



Rogozinski v. Reddit, Inc.

2023 | Cited 0 times | N.D. California | July 11, 2023

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

JAIME ROGOZINSKI,

Plaintiff, v. REDDIT, INC.,

Defendant.

Case No. 23-cv-00686-MMC ORDER GRANTING DEFENDANT S MOTION TO DISMISS;
AFFORDING PLAINTIFF LEAVE TO AMEND Re: Dkt. No. 28

Before the Court is opposition, to which Reddit has replied. Having read and considered the papers
filed in

support of and in opposition to the motion, the Court rules as follows. 1

BACKGROUND 2 vote, and comment in communities organized around their interests. (See Compl.
¶ 19

(See id.

See id. (citation omitted).) Moderators, in addition to those actions, also

See id. (citation omitted).)

1

By order filed June 16, 2023, the Court took the matter under submission. 2 The following facts are
taken from the Complaint. r/WallStreetBets and on which Rogozinski served as its first moderator.
(See Compl. ¶¶ 1, 20.) subscribers, e See id. ¶¶ 1-2.) At the end of

January 2020, Rogozinski published a book, WallStreetBets: How Boomers Made the See id. ¶ 33.)

-branded e- See id. ¶ 34.)



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On March 24, 2020, Rogozinski filed an application with the United States Patent conjunction with online and print publications in the fields of trading and finance, clothing

items and providing an online fo See Compl. ¶ 35.) Two weeks later, on April 7, 2020, Reddit his account had been placed on a seven- (See id. ¶ 36.) (See id.) Subsequently, on May 11, 2020,

Reddit filed its own application with the USPTO to register the mark WALLSTREETBETS. (See id. ¶ 41.) In addition, See id. ¶ 56.)

On January 12, 2022, Rogozinski filed an application to register the mark WSB, See Compl. ¶ 56.) Reddit did not oppose that registration, which, on June 7, 2022, the USPTO issued as U.S. Trademark Registration No. 6754487. (See id.)

As of 2023 appearances to discuss

See Compl. ¶ 59.) Additionally more than a dozen events . . . throughout the United States and around the world (see id.) and see id. ¶ 60). According to

Rogozinski, after Reddit banned him, the content on the r/WallStreetBets subreddit See id. ¶ 64.)

declaratory judgment that he, and not Reddit, is the owner of the WALLSTREETBETS

violation of Cal. Bus. & Prof. Code § 17200, et seq. (Count VIII). (See Compl. at 20-25.)

LEGAL STANDARD Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Rule 8(a)(2), however, requires only a short and plain statement of the claim showing that the pleader is entitled to relief. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations. See id. Nonetheless, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than . . . a formulaic recitation of the elements of a cause of action. See id. (internal quotation, citation, and alteration omitted).

In analyzing a motion to dismiss, a district court must accept as true all material allegations in the complaint and construe them in the light most favorable to the nonmoving party. See *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). To survive a motion to dismiss, however, a complaint must contain sufficient factual material, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Factual allegations must be enough to raise a right to relief above the speculative level, *Twombly*, 550 U.S. at 555, and courts are not bound to accept as true a legal conclusion couched as a factual allegation, see



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Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

DISCUSSION A. Trademark Claims

By separate order filed June 30, 2023, the Court

, set forth in the instant motion, that the Trademark Claims See Def. Mot. to Dismiss Mot. at 19:10, Dkt. No. 28.) The Court addresses below each such Count in turn.

1. Count I

the owner of the See Compl. ¶ 69.)

See *Sengoku Works Ltd. v. RMC Int'l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir.), as modified, 97 F.3d 1460 (9th Cir. 1996) enough to have invented the mark first or even to have registered it first; the party claiming ownership must have been the first to actually use the mark in the sale of goods See id.; see also id. prima facie evidence that the registrant is the owner of the mark, -registrant can show that he used the mark in commerce first, then the registration may be

Here, Rogozinski, to establish his ownership of the WALLSTREETBETS mark, does not assert he was the first to use the mark in commerce. Rather, citing no authority for such proposition the market i see at 17:8-9, Dkt. No. 34), and in support thereof

asserts he has been , gh his jartek username, [he] r/WallStreetBets subreddit page (see id. at 17:21-23 (citing Compl. ¶ 21 (displaying

), see id. at 17:24-25 see id. at 18:3-4

see id. at 18:5 (citing Compl. ¶ 23)), th

interviewed and treated [him] see id. at 18:16-17 (citing Compl. ¶ 59)), and [him] with the brand, so much so that a major production company purchased the rights to [his] life story to see id. at 18:19-21 (citing Compl. ¶ 59)).

means the bona fide use

of a mark in the ordinary course of trade . . . , and in commerce--

(1) on goods when--

(A) it is placed in any manner on the goods or their containers or the displays associated therewith or



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on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services. See 15 U.S.C. § 1127.

Here, Rogozinski acknowledges in the Complaint that WALLSTREETBETS trademark in commerce by operating the r/WallStreetBets

See Compl. ¶ 73.) Indeed, on May 15, 2020, the USPTO refused Rogozinski registration of the mark WALLSTREETBETS, noting, as to his See

Req. for Judicial Notice in Supp. of Def. 3.) 3

In response, Rogozinski, on May 27, 2020, amended his application, asserting an intent to use the mark. (See Decl. of Holly Prange at 2-3 See

Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp., 174 F.3d 1036, 1052 (9th Cir. 1999); Zazu Designs v. L'Oreal, S.A., 979 F.2d 499, 504 (7th Cir.1992) (noting an intent to use

To the extent Rogozinski alleges he created the mark (see, e.g., Compl. ¶ 75), such event, as noted, is, without more, insufficient, see Sengoku, 96 F.3d at 1219 (holding . To the extent Rogozinski relies on allegations that he used the mark as part of a book title in January 2020 or to promote an e-sports competition in March 2020 (see -25 (citing Compl. ¶¶ 32-34)), such arguments likewise find no support in the law. Rather,

3 The Court hereby GRANTS request for judicial notice USPTO record for trademark application for the WALLSTREETBETS (See see also Johnson v. Castillo, 2023 WL 3355260, at matters of public consistent with the authority discussed above, [r]ights in a trademark are determined by See Hana Fin., Inc. v. Hana Bank,

574 U.S. 418, 419 (2015).

In the instant case, Rogozinski not only alleges that Reddit, by operating the r/WallStreetBets subreddit, has been using the WALLSTREETBETS mark, but that it has done so since January 31, 2012, the date on which said subreddit was created. (See Compl. ¶ 20.) Moreover, his See) Rogozinski does not allege his own use of the mark for any purpose prior to January 31, 2012. Consequently, he fails to establish his priority over Reddit.

In sum, Rogozinski fails to plead ownership rights in the WALLSTREETBETS mark.



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Accordingly, Count I is subject to dismissal.

2. Count II Infringement of Unregistered WALLSTREETBETS

Trademark In Count II, Rogozinski asserts Reddit is infringing his unregistered WALLSTREETBETS mark. (See Compl. ¶ 77.)

or trade name infringement under the Lanham [he] has a protectable ownership La Terra Fina USA, LLC v. TerraFina, L.L.C., 2017 WL 4284167,

at *2 (N.D. Cal. Sept. 27, 2017) (quoting Network Automation, Inc. v. Advanced Sys. Concepts, 638 F.3d 1137, 1144 (9th Cir. 2011)).

As set forth above, Rogozinski has failed to show he possesses ownership rights in the WALLSTREETBETS mark. Consequently, he fails to state a claim for infringement of said mark.

Accordingly, Count II is subject to dismissal.

3. Count III Infringement of Registered WSB Trademark In Count III, Rogozinski asserts Reddit is infringing his registered WSB mark. Specifically, Rogozinski alleges that See Compl. ¶¶ 81, 83.)

To prevail on a claim of trademark infringement, Rogozinski, as set forth above, must show (1) that he that See La Terra Fina, 2017 WL 4284167, at *2.

As noted, [w]hen proving ownership of a trademark, federal registration of the mark is prima facie evidence that the registrant is the owner of the mark, and registrant is [thus] granted a presumption of ownership, dating to the filing date of the

application for federal registration. See Sengoku, 96 F.3d at 1219-20 (citing Lanham Act §§ 7(b), 33(a), 15 U.S.C. §§ 1057(b), 1115(a)). As also noted, however, -registrant See id. at 1220.

is January 12, 2022. Rogozinski alleges, however, that April 7, 2020, when Rogozinski was removed as moderator (see Compl. ¶¶ 36, 83), and

Reddit, citing La Terra Fina, 2017 WL 4284167, at *2 r/wallstreetbets subreddit could not infringe WSB registration because the

alleged use by Reddit predates any possible rights that [Rogozinski] has based on the see -12). Further WSB mark lists April 15, 2021, as , which is later than

. (See RJN, Ex. 4 at 2.) To the extent Rogozinski nonetheless (see -26), he cites no authority in support



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of such assertion.

Accordingly, Count III is subject to dismissal.

4. Count IV Trademark Dilution by Tarnishment In Count IV, Rogozinski alleges subreddit since [he] tarnishment of the WALLSTREETBETS and WSB marks. (See Compl. ¶ 90.)

shall be entitled to an injunction against another person who, at any time after the

owner's mark has become famous, commences use of a mark or trade name in commerce that is See 15 U.S.C. § 1125(c)(1). Here, Reddit argues, Rogozinski has not established that either mark is sufficiently famous. (See

recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's See 15 U.S.C. § 1125(c)(2)(A). protection under the [Federal Trademark Dilution Act], a mark must be truly prominent See Avery Dennison Corp. v. Sumpton, 189 F.3d 868, 875 (9th Cir. 1999) (internal quotation, citation, and alteration omitted); see also Dahon N. Am., Inc. v. Hon, 2012 WL 1413681, at *9 (C.D. Cal. Ap are restricted to truly famous marks, such as Budweiser beer, Camel cigarettes, and

Although Rogozinski alleges the r/WallStreetBets subreddit attracted media attention beginning in 2017 (see Compl. ¶ 26) and reached one million subscribers in March 2020 (see Compl. ¶ 22), such allegations fall short of the level of fame courts have found to be sufficient to support a dilution claim, see, e.g., Jada Toys, Inc. v. Mattel, Inc., 518 F.3d 628, 6 -seven years; 350 million dollars have been expended in advertising the mark; three billion HOT WHEELS units have been sold since the inception of the mark; and HOT WHEELS are , and Rogozinski, in his opposition,

famous.

Accordingly, Count IV is subject to dismissal. B. State Law Claims

Reddit first argues are barred by Section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230 considers below each such claim in turn.

1. CDA § 230 (Counts V, VI, VII, and VIII) See Fraley v. Facebook, Inc., 830 F. Supp. 2d 785, 801 (N.D.

Cal. 2011). In particular, § 230 states that [n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider, see 47 U.S.C. § 230(c)(1), and further states that [n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section, see 47 U.S.C. § 230(e)(3). In short, § 230 service (2) whom a plaintiff seeks to treat, under a state law cause of



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action, as a See Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1100 01 (9th Cir. 2009), as amended (Sept. 28, 2009). The Court considers below each of the above-listed elements.

a. Provider or User of an Interactive Computer Service Rogozinski does not dispute, and the Court finds, Reddit is a provider of an interactive computer service. See service, system, or access software provider that provides or see also Does 1- 6 v. Reddit, Inc., 51 F.4th 1137, 1141 (9th Cir. 2022), cert. denied, 2023 WL 3696135 (May 30, 2023) (f

b. Treatment as Publisher or Speaker See -10.)

To determine if a plai ask whether the duty that the plaintiff alleges the defendant violated derives from the See Barnes, 570 F.3d at involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-See id. [A]ny activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is See Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 115771 (9th Cir. 2008).

In Count V, his right of publicity claim, Rogozinski alleges that [s] . . . to See Compl. ¶¶ 94-95.) In Count VI, his See Compl. ¶ 103.) Similarly, in Count VII, his claim for violation of the duty of good faith and fair dealing, See Compl. ¶ 110.) Lastly,

in Count VIII, his unfair competition claim, Rogozinski all see Compl.

see Compl. ¶ 117).

Reddit argues all four State Law Claims seek to hold Reddit liable for publisher conduct, that is, decisions about what types of content and which users are permitted on See -10.)

In response, Rogozinski first argues commercial tort or breach of contract claims. (See .) As set forth below, however, three of the cases on which Rogozinski relies are readily distinguishable, in that those decisions either considered a statutory provision not at issue here, see Enigma Software Grp. USA, LLC v. Malwarebytes, Inc., 946 F.3d 1040, 1049 (9th Cir. 2019) (addressing scope of immunity under § 230(c)(2)), or the claims therein were based on a theory of promissory estoppel, see Barnes, 570 F.3d at 1099, 1109 (reversing dismissal of

over to the division responsible for stopping unauthorized profiles and they would take ; Berenson v. Twitter, Inc., 2022 WL 1289049, at *2-3 (N.D. Cal. Apr. 29, 2022)

gave specific and direct a (emphasis in original)

(alteration omitted)), and the fourth, namely Darnaa, LLC v. Google, Inc., 2016 WL 6540452 (N.D. Cal.



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Nov. 2, 2016), has been found to conflict with a number of cases holding to the contrary, see *King v. Facebook, Inc.*, 2019 WL 4221768, at *5 (N.D. Cal. Sept. 5, 2019), *aff'd*, 845 F. App'x 691 (9th Cir. 2021) (collecting cases); see also, e.g., *Brittain v. Twitter, Inc.*, 2019 WL 2423375, at *3 (N.D. Cal. June 10, 2019) (holding § 230 barred claims for breach of contract and promissory estoppel that sought to hold [defendant] .

Next, a and, as to his unfair competition See -12.)

The Court, however, agrees with Reddit that all four State Law Claims, with one limited exception, seek to hold Reddit liable for publisher conduct, specifically, for either suspending Rogozinski from the r/WallStreetBets subreddit, banning him, and/or allowing the subreddit to continue to operate without him. See *Rangel v. Dorsey*, 2022 WL e content Fed. Agency of News LLC v. Facebook, Inc., 432 F. Supp. 3d 1107, 1116 (N.D. Cal. 2020) (tation and citation omitted)).

The one exception relates to Count VIII, the unfair competition claim. To the extent Rogozinski bases such rights in the brand names of subreddits see Compl. ¶ 114), the Court finds the claim , see *Barnes*, 570 F.3d at 1102, but, rather, from separate conduct, and Reddit cites no authority holding to the contrary.

c. Information Provided by Another Information Content Provider As to the last element, Rogozinski does not appear to dispute, and the Court finds, the information at issue in the State Law Claims is information provided by another individual r/WallStreetBets subreddit. See 47 U.S.C. § 230(f)(3) ontent

or development of information provided through the Internet or any other interactive

see also *Sikhs for Just. "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1094 (N.D. Cal. 2015), *aff'd* immunizes an interactive computer service provider that passively displays content that is

d. Conclusion: CDA § 230 Accordingly, all four State Law Claims, with the exception of Count VIII to the subject to dismissal as barred by § 230(c)(1) of the CDA. 4

4 arguments in support of dismissal of Counts V, VI, and VII. (See -

2. Standing (Count VIII) As noted, in Count VIII, Rogozinski asserts Reddit is see see Compl. ¶ 117). To the extent Rogozinski bases this claim on the latter

allegation, the Court, as discussed above, has found it is barred by § 230(c)(1) of the CDA. To the extent Rogozinski bases this claim on the former allegation, the Court, as set forth below, finds he lacks standing.



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only if he or she has suffered injury in fact and has lost money or property as a result of the unfair competition. See *Mai v. Supercell Oy*, 2023 WL 25713, at *2 (N.D. Cal. Jan. 3, 2023) (quoting Cal. Bus. & Prof. Code § 17204). See Compl. ¶ 118.) Specifically, Rogozinski alleges, hundreds of thousands of dollars of sales for his book, which was published less than

company lost its contract for the e-sports trading competition in Texas, costing him See Compl. ¶ 58.)

As to the alleged purposes of establishing standing under the UCL for See *Dyson, Inc. v. Garry Vacuum, LLC*, 2010 WL 11595882, at *8-9 (C.D. Cal. July 19, 2010) (dismissing UCL . . . ;

type of injury is not sufficient to support st

As to the alleged lost contract, to the extent such agreement was prospective in nature See *Ahussain v. GNC Franchising, LLC*, 2009 WL 10672353, at *5 (C.D. Cal. Mar. 18,

16:23.) 2009). To the extent it was an existing contract, Rogozinski must still show his See *Kwikset Corp. v. Superior Ct.*, 51 Cal. 4th 310, 326 (2011) (quoting Cal. Bus. & Prof. Code §§ 17204, 17535). In particular, he must plead facts demonstrating R

and his claimed loss of . See *id.*; (see also Compl. ¶¶ 58, 114). As

See Compl. ¶ 58.)

practice, is subject to dismissal. 5

CONCLUSION motion is hereby GRANTED, and the Complaint is hereby DISMISSED with leave to amend.

A First Amended Complaint, if any, shall be filed no later than August 11, 2023. Lastly, the Court hereby SETS a Case Management Conference for November 17, 2023. A Joint Case Management Conference Statement shall be filed no later than November 9, 2023.

IT IS SO ORDERED.

Dated: July 11, 2023 MAXINE M. CHESNEY United States District Judge

5 s additional arguments in support of dismissal of Count VIII. (See 18:3-19:6.)

