

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MUSLIM ADVOCATES,

Plaintiff,

v.

MARK ZUCKERBERG, et al.,

Defendants.

Case No.: 2021 CA 001114 B

Judge Anthony C. Epstein

**PLAINTIFF MUSLIM ADVOCATES' OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(b)**

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INTRODUCTION

This case seeks to hold Facebook and its executives accountable for making false and misleading statements in the District of Columbia about what steps Facebook takes to make its social media platform safer for users. In public testimony to Congress and in private communications to Muslim Advocates, Facebook's leaders repeatedly stated that Facebook removes hate speech, calls to arms, and similar harmful content that violates the company's professed standards *when it learns of such content*. Because those statements were false and deceptive, Muslim Advocates filed this lawsuit, asserting claims of consumer fraud under the D.C. Consumer Protection Procedures Act (CPPA) and common-law fraud and negligent misrepresentation.

In the wake of the Cambridge Analytica scandal and intense pressure from Congress and civil rights groups, Facebook's leaders hatched a plan to avoid further regulation, stop consumers from dumping Facebook, and mitigate civil rights leaders' escalating demands. Starting with Facebook's CEO Mark Zuckerberg's April 2018 testimony in the House and Senate, Facebook's leaders began touting a false claim: that when Facebook learns of harmful content that violates its own community standards—like hate speech and dangerous groups—Facebook removes it. Time after time, Zuckerberg, Facebook's Chief Operating Officer Sheryl Sandberg, and other company leaders went to Capitol Hill to repeat this falsehood to Congress and Facebook's consumers. And those leaders made the same misrepresentations in meetings and emails with Muslim Advocates and other civil rights groups. But Facebook's leaders knew that the statements were false. As Muslim Advocates demonstrates in the complaint, Facebook had a practice of routinely refusing to remove content that clearly violated its community standards *after Facebook learned of it*.

In one sense, the issues here are familiar—like many other consumer-protection cases, this case involves corporate executives who have made false claims about the safety of their products (or, more specifically, the steps they've taken to make their products safer) in an effort to boost sales

and prevent a loss of customers. But there is also something extraordinary about this case: In moving to dismiss, Facebook and its executives claim that they are above the law in novel ways.

First, they claim, without citing any precedent or authority, that because Facebook does not charge users money for its service, Facebook is exempt from the CPPA's consumer protections. But this is wrong. The CPPA covers any sale, lease, or transfer of a good or service. Facebook plainly transfers its services to its users by allowing them to use their apps and sites. But Facebook also sells its services—because a sale does not require an exchange of money, it just requires one to give up property for something of value, and users give up their data in exchange for Facebook's services. Facebook's argument would also have far-reaching consequences. Since D.C.'s consumer protection law is one of the strongest in the nation, Facebook and other tech giants that don't charge money for their services would be exempt from virtually all other consumer protection laws.

Second, Facebook wrongly claims that Section 230 gives Facebook and its executives absolute immunity from civil liability for their executives' own false oral testimony and statements. But Section 230 immunity only applies to the content of third parties that Facebook publishes *online*, not oral statements made in real life. And Section 230 only applies to the statements of third parties online, not the misrepresentations created and spoken by an online platform or its executives. Adopting Facebook's view of Section 230 would create a special privilege for social-media executives who make false statements about their businesses, exempting them from a century's worth of laws designed to protect consumers and investors from deception.

Facebook makes additional arguments that fare no better. The company challenges Muslim Advocates' standing, but it does so by failing to note that Article III's requirements do not apply to Muslim Advocates' CPPA claim and by asking the court to disregard allegations underlying its common-law claims. Next, to argue that there is no actionable statement of fact, it mischaracterizes Muslim Advocates' complaint as premised on a broad promise to remove *all*

improper content. In reality, as explained, Muslim Advocates alleges that it and the public were misled by Facebook’s narrower statement that it removes content that violates its standards when Facebook *learns of it*. Those statements did not merely convey Facebook’s “goals,” as it claims, but represented how Facebook operates its service. Finally, Facebook argues that Muslim Advocates cannot have “reasonably relied” on Facebook’s statements for purposes of its common law claims. But this argument is contrary to the allegations of the complaint and, bizarrely, asks this Court to accept that nonprofits like Muslim Advocates should never assume that Facebook’s leaders are telling the truth when they testify in Congress or speak privately with them.

FACTUAL BACKGROUND

Facebook’s Business Model and Community Standards.

Facebook is the world’s most heavily used social networking website.¹ With 200 million users in the United States and nearly three billion users worldwide, some 36% of all human beings use Facebook. Amend. Compl. (“AC”) ¶ 10. Facebook’s main apps—Facebook, Instagram, Messenger, and WhatsApp—allow billions of people to communicate with each other. *Id.* ¶¶ 11–17. Instead of charging its users money for its services, Facebook requires its users to be monitored and give Facebook their personal data. *Id.* ¶¶ 19–21. Facebook and advertisers, in turn, use this data to target users with paid ads. *Id.* ¶ 22. Facebook makes nearly all its revenue when advertisers pay it to show their ads to people when they use Facebook. *Id.* ¶ 23. It’s a profitable business: In 2020, Facebook earned \$86 billion in revenues and \$29 billion in profit. *Id.* ¶ 31.

At the heart of Facebook’s business is a paradox. The more time people spend on Facebook’s apps the more money it makes, and incendiary content—including anti-Muslim hate speech and groups—causes users to spend more time on Facebook. *Id.* ¶¶ 27–29, 46. But the public

¹ All references to “Facebook” in this opposition include the individual Defendants, Mark Zuckerberg, Sheryl K. Sandberg, Joel Kaplan, and Kevin Martin, unless otherwise specified.



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