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Facebook Wants to Play Dating Game—Its Lawyers Could Face IP, Trade Secret Challenges

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If legal fights in the online dating industry are any indication, Facebook's legal department would be smart to strategize about its inroads into this new line of business.

Match Group, which owns Tinder, OKCupid, PlentyofFish and other prominent online dating sites, has been engaged in litigation on multiple fronts lately, showing that just because a company is in the business of helping users find love, doesn't mean its behavior toward competitors will be at all affectionate.

So, Match's newest rival in the online dating market, Facebook Inc., might want to have its in-house lawyers review Match's recent intellectual property lawsuits if the company wants to avoid the potential for litigation in its latest venture.

Two of Match's latest legal battles could hold lessons for Menlo Park, California-based Facebook's in-house lawyers, as the Dallas-based company pushes to aggressively defend its IP. Attorneys say there are messages for Facebook on both the IP infringement and trade secret fronts in the Match battles.

Match Vs.

Match filed two lawsuits back in March: one against its well-known U.S. competitor, Bumble Trading Inc., and another similar complaint against Chinese dating app TanTan.

Match alleged TanTan stole design patents and trademarks associated with its

match screen, in addition to its “swipe,” “rewind” and “super like” functions. TanTan did not respond for comment on the allegations.

The TanTan suit came three days after Match filed a lawsuit against Bumble, claiming infringement of its utility patent, design patent, trademarks and trade dress. In its suit, Match refers to Bumble as a “Tinder copycat.”

A settlement has been reached with TanTan, and a federal judge formally dismissed the case Monday, according to a May 14 order from the U.S. District Court in Western Texas.

Bumble has yet to file a response in the lawsuit filed by Match in March, but it was quick to publicly react at the time. The company published a blog post saying it “swipes left” on Match and “we’ll never be yours.” Bumble, which declined to comment for this article, is due to respond in the Match case in court by June 6.

Bumble then countered with a lawsuit of its own in March in a Texas state court, accusing Match of revealing Bumble’s trade secrets after trying to acquire it, thereby poisoning Bumble’s name in the market for other potential suitors.

Bumble claimed Match “deviously asked for, and received, Bumble’s most sensitive competitive information—without disclosing that it was already planning to sue Bumble.” Bumble also claimed Match “made a series of false statements” by appearing to file its lawsuit as “an honorable attempt to protect its intellectual property rights.”

Challenges Ahead for Facebook

Match and its parent company, IAC, have already taken jabs at Facebook’s decision to enter the market. Earlier this month, IAC chief executive Joey Levin said in a statement that Facebook’s “product could be great for U.S./Russia relationships.”

Match declined to comment on any “hypotheticals” since Facebook’s product has yet to launch.

The M&A issue seems unlikely to come into play for Facebook and Match, but the social network’s attorneys still have much to glean from Match’s lawsuits.

For one, when it comes to trade secrets, Facebook will need to be cautious when hiring any employees from Match to help develop its own platform, attorneys said.

Facebook, which did not respond for comment, has in fact hired at least 25 employees from popular dating sites in recent years, according to a search on LinkedIn.

While many of those employees moved to the company several years ago and their hire could be more by coincidence than by design, Facebook did recruit at least seven employees in 2017, including engineers, marketers and data scientists who previously worked for Match-owned businesses. Two of the 25 hires were from Bumble and Badoo Trading Ltd., which owns a majority stake in Bumble.

The small sample could shed little light into Facebook's workforce of nearly 28,000 employees worldwide but the data shows that the company is being strategic with some of its hires.

> "If Facebook has hired or plans to hire senior employees from Match, it, like all employers, needs to be careful that those employees are not bringing over any proprietary information or trade secrets," said Eric Ostroff, a partner at Meland Budwick, P.A.

Michael McCabe, an IP attorney with McCabe Law, said he "can pretty much guarantee that Facebook, and anyone else in this space, is studying carefully the progress of this litigation, including the patent that Match claims is being infringed by Bumble."

"But of course," McCabe added, "whenever a company of the size of Facebook rolls out any new product or application, you can bet that other patent holders will be chomping at the bit to allege that Facebook is infringing. That, unfortunately, is the cost of doing business—the more successful you are, the more you are likely to be targeted for allegedly violating someone else's IP."

David Suter, a principal at Harness Dickey & Pierce, said he "cannot speak to the merits" of Match's position relative to Facebook or other competitors, but clearly "Match is willing and able to assert its IP, a fact that raises the risk profile in any

assessment of its IP."

Suter continued, "As a new and prominent entrant into this market, Facebook will need to look closely at Match's position, along with what I'd assume to be a large volume of other competitive IP. Facebook can be assured that Match will be looking closely at whatever it does, and needs to do its homework accordingly."

As for the specifics of IP that Facebook should be considering, Facebook may want to watch how it "swipes."

"Don't copy the functionality of swiping left and right," said Jonathan Pearce, an attorney with SoCal IP Law Group, of the "somewhat basic" steps Facebook can take. "Avoid the use of the word and functionality of 'swipe' entirely if you want to avoid a suit," he said. "Whether Match's claims are valid or not, Match will likely feel obligated to defend those 'swipe'-like rights it has asserted in the Bumble case."

On the other hand, Pearce said, "Facebook will probably do whatever it thinks creates the best user experience and is likely to drive user engagement. They want eyeballs. They may simply view potential legal costs as a part of the cost of entering any new market, and budget accordingly."

And maybe Match should be the company to watch its back. Pearce pointed out that while Match is large, Facebook is "huge."

"Using the legal system to 'bully' Facebook is not something anyone can really do. I think, should Match or Facebook decide to fight, it would be a legitimate dispute on the merits of the case because both could afford it," he said. "IP is one way to impede new entrants , but Facebook likely has sufficient funds and legal savvy at hand to enter any market it would like."

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