

Case Study Should We Fire Him for That Post?



A small-business owner reacts to a prized employee's inappropriate Facebook commentary.

by Mary Anne Watson and Gabrielle R. Lopiano

By the time Susannah Winslow remembered that her ringer was off, she had seven text messages from her father, Dell, who was also her boss. Dell was the president of Downcity Motors, which owned BMW, Range Rover, and Mercedes-Benz dealerships in Charlotte, North Carolina, and had been in the Winslow family for three generations. Susannah, the general manager, was poised to take over in five years, when her dad retired.

It's Monday morning, Dad, she thought, sighing. Dell was an early riser who got to his office at 6:30 AM. Still, he rarely sent e-mails or texts at that hour. Something was clearly up.

"Dad, it's me," she said when he picked up the phone.

"Susie. Finally. We've got a problem. Kenton's been bad-mouthing us on Facebook again."

Everyone at the company called James Kenton by his last name, a sign of affection and respect for



Tell us what you'd do in this situation. Go to HBR.org.

one of Downcity's most successful salespeople. He had joined the Mercedes dealership straight out of college and quickly became its biggest producer, far outselling his peers across the company's locations.

Dell continued, "Greg Coucher called over the weekend. I just heard the voicemail this morning." Coucher was Downcity's contact at BMW headquarters. "He said that Kenton wrote something nasty about Friday's Mercedes launch, and he was glad it wasn't about a BMW promotion. He implied that we need to keep a tighter rein on our staff."

Susannah had heard Kenton's griping about the rollout. Tyson Beck, the Mercedes dealership sales manager, had been in charge of planning it, but Kenton had been breathing down his neck for weeks, asking for details. He wanted them to serve fancy

canapés, not "low class" barbecue. When he found out that Tyson was planning to use plastic tablecloths, Kenton had even come by Susannah's



office to say, "This isn't a Walmart employee picnic. We're selling *luxury* here. What

are our customers going to think?" Susannah had seen his point, but she also trusted Tyson.

"This is an embarrassment, Susie," Dell said now. "The kid clearly hasn't learned his lesson. He's got to go."

"Let's not be rash, Dad," she replied. "I'll deal with it as soon as I'm in."

What's Our Policy on This?

Tyson and Susannah were hunched over her computer, looking at Kenton's Facebook page. Dell sat on the small office couch with his arms crossed.

Susannah read: "So thrilled that Downcity went 'all out' for the most important Mercedes launch in years. Nothing says luxury like plastic tablecloths and soda pop." Kenton had posted a photo of a soda can with the Downcity Motors sign looming in the background.

"OK," Tyson said. "It's pretty bad. I'll have him delete it."

"But hasn't the whole world already seen it?" Dell asked. He didn't have a Facebook account and wasn't interested in social media. His daughter handled Downcity's online presence.

"Not really," Susannah replied. "He can restrict who sees it, depending on his privacy settings. And it looks like..." She clicked through to the post. "Shoot—he shared it pretty broadly."

"So that's how Greg Coucher saw it?" Dell asked. "And how do we know that no one at Mercedes headquarters has seen it?"



Susannah grimaced. She and Greg were Facebook friends; she assumed that he had friended staff members at the other Downcity dealerships and also car company executives he'd met.

"Only Kenton's 'friends' would see his posts, Dad," Susannah said, thinking of all the loyal customers whom Kenton had probably friended.

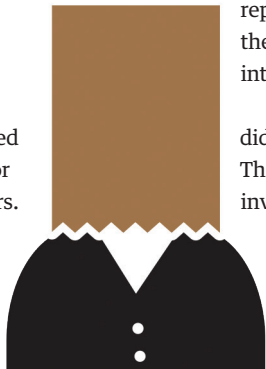
"Right," said Tyson. "Unless his friends repost the photo."

Susannah shot him a "you're not helping matters" look.

"I'll remind him that this is inappropriate," Tyson promised. "I'm sure he'll take it down, just like last time."

About a month earlier, another salesperson had pointed out to Susannah that Kenton had posted two photos: One was of seven cars lined up for service in the lot with the caption "Why am I here before the mechanics?" The other was of a BMW that had been driven into a pond by the 16-year-old son of a customer who had let the boy take the wheel during a test drive. When Tyson and Susannah had talked to Kenton about the pictures, he'd said that he was just sharing his work experiences with friends and family members. He then pointed out that the company should think about taking a harder line with tardy employees and teenage test drivers.

"We were clear that this shouldn't happen again," Dell said, and he was right. Susannah had asked Kenton not to post anything else that reflected negatively on Downcity or its customers and partners. "At some point we have to question Kenton's judgment and whether he can represent the company."



Tyson looked shocked. "Are you suggesting we fire him? He posted this late Friday night, clearly not on company time or from a company computer. He thinks he's being funny. He's not trying to hurt the company?"

"But he is hurting it—at least according to Greg Couchner." Then Dell smiled. "Are you worried about hitting your numbers without him?"

"Of course I am," Tyson said. "That's what you pay me to do, and he's our biggest producer. Not only would we be kissing sales good-bye, but I'd have to train a new person."

Toby Diller, Downcity's head of HR, walked in. "I'm sorry I'm late," he said. "I got your e-mail, Susannah. Has anyone talked to Kenton yet?"

"I was about to," Tyson said. "Let's hear from Toby first," Dell said. "We let Kenton get away with a slap on the wrist last time, but don't we have a policy on this sort of thing?"

Toby explained that technically they didn't. They hadn't yet updated their employee manual to cover social media. He and Susannah exchanged glances. They'd been talking about this for months, but it kept dropping down on the to-do list.

"All we have is a line that reads, 'No one should be disrespectful or use profanity or any other language that injures the image or reputation of the company,'" Toby said.

"Well, this seems to be a clear violation of that," Susannah replied. "And what about the section on unauthorized interviews?"

Tyson jumped in. "He didn't give an interview. There's no journalist involved here."

"That's just what Facebook seems like to me—people interviewing themselves all day



Case Study Teaching Notes

Mary Anne Watson and Gabrielle R. Lopiano developed the case on which this one is based for use in HR classes.

WHAT DREW YOU TO THIS STORY?

Employee use of social media has become increasingly important over the past decade, and no one can deny its power to make or break a company's reputation.

WHAT ISSUES DO YOU HOPE IT RAISES IN THE CLASSROOM?

We want students to become more aware of the consequences of their posts and the limitations on "freedom of speech" at work. The case might also frame a discussion about fairness in firing and other disciplinary actions and the impact of the employment-at-will doctrine.

WHAT REACTION DO YOU EXPECT FROM STUDENTS?

We think it's a topic they can easily relate to and debate. Some will think the salesperson is disloyal and deserves to be let go. Others will defend him because he posted those comments on a private site on his own time.



HBR's fictionalized case studies present problems faced by leaders in real companies and offer solutions from experts. This one is based on "Facebook Folly at Northeast BMW" (case no. NAO353-PDF-ENG), by Gabrielle R. Lopiano and Mary A. Watson (North American Case Research Association, 2015), which is available at HBR.org.

long," Dell said. "I don't get this generation. Not one bit."

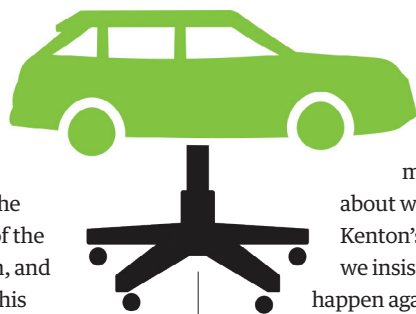
"Don't be such a curmudgeon," Susannah countered. "We were all young once, and if we'd had access to the technology Millennials have, we probably would have gotten into the same trouble."

"He's getting us in trouble—that's the difference," Dell said. "Susie, figure this out. I think I've made my views clear. I'd be happy to see him gone by the end of the day, even if he is our top salesman."

Make an Example of Him?

Susannah and Toby climbed into a Range Rover Sport. The dealership had few places for a private conversation, so they often used the roomy interior of one of their cars.

"It's impossible to think with Tyson and Dad hovering," Susannah said. "I just need to understand my options."



“I think you’ve got three,” Toby said. “First, since the photos he posted of the event were his own, and he was expressing his opinion—which he’s entitled to—on his personal Facebook page, we could ignore it.”

“That seems awfully lenient to me,” Susannah said. “I don’t want him—or anyone else—thinking this kind of behavior is OK.”

“The second option is to make an example of him. Because he damaged the company’s reputation in a public forum, we could take some sort of disciplinary action.” Toby laid out a few alternatives: make a note in Kenton’s personnel file, request that he rescind his remarks, or suspend him from work, with or without pay.

“And you think we could legally do any of those things?”

“I do. I think we could even fire him. That’s the third option. He violated the employee handbook when he was disrespectful of the company image, and it was a second offense. That would set a clear precedent regarding employee social media use, which, given the age of many of our new hires, is becoming increasingly important.”

Susannah asked if Kenton might sue. “He might,” Toby said, “but I don’t think he’d have a case. It’s not like this qualifies as free speech.”

She wasn’t so sure. Were they essentially censoring Kenton? What if he had posted something about poor working conditions? Wouldn’t that be protected?

Of course, her father and grandfather had always insisted on treating employees well. Other car dealers might behave as if salespeople were a dime a dozen, but Downcity was different, as proven by its incredibly low turnover.

“I guess I’m more worried about what he might say. Kenton’s a good guy; if we insist that this can’t happen again, I think he’ll try his best. But if we fire him, he’s essentially free to say whatever he wants about us.”

“I hear you,” said Toby. “But I’m more in Dell’s camp. We gave Kenton a second chance to demonstrate good judgment, and he failed again. Besides, I don’t think we can decide not to fire him just because of what he might post on Facebook. Then it’s as if we’re hogtied because he’s such a hothead.”

Kenton did have them in a bind, Susannah thought.

Get Ready for a New Generation

The next day Susannah went to Green’s Lunch with Rachel Evans, a rising star on the sales team, for one of their regular get-togethers. Knowing how challenging it could sometimes be to work with almost all men, Susannah had taken Rachel under her wing.

“I get that you probably can’t talk about the Kenton thing,” Rachel said after they’d ordered. “But remember when you asked me to help you understand our generation? I wonder if I can shed any light.”

“You’re right that I can’t discuss it,” Susannah said. “But I’ll listen.”

“I can see how this might not be a big deal to Kenton,” Rachel said. Susannah raised her eyebrows at the implication that he wasn’t remorseful.

“Don’t get me wrong. I think he’s a little embarrassed. But we’ve grown up with social media, sharing our opinions with friends, family, and even our employers, so we all have a story about posting something we regretted. And to be fair, he didn’t say



Mary Anne Watson is a professor of management and the associate director of the TECO Energy Center for Leadership at the University of Tampa. **Gabrielle R. Lopiano** is a PhD candidate in organization and management at Emory University’s Goizueta Business School.

anything that wasn’t true. He just added some sarcasm. We all thought the refreshments were a little off-brand.”

“On the other hand,” Rachel continued, “what he did was unnecessary and stupid. He got in trouble once but still did it again. He should have tighter privacy settings and maybe think twice before friending his professional contacts. And he should approach Tyson or you directly if he wants things done differently at the dealership—not gripe with all of us or do it online.”

Susannah winced. Kenton *had* come to her and Tyson; they’d just ignored his feedback.

Rachel was on a roll: “If you look through his feed, you’ll see that he says a lot of positive things about Downcity too. He loves his job and our cars, which is why he’s so good at selling them. But I worry that he just can’t help himself and it’s only a matter of time before he does it again.”

Susannah smiled. “Thanks, Rachel. That was very helpful.

Now let’s talk about you.

How was the conference last week?” But even as her protégé answered, she kept thinking about Kenton.

Should she just let it go? Should he simply be reprimanded again? Or should the consequences be greater this time?



What should Susannah do about Kenton’s Facebook remarks?

See commentaries on the next page.

The Experts Respond

Megan Erickson

Moritz is an attorney at BrownWinick Law Firm, where she practices employment law.

SUSANNAH SHOULD not fire Kenton—at least not yet. Given the information she has, terminating or even disciplining him would put Downcity at risk for legal action.

Here's why: Section 7 of the National Labor Relations Act protects employees' right to engage in "concerted activities" for "mutual aid or protection." Kenton's concerns about the marketing event may very well stem from its possible negative impact on vehicle sales and his commissions. Rachel suggests that other salespeople had similar feelings, so the Facebook post could be construed as Kenton's expressing their views on a subject related to their employment. If that behavior were punished, he would have a legitimate basis for filing an unfair

Terminating or even disciplining Kenton would put Downcity at risk for legal action.



labor practice charge with the National Labor Relations Board.

Tyson may be right that Kenton's gripes were his own, and Downcity could certainly argue that point to the NLRB, especially if no other employees "liked" or commented on them, or if some colleagues expressed concern that his behavior—more than the mismanaged event—was in fact likely to damage customer or vendor relationships. But asking employees for a statement along those lines could be viewed as coercive, and Kenton would need only one supporter to prove that he was voicing a shared opinion.

So before she decides what to do, Susannah should look into what, if anything, Kenton discussed with others, whether anyone else shared his views, and whether any of their worries might reasonably be tied to wages, commissions, or other terms of employment.

One thing she and Toby should do now, however, is whip the company's policies and practices into shape (with the help of experienced legal counsel) and then train employees in them, clarifying expectations. The NLRB would most likely find their current policy overbroad, which would also be a violation. Downcity could incorporate a clearer open-door policy, ensuring that staff members feel comfortable airing concerns with managers and that managers know they must listen and respond. This might help lessen the likelihood that employees would air workplace complaints online.

In the real case on which this account is based, the dealership fired the salesperson for two Facebook-related events, and he disputed the termination with the NLRB. The judge concluded that

criticism of the refreshments at a sales event probably amounted to protected activity but that the other post, complaining about a Land Rover accident at a different dealership, did not, because the employee hadn't discussed it with colleagues and it was unconnected to the conditions of his employment. Because the dealership had based his termination on the latter, it stood—but the company spent a lot of time and money fighting the case, which I'm sure Dell and Susannah want to avoid.

The frequent, multiple, and sometimes conflicting sources of information about recent NLRB activity make this area a compliance nightmare for employers. However, one thing is clear: The NLRB has been aggressively expanding its reach regarding social media issues in the workplace. Susannah is better off giving Kenton another warning and clarifying company policies so that Downcity is well prepared to take action if and when this happens again.

Comments from the HBR.org community

Employees Should Be Heard

His delivery may be off, but Kenton may also have a valid point about maintaining the brand. Employees should feel that they're valued and being heard.

Erica Ogle, student, *Regis University*

Not a Team Player?

Kenton should be suspended and told that if such behavior continues, termination is a possibility. Toby and Susannah need to reiterate the importance of being a team player.

Aaron Wynn, HR business partner, *Ford Motor Company*

Use His Insights

Management should focus on correcting and learning from bad business decisions, not chasing employees who whine on social media. Instead of punishing Kenton, his bosses should ask him to plan the next launch.

Khaled Barahmeh, group audit and risk manager, Zamil Group Holding Company

A Valuable Sales Tool

Once Kenton and the rest of Downcity's salespeople become aware that social media can be a sales tool, they'll realize that their online presence affects not only the company but also their own sales.

Saige Fraiha, director of product and marketing, MedicFP

Alexandra Samuel

is a cofounder of Social Signal, one of the world's first social media agencies, and the author of *Work Smarter with Social Media*.

SUSANNAH NEEDS to let Kenton go. I know from running my own company that nothing is harder than firing someone, particularly in a tight-knit family business. But once you've warned an employee about a specific issue and made your expectations clear, you can't keep providing second chances.

If Downcity keeps Kenton, it leaves itself open to ongoing risk: He didn't see why it was inappropriate to publicly mock a company event, so what might he post in the future? Ignoring that risk signals that employees can say what they want online and

get away with it. Worse, it tells both employees and partners that the company doesn't care if they publicly disrespect one another or the organization.

To be clear, Downcity doesn't have *carte blanche* to fire any employee who posts something off-brand on a social network. There's a world of difference between a personal post that diverges from the company line and comments that explicitly disparage the business. It might be uncomfortable if Kenton had criticized a competitor's event, or ranted about how badly BMW owners park, but neither would be an offense for which he should be terminated.

Likewise, any organization must tolerate social media commentary that's posted in the spirit of whistle-blowing. For example, if a female salesperson at Downcity wrote about her perceptions of gender discrimination at work, firing her would be a huge mistake. The company would be setting itself up for a lawsuit (and a PR disaster) and missing a valuable opportunity to address the problem in a transparent way. But Kenton wasn't calling out the company for mistreatment. He was complaining about its strategic choices.

Susannah is smart to try to understand the generational differences around social media. In terms of time spent on social platforms and the kind of personal information shared, younger employees may well vastly differ from their older colleagues. But age is no excuse for poor judgment, and particularly after his prior warning, Kenton should have known better.

As soon as Toby and Susannah have dealt with him, they should focus on writing and sharing that



Once you've warned an employee about a specific issue, you can't keep providing second chances.

social media policy. It should detail what's unacceptable, including posts that cast the company, its partners, or its customers in a negative light. But it should also prepare employees for social media success by describing activities that Downcity encourages and noting resources that can help strengthen their online presence.

All this should be in accessible language, not legalese. I've written social media and community policies for many sites and organizations; when the tone is conversational and helpful (rather than a list of "don'ts"), it inspires good behavior as much as it discourages bad.

Although Downcity didn't have an official social media policy when Kenton aired his criticisms on Facebook, he knew what his bosses expected because they had told him. The media context may be changing, but employers still have a right to insist that employees speak respectfully online about them and the products or services they sell. ♥

HBR Reprint R1603K

Reprint Case only R1603X

Reprint Commentary only R1603Z

Harvard Business Review Notice of Use Restrictions, May 2009

Harvard Business Review and Harvard Business Publishing Newsletter content on EBSCOhost is licensed for the private individual use of authorized EBSCOhost users. It is not intended for use as assigned course material in academic institutions nor as corporate learning or training materials in businesses. Academic licensees may not use this content in electronic reserves, electronic course packs, persistent linking from syllabi or by any other means of incorporating the content into course resources. Business licensees may not host this content on learning management systems or use persistent linking or other means to incorporate the content into learning management systems. Harvard Business Publishing will be pleased to grant permission to make this content available through such means. For rates and permission, contact permissions@harvardbusiness.org.