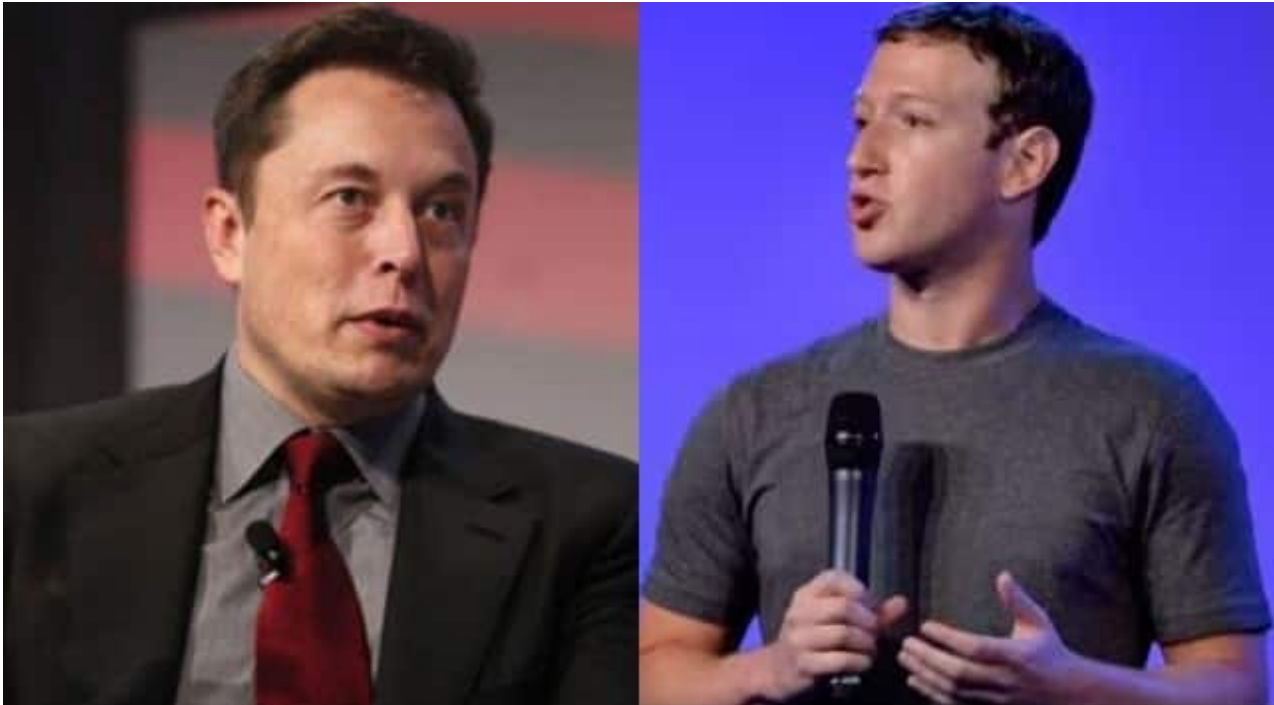


Twitter vs Threads: Why Musk may not win the battle against Zuckerberg

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Many advertisers have pulled out since Musk decided to put some of the app's popular features behind a paywall and Meta's Threads showed up on the horizon, eating into the microblogging user base of Twitter. (Express/File Photos)

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In the latest development in the social media landscape, Elon Musk has announced a **rebranding of Twitter**. The blue bird logo shall now be changed to a minimalist white X on a black background. The app may see sundry changes geared towards making it an AI-powered "everything app", allowing users to perform multiple functions — from messaging and audiovisual services to ordering taxis and paying bills. It remains to be seen if the move — an idea Musk has had for a while now — will successfully replicate the WeChat model or once again prove devastating for Twitter. The company is already suffering a financial setback. Many advertisers have pulled out since Musk decided to put some of the app's popular features behind a paywall and Meta's Threads showed up on the horizon, eating into the microblogging user base of Twitter.

Earlier this month, Musk had threatened to sue Zuckerberg and **Meta's Threads**, the newest social media application, which gathered over **100 million users** within a week of its launch. In the cease-and-desist letter to Threads, Twitter alleged theft of its trade secrets and violation of its intellectual property (IP) rights.

To be fair, Threads does owe a lot to Twitter. It has a sleek Instagram-like interface but all significant features of microblogging seem like they have been copied from Twitter — the “like”, “retweet”, “follow” features. Meta has successfully cloned Twitter and is using its existing network effect to beat the latter’s long-standing hegemony in the microblogging space. But a case for a legal battle will be complex and novel if charted. While Threads clearly replicates Twitter in many respects, fitting this within the exact contours of a trade dress infringement will be a challenging proposition.

Also Read | [Meta's Threads could lure ads from Twitter but it's early days, analysts say](#).

Trade dress encompasses the “look and feel” test that was traditionally applied to the design or packaging of a product. Its application within the context of websites is a relatively recent phenomenon without many guideposts available in case laws. Most telling is perhaps the case of Conference Archives, Inc v Sound Images, Inc (2010) in the United States where the court attempted to define both the “look” and “feel” of a website. “Look” represents the “visual design” of a website comprising features such as its layout, including colours, type cases and shapes while the “feel” represents the “interface design” referring to how a user interacts with the functionality of a website. This can be contextualised through dynamic navigation elements such as buttons, boxes, menus, and hyperlinks.

Like websites, social media apps also have the potential to have a unique design and feel. It can be argued that Twitter’s distinct appearance lies in the design of its microblogging features and layout, which includes the ability to tweet and interact through retweets, likes, and direct messages. But enforcing violations in the domain of unregistered trade dress rights is a complex process, and requires more than just a solid definition of trade dress from the plaintiff. The plaintiff must also prove that the trade dress is not functional and possesses inherent distinctiveness. If it lacks inherent distinctiveness, it must be demonstrated that it has acquired a secondary meaning that indicates its source. Most importantly, there must be evidence that there is a likelihood of confusion between the allegedly infringing product and the existing trade dress.

Threads has not attempted to confuse customers or tried to make them believe that they are using Twitter. And so, it is highly unlikely that a trade dress lawsuit against it will gain traction in any jurisdiction. In 2008, when [Facebook](#) sued German-based StudiVZ for infringing its design, features, and services, the German court dismissed the suit for failure to identify any unfair practices mainly because StudiVZ was not trying to trick customers by making them believe that they are using Facebook. Moreover, Threads, although the most successful one, is not the only Twitter-like app on the market. Trump’s Truth Social looks much more like Twitter than Threads does but has managed to escape a lawsuit potentially because of the same reason.

Opinion | Express View on Instagram Threads: The first blow in Twitter-Meta battle

Moreover, cloning features and designs have been a routine event with the proliferation of umpteen social media applications over the internet in the past few years. In the past, Instagram introduced a series of features that were flagship features of other popular applications — “Stories” feature from Snapchat, the “Reels” feature from TikTok, and the “IGTV” feature from YouTube. This type of borrowing, while often controversial, is mostly legal. But with Facebook, Instagram, WhatsApp, and now Threads under its umbrella, Meta has become omnipresent across all popular social media forms, which presents a significant concern for antitrust authorities worldwide.

The US’s Federal Trade Commission (FTC) is already in court for forcing Meta to sell its prized assets, Instagram and WhatsApp. Further, the recently launched Threads app is inextricably linked to Instagram and takes advantage of its existing user base, which gives rise to more antitrust issues. Europe has recently implemented the Digital Markets Act (DMA), which includes more rigorous regulations addressing “gatekeepers” — platforms that have achieved a particular user base or market capitalisation. For example, such platforms cannot combine users’ data without presenting them a choice and getting their express consent. Meta has decided to wait for further guidance and has not rolled out Threads in Europe. In fact, in Europe, Meta has been a frequent target of “abuse of dominance” charges by the European antitrust agencies since before the DMA came into force.

Overall, proving the violation of trade secrets would entail conclusively demonstrating that Meta hired staff previously employed by Twitter and was bound by its non-disclosure agreements. Regarding IP infringement, the case prima facie appears to be weak. Nevertheless, it is the deep linking of Threads with Instagram that presents a more significant challenge as it sheds the spotlight from Musk and Zuckerberg, and puts the FTC on the centre stage.

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