

Who Owns a Company's Twitter Account (and Musings on Social Media and Trademarks)?

By [Geri Haight](#) on January 31st, 2012

Our colleagues at Mintz Levin's [Employment Matters](#) blog recently posted [an interesting piece](#) about a dispute regarding ownership of a Twitter account. The dispute arose from an employer/employee relationship, but serves as an important reminder about protecting your brand on social media sites.

As alleged in the complaint ([PhoneDog LLC v. Kravitz](#)), PhoneDog operates a website that offers cellphone news and reviews and it hired Kravitz as a product reviewer and video blogger. While at PhoneDog, Kravitz was given use of a twitter account "[@PhoneDog_Noah](#)" to disseminate information on behalf of the company, and to promote its services. Over time, [@PhoneDog_Noah](#) amassed 17,000 followers. After resigning his employment with PhoneDog, Kravitz began working for a competitor but continued tweeting under the [@PhoneDog_Noah](#) handle. Although he later changed the account's name to omit the PhoneDog name, the 17,000 followers continued to follow Mr. Kravitz's tweets. PhoneDog sued Kravitz, asserting claims for misappropriation of trade secrets, interference with prospective employment advantage, and conversion, based on his use of the PhoneDog handle and his retention of the twitter account's followers. Kravitz moved to dismiss the case, but on Monday, the court [rejected his arguments](#) and the case will now move forward.

Having effective [social media policies](#) in place for employees would help to [avoid a situation](#) like the one faced by PhoneDog. Such a policy can clearly state that all Twitter and other social media accounts (and the fans and followers that go with them) that are used by employees for work-related purposes (such as [@PhoneDog_Noah's](#) use) are owned by the company. This provision is particularly important when the account includes a company's trademark or brand names. Moreover, business owners can take several additional steps to protect their trademarks on social media sites, including Twitter. For example, it is advisable to register your trademarks with each social media site (not only house mark, but each product mark as well). This simple proactive step helps to keep these valuable accounts out of the hands of unauthorized third parties. Companies should also monitor sites (for example, through internal monitoring, third party monitoring, Google alerts, etc.) to detect negative, inaccurate and misleading comments or intellectual property infringements. Businesses should also revise existing licenses and include in future license agreements restrictions that limit use of trademarks online, particularly in the social networking context.

But when a company's trademark is used by an unauthorized party in a Twitter account, a trademark owner has several options. First, Twitter itself has a [policy](#) that prohibits the use of a company or business name, logo, or other trademark-protected materials in a manner that may mislead or confuse others with regard to its brand or business affiliation. In response to complaints submitted by the trademark owner, Twitter will either suspend the infringing account or will transfer the account name to the rightful trademark owner. [Facebook](#) has a similar policy. Use of the terms of use policies of these (and other) social media sites is an quick and effective way of resolving a trademark infringement issue. A second (and more costly) option is to assert a trademark infringement claim

against the user/owner of an infringing account via a cease and desist letter or by filing a complaint in federal court. There has been little case law developed in this area. In 2009, both TonyLaRussa, a well-known baseball manager, and Oneok, a natural gas company, filed suit against Twitter for trademark “username” infringement. Both cases settled shortly after filing, with Twitter transferring the “ONEOK” twitter account to Oneok (the account now has [518 followers](#)) and the “TONYLARUSSA” account to LaRussa (who now has [28,000 followers](#)). Although traditional enforcement mechanisms can be effective, companies should always carefully evaluate the extent of the threat before filing suit especially in the online context.

To review our advisory on protecting trademarks on social media sites, click [here](#).