

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CARLY LEMMON; MICHAEL MORBY,  
as surviving parents of Hunter  
Morby (deceased); SAMANTHA  
BROWN; MARLO BROWN, as  
surviving parents of Landen Brown  
(deceased),

*Plaintiffs-Appellants,*

v.

SNAP, INC., doing business in  
California as Snapchat, Inc.,

*Defendant-Appellee.*

No. 20-55295

D.C. No.  
2:19-cv-04504-  
MWF-KS

OPINION

Appeal from the United States District Court  
for the Central District of California  
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted February 11, 2021  
San Francisco, California

Filed May 4, 2021

Before: Kim McLane Wardlaw and Carlos T. Bea, Circuit  
Judges, and James David Cain, Jr.,\* District Judge.

Opinion by Judge Wardlaw

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\* The Honorable James David Cain, Jr., United States District Judge  
for the Western District of Louisiana, sitting by designation

**SUMMARY\*\***

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**Communications Decency Act**

The panel reversed the district court's judgment dismissing on the ground of immunity under the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1), an amended complaint brought against Snap, Inc., a social media provider.

Plaintiffs are the surviving parents of two boys who died in a high-speed accident, and they alleged that Snap, Inc. encouraged their sons to drive at dangerous speeds and caused the boys' deaths through its negligent design of its smartphone application Snapchat. The district court held that the CDA barred the plaintiffs' claim because it sought to treat Snap, Inc. "as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1).

To determine whether § 230(c)(1) applied to immunize Snap, Inc. from the plaintiffs' claims, the panel applied the three-prong test set forth in *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009). As to the first prong, the parties did not dispute that Snap, Inc. was a provider of an "interactive computer service." As to the second prong, the panel held that the plaintiffs' claim did not treat Snap, Inc. as a "publisher or speaker" because the plaintiffs' claims turned on Snap, Inc.'s design of Snapchat. Plaintiffs' negligent design lawsuit treated Snap, Inc. as a products manufacturer,

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

accusing it of negligently designing a product (Snapchat) with a defect (the interplay between Snapchat's reward system and its Speed Filter); thus, the duty that Snap, Inc. allegedly violated sprung from its distinct capacity as a product designer. The duty to design a reasonably safe product was fully independent of Snap, Inc.'s role in monitoring or publishing third-party content. As to the third prong, the panel held that plaintiffs had not relied on "information provided by another information content provider." In short, Snap, Inc. was sued for the predictable consequences of designing Snapchat in such a way that it allegedly encouraged dangerous behavior. Accordingly, the panel concluded that Snap, Inc. did not enjoy immunity from this suit under § 230(c)(1) of the CDA.

The panel declined to affirm the district court's decision on the alternative ground that the plaintiffs failed to plead adequately in their amended complaint the causation element of their negligent design claim.

The panel reversed the district court's Fed. R. Civ. P. 12(b)(6) dismissal, and remanded for further proceedings.

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### COUNSEL

Naveen Ramachandrappa (argued), Bondurant Mixson & Elmore LLP, Atlanta, Georgia, for Plaintiffs-Appellants.

Jonathan H. Blavin (argued) and Rosemarie T. Ring, Munger Tolles & Olson LLP, San Francisco, California; John B. Major and Anne K. Conley, Munger Tolles & Olson LLP, Los Angeles, California; for Defendant-Appellee.

**OPINION**

WARDLAW, Circuit Judge:

Carly Lemmon, Michael Morby, Samantha Brown, and Marlo Brown (“the Parents”) are the surviving parents of two boys who died in a tragic, high-speed car accident. They sued Snap, Inc. (“Snap”), a social media provider, alleging that it encouraged their sons to drive at dangerous speeds and thus caused the boys’ deaths through its negligent design of its smartphone application Snapchat. We must decide whether the district court correctly dismissed that action when it concluded that the Communications Decency Act (“CDA”) barred the Parents’ claim because it sought to treat Snap “as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1).

We conclude that, because the Parents’ claim neither treats Snap as a “publisher or speaker” nor relies on “information provided by another information content provider,” Snap does not enjoy immunity from this suit under § 230(c)(1). We therefore reverse the district court’s Rule 12(b)(6) dismissal of the Parents’ lawsuit and remand for further proceedings.

**I.**

Because the district court dismissed this action pursuant to Federal Rule of Civil Procedure 12(b)(6), we accept as true the allegations contained in the Parents’ amended complaint and view them in the light most favorable to the Parents. *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019).

## A.

According to the Parents' amended complaint, Jason Davis (age 17), Hunter Morby (age 17), and Landen Brown (age 20) were driving down Cranberry Road in Walworth County, Wisconsin at around 7:00 p.m. on May 28, 2017. Jason sat behind the wheel, Landen occupied the front passenger seat, and Hunter rode in the back seat. At some point during their drive, the boys' car began to speed as fast as 123 MPH. They sped along at these high speeds for several minutes, before they eventually ran off the road at approximately 113 MPH and crashed into a tree. Tragically, their car burst into flames, and all three boys died.

Shortly before the crash, Landen opened Snapchat, a smartphone application, to document how fast the boys were going. Snapchat is a social media platform that allows its users to take photos or videos (colloquially known as "snaps") and share them with other Snapchat users. To keep its users engaged, Snapchat rewards them with "trophies, streaks, and social recognitions" based on the snaps they send. Snapchat, however, does not tell its users how to earn these various achievements.

The app also permits its users to superimpose a "filter" over the photos or videos that they capture through Snapchat at the moment they take that photo or video. Landen used one of these filters—the "Speed Filter"—minutes before the fatal accident on May 28, 2017. The Speed Filter enables Snapchat users to "record their real-life speed." An example

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