

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

O'SHEA JACKSON,
Plaintiff,

v.

ROBINHOOD MARKETS, INC., A
DELAWARE CORPORATION, et al.,
Defendants.

Case No. 21-cv-02304-LB

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

Re: ECF No. 31

INTRODUCTION

The plaintiff O’Shea Jackson, known professionally as Ice Cube, sued Robinhood, a financial-services company, after Robinhood used his image and a paraphrase of a line from his song, “Check Yo Self.” The graphic and caption illustrate Robinhood’s online article describing a market correction for tech stocks. The original line from Ice Cube’s song is “Check yo self before you wreck yo self,” which Robinhood paraphrased as “Correct yourself before you wreck yourself.” “Check yo self” is also Ice Cube’s catchphrase. He claims that by using his image and catchphrase, Robinhood created the false and deceptive commercial impression that Ice Cube endorses Robinhood’s services and violated the Lanham Act. 15 U.S.C. § 1125(a)(1)(A).¹ The court previously dismissed the case

¹ First Am. Compl. (FAC) – ECF No. 30. *Knieval v. ESPN*, 393 F.3d 1068, 1076–77 (9th Cir. 2005) (incorporation-by-reference doctrine allows citation to song). Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 for lack of standing because the plaintiff did not plausibly plead that Robinhood’s use of Ice Cube’s
2 identity suggested his endorsement of Robinhood’s products. The amended complaint does not cure
3 the previous complaint’s deficiencies. The court thus grants Robinhood’s motion to dismiss.

4
5 **STATEMENT**

6 The previous dismissal order summarized the allegations about the alleged endorsement. In
7 short, Robinhood is a financial-services company that allows commission-free trades of stocks and
8 exchange-traded funds on a mobile app. Ice Cube is a well-known rapper, actor, entrepreneur, and
9 social activist. Robinhood has a website called Robinhood Snacks, where it publishes newsletters on
10 financial issues. To illustrate a newsletter on a market correction of tech stocks, Robinhood used a
11 picture from Ice Cube’s movie *Are We Done Yet?* and a caption that paraphrased Ice Cube’s
12 catchphrase.²



25 *Correct yourself, before you wreck yourself*

26
27 ² Order – ECF No. 29 at 2–4 (describing the newsletter, including its breezy tone and other content:
28 articles, the daily Snacks podcast, and links to categories titled Check, Learn, Sweat, Do, Act, and Achieve). This order incorporates the previous order’s summary and legal analysis by this reference.

1 The amended complaint cites congressional testimony and SEC filings to illustrate that
 2 Robinhood Snacks is a commercial product that entices new users to sign up for the app and offers
 3 digestible educational content that also satisfies certain financial regulatory requirements.³ It adds
 4 allegations about its demographics and the appeal of celebrities like Ice Cube (and its celebrity
 5 endorsers Jay-Z, Nas, and Snoop Dog) to support the point that using Ice Cube’s picture and phrase
 6 created consumer confusion and suggested Ice Cube’s endorsement of its products.⁴

7 All parties consented to magistrate jurisdiction under 28 U.S.C. § 636.⁵ The court has federal-
 8 question jurisdiction over the Lanham Act claim. 28 U.S.C. §§ 1331, 1338. The court held a hearing
 9 on September 9, 2021.

10 ANALYSIS

11 The amended complaint falls for the same defect found in the original: it does not sufficiently
 12 plead an injury in fact because Robinhood’s use of Ice Cube’s image and phrase does not suggest
 13 Ice Cube’s endorsement of Robinhood’s product.

14 Ice Cube is a celebrity. If the unauthorized use of his image suggested his endorsement of
 15 Robinhood, then he would suffer injury in fact. But the image and phrase are not an endorsement:
 16 they illustrate a point in the newsletter about a market correction in tech stocks.⁶ No case finds
 17 endorsement on similar facts. Instead, the case law requires more than alleged unauthorized use to
 18 plead implied endorsement. Examples of well-plead endorsement include imitating Tom Waits’s
 19 distinctive voice to sell Doritos and using a robot Vanna White to sell VCRs. *Waits v. Frito-Lay,*
 20 *Inc.*, 978 F.2d 1093, 1110 (9th Cir. 1992) (“a celebrity whose endorsement of a product is implied
 21 through the imitation of a distinctive attribute of the celebrity’s identity [the imitation of Tom
 22 Waits’s distinctive voice in a Doritos radio commercial] has standing to sue for false endorsement
 23 under section 43(a) of the Lanham Act”); *White v. Samsung Elec. Am., Inc.*, 971 F.2d 1395, 1398–
 24 99 (9th Cir. 1992) (finding the depiction of a robot modeled after and dressed as Vanna White and

25 _____
 26 ³ FAC – ECF No. 30 at 5–9 (¶¶ 25–32).

27 ⁴ *Id.* at 4 (¶ 3), 7 (¶ 30), 10–12 (¶¶ 37–42).

28 ⁵ Consents – ECF Nos. 8 & 15.

⁶ Order – ECF No. 29 at 7–8.

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1 posed next to the product was proof of implied endorsement sufficient to raise a triable issue of
2 fact);; *see also Estate of Fuller v. Maxfield & Oberton Holdings, LLC*, 906 F. Supp. 2d 997, 1002
3 (N.D. Cal. 2012) (denying the motion to dismiss as the defendant’s alleged use of the inventor’s
4 name to promote a desk toy modeled after the inventor’s discovery implied endorsement); *Monk v.*
5 *N. Coast Brewing Co. Inc.*, No. 17-cv-05015-HSG, 2018 WL 646679, at *1, 3 (N.D. Cal. Jan. 31,
6 2018) (consistent use of Thelonious Monk’s name image, and likeness on the beer bottles and
7 packaging plausibly plead implied endorsement).

8 The new allegations do not add facts that create any likelihood of consumer confusion. For the
9 reasons in the court’s earlier order, the court dismisses the complaint for lack of Article III standing.
10 Because the court gave leave to amend previously, and the plaintiff did not cure the complaint’s
11 deficiencies, the dismissal is with prejudice.

12 This disposes of ECF No. 31.

13 **IT IS SO ORDERED.**

14 Dated: September 20, 2021



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16 LAUREL BEELER
United States Magistrate Judge

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