

The SEC's Twitter Feud with Elon Musk Escalates in Federal Court

By Dani Kritter, J.D. Candidate 2021 | March 20, 2019

Elon Musk fired back at the Securities and Exchange Commission (SEC) in federal court last week, accusing the agency of making a retaliatory [“unconstitutional power grab”](#) to silence his free speech. The SEC seeks to hold the Tesla CEO in contempt of court over tweets sent on February 19 that allegedly violated a 2018 settlement agreement. Musk's lawyers submitted a brief claiming the SEC's strict interpretation of the settlement is an [“unprecedented overreach”](#) and an attempt to “trample on Musk's First Amendment rights.”

In 2018, Musk posted a [misleading tweet](#) that he had secured funding to take Tesla private at \$420 a share. The company's stock soared, but the claim wasn't true. The SEC hit Musk with \$40 million in fines and a [settlement agreement](#) that forced him to step down as chairman. The settlement also restricted his communications to investors. Now, Musk must get preapproval from in-house counsel before sending any tweet about Tesla. The SEC claims the [“twitter-sitter”](#) did not approve a [February 19 post](#) in which Musk boasted that Tesla would produce 500,000 vehicles in 2019.

Musk's aggressive response to the SEC is poorly timed. Because commercial speech is more regulated than private speech, the federal judge is unlikely to heed Musk's First Amendment claims. Many predict the SEC and judge will try to [avoid punishing Musk](#) in a way that harms shareholders, meaning a permanent ban from Tesla is unlikely. But regardless of the outcome of the case, more negative publicity is the last thing Tesla needs.

Tesla stock is down 14% this year, and the company faces pressure from competitors, growing debts, and [whistleblower complaints](#). Tesla has been so embroiled in controversy that it included scrutiny from critics as a risk factor in its recent [10-K filing](#). Musk's needless provocation of the SEC might spur investors to push for further constraints on Musk's role in the company.

On the other hand, some investors are confident that Tesla has matured enough to have a strong path forward with or without its CEO. As [Ross Gerber](#) said of Musk: “He'll never be a liability for Tesla. He's more a liability for himself.”

