



Twitter subscribers (Followers) and trade secret: towards an assimilation?

340 000 USD is the amount of damages claimed by the PhoneDog Company to a former employee who kept his account on the well-known social network Twitter after he quitted. The blogger Noah Kravitz used his account in order to post professional as well as personal tweets. 17 000 subscribers, also dubbed “followers”, were following daily PhoneDog_Noah’s posts. Said followers, according to the PhoneDog Company, are deemed to be a customer list comparable to a trade secret. Were all followers customers of PhoneDog or mere third-parties whom presence was alien to the activities conducted by the Company? Here lie the hurdles of this Complaint which was filed by the mobile phone Company before the United States District Court of the Northern District of California. The blogger argues that the Company gave him its endorsement and that he was allowed to retain the Twitter account provided he would post sporadically on the behalf of PhoneDog. Since then, the blogger modified his account into @noahkravitz.

The Court should assess if a list of followers may become the property of a company when the followers are aggregated in the course of employment. Miscellaneous commentators highlight that the mobile phone company must bring proof that followers are a trade secret which is highly controversial. The company contends that it spends a huge amount of money on the protection of its intellectual property rights. Astoundingly, the Complaint of PhoneDog has been lodged right after the blogger decided to sue his former company in order to obtain 15% of the revenue derived from the Twitter account.

The well-known blogger developed a relevant argumentation and claims firstly that followers thanks to their free will can decide to follow someone and that no pressure of any kind can be exerted on them. Moreover, aforementioned followers are not PhoneDog’s property as the terms and use of Twitter make it clear, it is Twitter which has the exclusive property of the accounts opened by subscribers. Lastly, Noah Kravitz raises a salient point. Followers cannot be deemed to be a trade secret as there are visible by each and everyone of us on the website, they are inherently public.

The issue which comes up in this case is that it is hard to delineate the property of each subscriber as far as social networks are concerned. Arguably, it is a sharp question to draw a distinction between the property on the content and the property of the account. The growing importance of bloggers within the Web 2.0 economy leads some companies to recruit bloggers who are famous on the web in order to lure customers. We cannot but think at Samsung Electronics which uses this method of recruitment in an incremental way. Theoretically speaking, in the US, when an activity is completed during the course of the employment said activity is deemed to be the property of the employer. Notwithstanding, when an account is opened on a social network platform in the sole goal to be a platform where the employee expresses himself on the vacuity of daily life and gives his point of view on some products owned by the Company for which he works, there is a grey zone which occurs.

The question of ownership of Twitter accounts which are kept by employees who change work have not be handled so far by any Court in the US. Notwithstanding, similar cases happened here and there. We cannot but highlight the situation of the international BBC correspondent Laura Kuenssberg who kept her Twitter account when she was employed later by ITV. Furthermore, it is the first time that a case can delineate the property of Twitter accounts which are used during the course of employment.

In the present case the Court must assess accurately the context which motivated the creation of the Twitter account. If said account was opened under the umbrella of PhoneDog the Court will probably issue a decision in favor of the mobile phone company. Conversely, if the account preexisted the employment of Noah Kravitz the property on the account will be more doubtful. An irenic solution will be to determine as soon as the contract of work is concluded between the parties where the property stands. Whatever the Court will issue, the bulk of commentators says that this decision is likely to be a precedent.