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

COMEBACK MEDIA, INC.,
Plaintiff,

v.

PARTICLE MEDIA, INC., et al.,
Defendants.

Case No. 25-cv-03298-CRB

**ORDER GRANTING IN PART AND
DENYING IN PART PARTICLE
MEDIA, INC.'S MOTION TO
DISMISS**

Plaintiff Comeback Media, Inc. d/b/a Next Impulse Sports (“Comeback”) brought this action against Defendants Particle Media, Inc. (“NewsBreak”), Digital Next, Inc. (“Total Impulse”), and individual defendants for claims stemming from alleged infringement of Comeback’s copyrights and trademark. SAC (dkt. 25) at ¶¶ 1–4. Comeback alleges Total Impulse and the individual defendants copied and published Comeback’s news articles on NewsBreak—stealing the traffic and revenue that would otherwise belong to Comeback. Id. Comeback asserts claims for copyright infringement, trademark infringement, unfair competition, and misappropriation. Id. ¶¶ 151–197. NewsBreak now moves to dismiss the claims against it. Mot. (dkt. 28). The Court GRANTS the motion in part and DENIES in part.¹

I. BACKGROUND

Comeback is a digital media company that publishes articles on its websites. SAC ¶ 13. Comeback built its business around earning revenue from syndication deals with news apps and websites, which aggregate articles from publishers into a customizable

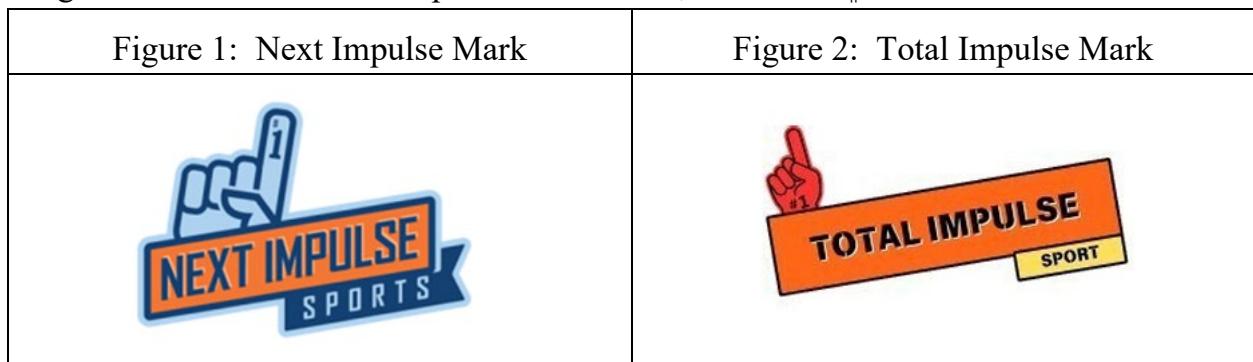
¹ Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for resolution without oral argument.

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. ¶ 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 ¶
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. ¶ 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 ¶ 21. The
11 copies kept the same content, pictures, and even videos—with many articles stating the
12 posts originated from Next Impulse. Id. ¶¶ 52, 60. Total Impulse was a “Verified
13 Publisher,” meaning it had a formal partnership with NewsBreak and curated its own
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.

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 ¶ 39–42.



20 Id. ¶ 42.

21 Comeback alleges NewsBreak somehow discovered the misconduct and suspended
22 Total Impulse's account. SAC ¶ 26. Comeback alleges that Total Impulse was hardly the
23 first to infringe articles from other publishers on NewsBreak and that NewsBreak's
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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.
26 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
28 Carpenters & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014) (providing the court must

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)

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28 ² After Ellison, the Ninth Circuit has, at times, stated that “actual knowledge” is required for
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
agreed that it still applies for contributory infringement. See, e.g., YZ Prods., Inc. v. Redbubble,
Inc., 545 F. Supp. 3d 756, 763 (N.D. Cal. 2021) (citing Ellison favorably).

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
28 continued to provide access to the infringing works. Likewise, Comeback's inducement

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; RJD (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., RJD Ex. B (emphasis added). That is

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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
28 reasonably be questioned and whose contents can be accurately determined. See In re Meta Pixel
Tax Filing Cases, 724 F. Supp. 3d 987, 1001 (N.D. Cal. 2024) (holding that publicly available
websites are proper subjects of judicial notice).

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
28 Comeback seeks to impose on NewsBreak. In its opposition, Comeback states that "NewsBreak
directly used Comeback's 'Next Impulse Sports' mark." Opp'n at 8. Consequently, the Court
interprets Comeback's claim as one for direct trademark infringement.

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.

28 The Copyright Act expressly preempts related state law claims based on “any of the

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
5 F.3d 1209, 1212 (9th Cir. 1998). For the equivalent rights element, a claim only survives
6 if it “protects rights which are qualitatively different from the copyright rights” and has “an
7 extra element which changes the nature of the action.” Laws v. Sony Music Ent., Inc., 448
8 F.3d 1134, 1143 (9th Cir. 2006). As the parties do not dispute the subject matter element
9 of preemption, Comeback’s state law claims escape preemption if they satisfy the
10 equivalent rights element.

11 Comeback seeks to distinguish its unfair competition claim by framing it as
12 challenging NewsBreak’s “lax verification and refusal to restore referrals.” Opp’n at 8.
13 But a review of Comeback’s complaint makes clear that it is really basing the claim on
14 copyright. Comeback specifically alleges the “lax and inadequate verification process,”
15 which allows “bad actors to easily obtain verified status and monetize stolen content,
16 constitutes an unfair business practice.” SAC ¶ 169 (emphasis added). Because the
17 allegations Comeback relies on “involve the encouragement or inducement of copyright
18 infringement,” the Copyright Act preempts Comeback’s unfair competition claim. See
19 Ryan v. Editions Ltd. W., Inc., 417 F. App’x 699, 701 (9th Cir. 2011).

20 Comeback’s misappropriation claim fares no better. Comeback styles it as being
21 about the “wrongful taking of Comeback’s business value.” Opp’n at 8. But the
22 complaint exposes the true nature of the claim. Comeback alleges NewsBreak
23 “wrongfully exercised dominion over Comeback’s property by copying and distributing
24 these articles” and that this substantial interference with “Comeback’s ownership rights”
25 deprived it of economic benefit. SAC ¶¶ 177–179. Such a claim is “not qualitatively
26 different from the rights protected under copyright law”—it is copyright law. Laws, 448
27 F.3d at 1144.

28 Because the underlying nature of Comeback’s state law claims is part and parcel of

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



CHARLES R. BREYER
United States District Judge