

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Comeback Media, Inc. v. Particle Media, Inc., et al.

Comeback Media · No. 25-cv-03298-CRB · Decided October 30, 2025

SUMMARY

The United States District Court for the Northern District of California partially granted and partially denied Particle Media, Inc.’s motion to dismiss claims brought by Comeback Media, Inc. The court dismissed the contributory copyright infringement, direct trademark infringement, unfair competition, and misappropriation claims against Particle Media, while allowing the vicarious copyright infringement claim to proceed. The court granted Comeback leave to amend.

OPINION

1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT 6 FOR THE NORTHERN DISTRICT
OF CALIFORNIA 7 8 COMEBACK MEDIA, INC., Case No. 25-cv-03298-CRB 9 Plaintiff,
ORDER GRANTING IN PART AND 10 v. DENYING IN PART PARTICLE MEDIA, INC.’S
MOTION TO 11 PARTICLE MEDIA, INC., et al., DISMISS 12 Defendants. 13 Plaintiff
Comeback Media, Inc. d/b/a Next Impulse Sports (“Comeback”) brought 14 this action against
Defendants Particle Media, Inc. (“NewsBreak”), Digital Next, Inc. 15 (“Total Impulse”), and
individual defendants for claims stemming from alleged 16 infringement of Comeback’s
copyrights and trademark.

SAC (dkt. 25) at ¶¶ 1–4. 17 Comeback alleges Total Impulse and the individual defendants copied
and published 18 Comeback’s news articles on NewsBreak—stealing the traffic and revenue that
would 19 otherwise belong to Comeback. Id. Comeback asserts claims for copyright infringement,
20 trademark infringement, unfair competition, and misappropriation. Id. ¶¶ 151–197.

21 NewsBreak now moves to dismiss the claims against it. Mot. (dkt. 28). The Court 22 GRANTS
the motion in part and DENIES in part.1 23 I. BACKGROUND 24 Comeback is a digital media
company that publishes articles on its websites. 25 SAC ¶ 13. Comeback built its business around
earning revenue from syndication deals 26 with news apps and websites, which aggregate articles
from publishers into a customizable 27 1 || newsfeed for a user.

Id. § 14. Comeback gets a share of the advertising revenue from user 2 || visits to their content on
apps and websites. Id. 4 15. 3 Next Impulse, one of Comeback’s news websites, had a non-
contractual 4 || relationship with NewsBreak, an app and website that platforms publisher content.
SAC 4 5 || 17.

Accordingly, NewsBreak would direct users to Next Impulse’s website from article 6 || previews on its platform. Id. The arrangement was profitable for Comeback—generating 7 || \$250,000 per month in November 2024. Id. § 18. But in early 2025, visits to Next 8 || Impulse dropped precipitously. Id. 4 19. 9 Comeback discovered a company called Total Impulse had been copying 10 || Comeback’s articles and passing them off as its own on NewsBreak.

SAC 4 21. The 11 || copies kept the same content, pictures, and even videos—with many articles stating the 12 || posts originated from Next Impulse. Id. 952, 60. Total Impulse was a “Verified 13 || Publisher,” meaning it had a formal partnership with NewsBreak and curated its own C 14 || content. Id. {}22. Total Impulse obtained this status on January 16, 2025—before it had 15 any website, content, or writers.

Id. Comeback claims Total Impulse induced NewsBreak 16 || to redirect referrals to Next Impulse articles to Total Impulse, instead. Id. 26. 5 17 Not only is Total Impulse alleged to have stolen Next Impulse articles, but it is also 18 || alleged to have stolen Next Impulse’s trademark, too. SAC 4 39-42. 9 20 21 54 NCA □□□ 24 95 Id. ¥ 42. 6 Comeback alleges NewsBreak somehow discovered the misconduct and suspended 4 Total Impulse’s account.

SAC 4 26. Comeback alleges that Total Impulse was hardly the 38 first to infringe articles from other publishers on NewsBreak and that NewsBreak’s 1 verification practices did nothing to stop bad actors. Id. ¶¶ 23, 27. Even after NewsBreak 2 became aware of Total Impulse’s infringement, it did not reinstate referrals to Next 3 Impulse, despite Comeback’s request.

Id. ¶ 28. 4 Comeback has been harmed from this alleged misconduct. It lost basically all of 5 the revenue from NewsBreak referrals—even impacting syndication with other platforms. 6 SAC ¶¶ 29–30. Next Impulse also lost many of its writers because they could not earn any 7 money from the collapse in referrals. Id. ¶¶ 31–34. Comeback even lost a potential buyer 8 due to the financial hit to Next Impulse.

Id. ¶¶ 35–38. 9 In preparation for this lawsuit, Comeback obtained copyright registrations for ten of 10 the stolen articles. Then, on April 11, 2025, Comeback filed the instant action. Compl. 11 (dkt. 1). Before NewsBreak filed its motion to dismiss, Comeback amended its complaint 12 twice—the second amendment by leave of this Court. See Motion for Leave (dkt.

18). In 13 its Second Amended Complaint, Comeback brings five claims against NewsBreak: 14 trademark infringement, vicarious copyright infringement, contributory copyright 15 infringement, unfair competition (Cal. Bus. & Prof. Code § 17200), and common law 16 misappropriation. SAC ¶¶ 159–197. NewsBreak moved to dismiss all the claims against 17 it. Mot. 18 II.

LEGAL STANDARD 19 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a 20 complaint if it fails to state a claim upon which relief can be granted. To survive a

Rule 21 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief 22 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct.

23 1955, 167 L. Ed. 2d 929 (2007). A claim is facially plausible when the plaintiff pleads 24 facts that “allow the court to draw the reasonable inference that the defendant is liable for 25 the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (internal citation omitted). And a court must construe the alleged facts in 27 the light most favorable to the plaintiff.

See *Retail Prop. Trust v. United Bhd. of* 1 “draw all reasonable inferences in favor of the nonmoving party” for a Rule 12(b)(6) 2 motion). Courts, however, are not “required to accept as true allegations that are merely 3 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Khoja v. 4 Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1008 (9th Cir.

2018) (internal citation omitted). 5 III. DISCUSSION 6 NewsBreak seeks to dismiss all claims against it by arguing that Comeback fails to 7 state claims for copyright and trademark infringement and that Comeback’s state law 8 claims are preempted.

The Court addresses each argument in turn. 9 A. Contributory Copyright Infringement 10 NewsBreak argues Comeback fails to adequately allege the elements of a 11 contributory copyright infringement claim. The Court agrees. 12 To state a claim for contributory copyright infringement, a plaintiff must allege: (1) 13 a defendant’s knowledge of another’s infringement and (2) that they either (a) materially 14 contributed to or (b) induced the infringement.

Perfect 10, Inc. v. Giganews, Inc., 847 15 F.3d 657, 670 (9th Cir. 2017). The parties differ on the requisite threshold for knowledge. 16 NewsBreak contends that actual knowledge is required. Mot. at 5. Comeback argues that 17 a “had reason to know” constructive standard is also permissible. Opp’n at 3. Comeback 18 is correct. While the Ninth Circuit has not always been clear², it has “interpreted the 19 knowledge requirement for contributory copyright infringement to include both those with 20 actual knowledge and those who have reason to know of direct infringement.” *Ellison v. 21 Robertson*, 357 F.3d 1072, 1076 (9th Cir.

2004) (emphasis in original). But NewsBreak is 22 also right that Comeback must allege “knowledge of specific infringers or instances of 23 infringement.” *Y.Y.G.M. SA v. Redbubble, Inc.*, 75 F.4th 995, 1001 (9th Cir. 2023) 24 (emphasis added), cert. denied, 144 S. Ct. 824, 218 L. Ed. 2d 32 (2024); Reply (dkt. 31) 25 26 2 After *Ellison*, the Ninth Circuit has, at times, stated that “actual knowledge” is required for 27 contributory infringement liability.

See, e.g., *Luvdarts, LLC v. AT & T Mobility, LLC*, 710 F.3d 1068, 1072 (9th Cir. 2013). But *Ellison* remains good law and other courts in this District have 1 at 3. 2 Comeback does not allege NewsBreak had actual knowledge of the infringement. 3 Indeed, Comeback alleges NewsBreak

later suspended Total Impulse's account due to its 4 misconduct. SAC ¶ 26. Comeback did not send a notice to NewsBreak, either.

5 Accordingly, Comeback can only satisfy the knowledge element if it sufficiently alleges 6 NewsBreak had reason to know of Total Impulse's infringement. And it has failed to do 7 so. 8 Viewed in the most favorable light, Comeback's strongest allegations for 9 constructive knowledge involve Total Impulse's blatant infringement (verbatim content, 10 same images, same authors, etc.).

Opp'n at 4–5 ("red flags that made infringement 11 'obvious' to NewsBreak"). But the Ninth Circuit has recognized that "contributory 12 liability [does] not automatically follow where [a] 'system allows for the exchange of 13 copyrighted material.'" Luvdarts, 710 F.3d at 1072 (quoting A&M Records, Inc. v. 14 Napster, Inc., 239 F.3d 1004, 1021 (9th Cir. 2001)).

Accordingly, the mere existence of 15 Total Impulse's infringing material on NewsBreak is insufficient on its own to establish 16 NewsBreak should have known of the infringement. The Court concludes Comeback fails 17 to adequately allege that NewsBreak had the requisite specific knowledge of infringement. 18 Similarly, Comeback fails to establish material contribution or inducement.

Under 19 a material contribution theory in the online context, a system operator is liable if it has 20 knowledge that "specific infringing material is available using its system, and can take 21 simple measures to prevent further damage to copyrighted works, yet continues to provide 22 access to infringing works." Perfect 10, 847 F.3d at 671 (emphasis in original).

23 Comeback does make a strong showing regarding NewsBreak's systemic measures for 24 copyrighted work. For example, Comeback alleges NewsBreak gave Total Impulse 25 "Verified Publisher" status before it even had a website or content. SAC ¶ 22. But 26 Comeback defeats its own claim. By alleging NewsBreak suspended Total Impulse's 27 account upon discovery of its misconduct, Comeback fails to show that NewsBreak 1 theory fails because Comeback must show NewsBreak had an "objective to infringe 2 copyrights," which necessarily fails if NewsBreak took affirmative steps to stop Total 3 Impulse's infringement.

Perfect 10, 847 F.3d at 672. 4 Because Comeback fails to sufficiently plead both the knowledge and material 5 contribution/inducement elements of a contributory copyright infringement claim, the 6 Court grants NewsBreak's motion as to the claim. 7 B. Vicarious Copyright Infringement 8 NewsBreak contends that Comeback fails to state the elements of a vicarious 9 copyright infringement claim.

Mot. 8–10. The Court disagrees. 10 "[O]n a claim for vicarious infringement, a plaintiff must prove the defendant has 11 (1) the right and ability to supervise the infringing conduct and (2) a direct financial 12 interest in the infringing activity." Perfect 10, 847 F.3d at 673 (internal

quotation marks 13 omitted). A financial benefit “exists where the availability of infringing material acts as a 14 ‘draw’ for customers.” Ellison, 357 F.3d at 1078 (internal quotation marks omitted).

The 15 size of the “draw” is immaterial as only a “causal link” between the infringing activity and 16 the benefit is needed. Perfect 10, 847 F.3d at 673. 17 NewsBreak argues Comeback’s allegations regarding NewsBreak’s verified 18 publisher process and content moderation are conclusory. Mot. at 9–10. NewsBreak 19 points to its Terms of Service which purport to clarify that “publishers and contributors are 20 ‘solely responsible’ for their content” and that they should make sure the content doesn’t 21 infringe on intellectual property rights.

Id. at 10; RJN (dkt. 29) Exs. A–C.3 But while that 22 is true, the Terms of Service also make clear that “NewsBreak may, in [its] sole discretion, 23 determine [a publisher’s] Content to be hosted on [its] Publisher Services and remove 24 some or all of the Content for any reason.” See, e.g., RJN Ex. B (emphasis added). That is 25 26 3 With respect to the webpages of NewsBreak’s Terms of Service, the Court takes judicial notice 27 of their existence because they are publicly available from a source whose accuracy cannot reasonably be questioned and whose contents can be accurately determined.

See In re Meta Pixel 1 the very definition of the right and ability to supervise content. Moreover, Comeback’s 2 allegations regarding content moderation are not conclusory. Comeback shows 3 moderation in practice by alleging NewsBreak suspended Total Impulse’s account due to 4 misconduct. SAC ¶ 26.

Accordingly, Comeback has made a sufficient showing on the 5 right to control content prong. 6 Comeback also adequately alleges NewsBreak had a direct financial benefit from 7 Total Impulse’s infringement. NewsBreak contends there is no allegation it received a 8 “commission for the ten infringing articles or those articles drew engagement translating 9 directly into profits.” Mot. at 8–9.

While NewsBreak is correct that Comeback does not 10 explicitly address revenue from the ten articles, Comeback raises the plausible inference 11 that NewsBreak derived financial benefit from Total Impulse’s infringement. Comeback 12 alleges NewsBreak would get traffic and ad revenue from articles published on its 13 platform. See SAC ¶¶ 2, 17. And Comeback explained how Total Impulse had copied its 14 articles, which led to a collapse of traffic to Next Impulse’s articles. “[W]here, as here, the 15 financial benefit is alleged to come directly from specific acts of infringement... there is a 16 clear causal link between the infringement and the financial benefit.” Robinson v. Binello, 17 771 F. Supp. 3d 1114, 1126 (N.D.

Cal. 2025). 18 Because Comeback brings sufficient allegations to support a claim for vicarious 19 copyright infringement, the Court denies NewsBreak’s motion as to this claim. 20 C. Trademark

Infringement 21 NewsBreak argues Comeback has failed to state a claim for direct trademark 22 infringement against it.4 Mot. at 10–11.

The Court agrees. 23 “To prevail on a claim of trademark infringement under the Lanham Act, 24 15 U.S.C. § 1114, a party must prove: (1) that it has a protectible ownership interest in the 25 mark; and (2) that the defendant’s use of the mark is likely to cause consumer confusion.” 26 27 4 Comeback’s complaint does not clearly specify which kind of trademark infringement liability Comeback seeks to impose on NewsBreak.

In its opposition, Comeback states that “NewsBreak 1 Network Automation, Inc. v. Advanced Sys. Concepts, Inc., 638 F.3d 1137, 1144 (9th Cir. 2 2011) (quotation marks omitted). “However, the alleged infringer must directly use the 3 trademarks; a party that merely facilitates or assists others’ use cannot be liable for direct 4 infringement.” Atari Interactive, Inc. v. Redbubble, Inc., 515 F. Supp. 3d 1089, 1101 5 (N.D.

Cal. 2021) (“Other service providers that aid the infringer may avoid liability 6 altogether.”), aff’d in part, appeal dismissed in part, No. 21-17062, 2023 WL 4704891 (9th 7 Cir. July 24, 2023). 8 NewsBreak only challenges the second element—arguing that Comeback has failed 9 to “allege that NewsBreak directly used the allegedly infringing mark.” Mot. at 10.

10 Comeback asserts that NewsBreak “directly used” Next Impulse’s mark by “hosting and 11 displaying” Total Impulse’s mark on their stolen articles via the NewsBreak platform. 12 Opp’n at 8. But this theory is “unsuccessful because the ‘use’ in question is being carried 13 out by [Total Impulse],” not NewsBreak. Rigsby v. GoDaddy Inc., 59 F.4th 998, 1004 14 (9th Cir.

2023). “A claim aimed at [a] third party cannot be repackaged to assert use by” 15 NewsBreak. Id. Comeback’s argument that NewsBreak’s search service sending users to 16 Total Impulse constitutes direct use also falls short. Opp’n at 8. It, too, points to Total 17 Impulse directly using the mark. Comeback’s conduct would, at most, merely facilitate 18 Total Impulse’s use.

Cf. Perfect 10, Inc. v. Giganews, Inc., 2013 WL 2109963, at *14 19 (C.D. Cal. Mar. 8, 2013) (“Defendants do not ‘use’ Plaintiff’s marks in a commercial 20 transaction by merely offering a search function that allows third parties to search for 21 images using Plaintiff’s marks as search terms.”), aff’d, 847 F.3d 657 (9th Cir. 2017). 22 Accordingly, the Court dismisses Comeback’s direct trademark infringement claim 23 against NewsBreak.

24 D. Preemption 25 NewsBreak asserts that both of Comeback’s state law claims—unfair competition 26 and misappropriation—are preempted by the Copyright Act. Mot. at 13–15. The Court 27 agrees. 1 exclusive rights within the general scope of copyright.” 17 U.S.C. § 301(a). A state law 2 claim is preempted if (1) “the rights that a plaintiff asserts under state law [are] ‘rights that 3 are equivalent’ to those protected by the Copyright Act” and (2) “the work involved [falls] 4

within the ‘subject matter’ of the Copyright Act.” *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1212 (9th Cir.

1998). For the equivalent rights element, a claim only survives if it “protects rights which are qualitatively different from the copyright rights” and has “an extra element which changes the nature of the action.” *Laws v. Sony Music Ent., Inc.*, 448 F.3d 1134, 1143 (9th Cir. 2006).

As the parties do not dispute the subject matter element of preemption, Comeback’s state law claims escape preemption if they satisfy the equivalent rights element. Comeback seeks to distinguish its unfair competition claim by framing it as challenging NewsBreak’s “lax verification and refusal to restore referrals.” Opp’n at 8. But a review of Comeback’s complaint makes clear that it is really basing the claim on copyright.

Comeback specifically alleges the “lax and inadequate verification process,” which allows “bad actors to easily obtain verified status and monetize stolen content, constitutes an unfair business practice.” SAC ¶ 169 (emphasis added).

Because the allegations Comeback relies on “involve the encouragement or inducement of copyright infringement,” the Copyright Act preempts Comeback’s unfair competition claim. See *Ryan v. Editions Ltd. W., Inc.*, 417 F. App’x 699, 701 (9th Cir. 2011). Comeback’s misappropriation claim fares no better. Comeback styles it as being about the “wrongful taking of Comeback’s business value.” Opp’n at 8.

But the complaint exposes the true nature of the claim. Comeback alleges NewsBreak “wrongfully exercised dominion over Comeback’s property by copying and distributing these articles” and that this substantial interference with “Comeback’s ownership rights” deprived it of economic benefit. SAC ¶¶ 177–179. Such a claim is “not qualitatively different from the rights protected under copyright law”—it is copyright law.

Laws, 448 F.3d at 1144. 1 || a copyright claim, the Court dismisses them. 2 || IV. CONCLUSION 3 For the foregoing reasons, the Court GRANTS NewsBreak’s motion in part and 4 || DENIES in part. As this is Comeback’s first chance to address a motion to dismiss, 5 || Comeback is granted leave to amend. 6 IT IS SO ORDERED. 7 Dated: October 30, 2025 f. □□ _ CHARLES R. BREYER 8 United States District Judge 9 10 11 2 12 13 14 15 16 19 20 21 22 23 24 25 26 27 28