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Can TWiT.tv prevent Twitter from expanding its business? The dangers of co-existence agreements

7 February 2018 *4 min read*

An interesting spat is on the brew between TWiT.tv and Twitter. Most of us are aware of the Twitter service being a text-based micro-blogging service, whereas the business of the lesser known TWiT.tv is concerned with the distribution of audio and video content via streaming on the internet.

According to TWiT's website, it has been operating since 2005 with their shows providing news, commentary, help, how-to and perspective on the latest trends in digital tech from seasoned experts and journalists.

Twitter was launched in 2006 which means that TWiT.tv has been around before Twitter. This is an important consideration in trade mark matters.

According to internet reports, TWiT has filed a court case against Twitter in the USA in which the following allegations were made:

- in March 2007 one of Twitter's co-founders appeared on one of TWiT's programmes together with owner of TWiT to discuss the new Twitter service;
- the parties agreed on the programme that the marks were similar and thereafter entered into a co-existence arrangement on the basis that each company could continue with their respective platforms;
- TWiT would concentrate on the distribution of audio and video content by way of internet streaming and Twitter would be concerned with the use of 140 character messages.

In 2017, Twitter announced that premium video content would be available on its platform which content would include online streaming and downloading of video content.

Despite attempts to resolve the dispute, TWiT alleges that Twitter has continued to intrude upon its business operations, whose conduct is in contravention of the agreement.

The outcome of this case will be of much interest especially due to the status of the TWITTER mark, worldwide.

This dispute brings to mind the long-running dispute of approximately 30 years between Apple Computer (now Apple Inc.) and Apple Corps, the owner of the Beatles record label. As an aside, arguably the best band to have ever existed.

The dispute commenced in 1978 when Apple Corps sued Apple Computer for trade mark infringement which was later settled on the basis that Apple Computer agreed not to enter the music business, and Apple Corps would not enter the computer business.

As things worked out and with technological advancements, Apple Computer did want to enter into the music business which ultimately became their iTunes offering. Who would have thought in 1978 that Apple Computer would enter the music business which generates a huge amount of revenue annually?

For the first quarter of 2017, Apple Inc. reported revenue of $8,5 billion for its services division which includes iTunes, Apple Music and other software, with CEO Tim Cook aiming to double the annual revenue for this part of the business by 2020.

Due to an infringement of the 1978 agreement, a further settlement was entered into between the parties in 1991 where Apple Computer paid to Apple Corps $26.5 million in damages.

The dispute did not end there as the interpretation of the 1991 agreement with regard to the delineation of the services ended up in the UK High Court between 2003 and 2006 with the court finding in favour of Apple Inc. and leaving Apple Corps with a legal bill of £2 million.

Although Apple Corps threatened to appeal, the parties reached a settlement – some 30 years after the dispute first started – in terms of which Apple Inc. would own the APPLE trade marks which it would license back to Apple Corps to use.

Although the terms of the settlement are confidential, according to some reports the rights were bought from Apple Corps for $500 million – which would simply have made the shareholders of Apple Corps slightly wealthier than they already are.

And to think that Apple Inc.'s music division may have had to be under a different trade mark if the matter had not been finally settled.

It is therefore essential when entering into co-existence agreements that the terms thereof are carefully considered by a legal expert to ensure that your rights are protected as these agreements last forever and may very well obstruct the expansion of your business some time in the future.

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