

## **Internet Execs Failed to Click** **By JOEL RUSSELL - 8/24/2009** **Los Angeles Business Journal Staff**

Nine months ago Hydra LLC was riding high.

The Internet advertising company in Beverly Hills was clicking with customers and had achieved buzzword status among marketers. It ranked sixth on the Business Journal's list of Fastest-Growing Private Companies with a two-year revenue growth of 333 percent. By the end of 2008, it reported revenue of \$108 million.

But today, three of the four partners are no longer with the company. Revenue has been chopped in half, according to the exiled partners. And simmering disagreements have turned into lawsuits.

The ball started rolling downhill in November when tensions between Chief Executive Zac Brandenburg and his three partners – Doug Walker and his sons, Jason and Adam – reached a breaking point.

According to the original lawsuit filed by Hydra, the Walkers “adopted an increasingly adversarial stance toward Hydra and Brandenburg on numerous matters,” including business strategy and employment agreements. In response, Brandenburg and executives from Kayne Anderson Private Investors LP, a limited partnership that invested \$10 million in the company, used their control of the board to fire the Walkers. (Based in Century City, Kayne Anderson is controlled by billionaire investor John E. Anderson.)

By April, Brandenburg was the sole partner left at the company. The following month the Walkers formed W4, a Venice-based Internet marketing company. Hydra sued, claiming the company violated the Walkers' noncompete agreements. A judge agreed, but the appeals court granted a temporary stay, allowing the Walkers to continue owning and running W4.

Meanwhile, the Walkers filed their own suit, alleging that Brandenburg and Kayne Anderson's decision to remove the Walkers has decimated the value of Hydra. The Walkers still own nearly 40 percent of the company.

“Before the defendants engaged in their misconduct, Hydra was projected to generate some \$150 million in revenue and substantial profits in 2009,” the suit states. “Today, Hydra will be lucky to generate revenue of half that amount and avoid a loss. This dramatic decline in financial performance is directly attributable to the defendants' wrongful acts.”

Adam Walker told the Business Journal that he believes the core conflict was caused by Brandenburg's efforts to get the Walkers out of the company. Walker said Brandenburg had been meeting with lawyers since early 2008 to engineer the ouster. The conflict “may sound like a lot of business reasons, but mostly they were not business reasons.”

The suit claims that “Brandenburg sought to affect the ouster of the Walkers for his personal benefit – both to eliminate any challenge to his authority and allow him to steal back the Walkers' equity stake.”

In response to these allegations, Mason Wiley, senior vice president of marketing at Hydra, referred to the court filings that cited disagreements over how the business should be run. The documents state that after Adam Walker was terminated over such disagreements, the other Walker family members grew increasingly adversarial.

“Both sides seem like reasonable people, so some things are better left to a court of law,” Wiley said.

As for the noncompete issue, Robyn Crowther, an attorney at Caldwell Leslie & Proctor who represents the Walkers, said her clients don't deny that W4 competes against Hydra. However, they don't believe the noncompete clauses are enforceable and their alleged wrongful discharge from Hydra makes them invalid.

Wiley said that although noncompetes often are unenforceable, in this situation the Walkers received millions of dollars to sign the noncompete documents.

"Our company position is that if they want to return the millions, then they can compete," he said.

With respect to Hydra's performance, Wiley said changes in affiliate marketing programs at Google, Yahoo and other online players have impacted Hydra's business. The company has made the decision to "go upmarket," meaning deal with blue-chip advertisers, and that explains the drop in revenue.

"The lawsuit is overstating the matter because they have a vested interest to do so," he said.

Crowther points out the timing of the company's downturn as evidence of what she said is poor managerial decision-making.

"The company went from zero to \$108 million in revenue while the Walkers were there, and now (since the Walkers are gone) it has less than half the employees and revenue is down by 50 percent or more," she said. "The people responsible for that should put money back into the business because they fired the Walkers without having anyone to replace them."

That's not the end of the fracas. The latest legal salvo between the partners is a defamation suit filed by Brandenburg and Louis Amoroso, one of the professional managers hired to replace the Walkers. The suit alleges that Jason Walker sent an e-mail to Kayne Anderson employees and Hydra managers, claiming that Amoroso was a convicted felon and "a frequenter of hookers, gambling and liquor."

The e-mail also accused Brandenburg of dishonesty and incompetence.

Brandenburg is seeking \$1 million for the alleged defamation, plus punitive and exemplary damages. The same figure applies to Amoroso's complaint. Hydra the company is not a party to this suit.

Crowther estimates all the lawsuits will go to trial in the summer of 2010. In addition to the suits, the Walkers are pursuing arbitration proceedings to settle their individual employee agreements, she added.

Until then, the litigation has put a cloud over her clients' future. The Walkers are moving forward with the launch of their new company knowing that the court could shut them down at any time, said Adam Walker.

And as major stockholders, the family is in the odd position of suing their former company while its success could benefit them.

"While it's reprehensible what they have done, it's saddening to see the company floundering and I wouldn't want to contribute to its demise with negative information in the press," said Jason Walker.

He declined to comment further.