

Elon Musk moves for mistrial in Twitter fraud case because everyone hates him



Fred Lambert

Elon Musk's legal team filed a motion for mistrial in the ongoing Twitter securities fraud class action lawsuit in San Francisco, arguing that the plaintiffs' lawyers and the judge have created an environment where Musk cannot get a fair trial. The 20-page filing, submitted on March 7, explicitly cites "the animosity in the community toward Mr. Musk apparent during jury selection."

The motion comes just days after Musk took the stand in the Pampena v. Musk trial, where shareholders accuse him of deliberately tanking Twitter's stock price through misleading tweets about bot accounts before completing his \$44 billion acquisition in 2022.

What the motion actually argues

To be clear, this is not a motion to dismiss the case outright. It is a motion for a mistrial — meaning Musk's lawyers are asking the court to throw out the current trial and start over with a new jury.

Musk's legal team at Quinn Emanuel, led by Alex Spiro, lists five separate grounds for mistrial in the filing:

First, the defense argues that the plaintiffs' lawyers repeatedly violated the judge's own pretrial ruling. Judge Charles Breyer had explicitly barred any argument suggesting Musk violated securities laws when he **secretly accumulated over 9% of Twitter stock** before disclosing his position to the SEC in early 2022. This case is still ongoing and a judge recently refused to dismiss it.

Despite this ruling, the filing alleges that plaintiffs' counsel brought up Musk's SEC disclosure failures in opening statements and then repeatedly questioned witnesses about it, including asking Twitter's former Chief Legal Officer, Vijaya Gadde, to explain what SEC Schedule 13G forms are and whether Musk filed them on time.

Second, the defense claims the court interfered with Musk's ability to rebut claims about European privacy laws. The plaintiffs argued that privacy laws prevented Twitter from sharing certain user data with Musk, and the defense says the judge prevented them from challenging that assertion while letting plaintiffs make it repeatedly.

Third, the filing accuses Judge Breyer of exceeding his supervisory role during the examinations of Twitter's former CFO Ned Segal and former CEO Parag Agrawal — repeatedly interrupting and admonishing defense counsel in front of the jury while letting plaintiffs' lawyers use similar tactics without objection. Fourth, the defense alleges plaintiffs' counsel deliberately asked questions designed to trigger attorney-client privilege objections, making Musk look like he was hiding something from the jury. Musk testified that he completed the Twitter acquisition because his lawyers told him the Delaware judge was biased against him, and plaintiffs kept pressing the point three times to force a privilege objection.

Finally, the motion argues that plaintiffs injected irrelevant and prejudicial material, including questioning Musk about his wealth, his decision to move businesses out of California, and his attempt to fire Twitter's top lawyer — all designed to turn the San Francisco jury against him.

The jury hostility problem

The filing's most notable argument is arguably its most candid. Musk's lawyers explicitly acknowledge what was **evident during jury selection**: the San Francisco jury pool harbors significant animosity toward Musk. Nearly 40 prospective jurors were **dismissed during jury selection** for admitting they could not set aside their biases, a striking number that reflects how Musk's public profile has shifted since 2022.

The defense argues this context makes any prejudicial conduct during trial more damaging than it would be in a neutral venue. "The Court has an obligation to protect Mr. Musk's right to a fair trial," the filing states. "The duty is all the more important given the animosity in the community toward Mr. Musk apparent during jury selection."

Background on the case

The Pampena v. Musk case was filed in October 2022 on behalf of Twitter shareholders who sold stock between May 13 and October 4, 2022. The central allegation is that Musk made false public statements, particularly his May 13, 2022 tweet declaring the Twitter deal was "temporarily on hold" and subsequent tweets claiming up to 20% of Twitter accounts might be bots, in order to drive down Twitter's stock price for his own benefit.

Musk has maintained throughout the trial that he genuinely believed Twitter's bot numbers were far higher than the company claimed and that the deal merited renegotiation. During his testimony, **Musk said of Twitter's 5% bot estimate**: "I did make it clear that I thought it was BS."

The case is separate from the **SEC's own action against Musk** over his delayed disclosure of his Twitter stock purchases, which seeks more than \$150 million in disgorgement and penalties.

The trial is scheduled to continue through March 19, and Judge Breyer has not yet ruled on the mistrial motion.

Electrek's Take

Top comment by **Dave Ward**

Liked by 12 people

"We expect the judge to deny the mistrial motion and let the trial proceed to verdict, but the filing itself is a clear signal that Musk's legal team sees the trajectory of this trial as unfavorable."

This is spot on. You never ask the court for a mistrial if you believe you are winning, and further, you fight against the other side's motion for mistrial if you believe the jury is on your side.

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Look, defense lawyers file mistrial motions all the time, it's a standard tactical move when a trial isn't going your way, and it creates a record for appeal if you lose. So this motion alone doesn't mean the trial is falling apart.

That said, the underlying dynamic described in this filing is real. Musk's public profile has become so polarizing, between DOGE, his political activities, and his behavior on X, that finding an unbiased jury in San Francisco was always going to be a monumental challenge. Nearly 40 jurors dismissed for bias during selection is extraordinary.

The more interesting question is what happens if Musk loses this case. A defeat here could open the door to significant damages for shareholders who sold Twitter stock during that volatile period in 2022, and it would set a precedent for how courts treat CEO tweets as potential securities fraud. Combined with the separate SEC case seeking over \$150 million, Musk is facing real legal exposure on the Twitter acquisition front, the same deal that has already cost him dearly in the Delaware Chancery Court.

We expect the judge to deny the mistrial motion and let the trial proceed to verdict, but the filing itself is a clear signal that Musk's legal team sees the trajectory of this trial as unfavorable.

