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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAIME ROGOZINSKI,
Plaintiff,
v.
REDDIT, INC.,
Defendant.

Case No. [23-cv-00686-MMC](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS; AFFORDING
PLAINTIFF LEAVE TO AMEND**

Re: Dkt. No. 28

United States District Court
Northern District of California

Before the Court is defendant Reddit, Inc.’s (“Reddit”) “Motion,” filed April 10, 2023, “to Dismiss Complaint.” Plaintiff Jaime Rogozinski (“Rogozinski”) has filed opposition, to which Reddit has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.¹

BACKGROUND²

“Reddit is a social media platform where millions of people around the world post, vote, and comment in communities organized around their interests. (See Compl. ¶ 19 (internal quotation and citation omitted).) “Reddit is comprised of users and moderators.” (See id.) Users “can post, comment, vote, discuss, learn, debate, support, and connect with people.” (See id. (citation omitted).) Moderators, in addition to those actions, also “volunteer their time to help guide and create Reddit’s many communities,” which are called “subreddits.” (See id. (citation omitted).)

On January 31, 2012, Rogozinski, “under the username ‘jartek,’” created the

¹ By order filed June 16, 2023, the Court took the matter under submission.

² The following facts are taken from the Complaint.

1 “r/WallStreetBets” subreddit, a “forum where people share stock and other financial
2 advice” and on which Rogozinski served as its first moderator. (See Compl. ¶¶ 1, 20.)
3 By early 2020, the r/WallStreetBets subreddit “had grown to more than 1 million
4 subscribers, earning recognition from the financial press.” (See id. ¶¶ 1-2.) At the end of
5 January 2020, Rogozinski published a book, *WallStreetBets: How Boomers Made the*
6 *World’s Biggest Casino for Millennials*, and posted, on the “side bar” of the
7 r/WallStreetBets subreddit, “a link to purchase his book on Amazon.” (See id. ¶ 33.)
8 Thereafter, in early March 2020, Rogozinski “announced a WALLSTREETBETS-branded
9 e-sports competition” on the subreddit. (See id. ¶ 34.)

10 On March 24, 2020, Rogozinski filed an application with the United States Patent
11 and Trademark Office (“USPTO”) to register the mark WALLSTREETBETS for use “in
12 conjunction with online and print publications in the fields of trading and finance, clothing
13 items and providing an online forum for financial and trading information.” (See Compl.
14 ¶ 35.) Two weeks later, on April 7, 2020, Reddit “sent a notification to [Rogozinski] that
15 his account had been placed on a seven-day suspension for ‘attempting to monetize a
16 community.’” (See id. ¶ 36.) It also stated that he was “no longer permitted to moderate
17 communities on reddit” with any account. (See id.) Subsequently, on May 11, 2020,
18 Reddit filed its own application with the USPTO to register the mark
19 WALLSTREETBETS. (See id. ¶ 41.) In addition, Reddit “initiated legal action at the
20 USPTO’s Trademark Trial and Appeal Board to block [Rogozinski] from asserting
21 ownership of WALLSTREETBETS.” (See id. ¶ 56.)

22 On January 12, 2022, Rogozinski filed an application to register the mark WSB,
23 “which is shorthand for WALLSTREETBETS.” (See Compl. ¶ 56.) Reddit did not oppose
24 that registration, which, on June 7, 2022, the USPTO issued as U.S. Trademark
25 Registration No. 6754487. (See id.)

26 As of 2023, Rogozinski has “made more than sixty media appearances to discuss
27 WALLSTREETBETS,” during which appearances “media consistently referred to [him] as
28 WALLSTREETBETS’ founder.” (See Compl. ¶ 59.) Additionally, he has “spoke[n] at

1 more than a dozen events . . . throughout the United States and around the world” (see
 2 id.) and “sold the rights to his life story to a major production company that is going to ‘to
 3 dramatize the story of his role in the WallStreetBets saga” (see id. ¶ 60). According to
 4 Rogozinski, after Reddit banned him, the content on the r/WallStreetBets subreddit
 5 became “offensive,” “racially inflammatory,” and “at various times included swastikas” and
 6 “hate speech.” (See id. ¶ 64.)

7 Based on the above, Rogozinski asserts the following claims for relief: (1) “a
 8 declaratory judgment that he, and not Reddit, is the owner of the WALLSTREETBETS
 9 trademark” (Count I); (2) “infringement of WALLSTREETBETS trademark” in violation of
 10 Lanham Act § 43(a), 15 U.S.C. § 1125(a) (Count II); (3) “infringement of registered WSB
 11 trademark” in violation of Lanham Act § 32, 15 U.S.C. § 1114 (Count III); (4) “trademark
 12 dilution by tarnishment” in violation of Lanham Act § 43(c), 15 U.S.C. § 1125(c) (Count
 13 IV); (5) “violation of right of publicity” (Count V); (6) “breach of contract” (Count VI); (7)
 14 “violation of duty of good faith and fair dealing” (Count VII); and (8) “unfair competition” in
 15 violation of Cal. Bus. & Prof. Code § 17200, et seq. (Count VIII). (See Compl. at 20-25.)

16 **LEGAL STANDARD**

17 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure “can be
 18 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
 19 under a cognizable legal theory.” See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696,
 20 699 (9th Cir. 1990). Rule 8(a)(2), however, “requires only ‘a short and plain statement of
 21 the claim showing that the pleader is entitled to relief.’” See Bell Atlantic Corp. v.
 22 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, “a
 23 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
 24 allegations.” See id. Nonetheless, “a plaintiff’s obligation to provide the grounds of his
 25 entitlement to relief requires more than . . . a formulaic recitation of the elements of a
 26 cause of action.” See id. (internal quotation, citation, and alteration omitted).

27 In analyzing a motion to dismiss, a district court must accept as true all material
 28 allegations in the complaint and construe them in the light most favorable to the

1 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). “To
 2 survive a motion to dismiss,” however, “a complaint must contain sufficient factual
 3 material, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
 4 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “Factual
 5 allegations must be enough to raise a right to relief above the speculative level,”
 6 Twombly, 550 U.S. at 555, and courts “are not bound to accept as true a legal conclusion
 7 couched as a factual allegation,” see Iqbal, 556 U.S. at 678 (internal quotation and
 8 citation omitted).

9 DISCUSSION

10 A. Trademark Claims

11 By separate order filed June 30, 2023, the Court denied Reddit’s motion to stay
 12 Counts I, II, III, and IV (collectively, “Trademark Claims”). In light thereof, the Court
 13 considers below Reddit’s argument, set forth in the instant motion, that the Trademark
 14 Claims “should be dismissed for failure to state a claim.” (See Def.’s Mot. to Dismiss
 15 Compl. (“Def.’s Mot.”) at 19:10, Dkt. No. 28.) The Court addresses below each such
 16 Count in turn.

17 1. Count I – Declaratory Judgment as to “Controversy Regarding 18 Ownership of the WALLSTREETBETS Trademark”

19 In Count I, Rogozinski seeks “a declaratory judgment that he, and not Reddit, is
 20 the owner of the WALLSTREETBETS trademark.” (See Compl. ¶ 69.)

21 “It is axiomatic in trademark law that the standard test of ownership is priority of
 22 use.” See Sengoku Works Ltd. v. RMC Int’l, Ltd., 96 F.3d 1217, 1219 (9th Cir.), as
 23 modified, 97 F.3d 1460 (9th Cir. 1996). “To acquire ownership of a trademark it is not
 24 enough to have invented the mark first or even to have registered it first; the party
 25 claiming ownership must have been the first to actually use the mark in the sale of goods
 26 or services.” See id.; see also id. at 1220 (noting “federal registration of the mark is
 27 prima facie evidence that the registrant is the owner of the mark,” but “if [a] non-registrant
 28 can show that he used the mark in commerce first, then the registration may be

1 invalidated”).

2 Here, Rogozinski, to establish his ownership of the WALLSTREETBETS mark,
 3 does not assert he was the first to use the mark in commerce. Rather, citing no authority
 4 for such proposition, Rogozinski argues the “owner” of a trademark is the person “whom
 5 the market identifies as the ‘source’ of the mark” (see Pl.’s Mem. of P. & A. in Opp’n to
 6 Reddit’s Mot. to Dismiss (“Pl.’s Opp’n”) at 17:8-9, Dkt. No. 34), and in support thereof
 7 asserts he has been “identified as the source of the WALLSTREETBETS mark,” in that
 8 “through his jartek username, [he] was identified as WALLSTREETBET’s creator” on the
 9 r/WallStreetBets subreddit page (see id. at 17:21-23 (citing Compl. ¶ 21 (displaying
 10 screenshot of r/WallStreetBets subreddit page containing phrase “created by jartek”))),
 11 that he “set the agenda for the WALLSTREETBETS community” (see id. at 17:24-25
 12 (citing Compl. ¶ 21)), that he “built the WALLSTREETS brand, and ‘carefully cultivated
 13 the community to ensure the forum aligned with his overall vision” (see id. at 18:3-4
 14 (citing Compl. ¶ 23)), that he “controlled the moderation team, set moderation rules, and
 15 enforced them” (see id. at 18:5 (citing Compl. ¶ 23)), that “national news media
 16 interviewed and treated [him] as the founder of WALLSTREETBETS” (see id. at 18:16-17
 17 (citing Compl. ¶ 59)), and that “tens of millions of people associate [him] with the brand,
 18 so much so that a major production company purchased the rights to [his] life story to
 19 dramatize his role in the brand” (see id. at 18:19-21 (citing Compl. ¶ 59)).

20 None of the above circumstances, however, establishes Rogozinski’s ownership,
 21 as none constitutes a use in commerce. “[U]se in commerce’ means the bona fide use
 22 of a mark in the ordinary course of trade . . . ,” and “a mark shall be deemed to be in use
 23 in commerce--”

24 (1) on goods when--

25 (A) it is placed in any manner on the goods or their containers
 26 or the displays associated therewith or on the tags or labels
 27 affixed thereto, or if the nature of the goods makes such
 28 placement impracticable, then on documents associated with
 the goods or their sale, and

(B) the goods are sold or transported in commerce, and

(2) on services when it is used or displayed in the sale or advertising of

1 services and the services are rendered in commerce, or the services are
 2 rendered in more than one State or in the United States and a foreign country
 3 and the person rendering the services is engaged in commerce in connection
 with the services.

4 See 15 U.S.C. § 1127.

5 Here, Rogozinski acknowledges in the Complaint that “Reddit uses the
 6 WALLSTREETBETS trademark in commerce by operating the r/WallStreetBets
 7 subreddit.” (See Compl. ¶ 73.) Indeed, on May 15, 2020, the USPTO refused
 8 Rogozinski’s proposed registration of the mark WALLSTREETBETS, noting, as to his
 9 purported use of the mark in “providing an online forum for financial and trading
 10 information,” that “Reddit is the one providing the online forum, not the applicant.” (See
 11 Req. for Judicial Notice in Supp. of Def.’s Mot. to Dismiss Compl. (“Def.’s RJN”), Ex. 3 at
 12 3.)³ In response, Rogozinski, on May 27, 2020, amended his application, asserting an
 13 intent to use the mark. (See Decl. of Holly Pranger in Supp. of Def.’s Mot. to Stay Action,
 14 Ex. B (“Rogozinski’s Response to USPTO Action”) at 2-3.) “[T]rademark rights,”
 15 however, “are not conveyed through mere intent to use a mark commercially.” See
 16 Brookfield Commc’ns, Inc. v. W. Coast Ent. Corp., 174 F.3d 1036, 1052 (9th Cir. 1999);
 17 Zazu Designs v. L’Oreal, S.A., 979 F.2d 499, 504 (7th Cir.1992) (noting “an intent to use
 18 a mark creates no rights a competitor is bound to respect”).

19 To the extent Rogozinski alleges he created the mark (see, e.g., Compl. ¶ 75),
 20 such event, as noted, is, without more, insufficient, see Sengoku, 96 F.3d at 1219
 21 (holding “it is not enough to have invented the mark first”). To the extent Rogozinski
 22 relies on allegations that he used the mark as part of a book title in January 2020 or to
 23 promote an e-sports competition in March 2020 (see Pl.’s Opp’n at 18:21-25 (citing
 24 Compl. ¶¶ 32-34)), such arguments likewise find no support in the law. Rather,

26 ³ The Court hereby GRANTS Reddit’s unopposed request for judicial notice of “the
 27 USPTO record for [Rogozinski’s] trademark application for the WALLSTREETBETS
 28 mark.” (See Def.’s Mot. at 20:4 n.13); see also Johnson v. Castillo, 2023 WL 3355260, at
 *1 (E.D. Cal. Apr. 19, 2023) (noting “a court may take judicial notice of undisputed
 matters of public record”).

1 consistent with the authority discussed above, “[r]ights in a trademark are determined by
2 the date of the mark’s first use in commerce,” and, “[t]he party who first uses a mark in
3 commerce is said to have priority over other users.” See Hana Fin., Inc. v. Hana Bank,
4 574 U.S. 418, 419 (2015).

5 In the instant case, Rogozinski not only alleges that Reddit, by operating the
6 r/WallStreetBets subreddit, has been using the WALLSTREETBETS mark, but that it has
7 done so since “January 31, 2012,” the date on which said subreddit was created. (See
8 Compl. ¶ 20.) Moreover, his application for the mark lists January 31, 2012, as the “first
9 use in commerce date.” (See Rogozinski’s Response to USPTO Action at 3.)
10 Rogozinski does not allege his own use of the mark for any purpose prior to January 31,
11 2012. Consequently, he fails to establish his priority over Reddit.

12 In sum, Rogozinski fails to plead ownership rights in the WALLSTREETBETS
13 mark.

14 Accordingly, Count I is subject to dismissal.

15 **2. Count II – Infringement of Unregistered WALLSTREETBETS** 16 **Trademark**

17 In Count II, Rogozinski asserts Reddit is infringing his unregistered
18 WALLSTREETBETS mark. (See Compl. ¶ 77.)

19 “To prevail on a claim of trademark or trade name infringement under the Lanham
20 Act or common law, a plaintiff ‘must prove: (1) that [he] has a protectable ownership
21 interest in the mark; and (2) that the defendant’s use of the mark is likely to cause
22 consumer confusion.’” La Terra Fina USA, LLC v. TerraFina, L.L.C., 2017 WL 4284167,
23 at *2 (N.D. Cal. Sept. 27, 2017) (quoting Network Automation, Inc. v. Advanced Sys.
24 Concepts, 638 F.3d 1137, 1144 (9th Cir. 2011)).

25 As set forth above, Rogozinski has failed to show he possesses ownership rights
26 in the WALLSTREETBETS mark. Consequently, he fails to state a claim for infringement
27 of said mark.

28 Accordingly, Count II is subject to dismissal.

3. Count III – Infringement of Registered WSB Trademark

In Count III, Rogozinski asserts Reddit is infringing his registered WSB mark. Specifically, Rogozinski alleges that “WSB is a known shorthand designation for WALLSTREETBETS” and that Reddit has been infringing his mark “by operating the r/WallStreetBets subreddit . . . following his ban as moderator.” (See Compl. ¶¶ 81, 83.)

To prevail on a claim of trademark infringement, Rogozinski, as set forth above, must show (1) that he “has a protectable ownership interest in the mark” and (2) that Reddit’s “use of the mark is likely to cause consumer confusion.” See La Terra Fina, 2017 WL 4284167, at *2.

As noted, “[w]hen proving ownership of a trademark, federal registration of the mark is prima facie evidence that the registrant is the owner of the mark,” and “the registrant is [thus] granted a presumption of ownership, dating to the filing date of the application for federal registration.” See Sengoku, 96 F.3d at 1219-20 (citing Lanham Act §§ 7(b), 33(a), 15 U.S.C. §§ 1057(b), 1115(a)). As also noted, however, a “non-registrant can rebut this presumption by showing . . . that he used the mark in commerce first.” See id. at 1220.

Here, the filing date of Rogozinski’s application for registration of the WSB mark is January 12, 2022. Rogozinski alleges, however, that Reddit’s infringing activity began on April 7, 2020, when Rogozinski was removed as moderator (see Compl. ¶¶ 36, 83), and Reddit, citing La Terra Fina, 2017 WL 4284167, at *2 (noting “the standard test of ownership is priority of use”), argues “Reddit’s purported use of WSB on the r/wallstreetbets subreddit could not infringe [Rogozinski’s] WSB registration because the alleged use by Reddit predates any possible rights that [Rogozinski] has based on the WSB registration” (see Def.’s Mot. at 22:9-12). Further, Rogozinski’s application for the WSB mark lists April 15, 2021, as the “first use in commerce” date, which is later than Reddit’s alleged use of the mark. (See Def.’s RJN, Ex. 4 at 2.) To the extent Rogozinski argues Reddit’s use nonetheless is not “valid” (see Pl.’s Opp’n at 22:25-26), he cites no authority in support of such assertion.

1 Accordingly, Count III is subject to dismissal.

2 **4. Count IV – Trademark Dilution by Tarnishment**

3 In Count IV, Rogozinski alleges Reddit’s “operation of the WALLSTREETBETS
4 subreddit since [he] was banned as a moderator” gives rise to a claim for dilution by
5 tarnishment of the WALLSTREETBETS and WSB marks. (See Compl. ¶ 90.)

6 The Federal Trademark Dilution Act provides: “[T]he owner of a famous mark . . .
7 shall be entitled to an injunction against another person who, at any time after the
8 owner's mark has become famous, commences use of a mark or trade name in
9 commerce that is likely to cause . . . dilution by tarnishment of the famous mark.” See 15
10 U.S.C. § 1125(c)(1). Here, Reddit argues, Rogozinski has not established that either
11 mark is sufficiently famous. (See Def.’s Mot. at 23:18.)

12 “[A] mark is famous if it is widely recognized by the general consuming public of
13 the United States as a designation of source of the goods or services of the mark's
14 owner.” See 15 U.S.C. § 1125(c)(2)(A). “[T]o meet the ‘famousness’ element of
15 protection under the [Federal Trademark Dilution Act], a mark must be truly prominent
16 and renowned.” See Avery Dennison Corp. v. Sumpton, 189 F.3d 868, 875 (9th Cir.
17 1999) (internal quotation, citation, and alteration omitted); see also Dahon N. Am., Inc. v.
18 Hon, 2012 WL 1413681, at *9 (C.D. Cal. Apr. 24, 2012) (noting “trademark dilution claims
19 are restricted to truly famous marks, such as Budweiser beer, Camel cigarettes, and
20 Barbie dolls”).

21 Although Rogozinski alleges the r/WallStreetBets subreddit attracted media
22 attention beginning in 2017 (see Compl. ¶ 26) and reached one million subscribers in
23 March 2020 (see Compl. ¶ 22), such allegations fall short of the level of fame courts have
24 found to be sufficient to support a dilution claim, see, e.g., Jada Toys, Inc. v. Mattel, Inc.,
25 518 F.3d 628, 635 (9th Cir. 2008) (holding “reasonable trier of fact could conclude that
26 the HOT WHEELS mark is famous”; noting “it has been in use for over thirty-seven years;
27 350 million dollars have been expended in advertising the mark; three billion HOT
28 WHEELS units have been sold since the inception of the mark; and HOT WHEELS are

1 sold in all fifty states and throughout the world”), and Rogozinski, in his opposition,
 2 provides no response to Reddit’s argument that he fails to plead either mark is sufficiently
 3 famous.

4 Accordingly, Count IV is subject to dismissal.

5 **B. State Law Claims**

6 Reddit first argues Counts V, VI, VII, and VIII (collectively, “State Law Claims”) are
 7 barred by Section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230
 8 (“CDA”). The Court considers below each such claim in turn.

9 **1. CDA § 230 (Counts V, VI, VII, and VIII)**

10 Section 230 “provides broad immunity to websites that publish content provided
 11 primarily by third parties.” See Fraley v. Facebook, Inc., 830 F. Supp. 2d 785, 801 (N.D.
 12 Cal. 2011). In particular, § 230 states that “[n]o provider or user of an interactive
 13 computer service shall be treated as the publisher or speaker of any information provided
 14 by another information content provider,” see 47 U.S.C. § 230(c)(1), and further states
 15 that “[n]o cause of action may be brought and no liability may be imposed under any
 16 State or local law that is inconsistent with this section,” see 47 U.S.C. § 230(e)(3). In
 17 short, § 230 “protects from liability (1) a provider or user of an interactive computer
 18 service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a
 19 publisher or speaker (3) of information provided by another information content provider.”
 20 See Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1100–01 (9th Cir. 2009), as amended (Sept.
 21 28, 2009). The Court considers below each of the above-listed elements.

22 **a. Provider or User of an Interactive Computer Service**

23 Rogozinski does not dispute, and the Court finds, Reddit is a provider of an
 24 interactive computer service. See 47 U.S.C. § 230(f)(2) (defining “interactive computer
 25 service” as “any information service, system, or access software provider that provides or
 26 enables computer access by multiple users to a computer server”); see also Does 1-
 27 6 v. Reddit, Inc., 51 F.4th 1137, 1141 (9th Cir. 2022), cert. denied, 2023 WL 3696135
 28 (May 30, 2023) (finding “Reddit is an ‘interactive computer service’ provider as defined in

1 § 230(f)(2)").

2 **b. Treatment as Publisher or Speaker**

3 Rogozinski contends he "is not trying to hold Reddit liable as a publisher." (See
4 Pl.'s Opp'n at 15:9-10.)

5 To determine if a plaintiff seeks to treat a defendant as a publisher, "courts must
6 ask whether the duty that the plaintiff alleges the defendant violated derives from the
7 defendant's status or conduct as a 'publisher or speaker.'" See Barnes, 570 F.3d at
8 1102. "[P]ublication involves reviewing, editing, and deciding whether to publish or to
9 withdraw from publication third-party content." See id. "[A]ny activity that can be boiled
10 down to deciding whether to exclude material that third parties seek to post online is
11 perforce immune under section 230." See Fair Hous. Council of San Fernando Valley v.
12 Roommates.Com, LLC, 521 F.3d 115771 (9th Cir. 2008).

13 In Count V, his right of publicity claim, Rogozinski alleges that "Reddit uses [his]
14 identity by operating the r/WallStreetBets subreddit," which "includes content[s] . . . to
15 which [Rogozinski] objects and which harm his reputation." (See Compl. ¶¶ 94-95.) In
16 Count VI, his breach of contract claim, Rogozinski alleges "Reddit breached its contract
17 . . . by suspending him as moderator" and by "not reinstating [him]." (See Compl. ¶ 103.)
18 Similarly, in Count VII, his claim for violation of the duty of good faith and fair dealing,
19 Rogozinski alleges Reddit violated said duty by "suspending [his] ability to moderate
20 WALLSTREETBETS" and "by not reinstating [his] account." (See Compl. ¶ 110.) Lastly,
21 in Count VIII, his unfair competition claim, Rogozinski alleges Reddit "is engaged in a
22 practice of asserting trademark rights in the brand names of subreddits" (see Compl.
23 ¶ 114) and further alleges Reddit "blocked [him] from controlling his brands" (see Compl.
24 ¶ 117).

25 Reddit argues all four State Law Claims "seek to hold Reddit liable for publisher
26 conduct, that is, decisions about what types of content and which users are permitted on
27 the site." (See Def.'s Mot. at 7:9-10.)

28 In response, Rogozinski first argues "Section 230 does not categorically bar

1 commercial tort or breach of contract claims.” (See Pl.’s Opp’n at 14:25.) As set forth
2 below, however, three of the cases on which Rogozinski relies are readily
3 distinguishable, in that those decisions either considered a statutory provision not at
4 issue here, see Enigma Software Grp. USA, LLC v. Malwarebytes, Inc., 946 F.3d 1040,
5 1049 (9th Cir. 2019) (addressing scope of immunity under § 230(c)(2)), or the claims
6 therein were based on a theory of promissory estoppel, see Barnes, 570 F.3d at 1099,
7 1109 (reversing dismissal of breach of contract claim where defendant’s Director of
8 Communications had told plaintiff “she would ‘personally walk the [objectionable material]
9 over to the division responsible for stopping unauthorized profiles and they would take
10 care of it”); Berenson v. Twitter, Inc., 2022 WL 1289049, at *2-3 (N.D. Cal. Apr. 29, 2022)
11 (denying motion to dismiss breach of contract claim where defendant’s “vice president
12 gave specific and *direct* assurances” that plaintiff would be “given a heads up before any
13 enforcement action [wa]s taken” with respect to his account (emphasis in original)
14 (alteration omitted)), and the fourth, namely Darnaa, LLC v. Google, Inc., 2016 WL
15 6540452 (N.D. Cal. Nov. 2, 2016), has been found to conflict with a number of cases
16 holding to the contrary, see King v. Facebook, Inc., 2019 WL 4221768, at *5 (N.D. Cal.
17 Sept. 5, 2019), aff’d, 845 F. App’x 691 (9th Cir. 2021) (collecting cases); see also, e.g.,
18 Brittain v. Twitter, Inc., 2019 WL 2423375, at *3 (N.D. Cal. June 10, 2019) (holding § 230
19 barred claims for breach of contract and promissory estoppel that sought to hold
20 defendant liable for suspending plaintiff’s accounts; finding claims “s[ought] to treat
21 [defendant] as a publisher”).

22 Next, as to his right of publicity claim, Rogozinski contends he is seeking “to put an
23 end to and recover damages related to the company’s misappropriation of his identity,”
24 and, as to his unfair competition claim, that it is “concerned with Reddit’s attempts to
25 control [his] brands and trademarks.” (See Pl.’s Opp’n at 15:10-12.)

26 The Court, however, agrees with Reddit that all four State Law Claims, with one
27 limited exception, seek to hold Reddit liable for publisher conduct, specifically, for either
28 suspending Rogozinski from the r/WallStreetBets subreddit, banning him, and/or allowing

1 the subreddit to continue to operate without him. See Rangel v. Dorsey, 2022 WL
 2 2820107, at *3 (N.D. Cal. July 19, 2022) (noting “decision[s] to exclude [plaintiff’s] content
 3 and suspend his account” are “traditional publishing functions”); Fed. Agency of News
 4 LLC v. Facebook, Inc., 432 F. Supp. 3d 1107, 1116 (N.D. Cal. 2020) (noting “Section 230
 5 immunizes decisions to delete user profiles” (internal quotation and citation omitted)).

6 The one exception relates to Count VIII, the unfair competition claim. To the
 7 extent Rogozinski bases such claim on Reddit’s alleged “practice of asserting trademark
 8 rights in the brand names of subreddits” (see Compl. ¶ 114), the Court finds the claim
 9 does not “derive[] from the defendant’s status or conduct as a ‘publisher or speaker,’” see
 10 Barnes, 570 F.3d at 1102, but, rather, from separate conduct, and Reddit cites no
 11 authority holding to the contrary.

12 **c. Information Provided by Another Information Content Provider**

13 As to the last element, Rogozinski does not appear to dispute, and the Court finds,
 14 the information at issue in the State Law Claims is information provided by another
 15 information content provider, specifically, Rogozinski’s or other individuals’ posts on the
 16 r/WallStreetBets subreddit. See 47 U.S.C. § 230(f)(3) (defining “information content
 17 provider” as “any person or entity that is responsible, in whole or in part, for the creation
 18 or development of information provided through the Internet or any other interactive
 19 computer service”); see also Sikhs for Just. "SFJ", Inc. v. Facebook, Inc., 144 F. Supp.
 20 3d 1088, 1094 (N.D. Cal. 2015), aff'd, 697 F. App’x 526 (9th Cir. 2017) (noting “the CDA
 21 immunizes an interactive computer service provider that passively displays content that is
 22 created entirely by third parties”).

23 **d. Conclusion: CDA § 230**

24 Accordingly, all four State Law Claims, with the exception of Count VIII to the
 25 extent it is based on Reddit’s alleged trademark practice, are subject to dismissal as
 26 barred by § 230(c)(1) of the CDA.⁴

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 28 ⁴ In light of this finding, the Court does not address herein Reddit’s additional
 arguments in support of dismissal of Counts V, VI, and VII. (See Def.’s Mot. at 10:10-

1 **2. Standing (Count VIII)**

2 As noted, in Count VIII, Rogozinski asserts Reddit is violating California’s Unfair
3 Competition Law (“UCL”) by “engag[ing] in a practice of asserting trademark rights in the
4 brand names of subreddits” (see Compl. ¶ 114) and by “block[ing] [him] from controlling
5 his brands” (see Compl. ¶ 117). To the extent Rogozinski bases this claim on the latter
6 allegation, the Court, as discussed above, has found it is barred by § 230(c)(1) of the
7 CDA. To the extent Rogozinski bases this claim on the former allegation, the Court, as
8 set forth below, finds he lacks standing.

9 Under the UCL, an individual has standing “only if he or she ‘has suffered injury in
10 fact and has lost money or property as a result of the unfair competition.’” See Mai v.
11 Supercell Oy, 2023 WL 25713, at *2 (N.D. Cal. Jan. 3, 2023) (quoting Cal. Bus. & Prof.
12 Code § 17204). Here, Rogozinski asserts he has “suffered economic injury” in “lost book
13 sales” and “lost contracts.” (See Compl. ¶ 118.) Specifically, Rogozinski alleges, he “lost
14 hundreds of thousands of dollars of sales for his book, which was published less than
15 three months prior to the ban,” and that “[a]s further consequence of Reddit’s ban, [his]
16 company lost its contract for the e-sports trading competition in Texas, costing him
17 millions of dollars.” (See Compl. ¶ 58.)

18 As to the alleged lost book sales, it is “not sufficient” for purposes of establishing
19 standing under the UCL for a plaintiff “to allege lost business opportunities, lost
20 anticipated profits, or injury to goodwill.” See Dyson, Inc. v. Garry Vacuum, LLC, 2010
21 WL 11595882, at *8-9 (C.D. Cal. July 19, 2010) (dismissing UCL claim that “rest[ed] on
22 the effect [defendant’s] advertising . . . had on customers’ purchasing preferences”;
23 finding “[t]his type of injury is not sufficient to support standing under the UCL”).

24 As to the alleged lost contract, to the extent such agreement was prospective in
25 nature, “‘lost money or property’ does not include the proceeds of prospective contracts.”
26 See Ahussain v. GNC Franchising, LLC, 2009 WL 10672353, at *5 (C.D. Cal. Mar. 18,

27 _____
28 16:23.)

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1 2009). To the extent it was an existing contract, Rogozinski must still show his
2 “economic injury come[s] ‘as a result of’ the unfair competition.” See Kwikset Corp. v.
3 Superior Ct., 51 Cal. 4th 310, 326 (2011) (quoting Cal. Bus. & Prof. Code §§ 17204,
4 17535). In particular, he must plead facts demonstrating “a causal connection” between
5 Reddit’s alleged “practice of asserting trademark rights in the brand names of subreddits”
6 and his claimed loss of “millions of dollars.” See id.; (see also Compl. ¶¶ 58, 114). As
7 alleged in the Complaint, however, the contract was lost “[a]s [a] consequence of Reddit’s
8 ban,” not its alleged trademark practice. (See Compl. ¶ 58.)

9 Accordingly, Count VIII, to the extent it is based on Reddit’s alleged trademark
10 practice, is subject to dismissal.⁵

11 **CONCLUSION**

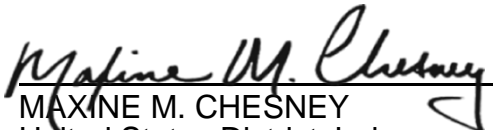
12 For the reasons stated above, Reddit’s motion is hereby GRANTED, and the
13 Complaint is hereby DISMISSED with leave to amend.

14 A First Amended Complaint, if any, shall be filed no later than August 11, 2023.

15 Lastly, the Court hereby SETS a Case Management Conference for November 17,
16 2023. A Joint Case Management Conference Statement shall be filed no later than
17 November 9, 2023.

18
19 **IT IS SO ORDERED.**

20
21 Dated: July 11, 2023


MAXINE M. CHESNEY
United States District Judge

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25
26
27 _____
28 ⁵ In light of this finding, the Court does not address herein Reddit’s additional
arguments in support of dismissal of Count VIII. (See Def.’s Mot. at 18:3-19:6.)