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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 FIRST
AMENDED COMPLAINT; DISMISSING
ACTION**

Before the Court is defendant Reddit, Inc.'s ("Reddit") "Motion," filed September 15, 2023, "to Dismiss First Amended 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 FAC ¶ 21 (internal quotation and citation omitted).) On Reddit, "[u]sers post, comment, vote, discuss, learn, debate, support, and connect with people," while "[m]oderators create and manage the communities" (see id. ¶ 21), called subreddits (see id. ¶ 35).

On January 31, 2012, Rogozinski launched the "r/WallStreetBets" subreddit,

¹ By order filed November 27, 2023, the Court took the matter under submission.

² The following facts are taken from the First Amended Complaint ("FAC").

1 “serving as the forum’s first moderator” (see id. ¶ 28), with the purpose being to “provide[]
2 a forum for members to exchange information and content related to the financial
3 industry” (see id. ¶ 3). Leading up to the launch of the r/WallStreetBets subreddit,
4 Rogozinski “spent several weeks creating the WALLSTREETBETS logo and developing
5 the overall look, feel, and design of the site by using CSS³ to create code to modify
6 Reddit’s template page” (see id. ¶ 27), and thereafter started an “Internet Relay Chat
7 chatroom,” “Discord channel,” and “Twitter account” using the WALLSTREETBETS name
8 (see id. ¶¶ 34-35, 38). Additionally, he started a chatroom under the name WSB, “an
9 abbreviation for WALLSTREETBETS.” (See id. ¶ 36.) By 2020, the r/WallStreetBets
10 subreddit had over “1,000,000 million subscriber[s].” (See id. ¶ 39.)

11 On March 24, 2020, Rogozinski “filed an application with the United States Patent
12 and Trademark Office (“USPTO”) to register the mark WALLSTREETBETS.” (See id.
13 ¶ 53.) Shortly thereafter, on April 7, 2020, Reddit notified him that his account had been
14 placed on a seven-day suspension for “attempting to monetize a community” and that he
15 was “no longer permitted to moderate communities on [R]eddit.” (See id. ¶ 54.) On
16 January 12, 2022, Rogozinski submitted a trademark application for WSB, “for which [he]
17 asserted a date of first use in commerce of April 15, 2021.” (See id. ¶ 77.) On June 7,
18 2022, “that registration issued.” (Id.)

19 Based on the above, Rogozinski asserts the following claims for relief: (1) “a
20 declaratory judgment that he, and not Reddit, is the owner of the WALLSTREETBETS
21 and WSB trademarks” (Count I); (2) “infringement of WALLSTREETBETS trademark” in
22 violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a) (Count II); (3) “infringement of
23 registered WSB trademark” in violation of Lanham Act § 32, 15 U.S.C. § 1114 (Count III);
24 (4) “violation of right of publicity” (Count IV); (5) “breach of contract” (Count V); (6)

25

26 ³ CSS is an abbreviation for Cascading Style Sheets. (See FAC ¶ 26 (citing
27 Reddit, Edit Stylesheet, [https://mods.reddithelp.com/hc/en-us/articles/360003000471-
28 Edit-Stylesheet](https://mods.reddithelp.com/hc/en-us/articles/360003000471-Edit-Stylesheet) (last visited Aug. 10, 2023) (explaining a moderator can “use the edit
stylesheet option in [the] moderation tools at the bottom of [the moderator’s] sidebar to
customize the look and feel of [the moderator’s] community using CSS”).)

1 “violation of duty of good faith and fair dealing” (Count VI); and (7) “unfair competition” in
2 violation of Cal. Bus. & Prof. Code § 17200, et seq. (Count VII). (See id. ¶¶ 97-157.)

3 **LEGAL STANDARD**

4 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure “can be
5 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
6 under a cognizable legal theory.” See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696,
7 699 (9th Cir. 1990). Rule 8(a)(2), however, “requires only ‘a short and plain statement of
8 the claim showing that the pleader is entitled to relief.’” See Bell Atlantic Corp. v.
9 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, “a
10 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
11 allegations.” See id. Nonetheless, “a plaintiff’s obligation to provide the grounds of his
12 entitlement to relief requires more than . . . a formulaic recitation of the elements of a
13 cause of action.” See id. (internal quotation, citation, and alteration omitted).

14 In analyzing a motion to dismiss, a district court must accept as true all material
15 allegations in the complaint and construe them in the light most favorable to the
16 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). “To
17 survive a motion to dismiss,” however, “a complaint must contain sufficient factual
18 material, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
19 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “Factual
20 allegations must be enough to raise a right to relief above the speculative level,”
21 Twombly, 550 U.S. at 555, and courts “are not bound to accept as true a legal conclusion
22 couched as a factual allegation,” see Iqbal, 556 U.S. at 678 (internal quotation and
23 citation omitted).

24 **DISCUSSION**

25 By order filed July 11, 2023, the Court dismissed Rogozinski’s initial February 15,
26 2023, Complaint in its entirety. In so ruling, the Court identified specific deficiencies as to
27 each of the causes of action alleged therein and afforded Rogozinski leave to amend to
28 cure those deficiencies. By the instant motion, Reddit argues Rogozinski has failed to

1 cure the deficiencies previously identified by the Court. The Court considers in turn the
2 seven causes of action.

3 **A. Trademark Claims**

4 In the initial Complaint, Rogozinski alleged four federal trademark claims. In the
5 FAC, he asserts three of those federal claims as amended.⁴

6 **1. Count I – Declaratory Judgment**

7 In Count I, Rogozinski “seeks a declaratory judgment that he, and not Reddit, is
8 the owner of the WALLSTREETBETS and WSB trademarks.” (See FAC ¶ 104.)

9 **a. WALLSTREETBETS**

10 By its prior order, the Court dismissed with leave to amend Rogozinski’s claim for
11 declaratory judgment as alleged in his initial Complaint. In so ruling, the Court noted that
12 Rogozinski “acknowledge[d] in the Complaint that ‘Reddit uses the WALLSTREETBETS
13 trademark in commerce by operating the r/WallStreetBets subreddit’” (see Order Granting
14 Defendant’s Motion to Dismiss (“Order of Dismissal”), filed July 11, 2023, at 6:5-7
15 (quoting Complaint ¶ 73)), that he did “not allege his own use of the mark for any purpose
16 prior to January 31, 2012” (id. at 7:10-11), the “date on which [the r/WallStreetBets]
17 subreddit was created” (id. at 7:7-8), and, indeed, that he did “not assert he was the first
18 to use the mark in commerce” (id. at 5:2-3). In light thereof, the Court found Rogozinski
19 “fail[ed] to plead ownership rights in the WALLSTREETBETS mark.” (Id. at 7:12-13.)

20 Rogozinski, citing newly added allegations concerning events occurring before the
21 launch of the r/WallStreetBets subreddit, now argues those allegations establish his first
22 use in commerce. As set forth below, the Court is not persuaded.

23 In trademark law, “the standard test of ownership is priority of use.” See Sengoku
24 Works Ltd. v. RMC Int’l, Ltd., 96 F.3d 1217, 1219 (9th Cir.), as modified, 97 F.3d 1460
25 (9th Cir. 1996). “To acquire ownership of a trademark it is not enough to have invented

26 _____
27 ⁴ In the FAC, Rogozinski omits the Federal Trademark Dilution claim brought in his
28 initial Complaint and expands his claim for declaratory judgment to include the “WSB”
mark.

1 the mark first or even to have registered it first; the party claiming ownership must have
2 been the first to actually use the mark in the sale of goods or services.” See id. In other
3 words, “a party pursuing a trademark claim must meet a threshold ‘use in commerce’
4 requirement.” See Rearden LLC v. Rearden Com., Inc., 683 F.3d 1190, 1203 (9th Cir.
5 2012).

6 Although, as Rogozinski points out, “trademark rights can vest even before any
7 goods or services are actually sold if the totality of one’s prior actions, taken together, can
8 establish a right to use the trademark” (see Pl.’s Opp’n at 17:21-24 (quoting Brookfield
9 Commc’ns, Inc. v. W. Coast Ent. Corp., 174 F.3d 1036, 1052)), Rogozinski fails to make
10 the requisite factual showing. In particular, the mark must be “use[d] in a way sufficiently
11 public to identify or distinguish the marked goods in an appropriate segment of the public
12 mind as those of the adopter of the mark.” See Brookfield Commc’ns, Inc. 174 F.3d at
13 1052 (internal quotation, citation, and alteration omitted).

14 Here, Rogozinski’s new allegation, namely, that before the launch of the
15 r/WallStreetBets subreddit, he “spent several weeks creating the WALLSTREETBETS
16 logo and developing the overall look, feel, and design of the site by using CSS to create
17 code to modify Reddit’s template page” (see FAC ¶ 27), is readily distinguishable from
18 the circumstances deemed sufficient by the Ninth Circuit and other courts. See New
19 West Corp. v. NYM Co. of Cal., 595 F.2d 1194, 1199 (9th Cir. 1979) (holding magazine
20 title was mark used in commerce prior to sale of magazine where plaintiff mailed
21 “430,000 solicitations to prospective customers” and also mailed “mock-up issue[s] to
22 advertisers . . . on which the [mark] was placed”); see, e.g., Marvel Comics Ltd. v.
23 Defiant, a Div. of Enlightened Ent. Ltd., 837 F. Supp. 546, 548-49 (S.D.N.Y. 1993)
24 (holding ownership rights established in comic book title through presale “promotional
25 activity,” including announcement of mark to 13 million comic book readers).

26 Likewise unavailing are Rogozinski’s additional allegations that he “created an IRC
27 or Internet Relay Chat chatroom,” launched a “Discord channel,” and “created the
28 WALLSTREETBETS Twitter account (@wallstreetbets).” (See FAC ¶¶ 34-35, 38.) In the

1 FAC, the creation of the IRC chatroom, Discord channel, and Twitter account are alleged
2 to have occurred “after . . . Rogozinski launched WALLSTREETBETS on the Reddit
3 platform” (see id. ¶ 34; see also id. ¶¶ 35, 38), and, consequently, cannot constitute a first
4 use in commerce.

5 Lastly, and also unpersuasive, is Rogozinski’s reliance on his allegation that the
6 “launch and operation of the WALLSTREETBETS name in conjunction with financial
7 information and forum services and related goods and services was his use of a mark in
8 United States commerce.” (See id. ¶ 99.) Rogozinski’s argument in support thereof is, in
9 essence, the same argument he previously made in support of this claim as alleged in
10 the initial Complaint, and which the Court found unpersuasive. (See Order of Dismissal
11 at 6:5-7:13.)

12 **b. WSB**

13 In the initial Complaint, Rogozinski sought a declaration of ownership only as to
14 the WALLSTREETBETS mark. In the FAC, Rogozinski now seeks such relief with regard
15 to the WSB mark as well.

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

22 In its prior order, the Court noted Rogozinski had alleged that “Reddit’s infringing
23 activity began on April 7, 2020,” and that his “application for the WSB mark lists April 15,
24 2021, as the ‘first use in commerce’ date, which is later than Reddit’s alleged use of the
25 mark.” (See Order of Dismissal at 8:17-26.) In the FAC, those facts remain essentially
26 unchanged. Nowhere in the FAC does Rogozinski allege he used the WSB mark prior to
27 its use on Reddit, nor does he allege any other facts that would establish him as the
28 owner of the WSB mark.

1 Accordingly, the First Cause of Action is subject to dismissal.

2 **2. Count II – Infringement of WALLSTREETBETS Trademark**

3 In Count II, Rogozinski asserts Reddit is infringing the WALLSTREETBETS mark.
4 (See FAC ¶ 110.)

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

11 In its prior order, the Court dismissed with leave to amend Rogozinski’s claim
12 alleging infringement of the WALLSTREETBETS mark. The Court found Rogozinski
13 failed, as noted, to sufficiently plead first use in commerce of the WALLSTREETBETS
14 mark, and, consequently, found he failed to plead ownership rights in said mark. (See
15 Order of Dismissal at 7:25-27.) As set forth above, Rogozinski again fails to plead first
16 use in commerce of the WALLSTREETBETS mark.

17 Accordingly, the Second Cause of Action is subject to dismissal.

18 **3. Count III – Infringement of WSB Trademark**

19 In Count III, Rogozinski asserts Reddit is infringing the WSB mark. (See FAC
20 ¶ 125.)

21 In its prior order, the Court dismissed with leave to amend Rogozinski’s claim
22 alleging infringement of the WSB mark, finding, as with WALLSTREETBETS, Rogozinski
23 failed to adequately plead first use in commerce. (See Order of Dismissal at 8:8-9:1; see
24 also id. at 6:7-12 (citing USTPO finding that “Reddit is the one providing the online forum,
25 not [Rogozinski]”).

26 In opposition to the instant motion, Rogozinski now argues that, “[e]ven assuming
27 [his] launch and operation of WALLSTREETBETS was Reddit’s use of the mark and not
28 his,” his infringement claim survives because he is “the senior user” of WSB in the

1 “cryptocurrency-related goods and services” market. (See id. at 22:3-12.) In support
2 thereof, Rogozinski asserts that he “owns U.S. Trademark Registration No. 6754487 for
3 the WSB mark in connection with certain cryptocurrency-related services with a date of
4 first [use in commerce] of April 15, 2021” and that Reddit infringed when it “entered this
5 market after [him], with its initial foray into the market taking place in 2022, and its
6 collaboration with WALLSTREETBETS moderators occurring in January 2023.” (See
7 Pl.’s Opp’n at 21:11-15; 22:9-11; see also FAC ¶ 77; FAC ¶¶ 80-81 (alleging Reddit
8 released “Reddit’s Avatars collection in July 2022,” and, in 2023, “partnered with the
9 post-Mr. Rogozinski moderators of WALLSTREETBETS to push the company’s Avatars
10 to WALLSTREETBETS users”) (citation omitted).)

11 Even assuming, arguendo, Rogozinski has adequately pleaded priority rights to
12 the WSB mark in the cryptocurrency-related goods and services market and that Reddit’s
13 avatars fall into such market, he has failed to adequately plead facts showing
14 infringement. As Reddit points out, Rogozinski does not allege that any such avatars
15 display the WSB mark or that Reddit has used the WSB mark in any other manner in
16 connection with such market. See, e.g., Naked Cowboy v. CBS, 844 F. Supp. 2d 510,
17 515 (S.D.N.Y. 2012) (dismissing trademark infringement claim where plaintiff’s mark “did
18 not appear anywhere” in defendant’s allegedly infringing television program).

19 Accordingly, the Third Cause of Action is subject to dismissal.

20 **B. State Law Claims**

21 In the FAC, Rogozinski asserts the same five claims for alleged violation of state
22 laws as alleged in his initial Complaint. The Court addresses each such claim below.

23 **1. Communications Decency Act § 230 (Counts IV, V, VI, and VII)**

24 In its prior order, the Court found Rogozinski’s claims for violation of the common
25 law right of publicity (Count IV), breach of contract (Count V), violation of the duty of good
26 faith and fair dealing (Count VI), and, in part,⁵ violation of California’s Unfair Competition
27

28 ⁵ The Court found the UCL claim was not barred to the extent said claim was based on Reddit’s alleged “practice of asserting trademark rights in the brand names of

1 Law (“UCL”) (Count VII) were barred by section 230 of the Communications Decency Act
2 of 1996, 47 U.S.C. § 230 (“CDA”). (See Order of Dismissal at 12:26-13:1; 13:24-26.)

3 Section 230 “protects from liability (1) a provider or user of an interactive computer
4 service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a
5 publisher or speaker (3) of information provided by another information content provider.”
6 Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1100-01 (9th Cir. 2009), as amended (Sept. 28,
7 2009).

8 Here, as to his claim alleging violation of the common law right of publicity,
9 Rogozinski, citing Fair Housing Council of San Fernando Valley v. Roommates.com,
10 LLC, 521 F.3d 1157, 1162 (9th Cir. 2008), argues Reddit fails the third requirement for
11 section 230 immunity because, according to Rogozinski, Reddit acted as a content
12 provider, not merely as a publisher of another party’s content. See id. at 1162 (explaining
13 “[a] website operator can be both a service provider and a content provider”). Here, by
14 contrast, Rogozinski alleges that “the WALLSTREETBETS forum changed after his ban”
15 (see Pl.’s Opp’n at 12:25-26 (citing FAC ¶ 91-93)), that “Reddit partnered with the post-
16 Mr. Rogozinski moderators of WALLSTREETBETS to push the company’s Avatars to
17 WALLSTREETBETS users” (see FAC ¶ 81), and that “WALLSTREETBETS’ artwork and
18 even its editorial agenda is under the influence of Reddit” (see Pl.’s Opp’n at 16:8-9
19 (citing FAC ¶ 82-83)).

20 Rogozinski’s reliance on Fair Housing is misplaced. In Fair Housing, the Ninth
21 Circuit held section 230 inapplicable where the defendant therein was an online
22 roommate matching service, and, “entirely [of] its doing,” created questions and provided
23 “pre-populated answers” as a condition of accessing its services. See Fair Housing, 521
24 F.3d at 1165-66; see also Anthony v. Yahoo! Inc., 421 F. Supp. 2d 1257, 1262-63 (N.D.

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26 _____
27 subreddits,” which allegation the Court reasoned did not derive from “[Reddit’s] status or
28 conduct as a ‘publisher or speaker.’” (See Order of Dismissal at 13:6-11 (citation
omitted).) As to the remainder of the UCL claim, the Court held Rogozinski “lacks
standing.” (See id. at 14:7-8.)

1 Cal. 2006) (finding defendant acted as content provider where it created dating profiles
 2 for its online dating service). Rogozinski, by contrast, does not allege Reddit had a hand
 3 in creating, even in part, any artwork or posts by users or moderators nor that Reddit
 4 required any content to be posted. See, e.g., Blumenthal v. Drudge, 992 F. Supp. 44, 51-
 5 52 (D.D.C. 1998) (holding defendant immune under section 230 despite its having
 6 retained “certain editorial rights with respect to the content provided by [gossip
 7 columnist]” and having “affirmatively promoted [gossip columnist’s]” report).

8 Next, as to the breach of contract and breach of good faith and fair dealing claims,
 9 Rogozinski, citing “Barnes v. Yahoo!, Inc., 570 F.3d 1096 (9th Cir. 2009),” argues such
 10 claims are “allowe[d] . . . to proceed despite section 230.” (See Pl.’s Opp’n at 15:21-24.)
 11 As noted in the Court’s prior order, however, Barnes is distinguishable on its facts in that
 12 the Ninth Circuit found the claims therein were based on a theory of promissory estoppel,
 13 and, consequently, liability “would come not from [the defendant’s] publishing conduct,
 14 but from [its] manifest intention to be legally obligated to do something.” See Barnes 570
 15 F.3d at 1107. Here, by contrast, Rogozinski alleges Reddit breached its contract and its
 16 duty of good faith and fair dealing by suspending him as a moderator (see FAC ¶¶ 141,
 17 148), actions clearly within its role as a publisher under the CDA.

18 Rogozinski cites no other authority in support of his argument, and, indeed,
 19 numerous courts have found breach of contract claims barred by section 230. See, e.g.,
 20 King v. Facebook, Inc., 845 F. App’x 691, 692, 692 (9th Cir. 2021) (affirming dismissal
 21 under section 230 where plaintiff’s breach of contract claim was based on defendant’s
 22 removal of plaintiff’s content and temporary suspension from social media website);
 23 Cross v. Facebook, Inc., 14 Cal. App. 5th 190, 206, 222 Cal. Rptr. 3d 250, 263 (2017)
 24 (holding section 230 barred breach of contract claim arising out of defendant’s refusal to
 25 remove offensive content from website); Yuksel v. Twitter, Inc., No. 22-CV-05415-TSH,
 26 2022 WL 16748612, at *5 (N.D. Cal. Nov. 7, 2022) (explaining section 230 “does not
 27 provide any exception for contract claims”).

28 Lastly, to the extent Rogozinski’s UCL claim is based on Reddit’s actions as a

1 publisher, Rogozinski offers no new argument, let alone authority, suggesting Reddit is
2 not immune under section 230.

3 Accordingly, Rogozinski’s claims alleging violation of the right of publicity, breach
4 of contract, violation of the duty of good faith and fair dealing, and, to the above-
5 referenced extent, violation of the UCL are subject to dismissal.

6 **2. Standing (Count VIII – Violation of California’s Unfair Competition**
7 **Law)**

8 As noted, the Court, in its prior order, dismissed for lack of standing and with leave
9 to amend, Rogozinski’s UCL claim to the extent such claim is based on Reddit’s
10 “engag[ing] in a practice of asserting trademark rights in the brand names of subreddits.”
11 (See Order of Dismissal at 14:2-8.) In particular, the Court found Rogozinski failed to
12 plead he suffered an injury as a result of such conduct. (See id. at 14:18-15:8); see also
13 Mai v. Supercell Oy, 648 F. Supp. 3d 1130, 1134 (N.D. Cal. 2023) (holding “[a] person
14 has statutory standing only if he or she ‘has suffered injury in fact and has lost money or
15 property as a result of the unfair competition’”) (quoting Cal. Bus. & Prof. Code § 17204).

16 In the FAC, the only new allegation as to injury is Rogozinski’s assertion that “he
17 would have never spent more than eight years building an audience” on Reddit had he
18 known it “could be seized by Reddit at any moment.” (See FAC ¶ 33.) An assertion one
19 spent time one otherwise would not have spent does not suffice to plead the requisite
20 element. See Bass v. Facebook, Inc., 394 F. Supp. 3d 1024, 1040 (N.D. Cal. 2019)
21 (finding, where plaintiff “alleged harm arising from . . . loss of time,” plaintiff “ha[d] not
22 sufficiently alleged standing under [UCL]”); see also Sapan v. Auth. Tax Servs., LLC, No.
23 13CV2782 JAH (JLB), 2014 WL 12493282, at *4 (S.D. Cal. July 15, 2014) (explaining
24 “[l]ost time is insufficient to recover damages under a UCL claim”).

25 Accordingly, Rogozinski’s UCL claim, to the extent based on Reddit’s “engag[ing]
26 in a practice of asserting trademark rights in the brand names of subreddits,” is subject to
27 dismissal.


28 //

1 **CONCLUSION**

2 For the reasons stated above, Defendant Reddit, Inc.'s Motion to Dismiss is
3 hereby GRANTED, and the First Amended Complaint is hereby DISMISSED without
4 further leave to amend.

5
6 **IT IS SO ORDERED.**

7
8 Dated: January 12, 2024


MAXINE M. CHESNEY
United States District Judge