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Use of Social Media in the M&A Due Diligence Process

Social media sites like Facebook, Twitter, LinkedIn or YouTube have become an integral part of almost every business. Companies worldwide are using social media as part of their marketing strategy to broadcast information about their products or services to a widespread audience. In addition, social media sites provide insights into how customers or competitors of a business perceive a company's products or services and whether employees are satisfied with their workplace and pay. Based on the vast amount of information available from these websites, parties conducting an M&A related due diligence have increasingly sought to utilize such information to assist the buyer in identifying potential risks and opportunities in the target's business and to evaluate the accuracy and exhaustiveness of the traditional due diligence materials.

The following outlines a few practical suggestions on how to optimize social media due diligence in an M&A transaction from the view of a prospective buyer:

Include Social Media Usage by Target Company in Due Diligence Request

As part of the traditional due diligence review of a target company, the buyer customarily requests information regarding the target's marketing strategies and copies of the relevant marketing materials, including any material press releases covering a certain time period prior to the due diligence request. To ensure that postings by the target company's representatives on social media websites are included, the buyer in its due diligence request should specifically ask for the following information relating to the target company's use of social media (to the extent permissible under applicable privacy laws and policies):

- A list of the social media sites currently or previously used by the target company.
- The log-in information (*i.e.*, username and password) to each social media account.
- A list of representatives of the target with access to such accounts.
- A description of the target company's use of the social media sites.
- To the extent available, all files of the target company's social media officer.

The foregoing information should provide the buyer with a better understanding of the target's social media activities and may disclose potential risks that may not have been apparent from the buyer's review of the traditional due diligence materials.



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Social Media Postings by Employees of the Target

A potential buyer of a business should also pay close attention (in accordance with applicable privacy laws and policies) to the use of social media by the target’s employees. An employee’s misconduct could expose the target company (and post-closing, the buyer) to liability and could harm the company’s reputation. Here are some examples:

- Employees share confidential information of the target on social media sites with the potential result of losing customer trust and revenues.
- Dissatisfied employees share their negative experiences with the target company on social media websites, thereby harming the company’s reputation.

Due to the foregoing risks, it is important that the buyer in an M&A transaction requests a copy of the Company’s social media policy and also requests a description of how such policy is monitored and enforced.

Third-Party Postings and Unauthorized Use of Target Company’s Intellectual Property

Besides monitoring and reviewing the social media activities of the target and its employees, the buyer in an M&A transaction should also research social media accounts and postings of third parties relating to the target’s business. Such research may provide additional information on the target’s business and reputation in the market place. The buyer should also research whether the target’s intellectual property has been compromised. In particular, the buyer should confirm that there are no existing social media accounts that “name squat” the target company’s name, logo or brands (“name-squatting” is a method by which a third party registers the name of a business or brands of such business with the intent to mislead the public about the ownership of the social media account).

Conclusion

Social media research has become an important part of a buyer’s due diligence of the target. The way social media users discuss a company’s products and services and employment practices can provide the buyer with a valuable insight on how well the company is perceived by its customers and employees and also whether the company will be able to attract new talent once the acquisition is complete. Lastly, social media research may also help in the post-acquisition process to integrate the target’s business into the existing operations of the buyer.

