

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

PHHHOTO INC.,

Plaintiff,

v.

META PLATFORMS, INC. and DOES  
NOS. 1-7,

Defendants.

Case No. 1:21-cv-06159-KAM-RLM

**META PLATFORMS, INC.'S REPLY IN SUPPORT OF ITS  
MOTION TO DISMISS PHHHOTO INC.'S AMENDED COMPLAINT**

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## STATUTES AND RULES

Sherman Antitrust Act, 15 U.S.C. §§ 1-38:

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Phhphoto's antitrust claim is time-barred because all of the challenged conduct occurred more than four years before Phhphoto sued. Phhphoto cannot claim fraudulent concealment because it alleges it had notice of its claim by April 2016. Nor has Phhphoto pleaded a continuing violation because it alleges no overt act after April 2016, and it could not have suffered an antitrust injury after it ceased operations. Phhphoto's state-law claims expired by April 2020. Numerous courts have dismissed similarly stale claims based on many of the same allegations. Phhphoto provides no reason why its case is different.

Phhphoto's claims also fail on the merits. All the specific conduct Phhphoto alleges is either categorically lawful (e.g., Meta's alleged refusals to assist Phhphoto in promoting its app) or not plausibly anticompetitive (e.g., Meta's launch of a competing service). And a plaintiff cannot bring a Section 2 claim by aggregating lawful conduct: "Two wrong claims do not make one that is right." *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 457 (2009). Phhphoto has also failed to plausibly allege monopoly power in a properly defined market because its assertion that Instagram was "critical infrastructure" to "personal social networking" rivals is unsupported by any properly alleged facts. Phhphoto's defenses of its state-law claims similarly contradict precedent and its own factual allegations. Because Phhphoto has amended but failed to cure the deficiencies identified in its previous pleading, this Court should dismiss with prejudice.

## ARGUMENT

### I. Phhphoto's Claims Are Untimely

A. Phhphoto cannot dispute that its antitrust claim accrued well outside the Sherman Act's four-year limitations period. Its arguments that it has nevertheless pleaded a timely Section 2 claim find no support in the law or the allegations of the complaint.

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