



IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiff,

vs.

TIKTOK INC.

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

Case No. 230907634

Honorable Richard Daynes

Tier III

On September 10, 2024, the Court held a hearing on Defendant TikTok, Inc.'s ("TikTok") Motion to Dismiss the Complaint. This Court took the matter under advisement, and now issues its written opinion. For the reasons set forth below, the Court DENIES TikTok's Motion to Dismiss in full.

BACKGROUND

On October 10, 2023, the Division of Consumer Protection of the State of Utah (the "Division") filed a three-count Complaint against TikTok Inc. alleging violations of the Utah Consumer Protection Act ("UCSPA"). Count One alleges "Unconscionable Acts or Practices Concerning Underage Consumers, Violation of Utah Consumer Sales Practices Act, Utah Code § 13-11-5." Count Two alleges "Deceptive Acts or Practices, Violation of Utah Consumer Sales

Practices Act, Utah Code § 13-11-4,” basically stating that TikTok has deceptively misrepresented the actions it has taken to keep the application safe for children and persons of all ages. Count Three alleges, “Deceptive Acts or Practices, Violation of Utah Consumer Sales Practices Act, Utah Code § 13-11-4,” principally stating that TikTok represents itself to be a company located, controlled and headquartered in the United States when it continues to be controlled by its China-based parent company, ByteDance.

On December 20, 2023, TikTok filed a motion to dismiss the Complaint, citing lack of both general and specific personal jurisdiction; that section 230 of the Communications Decency Act (“CDA”) protects TikTok from liability; that application of UCSPA as alleged in the Complaint violates the First Amendment to the U.S. Constitution; that the UCSPA is impermissibly vague; and that the Complaint fails to state a claim of unconscionability. TikTok also asserts the challenged statements are not made in connection with a consumer transaction and do not constitute acts or practices.

MOTION TO DISMISS STANDARD OF REVIEW

In Utah, pursuant to Utah Rules of Civil Procedure 12(b)(6), a Motion to Dismiss may be granted when there is a "failure to state a claim upon which relief can be granted," meaning the Court must assess whether the plaintiff's complaint, when viewed in the light most favorable to the plaintiff, contains sufficient factual allegations to state a viable legal claim under applicable law. Essentially, the court may only dismiss a case if the complaint demonstrates a complete lack of a legal basis for the claim, even if the facts alleged are accepted as true. *See St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 196 (Utah 1991). “A dismissal is a severe measure and should be granted . . . only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim.” *Am. W. Bank Members, L.C. v. State*, 2014 UT

49, ¶ 13, 342 P.3d 224. The Court must construe the complaint as pled under both Rules 8 and 12 of the Utah Rules of Civil Procedure liberally in favor of the plaintiff, meaning any doubts about the sufficiency of the claim will be resolved in favor of allowing the case to proceed. *Russell v. Standard Corp.*, 898 P.2d 263, 264 (Utah 1995) (“[W]e accept the factual allegations in the complaint as true and consider them and all reasonable inferences to be drawn from them in a light most favorable to the plaintiff.”); *Gill v. Timm*, 720 P.2d 1352, 1353 (Utah 1986) (“Rule 8(a) is to be liberally construed when determining the sufficiency of a plaintiff’s complaint.”). *Mack v. Utah State Dep’t of Com., Div. of Sec.*, 2009 UT 47, ¶ 17, 221 P.3d 194, 200, (referring to the Utah Rules of Civil Procedure; *see also*, Utah R. Civ. P. 1, (stating, The Rules of Civil Procedure “shall be liberally construed and applied to achieve the just, speedy and inexpensive determination of every action.”))

I. THE COURT HAS SPECIFIC PERSONAL JURISDICTION OVER TIKTOK.

A. General Personal Jurisdiction

The Division has not argued for **general personal jurisdiction** as to this matter and so this Court has generally only reviewed the case for specific personal jurisdiction. Nevertheless, TikTok is not incorporated in the State of Utah and Utah is not the home forum state for TikTok. Hence, there is no general personal jurisdiction over TikTok. However, as set forth below, the Court does find specific personal jurisdiction.

B. Specific Personal Jurisdiction

“[T]he evaluation of specific jurisdiction in Utah mandates a three-part inquiry: ‘(1) the defendant’s acts or contacts must implicate Utah under the Utah long-arm statute; (2) a ‘nexus’ must exist between the plaintiff’s claims and the defendant’s acts or contacts; and (3) application of the Utah long-arm statute must satisfy the requirements of federal due

process.’ ” *Soma Medical Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1297 (10th Cir.1999) citing *Arguello v. Industrial Woodworking Mach. Co.*, 838 P.2d 1120, 1122 (Utah 1992), quoting *National Petroleum Mkt'g, Inc. v. Phoenix Fuel Co.*, 902 F.Supp. 1459, 1465 (D.Utah 1995)(citation omitted).

1. Utah’s Long Arm Statute:

To have specific personal jurisdiction, Utah's long-arm statute must apply and allow its courts to reach out-of-state defendants. Additionally, the submission of jurisdiction must still comply with the Due Process Clause of the U.S. Constitution. Utah’s long arm statute states:

78B-3-205. Acts submitting person to jurisdiction.

Notwithstanding Section 16-10a-1501, any person or personal representative of the person, whether or not a citizen or resident of this state, who, in person or through an agent, does any of the following enumerated acts is subject to the jurisdiction of the courts of this state as to any claim arising out of or related to:

- (1) the transaction of any business within this state;
- (2) contracting to supply services or goods in this state;
- (3) the causing of any injury within this state whether tortious or by breach of warranty... .

In this case, as alleged in the Complaint by the Division, all three of these elements set forth within Utah’s long arm statute have been met. “[T]ransaction of business” is defined by Utah’s long arm statute as “activities of a non-resident person, his agents, or representatives in this state which affect persons or businesses within the state of Utah.” Utah Code Ann. § 78-27-23. TikTok intentionally transacts business within the state of Utah. TikTok sells advertising which is directed at Utah residents. TikTok enters agreements with the users of its app and provides individualized targeted content to each Utah customer. The Complaint

alleges injury to thousands of residents of Utah, and specifically children targeted by TikTok to continuously engage in using its application.

Utah's long arm statute applies in this circumstance to the extent that Due Process under the U.S. Constitution would allow. According to Utah Code § 78-27-22, Utah's long arm statute is intended "to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution." Due process should therefore be the next consideration in reviewing the jurisdictional element.

2. Due Process Evaluation:

To meet the requirements of due process, a court may assert specific jurisdiction if the following conditions are met: i) Purposeful Activities: The defendant has deliberately engaged in activities targeting the forum state or has otherwise established connections there. ii) Nexus: A nexus exists between the purposeful activities and the defendant's Utah contacts, iii) Reasonableness: Exercising personal jurisdiction over the defendant is reasonable and fair under the circumstances. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-478 (1985). A lack of physical presence cannot defeat personal jurisdiction. *Id.* at 476.

i. Purposeful Activities and ii Nexus:

In this case the Court finds that, as alleged in the Complaint, TikTok has purposefully conducted activity within the State of Utah and those activities relate to the claims set forth by the Division in its Complaint and response to the Motion to Dismiss. As alleged in the Complaint, the Division's claims "relate to" TikTok's profitable multi-billion-dollar business because TikTok designs its app to carefully cultivate user attention, allowing TikTok to

collect personal user data—including from Utahns—which in turn enables TikTok to offer more targeted and profitable advertisements. [Complaint] ¶¶ 3, 15–16.

TikTok makes its money selling ads— and TikTok makes more money when more users spend more time on its app, creating an incentive to increase the time that Utah users spend on its app. *Id.* TikTok has responded to that incentive by adding features that addict and consume the attention of Utah’s children to the detriment of their well-being. *Id.* ¶¶ 2–4.

TikTok’s alleged misrepresentations about the safety of and origin of its app are also intimately related to its forum contacts because the Complaint alleges that those statements targeted Utah children and their parents to maximize their use of TikTok’s app and to keep them coming back. These claims go to the central claims in the Division’s Complaint and are sufficient to find purposeful activity in Utah and a nexus. *See Inconnu Lodge v. Combbine.com LLC*, 214 F. Supp. 2d 1204, 1208–09 (D. Utah 2002) (finding that a domain name purchased by an out-of-state resident in order to extort money from Utah resident demonstrated defendants’ efforts to “direct” their activity towards Utah).

The allegations, as argued and set forth in the Complaint, are sufficient to satisfy this requirement. The Court agrees with the Division that the Division’s claims arise out of or relate to TikTok’s contacts with Utah. *See Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1222 (10th Cir. 2021); see also, *Burger King, Inc.* at 472.

3. Fairness and Reasonableness:

Even if there are sufficient contacts within the state, to satisfy due process a court must also confirm that asserting jurisdiction comports with “fair play and substantial justice.” *Burger King Corp.*, at 476 (citation omitted). This involves considering several factors to

decide if it is suitable to proceed in the forum state. The factors to review include, first, whether it is an unreasonable burden on the Defendant to litigate in Utah. Second, the interest of the state in having the case heard in the forum-state. Third, the interest of the plaintiff in having the case heard in the forum-state. And finally, the court must also consider judicial efficiency and the interests of the interstate system.

1) It is not an unreasonable burden to have TikTok litigate in Utah. TikTok has failed to show that litigating in Utah would place it at a “severe disadvantage.” *Burger King*, 471 U.S. at 478 (citation omitted). TikTok does not face any special burden in defending in Utah. By its own self-descriptions, it conducts a worldwide business and offers services throughout the United States. It has substantial yearly revenues, conducts significant business in Utah, and has signed up hundreds of thousands of Utah residents as its consumers. There is no reason to think that California, the state of TikTok’s listed incorporation, has any special interest in litigating this matter there. The victims and many witnesses would be located in Utah and Utah law is the applicable law to be applied. It is not unfair to cause TikTok to defend itself in the jurisdiction of Utah where the central issues of the case involve the protection of hundreds of thousands of TikTok consumers which TikTok has cultivated in Utah.

Further, a denial of jurisdiction on due process grounds is only appropriate where litigation in the forum is so gravely difficult that it puts the defendant at a severe disadvantage. The Court does not find that circumstance to be present here based on the evidence presented. *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990). As a sophisticated technology company, TikTok is surely aware that many litigation burdens are eliminated entirely by modern technology. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444

U.S. 286, 293 (1980) (“[M]odern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.” (citation omitted)); *Pro Axess, Inc. v. Orlux Distrib., Inc.*, 428 F.3d 1270, 1280 (10th Cir. 2005).

Another factor to consider is the forum state's Interest and the plaintiff's interest in litigating the claim. *See Sher* at 1365. The Court finds that it is in the state of Utah's interest in resolving this dispute. The Complaint itself arises from claims of injury towards Utah residents in enforcing Utah's Consumer Sales Practices Act. The alleged victims of the defendant's conduct apparently includes hundreds of thousands of Utah citizens. Those citizens are alleged to use the TikTok application within the state of Utah. Thus, the case has been brought by the Division and it is in the Division's interest specifically to enforce Utah laws and to protect and seek recourse for Utah residents from the alleged unlawful activities of TikTok directed individually to each of those residents.

Finally, the court must also consider judicial efficiency and the interests of the interstate system. This involves assessing how efficiently the legal matter can be resolved and ensuring that the choice of forum does not unnecessarily complicate the legal proceedings. By examining these factors, the court ensures that asserting jurisdiction aligns with principles of fair play and substantial justice, which are core to due process under the Constitution. There is nothing here that would delay or cause issues with the interstate system of justice. While TikTok has alleged that forcing it into Utah's judicial system to litigate these claims could subject it to every jurisdiction in the U.S., the fact that TikTok has similar substantive contacts with virtually every jurisdiction does not sway this Court to

believe that judicial efficiency or the interests of interstate should free TikTok from specific personal jurisdiction.

According to the Complaint, TikTok has purposefully directed its activities toward Utah and established contacts with the forum state. TikTok knowingly and deliberately has entered into hundreds of thousands of contracts with its Utah users. Compl. ¶ 15. Thus, the Division has established the minimum contacts of TikTok required by the due process clause of the Fourteenth Amendment. *First Mortgage Corp. v. State Street Bank and Trust Co.*, 173 F. Supp.2d 1167, 1175 (D. Utah 2001) quoting *Harnischfeger*, 883 F.Supp. at 617-18. “[P]ersonal jurisdiction is established when ‘a defendant clearly does business over the Internet,’ such as entering into contracts which require the “knowing and repeated transmission of computer files over the Internet.” *Patriot Systems, Inc. v. C-Cubed Corp.*, 21 F.Supp.2d at 1324 (quoting *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1123-24 (W.D.Pa.1997)). The Court therefore finds that the claims alleged in the Complaint sufficiently arise from TikTok's interactions with Utah, thereby justifying specific personal jurisdiction over the defendant. Additionally, exercising personal jurisdiction in Utah is considered reasonable and fair to TikTok. Therefore, the motion to dismiss for lack of personal jurisdiction is denied. Exercise of specific jurisdiction is appropriate in this context. The contacts are substantial and related to the suit sufficient to establish personal jurisdiction over defendant TikTok.

II. The Division's Claim Under the UCSPA Does Not Fail to State a Claim.

TikTok has argued that the UCSPA does not apply in this case because there was no money exchanged and therefore this cannot be deemed a “consumer” transaction. For the

reasons listed below, the Court finds the conduct as alleged does meet the definition of a “consumer transaction.” This issue is therefore without merit.

The UCSPA defines a “consumer transaction” stating:

(2) (a) "Consumer transaction" means a sale, lease, assignment, award by chance, **or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance) to, or apparently to, a person for:**

(i) primarily personal, family, or household purposes; or

(ii) purposes that relate to a business opportunity that requires:

(A) expenditure of money or property by the person described in Subsection (2)(a); and

(B) the person described in Subsection (2)(a) to perform personal services on a continuing basis and in which the person described in Subsection (2)(a) has not been previously engaged.

Utah Code § 13-11-3(2)(a).

TikTok argues that since its use of the application is provided for free, this is not a “consumer transaction.” TikTok cites the Court to the definition as found in the MERRIAM-WEBSTER DICTIONARY (11th ed. 2020), arguing plain meaning. However, this definition does not comport with the legal definition as defined in the UCSPA. TikTok also cites to cases referring to the Indiana statute which has similar language to the UCSPA. Ind. Code Ann. § 24-5-0.5-2(1). Nevertheless, the UCSPA and Indiana’s consumer protection statutes are not identical and the Utah Legislature has included the word “transfer” in the definition of a “consumer transaction,” while Indiana’s legislature did not. In reviewing this another court has found that, “in enacting the UCSPA the Utah Legislature eschewed the language of the model

act's definition of 'consumer transaction' in favor of a **broader** definition." *Iadanza v. Mather*, 820 F. Supp. 1371, 1380 (D. Utah 1993)(emphasis added).

The Utah Legislature has defined a "consumer transaction" to include a "written or oral **transfer** or disposition of goods, services or other property, both tangible and intangible." Such "transfer" requires no "expenditure of money" if those goods, services, or other property are provided for "primarily personal, family, or household purposes." *See* Utah Code § 13-11-3(2)(a).

Notwithstanding the legal definition as found in the UCSPA, a consumer transaction generally includes the transfer of any form of value in a transactional relationship. This is consistent with the Division's proffered definition of the term "Sale" under Webster's Third New International Dictionary 2003 (3d ed. 2002) which includes "a contract transferring . . . ownership of property from one person or corporate body to another for a price (as a sum of money **or any other consideration.**" (emphasis added). Further, the Utah Legislature has indicated that this Act should be "construed liberally..." Utah Code § 13-11-2. This Court is not convinced after a review of the definition under the UCSPA that the Utah Legislature intended to exclude transactions that did not include the exchange of money or involved an actual sale based on the language used to define a "consumer transaction."

During oral argument on the Motion to Dismiss, a great amount of emphasis was placed on the wording, of "or other written or oral transfer..." *Id.* TikTok has argued that the use of the word "or other" was intended therefore to refer back to the language "sale, lease, assignment, award by chance..." indicating therefore it must be for an exchange of money. The Court disagrees with this reading of the statute especially where the very next subparagraph refers specifically to "the expenditure of money." Under Utah Code § 13-11-3(2)(a)(ii), the Utah

Legislature defined the term “consumer transaction” to include the “expenditure of money” when referring to the second alternative definition of a “consumer transaction.” It defines this subsection as referring to “purposes that relate to a business opportunity that requires... **expenditure of money or property** by the person described in Subsection (2)(a)” *Id.* Had the Utah Legislature intended (2)(a)(i) to also include “expenditure of money,” an “exchange of money” or some other specific exchange, to be apply equally under 13-11-3(2)(a)(i), they would have included that in the definition. The Legislature did not include this requirement, and the absence of this language indicates it was meant to be more broadly construed.

As alleged in the Complaint, TikTok makes millions of dollars in value from its consumers through its advertising revenue. See Compl. ¶ 16. TikTok therefore receives great value directly from its hundreds of thousands of Utah users in the form of personal data, information regarding their individual interests, and their time as they are engaged in the use of the TikTok application. The time, data, and information provided by the Utah consumers are documented and collected by TikTok which then uses that value to sell advertising space to marketers. See Compl. ¶ 15.

III. The Division’s Claims Are Not Foreclosed by Section 230 of the CDA

TikTok has argued that they are immune from suit under Section 230 of the Communications Decency Act, 47 U.S.C. § 230 passed in 1996 (“CDA”). The CDA provides 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,” and provides “[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.” *Id.* § 230(e)(3). Together, these provisions mean that a

company like TikTok is protected from liability when a plaintiff “seeks to treat [it], under a state law cause of action, as a publisher or speaker” of content posted on its app by a third party. *Id.*

TikTok contends under Section 230 that this Complaint targets TikTok in its role in publishing third-party content. However, when the Complaint is viewed in a light most favorable to the Division, the claims do not fail. The claims of the Division are not attempting to hold TikTok accountable as a publisher of user-generated content, but rather seeking recourse for the harmful algorithms that are causing injury to the application’s users. It is therefore content neutral and not governed by Section 230 of the CDA. “It is not enough that third-party content is involved,” and courts have “rejected use of a ‘but-for’ test that would provide immunity under the CDA solely because a cause of action would not otherwise have accrued but for the third-party content.” *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019); *see also Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110, 122–23 (4th Cir. 2022).

Although TikTok distributes third-party content, the Division’s claims are based on the Defendant’s own actions employing features and practices that target children, resulting in excessive usage of their platforms, and making misleading statements about the safety of those platforms. The Complaint taken on its face alleges that TikTok used features under “a dopamine-inducing algorithm that spoon-feeds users a steady diet of highly personalized short-form videos, making it difficult for children to unplug, which TikTok amplifies with a series of manipulative features designed to keep users on the app.” Compl. ¶ 27. These and other features give children the illusion of control, hide any effective tools to limit time spent on the app, and further amplify and incentivize compulsive, repeated use, which is especially unhealthy for kids whose brains are not yet fully formed.” Compl. ¶37. The use of these features is alleged to have amounted to a violation of Utah law.

Similar to the Court's finding in *Utah Division of Consumer Protection v. Meta Platforms, Inc. and Instagram, LLC*, Case No. 230908060 (Order Denying Defendant's Motion To Dismiss, July 25, 2024), Judge Holmberg found in that case involving Meta and Instagram that it is possible this analysis could change if it becomes clearer that after further discovery in the case, that it is actually the content and not the algorithm that is at issue, then this issue may be addressed again in a motion for summary judgment or at trial. Judge Holmberg stated:

The Court can envision situations where Defendant may be exactly right and that the algorithms, disruptive notification, or infinite scroll, et cetera, may be nothing more than publishing activity, but the Complaint alleges that they are not focused on publishing activity. In a motion for summary judgment where the facts are in front of the Court, these features might qualify for Section 230 immunity. But at this stage, the Court must treat the allegations of a Complaint as true and the Division is alleging that these features, including algorithms, disruptive notifications, and more, amount to a violation of Utah law. At least as alleged, Section 230 does not foreclose the Division's claims at this stage. TikTok may renew its Section 230 arguments at summary judgment or at trial.

Similarly here, there may be specific facts presented by TikTok that could change the analysis on whether this is a content-based rather than algorithm based harm. If these facts become clear, the defendant could present the issue once more in a motion for summary judgment or at trial, but at this stage, the Court must treat the Division's Complaint in a light most favorable to the plaintiff and as true, and therefore the motion to dismiss on this basis is denied.

B. Count One is not barred by the First Amendment and the Free Speech Clause of the Utah Constitution.

The defendant also asserts that Count One infringes on TikTok's First Amendment rights. However, Count One does not seek to curtail any speech but rather to curtail the addictive features challenged. Count One does not seek to prevent or convey any message or viewpoint. The allegations in the Complaint are content-neutral. This means that the Complaint does not

target or criticize the specifics or nature of any third-party content available on the platform. Instead, it focuses on the actions taken by the Defendant regarding the addictive design features of the platform and their own misleading statements about its safety. Essentially, the issue isn't about the type of content shared on TikTok, but rather about TikTok's practices and representations that impact how the platform is used.

The Court therefore agrees with the Division in its memorandum that TikTok's use of these features is conduct, not speech, and "First Amendment doctrine permits regulating the conduct of an entity that hosts speech." *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 455 (5th Cir. 2022), *cert. granted in part sub nom. Netchoice, LLC v. Paxton*, 216 L. Ed. 2d 1313 (U.S. 2023).

C. The UCSPA provision at issue in Count One is not impermissibly vague and is not in violation of the Due Process Clause and the First Amendment.

While TikTok asserts that that the UCSPA's prohibition on "unconscionable act[s] or practice[s]" is unconstitutionally vague, this Court disagrees. See Mot. at 16 (citing Utah Code § 13-11-5). TikTok relies on a Colorado case, *Trail Ridge Ford, Inc. v. Colo. Dealer Licensing Bd.*, 543 P.2d 1245 (Colo. 1975). This Court finds the *Trail Ridge Ford, Inc.* case distinguishable and while it may be difficult for the Division to eventually establish these causes of action with the facts as alleged, this does not make it unconstitutionally vague. Other state courts have held that a ban on unconscionable consumers acts or practices is not unconstitutionally vague. *See State ex rel. Bryant v. R & A Inv. Co.*, 985 S.W.2d 299, 302 (Ark. 1999) (consumer protection statute's bar on "unconscionable" acts or practices not too vague). *See, e.g., Trade Comm'n v. Skaggs Drug Ctrs., Inc.*, 446 P.2d 958, 965 (Utah 1968) ("[W]e disagree with the trial court decision that the terms 'unfairly diverting trade from a competitor' and 'injuring a competitor' are vague and

ambiguous. The terms may present difficulties in application, but such difficulty is not sufficient to hold the Act unconstitutional.”).

The Court therefore agrees that unlike the licensing statute in *Trail Ridge*, the bar on unconscionable practices in the UCSPA, a general consumer protection statute, is appropriate because the legislature “could not be expected to envision every conceivable violation” of the statute. *Bryant*, 985 S.W.2d at 302; see also *Scott*, 430 N.E.2d at 1018 (“[E]ffective regulation requires that the concept be flexible, defined on a case-by-case basis, in view of the futility of attempting to anticipate and enumerate all the unfair methods and practices that fertile minds might devise.” (quotations, citations, and alterations omitted)). The Court therefore finds that the provision is not unconstitutionally vague.

D. The Division’s claim of unconscionability does not fail to state a claim under the UCSPA on the merits.

TikTok next argues that Count One has failed to sufficiently allege an unconscionability claim and has not alleged any conduct that would rise to the level of “extreme unfairness” required for a claim of unconscionability. TikTok argues that unconscionability requires an absence of meaningful choice, gross inequality in bargaining power, oppression, unfair surprise, or overall imbalance. Mot. at 18.

In response, the Division has alleged in its memorandum that in the Complaint it states that TikTok has exploited children’s neurological limitations using addictive design features to hook them into spending unhealthy amounts of time on the app. Compl. ¶¶ 5, 27. In reviewing the Complaint there is sufficient detail regarding these addictive features, which include personalized algorithms designed to manipulate dopamine releases in children’s brains, use of an infinite scroll feature that makes it difficult for children to disengage, and push notifications sent

at all times of day and night. *Id.* ¶¶ 28–44. The allegations of manipulating children in these ways to maximize time spent on the app (and thus advertising revenue generated) meet the definition of unconscionable.

While TikTok argues that the motion to dismiss should be granted because there should be an “absence of meaningful choice” or “gross inequality in bargaining power.” At this time there are sufficient facts pled by the Division to allow this count to proceed.

“[D]ismissal is a severe measure and should be granted . . . only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim.” *Am. W. Bank Members*, 2014 UT 49, ¶ 13, 342 P.3d 224 (citation omitted). Under the UCSPA, “[i]f it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.” Utah Code § 13-11-5(2). Based on the reasons as set forth above the Court declines to dismiss the UCSPA claim on the pleadings for failure to allege unconscionability.

IV. The Division Does Not Fail to State a Claim in Count Two that TicTok Deceived Users about Its Safety and Content Moderation Practices.

After a review of the Complaint and the briefs filed in this matter the Court agrees with the Division and finds that Count Two does state a claim under the UCSPA and there are sufficient facts pled to sustain this count alleging deceptive conduct. To allege deceptive conduct, “a party must state with particularity the circumstances constituting [the deceptive conduct].” Utah R. Civ. P. 9(c); *see also Williams v. State Farm Ins. Co.*, 656 P.2d 966, 972 (Utah 1982). Rule 9(c) must be read consistently with “the fundamental purpose of our liberalized pleading rules [which] is to afford parties ‘the privilege of presenting whatever legitimate contentions they

have pertaining to their dispute,’ . . . subject only to the requirement that their adversary have ‘fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.’” *Williams*, 656 P.2d at 971 (citations omitted).

Rule 9(c) should be applied “with great liberality in sustaining the sufficiency of allegations stating a cause of action.” *Id.* Thus, a complaint is sufficient if it “describe[s] the nature or substance of the acts or words complained of.” *Id.*

Here, the Division’s Complaint satisfies this requirement. The Complaint alleges numerous areas of deception, including as an example that TikTok represents that it proactively removes harmful content that violates its guidelines but further explains how these representations are deceptive because TikTok’s approach is reactive, not proactive, and is completely ineffectual. *Id.* ¶¶ 68–111. Furthermore, these alleged misrepresentations are not just vague statements, but rather the Division identifies numerous examples of verifiable factual misrepresentations. For these reasons, the Court finds that the Division does state a claim in Count Two that TicTok deceived its users about its safety and content moderation practices and the motion to dismiss this allegation is denied.

V. The Division Does Not Fail to State a Claim in Count Three that TikTok Deceived Users About the “Geographical Origin or Location” of Its Business.

Count Three, alleges that TikTok misrepresents itself as an independent U.S. company. While this may also be difficult to prove factually, based on the Complaint, this does state a claim under the UCSPA and should not be dismissed. The Division alleges that TikTok portrays itself as independent of its Chinese parent company, ByteDance, that “TikTok’s CEO has claimed that he is responsible for all business operations and strategic decisions for TikTok,” that TikTok states that it is a “myth” that “[d]ecisions about TikTok are made in Beijing,” and that

TikTok encourages its employees and spokespeople to downplay its association with ByteDance and China. Compl. ¶¶ 139–42. The Division alleges those representations are deceptive because TikTok remains heavily controlled by, and cannot operate independently from, ByteDance.

TikTok argues that the Division’s claims do not fall within the purview of UCSPA section 13-11-4(2)(w), which makes “misrepresent[ing] the geographical origin or location of the supplier’s business” a deceptive practice. TikTok argues that “geographical origin” and “location” as used in the statute “simply mean the defendant’s actual location.” Mot. at 26–27. But the Court agrees with the Division that TikTok’s argument improperly reads the word “origin” out of the statute. *See Turner v. Staker & Parson Cos.*, 2012 UT 30, ¶ 12, 284 P.3d 600. Thus, even if TikTok’s “location” is in California, Compl. ¶ 10, the “origin” of its business—the locus of control—is alleged to be in China. As to TikTok’s allegation that these facts may not be proven to be true or false, this is not the appropriate stage of the case to raise issues of fact and the Court accepts all facts as set forth in the Complaint as true and liberally construes this in the favor of the Plaintiff. As to whether this would be material to a reasonable customer, this is also an inappropriate time to raise this as an issue of fact and this should be allowed to move forward and give the Division a chance to establish those facts as alleged. The Division having alleged sufficient facts and allegations to support Count Three, the motion to dismiss this count is denied.

Conclusion

For the foregoing reasons, Defendant’s Motion to Dismiss is hereby DENIED in full. The case will proceed to trial for a full examination of the material facts and legal issues presented.

It is so ordered.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230907634 by the method and on the date specified.

MANUAL EMAIL: ISIUWA MABATAH MABATAHJ@BALLARDSPAHR.COM

MANUAL EMAIL: KEVIN HEINER KHEINER@WSGR.COM

MANUAL EMAIL: CONSTANDINOS HIMONAS DHIMONAS@WSGR.COM

MANUAL EMAIL: ALEXANDER H SOUTHWELL asouthwell@gibsondunn.com

MANUAL EMAIL: WINSTON YAW WEN CHAN wchan@gibsondunn.com

MANUAL EMAIL: BLAINE H EVANSON bevanson@gibsondunn.com

MANUAL EMAIL: PEISHEN ZHOU PEISHENZHOU@AGUTAH.GOV

MANUAL EMAIL: DOUGLAS CRAPO CRAPO@AGUTAH.GOV

MANUAL EMAIL: EMILY PENKOWSKI PEREZ epenkowski@edelson.com

MANUAL EMAIL: JIMMY ROCK jrock@edelson.com

MANUAL EMAIL: THEO BENJAMIN tbenjamin@edelson.com

MANUAL EMAIL: SHANTEL CHAPPLE KNOWLTON schappleknowlton@edelson.com

MANUAL EMAIL: CARINA WELLS SSHEPHERD@AGUTAH.GOV

MANUAL EMAIL: ROGER PERLSTADT rperlstadt@edelson.com

MANUAL EMAIL: JOHN FEENEY COYLE jfeeneycoyle@edelson.com

MANUAL EMAIL: TAYLOR MOSOLF TMOSOLF@AGUTAH.GOV

11/12/2024

/s/ CHARLENE MARTIN

Date: _____

Signature