

JANUARY 10, 2012

Who Owns That Twitter Account? Internet Company Sues Former Employee for Allegedly Hijacking Twitter Account.

Recent surveys indicate that eDiscovery requests increasingly include social media (in 41% of cases, says Symantec)¹ – but when an employee creates a social media account for his or her company, and then creates content using that account, who owns those assets? This question is at the heart of a lawsuit filed in the U.S. District Court for the Northern District of California by mobile phone site Phonedog.com, against a former employee.

Mr. Noah Kravitz created the Twitter handle “@PhoneDog_Noah” during his four years as a Phonedog employee. During his tenure, Mr. Kravitz tweeted both Phonedog product advertisements and personal messages, and by the time he left Phonedog (to go work for a rival company) he had amassed 17,000 Twitter followers.

Mr. Kravitz changed the account name to “@noahkravitz,” and has continued to post tech news, information about his personal interests, links and humorous quotes on the account (<http://twitter.com/noahkravitz>). He currently has around 24,500 followers.

Phonedog alleges in its lawsuit against Mr. Kravitz that the Twitter followers comprise a “customer list” and “confidential information,” and that Phonedog’s investment of “costs and resources” created intellectual property rights in the account, under copyright, trademark and branding laws. Phonedog is seeking control of the account, \$340,000 in damages and punitive damages.

Mr. Kravitz says that the lawsuit is baseless and that Phonedog told him he could keep the account if he would “tweet on their behalf from time to time.” The absence of a contractual agreement and the limited applicability of traditional intellectual property law leave the outcome unpredictable.

Phonedog LLC v. Noah Kravitz, Case No. 3:11-cv-03474-MEJ (N.D. Cal) will be important not just for deciding ownership of the account, but also for calculating damages, as Phonedog claims that each Twitter follower is “worth” \$2.50 per month, resulting in the \$340,000 in damages sought by Phonedog. Mr. Kravitz’s attorney seems to think that proving an economic relationship between the followers and Phonedog will be difficult, if not impossible. Federal Magistrate Judge Maria-Elena James has already noted the disagreement on this question, as well as its novelty, stating that, “the Court is unable to resolve this dispute at this juncture.”

A story on the lawsuit is available at <http://www.nytimes.com/2011/12/26/technology/lawsuit-may-determine-who-owns-a-twitter-account.html>

¹ *Symantec Survey Finds Emails Are No Longer the Most Commonly Specified Documents in eDiscovery Requests*, Symantec, Sept. 19, 2011, available at http://www.symantec.com/about/news/release/article.jsp?prid=20110918_01.



This newsletter is an information source for clients and friends of Redgrave LLP. The content should not be construed as legal advice, and readers should not act upon information in this publication without professional counsel. This material may be considered advertising under certain rules of Professional Conduct. ©2012 Redgrave LLP. All Rights Reserved.

Contact Us: For further information or if you have any questions regarding this Alert, please contact your Redgrave LLP attorney or Managing Partner Victoria Redgrave at (202) 681-2599 or vredgrave@redgravellp.com.

