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

UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiff,

vs.

TIKTOK INC.,

Defendant.

**RULING AND ORDER DENYING
DEFENDANT TIKTOK INC.'S
MOTION TO DISMISS COMPLAINT**

Civil No. 240904292
Judge Coral Sanchez

Before the court is TikTok Inc.'s ("TikTok") Motion to Dismiss (the "Motion"). The Utah Division of Consumer Protection (the "Division") filed its opposition to the Motion and TikTok filed its reply. A request to submit for decision was filed in accordance with Utah Rule of Civil Procedure 7(g). The court heard oral argument on the Motion on December 20, 2024 and took the matter under advisement. The court, having considered the motion; the facts, argument, and legal authority; and being otherwise fully informed, hereby **DENIES** the Motion.

BACKGROUND

The TikTok platform is an online platform that allows its users to create, share, and comment on videos. In the United States, the TikTok platform is provided by TikTok, Inc. In Utah, TikTok provides social media services to hundreds of thousands, if not millions, of Utahns. A substantial portion of Utah TikTok users are under 18 years old. The information TikTok collects from its Utah users includes users' location, interests, and behaviors. TikTok then

converts this data into advertising dollars. TikTok receives revenue from advertisements shown in Utah. TikTok's marketing materials have highlighted Utah locations, including Salt Lake City, as prime targets for advertisers.

On June 3, 2024, the Division filed this lawsuit against TikTok. The Division's lawsuit alleges that TikTok violated the Utah Consumer Sales Practices Act (the "UCSPA"). *See* Utah Code Ann. Sections 13-11-1 through -23. Of relevance to the Division's lawsuit are its allegations surrounding two features of the TikTok platform: LIVE and Coins. TikTok LIVE is a live-streaming feature that lets users stream videos of themselves to other TikTok platform users in real time. TikTok Coins are a form of virtual currency that TikTok users buy with real money and can cash out for real money. Purchasers of TikTok Coins can send virtual "Gifts" to other TikTok users hosting LIVE sessions. The LIVE hosts can then cash out these "Gifts" for real money. When a LIVE host cashes out a "Gift," TikTok makes about a 50% commission by cashing out "Gifts" at half the value of the Coins used to buy the "Gifts." In other words, if a TikTok user spent \$1.00 on Coins to buy a "Gift" to give to a LIVE host, when the host cashes out that "Gift," the host gets approximately 50 cents and TikTok gets approximately 50 cents.

The Division alleges that TikTok LIVE and TikTok Coins have led to an unregulated online economy that has given rise to numerous illegal activities, including the sexual exploitation of minors, money laundering, sex trafficking, drug sales, and gambling. The Division also alleges that TikTok is aware of the activities, allows the activities, and participates and profits from the transactions related to those activities. The Division further asserts that TikTok violated the UCSPA by engaging in deceptive and unconscionable conduct by misrepresenting the safety of TikTok LIVE and the steps it purportedly takes to protect users, particularly minors, from financial and sexual exploitation.

TikTok moves to dismiss the Division’s lawsuit on three separate grounds. First, TikTok asserts that this court lacks personal jurisdiction over TikTok because the Division’s claims do not rise out of or relate to TikTok’s various alleged contacts with Utah. Second, Section 230 of the Communications Decency Act bars the Division’s claims because the Division seeks to hold TikTok liable as a publisher of third-party content. Third, TikTok’s alleged conduct cannot violate the UCSPA because: 1) the UCSPA does not apply to services provided for free; 2) the Division has not sufficiently alleged any deceptive acts or practices, in part because the Division challenges features that are protected by the First Amendment; and 3) TikTok’s alleged practices are not “unconscionable” as a matter of law.

LEGAL STANDARD

Under Utah Rule of Civil Procedure 12(b)(2), a court must dismiss a complaint for lack of personal jurisdiction where the plaintiff fails to make a “prima facie showing of personal jurisdiction.” *Neways, Inc. v. McCausland*, 950 P.2d 420, 422 (Utah 1997). The plaintiff bears the burden of proof. *Fenn v. Mleads Enters., Inc.*, 2006 UT 8, ¶ 6, 137 P.3d 706.

Under Utah Rule of Civil Procedure 12(b)(6) a court can dismiss a complaint when, “assuming the truth of the allegations that a party has made and drawing all reasonable inferences therefrom in the light most favorable to the party, it is clear that [the party] is not entitled to relief.” *Calsert v. Est. of Flores*, 2020 UT App 102, ¶ 9 (quoting *Mitchell v. ReconTrust Co.*, 2016 UT App 88, ¶ 16) (internal quotations omitted). Dismissal of a complaint is proper “only if it is clear from the allegations that the [plaintiff] would not be entitled to relief under the set of facts alleged or under any facts it could prove to support its claim.” *Erickson v. Canyons Sch. Dist.*, 2020 UT App 91, ¶ 6 (quoting *Torgerson v. Talbot*, 2017 UT App 231, ¶ 7).

Utah Rule of Civil Procedure 9(c) provides that, “[i]n alleging fraud or mistake, a party

must state with particularity the circumstances constituting fraud or mistake.” Utah R. Civ. P. 9(c). This heightened pleading standard applies to the Division’s deceptive practice claims brought under the UCSPA. *Jackson v. Philip Morris, Inc.*, 46 F. Supp. 2d 1217, 1222 (D. Utah 1998) (noting that “allegations of deceptive practices under the UCSPA fall within th[e] category of ‘fraud’ and are thus governed by Rule 9(b),” which was later moved to Rule 9(c)).

DISCUSSION

I. THIS COURT HAS SPECIFIC PERSONAL JURISDICTION OVER TIKTOK BECAUSE TIKTOK HAS “MINIMUM CONTACTS” WITH UTAH, SUCH THAT THIS LAWSUIT DOES NOT OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE AND IS CONSISTENT WITH DUE PROCESS.

This court may exercise personal jurisdiction over TikTok because TikTok has “minimum contacts” with Utah, such that the suit does not offend traditional notions of fair play and substantial justice and is consistent with due process. *Raser Techs., Inc. v. Morgan Stanley & Co., LLC*, 2019 UT 44, ¶¶ 34, 36, 449 P.3d 150. TikTok is subject to specific personal jurisdiction. Specific personal jurisdiction gives a court power over a defendant “only with respect to claims arising out of the particular activities of the defendant in the forum state” and only if the defendant has “certain minimum local contacts.” *Arguello v. Indus. Woodworking Mach. Co.*, 838 P.2d 1120, 1122 (Utah 1992) (emphasis omitted).

In Utah, specific personal jurisdiction exists where (1) the Utah long-arm statute extends to defendant’s acts or contacts, (2) plaintiff’s claims arise out of those acts or contacts, and (3) the exercise of jurisdiction is consistent with federal due process requirements. *Hunsaker v. Am. HealthCare Cap.*, 2014 UT App 275, ¶ 11. A court must dismiss a complaint for lack of personal jurisdiction where the plaintiff fails to make a “prima facie showing of personal jurisdiction.” *Neways, Inc. v. McCausland*, 950 P.2d 420, 422 (Utah 1997). A prima facie showing of specific

personal jurisdiction on claims arising out of the defendant’s forum-state activity “only requires evidence of ‘minimal contacts’ with the state through transaction of *any* business in the state, contracting to supply goods or services within the state, or causing injury within the state through tort or breach of warranty.” *Id.* (emphasis in original). Moreover, in a statement of legislative policy and intent, our state legislature has declared that Utah courts should “assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.” Utah Code Ann. Sec. 78B-3-201(3). Thus, the Utah Supreme Court often “assume[s] the application of the statute—and go[es] straight to the due process issue.” *Pohl, Inc. of America v. Webelhuth*, 2008 UT 89, ¶ 11, 201 P.3d 944, 951.

Due process dictates that for this court to subject TikTok to personal jurisdiction, TikTok must have “certain minimum contacts with [Utah] such that maintenance of the suit does not offend the traditional notions of fair play and substantial justice.” *Hunsaker*, 2014 UT App 275, ¶ 15 (quotations omitted). In assessing minimum contacts, courts focus on “the relationship among the defendant, the forum, and the litigation.” *Id.* (quotation omitted). In doing so, courts look to whether 1) “the defendant has purposefully directed its activities at residents of the forum,” and whether 2) “the suit arise[s] out of or relate[s] to those activities.” *Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1221—22 (10th Cir. 2021) (quotations and alterations omitted). Even when a court determines that both requirements are satisfied, “the Supreme Court has indicated that the defendant can still escape jurisdiction by establishing that it would be incompatible with traditional notions of fair play and substantial justice.” *Id.*

A. TikTok purposefully directs its activities at residents of Utah.

TikTok purposefully directs its activities at Utah residents by contracting with Utah users to provide access to its social media platform in exchange for the users’ time and personal data.

TikTok has hundreds of thousands, if not millions of users in Utah. TikTok knowingly and repeatedly transmits data from its Utah users around the clock. The data that TikTok collects includes users' locations, interests, and behaviors (such as video views, likes, comments, live streams, and posts). TikTok turns that data into advertising dollars by selling that data to advertisers interested in the Utah market, who in turn target Utah users with their advertisements. TikTok's own marketing materials have highlighted Utah locations, such as Salt Lake City, as prime targets for advertisers. TikTok also sells Coins to Utah users, who then "Gift" the Coins to LIVE hosts. When the LIVE hosts, who live in Utah, cash out the "Gifts," TikTok takes a substantial percentage in commission.

TikTok's presence in Utah is not that of a passive website that does little more than make information available to those viewers who are interested. Rather, TikTok purposefully directs its commercial activity towards residents of Utah and financially benefits from that activity. By doing so, TikTok has purposefully availed itself of the benefit of conducting business in Utah and should have anticipated being called into any Utah court to answer to claims made against it.

B. The Division's claims arise out of or are related to TikTok's Utah contacts.

The Division's claims against TikTok arise out of or relate to TikTok's contacts with Utah. The Division's two counts are centered on TikTok LIVE and TikTok Coins. TikTok has profited from the use of these features by Utah users. Count I's allegations include that TikTok makes material misrepresentations and omissions about the value of Coins, the commission TikTok receives from Coins, the safety of LIVE, and that TikTok engages in deceptive practices to entice its Utah users (particularly minors) to buy and spend more Coins. These claims directly arise out of TikTok's contacts with Utahns and the way Utahns use the TikTok platform. Similarly, Count II's allegations relate to TikTok LIVE and TikTok's sale of Coins within Utah. Count II alleges

that Coins are used for unlawful activities, including sex trafficking of minors, money laundering, and drug sales to Utahns, and that TikTok brokers those transactions, while taking a hefty commission. Like in Count I, the Division's claims in Count II arise out of TikTok's in-state activity.

C. Exercising jurisdiction over TikTok is fair and reasonable.

It is fair and reasonable for this court to exercise specific personal jurisdiction over TikTok. "Specific jurisdiction . . . is premised on something of a *quid pro quo*: in exchange for 'benefiting' from some purposive conduct directed at the forum state, a party is deemed to consent to the exercise of jurisdiction from claims related to those contacts." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1078 (10th Cir. 2008). TikTok has reaped great financial benefits from Utah users' purchase of Coins and spending of Coins on LIVE. TikTok must now answer claims related to those transactions.

TikTok's argument, that exercising jurisdiction would be unfair and unreasonable, as it would result in piecemeal litigation because issues like those raised here are being litigated in matters against TikTok across the country, is not persuasive. Likewise, the court rejects TikTok's argument that if companies are subject to personal jurisdiction wherever their websites or apps could be viewed, all such companies would be subject to jurisdiction everywhere, and the defense of personal jurisdiction would no longer exist. If this alone were enough to render states devoid of personal jurisdiction, it would demand that "the States divest themselves of personal jurisdiction over the largest companies with the greatest reach." *State of Indiana v. TikTok, Inc., et al.*, 245 N.E. 3d 681, 692. Such a result would certainly be more offensive to notions of fairness and reasonableness.

II. THE 1996 COMMUNICATIONS DECENCY ACT DOES NOT BAR THE DIVISION'S CLAIMS.

Unlike claims which seek to hold an internet company liable as a speaker or publisher of content posted on its platform by a third party, the Division's claims are based on TikTok's alleged deceptive conduct regarding the sale and use of TikTok Coins and its alleged unconscionable practice of using those Coins to broker unlawful transactions on its platform. The 1996 Communications Decency Act (the "CDA") 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." 47 USC § 230(c)(1). The CDA also provides 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." *Id.* at § 230(e)(3). Together, these CDA provisions mean that a social media company such as TikTok is protected from liability when a plaintiff seeks to treat it under a state law cause of action, as a speaker or publisher of content posted on its platform by a third party. *See Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009). However, the CDA does not "declare [] a general immunity from liability deriving from third-party content." *Id.* at 1000. Notably, "Congress has not provided an all purpose get-out-of-jail-free card for businesses that publish user content on the internet." *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016). It follows that courts "must be careful not to exceed the scope of immunity provided by Congress." *Id.* at 1164 n.15.

A. The CDA does not bar Count I of the Division's Complaint

The Division alleges in Count I that TikTok engaged in deceptive conduct surrounding TikTok Coins and TikTok LIVE. Although TikTok asserts that Count I seeks to impermissibly hold TikTok liable as a publisher, the Division's allegations clearly seek to hold TikTok liable for its own conduct. At the core of Count I are the Division's allegations about TikTok's misrepresentations and omissions about the site, its features, and its policies towards its Utah users,

and not the content of third parties or TikTok’s monitoring/moderation of that content. For example, among other things, the Division alleges that TikTok has created an intentionally confusing maze of virtual currency in the monetary value of consumers’ purchases, that TikTok has deploys certain features to manipulate users, that TikTok has fails to inform consumers that it takes a 50% commission on all virtual transactions, and that TikTok misrepresents the safety of TikTok LIVE and the steps it takes to protect users, particularly minors, from financial and sexual exploitation on its platform.

The court rejects TikTok’s argument that TikTok Coins and “Gifts” do not operate as a virtual currency and are simply expressions of appreciation among users, similar to Facebook’s “Like” button and Reddit “votes.” First, Facebook “likes” and Reddit “votes” do not involve a transfer of money. Second, TikTok’s alleged deceptive conduct surrounding Coins includes much more than expressions of appreciation among its users, including the intentional confusion over the value of Coins, the dark patterns employed to get users to buy and spend more Coins, the failure to disclose the 50% commission it takes, and the material misrepresentations and omissions about the dangers associated with Coins and LIVE.

Because the Division alleges in Count I that TikTok made material representations and omissions about the platform’s safety, its features and its policies to its Utah users, and does not seek to treat TikTok as the publisher of third-party content, Count I is not barred by the CDA.

B. The CDA does not bar Count II of the Division’s Complaint.

The CDA does not bar Count II because the Division seeks to hold TikTok liable for its own conduct. The CDA does not grant immunity to a social medial platform that “materially contribute[s]” to “the alleged unlawfulness of . . . content. *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1099 (9th Cir. 2019). Through its alleged material misrepresentations and

omissions, Count II is based on allegations that TikTok is brokering unlawful sex trafficking, money laundering, drug sales, and gambling transactions. The Division’s Complaint is clear that TikTok is allegedly doing more than merely “display[Ing] unwelcome and actionable content” or that the Division wants to hold TikTok “responsible for [merely] having notice of illegal activities conducted by others.” *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1269 n.4 (9th Cir. 2016); *Gentry v. eBay, Inc.*, 99 Cal.App 4th 816, 835 (2002).

The Division’s Complaint alleges in paragraphs, 10, 11, 54, 123, and 132 that TikTok knowingly allows underage children to join the platform through their awareness that they have ineffective age-gating safety measures, knowingly targets children with gifting features, materially misrepresents that TikTok is safe, while knowingly incentivizing sexual content and pushing transactional sexual content to TopLIVES—all while being aware that this poses cruel risks to minors, but ignoring it because brokering each transaction yields a 50% commission for TikTok. These allegations, when assumed true, support that TikTok materially contributed to the unlawfulness of content, by knowingly lying about and/or misrepresenting that TikTok has policies to protect the safety and well-being of minors, immediately revoking access to features if TikTok finds accounts that do not meet age requirements, then intentionally targeting minors with gifting features, and pushing sexual content to their pages for the sake of profits at the expense of the developmental well-being of minors. This goes beyond displaying unwelcome and actionable content. *See Dyroff*, 934 F.3d 1093, 1099; *see also Kimzey*, 836 F.3d 1263, 1269.

III. THE DIVISION SUFFICIENTLY STATES A CLAIM IN COUNT ONE AND COUNT II UNDER THE UCSPA

A. The UCSPA applies to the transactions associated with Count I because downloading the TikTok application is a “consumer transaction” under the UCSPA.

The UCSPA prohibits deceptive and unconscionable acts and practices “in connection with

a consumer transaction.” Utah Code §§ 13-11-(4),-5(1). The UCSPA defines “consumer transaction” as:

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 . . . primarily personal, family, or household purposes

Utah Code Ann. Sec. 13-11-3(2)(a).

Users of the TikTok platform do not pay money to download and use the TikTok application. Instead, Utah customers invest their time and give up personal information, including the users’ locations, interests, and behaviors. TikTok then converts this data into advertising dollars. TikTok offers the download of its platform in exchange for a user’s attention and personal data. This amounts to a “consumer transaction,” despite the lack of monetary exchange between TikTok and the user.

When a user downloads the TikTok platform, the user is engaged in a sale and/or transfer, as contemplated by UCSPA’s definition of “consumer transaction.” The court’s conclusion that TikTok users provide valuable consideration to TikTok in the form of their personal data is supported by other courts that have examined whether downloading a social media platform, without the exchange of money, is a “consumer transaction” under consumer protection statutes, in light of the social media company’s subsequent sale of the user’s personal data. Recently, the Indiana Court of Appeals rejected TikTok’s argument that there is no consumer transaction under Indiana’s consumer protection statute when money is not exchanged. *State of Indiana v. TikTok, Inc., et. al.*, 245 N.E.3d 681, 693. Indiana’s consumer protection statute contains a substantially similar definition of “consumer transaction” to that in the UCSPA. *Id.* The Court found that “TikTok’s business model of exchanging access to its content library for end-user personal data is a ‘consumer transaction’ under [Indiana’s consumer protection statute].” *Id.*; see also *Utah Div. of*

Consumer Protection v. Meta Platforms, Inc., slip op. at 13—14 (allegation that Utah consumers “give up their personal data and their time as consideration” in exchange for access to social media platforms “allege[d] a sale and/or transfer sufficient to support a consumer transaction under the UCSPA); *Arkansas v. TikTok Inc.*, No. 12CV-23-65, slip op. at 4 (“Although Defendants do not charge a monetary fee for the use of the TikTok app, users provide valuable consideration to TikTok—their data.”); *Arkansas v. TikTok Inc.*, No. 70CV-23-135, slip op. at 4 (“There is no requirement that money be exchanged, instead other valuable consideration is exchanged in the form of user data that is valuable to the Defendants.”); *Vermont v. Meta Platforms, Inc.*, slip op. at 15 (social media company was engaged “in commerce” under consumer protection statute where state alleged that users “give [social media platform] access to personal information for advertising purposes in exchange for using the site.”).

The plain language of the UCSPA supports that download of the TikTok platform, without an exchange of money, is a qualifying “consumer transaction.” As articulated by the Indiana Court of Appeals when analyzing a substantially similar definition of “consumer transaction” as that of the UCSPA,

We agree with the State that [Indiana’s consumer protection statute’s] statutory definition of a consumer transaction does not include the words “exchange for money.” There is no question that any of the described dispositions in the statutory definition can be, and we presume most often are, effectuated by way of an exchange for money, but the statutory language does not require such an exchange.

State of Indiana v. TikTok, Inc., et. al., 245 N.E.3d 681, 693.

Similarly, the UCSPA’s statutory definition of “consumer transaction” does not include the words “exchange for money.” Utah Code Ann. Sec. 13-11-3(2)(a). The definition of “consumer transaction” does include “award by chance” as a qualifying “consumer transaction.” *Id.* This rebuffs arguments that all the list terms defining “consumer transaction” require an exchange of money for the goods or services. The listed transfers/dispositions also include all written or oral

transfers or dispositions of goods or services “or other property, both tangible and intangible (except securities and insurance) . . . for . . . primarily personal, family, or household purposes.”

Id. Our legislature contemplated making these protections as broad as possible, covering all transfers or dispositions of any tangible or intangible property (save for the specific exceptions of securities and insurance).

B. The Division states a claim upon which relief may be granted in Count I for deceptive practices.

To survive a motion to dismiss under rule 12(b)(6), a complaint must allege sufficient facts to satisfy each element of every claim. *1600 Barberry Lane 8 LLC v. Cottonwood Residential OP LP*, 2019 UT App 146, ¶ 9, 449 P.3d 949. For claims of fraud or mistake, “a party must state with particularity the circumstances constituting fraud or mistake.” Utah R. Civ. P. 9(c). However, “[m]alice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” *Id.* Mere recitation of the elements of fraud in a complaint does not satisfy the particularity requirement. *Robinson v. Robinson*, 2016 UT App 33, ¶ 35, 368 P.3d 105. The relevant surrounding facts must be set forth with sufficient particularity to show which facts the plaintiff believes support the allegations, and must typically include “the who, what, when, where and how.” *11500 Space Center LLC v. Private Capital Group Inc.*, 2022 UT App 92, ¶ 57, 516 P.3d 750. One reason for the rule requiring particularity in such cases is to “deter filing exploratory suits with little information in the hopes that discovery will uncover information to support the allegations.” *Fidelity Nat. Title Ins. Co. v. Worthington*, 2015 UT App 19, ¶ 11, 344 P.3d 156.

In Count I, the Division alleges that TikTok engaged in deceptive acts and practices. A practice can only be deceptive in violation of the UCSPA “if it entails a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances[.]” *FTC v. LoanPointe, LLC*, 525 F.App’x 696, 700 (10th Cir. 2013). Among other things, the Division

alleges that TikTok 1) intentionally obfuscated the true cost and value of Coins, 2) deployed dark patterns to manipulate users into buying more Coins, 3) failed to disclose that TikTok takes 50% commission on Coin transactions, and 4) made material misrepresentations and omissions about the safety of LIVE and various protections purportedly in place. Count I focuses on TikTok's alleged material misrepresentations and omissions of the identified features and seeks to prohibit TikTok's dishonesty about its features.

In accordance with Utah Rule of Civil Procedure 9(c), the Division has pled its claims in Count I with sufficient particularity to show which facts the Division believes support its allegations. *See* Utah R. Civ. P. 9(c). The relevant surrounding facts demonstrate that the Division alleges that: TikTok acted knowingly and intentionally when it materially misrepresented and/or omitted important information about the policies/services/safety of TikTok by their public representations that TikTok was safe; that they immediately remove a minor's account when they see that the account violates the age guidelines, despite knowing otherwise; and their failure to disclose the amount of Coin sales TikTok pockets as commission, their failure to disclose how the platform uses tactics to keep users using it; that such information would have been material as it would have affected a consumer's decision to use the product or service or engage with certain features of the product; and that such knowing conduct has occurred since at least 2019 to the present.

Additionally, the deceptive conduct alleged in Count I falls within the deceptive acts enumerated in the deceptive acts section of the UCSPA because the statute provides a non-exhaustive list of potential deceptive practices. *See* Utah Code Ann. Sec. 13-11-4(2). Section 13-11-4(1) provides a general prohibition on deceptive acts: "A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during,

or after the transaction.” *Id.* Subsection 4(2) then goes on to specify various conduct that constitutes a deceptive act or practice. Subsection 4(2) also expressly states that in specifying various conduct that constitutes a deceptive act or practice, it does so “[w]ithout limiting the scope of Subsection (1).” *Id.* Like Section 13-11-4(1), Section 13-11-5(1) states that an “unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.” Utah Code Ann. Sec. 13-11-5(1). Subsection 5(2) does not include a list of unconscionable acts or practices. Instead, it leaves it as a question of law for the court. Utah Code Ann. Sec. 13-11-5(2). Because Subsection 4(1), like Subsection 5(1), states a general prohibition on deceptive acts or practices, and Subsection 5(2) does not include a list of deceptive acts or practices, the court reads Subsection 4(2)’s list to be non-exhaustive.

C. The Division states a claim for which relief may be granted in Count II for unconscionable practices.

The Division’s unconscionability claim alleges that TikTok engages in illegal activities, including sex trafficking and money laundering that occur on LIVE, by brokering the unlawful transactions and keeping a 50% commission. There is no statutory definition of “unconscionable.” Instead, Section 13-11-5(2) leaves the unconscionability of an act or practice as “a question of law for the court.” Utah Code Ann. Sec. 13-11-5(2). However, that a term ‘may present difficulties in application . . . is not sufficient to hold [an] Act unconstitutional.’ *Trade Comm’n v. Skaggs Drug Centers, Inc.*, 446 P.2d 958, 965 (Utah 1968). Courts in various jurisdictions have found the term “unconscionable” and similar language in consumer protection statutes not unconstitutionally vague. *See, e.g., State ex rel Bryant v. R&A Inv. Co.*, 985 S.W.2d 299, 302 (Ark. 1999) (finding consumer protection statute’s bar on “unconscionable” acts or practices not too vague for enforcement); *State v. Ralph Williams’ N.W. Chrysler Plymouth, Inc.*, 510 P.2d 233, 242 (Wash. 1973) (“[W]e hold that the phrases ‘unfair methods of competition’ and ‘unfair or deceptive acts

or practices' have a sufficiently well established meaning in common law and federal trade law to meet any constitutional challenges of vagueness."); *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 363 S.E.2d 691, 692—93 (S.C. 1988) (finding "unfair methods of competition and unfair or deceptive acts or practices" not unconstitutionally vague (citation omitted)).

Utah courts, mostly in contracts cases, define an unconscionable practice as one in which a person takes advantage of a position of power by engaging in a transaction that either (1) is characterized by a "absence of meaningful choice" or "gross inequality in bargaining power," or (2) has terms which are "so one-sided as to oppress or unfairly surprise an innocent party" or are marked by an "overall imbalance in the obligations and rights imposed by the bargain." *Wade v. Jobe*, 818 P.2d 1006, 1017 (Utah 1991) *abrogated on other grounds*. In *Resource Management Co. v. Weston Ranch and Livestock Co., Inc.*, a contracts case, the Utah Supreme Court stated that

'Unconscionable' is a term that defies precise definition. Rather, a court must assess the circumstances of each particular case in light of the twofold purpose of the doctrine, prevention of oppression and of unfair surprise."
706 P.2d 1028, 1041 (Utah 1985) (citing J. Calamari & J. Perillo, *Contracts* § 9-40 (2d ed. 1977); UCC § 2-302, Comment 1.).

The attempt of application of these contract-based factors for unconscionability further demonstrate that unconscionability defies precise definition. In this case, a "transfer" or "award by chance" can be made without mutual obligation or consideration, making the framework provided in contract law difficult to analogize. However, the twofold purpose of the doctrine of unconscionability remains applicable: based on the circumstances of the case and the consumer, that the supplier should have known at the time of the alleged conduct, did the supplier (1) oppress the consumer or (2) unfairly surprise the consumer.

In consumer protection statutes, terms like "unconscionable" and "unfair" survive vagueness challenges because "effective 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.” *Scott v. Ass’n for Childbirth at Home, Int’l*, 430 N.E.2d 1012, 1018 (Ill. 1981) (quotations citations, and alterations omitted). This flexibility allows a “new mercantile invention[,]” such as social media platforms, to be effectively regulated. *See Trail Ridge Ford, Inc. v. Colorado Dealer Licensing Board*, 543 P.2d 1245, 1247 (Colo. 1975).

Considering Utah’s common law, the principles behind consumer protection statutes, the persuasive authority cited, and the general principle that a court should not find a statute unconstitutional unless it needs to, the term “unconscionable” is sufficiently clear to inform the ordinary reader of common intelligence what conduct is proscribed. *See Chris & Dick’s Lumber & Hardware v. Tax Comm’n*, 791 P.2d 511, 516 (Utah 1990). The conduct the Division alleges, that TikTok knowingly brokers transactions on LIVE involving sex trafficking, drug sales, money laundering, illegal gambling, and fraud, and takes a significant monetary cut in the process, falls within the UCSPA’s bar on unconscionable acts and practices.

ORDER

1. TikTok’s Motion to Dismiss is **DENIED**.

So ORDERED this 20th day of February 2025.



Judge Coral Sanchez
Third District Court