



## All A-Twitter Over Possible Trademark Infringement

### Unauthorized uses of companies' names could spawn more lawsuits

By **DOUGLAS S. MALAN**

Companies trying to get a handle on how to most effectively use the social networking site Twitter could run into a bit of a problem. There may be someone out there already pretending to be them.

Stories about stolen identities on Twitter have hit the news in recent months, mainly dealing with people impersonating famous people. But earlier this month, the discussion entered the business world when Oklahoma-based natural gas distributor Oneok filed a lawsuit in Tulsa federal court against Twitter alleging trademark infringement. The company claimed that Twitter wrongly allowed an anonymous user to post the company's logo on a profile that was named "Oneok\_i." The user also posted some information about the company, Oneok officials said.

Oneok withdrew the lawsuit a day after it was filed, and Twitter has disabled the account. Oneok has its own official account on Twitter that includes the company's logo.

"This lawsuit could be the beginning of many others," said Curtis Krechevsky, a Hartford-based partner of Cantor Colburn who specializes in trademark and copyright matters but was not involved in the Oneok case. "Any service that allows you to create a personalized area of content, the same issues are going to come up."

That could mean allegations of trademark infringement, unfair competition and issues involving consumer protection and fraud. And with an estimated 37 million Twitter users worldwide, there seems to be ample opportunity for mischief.

Twitter's terms of service outline a process that allows people or companies to act if they believe their intellectual property has been compromised.

"Twitter respects the intellectual property rights of others and expects users of the Services to do the same," the company's copyright policy states. The company states that accounts with a "clear intent" to mislead others will be suspended immediately.

Twitter does not require identity authentication to set up an account.

Oneok officials said they tried to convince Twitter to reveal the identity of the imposter account holder, but Twitter refused based on its privacy policy. Oneok also asked that the account be turned over to the energy company, but Twitter didn't comply.

That's when Oneok filed the lawsuit.

"If this situation is allowed to persist, the unknown Oneok Twitter account holder can use the Twitter system to damage Oneok's reputation in the investor community and energy industry," the lawsuit stated.

#### Parodies Permitted

There's a fine line in the discussion, Krechevsky noted. If an account is created to parody a company, that use is allowed under



Contributed Photo

**Attorney Curtis Krechevsky of Cantor Colburn said companies must determine if chasing down alleged misuse of their names on social networking sites is worth the risk of alienating a young, tech-savvy customer base.**

Twitter's terms of service, but deception is not allowed.

An example is using brand names or logos in an attempt to steer people away from a legitimate company and entice them to purchase products that are potentially counterfeit. A quick search of Twitter accounts revealed pages for well-known brands of watches and handbags, some of which linked back to retail web sites unaffiliated with the actual manufacturer of the products.

“If people are engaged in selling counterfeit products, that is something that is actionable,” Krechevsky said, and could lead to more lawsuits against Twitter.

The networking site provides instructions for copyright complaints and for law enforcement officials to attempt to obtain information about Twitter users.

Those who wish to create a Twitter account must abide by the terms of service, which state, “You are responsible for your use of the Services, for any content you post to the Services, and for any consequences thereof.”

Professional baseball manager Tony LaRussa of the St. Louis Cardinals sued Twitter in June when he discovered that someone was posting comments using his identity. He dropped his lawsuit after the account was suspended.

Twitter has since instituted a verified account option where it will contact the person the account is representing to make sure they’re not imposters. That option is not yet available for businesses, however.

Krechevsky said he’s talked to clients about monitoring the use of their names on

social networking sites. “Many businesses are sitting back and watching and waiting” for any perceived serious misuse of a company’s brand, Krechevsky said.

Besides the expense of initiating a lawsuit, a company also must consider the bigger impact a suit might have.

“In some cases, brand owners may not take action because they don’t want to look like they’re trying to squelch information,” Krechevsky noted. “If you take action, it can backfire in your face if you’re catering to a tech-savvy younger customer base.” ■