

Idaho Mountain Express: Ketchum couple sues resort, Twitter - May 17, 2013

A husband and wife from Ketchum have filed a lawsuit in Blaine County 5th District Court against Sun Valley Co. and San Francisco-based Twitter, requesting that the resort be prohibited from using the Twitter handle “@SunValley” and that the court return use of the handle to the couple.

Attorney Erin Smith filed the lawsuit on May 6 on behalf of herself and her husband, Leonard Barshack. According to the complaint, Barshack registered for and obtained the handle sometime before April 3, 2010, and “periodically” tweeted on a variety of topics thereafter, including Apple products, “MacRumors,” the weather, a pig roast and skiing.

“At no time did Barshack impersonate [the resort],” the complaint states.

According to the complaint, the resort contacted Twitter in October 2012 stating that it wished to use the handle and that Barshack was using the resort’s trademarked sun logo. That month, Twitter sent Barshack an email notifying him that he was in violation of Twitter’s rules and that the company would transfer use of the handle to the resort.

“At that time, Twitter gave the following reason for the suspension, ‘We have received a valid report and determined that your account, @sunvalley, is engaged in non-parodly (sic) impersonation,’” the complaint states.

Twitter’s “Parody, commentary and fan account policy,” available at tinyurl.com/ime-twitterpolicy, states that in order to avoid impersonation, such an account’s profile information “should make it clear that the creator of the account is not actually the same person or entity as the subject of the parody / commentary.”

The complaint states that Barshack “at no time” impersonated the resort in his tweets, but did use an image of “a sun.” According to the complaint, the resort’s trademark consists of a sun positioned above and to the right side of the words “Sun Valley” and that the resort allowed its registration for a stand-alone sun to “lapse.” The complaint states that Barshack only used a stand-alone sun.

“Numerous businesses, including jewelers, artists, and real estate companies use a sun logo in the communities of Sun Valley and Ketchum, Idaho,” the complaint states. “... Barshack never violated [the resort’s] trademark and, therefore, never violated Twitter’s rules.”

According to the complaint, Barshack has attempted to contact Twitter to discuss the matter on numerous occasions but has not heard back from the company. In the meantime, Twitter has continued to allow the resort to use the handle.

“Twitter in fact breached its own rules by transferring the [handle],” the complaint states. “... Twitter breached the implied contract that existed between [Barshack and Smith] and Twitter.”

In the complaint, Barshack and Smith also ask that the court order Twitter and the resort to pay their attorney’s fees and costs and “such other relief” that the court deems appropriate.

Neither Twitter nor the resort responded to messages seeking comment by press deadline Thursday.

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