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ЮРИДИЧЕСКИЕ АСПЕКТЫ ИЗМЕНЕНИЯ СОБСТВЕННОСТИ И ПОЛИТИКИ В «ТВИТТЕРЕ»

LEGAL ISSUES OF THE CHANGE OF OWNERSHIP AND POLICIES OF TWITTER

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Аннотация. Покупка Twitter Илоном Маском и изменения, которые он внес в него, породили ряд юридических вопросов в области договорного права, трудового права, права социальных сетей. Возник конфликт между сокращением редакционного контроля и желанием потенциальных закупщиков рекламы иметь предсказуемый контекст для своих рекламных объявлений.

Ключевые слова: социальные медиа; «Твиттер»; Маск; Twitter

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- **Abstract.** The purchase of Twitter by Elon Musk and the changes he has made in Twitter have created a variety of legal issues in the areas of contract law, employment law, social media law, and advertising law. A conflict has arisen between the reduction of editorial control and the desire of prospective advertisers for a predictable context for their advertisements.

- **Keywords:** social media; Twitter; Musk

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In 2022, Elon Musk, the richest person in the United States (and perhaps the richest person in the world) agreed to buy Twitter for 44 billion dollars. Many analysts said that he had agreed to pay too much for the social network, which, while very popular worldwide, was far from profitable. However, Musk is an innovative genius, having revolutionized the electric vehicle industry and the reusable satellite rocket launch industry.

Musk, himself, soon came to regret having agreed to pay so much to purchase Twitter. He tried to back out of the deal, and Twitter promptly sued to enforce the agreement [1]. Because the State of Delaware is the state where most large corporations are registered, the suit was filed in the Delaware Chancery Court. This court is famous for providing swift and fair justice in corporate disputes. It soon became obvious that Twitter would win the case, so Musk consented to go ahead with the purchase [2].

As soon as the purchase was completed, Musk faced a number of serious business and legal problems. Twitter was losing hundreds of millions of dollars a year, and Musk needed a billion dollars a year just to pay interest on the loans that had helped him pay for the purchase of Twitter. The use of some foreign money in financing the deal raised issues under United States law restricting foreign ownership of U.S. media [3]. Musk had promised to end what he perceived as political bias and censorship by Twitter, but any radical change threatened a loss of advertisers and subscribers.

The first two steps that Musk took were to fire half the employees of Twitter and to introduce a new “verified” status costing \$8 a month. Both steps immediately led to legal problems. Lawyers for employees fired a class action against Twitter seeking an injunction based on laws requiring that in case of mass layoffs there be substantial severance pay [4]. The complaint cited relevant Federal and California worker protection legislation. Twitter attempted a defense by citing arbitration clauses in the employment contracts [6]. While such use of arbitration clauses to avoid class actions is a widely-used and often successful tactic, it has been criticized severely, and politicians regularly introduce legislation that would make such arbitration clauses void [7].

While many Internet resources are supported by advertising alone, others need money from subscription

fees to survive [8]. Musk promptly decided to introduce an optional subscription fee that would allow users for about \$8 per month to have a blue check mark next to their Twitter names, showing that their identity had been verified. Holders of blue check marks would also get a variety of other privileges. The implementation of this feature was bungled and led to legal problems. Perhaps due to shortage of employees caused by the mass firing, identity was confirmed by a hastily-developed algorithm that was very easily deceived. The results was the proliferation of fake accounts with “verified” identities referring to real people, real business, and real products [9]. There is speculation that Twitter could be liable to fraud victims that trusted fake accounts that Twitter had negligently “verified” with blue check marks [10].

Twitter’s most serious practical and legal problems are related to Musk’s promise to remove what he saw as bias and censorship in pre-takeover Twitter. He has made it much more difficult to exercise editorial control over “tweets” by firing half the human staff. While artificial intelligence algorithms can help editorial control, existing algorithms are far from accurate. Development of new algorithms will be difficult with much of the top research talent fired.

At present, under United States federal law, under Section 230 of the Communications Decency Act, social media, including Twitter are immunized from liability for material posted by users [11]. New York, however, has passed a law of dubious constitutionality related to control of “hate speech” on social media [12]. Moreover, Twitter has world-wide participation, and some other countries, and in particular the European Union do require editorial control of user-submitted content [13]. It is not clear if Twitter, with its greatly reduced staff, will have the ability to comply with such foreign content regulation.

Inadequate content regulation has already created complicated problems related to the huge number of Twitter users that use Apple iPhones. These phones are designed to only allow installation of applications from Apple’s app store. Apple will not host applications in its app store if they provide content that Apple considers inappropriate. Further Apple takes a 15% to 30% cut of any money generated in “in-app” purchases. The content

restrictions threaten Musk's promises to remove censorship, and the in-app purchase charges threaten his promises to raise money through a subscription model. The situation remains somewhat confused [14].

The greatest threat to Musk's plans to lessen editorial control of Twitter comes from advertisers. There is no government regulation of the placement of advertising on social media. The placement of advertisements depends entirely upon freely-negotiated contracts between advertisers and the media. While Twitter may attract more subscribers by allowing the return of persons (such as former president Trump) previously banned from Twitter, many advertisers will be reluctant to place advertisements linked to Trump's controversial and at times shocking tweets. New members that subscribe mainly to blogs of members that advertisers shun are of no value to Twitter, unless, of course, Musk succeeds in implementing his subscription model.

Elon Musk is the ultimate United States entrepreneur, undertaking complex and risky ventures and proving his critics wrong time and again. It remains to be seen if he will overcome the complex practical and legal problems involved in redirecting Twitter.

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