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Trade Secret Case Carries Big Impact for Business Use of Social Media

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By [Krystina Steffen](#), *Editor – January 19, 2012*

Social media is increasingly being used by businesses to build their brands and customer base. In particular, businesses are embracing sites such as Twitter to heighten awareness amongst their target markets. The latest estimates show that more than 175 million users are registered on Twitter and send 95 million Tweets on a daily basis. [1]

Businesses spend a lot of time and effort on developing customers and creating corresponding customer lists. In the digital era, this translates on Twitter to followers. Whoever is in charge of the Twitter handle at a business creates a target list of influencers or prospects that it wants to convert into clients. As followers increase, the person's tweets, even when conversational or personal, become part of the company's public relations. As the Twitter account becomes more popular, other Twitter feeds can list it too. The business' Twitter feed then becomes more valuable and influential as a key part of business development. What starts out as a casual interaction on Twitter leads more people to visit a business' website and offline products, use their services, and partner on unique business transactions.

A current lawsuit in the California courts shows how one business is grappling with a coveted Twitter account that one of its ex-employees took with him when he left the company. The lawsuit has big implications nationwide for business use of social media and employment contracts as businesses try to keep trade secrets, including customer lists, away from competitors.

In *PhoneDog v. Noah Kravitz*, PhoneDog sued Noah Kravitz, a writer for its mobile reviews and news after he left the company and took his 17,000 Twitter followers with him. [2] Kravitz alleges that PhoneDog let him keep his Twitter account if he would post Tweets occasionally as he left on good terms. [3] His account while at the company was Phonedog_Noah and post employment he changed it to NoahKravitz. Eight months after Kravitz left, PhoneDog asserts that Kravitz took all the followers with him when he changed his account and this customer list is vital to doing business. PhoneDog is seeking \$2.50 a month per client in damages, or \$340,000 for the eight month time span.

Kravitz sought to have the lawsuit dismissed as he stated that the case lacks subject matter jurisdiction. Last November the United States District Court, N. D. California, ruled against Kravitz on this matter, and said that PhoneDog can file an amended complaint in regards to misappropriation of trade secrets. [4]

PhoneDog asserts that it has employees send out written content and videos via Twitter accounts. Twitter accounts help it generate more website traffic and thus increase the potential for mobile and other related companies to advertise on the website. The company says that all @PhoneDog_Name Twitter accounts accessed by employees, including account names, passwords, and followers are proprietary, confidential information. Kravitz says that since there was no employment agreement setting a rule for changing his Twitter handle, the company cannot seek damages from him.

“The costs and resources invested by PhoneDog Media into growing its followers, fans and general brand awareness through social media are substantial and are considered property of PhoneDog Media L.L.C,” they released in a comment to *The New York Times*. [5] “We intend to aggressively protect our customer lists and confidential information, intellectual property, trademark and brands.”

The lawsuit highlights the debate at the center of social media use by businesses – who owns a Twitter account and its followers ultimately? To Kravitz, “...all Twitter accounts are the exclusive property of Twitter and its licensors, not PhoneDog” and his 17,000 followers “...are human beings who have the discretion to subscribe and/or unsubscribe to the Account without the consent of PhoneDog and are not property and cannot be owned.” [6] So does everything belong to Twitter or as PhoneDog asserts, to the company as it has a license granted by Twitter to access and use the @PhoneDog_Name accounts?

Also of contention is the value of a Twitter account and followers. Without an industry recognized standard of valuing followers, how can a value such as \$2.50 a person be assessed? What would happen if a company kept its Twitter handle when a person left but the value of the content on the Tweets did not find much interest and followers greatly diminished with a new person at the controls?

The questions raised in this lawsuit are important as businesses use Twitter more and enlist high-profile guest reviewers and bloggers on sites to gain more business. Employers and their human resources and legal departments will need to update confidentiality, nondisclosure and non-compete agreements to address ownership of social media information that is operated on behalf of a company and on company time. With Rolodexes and old fashioned customer lists barely used in the workplace anymore, social media contacts for business and corresponding customer relationship management databases must be safeguarded. Restrictive covenants could have prevented much of PhoneDog’s complaints.

As with many employment agreements, an employer can lessen disputes by informing potential and current employees of expectations up front, remind them about ground rules in yearly meetings or quarterly emails, and update the rules as new forums for business development emerge. With Twitter, Facebook, LinkedIn, Google’s +1, and the dizzying array of social media that will undoubtedly take root in the years to come, employers must stay out front of these disputes.

Being specific and detailed in employment agreements and policies is key. Provisions should define what is confidential and a trade secret, bar personal use of business accounts, and establish what disciplinary actions could occur if coveted information was disclosed. [7] This should also include post-termination rules, such as unlinking customers to social media accounts, handing over logins and passwords, and prohibiting connecting to customers with a competitor for a set, reasonable amount of time.

How the California courts will interpret PhoneDog’s interpretation of what is a trade secret is still to be determined. Trade secret lawsuits must prove that a secret gives its business a competitive advantage and it has taken the steps to protect it. PhoneDog says that how Kravitz logged on was confidential company information. Many companies and employment and business attorneys are looking to this case for more guidance, and hoping that the case does not end in a mediocre, hushed way.

Sources

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Background

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