

**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)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
OD'S ON FINANCE, LLC, Case No. 25-cv-03027-SI 8 Plaintiff, ORDER DENYING
DEFENDANT'S 9 v. MOTION TO DISMISS THE FIRST AMENDED COMPLAINT 10
VITTORIO MENA JR., and DOES 1-25, Re: Dkt. No. 12 11 Defendants. 12 13 Defendant's
motion to dismiss the first amended complaint was scheduled for a hearing on 14 July 11, 2025.

Pursuant to Civil Local Rule 7-1(b), the Court determined that oral argument was 15 not necessary
and VACATED the hearing. For the reasons set forth below, the Court DENIES 16 defendant's
motion. 17 18 BACKGROUND 19 Plaintiff OD's on Finance, LLC ("ODOF") is a California
company that "promotes financial 20 competence and career success for optometrists and those in
related fields, including through the 21 provision of newsletters and other resources to its
community members." First Amend.

Compl. 22 ("FAC") ¶ 11. ODOF operates a Facebook group called "OD's on Finance," a website,
and other 23 social media pages, including on Instagram and LinkedIn. Id. Since at least January
2018, ODOF 24 "has been continuously using the trademarks 'OD's on Finance' or 'ODS ON
FINANCE' to market 25 and sell its products, services, and other commercial activities
throughout the United States," and in 26 March 2024, ODOF obtained a registered trademark for
"ODS ON FINANCE." Id. ¶¶ 12, 14.

27 Defendant Vittorio Mena Jr. ("Mena") is a licensed optometrist. Id. ¶ 15. Mena "holds 1 to
Review of Optometric business columns and a lecturer on finance topics." Id. Mena also operates
2 a Facebook group called "OD Finance Professionals" ("ODFP"), which markets itself as the 3
"second" largest financial community in the "Optometry space." Id. ¶ 16. ODFP "advertises itself
4 as a resource for support and advice for Optometrists and Optometry students in various areas of
5 finance, including financial planning, generating and building wealth, retirement and estate 6
planning." Id. 7 In March 2019, Mena became a member of the ODOF Facebook group.

Id. ¶ 20. Mena 8 attempted to sell cryptocurrency on the Facebook group, which constituted a
violation of the group's 9 "No Self-Promotions/Spam or MLM" guidelines. Id. As a result, Mena
was banned from the ODOF 10 Facebook group. Id. After he was banned, Mena "pleaded with
ODOF to be let back into the 11 group," and ODOF let Mena rejoin the group. Id. ¶ 21.

However, soon after Mena rejoined the 12 ODOF Facebook group, he attempted to sell life insurance to group members, again in violation of 13 the group's guidelines. Id. Mena was permanently banned from the ODOF Facebook group. Id. 14 Around July 2023, Mena "began to publicly attack and defame ODOF, including its 15 members such as Dr. Dat Bui, O.D. and Dr. Aaron Neufeld." Id. ¶ 22.

ODOF alleges that "Mena's 16 attacks were part of an overall campaign which involved his trading off the name and goodwill of 17 ODOF, confusing consumers, and attempting to persuade them to utilize his products or services or 18 that or his business partners over those offered by ODOF." Id. ¶ 23.

The FAC alleges that Mena 19 made a number of false or misleading statements about ODOF on Mena's social media pages, and 20 ODOF has attached exhibits to the complaint containing screenshots of these statements. 21 The FAC alleges the following seven causes of action against Mena: (1) false advertising 22 under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); (2) false association under 23 Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); (3) trademark infringement 24 under Section 32 of the Lanham Act, 15 U.S.C. § 1114, and California Business & Professions Code 25 § 14245; (4) defamation; (5) trade libel; (6) unfair competition and trade name infringement; and 26 (7) tortious interference with prospective business advantage.

27 Mena moves to dismiss the Lanham Act causes of action for failure to state a claim and to 1 2 LEGAL STANDARD 3 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if 4 it fails to state a claim upon which relief can be granted.

To survive a Rule 12(b)(6) motion to 5 dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." 6 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This "facial plausibility" standard requires 7 the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted 8 unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

While courts do not require "heightened 9 fact pleading of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the 10 speculative level." *Twombly*, 550 U.S. at 555, 570. 11 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the 12 court must assume that the plaintiff's allegations are true and must draw all reasonable inferences 13 in the plaintiff's favor.

See *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). 14 However, the court is not required to accept as true "allegations that are merely conclusory, 15 unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 16 1049, 1055 (9th Cir. 2008). 17 "While the Ninth Circuit has not squarely decided that Rule 9(b) applies to Lanham Act

18 claims, several of its district courts have reasoned that, ‘where a Lanham Act claim is predicated on 19 the theory that the defendant engaged in a knowing and intentional misrepresentation, then Rule 20 9(b) is applicable.’” *Yelp, Inc. v. ReviewVio, Inc.*, No. C 23-06508 WHA, 2024 WL 2883668, at *2 21 (N.D.

Cal. June 6, 2024) (holding Rule 9(b) applied to state and federal unfair competition and false 22 advertising claims where plaintiff alleged “false statements,” “fraud,” “false advertising,” and “false 23 and misleading statements”) (quoting 23andMe v. Ancestry.com, 356 F. Supp. 3d 889, 908 (N.D. 24 Cal. 2018)). 25 26 DISCUSSION 27 Mena raises a number of challenges to ODOF’s Lanham Act claims.

First, Mena contends 1 or misleading statements that predate the March 2024 trademark registration. Mena’s argument 2 both misunderstands the differences between Sections 43 and 32 of the Lanham Act and ignores the 3 allegations of the complaint. ODOF’s first two causes of action are brought under Section 43 of the 4 Lanham Act, alleging false advertising and false association, and the third cause of action alleges 5 trademark infringement under Section 32 of the Lanham Act. “Whereas section 32 provides 6 protection only to registered marks, section 43(a) protects against infringement of unregistered 7 marks and trade dress as well as registered marks, and protects against a wider range of practices 8 such as false advertising and product disparagement[.]” *Brookfield Commc’ns, Inc. v. W. Coast Ent.*

9 Corp., 174 F.3d 1036, 1047 (9th Cir. 1999) (internal citation omitted). Thus, ODOF may challenge 10 alleged false or misleading statements that predate the trademark registration under the first two 11 causes of action.

The FAC alleges that ODOF began using the marks in 2018, before any of the 12 alleged false or misleading statements challenged in the first two causes of action; those claims 13 challenge statements made in 2024 and 2025. See FAC ¶¶ 26-84.

The third cause of action for 14 trademark infringement under Section 32 of the Lanham Act alleges that ODOF informed Mena in 15 August 2024 that it owned the trademarks “ODS ON FINANCE” and requested that Mena cease 16 and desist from further use of or reference to the name, and that Mena has refused to comply. Id. 17 ¶ 90.

Thus, the allegations of the FAC are sufficient. 18 Second, Mena contends that ODOF’s first cause of action for false advertising fails to 19 comply with Rule 9(b). The Court disagrees. That cause of action identifies seven social media 20 posts made by Mena that ODOF claims are false and misleading.

The FAC alleges that Mena made 21 the posts, the dates he made the posts, the exact statements, and alleges why the statements are false 22 or misleading, and for six of the seven statements, the FAC includes screenshots of the statements. 23 Id. ¶¶ 26-53, Ex. A-E.

For example, the FAC alleges that on February 4, 2024, Mena posted a 24 cropped photo of ODOF's Bui and Neufeld on the ODFP Facebook group page, and stated in the 25 post that Bui and Neufeld "had flown down to tell the [American Optometric Association] that they 26 realized that the finance team for the [AOA] needed optometrists with actual financial licenses" and 27 that Bui and Neufeld had recommended Mena's group, ODFP, to the AOA.

Id. ¶ 30, Ex. B. The 1 and misleadingly implied that a financial license was required in order for ODOF to conduct its 2 || business. /d. 433. Mena also argues that the FAC does not comply with Rule 9(b) because some 3 of the allegations are made "“on information and belief.” None of those allegations are contained in 4 || the first cause of action. See id. J 4, 143, 146 (paragraphs relating to the parties and seventh cause 5 of action for tortious interference with prospective business advantage).

6 Third, Mena raises several challenges to the validity of ODOF's trademarks, both prior to 7 and after registration. Mena argues, inter alia, that the registered mark is not distinctive and that 8 ODOF has not alleged continuous use of the common law marks in a commercial capacity or priority 9 || of use.

The Court finds that these arguments lack merit and that ODOF's allegations are sufficient 10 || as a pleading matter. With regard to the registered trademark, "[a]ny registration... owned by a 11 party to an action shall be admissible in evidence and shall be prima face evidence of the validity of 12 || the registered mark and... of the registrant's ownership of the mark, and of the registrant's 13 exclusive right to use the registered mark in commerce on or in connection with the goods or services 14 || specified in the registration...." 15 U.S.C. § 1115(a).

Mena's challenges to the registered mark 15 raise factual questions that cannot be resolved on the pleadings. As to the common law trademarks, a 16 || Mena ignores the allegations of the complaint as to priority of use and ODOF's use of the marks in 3 17 a commercial capacity. See e.g., FAC §f] 12, 16. Mena may renew these arguments on a factual 18 || record.

19 20 CONCLUSION 21 The Court concludes that the amended complaint states a claim and DENIES Mena's motion 22 || to dismiss. 23 24 IT IS SO ORDERED. Sn. bla 26 Dated: July 18, 2025 SUSAN ILLSTON 27 United States District Judge 28