

Bouck Could Make It Easier to Sue Tech Companies That Provide Generative AI Tools to Advertisers on Their Platforms

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According to industry leaders, the future of advertising will be generated by artificial intelligence (AI) and sponsored by tech companies.[1] For advertisers and social media platforms that serve them, the recent decision out of the Central District of California in *Bouck v. Meta Platforms, Inc.*, Case No. 25-cv-05194-RS, 2026 U.S. Dist. LEXIS 62626, *2-3 (C.D. Cal. Mar. 24, 2026), carries potential practical implications. Most significantly, Section 230 of the Communications Decency Act may no longer shield social media platforms from liability for advertising content produced by the platforms' generative AI (GenAI) tools, if other courts follow suit and treat such outputs as the platforms' own creations rather than third-party content. This shift matters because being deemed the "creator" of unlawful advertising, rather than a "material contributor," can expose a platform to direct claims, including Lanham Act false advertising claims.

Prior to the *Bouck* decision, Section 230 would generally shield a company that provides so-called "interactive computer services" (e.g., services that provide access to the internet) from liability for AI-powered advertising on their platforms.[2] Section 230 prevents such a tech company from being treated as the "publisher or speaker" of third-party content published on its platform, unless the company is "responsible, in whole or in part, for the creation or development" of the content.[3] In line with Congress's policy "to promote the continued development of the Internet,"[4] California courts have confirmed that social media companies are not liable for the “creation or development” of unlawful advertising published by third parties on their platforms, and possess Section 230 immunity if their AI tools merely maximize engagement with advertisements.[5] An AI tool that suggests the inclusion of viewership-enhancing elements (such as keywords) in the published content but leaves the selection of those elements to the user, or provides for “algorithmic amplification” to target certain audiences, is

"content neutral," even if the company providing the tool knows that the third parties are using it to promote unlawful content.[6] This makes sense because the AI tool functions the same way regardless of whether an advertiser uses it for an unlawful purpose.

By the same logic, a social media platform should be immune to liability under Section 230, even if the AI tool offered to advertisers on its platform uses a generative AI (GenAI) model. The content created using GenAI depends on user input, and a GenAI tool functions the same way regardless of whether the content prompted by the user has an unlawful purpose.[7] Nevertheless, in *Bouck*, the court found that Section 230 did not bar claims against Meta Platforms, Inc. (Meta) arising from a third-party investment scam on Meta's platforms where the plaintiffs alleged that scammers used Meta's GenAI tools to help create the fraudulent advertisements.[8]

Accepting the plaintiffs' allegations as true, the court concluded that Section 230 would not shield Meta from liability if Meta's AI tools "literally generat[ed], using artificial intelligence, the [fraudulent] images and text in the advertisements."[9] Underlining this reasoning by way of example, the court observed that if the scammers prompted Meta's AI tool to generate "an ad promising astronomical weekly investment returns," and if the AI "generated a slew of ads saying just that and new ads with language like 'Tired of living paycheck to paycheck? Break the cycle and start earning steady weekly income with our proven system,'" the scammers "did not come up with that (patently fraudulent) language; ***it was all Meta.***"[10] Meaning, even if Meta's AI tool generates many versions of an advertisement that a user may choose from, any version that includes text or images selected entirely by the algorithm, with only "inspiration from the scammers" (i.e., not explicitly requested by the user's prompt), is — as the plaintiffs allege — the literal creation of Meta's AI tool.[11]

The court's conclusion that plaintiffs plausibly alleged that content generated using Meta's AI tools can be "the creation of Meta" is unprecedented.[12] Prior to the *Bouck* decision, no court in the Ninth Circuit allowed a claim to proceed on the theory that a social media platform may be liable as the "creator" of unlawful advertising generated through its AI tool by a third party. In fact, the court could have denied Meta immunity under Section 230 simply on the basis that plaintiffs plausibly alleged Meta "materially contributed to the creation of the ads" generated through its AI tool, rather than concluding that the allegations supported treating the advertisements as Meta's own creation.[13]

The distinction between liability for material contribution to the creation and liability as the creator is monumental: "material contribution to the creation" sounds in aiding and abetting liability; "creation" begets direct liability. Whereas liability for aiding and abetting requires a plaintiff to prove that a defendant acted with knowledge or intent to further the underlying violation of law,[14] depending on the cause of action, direct liability may be imposed without a further showing of knowledge or intent. For example, "intent is not a required element of a Lanham Act false advertising claim,"[15] but

to establish that a social media platform aided and abetted a violation of the Lanham Act by materially contributing to the creation of false advertising, a plaintiff would still need to show that the platform knew its AI tool was being used for false advertising. This is not easy to do and would likely require showing that the platform had knowledge beyond what could be derived by processing the generated content through a routine review process.[16] But to establish that a social media platform directly violated the Lanham Act as the "creator" of false advertising, a plaintiff would only need to show that the platform provided the AI tool that generated the ad. In effect, as mentioned above, *Bouck* could make it easier to sue tech companies that provide GenAI tools to advertisers on their platforms.

Importantly, *Bouck* is a ruling at the motion to dismiss stage — the court accepted the plaintiffs' allegations as true and did not make any factual findings on the merits. Still, by allowing claims to survive dismissal on the theory that a platform's GenAI tools can make it a “creator” of unlawful content, *Bouck* may lower the barrier for plaintiffs to initiate lawsuits against social media platforms and proceed to discovery, potentially impacting the business of AI-generated advertising. But the decision is not binding and may never be affirmed by the Ninth Circuit, and other appellate circuits might never follow suit. It may simply reflect an increasing wariness about the AI boom and a desire to hold internet service providers liable for unchecked technological advancement. Still, social media companies should beware.

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1 *See* Vincent Kilbride, *AI Is Turning the Ad Business Upside Down*, The Economist (Jun. 18, 2025), https://www.economist.com/business/2025/06/18/ai-is-turning-the-ad-business-upside-down ("For brands placing ads, "AI has the most potential to improve business outcomes that they've seen in the last 20 years," believes Sean Downey, president for the Americas at Google."); Mike Haddad, *AI Needs Regulation, but What Kind, and How Much?*, The Economist (Apr. 20, 2024), https://www.economist.com/schools-brief/2024/08/20/ai-needs-regulation-but-what-kind-and-how-much? ("Lawmakers worry that overly strict regulation could stifle innovation in a field where America is a world leader; they also fear that regulation could allow China to pull ahead in AI research.").

2 47 U.S.C. § 230(f)(2)

3 *Id.* at §§ 230(c)(1), 230(f)(3).

4 *Id*. at § 230(b)(1).

5 *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1196–97 (N.D. Cal. 2009); *Suddeth v. Meta Platforms, Inc.*, Case No. 25-cv-08581-RS, 2026 U.S. Dist. LEXIS 62629, *4–9 (C.D. Cal. Mar. 24, 2026).

6 *Id*.

7 *See* Laurie Harris, *Generative Artificial Intelligence: Overview, Issues, and Considerations for Congress*, Library of Congress (Apr. 2, 20205), https://www.congress.gov/crs-product/IF12426

8 *See* 2026 U.S. Dist. LEXIS 62626 at *2–3.

9 *Id*. at *9 (emphasis in original).

10 *Id.* at *13 (emphasis in original and added).

11 *Id.* at *12–14 (citing *Carafano v. Metrosplash.com, Inc.*, 339 F. 3d 1119, 1124 (9th Cir. 2003)).

12 *Id.* at *14.

13 *See Forrest v. Meta Platforms, Inc.*, 737 F. Supp. 3d 808, 818 (N.D. Cal. 2024); *see also Bouck*, 2026 U.S. Dist. LEXIS 62626 at *10 (finding averments that Meta's AI tools generated the text and images used in the ads "are stronger" than averments that Meta's tools "optimiz[ed] the appearance of an ad to drive engagement" as in *Forrest*).

14 *See, e.g., Rosemond v. United States*, 572 U.S. 65, 75–76 (2014); *U.S. S.E.C. v. Fehn*, 97 F.3d 1276, 1288 (9th Cir. 1996).

15 *POM Wonderful LLC v. Purely Juice, Inc.*, 362 Fed. Appx. 577, 579 (9th Cir. 2009).

16 *See Bouck*, 2026 U.S. Dist. LEXIS 62626 at *17.

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