

COMMONWEALTH OF KENTUCKY  
SCOTT CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 24-CI-00824

COMMONWEALTH OF KENTUCKY, *ex rel.*  
RUSSELL COLEMAN, ATTORNEY GENERAL  
v.

PLAINTIFF

TIK TOK, INC. *et al.*,

DEFENDANT

**ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS**

This matter is before the Court on Defendant’s January 13, 2025, Motion to Dismiss submitted pursuant to CR 12.02(f), 12.02(b), and 9.02. Arguments were heard on May 1, 2025. The Court permitted supplemental briefing, and the matter was taken under submission following Defendant’s November 14, 2025 Response to Commonwealth’s fourth supplemental notice. This Court having reviewed the record, supplemental authority filed, and being otherwise sufficiently advised, hereby DENIES the motion for the reasons set forth below.

**BACKGROUND**

This action was initiated by the Commonwealth on October 8, 2024.<sup>1</sup> The Complaint asserts claims against TikTok, Inc., and related corporate entities (collectively hereinafter “Defendant” or “TikTok”), alleging violations of the Kentucky Consumer Protection Act (“KCPA”), KRS 367.110 et. seq., and related statutory provisions.<sup>2</sup>

Defendant operates an online social-media platform that allows users to create, view, share, and interact with short-form video content.<sup>3</sup> The platform is accessible through a mobile

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<sup>1</sup> Plaintiff’s October 8, 2024 Complaint (“Complaint”).

<sup>2</sup> Complaint at 9.

<sup>3</sup> *Id.* at 1-2.

application or website and is available to users in Kentucky and throughout the United States.<sup>4</sup> Users create accounts and agree to TikTok’s terms of service and Community Guidelines.<sup>5</sup> The platform includes algorithmic systems that recommend and prioritize content for users based on engagement history, interactions, and other data inputs.<sup>6</sup>

The Commonwealth alleges that hundreds of thousands of Kentucky residents maintain TikTok accounts and access the platform through devices located within the Commonwealth.<sup>7</sup> The Complaint further alleges that TikTok collects user data including geolocation and engagement data from Kentucky users and uses that data for advertising, analytics, and content-recommendation purposes.<sup>8</sup> The Commonwealth contends that TikTok sells advertising services that allows advertisers to target users based on geographic location and other demographic criteria, including users located in Kentucky.<sup>9</sup>

The Complaint further alleges that TikTok has designed certain platform features to increase user-engagement and time spent on the platform.<sup>10</sup> The Commonwealth asserts that some of these features may affect minor users and contends that TikTok was aware of internal research and external studies addressing potential impacts of social media use on youth.<sup>11</sup> The Commonwealth challenges several features of Defendant’s platform, including (1) its recommendation system, which uses algorithms to curate and personalize video feeds; (2) continuous or “infinite” scrolling; (3) autoplay functionality; (4) user engagement tools such as likes and comments; and (5) push

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 18-20.

<sup>6</sup> *Id.* at 13-14.

<sup>7</sup> *Id.* at 25, 31.

<sup>8</sup> *Id.* at 13-14.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.*

notifications.<sup>12</sup> The Complaint posits that these design features may contribute to excessive or compulsive use amongst younger users.<sup>13</sup>

The Commonwealth references TikTok's public statements regarding user-safety, screen-time management tools, content moderation practices, and efforts to protect young users.<sup>14</sup> The Complaint contends that certain representations concerning safety features and content controls were incomplete or misleading.<sup>15</sup> For this alleged conduct, the Commonwealth seeks injunctive relief, civil penalties, restitution, and other remedies authorized by statute.<sup>16</sup>

Defendant denies liability and has moved to dismiss the Complaint. TikTok contends, among other arguments, that this Court lacks personal jurisdiction; that the claims are barred by Section 230 of the Communications Decency Act; that the claims impermissibly seek to regulate speech in violation of the First Amendment; and that the Complaint fails to state a claim upon which relief can be granted.<sup>17</sup>

On October 8, 2024, Plaintiff filed the complaint, and an Order to Seal was filed the following day. On January 13, 2025, Defendant filed a Motion to Dismiss and Memorandum in Support pursuant to CR 12.02. Plaintiff filed a Response on March 13, 2025. Defendant thereafter filed a Reply in Support of the Motion to Dismiss on April 10, 2025. This Court heard arguments on the motion on May 1, 2025. On May 5, 2025, Defendant filed a Notice of Filing Supplemental Authority in Support of its Motion to Dismiss. On May 12, 2025, the Commonwealth filed a sur-reply with leave of the Court. On May 29, 2025, the Commonwealth filed a Notice of Filing Supplemental Authority in Support of its Response in Opposition. On June 26, 2025, Defendant

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<sup>12</sup> *Id.* at 41-63.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 112-113.

<sup>17</sup> Defendant's March 13, 2025, Response ("Response").

filed a Response to the Commonwealth's Notice. On September 5, 2025, the Commonwealth filed a Second Notice of Filing Supplemental Authority, to which Defendant Responded on September 9, 2025. On October 31, 2025, the Commonwealth filed a Third Notice of Supplemental Authority, to which Defendant filed a response on November 6, 2025. On November 12, 2025, the Commonwealth filed a Fourth Notice of Filing Supplemental Authority, to which Defendant responded on November 14, 2025.

The parties have not tendered a notice of submission. However, the Court observes that no further notices have been filed since November 12, 2025; as such, this matter is ripe for decision.

## LEGAL STANDARD

### A. Personal Jurisdiction

Under CR 12.02(b), the plaintiff bears the burden of establishing personal jurisdiction.<sup>18</sup> When the Court resolves the motion without an evidentiary hearing, the plaintiff need only make a *prima facie* showing.<sup>19</sup> This burden is met by establishing with reasonable particularity sufficient contacts between the non-resident defendant and the forum state to support jurisdiction.<sup>20</sup> Kentucky Courts apply a two-step inquiry:

1. Whether Kentucky's long-arm statute, KRS 454.210, is satisfied;<sup>21</sup> and
2. Whether the exercise of jurisdiction comports with federal due process.<sup>22</sup>

Due process requires minimum contacts such that the defendant should reasonably anticipate being subjected to suit in Kentucky. For internet-based contacts, the Kentucky Supreme Court

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<sup>18</sup> Ky. CR Rule ("CR") 12.02(b).

<sup>19</sup> *Hinners v. Robey*, 336 S.W.3d 891, 893 (Ky. 2011).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

follows the proportionality approach derived from *Zippo*, examining the nature and quality of the commercial activity conducted online.<sup>23</sup>

## **B. Failure to State a Claim**

Under CR 12.02(f), dismissal is appropriate only when it appears the Plaintiff would not be entitled to relief under any set of facts provable under the complaint.<sup>24</sup> Kentucky follows notice pleading.<sup>25</sup> Under Kentucky law, a motion to dismiss under CR 12.02 should only be sustained if “the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.”<sup>26</sup> The court is not required to make any factual determinations, it must simply decide whether, taking the facts as alleged in the complaint as true, would the plaintiff be entitled to relief. The facts pled in the Complaint are to be assumed to be true for the purpose of review of this motion; however, the Plaintiff has the burden to sufficiently plead each essential element of its claims.<sup>27</sup> In order to survive a motion to dismiss, there must be direct or inferential allegations of all material elements in the complaint.<sup>28</sup>

## **ANALYSIS**

### **I. Personal Jurisdiction**

#### **A. Purposeful Availment and Specific Jurisdiction**

The Commonwealth alleges that TikTok entered hundreds of thousands of bilateral contractual relationships with Kentucky residents; knowingly placed its application on devices located in Kentucky; sold and delivered targeted advertising to Kentucky users; permitted geographically restricted advertising within Kentucky specific counties; and collected geolocation

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<sup>23</sup> *Id.* at 893 (Ky. 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1120 (W.D. Pa. 1997)

<sup>24</sup> CR 12.02(f).

<sup>25</sup> *Russell v. Johnson & Johnson, Inc.*, 610 S.W.3d 233 (Ky. 2020).

<sup>26</sup> *James v. Wilson*, 95 S.W.3d, 875, 883 (Ky. App. 2002) (quoting *Pari-Mutuel Clerks' Union v. Ky. Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977)).

<sup>27</sup> *James v. Wilson*, 95 S.W.3d at 895-96 (Ky. App. 2002).

<sup>28</sup> *Hunter v. Sec'y of U.S. Army*, 565 F.3d 986, 992 (6<sup>th</sup> Cir. 2009).

data identifying Kentucky users. Unlike the single contractual contact in *Hinners*<sup>29</sup>, the allegations here describe large-scale, continuous, and systematic commercial activity directed at Kentucky residents. Under the *Zippo* interactivity test adopted in *Hinners*, jurisdiction is proper where a defendant enters contracts with forum residents involving knowing and repeated transmission of computer files.<sup>30</sup> This Court finds that Defendant’s alleged conduct, far from random, constitutes purposeful availment of the privilege of conducting business in Kentucky.

### **B. Arising From**

The Commonwealth’s claims arise directly from Defendant’s alleged design choices, marketing representations, and commercial conduct directed towards Kentucky residents. The alleged harms were experienced in Kentucky, by Kentucky consumers. The Sixth Circuit has clarified that the proper inquiry is not where the plaintiff experienced injury, but whether the defendant’s conduct connects it to the forum in a meaningful way.<sup>31</sup> The Complaint sufficiently alleges such meaningful connections.

### **C. Reasonableness**

Defendant does not meaningfully contest that, if the “purposeful availment” and “arising from prongs” are satisfied, jurisdiction would be reasonable. Given the scale of Defendant’s national and international operations, defending suit in Kentucky does not impose an unconstitutional burden. Courts in analogous actions brought by other states have rejected similar arguments.<sup>32</sup> This Court concludes that the exercise of specific personal jurisdiction over TikTok comports with due process.

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<sup>29</sup> *Hinners*, 336 S.W.3d at 893.

<sup>30</sup> *Id.* at 893; *Zippo*, 952 F. Supp. at 1120.

<sup>31</sup> *Bulso v. O’Shea*, 730 F. App’x 347, 349 (6th Cir. 2018) (quoting *Walden v. Fiore*, 571 U.S. 277, 134 S. Ct. 1115 (2014)).

<sup>32</sup> See *Tennessee v. Meta* (APP028); *Vermont v. Meta* (APP062); *Arkansas v. TikTok inc.* (APP013).

## II. Section 230

Section 230(c)(1) of the Communications Decency Act provides that no provider of an interactive computer service shall be treated as the publisher or speaker of information provided by another information content provider.<sup>33</sup> The central inquiry is whether the Plaintiff's claims treat the Defendant as the publisher or speaker of the third-party content.<sup>34</sup>

The Commonwealth alleges liability based on TikTok's alleged addictive product design features; manipulative engagement mechanisms; misrepresentations regarding safety and time management tools; and deceptive omissions regarding known harms. The Complaint expressly disclaims liability premised on the substance of user-generated content. As the Ninth Circuit held, negligent product design claims do not treat a platform as a publisher of third-party content where the alleged duty arises from the defendant's own design decisions.<sup>35</sup>

Similarly, courts in Vermont, Tennessee, Arkansas, Massachusetts, and the District of Columbia have rejected Section 230 defenses in analogous state consumer protection actions against social media platforms.<sup>36</sup> Since the Commonwealth's claims arise from allegations centering on Defendant's own conduct and representations, rather than treating TikTok as the publisher of specific third-party content, Section 230 does not mandate dismissal at this stage.

The Commonwealth filed a Notice of Supplemental Authority attaching the recent decision of the Nevada Supreme Court.<sup>37</sup> Defendant responded contending that the Nevada decision

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<sup>33</sup> 47 U.S.C.S. § 230(c)(1).

<sup>34</sup> *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 328 (4th Cir. 1997).

<sup>35</sup> *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1098 (9th Cir. 2009).

<sup>36</sup> *Vermont v. Meta* (APP062-79); *Tennessee v. Meta* (APP028-61); *Arkansas v. TikTok* (APP013-27); *Massachusetts v. Meta* (APP136-63); *District of Columbia v. Meta* (APP164-205); and *In re Soc. Media Adolescent Addiction/Pers. Injury Prods. Liab. Litig.*, 702 F.Supp.3d at 829-35; *see also* F.Supp.3d\_, 2024 WL 4532937 (N.D. Cal. Oct. 15, 2024), *appeal filed* (APP206-307).

<sup>37</sup> Commonwealth's November 12, 2025 Fourth Notice of Filing Supplemental Authority ("Fourth Notice").

conflicts with federal precedent and should not be followed.<sup>38</sup> This Court recognizes that the Nevada decision is not binding authority. It is considered only for its persuasive value.

In *In Re TikTok Inc.*, the Nevada Supreme Court concluded that certain state consumer protection and product design claims were not barred by Section 230 where the alleged duty arose from the platform's own design choices and representations rather than from third-party content itself.<sup>39</sup> The court emphasized the distinction between claims seeking to hold a platform liable for publishing specific content and claims challenging the platform's own conduct in structuring and marketing its product. That distinction is consistent with federal appellate authority recognizing that Section 230 does not provide blanket immunity for a platform's own allegedly wrongful conduct.<sup>40</sup> The operative question remains whether the cause of action necessarily requires treating the defendant as the publisher or speaker of third-party information.<sup>41</sup>

Here, the Commonwealth's theory of liability does not depend upon the contents of any particular video or post. Instead, the claims challenge the design of recommendation features, engagement mechanics, and alleged misrepresentations regarding safety tools. At this stage, this Court must accept as true the allegation that the duties alleged arise from Defendant's own commercial conduct and representations.

To the extent the Nevada court addressed similar theories, this Court finds its reasoning persuasive insofar as it reinforces the principle that Section 230 does not bar claims directed at a platform's own design and advertising practices. To the extent the parties dispute the scope of the

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<sup>38</sup> Defendant's November 14, 2025 Response to Commonwealth's Fourth Notice of Filing Supplemental Authority ("Response to Fourth Notice").

<sup>39</sup> *TikTok, Inc., et al. v. Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, et al.*, No. 89709, 141 Nev. Advance Opinion 51 (Nev. Nov. 6, 2025) (the "Nevada Opinion").

<sup>40</sup> *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1098 (9th Cir. 2009).

<sup>41</sup> *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 328 (4th Cir. 1997).

decision, this Court's ruling rests independently on federal statutory interpretation and controlling precedent.

Accordingly, Section 230, does not mandate dismissal at this stage.

### III. First Amendment

Defendant relies heavily on *Moody v. NetChoice*.<sup>42</sup> In *Moody*, the United States Supreme Court addressed state statutes that restricted social media platforms' ability to moderate, remove, or prioritize third party-content.<sup>43</sup> However, this case is distinguishable. The Commonwealth does not seek to compel publication of specific content, restrict content moderation, or mandate viewpoint neutrality. Nor does the Complaint challenge Defendant's right to curate expressive content. Rather, it alleges that Defendant engaged in deceptive and unfair business practices in violation of the applicable consumer protection laws.

The First Amendment protects expressive editorial judgment.<sup>44</sup> It does not categorically immunize commercial entities from applicable laws regulating deceptive conduct or misleading commercial speech.<sup>45</sup> The Supreme Court has repeatedly recognized that false or misleading commercial speech is not protected.<sup>46</sup>

This Court is mindful that algorithmic curation can implicate expressive interests.<sup>47</sup> However, at the pleading stage, the Commonwealth's claims are framed as targeting the commercial design and marketing of the product, not the communicative content of individual user posts. Whether discovery will show that the claims impermissibly intrude upon protected editorial discretion is a question for a more developed factual record.

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<sup>42</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707, 144 S. Ct. 2383 (2024).

<sup>43</sup> *Id.*

<sup>44</sup> USCS Const. Amend. 1.

<sup>45</sup> *Associated Press v. United States*, 326 U.S. 1, 65 S. Ct. 1416 (1945).

<sup>46</sup> *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 593, 100 S. Ct. 2343, 2365 (1980).

<sup>47</sup> *Moody*, 603 U.S. 707.

Accordingly, this Court finds that the First Amendment does not bar the Commonwealth's claims at this stage.

#### **IV. KCPA CLAIMS**

##### **A. Unfair Acts**

The Complaint alleges that Defendant intentionally designed its platform to exploit developmental vulnerabilities in young users, causing substantial injury. These allegations, taken as true, satisfy the statutory definition of unfair practices under KRS 367.170.<sup>48</sup> This Court finds that the Complaint alleges substantial injury, lack of countervailing benefits, and consumer impact sufficient to state an unfairness claim under KRS 367.170.<sup>49</sup>

##### **B. Deceptive Acts**

Plaintiff alleges specific, identifiable misrepresentations, including statements by corporate executives concerning time optimization, screen time tools, and content moderation practices. Even if heightened pleading applied, the Complaint identifies specific statements, explains why it alleges these statements are false or misleading, and alleges knowledge of falsity supported by internal documents. With respect to deception, the Complaint identifies specific public statements, explains why they are alleged to be misleading, and alleges knowledge supported by internal materials. These allegations are sufficient to survive dismissal. Kentucky courts construe the KCPA broadly.<sup>50</sup> This Court declines to impose CR 9.02's fraud pleading standard on statutory KCPA claims not sounding in fraud.<sup>51</sup>

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<sup>48</sup> Ky. Rev. Stat. ("KRS") § 367.170.

<sup>49</sup> KRS § 367.170.

<sup>50</sup> *Stevens v. Motorists Mut. Ins. Co.*, 759 S.W.2d 819, 819 (Ky. 1988).

<sup>51</sup> CR 9.02.

**V. Standing**

The Attorney General possesses broad statutory authority to enforce the KCPA and to proceed in *parens patriae* to protect the public interest.<sup>52</sup> The Commonwealth alleges harm to Kentucky consumers and minors statewide. These allegations of statewide consumer harm sufficiently support standing at this stage.

**VI. Conclusion**

Taking the allegations as true and drawing all reasonable inferences in favor of the Commonwealth, this Court finds:

1. Personal jurisdiction is proper;
2. Section 230 does not bar the claims at this stage;
3. The First Amendment does not preclude this action; and
4. The Complaint states viable claims under the KCPA and related theories.

IT IS HEREBY ORDERED that the Motion to Dismiss of Defendant TikTok, Inc., *et. al.*, is DENIED.

SO ORDERED AND ENTERED this 20th day of February 2026.



HON. KATHRYN H. GABHART  
SCOTT CIRCUIT COURT  
DIVISION II

DISTRIBUTION: Parties of Record

<sup>52</sup> KRS § 15.020.