Twitter users are now wondering if mandatory blue checks are illegal



Okay, I'll admit it: I did not expect the Twitter checkpocalypse to result in Dril accusing Elon Musk of violating federal consumer protection laws.

It's been four days since Musk removed the last "legacy verified" checkmarks, leaving Twitter's blue checks in the hands of people who pay $8 per month for Twitter Blue. Or, at least, that was the idea. As of Monday morning, here's how it's gone:

- Legacy checkmarks did, in fact, disappear, leaving only checks bestowed through the paid Twitter Blue service.
- Elon Musk revealed that he was comping "a few" Twitter Blue subscriptions for celebrities, mainly ones who had criticized Twitter Blue verification, like LeBron James and Stephen King.
- As this was unfolding, a group of users, including Weird

Twitter legend Dril, launched a “Block the Blue Checks” campaign to mass-block anyone with a checkmark.

- Twitter responded by slapping free blue checks on *more* accounts — including Dril, journalist Matt Binder (who reported on #BlockTheBlue), and possibly all living or dead users with over a million followers.

This is all consistent with the nonstop forum drama that is Elon Musk’s Twitter, but there’s one detail that’s particularly rankled King and others. It’s that Twitter doesn’t make clear these people aren’t paying for its services. For now, here’s what you get if you hover over King’s (or another comped user’s) checkmark:

> *This account is verified because they are subscribed to Twitter Blue and verified their phone number.*

King simply mentioned this fact with annoyance, but others have gone further and suggested it might be grounds for a lawsuit. The argument is that Twitter violated rules against false endorsement with its message — in other words, that it’s wrongly implying celebrities are paying for a service they actually despise. Over the weekend, Dril quote-tweeted a post citing Section 43(a) of the Lanham Act, a US federal law that bars connecting someone’s identity to a product in a misleading way.

Look, you shouldn’t take legal advice from social media. And on Twitter particularly, people love throwing around bizarre interpretations of real laws. (Case in point: legal blogger Ken White’s perpetual nemesis RICO.) But you can also find some serious, well-reasoned discussion of how weird this situation is. The best I’ve seen is a long thread from Alexandra Roberts, a Northeastern University School of Law professor that we’ve cited at *The Verge* before.

Roberts makes clear there’s no slam dunk case against Twitter. Instead, there are a variety of state and federal rules —

including the Lanham Act — that you could argue for applying in intriguing and relatively untested ways. Colorado, for instance, bans falsely representing "sponsorship, approval, status, affiliation, or connection" for a product. Is suggesting that Stephen King paid for Twitter Blue a sign that King approves of Twitter Blue? "Sounds like a reasonable argument," Roberts tweeted. Solicitor Simon McGarr makes some similar points in an article about how European false endorsement laws might apply.

But taking Twitter to court would require addressing serious complicating factors. As Roberts lays out, false endorsement claims often revolve around advertising campaigns, and the blue checkmark isn't a conventional advertisement. Courts would have to decide whether those rules apply in Twitter's situation at all, then determine whether Twitter violated them. It's probably not the kind of case you'd want to hash out against the attorneys of the second-richest person on Earth.

The Federal Trade Commission polices consumer protection laws in the US, and the agency has taken a strong interest in Twitter's operations. But it's focused on issues around a consent order Twitter signed in 2011 — mainly dealing with the service's privacy and security. The agency declined to comment on whether Twitter's blue checkmark language could constitute false endorsement.

And the entire dust-up hinges on some language that Twitter could easily change. Until last week, the checkmark label made clear that someone *either* had a certain level of notability or subscribed to Twitter Blue. That still appears to be how the system works, and reverting it would seem to address the underlying false endorsement claims pretty neatly.

So let's not lose sight of the real news: over the course of a single weekend, Twitter managed to turn its most coveted status symbol into something that (at least some) users are so

upset to be associated with that *they're wondering if it's illegal*. I'm not sure this is a winning business strategy for Musk, but I can't deny his talent for laying new and exciting legal minefields.

https://www.theverge.com/2023/4/24/23695772/twitter-blue-check-paid-verification-false-endorsement-dril