

## Some Considerations When Using Online Platforms During the COVID19 Outbreak

Small business owners that have traditionally operated from a brick and mortar model should be considering moving a portion of their business to an online delivery method in order to sustain at least a portion of revenue during the COVID19 closures and restrictions. For those that already had an online presence, this would be an opportunity to expand existing alternative delivery methods and make them a more robust part of operations. Whether one's small business is just now entering online commerce or expanding existing online operations, there are many legal considerations that business owners should keep in mind.

First and foremost, all small businesses should ensure that they and their staff are staying up to date and complying with the latest COVID19 restrictions and recommendations put in place by municipal, state, and federal authorities. The shelter-in-place orders that have been handed down thus far are enforceable by local police departments, and violations by individuals or businesses could result in misdemeanor criminal citations, suspension of business licenses, and health code citations. Although Nebraska's governor has not yet issued such an order, one may well be on the way. Vandennack Weaver's website is offering comprehensive updates regarding COVID19 as a courtesy to keep our community safe.

Small businesses are likely working to update and increase their social media presence and push forward with additional online advertising. Frequent updates to social media accounts, as well as listings like Google's MyBusiness and Yelp may be beneficial to businesses as they try to keep customers apprised of new hours and of services still being offered. Some businesses may be offering discounts or incentives in order to encourage purchases. Businesses may even wish to consider the inclusion of a dedicated FAQ page detailing how exactly they are complying with social distancing guidelines—for example, a restaurant may wish to explain who comes in contact with food ordered for take-out, how exactly the food may be picked up, and what methods of payment are being accepted (for example, cash has been disfavored lately as it requires a hand-to-hand exchange and cannot be sanitized).

As online advertising becomes more frequently used, however, businesses must keep in mind that online claims are regulated by both federal and state law, and that any claims they make must be truthful, and promotions honored. Section 5 of the Federal Trade Commission act states that online advertisements may not be unfair or deceptive, which includes misrepresenting or omitting information that is material to consumers. Advertisers must be able to substantiate claims they make with competent and reliable evidence. Nebraska Revised Statute §87-302 is the state statute that governs fairness of online advertising, and its standards mirror those of the FTC.

A small business should also be aware of the concurrent increased risk of cyber-security attacks. A study by Nationwide Insurance of 1,069 small business owners found that approximately 75% of entrepreneurs think cyber attacks are unlikely to affect their business, and 41% reported that they believe that cyber attacks are limited to large businesses. However, this is far from the truth. The most common cyber attacks on small businesses involve ransomware and email hacks.

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Business owners need to ensure that they are doing their so-called ‘technology due diligence’ protecting customer information, as required by federal and state law. Nebraska Revised Statute §87-808 is the state statute that pertains to duties of businesses to their customers with respect to data and requires that Nebraska entities “maintain reasonable safety procedures and practices” appropriate to the “nature and sensitivity” of the personal information they possess. Notably, this statute also mandates that a business disclosing Nebraska resident data to third-party service providers shall require the service provider, by contract, to also take appropriate measures to protect the data.

Given the foregoing, Business owners should take this opportunity to ensure that business and customer information is safe, and that they have appropriate cyber-security measures in place that will prevent them from being found negligent. Businesses should have procedures in place that every employee can follow to keep electronic information safer. A separate device should be used to take customer payment. Physical access to computers and devices should be limited, and devices should be outfitted with anti-virus software. Ensure procedures exist for lost or stolen equipment. Frequent and reliable back-up of information is crucial to protecting it. Businesses can also consider taking advantage of cyber liability insurance policies, which protect against exposures and may also cover business interruption and attorney costs in the event of a breach; these may not be covered by general liability policies already in place.

Finally, if they have not done so already, small businesses moving online may wish to seek out intellectual property protections for their services and products. As the business becomes visible to a wider online market, trademark protection would protect the items that define the company and brand (for example, a logo) from infringement by others. Copyright registration would protect businesses’ artwork, written materials, reports, or videos. An experienced attorney can assist with this and determine the type of intellectual property protection that would be most beneficial.

Although this article discusses several legal considerations when moving a business online, making that transition might be necessary given the global economic challenges. As social distancing, quarantine, and other measures are taken to curb the COVID19 outbreak, utilizing technology to evolve delivery methods will become even more of a necessity to survive these challenging economic times. Experienced attorneys can provide advice, analysis, and recommendations to stay compliant with the law and navigate this unexpected transition.