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## Local IP lawyers consider issues in California Twitter account lawsuit

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Anyone with a large following on the social media website Twitter might find it interesting that a recent intellectual property-based lawsuit claims a Twitter follower can be worth \$2.50 a month.

PhoneDog LLC, a mobile phone product review website, made that claim in a lawsuit against an employee after he took his work-related Twitter handle, which the company valued at \$340,000, along with him when he quit his job.

Local IP lawyers not involved in the case said the lawsuit raises questions about how to value Twitter followers and highlights the need to establish ownership of work-related Twitter accounts. The lawyers also weighed in on the likely outcome of the litigation.

The lawsuit, *PhoneDog LLC v. Noah Kravitz*, filed in the U.S. District Court for the Northern District of California, seeks an injunction to keep Noah Kravitz from using the Twitter account.

PhoneDog's complaint lists four claims against Kravitz: misappropriation of trade secrets, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage and conversion.

In November, the district court sided with a Kravitz motion to dismiss the "economic advantage" claims. At that time, the court said PhoneDog's initial complaint "failed to sufficiently allege which economic relationships were actually disrupted" by Kravitz keeping the Twitter feed.

After PhoneDog filed an amended complaint on Nov. 29, Kravitz tried again to dis-

miss those two claims.

But in a ruling Monday, the court said PhoneDog's amended complaint sufficiently alleges an economic interest in the account because without it, the company's website attracts fewer visitors. That, in turn, costs the company advertising revenue.

Given the \$2.50 a month valuation of the account's 17,000 followers, PhoneDog wants \$340,000 from Kravitz for the eight months in which he used the account after quitting. It also seeks punitive damages and the return of the account name and password, which it calls trade secrets.

Richard S. Stockton, a partner at Banner & Witcoff Ltd., said PhoneDog's \$2.50 a month valuation of a Twitter follower seemed high.

"Valuing a Twitter account at this stage is just rife with complications," he said. "There isn't a lot of concrete data on how exactly a Twitter follower translates into an actual business lead."

Evan D. Brown, an associate at Hinshaw & Culbertson LLP, said the "very loose, very distant relationship" between a Twitter account and its followers makes it hard to know how to value each follower.

"I don't purport to know even 10 percent of the people who follow me on Twitter," Brown said. "How on earth could I assign a dollar value to how much they mean to me?"

Brown said companies should negotiate ownership rights of Twitter accounts into contracts to avoid similar disputes.

Kravitz appeared this month on an Internet TV show Brown co-hosts called, "this WEEK in the LAW."

On the show, Kravitz said he spoke with his superiors at PhoneDog about the account before he left the company.

"When I decided it was time to move on (from PhoneDog) and we sort of figured out what loose ends needed to be tied up, they said to me, 'The Twitter account is yours,'" Kravitz said. "I decided I would change the handle so that I wouldn't be using their brand name anymore. ... And on my last official day of working (there), I changed the handle of the account."

Still, PhoneDog's complaint says the company owns the Twitter account.

Joseph M. Barich, a shareholder at McAndrews, Held & Malloy Ltd., said similar cases played out when employees first started making their own websites or running a blog.

"These disputes shouldn't be hitting employers like bolts from the blue," Barich said. "Instead, they should be integrated into a company's standard management practices."

Barich said one way to solve the issue could be treating the Twitter account as a "shop right." He said that means creating a duplicate account that the company operates while letting Kravitz continue to use his account.

Brown said the case seems poised to end in mediation.

Stockton said he predicts the case will likely end with PhoneDog offering Kravitz a settlement to regain the Twitter account.

"PhoneDog has some hold in its argument here," Stockton said. "I think they're going to pay (Kravitz) off ... and say, 'Give us the handle. Go away.'"