

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**STATE OF IOWA, ex rel. ATTORNEY
GENERAL BRENN A BIRD,****Plaintiff,**

v.

**TIKTOK INC., TIKTOK LTD., TIKTOK
PTE. LTD., BYTEDANCE LTD., and
BYTEDANCE INC.,****Defendants.****Case No. EQCE089810****RULING ON DEFENDANT'S MOTION
TO DISMISS AND ON PLAINTIFF'S
MOTION FOR TEMPORARY
INJUNCTION****STATEMENT OF THE CASE**

On January 17, 2024, the State of Iowa filed this lawsuit against several companies jointly doing business as TikTok, a social media app. The State claimed that defendants are violating the Iowa Consumer Fraud Act (CFA) through misrepresentations, deceptions, false promises, and unfair practices. The State's claims are focused on TikTok's representations that allowed it to receive a 12+ rating on the Apple App Store, which has allowed 13-17 year old Iowans to access content that the State claims is inappropriate for minors. The State seeks injunctive relief, civil penalties, disgorgement of funds and property, court costs, expenses, and attorney fees.

On March 30, 2024, the State filed a motion for temporary injunction. The motion sought to prevent defendants from making certain representations regarding their app during the pendency of this case.

The court held a scheduling conference on April 16, 2024. The parties and the court agreed to a briefing schedule to present the motion for temporary injunction and defendants' expected motion to dismiss. The hearing was on June 16, 2024. The State was represented by Eric Wessan and David Thompson. The defendants were represented by Nicholas Klinefeldt, Emily Ullman, and Neema Sahni.

STATEMENT OF THE FACTS¹

According to the petition, defendant TikTok Inc. is incorporated in California and operates a social media application and platform known as TikTok. Defendant TikTok Pte. Ltd. is headquartered in Singapore is nominally listed in the Apple App Store as the “seller” of the TikTok app. Both of those companies are wholly owned by defendant TikTok Ltd., which is incorporated in the Cayman Islands. Defendant ByteDance Ltd., which is incorporated in the Cayman Islands and headquartered in China, is the parent company of TikTok Inc., TikTok Ltd., TikTok Pte. Ltd., and ByteDance Inc. Defendant ByteDance Inc. is incorporated in Delaware and headquartered in California. Because all defendants are related, the court will refer to them jointly as “defendants” and refer to the TikTok application by its trade name.

TikTok is a social media platform that allows users to create and share videos with other users. It was launched globally in 2017 and re-launched in the United States in 2018. TikTok has more than 1 billion users globally. There is a wide variety of content on TikTok, including sports, hobbies, special interests, education, humor, and shared life experiences. Between January 1, 2021 and April 1, 2024, more than 11 billion videos were uploaded on TikTok in the United States alone. Those videos produced more than 33 trillion total views. (Brandenburger declaration, paragraphs 8-14).

The defendants produce revenue through advertising. TikTok Inc. received nearly \$4 billion in revenue in 2021 and an estimated \$10-12 billion in 2022. Two of the defendants have filed a corporate tax return in Iowa. The State alleged that the defendants can attribute at least millions of dollars in revenue to activities in Iowa. (Petition, paragraphs 16, 20).

¹ There is a mix of fact standards because the court is considering a motion to dismiss and a motion for temporary injunction. The motion to dismiss is limited to the facts set forth in the petition. *Haupt v. Miller*, 514 N.W.2d 905, 907 (Iowa 1994). The motion for temporary injunction considers exhibits submitted by the parties. This statement of the facts contains a mix of the two and each will be identified accordingly.

TikTok takes multiple steps to moderate content that is inappropriate. One is through its Community Guidelines which provides guidance as to what is allowed and not allowed on its platform. Among the categories of content not allowed are: “nudity or significant body exposure of young people,” “showing or promoting suicide,” “physical or psychological abuse of young people,” and “harassing and bullying.” TikTok also has internal policies called their “playbook rules” to provide guidance to content moderators who enforce the Community Guidelines. (Brandenburger declaration, paragraphs 17-20).

TikTok publishes a quarterly enforcement report documenting the videos removed from the platform. The report for the 4th quarter of 2023 shows that TikTok removed 176,461,963 videos for violating its Community Guidelines during that period. Of those videos, 77.1% were removed before they received any views, 89% were removed within 24 hours of posting, and 96.7% were removed proactively. TikTok also reviews and removes videos that are flagged by users as being in violation the Community Guidelines. Of that group, TikTok removed 92.4% of those videos within two hours of the user’s report. (Brandenburger declaration, paragraph 29).

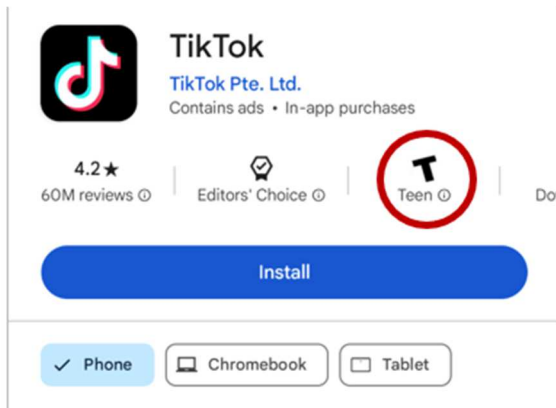
TikTok takes other steps to monitor inappropriate content. It reviews search language that might direct a user to violative content. It tags certain words and phrases to be able to ban links to violative content. It may ban users who violate the Community Standards depending on the number or severity of the violations. It updates its Community Standards and playbook rules periodically to stay up to date on enforcement needs. (Brandenburger declaration, paragraphs 30-35).

TikTok takes the position that its platform is intended for people 13 years of age and older. It employs settings to limit content for people between 13 and 17 years. When people first create an account, they must provide their birthday. If the user is under 13, they are directed to an under 13 platform that contains a limited version of the app. If the user is between 13 and 17, TikTok

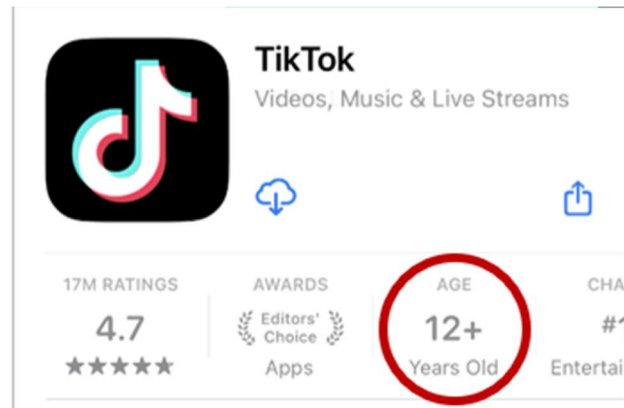
enables settings to protect them from adult content. There is a Family Pairing feature to allow a parent or guardian to customize safety settings and set a link to their accounts so they can monitor and limit usage and searches. TikTok employs a Content Level system that categorizes content level as appropriate for certain age groups. For example, Level 1 is suitable for all ages. Level 4 may include content containing allusions to sexual activity by adults and is deemed not suitable for minors. TikTok restricts Level 4 content for users between 13 and 17. (Brandenburger declaration, paragraphs 36-43).

A prospective user can download TikTok through third-party app stores, including Apple, Google, and Microsoft.² The following images show listings for TikTok on the different app stores.

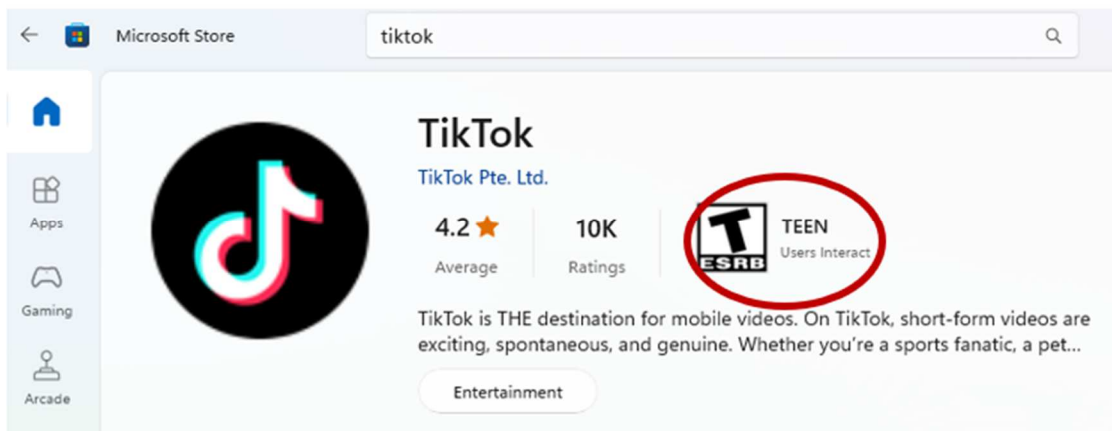
TikTok on the Google Play Store



TikTok on the Apple App Store



² While both parties primarily focus on the Apple App Store, the analysis within this ruling relating to the motion to dismiss also applies to the Google Play Store and Microsoft Store.

TikTok on the Microsoft Store³

Apple requires an app developer to respond to an age-rating questionnaire before being accepted to its store. The questionnaire asks the app developer to select the level of frequency for certain content descriptions, including “profanity or crude humor,” “mature/suggestive themes,” “alcohol, tobacco, or drug use or reference,” and “sexual content and nudity.” The questionnaire provides three options: 1) none, 2) infrequent/mild, and 3) frequent/intense. Based on the response, Apple assigns one of four age ranges for the app: 4+, 9+, 12+, or 17+. If an app is assigned a 12+ rating, Apple then asks the developer if it nevertheless wants to restrict the app to 17+ users. (Brandenburger declaration, paragraphs 44-46).

TikTok answered “infrequent/mild” to each of the above-referenced content descriptions. Based on the answers, Apple assigned TikTok a 12+ age rating. TikTok did not elect to restrict its app to 17+ users and it was placed in the Apple app store at the 12+ rating. The app store gives the following description of apps in the 12+ rating category:

Apps in this category may also contain infrequent mild language, frequent or intense cartoon, fantasy, or realistic violence, and infrequent or mild mature or suggestive themes, and simulated gambling, which may not be suitable for children under the age of 12.

The app store gives the following description of apps in the 17+ rating category:

³ Emphasis added to highlight the rating of TikTok on the Apple App Store and the Google Play Store.

You must be at least 17 years old to download this app.

Apps in this category may also contain frequent and intense offensive language; frequent and intense cartoon, fantasy, or realistic violence; and frequent and intense mature, horror, and suggestive themes; plus sexual content, nudity, alcohol, tobacco, and drugs which may not be suitable for children under the age of 17.

(Brandenburger declaration, paragraphs 44-47; Exhibit 6). TikTok is very popular with users in the 13 to 17 year age group. As of July of 2020, 95% of people with smart phones in that age group had the TikTok app. By comparison, only 51% of the people in the 18 to 24 year age group had the TikTok app. The average user in the 13 to 17 year age group spent 106 minutes per day on TikTok. As of September of 2021, surveys showed that 59 percent of teens felt they needed a screen time management tool even though one existed in the program. (Exhibit 1, ref. 66589; Exhibit 2, ref. 84894).

Beginning October 2, 2023, Alberto Perales, an investigator in the Consumer Protection Division of the Attorney General's Office, began an investigation into TikTok. On that date, he registered as a new TikTok user under the fake name of "Tanner West" with a birthdate of May 5, 2010, which would make him 13 at the time. From October 2-11, 2023, Perales used the TikTok app and conducted searches of topics including profanity, crude humor, sexual content, nudity, alcohol, tobacco, drug use, suicide, depression, self-harm, eating disorders, and other mature themes. Perales compiled videos that he believed to fit these categories and included them in attachments to his affidavit. The court notes that it could not view the videos because the attachment solely consists of a place-holder document stating "Document produced in their native format[.]" This issue was not discussed by the State at the June 24, 2024.⁴ (Exhibit 7).

⁴ The parties agreed to the admission of exhibits, so they were largely not discussed or viewed during the hearing. This is often workable in motion hearings or cases tried solely to the court but can be a problem when the judge reviews the record later and questions like this arise. Additionally, there was no exhibit list and the exhibits were not identified during submission, which made exhibit review more challenging. The court considered bringing this issue to the attention of the parties, but decided to let the record stand as is based on the decisions made in this ruling and the early stage of the proceedings.

The State did play clips of videos at the hearing. These videos and others are quoted or described extensively in the petition, which were taken from the Perales investigation. Jennifer Brandenburger, the defendants' Head of Product Policy, reviewed the videos collected by Perales and offered several responses. First, she noted that Perales collected 204 clips but had viewed 16,600 videos to find them, so the videos collected were a small fraction of those viewed. She agreed that some of the videos violated TikTok's Community Standards and should be removed. She claimed that others met the Community Standards and disagreed they were inappropriate. For example, she pointed out that videos of people discussing struggles with mental health were appropriate to show people discussing "emotionally complex topics in a supportive way." Some of the videos show women singing or lip-syncing songs containing explicit lyrics. TikTok considers such videos to be "mild profanity," even though the language is explicit, because the language is used in an artistic context and the songs themselves are widely available. D0007 at ¶¶ 55-62, 76-81, 90-94, 99-103. (Exhibit 6A; Brandenburger declaration paragraphs 55-60).

The State contends that TikTok has violated the Iowa Consumer Credit Code by falsely answering questions on the Apple App Store regarding content categories that it classified as mild/infrequent. The State claims TikTok did so to maintain a 12+ rating. Apple has questioned TikTok about this same topic in the past. In December of 2022, Apple informed TikTok that it was out of compliance with its rating system based on a review of some videos accessible to 13-17 year old users during the onboarding process (referring to the process in which a new user creates an account). TikTok responded to Apple's concerns and retained the 12+ rating after modifying its program. The State claims that, while TikTok responded to Apple's concerns, they were limited to onboarding and similar videos are still available on TikTok. (Exhibit 9).

In its motion for temporary injunction, the State requests that the court enjoin TikTok from

the following:

- (1) Representing to consumers through their statements to the Apple App Store or elsewhere that the TikTok application contains “none” or only “infrequent/mild” “alcohol, tobacco, or drug references,” “sexual content or nudity,” “mature/suggestive themes,” or “profanity or crude humor;”
- (2) Representing to consumers through their statements to the Apple App Store or elsewhere that the TikTok application qualifies for a “12+” age rating;
- (3) Stating in the Community Guidelines that TikTok does not allow the promotion of alcohol, tobacco, or drug use.

TikTok contends that the State’s request would dramatically impact its brand if forced to represent itself as providing frequent/intense content only appropriate to adults. This would impact its market for users and advertisers. (Motion for temporary injunction; Brandenburger declaration paragraphs 61-69).

The defendants’ motion to dismiss argued that this Court lacks personal jurisdiction over the defendants, that the State fails to “allege a cognizable claim for relief” under the CFA, and that the defendants are immune from liability under Section 230 of the Communications Decency Act.

CONCLUSIONS OF LAW

I. Motion to Dismiss

A. Standard of Review.

In determining whether to grant the motion to dismiss, a court views the well-pled facts of the petition “in the light most favorable to the plaintiff with doubts resolved in that party’s favor.” *Haupt v. Miller*, 514 N.W.2d 905, 911 (Iowa 1994). A motion to dismiss must succeed or fail exclusively on the contents of the petition. *Id.* “A motion to dismiss admits the allegations of the petition and waives any ambiguity or uncertainty in the petition.” *Leuchtenmacher v. Farm Bureau Mutual Ins.*, 460 N.W.2d 858, 861 (Iowa 1990). “The petition should be construed in a light most favorable to the plaintiff with doubts resolved in that party’s favor in ruling on the motion.” *Sanford*

v. Manternach, 601 N.W.2d 360, 363 (Iowa 1999).

A motion to dismiss is sustainable only when it appears to be a certainty that the plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claims asserted. *Haupt*, 514 N.W.2d at 911 (citing *Bindel v. Iowa Mfg. Co.*, 197 N.W.2d 552, 555 (Iowa 1972)). Therefore, a motion to dismiss must be on legal grounds. *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Ia. Ct. App. 1998).

B. Whether this Court has Personal Jurisdiction.

It must first be established whether this court has personal jurisdiction to hear this case. A state's ability to exercise jurisdiction over a nonresident is limited by both the Federal Constitution and state law. *Harding v. Sasso*, 2 N.W.3d 260, 264 (Iowa 2023) (citing *Sioux Pharm, Inc. v. Summit Nutritionals Int'l Inc.*, 859 N.W.2d 182, 188 (Iowa 2015)).

Regarding the Federal Constitution, the Iowa Supreme Court has held that the Fourteenth Amendment's due process clause limits a state court's power to exercise jurisdiction over a defendant. *Harding*, 2 N.W.3d at 264 (citing *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021)). A state's authority to exercise jurisdiction over a non-resident is dependent upon the defendant having "contacts" with the forum state, such that the "the maintenance of the suit" is "reasonable, in the context of our federal system of government," and "does not offend traditional notions of fair play and substantial justice." *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945)).

Iowa law provides that "[e]very corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state." Iowa R. Civ. P. 1.306. The Iowa Supreme Court has held that rule 1.306 authorizes the widest possible exercise of personal

jurisdiction allowed under the U.S. Supreme Court's interpretation of the Fourteenth Amendment. *Harding*, 2 N.W.3d at 264; *Book v. Doublestar Dongfeng Tyre Co.*, 860 N.W.2d 576, 583 (Iowa 2015); *Sioux Pharm, Inc.*, 859 N.W.2d at 188; *Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 891 (Iowa 2014).

There are two kinds of personal jurisdiction: general jurisdiction and specific jurisdiction. *Ford Motor Co.*, 592 U.S. at 358. A state court may exercise general jurisdiction when a defendant is "essentially at home" in the state. *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). The parties agree that this court does not have general jurisdiction.

Specific jurisdiction covers defendants who are not as intimately connected with a state, but it applies to a narrower class of claims. *Harding*, 2 N.W. 3d at 264-65. There do not need to be great contacts to support the exercise of specific jurisdiction the defendant must only take "some act by which [he] purposefully avails [himself] of the privilege of conducting activities within the forum State." *Id.*; *Ford Motor Co.*, 592 U.S. at 358 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). The contacts cannot be random, they must be the result of the defendant's own choice. *Ford Motor Co.*, 592 U.S. at 359. When a defendant has sufficient minimum contacts, the forum state has jurisdiction over only a limited set of claims. *Harding*, 2 N.W. 3d at 265. The nonresident defendant can only be sued in the forum state when the claims "arise out of or relate to the defendant's contacts with the forum." *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 262 (2017)).

"If a non-resident defendant has sufficient minimum contacts with the forum state and the claim related to the contact, the court may exercise personal jurisdiction over the defendant." *Id.* Courts may do so only where it would be in accord with notions of "fair play and substantial

justice.” *Ostrem*, 841 N.W.2d at 893 (quoting *Cap. Promotions, L.L.C. v. Don King Prods., Inc.*, 756 N.W.2d 828, 834 (Iowa 2008)). When making this determination, the courts focus on the burden of the litigation on the defendant, whether the forum State has an interest in adjudicating the dispute, if the plaintiff has an interest in obtaining convenient and effective relief, the interstate judicial system's interest in efficiently resolving the controversies, and the shared interest of the several states in furthering fundamental substantive social policies. *Id.*

Unlike other grounds for dismissal, however, a court considering a motion to dismiss for lack of personal jurisdiction must make factual findings to determine whether it has personal jurisdiction over the defendant. *Cap. Promotions*, 756 N.W.2d at 832. Those findings are binding if supported by substantial evidence. *Hodges v. Hodges*, 572 N.W.2d 549, 551 (Iowa 1997). It is the plaintiff's burden to make a prima facie showing that the exercise of personal jurisdiction is allowed. *See PSFS 3 Corp. v. Michael P. Seidman, D.D.S., P.C.*, 962 N.W.2d 810, 826 (Iowa 2021). While the plaintiff has the burden to establish jurisdiction may be had over the defendant, “we accept as true the allegations of the petition and the contents of uncontroverted affidavits.” *Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight, L.L.C.*, 734 N.W.2d 473, 476 (2007) (quoting *Aquadrill, Inc. v. Env'tl. Compliance Consulting Servs., Inc.*, 558 N.W.2d 391, 392 (Iowa 1997)). After the plaintiff makes a prima facie case showing that personal jurisdiction is appropriate, the burden shifts to the defendant to rebut that showing. *State ex rel. Miller v. Internal Energy Mgmt. Corp.*, 324 N.W.2d 707, 710 (Iowa 1982).

The State claims that the defendants have three sets of purported contacts with Iowa: (1) advertising and making TikTok available to Iowans through various online app stores; (2) “inducing” Iowans who use TikTok to enter ongoing Terms of Service contracts with the defendants; and (3) collecting location data from Iowa users. The court now turns to the due

process analysis in order to determine whether the defendants have met such minimum contacts with Iowa to warrant the exercise of specific jurisdiction over it.

i. Due process analysis

In order to establish the necessary minimum contacts, the defendant must either purposefully direct activities towards Iowa or purposefully avail itself of the privileges of conducting activities in Iowa. *See AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1208 (9th Cir. 2020), *S. Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968). The claim must arise out of or relate to the defendants' Iowa-related activities, and the exercise of jurisdiction must be reasonable. *Id.* “[W]hat matters” for specific personal jurisdiction “is [defendants’] structuring of its own activities so as to target the [Iowa] market.” *NBA Props., Inc. v. HANWJH*, 46 F.4th 614, 624 (7th Cir. 2022).

The State argues that the defendants provide Iowa consumers with a highly interactive and customized online experience in Iowa. Through its consumers' assent to the defendants' terms of service (“TOS”), the defendants automatically collect certain information its consumers, including geographical information and IP addresses. Unredacted Pet. at ¶ 14 (1/17/2024). The defendants then use that data to tailor content specifically to Iowans.

The defendants use highly-targeted, data-informed advertisements, including those based on consumers' locations. Consumers on TikTok are served advertisements during their sessions on TikTok, and consumers see these ads multiple times per minute. Viewing ads is a core part of the TikTok experience. The more time a consumer spends on the platform, the more advertising opportunities the defendants can sell, and the more data the defendants collect about the consumer.

ii. Purposeful availment

The targeted advertisements toward Iowans indicate that the defendants know about Iowa's

consumer base. Defendants use that information for commercial gain by selling their algorithm's ability for advertisers to target their Iowa-based ads to Iowa consumers on TikTok. Under the defendants' business model, consumers agree to TikTok's TOS, which explains that TikTok shows consumers ads that businesses and organizations pay the defendants to promote. Advertisers tell the defendants their business goal and the type of audience they want to see their ads. The defendants then use consumers' personal data to create categories and charge advertisers to show ads to that category. In this way, the defendants also custom tailor the ad experience of each consumer on TikTok. The defendants are motivated to maximize the time consumers spend on the platform, because the more time a user spends consuming content, the more advertising opportunities the defendants can sell and the more profits they make from the consumer in the form of advertising dollars. Many advertisers on TikTok are willing to pay the defendants for the opportunity to reach consumers in specific geographical markets, like Iowa.

The defendants make several arguments as to why personal jurisdiction is not present in this case. First, the defendants argue that the operation of a nationally-available entertainment platform is not sufficient to establish specific jurisdiction. D0085, Unredacted Mot. Dismiss at 9 (4/29/2024). The defendants further argue that because Iowans download and use their app that its alleged actions were not purposefully directed at Iowa. The court disagrees. Personal jurisdiction, in this case, does not hinge upon whether the defendants operate nationally and would be susceptible to similar claims elsewhere. Rather, the defendants have purposefully directed their actions at Iowans through their advertising, making TikTok available to Iowans through various online app stores, entrance into ongoing TOS contracts with Iowans, and collection of location data from Iowa users.

Next, the defendants claim their collection and use of geographic data is insufficient to

establish specific jurisdiction. D0085 at 11. The State argues that the defendants do more than simply use geographic data to sell advertisements to Iowans, but that TikTok also uses geographic data in its algorithm. D0007, Unredacted Pet. at ¶ 11 (1/17/2024). The State claims that the algorithm is the core of TikTok’s experience for users, and that it uses geographic information when determining what videos to recommend to individual users. *Id.* The court agrees that TikTok’s use of geographic data and information seems is part of the TikTok experience, and it is not being used to superficially prop up the litigation before this court.

Next, the defendants argue that its contractual relationships in Iowa is not sufficient to establish specific jurisdiction. The defendants emphasize that it is not the mere existence of a contract that is determinative of personal jurisdiction, rather the “negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing” are to be considered. *Burger King v. Rudzewicz*, 471 U.S. 462, 479 (1985).

However, the defendants’ conduct in Iowa is not a one-time, unlikely-to-be-repeated transaction. “[P]urposeful availment’ is something akin to a deliberate undertaking to do or cause an act or thing to be done in [a state] or conduct which can be properly regarded as a prime generating cause of the effects resulting in [a state], something more than a passive availment of [the state’s] opportunities.” *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 891 (6th Cir. 2002). In this case, the defendants reasonably expect to conduct a given level of business in Iowa each year through its collection of geographic data and by entering into TOS agreements with Iowans. The defendants have the intent to maintain “continuing relationships and obligations” in Iowa, *Burger King*. 471 U.S. at 476, in a way that its activities here are “continuous and systematic.” *Int’l Shoe*, 326 U.S. at 317. The defendants not only expected, but encouraged the Iowa contacts that led to this case via representations to Iowans about the safety of the app and the

accessibility of the user’s digital and geographic data.⁵ This transaction is central to the defendants’ business model.

The defendants argued that, if Iowa courts were to find personal jurisdiction exists based on its contractual obligations, it would open the defendants up to litigation in all 50 states. Even if true, it does not matter. The issue for this court concerns the defendants’ contacts with Iowa. An Arkansas court examined this same issue and denied a motion to dismiss because “at least hundreds of thousands of Arkansas users—relationships that the State alleges many Arkansans would not have agreed to absent the deceptive statements that are subject of this lawsuit.” *Id.* at 4. The same reasoning applies here.

These TOS agreements arise out of and relate to the suit at hand, because the agreements necessarily involve the State’s claims regarding age-appropriate content and the defendants’ alleged misrepresentations about said content. The State alleged that many Iowans would not have entered into these continuing bilateral contractual relationships but for deceptive statements that are the subject of the present lawsuit. These TOS agreements are central to the suit at hand, and therefore arise out of and relate to said suit.

The defendants’ internal communications include specific mention of Iowa’s market. Those communications refer to capturing Iowa as a market. This shows that defendants do not simply make TikTok available in all 50 states, but rather develop internal plans to more effectively capture market percentages of, and simultaneously avail themselves in, specific states. This includes Iowa. These internal communications provide some support to the state’s claim that personal jurisdiction is present in this case.

⁵ As stated by a court in Arkansas: “[t]hese representations induced [Iowans] to enter into continuous bilateral contracts with [d]efendants that provided the company with the valuable consideration it seeks – user data in exchange for the use of its app.” *State of Arkansas v. TikTok Inc.*, 12CV-23-65, Order Denying Defendants’ Motion to Dismiss at 5 (Cir. Ct. Cleburne Cnty. Civ. Div., May 15, 2024).

This court also finds that the State properly pled specific jurisdiction against all defendants. Both TikTok Ltd. and TikTok Pte. Ltd. are listed in online app stores offering TikTok to the general public, and the listing of the app in app stores is at the heart of the complaint. TikTok Inc. operates TikTok as listed in app stores. The State does allege lack of separation between ByteDance entities and TikTok entities. The complaint satisfactorily pleads the connection and participation of all defendants in the activities giving rise to the State's claims. Therefore, this court has jurisdiction over all of the defendant entities.

iii. Fair play and substantial justice

Finally, the court must determine whether an exercise of specific jurisdiction over the defendants would offend traditional notions of "fair play and substantial justice." *Burger King*, 471 U.S. at 476. The court must analyze the "burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in efficiently resolving controversies, and the shared interest of the states in furthering fundamental substantive social policies." *uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 432 (7th Cir. 2010).

This case involves alleged violations of the CFA under Iowa Code Section 714.16(2)(a). That said, most of these factors weigh in favor of allowing this court to exercise specific personal jurisdiction over the defendants. The defendants are a global company. It profits from Iowans' use of its product. Iowans have a strong interest in providing a forum for the adjudication of claims under the CFA, which is a broad remedial statute. Further, the burden on the defendants of defending a lawsuit in Iowa is minimal. The defendants report earning billions of dollars and operate TikTok on a global scale. This litigation does not offend due process.

C. Cognizable Claim under the CFA

The CFA prohibits the following:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

Iowa Code section 714.16(2)(a). The statute also contains the following relevant definitions:

a. The term “advertisement” includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

...

e. The term “merchandise” includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.

...

i. “Unfair practice” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

Iowa Code section 714.16 (1).

The State alleged that the defendants advertise merchandise as defined by the statute. It claimed that the TikTok app is an “intangible or service” that it presents for circulation in the Apple App store as well as the Google and Microsoft stores. (Petition paragraph 128). It claimed that the defendants engage in advertising through publication, dissemination, or circulation in those stores. *Id.* The State claimed that the defendants engaged in deception, false promises, and misrepresentations relating to the age rating of its app and by facts regarding its content and features. (Petition paragraph 129). It also claims an unfair practice by displaying “harmful content” to young Iowans despite making assurances that such content is only infrequent/mild.

(Petition paragraph 130).

The defendants' primary argument in its motion to dismiss is that its app is free so there is no sale and there is no merchandise. It argued that the age rating is not an advertisement because the age rating is created by the app store and the defendants simply provides information to the app store to receive a rating. Further, it argued that there is no deception, false promises, or misrepresentations because the app store questions are subjective and different people can judge the standards differently.

In order to prove a claim under the statute, the State must show some nexus between the unfair practice to the sale or advertisement of merchandise. *State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 526 (Iowa 2005). In most cases, the nexus is relatively clear. For example, in *State ex rel. Miller v. New Womyn, Inc.*, the State showed that the defendant made deceptive claims about a purported breast enlargement device in order to sell the device. 679 N.W.2d 593, 594-97 (Iowa 2004) (referred to in the decision as a "quack device"). In another case, the State showed that the defendant made deceptive claims about a device allegedly designed to electromagnetically treat water for the purpose of sale. *State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 617, 622 (Iowa 1989). In another case, the State showed that the promise to send a "gift card" was deceptive and intended to cause consumers to enter into a costly buying club. *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12, 35 (Iowa 2013). In each of these cases, there was no question that the defendant had made a sale and/or advertised merchandise, whether products or services.

The State's claim in this case is more nuanced. It first argued that the TikTok app meets the definition of a service or intangible. A dictionary definition of "service" includes "a facility supplying some public demand" e.g. telephone service. Merriam-Webster Online Dictionary

(2024). At the least, the petition creates a fact question as to that element.

The State argued that it is not required to show the exchange of money to show a sale. A dictionary definition of the term “sale” is “the transfer of ownership of and title to property from one person to another *for a price*.” See Merriam-Webster Online Dictionary (2024) (emphasis added). The State’s argument as to that point must be denied. The State’s backup argument is stronger. The State argued that consumers exchange value through their time and data when they upload and use the TikTok app. In return, TikTok receives advertising revenue totaling billions of dollars globally. This pleading and theory survives the standard for a motion to dismiss.

In any event, the State’s primary theory is based on the defendants’ advertisement of its app. The statutory definition of “advertisement” does not require a sale, but only an attempt to induce a consumer to acquire title or interest in any merchandise. The defendants admittedly seek to advertise its app as for people 13 years of age and older so that children between the ages of 13 and 17 can acquire title to the app. The State has made a valid claim as to the advertisement element based on the facts alleged in the petition.

The deception, misrepresentation, and unfair practice elements are also sufficiently pled. The defendants are correct that some of the questions posed by Apple are subjective. However, that subjectivity benefits the State’s claim that its claim under the CFA survives a motion to dismiss. The answers on the app store questionnaire are used to determine whether the app will be advertised as appropriate for 12+ individuals. The State may not ultimately prevail on these elements of its claim, but the court must consider its cause of action in the light most favorable to the facts alleged. The State meets that standard.

The court notes that it reads the petition as a whole and not just the paragraphs listed under part IV setting forth the State’s claims. See *State ex rel. Miller v. Internal Energy Mgmt. Corp.*,

324 N.W.2d 707, 712 (Iowa 1982). Considering the petition as a whole, the State has submitted a cognizable claim under the CFA. The motion to dismiss is denied on this ground.

D. Section 230

The defendants claim immunity under Section 230 of the 1996 Communications Decency Act (“Section 230”) in their motion to dismiss. D0085 at 47. Section 230 states that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Section 230 defines an information content provider as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” 47 U.S.C.A. § 230(f)(3). The definitions within Section 230 have been interpreted broadly, including any websites and applications accessed through the internet that host materials created by a third party. VALERIE C. BRANNON, CONG. RSCH. SERV. R46751, SECTION 230: AN OVERVIEW 8 (2024). Generally, Section 230 provides immunity to internet platforms for the majority of third-party content that is hosted or facilitated on their platform.⁶ “Thus, Section 230 distinguishes those who create content from those who provide access to that content, providing immunity from suit to the latter group.” *Id.* at 4. Under Section 230 the host cannot be held responsible for the content that is created by third parties and hosted on their platform.

Here, the State argued that its claim is based on TikTok's age ratings on app stores, not for videos posted by third-party users. The petition addresses only the age ratings, not the content created by third parties. The petition also does not state if TikTok should or should not contain

⁶ There are a few exceptions to this section. “A defendant cannot claim Section 230 immunity as a basis to dismiss a federal criminal prosecution or any lawsuit brought under intellectual property laws, state laws that are consistent with Section 230, certain electronic communications privacy laws, or certain sex trafficking laws.” *Id.* at 26.

frequent and intense content. Rather, it seeks to hold defendants liable for misleading consumers about the frequency and intensity of certain types of content on TikTok. This type of claim does not fall under Section 230.

The court finds that Section 230 does not apply to these claims by the State and the defendants are not immune from the suit.

II. TEMPORARY INJUNCTION

A. General standards.

Iowa R. Civ. P. 1.1502 allows for the entry of a temporary injunction under three provisions. The first is when the petition, as supported by affidavit, shows the plaintiff is entitled to relief to restrain an act that would greatly or irreparably injure the plaintiff. The second is when a party is taking an act that is tending to make the judgment ineffectual. The third is in any case specially authorized by statute.

The State requested an injunction pursuant to Iowa Code section 714.16(7), which authorizes the Attorney General to seek a preliminary injunction to prevent a person from continuing or engaging in a practice in violation of section 714.16. Because the State's request for a temporary injunction is authorized by statute, it claimed that it does not need to show great or irreparable harm, as required by Rule 1.1502(1).

This same argument was rejected by the Iowa Supreme Court in *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001). In *Max 100*, the district court had granted the application for preliminary injunction without considering great or irreparable harm based on the same argument. The supreme court noted that "the issuance of an injunction invokes the equitable powers of the court and courts apply equitable principles." *Id.* (cite omitted). The equitable standards include the first two cited in the rule along with the following: 3) whether the plaintiff

has shown a likelihood of success on the merits, and 4) considering the “circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance.” *Id.*

In *Max 100*, the plaintiff cited to Iowa Code section 553.12(1), which allowed for injunctive relief under the Iowa Competition Law. *See* Iowa Code § 553.1. The statute did not set a separate standard for injunctive relief. The court held that, in the absence of any directive in the statute, traditional equitable requirements apply when considering a temporary injunction. *Id.* The court noted that, if the legislature wanted to limit equitable considerations, it could include such language in the statute. *Id.*

Section 714.16(7) contains some standards when considering injunctive relief. The statute provides that the State does not need to “allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.” Iowa Code § 714.16(7). There is no language in the statute eliminating any of the traditional equitable requirements. This is in contrast to at least one other statute that expressly eliminated the great or irreparable harm factor. *See* Iowa Code § 543B.49 (allowing injunctive relief for violations of the statute governing real estate brokers). If the legislature had intended to provide the same exclusion in section 714.16(7), it could have explicitly done so. *See Marcus v. Young*, 538 N.W.2d 285, 289-90 (Iowa 1995) (legislative intent is expressed by omission as well as by inclusion). As stated in *Max 100*: “[the courts] should not limit the applicability of equitable principles without a valid and clear legislative mandate.” *Max 100*, 621 N.W.2d at 182 (cites omitted).

The supreme court has recently confirmed that section 714.16(7) invokes the court’s equitable powers. *State ex rel. Att’y Gen. of Iowa v. Autor*, 991 N.W.2d 159, 165 (Iowa 2023)

(citing with approval *Max 100*, 621 N.W.2d at 181). While *Autor* involved the wholly different question whether defendant had a right to a jury trial in an action by the State under section 714.16(7), the court expressly stated that injunctive relief under section 714.16(7) invokes the court's equitable powers and the courts must apply equitable principles. *Id.* at 165 (quoting *Max 100*). There is no reason to believe that the court would not apply equitable principles to actions under this section. Accordingly, the State must meet the equitable standards before a temporary injunction will be entered.⁷

B. Irreparable harm – Threshold factor.

The purpose for issuing a preliminary injunction is to “preserve the status quo and to prevent irreparable harm until the court has an opportunity to rule on the lawsuit's merits.” *Curtis 1000, Inc. v. Youngblade*, 878 F. Supp. 1224, 1244–45 (N.D. Iowa 1995); *see also Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 95 (Iowa 1985) (“A temporary injunction is a preventative remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation.”). A court should consider an application for injunction with caution and only grant the request when clearly required. *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co. of Des Moines*, 510 N.W.2d 153, 158 (Iowa 1993) (cites omitted).

Ordinarily, courts consider all four equitable factors to determine on balance whether they weigh toward granting injunction. *Curtis 1000*, 878 F.Supp. at 1245-46. In that sense, no single factor is normally considered to be dispositive. *Id.* However, the Eighth Circuit Court of Appeals has held that irreparable harm is a threshold inquiry that must be shown to obtain a preliminary

⁷ I found one unreported Iowa Court of Appeals decision reaching a contrary conclusion. *State ex rel. Miller v. Grady*, 698 N.W.2d 336 (Iowa Ct. App. 2005) (Table). All decisions of the court of appeals are entitled to respect and unreported decisions are frequently cited by district courts to support of a conclusion. With that said, unreported decisions are controlling authority. Iowa R. App. P. 6.904(2)(c). Considering the reasoning and reported caselaw discussed above, I do not reach the same conclusion in *Grady* and decline to follow that decision.

injunction. *Id.* at 1246 (citing *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 n. 9 (8th Cir. 1981)) (other cites omitted). As stated in *Dataphase*: “the absence of a finding of irreparable injury is alone sufficient ground for [denying] the preliminary injunction.” The Eighth Circuit continues to follow this rule. *See, e.g., Ng v. Bd. of Regents of Univ. of Minnesota*, 64 F.4th 992, 997 (8th Cir. 2023).

I found no decision from an Iowa court adopting or rejecting the Eighth Circuit rule, but the rule is consistent with Iowa law. The whole point for a temporary injunction is to prevent irreparable harm prior to trial. *See Presto-X-Co. v. Ewing*, 442 N.W.2d 85, 89 (Iowa 1989) (injunctive relief is designed primarily to avoid irreparable damage). If the moving party cannot show irreparable harm, there is no reason to grant an injunction. *See Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991) ([a]n injunction “should be granted with caution and only when clearly required to avoid irreparable damage”); *Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995) (same). And like federal law, the Iowa courts have held that a temporary injunction is a “preventive remedy to maintain the status quo of the parties prior to final judgment[.]” *Kleman v. Charles City Police Dep’t*, 373 N.W.2d 90, 95 (Iowa 1985).

The Eighth Circuit rule makes logical sense. Courts do not normally make preliminary findings on the likelihood of success of a case. Rather, cases run their course and are resolved by through dispositive motions or trials. A temporary injunction is a unique remedy because it can impose requirements on the defendant(s) at the beginning of a case rather than after a final decision on the merits. The only reason to consider a preliminary injunction is to prevent irreparable harm. Only when a plaintiff can make that showing, does it then becomes important to consider the plaintiff’s likelihood of success on the merits. After all, a finding of irreparable harm is meaningless if a plaintiff cannot show the defendant(s) are likely liable for that harm. But until the

plaintiff shows irreparable harm, there is no reason to preview how the judge might decide the case on the merits. The court can consider any equitable remedies following the conclusion of the case, just as it does in essentially every other case that runs through the courthouse.

C. Irreparable harm – Evaluation.

Iowa law does not define irreparable harm in detail. The Eighth Circuit requires a moving party to show that the claimed harm is “certain and great and of such imminence that there is a clear and present need for equitable relief.” *S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 778 (8th Cir. 2012). Iowa cases appear consistent with that general definition. The moving party must present some evidence to support its request. *Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 96 (Iowa 1985). Conclusory allegations are not sufficient. *Salsbury Lab'ys v. Iowa Dep't of Env't Quality*, 276 N.W.2d 830, 837 (Iowa 1979).

As an example, the supreme court found irreparable harm in a case in which a woman sought an injunction to prevent contact by a former boyfriend. *Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995). She submitted evidence showing numerous instances of the defendant following, pursuing, harassing, and writing to her without legitimate purpose and in a manner designed to cause her fear for her personal safety and deterioration of her mental health. *Id.* The supreme court found that the evidence supported the finding of irreparable harm and the entry of a temporary injunction to prevent further contact. *Id.*

While the cause of action in this case is much different than *Matlock*, *Matlock* is important because it distinguished between claims of harm that were definitive versus those that are speculative. The plaintiff in *Matlock* made a preliminary showing that the defendant took numerous actions that had already impaired her mental health. She also showed that his conduct was likely to continue and cause additional harm without an injunction. Her claim was not

speculative or conclusory – it was supported by actual evidence.

In this case, the State produced evidence of videos from TikTok that contain offensive language and potentially offensive topics. It has not produced any evidence to show an Iowan has been viewed and harmed by such videos. The State claimed at page 66 of its reply brief that defendants' statements that their content only contains infrequent and mild deceived Iowa parents into allowing their minor children to see and interact with content that is only appropriate for adults. Even if true, this does not show irreparable harm. The argument is both speculative and conclusory. There is no evidence that any Iowan has been harmed. There is not even any evidence that any Iowan has complained to the Attorney General that they have been harmed. The State presented no evidence of any form to show irreparable harm.

Defendants also argued that irreparable harm is undermined by the State's failure to promptly seek injunctive relief. A delay may undermine a finding of irreparable harm. *See Ng*, 64 F.4th at 998. The reasonableness of a delay is "context dependent." *Id.* In *Ng*, the plaintiff sought to enjoin his university from disbanding the men's gymnastics program of which he was a member. *Id.* at 995. The program was scheduled to end at the end of the upcoming season. *Id.* The plaintiff did not seek a preliminary injunction until 13 months after learning the decision. *Id.* at 998. By that point, the final gymnastics season had ended and most of the coaches and athletes had left the university. *Id.* The court, noting that one of the purposes of a preliminary injunction is to preserve the status quo, found the delay unreasonable and defeated the plaintiff's goal of preventing irreparable harm. *Id.*

In this case, defendants claim that the State: 1) began its investigation by August of 2023, 2) filed suit in January of 2024, and 3) filed its motion for temporary injunction in March of 2024. The parties agreed to an extended briefing schedule with hearing on June 24, 2024. Defendants

added that the State has hired the same law firm that conducted a prior investigation and litigation in Indiana, so the claims and theories were not novel. In response, the State argued that it needed to conduct a reasonable investigation and that it would likewise be criticized if it had brought the action and motion on a rushed investigation. This is a fair point. Still, one of the points in *Ny* was that, by delaying action, the plaintiff had allowed the status quo to flip from his favor (before the team was disbanded) to the university's favor (after the team was disbanded and most coaches and athletes were gone).

Defendants asserted in their brief that TikTok has been available in Iowa with the same age ratings for five years. The State did not rebut that claim. Even giving the State some time to conduct an investigation, the status quo clearly favors defendants. It may be that the State will prove statutory violations and the court will ultimately enter some manner of remedy and/or relief. That can be done at the conclusion of the case following discovery and a trial or dispositive motions. The State cannot show irreparable harm to justify injunctive relief at this stage of the proceedings. There is no reason to impact the status quo.

RULING

The defendants' motion to dismiss is denied. The State's motion for preliminary injunction is denied.



State of Iowa Courts

Case Number
EQCE089810

Case Title
STATE OF IOWA EX REL AG BRENNA BIRD VS TIKTOK
INC ET AL
Type: OTHER ORDER

So Ordered

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2024-08-26 15:37:28