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Twitter

The Sports Media Rookie

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Twitter has recently become a source of fascination and legal controversy for the sports world. Everyone from professional golfers (Steward Cink has over 900,000 followers) to professional basketball players (Shaquille O'Neal has more than 1.8 million followers) have signed on to Twitter (Gregory, 2009). Athletes rely on Twitter to share their thoughts, post pictures, make announcements and even relay inspirational messages to fans.

For those unfamiliar with the new social networking phenomena Twitter, or who have been living under a rock for the past year,—here is a brief primer: Twitter, founded in 2006, is a free social networking and microblogging service that enables its users to send and read messages known as 'tweets.' Tweets are text-based posts of up to 140 characters displayed on the authors profile page and delivered to author's subscribers who are otherwise known as 'followers.' Currently Twitter has 7 million unique monthly visitors and has a monthly growth of 1,382% (McGiboney, 2009). Technology gurus predict Twitter will surpass other social media outlets like Facebook and Myspace in the near future.

Penalty Flags and Foul Balls Lead to New Regulation

Athletes should be aware that opening a Twitter account can also open oneself up to a number of legal risks. Throughout the summer and fall of 2009, new Twitter accounts ushered in new

problems and new fines for a number of athletes. In August 2009, the San Diego Chargers fined Cornerback Antonio Cromartie \$2,500 for using Twitter to complain about the food served at the team's training camp. The offending Twitter post not only complained about the food served at the team's training camp but also insinuated that it contributed to the team's failure to make it to the Super Bowl in recent years ("Cromartie tweets," 2009). During a recent game against the St. Louis Rams, Washington Redskins backup linebacker Robert Henson used his Twitter page to label booing fans "dim-wits" and ask how people "who work 9 to 5 at McDonalds" could know what's best for the team. Henson later apologized and deactivated his Twitter account ("Henson takes," 2009, ¶3).

Amid such recent controversy, many sports leagues have begun instituting formal Twitter policies. The NFL's Twitter policy, which applies to players, coaches and other team personnel, prohibits Twitter use beginning 90 minutes before a game until following the conclusion of media interviews after a game. The league does not restrict Twitter use by players and coaches on other days. In conjunction with their new policy, the NFL did issue an announcement that states "the growth of social media platforms such as Twitter and Facebook has created new ways of or the NFL and clubs to communicate and connect with fans. The NFL has been at the forefront of the use of new media and will continue to emphasize innovation and approach use of these new forms of communication" ("League announces," 2009, ¶10).

Fearful that the casual nature of Twitter could inspire players to inadvertently disclose privileged information ranging from game plans to injuries, the NBA has also followed suit by issuing a formal policy. On September 30, 2009, the league issued a policy prohibiting "coaches, players, and other team basketball personnel" from using cell phones and other communication devices 45 minutes before game time until after players have finished their responsibilities after the games ("NBA issues," 2009, ¶3). Following the lead of the NFL and NBA, the NHL most

recently instituted a league-wide policy pertaining to Twitter. The NHL policy prohibits players from using communicational devices for social media activity—including Twitter and Facebook—thirty minutes before and after games, practices, meetings and media access periods. In regards to the policy, NHL Director of Social Media Marketing, Mike Dilorenzo said he looked at the NBA and NFL rules and used that as the basis for his own recommendations (Corazza, 2009). Major League Baseball (MLB) has no specific guidelines but has a longstanding policy regarding communicational devices that prohibits their use thirty minutes before the start of a game.

Defense v. Offense: Twitter's First Court Case

While Twitter opens a Pandora Box of legal issues, there is little, if any, court precedent to provide guidance on the legal consequences of social networking. Thus far, the court has only been confronted with one suit from a representative of the sports world. On May 6, 2009, St. Louis Cardinals manager Tony LaRussa (who also happens to be an attorney) filed a lawsuit against Twitter in the Superior Court of California, San Francisco.¹ LaRussa was prompted to file a lawsuit after an imposter created a false Twitter account under his name. The imposter posted controversial and sensitive tweets about the St. Louis Cardinals team and deceased players.

The lawsuit alleged eight causes of action including: trademark infringement, trademark dilution, false designation of origin, cybersquatting, misappropriation of name, misappropriation of likeness, invasion of privacy and intentional misrepresentation. Ultimately, LaRussa dismissed the complaint but, the lawsuit clearly spelled out some of the potential legal problems associated with having a Twitter (whether authentic or falsified) account. In response to LaRussa's suit, Twitter launched a *Verified Accounts* program. The program allows celebrities, musicians, athletes, actors and public figures to display a Verified Ac-

count message on their page. It provides users with a confidence about who they are actually following, and also aims to curb some of the legal problems outlined in LaRussa's complaint and appease celebrities' concerns about Twitter impersonators.

Preventing Legal Fumbles and Fouls

While Twitter's newly created Verified Accounts program addresses legal issues of misappropriation and misrepresentation, issues still remain concerning trademark, copyright, invasion of privacy and defamation.² The lack of court precedent on these issues leaves many questions unanswered: Can repeating someone's Twitter message constitute copyright infringement? Does a Twitter message fulfill the libel requirement of 'publication'? Does posting private information about someone else constitute a legal invasion of privacy?

As the popularity of Twitter continues to grow, Twitter and the Leagues should continue working on policies to curtail potential lawsuits. Twitter, in conjunction with the leagues, should consider implementing a disclaimer policy. To protect themselves from any liability that may arise from future suits, sports leagues should require players to include a disclaimer on their profile. For instance: 'The views and ideas expressed on this Twitter account do not express the views and ideas of the NFL/NHL/NBA and its affiliate companies.' A disclaimer would provide an extra coating of protection for the leagues.

Furthermore, it may benefit the NFL and other leagues to codify their new rules in future player contracts. A legally-binding clause contained within a player's contract eliminates the risk of NFL players claiming ignorance or an unawareness of new media policy and procedures. Player's signatures would constitute a legally-binding obligation to abide by the new rules.

As controversy continues to ensue over the usage of Twitter, attorneys should make a concerted effort to keep athlete clients abreast of new policies and legal precedent as they arise.

Although it may seem like common sense, attorneys should also continue to remind clients to think twice before posting information on social media outlets. Not only is important to think twice about posting one's own messages, it may be even more important to think twice about re-posting another's message. Adding comments to another's message can easily lead to misinterpretations and misunderstandings.

Overtime

When used responsibly, Twitter is an effective tool to bridge the gap between players and fans. Players enjoy it. Fans enjoy it. Chad Ochocinco, of the Cincinnati Bengals, used Twitter to announce to Cincinnati fans that he was purchasing movie tickets to the first 40 fans who arrived at a local movie theatre to watch a newly released film with him. (He generously also promised to buy popcorn and drinks.) As the popularity of Twitter continues to skyrocket, so does the potential of lawsuits. The relationship between social media, sports and the law is still in an ill-defined state. As the relationship begins to take shape, it would benefit those in the legal profession to closely follow developments and court decisions as they arise. The sooner we realize Twitter is the current and future trend in communication, the sooner we can educate athletes about the legal implications on and off the field.

Jaia A. Thomas is a 2006 graduate of The George Washington University Law School. She currently oversees her own law practice (The Law Office of Jaia Thomas), which counsels entertainment professionals and athletes in the areas of intellectual property and new media. Her practice is based out of New York City and Washington DC. She can be reached at: jaia@jathomaslaw.com

Notes

1. *Anthony LaRussa v. Twitter, Inc.*, CGC-09-488101 (Cal. Super. 5/6/2009).

2. See *Simorangkir v. Love*, No. BC410593 (Cal. Super. 3/26/2009). The first Twitter defamation case took place in 2009 in Los Angeles Superior Court. Clothing designer, Dawn Simorangkir filed suit against singer Courtney Love for comments Love made on her Twitter page. Simorangkir sued Love for defamation, invasion of privacy and emotional distress. The judge found that the subject matter of the Twitter post was not about a matter of public concern and that Simorangkir had showed a probability of proving her defamation case. The Court's decision will hopefully provide guidance and precedent on many of the legal issues surrounding social media.

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