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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LONA'S LIL EATS, LLC,
Plaintiff,
v.
DOORDASH, INC.,
Defendant.

Case No. [20-cv-06703-TSH](#)
ORDER RE: MOTION TO DISMISS
Re: Dkt. No. 29

I. INTRODUCTION

In this putative class action, Plaintiff brings claims for purported violations of the Lanham Act, California’s false advertising statute, and California’s unfair competition statute, alleging that Defendant misrepresents to consumers that it provides delivery and pick-up services for non-partner restaurants and then misrepresents the restaurants are closed, do not offer delivery services, or are unavailable for pick-up orders. Pending before the Court is Defendant’s Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 29. Plaintiff filed an Opposition, ECF No. 30, and Defendant filed a Reply, ECF No. 31. The Court finds this matter suitable for disposition without oral argument and **VACATES** the January 21, 2021 hearing. *See* Civ. L.R. 7-1(b). Having considered the parties’ positions, relevant legal authority, and the record in this case, the Court **DENIES** Defendant’s motion for the following reasons.

II. BACKGROUND

Plaintiff Lona’s Lil Eats, LLC (“Lona’s”), alleges the following:

Defendant DoorDash, Inc. is in the business of delivering food for restaurants via its websites and mobile apps. Compl. ¶ 2, ECF No. 26. DoorDash has partnerships with certain

1 from customers using its websites or mobile app, which orders are then relayed to the partner
2 restaurants. *Id.* A customer who places an order using DoorDash’s platforms can select to have
3 the food delivered by DoorDash or can choose to pick it up themselves. *Id.* If a customer wants
4 delivery, DoorDash will engage someone from its network of drivers to go to the restaurant, pick
5 up the order, and deliver it to the customer. *Id.* ¶ 2. DoorDash then collects payments from the
6 customer for these orders and also withholds various commissions and fees from partner
7 restaurants in exchange for its services. *Id.* ¶ 10.

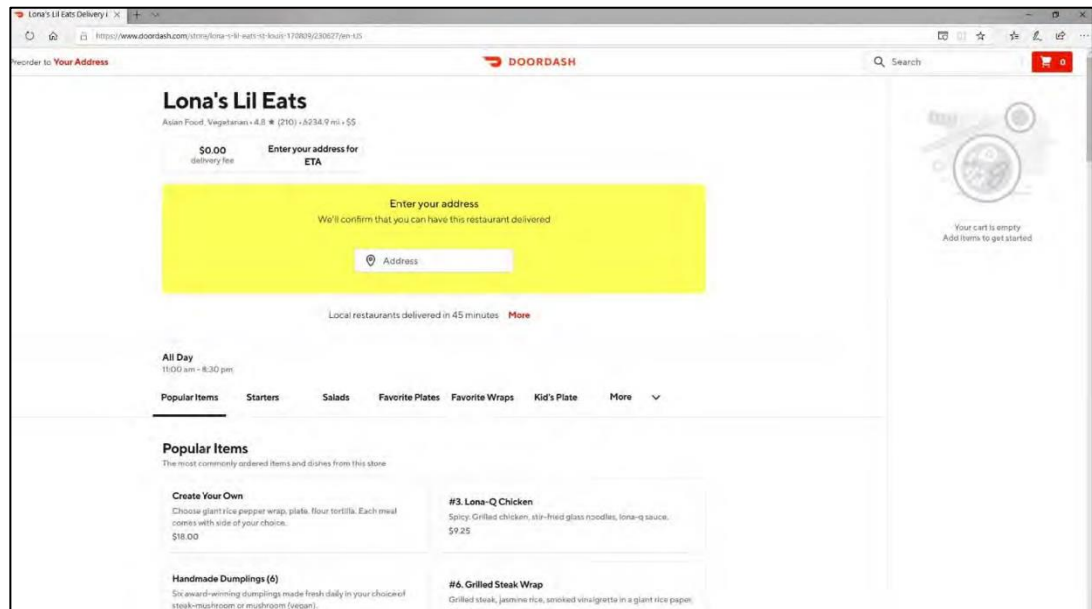
8 To the extent that it offers a mechanism to order food online and then have it delivered or
9 made available for pickup, DoorDash competes directly with restaurants that offer their own
10 online delivery or pick-up services. *Id.* ¶ 12. DoorDash, which was recently valued at \$16 billion,
11 has developed significant market power, particularly as a result of the COVID-19 pandemic. *Id.* ¶
12 11. With many restaurants unable or unwilling to offer dine-in services, many consumers have
13 turned to DoorDash to order pickup or delivery in lieu of dining out. *Id.* DoorDash’s market
14 power is such that restaurants are put in a difficult situation: they can become partner restaurants
15 and pay exorbitant fees and commissions to Defendant, or they decline to do so and risk losing out
16 on sales. *Id.* ¶ 13.

17 Worse yet, DoorDash pressures non-partner restaurants by setting up “landing pages” for
18 them, which in some instances still are available on its website and on its mobile app. *Id.* ¶ 14.
19 The landing pages are displayed for the general public to see, and DoorDash’s marketing power is
20 such that the landing pages are often prioritized on internet search engines and displayed even
21 before the restaurants’ own websites. *Id.* These landing pages are complete with DoorDash
22 branding and usually show a restaurant’s full menu, even if the restaurant has no affiliation with
23 DoorDash and has not authorized the use of its information. *Id.* This façade of a connection
24 signals to consumers that the landing page for the non-partner restaurant is legitimate and can be
25 relied upon. *Id.*

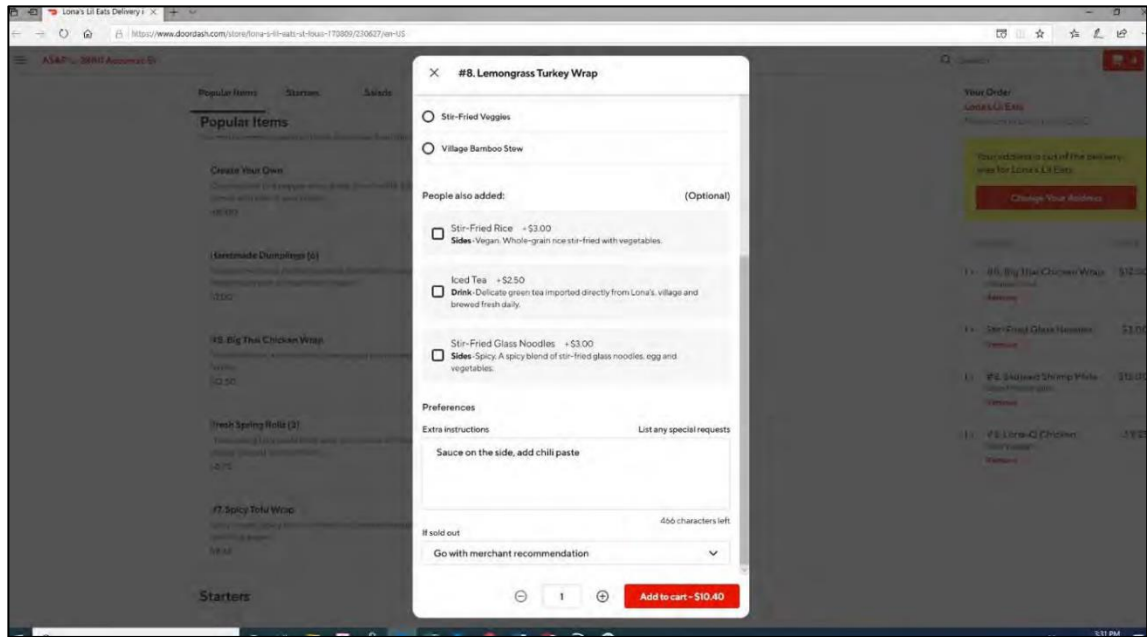
26 On these landing pages, DoorDash publishes false and misleading information about
27 restaurants that are not its partners, including restaurants being “closed” when they were in fact

1 orders when the restaurant is in fact accepting pick-up orders. *Id.* ¶ 15. Each of these false and
 2 misleading statements steers would-be customers of non-partner restaurants' to DoorDash's
 3 partner restaurants. *Id.*

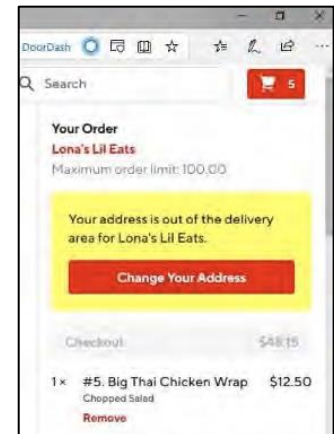
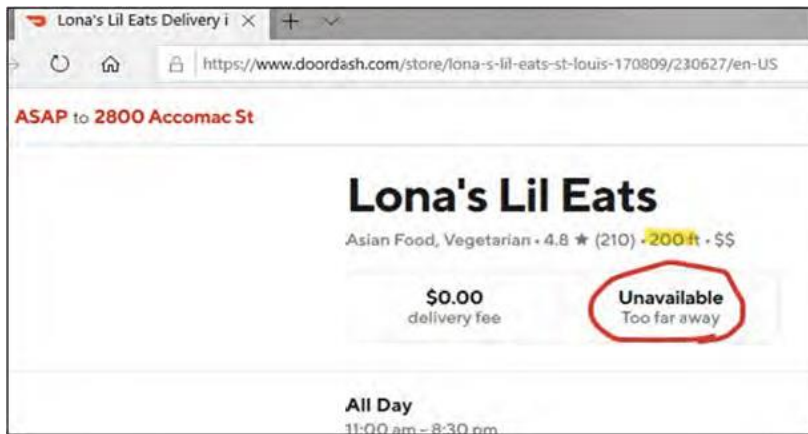
4 Lona's is one such non-partner restaurant. In June 2020, as the pandemic's effects were
 5 crippling small-business restauranteurs, several customers informed Lona's that it was being
 6 represented as closed online on DoorDash's landing page for Lona's. *Id.* ¶ 17. If a consumer
 7 were to search for "Lona's Lil Eats delivery," as a result of DoorDash's market power and internet
 8 marketing strategies, then one of the first results displayed was a link for Lona's on a DoorDash
 9 website. *Id.* ¶ 21. Lona's had no relationship with DoorDash, so its website mock-up of a Lona's'
 10 landing page is itself deceptive, let alone falsely representing that Lona's was closed. *Id.* ¶ 17.
 11 Clicking through the link for Lona's would bring a consumer to a page with DoorDash branding
 12 and Lona's' complete menu, as if it were possible to place an order through the site:



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 23 *Id.* ¶ 21 (the website images are from DoorDash's website on August 18, 2020, unless otherwise
 24 noted). DoorDash's site would let the customer go through the process of placing an order,
 25 including the opportunity to customize the order, adding credibility to the idea that Lona's had
 26 partnered with DoorDash and that placing an order was possible:

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Id. ¶ 22. The order, however, could not be completed, and no matter what the user’s proximity to Lona’s—even as close as only 200 feet away—the site would say that ordering from Lona’s was “unavailable” on account of being “out of the delivery area” and “too far.”



Id. ¶¶ 23-24. The problem is not, in fact, that a delivery address is too far away, but that Lona’s has not agreed to partner with DoorDash and pay its fees. *Id.* ¶ 25. A consumer can change his or her address over and over again, but Lona’s will never become available for delivery because it is not a partner restaurant. *Id.*

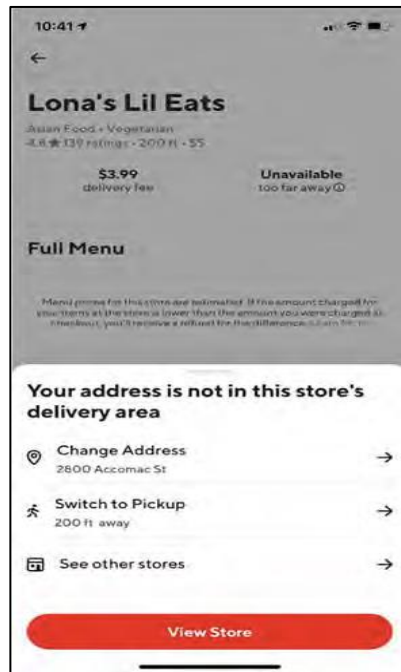
The same is true for DoorDash’s mobile app. *Id.* ¶ 26. DoorDash’s mobile app misrepresents that Lona’s is not available for delivery and also not accepting pick-up orders:

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Id. ¶¶ 27-28 (the mobile phones images are from November 11, 2020). And if the consumer clicks on the information button immediately next to “Unavailable too far away,” then the app displays options of “Switch to Pickup” or “See other stores”:



Id. ¶ 29. Since Lona’s (at 200 feet) is too far away for delivery, DoorDash represents that the customer could simply “Switch to Pickup.” *Id.* ¶ 30. Indeed, pick-up is available at Lona’s, but not through DoorDash. *Id.* So when the customer chooses “Switch to Pickup,” DoorDash

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