Coleman offers a wide variety of outdoor leisure products under the Coleman(R), Stearns(R), Sevylor(R), Hodgman(R), Campingaz(R) and Esky(R) brands. Coleman operates manufacturing and R&D facilities in the United States, Europe, and China as well as warehouse, distribution, and sales offices across the globe.

Prior to joining Coleman, Mr. Raza held in-house positions with Ocwen Financial Corporation and Payless Shoesource Inc. He started his legal career in the Kansas City, MO office of Shook, Hardy & Bacon, LLP.

Mr. Raza was appointed to the City of Wichita Transit Advisory Board in 2009 and has been a member of the Wichita Leadership Council of the American Lung Association of the Central States since 2008.

He received a BA from Westminster College and is a graduate of the Washington University School of Law.

Sonya Sigler

Sonya L. Sigler is the vice president, operations and general counsel at Cataphora Inc. She is a frequent writer and speaker on electronic discovery issues and many other topics.

Prior to Cataphora, Ms. Sigler was in-house counsel at Sega of America and Intuit Inc.

Ms. Sigler is an active member of ACC, the American Bar Association, and The Sedona Conference Working Group 1 on Electronic Document Retention and Production. She is active in her community and is the chairman for the Chickens' Ball Steering Committee and is a member of the Governance Council for the San Carlos Charter Learning Center. Her past board work has included founding the Women in Interactive Entertainment Association, Women in Technology Advisory Board and the Nova Vista Symphony.

Ms. Sigler holds a BA from UC Berkeley and a JD from Santa Clara University.

James Wong

James Wong is the executive director of the Chinney Alliance Group. His responsibilities include supervision of legal matters in the US, and management of the Group's offices in Shanghai, Chongqing, and Macau. His US projects include acquiring distressed commercial property loans, the management of US agencies for companies like Raytheon and Harris Communications in China, and management of a Green Technology fund. A former chapter Treasurer, he now serves as the editor of the Association of Corporate Counsel's Southern California Chapter's newsletter.

Mr. Wong has written and lectured extensively on Social Media, the law, and China. His columns on doing business in China appear monthly in the LA Daily Journal. He is an adjunct professor at the Florida Institute of Technology where he designed and teaches courses in Law 1, Law 2, and Health Care Law. He also anchors the "Going Global" column for the ACC Docket Magazine. He also leads the Social Media Policy Group on Martindale Connected.

Mr. Wong is a graduate of the University of Washington, and holds a Masters Degree in Information Technology from the Florida Institute of Technology as well as a JD from the University of California Hastings College of the Law.

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#15

- It's all **ADVERTISING**
 - Social media is advertising and subject to the same rules
 - Earned vs. compensated media
 - Some social media does not allow certain activities – Read the Terms of Use

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#14

- Be aware of metadata and shared content
 - GPS or other location based tools
 - Facebook friends and feeds
 - Twitter trails
 - Snooping

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#13

- Be mindful of professional responsibility rules
 - Advertising
 - Privilege
 - Who is your client?
 - When (and where) are you practicing law?

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Ethical Obligations for Attorneys

- **Friending:**
 - MRPC 1.18: Client – Lawyer relationships
 - MRPC 3.5: Impartiality and Decorum of Tribunal
- **Commenting:**
 - MRPC 2.3: Evaluation for Use by Third Persons
 - MRPC 3.6: Trial Publicity
- **Snooping**
 - MRPC 4.1: Truthfulness in Statements to Others
 - MRPC 8.4: Misconduct
 - MRPC 3.4: Fairness to Opposing Party and Counsel

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Ethics (cont.)

- **Ghost Blogging**
 - MRPC 5.3: Responsibilities Regarding Nonlawyer Assistants
 - MRPC 5.5: Unauthorized Practice of Law
- **Online Profiles**
 - MRPC 7.1: Communications Concerning a Lawyer's Services
 - MRPC 7.2: Advertising
 - MRPC 7.3: Direct Contact with Prospective Clients
 - MRPC 7.4: Communication of Fields of Practice and Specialization
- **Networks**
 - MRPC 1.6: Confidentiality of Information

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#12

- **Keep track of what others are saying**
 - It is your brand – isn't is supposed to be your message
 - Consider 3rd party monitors

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#11

- Train everyone
 - Social media is the new water cooler
 - City of Ontario vs. Quon, No 08-1332, 560 US ___ (2010)

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Case studies

- <http://socialmediatoday.com/elizabeth-lupfer/155390/extensive-list-over-30-enterprise-20-case-studies-and-reports>

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#10

- Be Useful –
 - When to respond and when to let it go

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#9

- Be Nice
 - Your words are permanent
 - It will cost how much to review those records?

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Electronic Discovery

- Capture of social media content
 - Third party
 - Internal
- Tools to data mine
 - Dual benefit - talk to your marketing department
- Retention obligations

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#8

- Play Fair
 - It really is my opinion - - honest
 - That was Fair Use
 - What do you mean there is a right of publicity – no one even knows that guy.
 - CDA/DMCA

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Intellectual Property

- Copyright Infringement
 - DMCA and the Safe Harbor
 - Have a copyright policy with a takedown process
 - Directive 2000/31/EC – (Electronic Commerce Directive) mere conduit or more
- Defenses
 - Fair Use
 - Directive 2001/29/EC – (Copyright Directive)

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#7

- Own what you say
 - Who is on the clock?
 - User generated content
 - Wait! That product was my idea
 - Read the Terms of Use – not everything you post or webcast is yours

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Third party content

- Click agreement validity
 - U.S. E Sign - n electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record
 - Canada - PIPEDA - a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document
 - EU - Directive on Electronic Signatures 1999/93/EC
- Idea submission program
 - All ideas posted are given gratuitously
 - Consider a web-based idea submission program

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Employee content

- FLSA – suffer to work
 - For non-salaried employees, have a policy or add it to your FLSA policy
- Course and scope of work
 - Create and use an IP assignment agreement
 - EU, Japan and others may require supplemental payment to employees for patentable ideas

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Company content on other sites

- License to use for any purpose
 - Twitter
- License to use with service only
 - Facebook
 - Blogger
 - Skype
- License to use with service plus
 - YouTube

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#6

- Tell the truth – but only what you are supposed to share
 - Tipping – it's not just for cows
 - Location based social media
 - Reg. FD
 - How to lose a trade secret in one easy step

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Tipping and the SEC

- What is illegal (10b5-1 and 10b5-2)
 - Generally buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about the security
 - Advising others to do so

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Where are you again?

- Location as a tip
 - GPS enabled devices connected to social media can “talk” all the time.
 - Twitter and Foursquare encourage you to tell your friends where you are.
- Location as a privacy issue
 - Congressional hearings on “The Collection and Use of Location Information for Commercial Purposes”, February 24, 2010

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The Whole Story

- Reg FD - when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons, it must make public disclosure of that information.
 - Speakers – Senior officials and those who regularly communicate with securities market professionals
 - Audience - Securities market professionals and holders of the issuer's securities who may well trade on the basis of the information
 - Knowing or reckless about whether the information is material and non-public

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Trade Secrets

- State – Uniform Trade Secrets Act
 - Are not generally known to the public
 - Confer economic benefit on the holder and
 - Are the subject of reasonable attempts to maintain secrecy
 - Excludes 4 states – MA, NJ, NY, TX
- Federal – Economic Espionage Act

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#5

- Tell people who you are
 - When personal comments aren't
 - It was just one free product

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#4

- Defamation
 - Who wrote that anonymous blog or comment about your company and how to find out who it is
 - We didn't write those things about our competitor - our consumers and fans did

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#3

- Have a crisis plan
 - Know who is on the team and who makes the call
 - What to cover

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#2

- Have a social media team
 - Know who speaks on behalf of the company
 - Identify your communication experts
 - Include your subject matter experts – but understand they don't speak for a living

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Who is on the team?

- Get corporate champion and support from the top
- Get ownership of intersect between advocacy, education, and membership in social media.

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What does the team do?

- Determine social media objectives (can use, for example, Forrester's **talking, listening, energizing, supporting, embracing**)
 - <http://forrester.typepad.com/groundswell/2007/12/the-post-method.html>
- Create a governance model:
 - See, e.g., http://www.intel.com/sites/sitewide/en_US/social-media.htm
- Try to balance clarity (widely based team) vs. control (narrowly focused team)

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#1

- Have rules
 - How to draft a policy
 - What to cover
 - Where to get ideas

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What goes into a policy

- Define what social media means to the company
- Reminder of existing policies, including privacy
- Clarify authorizations (post, respond, monitor)
- Define employee private and "company" roles
- Caution re: IP sensitivities
- Caution re: be nice
- Caution re: friending, and "recommending"
- Training
- Violations

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Coordinate with other policies

- Company communications policies
- Privacy and Confidentiality
- Computer, Email, Internet Use
- Government Affairs and Political Use
- Code of Ethics

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ACC Resource for Rules

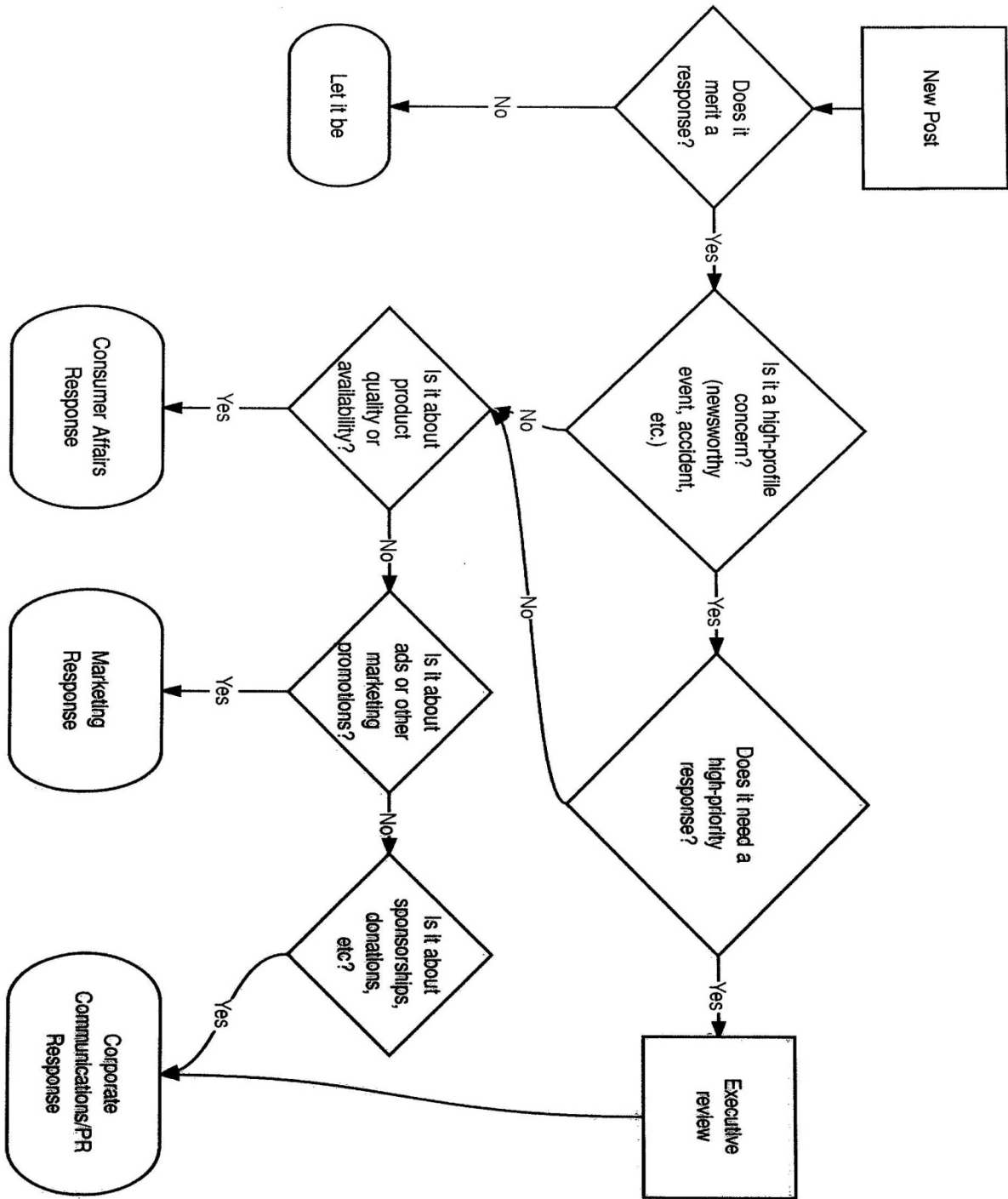
- Check out one of many templates at:
 – www.acc.com/legalresources/resource.cfm?show=842436
- Read about workplace challenges at:
 – www.acc.com/legalresources/quickcounsel/
- Read a Leading Practice profile at:
 – <http://www.acc.com/legalresources/resource.cfm?show=691419>
- Get a checklist of policies and procedures at:
 – <http://www.acc.com/legalresources/resource.cfm?show=753848>

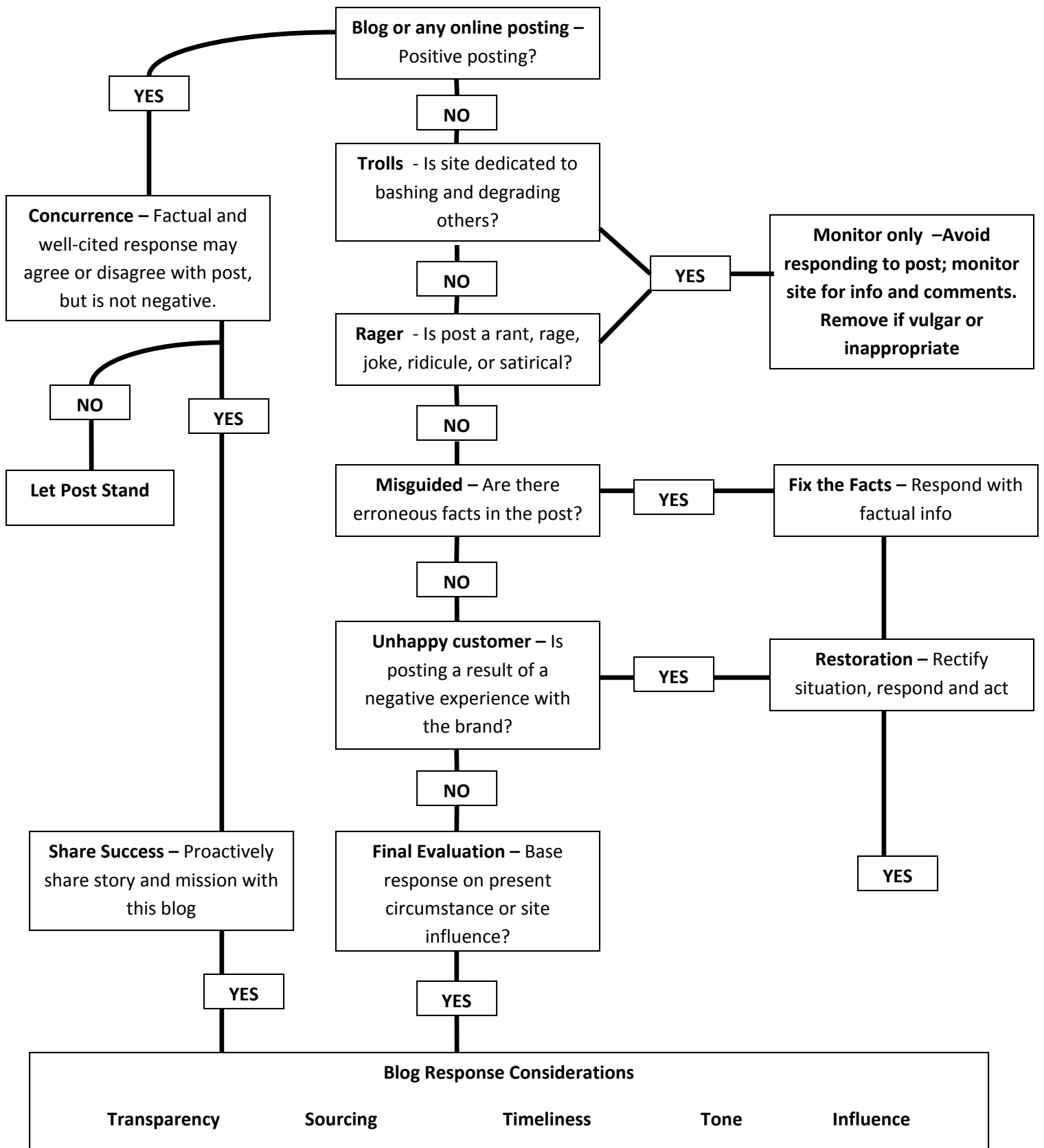
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Third Party Resources

- Policies
 - <http://socialmediatoday.com/ralphpaglia/141903/social-media-employee-policy-examples-over-100-companies-and-organizations>
 - <http://socialmediagovernance.com/policies.php>
 • 140+ policies and counting!
- Industry Best Practices
 - gaspedal.com
 - socialmedia.org







Extras from ACC

We are providing you with an index of all our InfoPAKs, Leading Practices Profiles, QuickCounsels and Top Tens, by substantive areas. We have also indexed for you those resources that are applicable to Canada and Europe.

Click on the link to index above or visit <http://www.acc.com/annualmeetingextras>.

The resources listed are just the tip of the iceberg! We have many more, including ACC Docket articles, sample forms and policies, and webcasts at <http://www.acc.com/LegalResources>.