

How weird could things get if Twitter settles with Elon Musk?

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As Elon Musk's imbroglio with Twitter moves from the boardroom to the courtroom, one might expect that under the watchful eye of Delaware's Court of Chancery, things will take on a more predictable trajectory than they have so far.

In theory, the lawsuit that the social media platform launched Tuesday to

force Musk to follow through on his acquisition offer presents a limited spectrum of possible outcomes: Musk could be forced to close at the agreed-upon \$44-billion price; pay a \$1-billion termination fee to get out of the deal; cough up some intermediary price that the court decides; or escape entirely unscathed.

Yet if there's one lesson to be learned from all that's transpired so far, it's that there are no guarantees, even in the face of binding contracts, federal regulations and historical precedents, when it comes to the world's richest man. Settlement is still an option—some experts even say it's likely—and would open up a whole new menu of options. Here are some of them.

Nondisparagement agreements

Musk has never been one to hold off on criticizing Twitter, despite being among the platform's biggest users.

He has panned its content moderation policies as undemocratic, lobbied for major changes to both the company's product and its business model, and persistently criticized the site's handling of automated spam bots (Twitter's "single most annoying problem," he once wrote).

Signing a deal for him to buy the platform didn't dull those barbs. In one tweet that Twitter included in its lawsuit, he responded to a remark by Chief Executive Parag Agrawal with nothing but the "poop" emoji.

"Since signing the merger agreement, Musk has repeatedly disparaged Twitter and the deal, creating business risk for Twitter and downward pressure on its share price," the company complained in the filing. This is despite a provision of the deal that required that Musk's tweets "do not disparage the Company or any of its Representatives."

It wouldn't be unusual for that sort of agreement to become part of a longer-term settlement, said Charles Elson, founding director of the Weinberg Center for Corporate Governance. "You could have a nondisparagement agreement [under these sorts of circumstances]," he said. "I wouldn't be shocked."

"He would not disparage Twitter, they wouldn't disparage him," Elson added. "It'd be a mutual nondisparagement."

Whether Musk would actually abide by those terms is, of course, an altogether different question.

Nondisclosure agreements

Also on the table could be some sort of nondisclosure agreement, or NDA, which would limit what one or both parties could publicly share about the on-again, off-again relationship they've engaged in since early April.

"I could definitely see an NDA happening which would keep certain terms confidential and allow a side to 'save face,'" said Alex Bruno, founder of the Glendale-based corporate law firm Bruno Group, in an email.

Twitter may still have to disclose some information, however, given that it's publicly traded, Bruno added.

This eventuality could prove particularly appealing to Twitter, because according to the lawsuit, the company has given Musk significant access to corporate intelligence during their dealings, including about 49 tebibytes' worth of raw historical site data.

Then again, Musk seems to currently be bound by some sort of NDA,

and doesn't appear all that concerned about it. "Twitter legal just called to complain that I violated their NDA by revealing the bot check sample size is 100!" he wrote in one May tweet, referencing his efforts to replicate Twitter's bot prevalence estimates.

A noncompete agreement?

One looming threat for Twitter is that if Musk doesn't end this saga as the platform's owner, he may pick back up an idea he's toyed with in the past: competing with the company on his own terms.

In one tweet this March, he asked what should be done about Twitter's content moderation policies, which he framed as undemocratic. In a follow-up, he pitched one possible course of action: "Is a new platform needed?"

Later that day he added, "Am giving serious thought to this."

Now, with the benefit of having seen some of Twitter's inner workings firsthand—and enjoyed months of free press about how he'd run a social network were he in charge—Musk could well return to that option if he's not barred from doing so.

Though Twitter alternatives have historically struggled to enter the mainstream, this is a threat Twitter doesn't take lightly. In its lawsuit, the company noted that Musk has said he will "do one of three things with Twitter: sit on its board, buy it, or build a competitor"—the first of which he's opted out of, and the second of which he seems to be actively trying to avoid.

"The biggest wildcard scenario is that Musk needs to pay Twitter a massive settlement number in the \$5 billion to \$10 billion range and is restricted from starting his own social media platform," said Wedbush

analyst Dan Ives, a frequent commentator on the Musk-Twitter saga, in an email to The Times. "That would be a twilight zone ending to this circus show."

Twitter policy changes

Musk could even use a settlement as an opportunity to push for certain policy changes—from highly politicized ones such as those around how Twitter moderates users' speech, to the sort of hobbyhorses that super-users like him care about, including the addition of an "edit tweet" button.

Even if such concessions came alongside a cash settlement he had to pay out, they might offer the public figure a chance to save some face.

But it's an unlikely outcome, Bruno said.

"I do not see a change in site policies unless a lot of money comes Twitter's way," the attorney wrote. However, he added, Twitter may still choose to make changes "to publicly show their users that they are active in eliminating bots," the focus of much of Musk's criticism.

Elson agreed. "I don't think he would be able to get a change in business practices from them. ... Ultimately this is a business transaction; it's [about], 'How much is this thing worth?' That's all."

But Ives is more open to the possibility.

"If Musk ultimately is forced to take ownership of Twitter by the court," he said, "there may be some content areas agreed upon as part of a deal."

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