

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

OD's on Finance, LLC v. Vittorio Mena Jr.

No. 25-cv-03027-SI, United States District Court for the Northern District of California (July 18, 2025)

SUMMARY

The United States District Court for the Northern District of California denied Vittorio Mena Jr.’s motion to dismiss OD’s on Finance, LLC’s first amended complaint. The court held that the complaint sufficiently pleaded Lanham Act false advertising, false association, and trademark infringement claims, including by identifying allegedly misleading social media statements with the required particularity. The court also concluded that challenges to the validity and priority of the plaintiff’s marks raised factual issues inappropriate for resolution on the pleadings.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Susan Illston
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 18, 2025
DOCKET	25-cv-03027-SI
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the first amended complaint's Lanham Act claims and related state-law claims. The court denied the motion.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded allegations as true and draws reasonable inferences in the plaintiff's favor, but need not accept conclusory allegations, unwarranted factual deductions, or unreasonable inferences. A complaint must allege enough facts to state a claim that is plausible on its face. The court also considered whether the false-advertising allegations satisfied Rule 9(b).
PRECEDENTIAL VALUE	Unpublished district court order; generally nonprecedential.

TOPICS

- trademark infringement
- trademark law
- motions to dismiss
- pleadings
- civil procedure

PRACTICE AREAS

trademark law

trademark infringement

false advertising

civil procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether the Lanham Act Section 43(a) false-advertising and false-association claims could challenge alleged statements made before ODOF obtained its March 2024 trademark registration.
2. Whether the first cause of action for false advertising pleaded the alleged misrepresentations with the particularity required by Federal Rule of Civil Procedure 9(b).
3. Whether ODOF sufficiently pleaded valid registered and common-law trademark rights, including distinctiveness, continuous commercial use, and priority of use, to survive a motion to dismiss.

HOLDINGS

1. Section 43(a) of the Lanham Act protects against infringement of unregistered marks and trade dress and against practices such as false advertising and product disparagement; therefore, ODOF could challenge alleged false or misleading statements made before its March 2024 registration. The Section 32 infringement claim, by contrast, was based on alleged post-registration use after Mena was notified of ODOF's trademark rights.
2. The first amended complaint sufficiently pleaded the false-advertising claim under Rule 9(b) because it identified the allegedly false or misleading social-media posts, their dates, the exact statements, who made them, and why they were false or misleading, with screenshots attached for six of the seven statements.
3. The allegations concerning ODOF's registered and common-law marks were sufficient at the pleading stage. Challenges to the registered mark's distinctiveness and related validity issues raised factual questions unsuitable for resolution on the pleadings, while the complaint adequately alleged priority of use and commercial use of the common-law marks.

KEY QUOTATIONS

“Whereas section 32 provides protection only to registered marks, section 43(a) protects against infringement of unregistered marks and trade dress as well as registered marks, and protects against a wider range of practices such as false advertising and product disparagement[.]” (at 2)

“The FAC alleges that Mena made the posts, the dates he made the posts, the exact statements, and alleges why the statements are false or misleading, and for six of the seven statements, the FAC includes screenshots of the statements.” (at 2)

FACTUAL BACKGROUND

OD's on Finance, LLC operates financial-education and career-success resources for optometrists, including a Facebook group, website, and social-media pages, and alleged continuous use of the marks "OD's on Finance" and "ODS ON FINANCE" since at least 2018. It obtained a federal registration for "ODS ON FINANCE" in March 2024. Mena, an optometrist who operated a competing Facebook group called "OD Finance

Professionals," was banned from ODOF's group after attempted self-promotion and later allegedly made false or misleading social-media statements attacking ODOF and its members and trading on ODOF's name and goodwill.

PROCEDURAL HISTORY

OD's on Finance, LLC filed a first amended complaint asserting seven causes of action, including Lanham Act false advertising, false association, and trademark infringement claims. Vittorio Mena Jr. moved to dismiss, arguing that the Lanham Act claims were untimely or otherwise deficient, that the false-advertising claim did not satisfy Rule 9(b), and that the marks were invalid or insufficiently pleaded. The court vacated oral argument under Civil Local Rule 7-1(b) and denied the motion to dismiss.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987)
- In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008)
- Yelp, Inc. v. ReviewVio, Inc., No. C 23-06508 WHA, 2024 WL 2883668, at *2 (N.D. Cal. June 6, 2024)
- 23andMe v. Ancestry.com, 356 F. Supp. 3d 889, 908 (N.D. Cal. 2018)
- Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp., 174 F.3d 1036, 1047 (9th Cir. 1999)