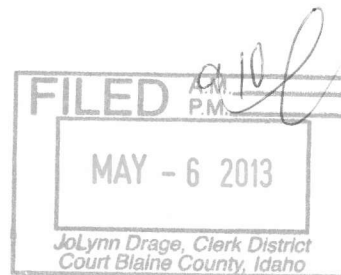


Erin P. Smith ISB No. 7874  
3215 Warm Springs Road  
Post Office Box 10160  
Ketchum, Idaho 83340  
Telephone 208.726.7148



Attorney for Plaintiffs Leonard B. Barshack and Erin P. Smith

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

LEONARD B. BARSHACK, an individual,  
and ERIN P. SMITH, an individual

Plaintiffs,

vs.

TWITTER, Inc., a Delaware corporation, and  
SUN VALLEY COMPANY, a Wyoming  
corporation

Defendants.

Case No. CV-~~12~~-293

**COMPLAINT FOR:**

**1) INJUNCTIVE RELIEF**

**AND DEMAND FOR JURY TRIAL**

Fee Category: A

Fee: \$ 96.00

Plaintiffs Leonard Barshack ("Barshack") and Erin P. Smith (collectively "the Barshacks") complain of Defendant Twitter, Inc. ("Twitter") and Defendant Sun Valley Company ("SV") as follows:

**NATURE OF ACTION**

1. The Barshacks seek an injunction prohibiting Twitter from allowing SV to use the Twitter handle @SunValley.
2. The Barshacks seek an order that the Twitter handle @SunValley be returned for their use.

### **Parties**

3. Plaintiffs Leonard B. Barshack and Erin P. Smith are married individuals and are residents of Ketchum, Idaho.

4. Defendant Twitter is a corporation organized under the laws of the State of Delaware.

5. Defendant Sun Valley Company (the "Company") is a corporation organized and existing under the laws of the State of Wyoming and has its principal place of business in Blaine County, Idaho where it is engaged in the hospitality business.

### **Jurisdiction and Venue**

4. The court has subject matter jurisdiction over the claims specified in this complaint pursuant to Idaho Code §§ 5-514.

5. Venue is proper in this Court by virtue of the fact that both Defendants provide services in Blaine County, Idaho.

### **Facts**

1. Prior to April 3, 2010, Barshack registered to and was granted the right to use the Twitter handle @SunValley.<sup>1</sup>
2. Barshack periodically tweeted on a variety of topics, including Apple products, MacRumors, weather, a pig roast, and skiing. At no time did Barshack impersonate SV.<sup>2</sup>
3. On information and belief, on or about Oct 23, 2012, SV contacted Twitter stating they wished to use the handle @SunValley.<sup>3</sup>

---

<sup>1</sup> Attached Exhibit A, page 18, which shows tweets starting April 3, 2010.

<sup>2</sup> *Id.*

<sup>3</sup> *Id* at page 11.

4. On information and belief, SV claimed Barshack was using its trademarked logo of a sun.
5. On or about Oct. 15, 2012, Twitter sent Barshack an email notifying him that he was in violation of Twitter's Rules and that the handle @SunValley was being taken away from him and given to SV.
6. At that time, Twitter gave the following reason for the suspension, "We have received a valid report and determined that your account, @sunvalley, is engaged in non-parodly impersonation."<sup>4</sup>
7. At no time did Barshack impersonate SV in his tweets.<sup>5</sup>
8. Barshack did use an image of a sun for his tweets.
9. SV does not indicate anywhere on its home page or any materials that its logo is trademarked.<sup>6</sup>
10. According to the USPTO, SV's trademark "...consists of a sun positioned above and to the right side of the words, "Sun Valley".<sup>7</sup>
11. Sun Valley allowed the registration for a stand-alone sun image to lapse.<sup>8</sup>
12. SV's only mark at the time of its complaint was a sun positioned above and to the right of the words, "Sun Valley." ("the Mark")
13. Barshack never used the Mark. Barshack simply used a sun.
14. Numerous businesses, including jewelers, artists, and real estate companies use a sun logo in the communities of Sun Valley and Ketchum, Idaho.<sup>9</sup>

---

<sup>4</sup> *Id.* at 16.

<sup>5</sup> *Id.* at 18.

<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.* at 12, 14.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.* at pages 8-10.

15. Twitter's Trademark Policy states it will give account holder's the opportunity to clear up any potential confusion.<sup>10</sup>
16. Twitter never contacted Barshack regarding SV's claim.
17. Barshack never violated SV's trademark and, therefore, never violated Twitter's rules.
18. Barshack has attempted to contact Twitter to discuss the matter via email and letter on numerous occasions.<sup>11</sup>

### **CLAIMS FOR RELIEF**

#### **Count One** **(Injunctive Relief)**

1. The Barshacks re-allege and incorporate by reference the paragraphs set forth above.
2. Twitter has failed to respond despite the Barshacks numerous attempts to contact it.
3. Twitter improperly took the Twitter handle @SunValley from the Barshacks.
3. By not complying with its own rules, Twitter improperly granted SV the right to use the Twitter handle @SunValley.
4. Twitter continues to allow the improper use of the Twitter handle @SunValley by SV.
4. Defendants' actions constitute a gross inequity and will cause the Barshacks to suffer irreparable harm for which there is no adequate remedy at law.
5. The Barshacks are entitled to a preliminary injunction and a permanent injunction enjoining Twitter from allowing SV to use the Twitter handle @SunValley.

---

<sup>10</sup> *Id* at 4.

<sup>11</sup> *Id* at. 1, 2, 16.



6. The Barshacks are entitled to have the handle @SunValley returned to them.

**Count Two**

**(Breach of Contract)**

1. The Barshacks re-allege and incorporate by reference the paragraphs above.
2. Twitter's rules are a fundamental element of the contract between Twitter and its users.
3. The Barshacks never falsely represented themselves as, nor impersonated, SV.
4. The Barshacks never violated Twitter's rules.
5. Twitter in fact breached its own rules by transferring the Twitter handle, @SunValley, from the Barshacks to SV.
6. By virtue of its actions, Twitter breached the implied contract that existed between the Barshacks and Twitter.

**Count Three**

**(Breach of Good Faith and Fair Dealing)**

1. The Barshacks re-allege and incorporate by reference the paragraphs above.
2. Implied in all business agreements is the covenant of good faith and fair dealing.
3. By transferring the Twitter handle @SunValley to SV without examining whether it was warranted and without allowing the Barshacks any opportunity to rebut SV's claims, Twitter breached the implied covenant of good faith and fair dealing.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray that the Court:

- A. Enter into a judgment in favor of the Plaintiffs and against the Defendants on the Claim for Relief in the Complaint;

- B. Enjoin Twitter from allowing SV from using the Twitter handle, @SunValley;
  - C. Order Twitter to return the Twitter handle, @SunValley, to Plaintiffs;
  - D. Order the Defendants to pay Plaintiffs their reasonable attorney's fees, costs and other expenses under Idaho Code Sections 12-120 and 12-121; and
- Order such other relief as the Court deems just and equitable.

Dated: May 6, 2013


By:   
Erin P. Smith  
Attorney for the Plaintiffs

Exhibit A



**QuadRun Consulting, LLC**

3215 Warm Springs Road - Unit A  
POB 10160  
Ketchum, ID 83340

April 17, 2013

Incorporating Services, LTD  
3500 S Dupont Highway  
Dover, DE 19901

CT Corporation System  
818 W Seventh Street  
Los Angeles, CA 90017

To Whom It May Concern:

Attached is a letter we previously sent to Twitter, Inc.. I have not received a response. Having noticed that the California agent for service of process has changed since I sent the letter, I am hoping it got lost between the cracks, and resending.

I would appreciate the courtesy of a reply of some sort.

Sincerely,

Leonard Barshack



QuadRun Consulting, LLC

3215 Warm Springs Road - Unit A  
POB 10160  
Ketchum, ID 83340

October 15, 2012

Alexander MacGillivray  
Twitter Inc.  
1355 Market Street, ste 900  
San Francisco, CA 94103

Re: account suspension - @sunvalley  
#6353166 Twitter Support

To Whom It May Concern:

It has been three months since I wrote you, and I have not had a reply to my note. I was hoping that due to the holiday season, flu, and other demands, you had simply not gotten to my note, but as time passes, I am concerned that you don't plan to respond to me.

## **Twitter: Do the right thing!**

I have been a twitter user for over 5 years. I have done nothing wrong, yet twitter unfairly stole my handle from me. The attached materials clearly indicate why the account should be returned to me.

**I would like to approach this in a friendly manner and am simply looking for someone with authority who can discuss this fully with me.**

**Please return my account or contact me.**

Sincerely,

Leonard Barshack  
208-726-7232

A bit about me:

=====

I am a well-educated sophisticated individual. I have founded several very successful internet companies, including ones that are consumer facing. I have build large brands and understand the value of a brand. I greatly respect all kinds of intellectual property, including trade marks, service marks, and logos.

I would never knowingly use someone else's trademark, and while I don't consider it relevant to what should happen, I believe there is a strong argument that I was never in any trademark violation due to Sun Valley Company's carelessness of not protecting the image.

What amazes me:

=====

Neither Twitter or Sun Valley ever contacted me informing me that Sun Valley Company, in their opinion, considered the image an infringement of their trade mark. While I personally believe that it is not a proper infringement, I would have immediately not bothered to argue and changed the image.

WHY DIDN'T TWITTER SIMPLY CONTACT ME AND ASK ME TO CHANGE THE IMAGE?

It seems extremely heavy handed, unfair, unethical, and actually counter to Twitter's own rules to deny me my twitter handle that I had used for over 5 years !!!!

I am certain

=====

I am certain that this dispute can be quickly resolved in a very short phone call. I have spent HOURS documenting my argument and drafting these notes. Please have the courtesy to contact me directly. I truly wish to resolve this in a friendly and professional manner.

# Trademark Policy

Tweet

Updated October 3, 2012

## What is a Trademark Policy Violation on Twitter?

Using a company or business name, logo, or other trademark-protected materials in a manner that may mislead or confuse others with regard to its brand or business affiliation may be considered a trademark policy violation.

## How Does Twitter Respond To Reported Trademark Policy Violations?

When we receive reports of trademark policy violations from holders of federal or international trademark registrations, we review the account and may take the following actions:

- When there is a clear intent to mislead others through the unauthorized use of a trademark, Twitter will suspend the account and notify the account holder.
- When we determine that an account appears to be confusing users, but is not purposefully passing itself off as the trademarked good or service, we give the account holder an opportunity to clear up any potential confusion. We may also release a username for the trademark holder's active use.
- We are responsive to reports about confusing or misleading Promoted Tweet and Promoted Trend copy, as well as Promoted Account profile information. For more information, please visit our Trademark Policy for Promoted Products.

**This is your policy regarding Trademarks, if you read your own policy, you will see that your actions are in direct contradiction to your policy in this matter.**

**Not only is there no "clear intent" to mislead, there is NOTHING I did that can be interpreted as misleading in any manner.**

**As per your own policy, I was NEVER given an opportunity to clear up any potential confusion, the account was simply taken away from me and EVERY attempt I have made to establish a conversation with twitter has been ignored.**

The following pages clearly demonstrate that it is not reasonable to expect a resident of Sun Valley know that the sun image is trademarked. I can understand how someone who does not live in the area could make this mistake, but now that I have pointed this misconception out to you, I once again ask you return my twitter handle to me.

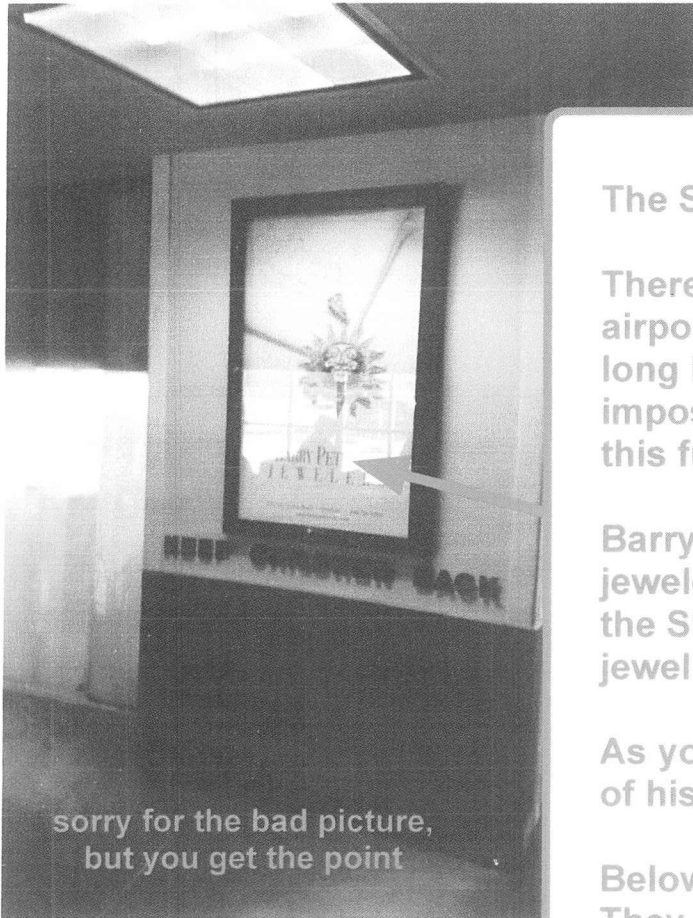




In communications, Sun Valley Company freely use the sun image and text, and NEVER indicates that any part of the message is a trademark.



# Many other people use the sun image.



sorry for the bad picture,  
but you get the point

The Sun Valley airport is very small.

There are only a few posters in the airport. This poster is above the 30 foot long baggage claim area. It is impossible to get luggage and not see this full size poster.

Barry Peterson is one of 3 high end jewelers in town. He has been selling the SUN image in various kinds of jewelry for over 20 years.

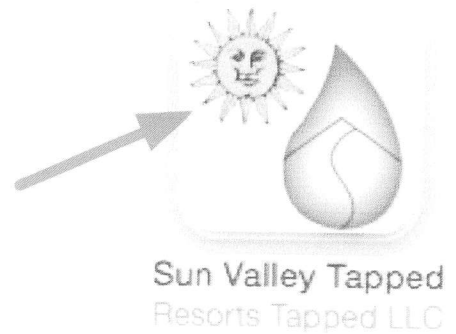
As you can see from the poster, it is one of his heavily promoted themes.

Below, see the logo for Sun Valley Limo. They are one of the two cab companies in the valley. They have been operating for years using the sun as part of their branding.



Below  
Coldwell Banker, a nationwide real estate  
company uses the image for their Sun Valley  
centric iPhone application

Right  
Another iPhone app using the sun



App Store > Travel > Glad To Have You, Inc.

## Coldwell Banker Sun Valley

Glad To Have You, Inc. >

Details Ratings and Reviews Related

### iPhone Screenshots

Carrier 11:10 AM

SUN VALLEY KETCHUM  
CHAMBER & VISITORS BUREAU  
THE FUN NEVER SETS

guest sign-in I am just visiting visit our website

Carrier 11:10 AM

Featured

Activities

- Red Fish Lake Lodge
- Zenergy Thunder Spring
- Ketchum On the Fly
- Sun Valley Heli Ski

Restaurants

- Pioneer Saloon
- Java On Fourth
- Boca
- Cristina's Restaurant & Bake...

### Description

Coldwell Banker Distinctive Properties is committed to delivering a vacation experience that you will never forget. The Distinctive Properties App is designed for rental guests vacationing at properties managed by Coldwell Banker Distinctive Properties, visitors interested in finding out about what the Sun Valley, Ketchum, and Hailey have to offer while on vacation, and special friends of CBDP interested in purchasing vacation properties in our area. Distinctive Properties manages over 250 rental properties and sells millions of dollars of real estate in the Sun Valley.

More >

What's New in Version 1.3.0 Posted Nov 30, 2012



Local artists use the image often.

Companies use various similar themes.

The concept that a local resident should know that the sun image is trademarked is NOT a reasonable argument.





This is the only correspondence I received from Twitter since 15-Oct-2012. It does not address the content of my letter to Twitter dated 15-Oct. Below my comments on this note appear in RED.

noirah <notifications-support@twitter.zendesk.com>

October 23, 2012 11:00 AM

To: sunvalley\_ <twitter@redcircleroad.com>

Reply-To: Twitter Support <support+id6437086@twitter.zendesk.com>

#6437086 Message from Twitter Support: "Re:"

##- Please type your reply above this line -##



**noirah, Oct 23 09:54 am (PDT):**

This is a follow-up to your previous request [#6353166](#) "Hello, We have received ..."

Hello,

Although Twitter firmly believes in the freedom of expression, impersonation that misleads, confuses, or deceives others is against our Rules.

For more information about Twitter's Trademark Policy, please see:

<http://support.twitter.com/articles/18367>

Here is a copy of the report:

**I carefully read Twitter Policy, see my comments on a prior page.**

Reported Account: @sunvalley

Description: Using artwork from our trademarked Logo along with word mark of Sun Valley

Usage: Our company would like to use this username on Twitter.

Company name: Sun Valley Resort

Website: <http://www.sunvalley.com>

Trademarked word, symbol: Sun Valley Sun Logo

Registration number: 929749

Registration office: USPTO

Direct Link to Trademark Record (optional): <http://tdr.uspto.gov/search.action?rn=929749#>

Tell us about yourself: I am the trademark holder or authorized representative.

Full name: Rob Prew

**According to the US Patent & Trademark Office: "Registration 929749 was not renewed and therefore has expired" (<http://1.usa.gov/140nWV2>)**

Job title: IT/Interactive Director

Email address: [rprew@sunvalley.com](mailto:rprew@sunvalley.com)

Your relationship to the trademark holder: I work directly for the company that holds this trademark.

Street address: 1 Sun Valley Road, PO Box 10

City: Sun Valley

State/Province: ID

Postal code: 83353

Country: USA

Copy of Report: I understand that Twitter may provide third parties, such as the affected user, with a copy of this report.

Authority to Act: I am authorized to act on behalf of the trademark holder.

Anything else? (optional): Additional Trademark

<http://tdr.uspto.gov/search.action?sn=85260154#>

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.05.03 - Sun representing a human face or an animal

Serial Number 85260154

Filing Date March 7, 2011

Current Basis 1B

Original Filing Basis 1B

Published for Opposition January 17, 2012

Owner (APPLICANT) Sinclair Finance Company Corporation Wyoming

CORPORATION WYOMING 550 East South Temple Salt Lake City UTAH 84130

Attorney of Record John C. Stringham

Prior Registrations 2897067;3486335;3879686;AND OTHERS

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a sun positioned above and to the right side of the words "Sun Valley".

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

Thanks,

noirah

Twitter Trust & Safety

Please note, we cannot accept email attachments at this time; please include all information in the body of your request.

The design they have trademarked, by definition, *consists of a sun positioned above and to the right side of the words "Sun Valley"*. The image I used was the sun that many others are using. I never used any text as part of my image.

I am not an attorney, and hence very wary of making a legal argument, but from reading the various links Twitter provided to me, it looks like Sun Valley Company abandoned the sun image as a trademark and migrated to the image with the word "Sun Valley". If this is the case, I am uncertain if I was ever violating any trademark rights at all. It is also my understanding that because Sun Valley Company doesn't make reasonable effort to protect their trademark, it may not be protectable. Again, I am not a lawyer, but I feel its important to to point these details out.

That being said, of course, I am glad to use a different image.

#### Screenshot from the US Patent & Trademark Office's website

US Serial Number: 72310611

Application

US Registration Number: 929749

Regist

Register: Principal

Mark Type: Service Mark

Status: This registration was not renewed and therefore has expired.

Status Date: Sep. 28, 2012

## Screenshot from the US Patent & Trademark Office's website

United States Patent & Trademark Office


tsdr.uspto.gov

United States Patent & Trademark Office

STATUS DOCUMENTS [Back to Search](#) Print

Generated on: This page was generated by TSDR on 2013-01-21 19:53:35 EST

Mark: SUN VALLEY



US Serial Number: 85260154 Application Filing Date: Mar 07, 2011

US Registration Number: 4242693 Registration Date: Nov 13, 2012

Register: Principal

Mark Type: Trademark, Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Nov 13, 2012

Publication Date: Jan 17, 2012 Notice of Allowance Date: Mar 13, 2012

▼ Mark Information [Expand All](#)

Mark Literal Elements: SUN VALLEY

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a sun positioned above and to the right side of the words "Sun Valley".

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 01 05 03 - Sun representing a human face or an animal

▲ Related Properties Information

Again, I am not an attorney, but this is NOT the image in question.



In Closing:

I have spent more then several hours, preparing the eMails, letters, photos.

I do understand how a busy organization could make a bad judgement call under these circumstances, but at this point , I am confident that it is clear Twitters actions were unjustified, and against Twitters own corporate policy.

The only open issue is what do you do now?

Excellence and integrity involve correcting your mistakes.

If after all this effort there is a honest disagreement between us, I feel that I am entitled to an explanation that justifies your actions. The only response I have gotten are the eMails and a 3rd hand comment implying I should have known better (which, in the best of lights, is naive.)

As I have said over and over, I would like to approach this in a friendly manner and am simply looking for someone with authority who can discuss this with me.

# **Do the right thing!**

**(please) return my handle to me.**



**QuadRun Consulting, LLC**

3215 Warm Springs Road - Unit A  
POB 10160  
Ketchum, ID 83340

**These last 3 pages are my  
letter of 15-Oct-2012**

October 15, 2012

Alexander MacGillivray  
Twitter Inc.  
1355 Market Street, ste 900  
San Francisco, CA 94103

Re: account suspension - @sunvalley  
#6353166 Twitter Support

To Whom It May Concern:

I was recently informed that Twitter suspended and reassigned my twitter handle, @sunvalley. The reason for the suspension was "We have received a valid report and determined that your account, @sunvalley, is engaged in non-parody impersonation." You have assigned me the alternate handle of @sunvalley\_.

While I understand and support Twitter's efforts to maintain the integrity of the user base, I strongly disagree with the assertion I have engaged in non-parody impersonation. Specifically, I encourage you to look at my tweet history. All of my tweets are clearly those of an individual. My tweets have discussed everything from Apple computer, to dancing, to poker, and skiing. I have lived in the Sun Valley, Idaho, area for over ten years. This is a nickname my friends have used for me for years. Hence, the reason I registered the name with Twitter. At no time did I falsely represent myself or make a non-parody impersonation.

Sunvalley is a generic phrase -- there are multiple cities, companies, sports teams, etc., that use this phrase. Sunvalley is not a unique brand. I could certainly understand this action much better if the handle was SunValleyCo, SunValleyCompany, SunValleyCleaners, SunValleyHomes, SunValleyRugAndTile, or any of the other dozens of businesses that bear the name SunValley.

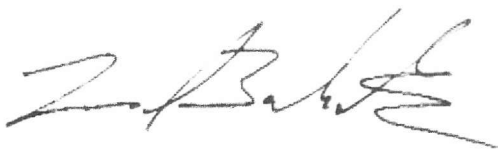
I have repeatedly tried to reach someone who can discuss and correct this matter. As you are aware, you guys are pretty hard to reach, and the only contact I've had has been with Noirah from Twitter Trust & Safety. In addition to the contents of the original notice, in a subsequent email she stated the following: "Twitter responds to reports from brands and trademark holders regarding the use of trademarks and logos that we determine are misleading or confusing with regard to brand or business affiliation."

While I don't want to presume what was the motivations for taking my handle away from me were, I want to address the possibility that Sun Valley Company was objecting to the use of the Sun Valley Sun. This is an image that is used widely all over town, found in publications, used in local advertisements by various companies, and in jewelry sold by local jewelers. While it was many year ago when I created the account and image, I would suspect that before I copied it from whatever website I got it, I would have checked for a TM mark or some other indication of ownership. It has always been my belief that this is an image that people of the town use to promote the town. Of course, if I were to have ever learned that this image is trademarked or registered, I would have immediately changed it. The action of taking away my long established handle is unfair. The action of assigning it to one of the MANY people, companies, or towns that is known as SunValley is arbitrary and unfair.

I have no idea how you determined you have a valid complaint when you have not contacted me to discuss the matter. Nor do I see how you would have reached that conclusion if you read my tweets. I have not violated Twitter Rules and, therefore, believe it was contrary to your own policies to have suspended and reassigned my handle. I would like to approach this in a friendly manner and am simply looking for someone with authority who can discuss this fully with me.

Please return my account or contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Barshack", with a stylized, flowing script.

Leonard Barshack  
208-726-7232

## Tweets



**SunValley** · sunvalley

30 Dec

Power day!! First tracks or stay home!

Expand



**SunValley** · sunvalley

18 Nov 11

Mac Rumors: Signal Snowboards Honor Steve Jobs With the iShred  
[macrumors.com/2011/11/17/sig...](http://macrumors.com/2011/11/17/sig...)

Expand



**SunValley** · sunvalley

6 May 11

Today I am so HAPPY !!! Thanks to everyone for delivering !!!

Expand



**SunValley** · sunvalley

12 Jan 11

Its Snowing, Warmer, and No Lift Lines !!

Expand



**SunValley** · sunvalley

14 Dec 10

Overcast today, but tomorrow should be epic! Beat the tourists, ski tomorrow!

Expand



**SunValley** · sunvalley

26 Aug 10

Anyone know how to get @jamie\_heywood to return your call ?

Expand



**SunValley** · sunvalley

21 Aug 10

Pig Roast is about to start. I can smell the aroma. Two great bands.  
CU at Apples. Can you believe its 100 days until lifts open?

Expand



**SunValley** · sunvalley

18 Apr 10

And so it was.. <http://bit.ly/9sv1VG> .

Expand



**SunValley** · sunvalley

18 Apr 10

Last ski day of the season, and it could not be nicer out. Get  
"bagged" and party at the top of Baldy. Scorpion Challenge at 4PM.

Expand



**SunValley** · sunvalley

17 Apr 10

Closing weekend with crystal skies, live music, and good times...  
Who could ask for more ?

Expand



**SunValley** · sunvalley

7 Apr 10

My first thoughts on iPad apps <http://bit.ly/9PANq0>

Expand



**SunValley** · sunvalley

3 Apr 10

<http://yfrog.com/2oit4hj> had to do it