

LEGAL

TUWK is considering licensing access to its database. Ms. Dewey is concerned that TUWK may lack the legal authority to enter into such licenses.

Dewey, Cheatum, & Howe, Inc. is a "C" corporation providing consulting services by its MBA shareholders and d.b.a. TrustUsWeKnow.com as well as doing business under its NYSE ticker TUWK. Given its current burn rate, TUWK has considered a voluntary bankruptcy decision during this quarter. TUWK needs revenue. Now. TUWK has searched for assets to sell and new customers to procure. To date, the only feasible source of sufficient revenue is for TUWK to license access to its database. The TUWK database includes extensive data on TUWK's customer that number over 1,000.

The Terms of Use (ToU) found on TUWK's web site includes a statement that TUWK never will allow third parties access to TUWK's database. The primary interface between TUWK and its clients is the web with no less than 90% of the content in the TUWK database submitted by the clients via the web. When data is collected face-to-face, the TUWK agent uses mobile computers and communications over a secure virtual network to submit data via the web. TUWK's database includes both publicly available data (e.g., business name, address) as well as data not ordinarily public (e.g., direct phone numbers, email address, corporate alliances). None of the contracts signed by authorized TUWK agents contain any statement resembling the Terms of Use. All of the contracts signed by TUWK's authorized agents contain a merger clause that expressly disclaims all other oral or written warranties or agreements. All of TUWK's clients are corporations or LLCs or LLPs organized in a USA State, but many do business within NAFTA and the EU.

TUWK's Ms. Dewey asserts that TUWK's ToU is legally binding both in law and in equity. Cheatum and Howe assert that neither party gave consideration, so there are no contracts based on the web ToU. Dewey is willing to grant that point, but she believes promissory estoppel may exist and she is worried about violating FTC prohibitions against deceptive trade practices. Cheatum grants that the FTC may have jurisdiction, but he believes only consumers reasonably could claim to have been deceived by the divergence between the ToU and the merger clause, and none of TUWK clients are consumers. Howe believes none of its clients could justifiably rely upon a web ToU when the signed, written contract contains a merger clause "expressly" disclaiming the web ToU.

Dewey is not persuaded by Cheatum and Howe because there are so many governments that could prove TUWK had substantial minimal contacts with that government's geographic jurisdiction. Each of those governments, especially the Canadian, the EU, and the various European governments are likely to have less forgiving regulatory responses to a bogus ToU.

Cheatum and Howe believe Dewey is missing the bigger picture of the potential for their personal liability for breach of fiduciary duties should TUWK file for bankruptcy. Dewey says that's not the problem because the automatic stay most likely would protect them from derivative lawsuits.

ETHICAL

TUWK's CEO Cheatum believes that the Officers are ethically required by the shareholders' expectations to focus on and stress the potential for near term revenue and avoiding bankruptcy. TUWK's CFO Howe believes they should stress the importance of long-term opportunities for profitability from the database product extension and expanding consulting opportunities with firms that take TUWK licenses. Dewey believes they are both misguided by their focus on money: she believes the ends can not justify the means.

Cheatum views the long term as moot if TUWK is bankrupt. Accordingly, Cheatum uses a very large discount rate on consequences in the distant future (e.g., six quarters away). Cheatum says that shareholders, employees, and current customers do not gain if TUWK goes into bankruptcy. True, the current customers will be asked to bear a distinct and slight burden for the benefit of the whole, but that is only fair. Cheatum believes that since TUWK's are businesses TUWK's customers reasonably expect TUWK to seize this opportunity given the very real and current threat of bankruptcy. It would be another thing altogether if TUWK was flush with cash, but it isn't. Cheatum believes that if any current TUWK customer is upset with TUWK that customer will leave TUWK at the end of their contract and thus end any ethical concerns for TUWK.

Howe is not quite ready to agree the long term is moot since while the corporation may end, she certainly plans on still being here. Also, Howe is not fully convinced of the profitability of the database licenses because some current TUWK customers might treat TUWK's behavior as an anticipatory breach and/or might sue at the end of their contract seeking royalties. Howe just wants to be sure TUWK sets aside enough for these contingent liabilities. Additionally, because Howe believes TUWK must focus on future profitability, she wants to estimate how many new consulting customers may be gained during the marketing of the database. The net change in customers is critical. The future stream of both revenues and costs must be used in any calculation of TUWK profit. Howe believes licensing the database is ethical if it is profitable for TUWK.

Dewey believes that TUWK should be run so that the managers can prove beyond a reasonable doubt that they have acted with a fiduciary's good faith. Also, she can say with certainty that at least one major shareholder and at least one member of the Board and at least one Officer shares the view that it is very important that the business community view TUWK's behavior as ethical. Dewey is concerned about creating an internet environment devoid of trust and characterized by unexpected abuse at every turn. Dewey believes TUWK, as a consulting firm has a higher calling to professionalism, and that includes setting an example of superior behavior. Stealing, even when it is lawful, is not such an example.

SOCIAL

TUWK is a dot com. TUMK claims to exist in cyberspace. In cyberspace is there any there there? And if so, who is there there?

The web is a no man's land where technology is king and the law is little more than a stunned bystander. That stunned kibitzer spasms on occasion, striking out at web phantoms long since past as the kibitzer shadow boxes with the future. Cash is technology's siren, luring technology and its human handmaidens with the promises of productivity when the real destination is an ethical abyss.

The web is a tool. The web is a human artifact. The web, like all technology, is no more than yet another attempt by humans to avoid experiencing reality directly. While the blinders of technology might explain the inadvertent deeds of some who tread in cyberspace, one truth is unavoidable: each human in cyberspace is no more than a human. In cyberspace the herds of humans are no more than the herds of humans on Earth, albeit with some minor adjustments to their corporeal limitations. However, no such adjustment alters the fact that each human manifests its soul and no more. The manifestation of the human condition in cyberspace appears distinctive, but that is a false image. No difference in technological degree becomes a difference in human kind.

Cyberspace fills a physical space for the assemble pieces of equipment. In contrast, for the sentient biological organisms purportedly creating and claiming authority over that space, cyberspace is just one more profit center.