

No. 24-____

IN THE
Supreme Court of the United States

PLANET GREEN CARTRIDGES, INC.,
A CALIFORNIA CORPORATION,

Petitioner,

v.

AMAZON.COM, INC., A DELAWARE CORPORATION;
AMAZON.COM SERVICES LLC, A DELAWARE LIMITED
LIABILITY COMPANY; AND AMAZON ADVERTISING LLC,
A DELAWARE LIMITED LIABILITY COMPANY,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In early 2022, Plaintiff Planet Green, Inc. (“Planet Green”), a U.S.-based remanufacturer of printer ink cartridges, provided Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Advertising LLC (collectively “Amazon”) with detailed evidence of sellers on its website that falsely promoted, advertised, and sold printer ink cartridges they misrepresented as remanufactured when they are actually newly-manufactured replicas of original equipment manufacturer (“OEM”) products. After more than a year of extensive discussions, Amazon chose to take no effective corrective action, instead claiming that Section 230 of the Communications Decency Act (“CDA”), 47 U.S.C. § 230 (“Section 230”) immunized it from liability for third-party product listings. The unlawful sales and promotions persist today. Amazon’s Section 230 defense succeeded in both the District Court and the Ninth Circuit because Planet Green’s claims involved third-party content and products. Does Section 230 confer immunity on internet platforms when they knowingly permit, facilitate, and profit from third-party promotion and sale of misrepresented products on their websites?

2. Amazon itself is a central player in the promotion, advertising, and sale of misrepresented ink cartridges on its website. Among other activities, Amazon’s algorithms collect and analyze data about the online activities of its users and target advertising and product recommendations to them through direct communications over Amazon’s website and other web platforms, and via email. The lower courts held that Amazon’s algorithm-driven recommendations and targeted advertising were protected by Section 230 because they support third-party product listings.

Does Section 230 immunize internet platforms from civil claims based on their own conduct, including using algorithms to generate targeted advertising and product recommendations for their users?

LIST OF PARTIES

The parties in the proceeding in the United States Court of Appeals for the Ninth Circuit, whose judgment Petitioner asks this Court to review, are Petitioner/Plaintiff Planet Green Cartridges, Inc. and Respondents/Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Advertising LLC. These same entities are the parties to the proceedings in this Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Planet Green Cartridges, Inc. discloses the following. There is no parent or publicly held company owning 10% or more of Petitioner's stock.

RELATED PROCEEDINGS

Petitioner is aware of no proceedings that are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

This petition asks the Court to address the proper scope of Section 230 of the Communications Decency Act (“CDA”), 47 U.S.C. § 230 (“Section 230”). In recent years, this Court has recognized the review-worthiness and critical importance of deciding the scope of Section 230, a statute whose advocates have described it as “the twenty-six words that created the internet.” Jeff Kosseff, *The Twenty-Six Words That Created the Internet* (2019). The Court took up the issue in *Gonzalez v. Google LLC*, 598 U.S. 617, 622 (2023), but ultimately decided that case was not a good vehicle because the underlying claim was not viable. No such impediment exists here and the Court can use this case to provide critical guidance about Section 230 for the lower courts and all participants in the e-commerce that has become so critical to our nation’s economy.

In two years since *Gonzalez*, at least two members of this Court have joined a growing number of appellate judges challenging the leading interpretation of Section 230 in the lower courts and calling for the Court to address the scope of the statute definitively. See *Doe Through Roe v. Snap, Inc.*, 144 S.Ct. 2493, 2493 (2024) (Thomas, J., joined by Gorsuch, J., dissenting from the denial of *certiorari*) (urging the Court “to address whether social-media platforms—some of the largest and most powerful companies in the world—can be held responsible for their own misconduct” under Section 230); *id.* at 2494 (noting that “there is danger in delay” because “[s]ocial-media platforms have increasingly used § 230 as a get-out-of-jail free card”). In *Doe v. Snap*, seven judges of the Fifth Circuit voted to revisit that court’s “erroneous interpretation of Section 230” and indicated that they would not have “[left] in place sweeping immunity for

[internet] companies that the [statutory] text cannot possibly bear.” *Doe Through Roe v. Snap, Inc.*, 88 F.4th 1069, 1070 (5th Cir. 2023)(Elrod, J., dissenting from denial of rehearing *en banc*). Those same judges called up on “our nation’s highest court to properly interpret the statutory language enacted by Congress.” *Id.* at 1073. Other respected jurists have similarly challenged the broad, atextual immunity that the lower federal courts have generally found Section 230 confers on internet companies. *See Force v. Facebook*, 934 F.3d 53, 77-84 (2d Cir. 2019) (Katzmann, C.J., concurring in part and dissenting in part); *accord Gonzalez v. Google*, 2 F.4th 871, 913 (9th Cir. 2021) (Berzon, J., concurring); *id.* at 920 (Gould, J., concurring in part and dissenting in part).

Congress enacted Section 230 as part of a larger effort to limit distribution of obscenity over the Internet and to protect children from pornographic content. While the CDA originally authorized criminal penalties for internet platforms that knowingly disseminated obscene or indecent messages to children, *see* 47 U.S.C. §§ 223(a) & (d), Section 230 (c) provided that Internet companies should not be treated as the publishers or speakers of third party posts on their platforms. In other words, internet platforms could not be subjected to “publisher liability” civil claims for third-party content on their websites, based on either strict liability or their negligence in allowing it to be posted. *See* 3 Restatement (Second) of Torts § 559 (1977). But Section 230 says nothing about protecting platforms from civil liability as “distributors” of third party content, in circumstances when they know or have reason to know it is unlawful. *See id.* § 581(1) cmts. e-f. Such liability would obviously be consistent with the CDA’s larger statutory scheme, which went so far

as to authorize *criminal penalties* against platforms for knowing distribution of unlawful content.

The lower courts have largely ignored the limitations of Section 230 and interpreted the statute to confer a broad immunity from suit for Internet companies when content is posted or products are sold by third parties over their websites, whether claims are based on strict liability- or negligence-based “publisher liability” or knowledge-based “distributor liability.” That judicially-created immunity, which finds no support in the text or history of the statute, has prevented parties whose businesses have been decimated by misrepresented products sold over the internet from seeking redress against e-commerce platforms – even when (a) the platforms demonstrably knew that product listings or products sold on their websites were unlawful or misrepresented; or (b) plaintiff’s claims arose from the platform’s own conduct, including conduct that does not involve publication of third party statements over the defendant’s website. The Fourth Circuit was the first to articulate this misreading of Section 230 and nearly every other circuit has subsequently followed its lead and interpreted the statute to confer broad immunity on Internet platforms that is not supported by the text of the statute.

But the judicial consensus is splintering. The Seventh Circuit has correctly held that Section 230 does not create immunity at all. It precludes liability that relies on deeming an internet service provider a publisher, but leaves open the possibility that a platform might be liable for knowingly distributing unlawful third party content or goods or for its own conduct that goes beyond “publishing.” Outside the Seventh Circuit, an increasing number of appellate

jurists have called for the courts to revisit their misreading of Section 230 in a series of concurrences and dissents. And two members of this Court have challenged their fellow justices to address the scope of Section 230 and firmly reject the claim that “since internet platforms are *not* speakers under § 230, they cannot be subject to any suit implicating users’ content.”

This case presents an ideal vehicle to accept that challenge and correctly decide the scope and meaning of Section 230. Plaintiff Planet Green is a classic American success story. As one of the last remaining printer ink cartridge remanufacturers in the United States, Planet Green has built a multi-million-dollar business by collecting used OEM printer cartridges and remanufacturing them for resale. Planet Green has developed specialized equipment and processes specifically designed to avoid infringing OEM patents in the printhead technology that gets reused in remanufactured ink cartridges.

In recent years, Plaintiff’s business and the U.S. remanufactured printer ink cartridge industry as a whole have been decimated by a flood of new manufactured ink cartridges, typically made in China, that are falsely represented as remanufactured. These misrepresented cartridges deceive consumers, increase plastic-waste, and often infringe OEM patents in the printheads of the ink cartridges they imitate.

The principal portal that allows these unlawful products to flood the United States market is Amazon. Leveraging its vast online marketplace and fulfillment infrastructure, Amazon enables foreign sellers, to sell misrepresented cartridges directly to American consumers with virtual impunity. After Planet Green provided Amazon with detailed evidence of the unlawful sale of misrepresented ink cartridges on its website and engaged in extensive discussions with Amazon about how to address the problem, Amazon ultimately chose not to take any effective action and the sales continue today.

Because of the vast number of individual sellers operating outside the United States, pursuing legal action against them is both impractical and ineffective. So, Planet Green sued Amazon, not simply because it hosted misleading seller listings, but because it knowingly permitted these sellers to advertise, sell, and distribute misrepresented cartridges through its platform. Moreover, Amazon actively facilitated these sales by using its own marketing tools and algorithms to target and communicate with consumers, despite being fully aware of the unlawful nature of the products.

The District Court and the Ninth Circuit held that Planet Green's claims were barred by Section 230 because they involved products listed, sold and promoted over Amazon's website by third parties. In so doing, those courts extended Section 230 far beyond its intended scope to give Amazon a free pass for knowing participation in illegal distribution of falsely labeled and misrepresented ink cartridges, harming Planet Green and contributing to the destruction of an American industry.

Similarly, the lower courts held that Section 230 precluded claims by Planet Green that were not based on conduct by Amazon that involved publishing third party content on its website. While the Ninth Circuit correctly recognized that claims based on Amazon's own sale and physical distribution (from its warehouses and using its trucks) of ink cartridges that were misrepresented as "remanufactured" on their labels and packaging fell beyond the scope of statutory immunity, it nevertheless held that claims based on Amazon's curation of the listings on its website and recommendation of misrepresented cartridges to its customers were barred by Section 230.

But Amazon's use of algorithms to recommend product listings to customers is not traditional "publishing activity," *i.e.*, deciding whether to publish, withdraw, postpone or alter content. It is Amazon's own speech to its customers about the products it recommends. Amazon does not have Section 230 immunity from claims based on its own speech simply because it runs a website and Planet Green's claims involve products that third parties promote and sell there.

The scope of Section 230 is an issue of exceptional national importance. This case demonstrates the extent to which the statute has been ripped from its moorings. Small businesses deserve a forum in which their claims that internet platforms are decimating their industries can be heard – especially when the platforms know the products sold on their websites are unlawful or misrepresented and especially when the claims are based on the platform's own conduct, including conduct that does not involve publishing third party statements on their websites. As it stands now platforms have carte blanche to knowingly

facilitate unlawful sales of misrepresented products, which cause consumer deception and unfair competition. That is the opposite of what Section 230 was enacted to achieve.

Properly defining the scope of the statutory immunity does not mean that plaintiffs will always win their claims or even that the business of companies like Amazon will change materially. It means only that judicial interpretation of the statute will be brought in line with its text and history and that American industries will enjoy the same protections from unfair competition in e-commerce that exist when the same misconduct occurs in the physical marketplace.

OPINIONS BELOW

The opinion of the Ninth Circuit, affirming the District Court's decision granting Amazon's motion to dismiss, is currently unreported and is reproduced at page 1a of the appendix to this petition ("Pet. App."). The unreported opinion can be found at 2025 WL 869209 (Mar. 20, 2025). The decision of the United States District Court for the Central District of California, granting Amazon's motion to dismiss, is currently unreported and is reproduced at Pet. App. 6a. The unreported decision can be found at 2023 WL 8943219 (Dec. 5, 2023).

JURISDICTION

The decision of the Ninth Circuit was entered on March 20, 2025. Pet. App. 40a. This Court has jurisdiction under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. §§ 1331, 1338, and 1367(a).

STATUTORY PROVISIONS INVOLVED

47 U.S.C. § 230(c) provides:

(c) Protection for “Good Samaritan” blocking and screening of offensive material

(1) Treatment of publisher or speaker

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.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

STATEMENT OF THE CASE

A. Statutory Background

Section 230 contains two subsections that protect internet service providers from some civil and criminal claims. Section 230(c)(1) provides 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.” It ensures that internet companies can host and transmit third-party content without being subject to the liability that sometimes attached to the publishers and speakers of unlawful content. Section 230(c)(2) immunizes internet companies from liability for (A) good-faith acts to restrict access to, or remove, certain types of objectionable content; or (B) giving consumers tools to filter the same types of content. It allows companies to create community guidelines and remove harmful content without worrying about legal reprisal.

Congress enacted the statute against specific background principles. “Publishers or speakers were subjected to a higher standard because they exercised editorial control. They could be strictly liable for transmitting illegal content.” *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S.Ct. at 14; see 3 Restatement (Second) of Torts § 559. “But distributors were different. They acted as a mere conduit without exercising editorial control, and they often transmitted far more content than they could be expected to review. Distributors were thus liable only when they knew (or constructively knew) that content was illegal.” *Malwarebytes*, 141 S.Ct. at 14; see 3 Restatement (Second) of Torts § 581(1) cmts. e-f. By prohibiting courts from treating internet platforms as publishers of third-party content, Section 230 thus apparently precluded liability for unknowing or

negligent transmission of illegal content. But the statute is silent with respect to distributor liability, leaving claims for knowing transmission of illegal content outside the scope of Section 230 immunity.

The distinction is consistent with the history and structure of the statute of which Section 230 is a part. Section 230 was adopted one aspect of a larger statutory effort to deregulate and encourage innovation in telecommunications. *See Reno v. ACLU*, 521 U.S. 844, 857 (1997). With respect to the then-emergent internet, Congress addressed only one subject – controlling digital distribution of pornography, especially to children. *See Force*, 934 F.3d at 76 (Katzmann, C.J., concurring in part and dissenting in part); Telecommunications Act of 1996, tit. V, subtit. A., 110 Stat. at 133-39.

Presented with two competing proposals for how to address the protection of children and families from internet distribution of pornographic content, Congress adopted both (a) provisions criminalizing “knowing” transmission of (or knowingly permitting telecommunications facilities under the defendant’s control to be used to transmit) obscene or indecent content to anyone under 18 years of age, *see* 47 U.S.C. §§ 223(a) & (d); and (b) Section 230. *Reno*, 521 U.S. at 859-60. The criminal prohibitions were also enforceable by a civil remedy. 47 U.S.C. § 207. The structure of the CDA, as originally enacted, thus compels the conclusion that Section 230 leaves open the possibility of civil liability for internet companies that “knowingly” permit third parties to use their facilities to transmit illegal content or market misrepresented products. After all, the original statute authorized both civil and even criminal penalties or the same conduct. *Malwarebytes*, 141 S.Ct. at 15 (“It is odd to hold, as courts have, that Congress

implicitly eliminated distributor liability in the very Act in which Congress explicitly imposed it.”); *accord Doe v. Snap*, 88 F.4th at 1070 (Elrod, J., dissenting from the denial of rehearing *en banc*).

Section 230 was a specific response to a New York trial court’s decision that an online service became a “publisher” when it decided to remove indecent content from its site, and therefore liable for negligent failure to remove other objectionable content. *Stratton-Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, at *4 (N.Y. Sup.Ct., May 24, 1995). The proponents of Section 230 sought to overturn *Stratton-Oakmont*, which they viewed as indicative of a legal system that created massive disincentives for internet companies, who were best situated to assist in restricting distribution of pornography, to do so. The statute was designed to remove that disincentive by eliminating publisher liability for internet companies and protecting their efforts to filter offensive content. *Force*, 934 F.3d at 79; *see* S. Rep. No. 104-230, at 194. But the legislative objective did not require limitations on distributor liability for knowingly supporting transmission of objectionable content and Congress did not impose any.

In short, as Justice Thomas has concluded, the text, history, and context of the statute suggest that “if a company unknowingly leaves up illegal third-party content, it is protected from publisher liability by § 230(c)(1),” while distributor liability for “knowing” transmission is not subject to statutory protection. *Malwarebytes*, 141 S. Ct. at 15. If “Congress wanted to eliminate both publisher and distributor liability in the [CDA], it could have simply created a categorical immunity in § 230(c)(1): No provider ‘shall be held liable’ for information provided by a third party. After all, it used that exact categorical language in the very

next subsection, which governs removal of content.” *Id.* at 16. But Congress did not do so, which further supports the conclusion that distributor liability remains unprotected.

Even though Section 230 immunity attaches at most to the publication of third-party content over an internet company’s own platform, courts have repeatedly confronted the question of whether and to what extent the statute immunizes internet companies from their own conduct. Specifically, plaintiffs have raised the question presented here – does Section 230 immunize an internet company’s use of an algorithm to generate recommendations of third-party content or products for users of its platform. This was the exact issue presented in *Gonzalez*.

In *Gonzalez*, the Ninth Circuit held that algorithm-driven recommendations that Google made to its users were covered by Section 230 immunity because they were merely the product of “neutral tools” that facilitated the distribution of third-party content over Google’s platform. *Gonzalez v. Google*, 2 F.4th 871, 894-95 (9th Cir. 2021). The court rejected the argument that the recommendations were Google’s own speech and thus beyond the scope of Section 230. *Id.* at 896-97. It therefore held that Google was immune from claims that its algorithms recommended ISIS recruiting content to users who ultimately collaborated with ISIS in terrorist activity. *See also Dryoff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019) (Section 230 immunized platform’s algorithm-driven recommendations that connected plaintiff’s son to seller of fentanyl-laced heroin that killed him). The Second Circuit reached a similar conclusion in *Force*, 934 F.3d at 64-72 (claims based on Facebook’s use of algorithms to connect

recruits to content posted by Hamas were barred by Section 230 because the use of algorithms did not “develop” the underlying content and deciding to whom content will be shown is an “editorial” function).

The decisions in *Gonzalez*, *Force* and other recent Section 230 cases have met with sharp criticism from a “growing chorus of voices calling for a more limited reading of the scope of section 230 immunity,” *Gonzalez*, 2 F.4th at 913 (Berzon, J., concurring), including members of this court and multiple judges of the courts of appeals. Justice Thomas has observed that courts have “departed from the most natural reading of [Section 230’s] text by giving Internet companies immunity for their own content,” even though the statute provides protection only for content provided by “another ... provider.” *Malwarebytes*, 141 S.Ct. at 16. Judge Berzon wrote that “targeted recommendations and affirmative promotion of connections and interactions among otherwise independent users are well outside the scope of publication” and therefore not covered by Section 230. *Gonzalez*, 2 F.4th at 914. Based on the text of the statute, she “would hold that a plaintiff asserting a claim based on the way that website algorithms recommend content or connections to users is not seeking to treat the interactive computer service as a ‘publisher’ within any usual meaning of that term. Instead, the website is engaging in its own communications with users....” *Id.* at 914-15.

Other judges have reached similar conclusions about whether Section 230 reaches claims based on algorithm-driven recommendations that platforms make to their users. *See id.* at 922 (Gould, J., concurring in part and dissenting in part) (Section 230 “in no way provides immunity for other conduct of

[internet platforms] that goes beyond merely publishing [a third-party] post,” including using the platform’s “infrastructure, network, applications, tools, features, and communications services” to recommend posts to users); *Force* 934 F.3d at 76-77 (Katzmann, C.J., concurring in part and dissenting in part) (Facebook’s use of sophisticated algorithms to recommend posts to users based on their online activities does not constitute publishing activity and is therefore beyond the scope of Section 230); *id.* at 82 (Section 230 “does not protect Facebook’s friend- and content-suggesting algorithms”).

B. Factual Background.

This case seeks to hold Amazon accountable for its role in the destruction of the printer ink cartridge recycling industry in the United States and Plaintiff Planet Green’s business, in particular. Over the past 25 years, Planet Green has been an industry leader. First Amended Complaint (among Additional Materials Available in the Clerk’s Office) ¶5, 15. Planet Green remanufactures ink cartridges in a state-of the art facility that utilizes a painstaking process that involves obtaining used OEM cartridge cores, thoroughly inspecting and cleaning them, refilling them with new ink, testing for quality control, and packaging them for resale. It is a successful, multi-million-dollar business that supports the local economy and employs hundreds of people in high-paying jobs. The remanufactured ink cartridges sold by Planet Green are authentic recycled products. *Id.*

The United States was once the epicenter of printer ink cartridge remanufacturing, with thousands of remanufacturers, suppliers, and retailers located here.

Id. ¶15. In the mid-2000s, domestic printer cartridge remanufacturing grew into an estimated \$7 billion industry with thousands of participants. *Id.* ¶32. In recent years, however, the industry has been decimated by a flood of falsely labeled and misrepresented new manufactured ink cartridges, imported mostly from China. Sellers, including Amazon itself, represent these cartridges to consumers as genuine remanufactured and recycled products, in product listings on Amazon's website, promotional communications, and on product packaging and labels. But those representations are false. *Id.* ¶55. The cartridges are not remanufactured. They are actually newly manufactured products that add to the environmental concerns that consumers have sought to avoid by purchasing remanufactured cartridges. *Id.* ¶16.

The mass importation of new manufactured ink cartridges that are falsely represented as remanufactured displaces the demand for genuine remanufactured products, undermines the remanufacturing industry's core business model, and pushes legitimate remanufacturers out of business. It has done untold damage to Planet Green's business. Saturating the market with misrepresented ink cartridges creates an uneven playing field where foreign companies gain an unlawful advantage by selling new manufactured cartridges that: (a) are falsely advertised as remanufactured; (b) violate federal, state, and local standards designed to reduce plastic-waste; (c) infringe the patents in the printer head technology on OEM cartridges and (d) can be produced without devoting resources to collecting and reconditioning OEM cartridge cores. By this point, Planet Green is the largest printer ink cartridge remanufacturer remaining in the United States. It produces the overwhelming

majority of remanufactured printer ink cartridges sold at retail in this country, including over Amazon's website. *Id.*

The principal portal for sales of misrepresented ink cartridges in the United States is Amazon's website. Amazon sells literally millions of foreign-made, misrepresented cartridges, generating an estimated \$3.2 billion in sales annually. Planet Green first identified a significant problem with misrepresented cartridges in 2021. *Id.* ¶¶20, 29-30, 33. Concerned with the proliferation of these unlawful products, Planet Green conducted its own investigation in 2022 and discovered literally thousands of different brands of newly manufactured cartridges that were falsely represented as remanufactured. *Id.* ¶¶47-48. Upon further investigation, Planet Green was able to trace these products to sellers who used deceptive product listings and product labels to sell them on Amazon's website.

Planet Green promptly brought the results of its investigation to Amazon's attention. It submitted its first formal complaint through Amazon's online portal in March 2022. Three months later, on June 23, 2022, Planet Green provided Amazon with a presentation detailing results of its own investigations, which showed 18 different companies each with numerous listings for aftermarket ink cartridges that were misrepresented in product listings and on packaging and labeling as remanufactured, when they were actually new manufactured cartridges. *Id.* ¶17 & Ex. 1.

On December 8, 2022, after nearly six months with no satisfactory action being taken to stop the unlawful sales of misrepresented new manufactured cartridges

by any of the sellers identified in the June 2022 presentation, Planet Green provided Amazon with a second presentation of evidence, identifying total of 82 brands of misrepresented cartridges, each with numerous listings. The second presentation further exposed a category-wide problem with falsely labeled cartridges that violate environmental standards and deceive consumers. *Id.* ¶18 & Ex. 2.

Amazon acknowledged receipt of Plaintiff's second presentation and asked for some of the underlying evidence. *Id.* ¶19. Over the course of a year, Planet Green's legal counsel engaged with Amazon over 35 times and submitted multiple detailed documents to illustrate the ongoing problem. At a May 2023 meeting, Amazon's representatives admitted that they had asked the sellers Planet Green had identified—who were falsely advertising and labeling their products—to either substantiate their remanufacturing claims or revise their product descriptions. *Id.* ¶66. This was a significant admission: while Amazon clearly recognized there was a problem, it ultimately failed to take action to prevent any of the identified sellers from continuing to offer misrepresented cartridges on its website or to remove falsely labeled cartridges from its fulfillment centers. *Id.* ¶¶66-67. Instead, Amazon allowed them to continue selling misrepresented cartridges over its website and reminded Planet Green that it was immune from liability for third-party statements under Section 230.

Planet Green was not the only entity that brought the problem to Amazon's attention. In February 2023, the International Imaging Technology Council ("IITC"), a trade association for U.S. printer cartridge remanufacturers and suppliers, sent Amazon a letter outlining the "growing problem of 'fake' remanufac-

tured products flooding e-commerce platforms.” *Id.* ¶74. The letter attached a presentation that laid out evidence of a category-wide problem with imported cartridges that were misrepresented as remanufactured and proposed a solution. IITC offered Amazon a simple verification process for remanufactured printer ink cartridges that is similar to the process Amazon already uses to verify the authenticity of new OEM printer cartridges. The proposal would have allowed Amazon to verify the legitimacy of remanufactured cartridges before product listings were accepted. Amazon never adopted this common-sense approach to verifying remanufactured ink cartridges, despite extensive evidence of a category-wide problem. *Id.* ¶¶74-75. The problem of illicit sales of misrepresented new manufactured ink cartridges over Amazon’s website persists unabated to this day.

Moreover, Amazon is hardly a mere passive platform over which others sell and promote misrepresented ink cartridges. It is directly engaged in sales and promotion in ways that take it outside the scope of Section 230 protection. Importantly, for purposes of this petition, Amazon participates directly in the marketing of misrepresented cartridges by using its own sophisticated algorithms to identify users to whom advertising and product recommendations should be targeted, thereby increasing sales of misrepresented cartridges and the harm they cause to Planet Green and the legitimate remanufacturing industry as a whole. *Id.* ¶¶49-50. Amazon itself delivers targeted advertising to users identified through its algorithms both within its own website and via email communications to those same users at their accounts on other platforms. For example, Amazon is one of Google’s biggest advertising clients.

Id. ¶50. Amazon’s targeted promotional support of the sellers’ unlawful listings goes far beyond traditional publisher functions. It has nothing to do with selecting, editing or withdrawing third-party content. To the contrary, it constitutes Amazon’s own speech (*i.e.*, product recommendations and advertising) to its users, based on its own algorithm-driven consumer research.

And Amazon is itself a direct seller and distributor of new manufactured ink cartridges that are misrepresented as remanufactured in their product listings and on their labels and packaging – conduct which the Ninth Circuit held fell beyond the scope of Section 230 immunity. *Id.* ¶¶39-40, 52-54, 69. In those capacities, Amazon’s knowledge that the new manufactured ink cartridges it sells and distributes bear labels that misrepresent them as remanufactured created a duty to act that Section 230 does not reach.

C. Procedural Background.

After more than a year of fruitless communications that led to no effective action by Amazon to stop sellers it knew were misrepresenting newly manufactured ink cartridges as remanufactured products over its website and through its distribution centers, Planet Green was left with no choice but to file suit against Amazon in the Central District of California on August 14, 2023, in order to put a stop to these unlawful sales and unfair competition.

The Complaint detailed the devastating effects of unlawful trafficking in misrepresented ink cartridges over Amazon’s website, Planet Green’s investigation of the problem and extensive efforts to protect its business, and Amazon’s engagement with Planet Green and ultimate decision not to take corrective

action to stop unlawful sales that it acknowledged were a problem. Based on the facts outlined above, Planet Green's claims against Amazon, as enumerated in the First Amended Complaint, included False Advertising and False Designation of Origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A) & (B), California common law unfair competition, unfair competition in violation of California Business & Professions Code § 17200, false advertising in violation of California Business & Professions Code § 17500, and negligence (based principally on Amazon's distribution of products that are misrepresented on their physical packaging and labels).

Amazon moved to dismiss the Complaint and the District Court granted the motion in an order dated December 5, 2023. With respect to Section 230, the Court applied the "broad federal immunity" that members of this Court and others in the federal judiciary have questioned in recent years and held that the statute provided Amazon with immunity from all of Planet Green's claims because they all treated Amazon as the publisher of speaker of third-party content created by the illicit cartridge sellers.

The Court accorded no importance to Amazon's knowledge that the sellers were offering misrepresented cartridges on its website and found that Amazon's participation in the marketing of the counterfeit cartridges did not affect the Section 230 analysis because its algorithms were merely "neutral tools" for expanding the reach of the sellers' product listings.

The District Court also dismissed Planet Green's claims other than negligence because the actionable product misrepresentations did not originate with Amazon, even though Amazon indisputably used and

distributed false and misleading statements about the falsely represented cartridges. It also held that Planet Green had not sufficiently pled passing off to state a claim for common law unfair competition and that the negligence claim had to be dismissed because Planet Green did not identify an actionable duty.

Planet Green filed a timely appeal and the Ninth Circuit affirmed the District Court in a memorandum disposition dated March 20, 2025. The Ninth Circuit agreed that under its precedents, Section 230 immunized Amazon from Planet Green's claims, to the extent they are based on either statements made by third-party sellers on Amazon's website or the use of Amazon's algorithms to target advertising and promotions or product recommendations to users of the site. With respect to claims based on Amazon's distribution of new manufactured ink cartridges in packaging and bearing labels that misrepresent them as remanufactured, the Court held Section 230 did not preclude liability because the actionable statements were not made on the internet. Nevertheless, the Ninth Circuit affirmed the District Court's conclusion that the claims other than negligence were properly dismissed because the allegedly actionable statements all originated from speakers other than Amazon and similarly agreed that Planet Green had not pled and actionable duty to support its negligence claim.

As a consequence of the lower courts' rulings, Amazon has suffered no consequence for its knowing participation in the distribution of misrepresented ink cartridges and these illicit sales continue over its website today with no end in sight.

REASONS FOR GRANTING THE WRIT

I. The questions presented require this Court’s review

A. The Court has previously recognized the need to review the scope of Section 230

Less than three years ago, this Court granted certiorari in *Gonzalez v. Google* “to review the Ninth Circuit’s application of § 230.” *Gonzalez v. Google LLC*, 598 U.S. 617, 622 (2023). In granting *certiorari*, the Court necessarily found that the case presented an important federal question – reviewing lower courts’ interpretations of Section 230 – that merited Supreme Court review. *See* Supreme Court Rule 10. Notably, *Gonzalez* presented one of the specific questions raised in this petition – whether Section 230 immunizes an internet company from claims based on its own conduct in the form of using algorithms to generate recommendations of third-party content or products for users of its platform.

For his part, Justice Thomas has repeatedly urged the Court to “address the proper scope of immunity under § 230 in an appropriate case,” *Doe v. Facebook, Inc.*, 142 S.Ct. 1087, 1088–89 (2022) (Thomas, J., respecting the denial of *certiorari*), both before and after *Gonzalez*. *See also Malwarebytes*, 141 S.Ct. at 18 (Thomas, J., respecting the denial of *certiorari*) (“[W]e need not decide today the correct interpretation of § 230. But in an appropriate case, it behooves us to do so.”); *Doe v. Snap, Inc.*, 144 S.Ct. 2493, 2494 (2024) (Thomas, J., dissenting from the denial of *certiorari*) (“The question whether § 230 immunizes platforms for their own conduct warrants the Court’s review.”). In his most recent call, Justice Thomas, who was joined

by Justice Gorsuch, warned, “there is danger in delay. Social-media platforms have increasingly used § 230 as a get-out-of-jail free card.” *Id.*

The Court never reached the question presented in *Gonzalez*, “declin[ing] to address the application of § 230 to the plaintiffs’ complaint because, in light of the contemporaneous decision in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), the *Gonzalez* complaint failed to state a plausible claim for relief.” *Gonzalez*, 598 U.S. at 622. The critical question of the proper scope of Section 230 thus remains unanswered by this Court.

B. The Circuits require this Court’s guidance on how to interpret Section 230 with respect to both of the questions presented

The federal judiciary is divided over the proper scope of Section 230. To the extent a consensus exists, it is one that largely disregards the modest interpretation of Section 230 immunity compelled by the statutory text and history in favor of a “sweeping immunity” that adopts “the too-common practice of reading extra immunity into statutes where it does not belong.” *Malwarebytes*, 141 S. Ct. at 15. The first Court of Appeals to address the statute was the Fourth Circuit in *Zeran v. America Online, Inc.* 129 F.3d 327 (4th Cir. 1997). The *Zeran* court affirmed judgment on the pleadings and found all of plaintiff’s claims barred by Section 230(c)(1) in a case alleging that AOL unreasonably delayed in removing defamatory messages about the plaintiff that were posted by an unknown user, refused to post retractions, and failed to screen for similar postings. *Zeran*, 129 F.3d at 328-29. It held that Section 230 confers immunity for “any cause of action that would make service providers liable for information originating with a third-party

user.” The court concluded that the plaintiff’s claims were barred by Section 230 because they were all based on defamatory third-party statements on AOL’s online “bulletin boards.” *Id.* at 330.

The Fourth Circuit rejected the plaintiff’s argument that, Section 230 eliminates only publisher liability,” but leaves “distributor liability intact.” *Id.* at 331. Plaintiff argued that the statute only provides that internet companies “shall not be treated as the publisher or speaker” of third-party content on their platforms, but says nothing about whether they may be treated as “distributor[s]” and subjected to liability for knowing transmission of unlawful content. But the court found that distributor liability is “merely a subset, or a species, of publisher liability, and is therefore also foreclosed by § 230.” *Id.* at 332. In so doing, it provided shelter for internet companies that know about unlawful content or activities on their platforms and do nothing to stop it, in direct contradiction of the central purpose of Section 230, which was to incentivize platforms to assist in restricting the dissemination of objectionable content.

Following *Zeran*, “[t]he majority of federal circuits have interpreted [§ 230] to establish broad ‘federal immunity to any cause of action that would make service providers liable for information originating with a third-party user....’” *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (quoting *Zeran*); see *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 173 (2d Cir. 2016) (collecting cases); *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 406–07 (6th Cir. 2014) (Section 230 “immunizes providers of interactive computer services against liability arising from content created by third parties.”); *Marshall’s Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263,

1267 (D.C. Cir. 2019) (“Congress[] inten[ded] to confer broad immunity for the re-publication of third-party content.”); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (“Courts have construed the immunity provisions in § 230 broadly in all cases arising from the publication of user-generated content.”); *accord Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1174-75 (9th Cir. 2008).

The Seventh Circuit, however, has split from the other Courts of Appeals on the proper interpretation of Section 230. That court has questioned whether Section 230(c)(1) creates any form of immunity, *Chicago Lawyers’ Comm. For Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 669 (7th Cir. 2008), and held that it is instead a “definitional clause.” *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003). Consistent with the text of the statute, the Seventh Circuit has found that Section 230 “forecloses any liability that depends on deeming the ISP a ‘publisher’... while permitting the states to regulate ISPs in their capacity as intermediaries.” *Id.*; see *City of Chicago v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010). Applying these principles, it has recognized that Section 230 does not confer immunity for claims based on a defendant’s own conduct in assisting a third-party speaker or publisher reach its intended audience, especially when the defendant knows the speaker is engaged in unlawful conduct. See *G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 566-67 (7th Cir. 2023).

In addition, as noted above, no fewer than ten Court of Appeals judges have joined two members of this Court in openly challenging the leading interpretation of Section 230 and calling for the Court to decide the

proper scope of statutory immunity definitively – especially as relates to knowledge-based “supplier liability” and claims based on an internet platform’s own conduct, including the use of algorithms to generate recommendations and targeted advertising for website users. *See Doe v. Snap*, 144 S.Ct. at 2493 (Thomas, J., joined by Gorsuch, J., dissenting from the denial of *certiorari*); *Doe v. Snap, Inc.*, 88 F.4th at 1070 (Elrod, J., joined by six other judges, dissenting from denial of rehearing *en banc*); *Gonzalez*, 2 F.4th at 913 (Berzon, J., concurring); *id.* at 920 (Gould, J., concurring in part and dissenting in part); *accord See Force* 934 F.3d at 77-84 (Katzmann, C.J., concurring in part and dissenting in part).

C. This petition presents questions of exceptional importance.

1. The questions presented in this petition have enormous implications that extend well beyond Planet Green’s dispute with Amazon. As a general matter, the proper interpretation of Section 230 affects internet platforms, including some of the nation’s largest corporations – *e.g.*, Amazon, Google, Meta – and their incentives to control the proliferation of misleading, unlawful, dangerous and offensive content on their sites. *See Doe v. Snap*, 144 S.Ct. at 2493 (Thomas, J., dissenting from the denial of *certiorari*).

As the Seventh Circuit has noted, if one accepts the leading interpretation of Section 230 as immunizing platforms from both publisher and distributor liability for third-party statements on their websites, then the statute defies its stated purpose. Section 230’s title is “Protection for ‘Good Samaritan’ blocking and screening of offensive material.” It is intended to encourage websites to take action to limit the distribution of offensive or unlawful material without

fear of liability. If it is read to immunize platforms from both publisher liability (on a showing of negligence or less) and supplier liability (on a showing of actual or constructive knowledge), then it eliminates any concern with legal repercussions for unlawful third-party posts on a platform's website and it incentivizes platforms to do nothing to address them – as Amazon has done in this case. *See Doe v. GTE*, 347 F.3d at 660.

The effects of granting such broad immunity are particularly pernicious in the context of this case, where Amazon seeks to use Section 230 as a shield not only from liability for third party posts on its website, but for its own participation in the promotion, distribution, and sale of huge quantities of unlawful and misrepresented products. The statute was intended to shield platforms from certain forms of liability for third party content on their websites. It was not meant to be a ‘get-out-of-jail-free” card for companies that knowingly participate in the sale of unlawful and misrepresented products. *See Doe v. Snap*, 88 F. 4th at 1071 (“Today's “interactive computer services” are no longer the big bulletin boards of the past. They function nothing like a phone line. Rather, they are complex operations offering highly curated content.”); *id.* (Section 230 should not confer immunity on social media company for claims based on its own recommendations of posts that it knew or should have known involved illegal conduct).

2. E-commerce comprises roughly 16% of all retail sales in the United States. And that number is projected to grow rapidly. U.S. Department of Commerce, *U.S. Census Bureau News*, at 2 (Table 1) (May 19, 2025), available at https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf. Sales over Amazon

constitute roughly 40% of domestic online sales. *See* eMarketer, U.S. Economic Forecast 2024 (Aug. 23, 2024), available at <https://www.emarketer.com/content/us-ecommerce-forecast-2024#page-report>. If a proper interpretation of Section 230 affected just Amazon, it would therefore affect over 6% of all domestic retail sales – estimated at over \$300 billion. That alone would have a significant effect on how internet platforms conduct e-commerce, especially because Amazon is the industry leader. Reading Section 230 in a manner that permits platforms to be subject to potential liability for knowingly supporting sales of unlawful products and for their own conduct in using their algorithms to target advertising and promotions of such products would encourage the platforms to take greater responsibility for preventing unlawful sales. That would reduce unfair competition in e-commerce and protect consumers from misrepresented and unlawful products.

3. Interpreting Section 230 to immunize platforms from both publisher liability (based on negligence or less) and distributor liability (based on actual or constructive knowledge) for unlawful third party posts or product listings on their websites often leaves injured parties, including consumers and other participants in markets affected by contraband products, without any effective remedy for their injuries. The facts of this case are a paradigm example. The recycled printer ink cartridge industry, and Planet Green's business in particular, have been decimated by the proliferation of misrepresented new ink cartridges, falsely claiming to be remanufactured, mostly manufactured in China and sold by Chinese companies.

The principal portal that allow these sellers to reach the huge U.S. market is Amazon. If Amazon had acted to prevent their unlawful sales after it became aware of them, the assault on Planet Green's business and its industry could have been eliminated or greatly reduced. But Amazon instead chose to do nothing. It permitted the unlawful sales to continue, even assisting sellers in their efforts, all the while claiming the protection of Section 230. Ultimately, Planet Green has been left with no remedy for unlawful conduct that threatens its very existence and has already driven most of its competitors out of business. Suing small Chinese companies that are difficult to locate and serve with process, have few if any assets in the United States, and frequently disband in response to enforcement activity and reform as new entities is expensive and ineffective.

Of course, the problem is far bigger than the sale of misrepresented printer ink cartridges and its effects on Planet Green and others in its industry. Recent studies reveal that Amazon, in particular, and e-commerce platforms generally are major portals for the importation, distribution, and sale of contraband and unlawful products in the United States – everything from banned, unsafe and mislabeled products, see A. Berzon, *et al.*, *Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products*, Wall St. J. (Aug 23, 2019), available at <https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990>, to expired foods and unsafe medications, see A. Palmer, *Amazon Is Shipping Expired Food, From Baby Formula to Old Beef Jerky, Scaring Consumers and Putting Big Brands at Risk*, CNBC (Oct. 20, 2019), available at <https://www.cnbc.com/2019/10/20/amazon->

is-shipping-expired-baby-formula-and-other-out-of-date-foods.html?&qsearchterm=amazon, to counterfeits and other knockoffs, see Department of Homeland Security Office of Strategy, Policy & Plans, *Combating Trafficking in Counterfeit and Pirated Goods* (Jan. 24, 2020), available at https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf. See generally G. Suthivarakom, *Welcome to the Era of Fake Products*, Wirecutter (Feb. 11, 2020), available at <https://www.nytimes.com/wirecutter/blog/amazon-counterfeit-fake-products/>. Interpreting Section 230 consistently with its text to permit distributor liability for platforms that fail to take reasonable steps when they know or reasonably should know about unlawful or misrepresented products being listed and promoted over their websites would protect consumers and lawful competitors in a wide variety of industries.

Reading Section 230 correctly such that it does not immunize internet platforms from distributor liability for their actions in response to knowledge of unlawful, misleading or otherwise harmful posts on their websites or for claims based on their own actions, including using their algorithms to target advertising and direct recommendations to users, would not necessarily expose the platforms to greater liability. Plaintiffs still have to prove their cases. It would, however, require platforms to consider their own actions – responding to knowledge of misleading and unlawful content or using their algorithms to support the marketing of misrepresented products – more carefully. And it would give companies like Planet Green in a wide variety of industries a forum in which their claims could at least be heard and where they would enjoy the same protections they would have if

the same misleading product listings and promotions appeared in commerce in the physical world.

II. This case presents an ideal vehicle for resolving the questions presented.

This case presents a strong vehicle to decide critical questions about the scope of Section 230 immunity that the lower courts have grappled with for years.

1. The case is an ideal vehicle because it squarely presents both of the questions in this petition. Both the district court and the Ninth Circuit held that Section 230 immunized Amazon from all of Planet Green's claims that were based on product listings and promotions on its website. The district court dismissed all such claims, including false advertising, false designation of origin, and unfair competition, under Section 230 and the Ninth Circuit affirmed. The case thus turns principally on the proper application of Section 230 and the avenues of lower court review have been exhausted.

The case addresses two questions concerning the scope of Section 230 that have generated disagreement and dissent among judges of the courts of appeals and drawn the attention of members of this Court. *First*, Planet Green's claims raise the question of whether Amazon can be held liable as a distributor of unlawful posts, and not as a publisher. Planet Green's false advertising and unfair competition claims are significantly based on allegations that Amazon knew – because Planet Green put it on notice – about the listing and promotion of misrepresented ink cartridges on its website and chose not to take action because of its confidence that it would be shielded from liability by the statute. If the Court finds that Section 230 does not confer immunity for distributor liability, as the

Seventh Circuit has held, then Planet Green should be permitted to proceed on these claims.

Second, Planet Green's claims arise, in part, from Amazon's use of its algorithms to generate targeted advertising and product recommendations for its users. If this Court holds, as judges of the Second, Fifth, and Ninth Circuits have urged, that the use of algorithms to generate user recommendations and targeted promotions is Amazon's own conduct and its own speech, which falls outside the scope of Section 230, then Planet Green should likewise be permitted to proceed with its false advertising and unfair competition claims. Such a holding would also overturn the lower courts finding that Planet Green had not pled an actionable statement by Amazon because the use of the algorithms and the targeted product recommendations and promotions they generate would constitute Amazon's own actionable statements and conduct, as to which Section 230 would not impose any impediment to civil liability.

2. This Court is the appropriate forum to correct the overly broad and textually unsupported reading of Section 230 immunity that pervades in the lower federal courts. Internet companies have repeatedly told the courts that they should defer to ongoing congressional efforts to reform the statute. And Amazon may make the same argument here. But Section 230(c)(1) was enacted 30 years ago and Congress has taken no action to clarify the statute since. There is no indication that any pending bills to reform Section 230 have any chance of passing or that they would address the statute's effect on e-commerce and the companies and industries affected by it. The overly broad reading of Section 230 immunity that

pervades in the lower courts is a judge-made problem and this Court is the right place to address it.

CONCLUSION

For these reasons, Planet Green's Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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June 18, 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed March 20, 2025]

No. 23-4434

D.C. No. 2:23-cv-06647-JFW-KS

PLANET GREEN CARTRIDGES, INC.,
a California corporation,

Plaintiff-Appellant,

v.

AMAZON.COM, INC., a Delaware corporation;
AMAZON.COM SERVICES, LLC, a Delaware limited
liability company; AMAZON ADVERTISING LLC,
a Delaware limited liability company,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding
Argued and Submitted November 20, 2024
Pasadena, California

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: RAWLINSON, CHRISTEN, and JOHNSTONE,
Circuit Judges.

Planet Green Cartridges, Inc. (Planet Green) appeals the district court’s order granting Defendants’ (collectively, Amazon) motion to dismiss Planet Green’s complaint. Because the parties are familiar with the facts, we do not recount them here. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we review de novo the district court’s order dismissing the complaint. *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019). We affirm.

1. We begin with the application of 47 U.S.C. § 230(c)(1), pursuant to which immunity extends to “(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat . . . as a publisher or speaker (3) of information provided by another information content provider.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009) (citing 47 U.S.C. § 230(c)(1)). We easily conclude that Amazon is an “interactive computer service” provider, a term that we interpret “expansively,” *Dyroff*, 934 F.3d at 1097 (citing *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1268 (9th Cir. 2016)), because Planet Green alleges that Amazon operates websites, including Amazon.com, and much of its complaint focuses on product listings on Amazon.com, *see id.*

We also conclude that Planet Green’s “theory of liability would treat [Amazon] as a publisher or speaker” *Barnes*, 570 F.3d at 1101. Each of Planet Green’s claims rests on the same theory of liability, which is that Amazon made, or failed to prevent others from making, false or misleading statements about “clone ink cartridges” sold on Amazon.com. This theory imposes a duty on Amazon to refrain from publishing such statements.

The third element of section 230 immunity is satisfied with respect to most, but not all, of Planet Green's claims. To satisfy this element, a defendant must not create or develop the relevant "information provided through the Internet" and thereby act as an "information content provider." *See* 47 U.S.C. § 230(0)(3); *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162-63 (9th Cir. 2008) (en banc). One "develop[s]" content in the relevant sense by "materially contributing to its alleged unlawfulness." *Roommates*, 521 F.3d at 1167-68.

To the extent Planet Green's claims are directed to statements published by third parties on Amazon.com product listings, this element is satisfied because Amazon merely publishes the third-party content at issue. *See Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 744-46 (9th Cir. 2024). Although Planet Green insists that Amazon's extensive control over sellers and listings on Amazon.com transforms Amazon into an information content provider, enabling or enhancing the distribution of unlawful content through "neutral tools" is distinct from "materially contributing to [the content's] alleged unlawfulness." *Roommates*, 521 F.3d at 1168-69.

Similarly, with respect to Planet Green's allegations that Amazon collects and analyzes customer data to create promotional emails and search-engine optimizations, enhancing access to actionable content without more does not constitute creation or development of that content. *See id.* at 1171-72. Tools that recommend or suggest third-party content "are tools meant to facilitate the communication and content of others," and "are not content in and of themselves." *Dyroff*, 934 F.3d at 1098; *see Calise*, 103 F.4th 745-46.

However, Planet Green also alleges that Amazon directly imports and distributes clone ink cartridges through the Amazon Warehouse and the Fulfilled by Amazon program, and that the packaging and labels on these clone ink cartridges include false or misleading statements. These third-party statements are not provided by “another information content provider,” 47 U.S.C. § 230(c)(1), because they are not “information provided through the Internet,” *id.* § 230(0)(3). Indeed, Planet Green’s allegations would not materially differ if Amazon conducted its transactions at a brick-and-mortar retail store. Thus, extending immunity to this circumstance would “exceed the scope of the immunity provided by Congress and . . . give online businesses an unfair advantage over their real-world counterparts.” *Roommates*, 521 F.3d at 1164 n.15. Accordingly, Planet Green’s allegations concerning Amazon’s importation and distribution of ink cartridges are not foreclosed by section 230.

2. We next conclude that, to the extent claims 1 through 5 of Planet Green’s complaint (*i.e.*, all claims other than its negligence claim) survive section 230, Planet Green has failed to allege an actionable false statement by Amazon.¹ Planet Green does not allege that Amazon itself made any of the false statements on the packaging and labeling for clone ink cartridges; rather, the statements at issue

¹ Each of Planet Green’s first five claims requires a false statement by Amazon. *See* 15 U.S.C. § 1125(a)(1) (Lanham Act false advertising and false designation); *Cleary v. News Corp.*, 30 F.3d 1255, 1262-63 (9th Cir. 1994) (California Unfair Competition Law (UCL), Cal. Bus. & Prof Code § 17200; and common-law unfair competition); *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*, 494 F.3d 788, 808-09 (9th Cir. 2007) (California UCL and false advertising, Cal. Bus. & Prof. Code § 17500).

were all made by third parties. Amazon's sale of a product, without more, does not warrant treating Amazon as the maker of the statements contained within that product's commercial advertising.

3. As for Planet Green's negligence claim (claim 6), Planet Green failed to allege a legal duty owed by Amazon. Under California law, one "who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another" from the acts of a third party, absent a special relationship. *Williams v. State*, 664 P.2d 137, 139 (Cal. 1983). Here, Amazon did not create the risk that third-party ink cartridge manufacturers would make false or misleading claims on their products' packaging and labels. Moreover, we have recognized that no duty is created "when a website facilitates communication, in a content-neutral fashion, of its users' content." *Dyroff*, 934 F.3d at 1101 (citing *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359-60 (D.C. Cir. 2014)).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. CV 23-6647-JFW(KSx)
Date: December 5, 2023
Title: Planet Green Cartridges, Inc. -v-
Amazon.com, Inc., et al.

PRESENT:

HONORABLE JOHN F. WALTER,
UNITED STATES DISTRICT JUDGE

Shannon Reilly None Present

Courtroom Deputy Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: None

ATTORNEYS PRESENT FOR DEFENDANTS: None

PROCEEDINGS (IN CHAMBERS):

ORDER GRANTING DEFENDANTS' MOTION
TO DISMISS PLAINTIFF'S FIRST AMENDED
COMPLAINT [filed 10/24/23; Docket No. 44]

On October 24, 2023, Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Advertising LLC (collectively, "Defendants") filed a Motion to Dismiss Plaintiff's First Amended Complaint ("Motion"). On November 6, 2023, Plaintiff Planet Green Cartridges, Inc. ("Plaintiff") filed its Opposition. On November 13, 2023, Defendants filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found

the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's November 27, 2023 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background

On October 10, 2023, Plaintiff filed a First Amended Complaint ("FAC"), alleging claims for: (1) false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); (2) false association and false designation of origin or approval in violation of Lanham Act 15 U.S.C. § 1125(a)(1)(A); (3) common law unfair competition; (4) unfair competition in violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful and unfair prongs); (5) false advertising in violation of California Business & Professions Code §§ 17500, *et seq.*; and (6) negligence.

"Amazon.com, Inc. markets and sells products to retail consumers all over the world through internet websites such as www.amazon.com." FAC ¶ 6. Amazon.com Services LLC "sells products to consumers through Amazon Warehouse that are fulfilled by Amazon.com." FAC, ¶ 7. Amazon Advertising LLC "provides advertising services to third party sellers." FAC, ¶ 8. Plaintiff does business as "DoorstepInk," and has been a printer ink cartridge remanufacturer since 1999. Plaintiff "remanufacture[s] ink cartridges in a state-of-the-art facility utilizing a painstaking process consisting of obtaining used OEM [or "original equipment manufacturer"] cartridge cores, thoroughly inspecting, cleaning, refilling the cartridges with new ink, testing for quality control, and packaging for resale." FAC, ¶ 15.

The gravamen of Plaintiff's FAC is that third-party sellers sell ink cartridges on Defendants' website and that the product listings for those ink cartridges falsely advertised them as "remanufactured" or "recycled." FAC, ¶ 1. Specifically, Plaintiff alleges that it is "one of the only remaining printer cartridge remanufactuer[s] in the United States" and that "the United States printer cartridge remanufacturing industry has been eviscerated" because of "the conduct of Defendants as the primary advertiser and distributor and a major seller of inauthentic clone ink cartridges that are falsely represented as remanufactured and/or recyclable in promotions, packaging, labeling, and on the products themselves." FAC, ¶¶ 15-16. Plaintiff admits that Defendants do not create any of the product listings containing any of the allegedly false statements. FAC, ¶ 36 (referring to the listings as "third-party seller listings"). However, Plaintiff claims that Defendants are liable for false advertising because Amazon allegedly "approves seller listings, accepts possession of products, and store the products in its warehouses, attracts the customer to the Amazon website using third-party seller listings, provides customers with product listings for their searches, processes customer payments for the product, and ships products in Amazon packaging to customers." FAC, ¶ 36. In addition, Plaintiff alleges that Defendants control "all customer service and returns and responds directly to consumers who leave negative reviews for products fulfilled by" Defendants. FAC, ¶ 39. Plaintiff also alleges that Defendants label some products as "Amazon's Choice" and resell returned third-party products on its Amazon Warehouse page. FAC, ¶¶ 49 and 52.

Plaintiff alleges that, before it filed this action, it notified Defendants of allegedly false statements by

third parties, and that Defendants took steps to investigate those product listings. FAC, ¶¶ 64 and 66. Specifically, Plaintiff alleges that Defendants “asked sellers to substantiate their claims about selling remanufactured and environmentally responsible ink cartridges.” FAC, ¶ 66. Moreover, “[t]hirty-party sellers who couldn’t substantiate their product claims were instructed to change their product listings.” FAC, ¶ 66. However, according to Plaintiff, some third-party sellers “were allowed to continue to sell regardless of their history of defrauding customers.” FAC, ¶ 66. Plaintiff also alleges that Defendants failed “to adopt a simple verification process for remanufactured printer ink cartridges,” despite being urged to do so in February 2023 by the International Imaging Technology Council (“IITC”), a trade association for imaging supply dealers, remanufacturers, and industry suppliers and consultants. FAC, ¶¶ 74-75.

II. Legal Standard

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. “A Rule 12(b)(6) dismissal is proper only where there is either a ‘lack of a cognizable legal theory’ or ‘the absence of sufficient facts alleged under a cognizable legal theory.’” *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of

the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). “[F]actual allegations must be enough to raise a right to relief above the speculative level.” *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). “However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations.” *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

“Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.; Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir.

1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (“Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.”).

III. Discussion

In their Motion, Defendants argue that all of Plaintiff’s claims should be dismissed because Defendants are entitled to immunity under Section 230 of the Communications Decency Act (“CDA”). In addition, Defendants argue that Plaintiff’s first five claims (all of its claims other than its sixth claim for negligence) should be dismissed because Plaintiff has failed to identify any “false statement of fact” made by Defendants. Defendants also argue that Plaintiff’s second claim for false designation of origin in violation of the Lanham Act and third claim for common law unfair competition should be dismissed because Plaintiff fails to plausibly allege a claim. Finally, Defendants argue that Plaintiff’s sixth claim for negligence should be dismissed for failure to allege a cognizable legal duty. In its Opposition, Plaintiff argues that Section 230 of the CDA does not provide immunity to Defendants because its claims do not derive from the publication of third party content. Plaintiff also argues that it has alleged a sufficient factual and legal basis for all of its claims.

A. Section 230 of the CDA Provides Defendants Immunity for All of Plaintiff’s Claims

Section 230 of “[t]he CDA provides that website operators are immune from liability for third-party

information . . . unless the website operator ‘is responsible, in whole or in part, for the creation or development of [the] information.’” *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096-97 (9th Cir. 2019) (*quoting* 47 U.S.C. §§ 230(c)(1) & (f)(3)). This immunity “must be interpreted to protect websites not merely from ultimate liability, but from having to fight costly and protracted legal battles.” *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1202 (N.D. Cal. 2009) (citation omitted). As a result, reviewing courts have treated Section 230 “immunity as quite robust” (*Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003)), and courts often apply Section 230 to bar federal, state, and local claims at the motion-to-dismiss stage. *See, e.g., Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007) (“The majority of federal circuits have interpreted the CDA to establish broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.”) (internal quotation omitted); 47 U.S.C. § 230(e)(3) (“No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section”); *Morton v. Twitter, Inc.*, 2021 WL 1181753, at *3 (C.D. Cal. Feb. 19, 2021) (“When a plaintiff cannot allege enough facts to overcome Section 230 immunity, a plaintiff’s claims should be dismissed”) (internal quotation omitted). In the Ninth Circuit, Section 230 immunity applies if three criteria are met: (1) “the provider is an interactive computer service”; (2) “the plaintiff is treating the entity as the publisher or speaker”; and (3) “the information is provided by another information content provider.” *Rigsby v. GoDaddy Inc.*, 59 F.4th 998, 1007 (9th Cir. 2023) (*citing Dyroff*, 934 F.3d at 1097).

In this case, the Court concludes that, for the reasons discussed below, Section 230 provides Defendants immunity from all of Plaintiff's claims. Accordingly, Defendants' Motion is granted, and Plaintiff's FAC is dismissed.

1. Defendants are Interactive Computer Service Providers

In determining if Defendants are entitled to immunity under Section 230, the Court must first determine if Defendants are interactive computer service providers. Under Section 230, "[t]he term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." 47 U.S.C. § 230(f)(2). The Ninth Circuit "interpret[s] the term 'interactive computer service' expansively." *Dyroff*, 934 F.3d at 1097 (citing *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1268 (9th Cir. 2016)). "Websites are the most common interactive computer services." *Id.* Moreover, when a plaintiff admits that its allegations concern a defendant's action or inaction relating to a website, the defendant qualifies as a provider of an "interactive computer service." *Id.* (concluding that the defendant qualified as an interactive computer service provider because the plaintiff alleged that his son had "set up accounts on" a website); see also *Kimzey*, 836 F.3d at 1268 (holding that "Yelp is plainly a provider of an 'interactive computer service'" because the allegations concerned the operation of its website).

In this case, Plaintiff's allegations make clear that Defendants are providers of interactive computer services as defined by Section 230. Specifically, Plaintiff alleges that Defendants "market" and "sell" products to retail consumers "through internet web-

sites.” See FAC, ¶ 6. In addition, Plaintiff admits that its allegations concern products “available for purchase on Amazon’s website.” FAC, ¶ 18; FAC, ¶ 33 (“sale of inauthentic printer cartridges, advertised, sold, and distributed by Defendants through their website”). Moreover, the overwhelming majority of courts that have considered the issue have concluded that Defendants are providers of interactive computer services within the meaning of Section 230. See, e.g., *McCarthy v. Amazon.com, Inc.*, __ F.Supp. 3d __, 2023 WL 4201745 (W.D. Wash. June 27, 2023) (concluding that Amazon is an interactive computer service provider); *Ratermann v. Pierre Fabre USA, Inc.*, 651 F.Supp. 3d 657 (S.D.N.Y. 2023) (concluding that Amazon “fall[s] comfortably within th[e] definition” of “interactive computer service provider”); *Eberhart v. Amazon.com, Inc.*, 325 F. Supp. 3d 393, 400 n.5 (S.D.N.Y. 2018) (confirming that Amazon is an interactive computer service in a products-liability case seeking to hold Amazon liable for content posted by a third-party retailer); *Joseph v. Amazon.com, Inc.*, 46 F. Supp. 3d 1095, 1105 (W.D. Wash. 2014) (holding that Amazon is an interactive service provider because Amazon “operates a website that allows consumers to purchase items online”); *Almeida v. Amazon.Com, Inc.*, 2004 WL 4910036, at *4 (S.D. Fla. July 30, 2004) (holding that Amazon is an “interactive computer service” because “[i]ts primary function is to allow multiple users to a computer service the ability to purchase various items”), *aff’d* 456 F.3d 1316 (11th Cir. 2006).

Accordingly, the Court concludes that Defendants are interactive computer service providers under Section 230.

2. Plaintiff Treats Defendants as Publishers or Speakers

In determining if Defendants are entitled to immunity under Section 230, the Court must next determine if any of Plaintiff's claims "inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir.), *as amended* (Sept. 28, 2009). "[C]ourts must ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.'" *Id.* "If it does, section 230(c)(1) precludes liability." *Id.* "[P]ublication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Id.* at 1102-03 (noting that a defendant cannot be held liable for a decision whether to publish or remove third-party content). In other words, "[p]ublishing encompasses 'any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online.'" *Gonzalez v. Google LLC*, 2 F.4th 871, 894 (9th Cir. 2021) (*quoting Roommates*, 521 F.3d at 1170-71), *rev'd on other grounds by Twitter, Inc., v. Taamneh*, 598 U.S. 471 (2023); *see also Rangel v. Dorsey*, 2022 WL 2820107, at *2 (N.D. Cal. July 19, 2022) ("Rangel seeks to 'treat [Twitter] as the publisher' because his claims derive entirely from Twitter's decision to exclude his content and suspend his account—that is, traditional publishing functions."); *Riggs v. MySpace, Inc.*, 444 F. App'x 986, 987 (9th Cir. 2011) (affirming dismissal of claims involving "MySpace's decisions to delete Riggs's user profiles on its social networking website yet not delete other profiles Riggs alleged were created by celebrity imposters"); *Levitt v. Yelp! Inc.*, 2011 WL

5079526, at *6 (N.D. Cal. Oct. 26, 2011) (“Plaintiffs’ allegations of extortion based on Yelp’s alleged manipulation of their review pages – by removing certain reviews and publishing others or changing their order of appearance – falls within the conduct immunized by § 230(c)(1)”), *aff’d*, 765 F.3d 1123 (9th Cir. 2014). In addition, courts routinely find that allegations that defendants published or failed to remove offending content, including false advertising, necessarily seek to hold defendants responsible as publishers. *See, e.g., Barnes*, 570 F.3d at 1103-04 (“[R]emoving content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove”); *Ginsberg v. Google Inc.*, 586 F. Supp. 3d 998, 1005 (N.D. Cal. 2022) (concluding that the failure to remove an application from Google’s Play Store “boils down to deciding whether to exclude material . . . that a third party seeks to place in the online Play Store”); *Bride v. Snap Inc.*, 2023 WL 2016927, at *6 (C.D. Cal. Jan. 10, 2023) (holding that Section 230 applies when a plaintiff sought to hold a defendant liable for false advertising based on the accusation that they “should have monitored and curbed third-party content”).

In this case, the Court concludes that Plaintiff’s claims require the Court to, in effect, treat Defendants as the publishers or speakers of the purportedly false advertising. *See, e.g.,* FAC ¶ 77 (alleging a claim for false advertising under Section 1125(a) of the Lanham Act); FAC, ¶ 88 (alleging claim for false association and false designation of origin or approval under Section 1125(a) of the Lanham Act); FAC, ¶ 96 (alleging common law unfair competition based on purportedly wrongful false advertising); FAC, ¶ 102

(alleging statutory unfair competition claim based on purportedly wrongful false advertising); FAC, ¶ 113 (alleging California false advertising law claim); FAC, ¶ 120 (alleging claim for negligence because Defendants purportedly breached their duty by failing to verify false advertising). Indeed, Plaintiff's claims are all based on the theory that Defendants "continue to allow unlawful sellers to maintain their accounts" and "permit them to advertise" on Defendants' website. FAC, ¶ 3 (Defendants "continue to allow sellers that have deceived millions of consumers with [its] false advertising and recyclability claims . . . to sell clone ink cartridges over Amazon"); *see also* FAC, ¶ 20 ("Sellers are allowed to list multiple products claiming to be remanufactured OEM cartridges, frequently bearing the 'recyclable' symbol . . . when in fact they are newly manufactured clone cartridges, not OEM product[s], and not in fact a recycled or recyclable product"); FAC, ¶ 38 ("Below are screen shots of Amazon's specific ink and toner selling policies that Defendants are not enforcing, allowing for deceptive product descriptions to rampantly take place across the category"). In addition, Plaintiff alleges that "Defendants bear responsibility for verifying the advertising claims and product authenticity of its third-party sellers." FAC, ¶ 56; *see also* FAC, ¶ 117. However, the Ninth Circuit has held that Section 230 immunity applies to false advertising claims and other claims that are based on purportedly false representations. *See, e.g., Perfect 10*, 488 F.3d at 1118-19 (affirming dismissal of false advertising and unfair competition claims under Section 230); *see also L.W. through Doe v. Snap, Inc.*, — F. Supp. 3d —, 2023 WL 3830365, at *2 (S.D. Cal. June 5, 2023) (dismissing California False Advertising Law and unfair competition claims based on

Section 230); *Prager Univ. v. Google LLC*, 85 Cal. App. 5th 1022, 1040-42 (2022) (dismissing unfair competition claim based on Section 230).

In addition, Plaintiff treats Defendants as publishers or speakers in its UCL claim because each of the statutes cited by Plaintiff concerns false or misleading statements.¹ See, e.g., Cal. Bus. & Prof. Code, § 17500 (prohibiting false or misleading statements in advertising); Cal. Bus. & Prof. Code, § 17580.5 (prohibiting misleading environmental marketing claims); 15 U.S.C. § 45(a) (prohibiting deceptive acts or practices in or affecting commerce). As the FAC makes clear, those allegedly false or misleading statements consist solely of third-party content. See, e.g., FAC, ¶ 20 (alleging that “[s]ellers are allowed to list multiple products” with “the ‘recyclable’ symbol in their listings, packaging and on the products”); FAC, ¶ 21 (screenshots of third-party sellers’ products).

The Court concludes that Plaintiff’s claims easily satisfy the second criteria for Section 230 immunity because those claims are premised on Defendants’ conduct as publishers of third-party content. Indeed, when “the accusation . . . is fundamentally that defendants should have monitored and curbed third-party content,” courts consistently hold that the defendants are immune under Section 230 and dis-

¹ Plaintiff also cites to California Public Resources Code § 42355.51 in connection with its UCL claim. Section 42355.51 prohibits the sale, distribution, or importation of products or packaging with deceptive or misleading claims about their recyclability, specifically, as relevant here, products or packaging bearing symbols that falsely denote recyclability. However, Section 42355.51 does not take effect until January 1, 2024.

miss the plaintiff's claims. *See, e.g., Bride v. Snap Inc.*, 2023 WL 2016927, at *5-6 (C.D. Cal. Jan. 10, 2023) (when the plaintiffs sought “to hold Defendants liable based on content published by anonymous third parties on their applications,” their claims fell “squarely within Section 230’s broad grant of immunity”); *see also Ynfante v. Google LLC*, 2023 WL 3791652, at* 3 (S.D.N.Y. June 1, 2023) (when the plaintiff asserted that “Google had a duty to ‘vet and verify the authenticity and legitimacy of potentially fraudulent advertisements,’” its claims were “fundamentally premised on Google’s actions related to publishing the scam advertisement”); *Anderson v. TikTok, Inc.*, 637 F. Supp. 3d 276, 281 (E.D. Pa. 2022) (when the plaintiff’s claims implicated the defendants’ “monitoring, screening, arrangement, promotion, and distribution” of third-party content, her claims were “plainly barred by Section 230 immunity”).

Plaintiff argues its allegations that Defendants resell used or returned third-party ink cartridges via its “Amazon Warehouse” business demonstrate that its claims are not entirely dependent on Defendants’ conduct as a publisher or a speaker. *See, e.g., FAC*, ¶ 52 (“[I]f Defendants reimburse a seller for any damaged, lost or returned product, Defendants can dispose of any item or sell it on the Amazon Warehouse”). However, Defendants cannot be held liable for third-party content merely because it resold third-party products and re-posted third-party content. *See, e.g., Corker v. Costco Wholesale Corp.*, 2019 WL 5895430, at *2-3 (W.D. Wash. Nov. 12, 2019) (concluding that retailers are immune under Section 230 “to the extent they [are] simply retailing products produced, manufactured, and packaged by third parties”). In addition, Plaintiff does not (and

cannot) allege that Defendants created any of the third-party statements in the product listings. *See, e.g., Brodie v. Green Spot Foods, LLC*, 503 F. Supp. 3d 1, 11-13 (S.D.N.Y. 2020) (holding that Amazon was immune under Section 230 because Section 230 “bars liability for the exercise of a publisher’s traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content”) (internal quotation omitted); *Lasoff v. Amazon.com Inc.*, 2017 WL 372948, at *4 (W.D. Wash. Jan. 26, 2017) (holding that when “Amazon neither created nor developed” the content, Section 230 “prohibit[ed] Plaintiff from seeking to hold Amazon liable . . . as though it had”).

Accordingly, the Court concludes that Defendants have satisfied the second criteria for immunity under Section 230 because Plaintiff treats Defendants as publishers or speakers.

3. Third Parties Provided the Allegedly False or Misleading Content

The third criteria for Section 230 immunity examines who provided or was the source of the content that allegedly gives rise to liability. *Dyroff*, 934 F.3d at 1098-1099. If the content is provided by a third party, and not the defendant, Section 230 bars the plaintiff’s claims. *Id.*; *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021) (holding that Section 230(c)(1) “cuts off liability only when a plaintiff’s claim faults the defendant for information provided by third parties,” but that “internet companies remain on the hook when they create or develop” the content at issue or are “responsible . . . in part, for the creation or the development of the offending content”) (internal quotation omitted). Ninth Circuit cases “establish that a website may lose immunity

under [Section 230] by making a material contribution to the creation or development of content.” *Kimzey*, 836 F.3d at 1269-70. “A ‘material contribution’ does not refer to merely augmenting the content generally, but to materially contributing to its alleged unlawfulness.” *Calise v. Meta Platforms, Inc.*, 2022 WL 1240860, at *3 (N.D. Cal. Apr. 27, 2022). The material contribution “test draws the line at the crucial distinction between, on the one hand taking actions to display actionable content, and on the other hand, responsibility for what makes the displayed content itself illegal or actionable.” *Id.* “That is, immunity will be lost only when the website contributes to the illegality of the third-party content.” *Id.*

In this case, Plaintiff does not alleged that Defendants created any of the purportedly false or misleading content at issue. Instead, Plaintiff expressly alleges that the “seller listings” that contain the purportedly false advertising are “third-party seller listings.” FAC, ¶ 36. In addition, Plaintiff alleges that Defendants contacted third parties to change their product listings to remove the purportedly false content because the “third party sellers are [the ones who are] falsely advertising their listings, products, and packaging.” *See, e.g.*, FAC, ¶ 17 (“18 brands and their numerous listings of aftermarket ink cartridges”); FAC, ¶ 66 (“Third-party sellers who couldn’t substantiate their product claims were instructed to change their product listings” and “Below are before and after examples of listings by Sellers who were instructed by Defendants to change their product listings”); FAC, ¶ 21 (“[Third party] Sheengo depicts its box to look like a Canon box and claims to be remanufactured”); FAC, ¶ 25 (“Below is an example of how two brands, Greencycle and Inktopia, are

creating multiple listings that saturate the platform”); FAC, ¶ 24 (claiming that forty-five third-party brands are falsely advertising their products).

Plaintiff argues that Defendants are not immune under Section 230 because Amazon contributes to the dissemination of the offending content by “creat[ing] promotional emails and search engine marketing content” that brings traffic to its website; “controls all customer service and returns and responds directly to consumers who leave negative reviews for products”; and “has a special badge called Amazon’s Choice, which endorses products.” FAC, ¶¶ 39 and 49. However, the Ninth Circuit has held that neutral and generic actions, even if they spread the reach of some of the offending material, do not defeat Section 230 immunity. *Kimzey*, 836 F.3d at 1270 (holding that an interactive computer service cannot “be held liable for ‘republishing’ [third-party] content as advertisements or promotions . . . or disseminating the same content in essentially the same format to a search engine” because doing so “does not change the origin of the third-party content”); *Roommates.com*, 521 F.3d at 1169 (holding that an interactive computer service “providing neutral tools to carry out what may be unlawful or illicit searches does not amount to ‘development’ for purposes of the immunity exception”). For example, in *Dyroff*, the Ninth Circuit held that even though the defendant “recommend[ed]” the offending content to new users, section 230 immunity applied because the “recommendations and notifications” were “neutral tools” used to “facilitate the communication and content of others.” *Dyroff*, 934 F.3d at 1098; *see also Roommates*, 521 F.3d at 1172 (holding that it was irrelevant that an interactive computer service provider may have helped further disseminate unlawful content through its neutral tools,

because those actions “did absolutely nothing to enhance the defamatory sting of the message, to encourage defamation or to make defamation easier”).

In the FAC, Plaintiff has alleged content neutral actions by Defendants related to the dissemination of the purportedly false or misleading content. For example, Plaintiff alleges that, for all products, Amazon serves as an “online catalog marketer, driving traffic, promoting, selling, and distributing products.” FAC, ¶ 42. Plaintiff also cites routine responses by Defendants to customers about fulfillment. FAC, ¶ 45 (“Message from Amazon: This item was fulfilled by Amazon, and we take responsibility for this fulfillment experience”). In addition, Plaintiff admits that the “Amazon Choice” badge is based on a neutral algorithm that “endorse[s] products based on customer feedback, highlighting ratings, price, popularity, availability and delivery,” and does not involve any evaluation of the allegedly false or misleading content. FAC, ¶ 50. Because Plaintiff’s allegations that Defendants’ actions in connection with the purportedly false or misleading content are neutral, Defendants are entitled to immunity pursuant to Section 230 because the purportedly false or misleading content consists exclusively of third party content. *See, e.g., Dyroff*, 934 F.3d at 1098 (holding that Section 230 applies even though the defendant “used features and functions, including algorithms, to analyze user posts on Experience Project and recommended other user groups”); *L.W.*, 2023 WL 3830365, at *5 (“Because Plaintiffs’ complaint doesn’t allege that either Google or Apple did anything more than create neutral tools by which users could download and access Snapchat, the argument fails”); *Goddard*, 640 F. Supp. 2d at 1199 (applying Section 230

because Google’s neutral “algorithm” does not “suggest the type of ‘direct and palpable’ involvement that otherwise is required to avoid CDA immunity”).

Accordingly, the Court concludes that Defendants satisfy the third criteria for immunity under Section 230 because the purportedly false or misleading content that is the basis of Plaintiff’s claims is all provided by third parties, and not Defendants.

B. Plaintiff Fails to Identify Any False Statement of Fact Made by Defendants

Defendants argue that, even if Section 230 immunity does not apply to Plaintiff’s claims, Plaintiff’s first claim for false advertising in violation of the Lanham Act, second claim for false association and false designation of origin or approval in violation of Lanham Act, third claim for common law unfair competition, fourth claim for violation of the UCL, and fifth claim for violation of California’s false advertising law fail because those claims rely on purportedly false statements and Plaintiff has failed to allege that Defendants have made any false statements.

“The first element of the Ninth Circuit’s five-element test for false advertising claims requires ‘a false statement of fact by the defendant in a commercial advertisement about its own or another’s product.’” *Corker*, 2019 WL 5895430, at *2 (citation omitted). When “the moving defendants are merely retailers of products manufactured, produced, and packaged by third parties, the issue is whether they made a false statement of fact in commercial advertising when they put the third-party vendor’s product on their shelves or websites.” *Id.* The “relevant court authority” reveals “that the answer is ‘no.’” *Id.* (agreeing with the conclusion that retailers

cannot be “responsible for scrutinizing and determining the veracity of every claim on every product label in their stores simply because they sell the product”) (citations and internal quotation marks omitted).

In this case, the Court concludes that Plaintiff has failed to allege that Defendants manufactured, produced, or packaged any of the products at issue and Plaintiff has also failed to allege that Defendants created or otherwise contributed to the purportedly false product descriptions. *See, e.g.*, FAC, ¶ 77 (“false statements”); FAC, ¶ 89 (“false and misleading use of terms, names, symbols, and descriptions and representations of fact”); FAC, ¶ 96 (“wrongful conduct” based on false statements described earlier); FAC, ¶ 102 (“falsely claim”); FAC, ¶ 113 (“deceptive, untrue or misleading statements”). Because Plaintiff does not allege that Defendants created or otherwise contributed to any of the purportedly false product descriptions, Plaintiff cannot maintain its first, second, third, fourth, or fifth claims. *See, e.g., Lasoff*, 2017 WL 372948, at *8 (“Plaintiff fails to draw a meaningful distinction between two interactive computer service providers who created a platform for advertising which contained misrepresentative material generated by third parties. In both instances, liability lies with the vendors who created the misleading content, not the service providers who transmit that content.”); *Hawaii Foodservice All., LLC v. Meadow Gold Dairies Hawaii, LLC*, 2023 WL 159907, at *5-6 (D. Haw. Jan. 11, 2023) (dismissing false advertising claim because “[p]laintiff does not allege that the Dairy Farmers had control over, or involvement in, creating the statements on the labels”); *In re Outlaw Lab., LP Litig.*, 424 F. Supp. 3d 973, 981-82 (S.D. Cal. 2019) (dismissing false advertising claim because

“in the same way that an internet platform is not responsible for the veracity of vendors’ advertisements, a retail or wholesale store cannot be found liable for false information appearing on the packages of the products that they sell”).

Accordingly, Defendants’ Motion is granted with respect to Plaintiff’s first, second, third, fourth, and fifth claims, and those claims are dismissed.

C. Plaintiff Fails to Allege that Defendants “Passed Off” Its Trade Names, Trademarks, or Brands

In its FAC, Plaintiff alleges that the purportedly false or misleading information contained in the third party product descriptions “deceive[s] the public into falsely believing that the illicit ink cartridges sold on Amazon are remanufactured, recyclable products that originate with or are otherwise associated with or sponsored by Plaintiff, which is the nearly exclusive lawful producer and supplier of remanufactured printer ink cartridges in the United States.” FAC, ¶ 87. This allegation forms the basis for Plaintiff’s second claim for false designation of origin or approval under the Lanham Act and third claim for common-law unfair competition. FAC, ¶¶ 86-99. Defendants argue that Plaintiff cannot maintain either its false designation of origin or approval under the Lanham Act claim and common-law unfair competition claim because Plaintiff fails to plausibly allege that Defendants “passed off” Plaintiff’s trade names or trademarks or that it owns or maintains the exclusive right to use any “recycled” or “remanufactured” marks for ink cartridges in the marketplace.

“Passing off, or palming off, occurs when a producer sells its own goods as that of another brand.” *R & A Synergy LLC v. Spanx, Inc.*, 2019 WL 4390564, *13 (C.D. Cal. May 1, 2019). When a product is marketed “under [its own] brand name,” the allegations “do not constitute passing off or reverse passing off necessary to support a claim for false designation of origin.” *Id.* at *14; *see also Cleary v. News Corp.*, 30 F.3d 1255, 1262-63 (9th Cir. 1994) (“This Circuit has consistently held that state common law claims of unfair competition . . . are ‘substantially congruent’ to claims made under the Lanham Act”).

In this case, Plaintiff does not allege that any of the products that purportedly contain false advertising use its marks “Planet Green” or “Doorstepink.” Instead, Plaintiff admits that consumers who purchase the third-party products may not even “know the name of [Planet Green]” at all. FAC, ¶ 16. In addition, the FAC includes numerous screenshots showing that the identified third-party products use their own brand names and not Plaintiff’s names or brands. FAC, ¶ 21(1)(a) (“Amazon listing for V-Surink”); FAC, ¶ 21(1)(d) (“BJ Ink Cartridge”); FAC, ¶ 21(2) (“Sheengo”); FAC, ¶ 21(4) (“Greencycle”); and FAC, ¶ 21(5) (“Inktopia”). Indeed, the FAC includes a list of forty-five “brands” that are allegedly “falsely sold as ‘remanufactured’ and recycled products,” and none of those brands use the Planet Green or Doorstepink name or brand. FAC, ¶ 24. In addition, Plaintiff has not and cannot allege that consumers link “Planet Green” or “Doorstepink” to all remanufactured ink cartridges in the United States because Plaintiff is not the exclusive seller of those cartridges. *Obesity Research Institute, LLC v. Fiber Research International, LLC*, 165 F. Supp. 3d 937, 947 (S.D. Cal. 2016) (surviving motion to dismiss

where Fiber Research alleged “that it ha[d] an exclusive sales contract to sell Propol in the United States,” meaning that consumers linked Propol to Fiber Research, and only Fiber Research). To the contrary, Plaintiff specifically alleges that it is “one of the only remaining printer ink cartridge remanufacturer[s] in the United States” (FAC, ¶ 16), and, as result, Plaintiff acknowledges the existence of other printer ink cartridge remanufacturers in the United States. *See also* FAC, ¶ 87 (claiming to be “nearly exclusive” but not the “exclusive” seller). Because Plaintiff fails to identify a specific mark it owns that Defendants are “passing off” as their own or that Plaintiff is the exclusive provider of remanufactured ink cartridges in the United States, the Court concludes that Plaintiff’s false designation of origin or approval under the Lanham Act claim and common-law unfair competition claim must be dismissed. *See, e.g., Spanx*, 2019 WL 4390564, at *14 (dismissing Lanham Act and common-law unfair competition claims because “the exhibits Plaintiff attached to the FAC reveal that Defendant uses clearly distinguishable advertising materials, packaging, and other brand recognition materials under the Spanx brand, even if the substance and style of those materials overlap with those Plaintiff uses for its Sleeve products”); *Fortune Mfg. Co. v. Zurn Indus., LLC*, 2011 WL 13220134, at *4 (C.D. Cal. May 23, 2011) (dismissing Lanham Act and common-law unfair competition claims because “[t]he FAC does not, for instance, allege that the ball valves manufactured by Fortune have Fortune’s mark stamped on them, or that Zurn has installed counterfeit Fortune valves into its backflow prevention assemblies”).

Accordingly, Defendants' Motion is granted with respect to Plaintiff's second and third claims, and those claims are dismissed.

D. Plaintiff's Negligence Claim Fails to Allege a Legal Duty

Defendants argue that Plaintiff cannot maintain its negligence claim because it fails to identify any legal duty Defendants owed to Plaintiff. To state a negligence claim under California law, a plaintiff must allege the duty of care that a defendant owed it and the legal basis for that duty. *See, e.g.*, 6 Witkin, *Summary of Cal. Law*, § 961 (11th ed. 2023) (explaining the two types of legal duties of care: (1) "the duty of a person to use ordinary care" and (2) "[a]n affirmative duty where the person occupies a particular relationship to others"); *Pirozzi v. Apple Inc.*, 913 F. Supp. 2d 840, 851 (N.D. Cal. 2012) (no general "duty to protect another from the conduct of third-parties").

In this case, Plaintiff alleges that Defendants have an affirmative duty to verify whether ink cartridges advertised as "remanufactured" by third parties on Amazon.com are, in fact, remanufactured. FAC, ¶ 117. Plaintiff argues that Defendants assumed this legal duty as a seller and distributor of products because Plaintiff's harm was foreseeable. However, foreseeability of harm, even if true, does not give rise to a duty of care. *Welte v. Wells Fargo Bank Nat'l Assoc.*, 189 F. Supp. 3d 965, 975 (C.D. Cal. 2016) (concluding that neither foreseeability of harm nor knowledge of danger can "create a legally cognizable special relationship giving rise to a legal duty to prevent harm"). In addition, a website operator, like Defendants, does not assume a duty of care merely by creating and operating its website. *See, e.g., Dyroff*,

934 F.3d at 1100-01 (holding that a website operator utilizing content neutral functions owed no duty of care); *Ginsberg v. Google Inc.*, 586 F. Supp. 3d 998, 1009 (N.D. Cal. 2022) (holding that Google did not “owe a general duty to the public” by operating its Play Store). Indeed, “[n]o website could function” if content-neutral conduct gave rise to a legal duty of care. *Dyroff*, 934 F.3d at 1101. As a result, courts have repeatedly dismissed negligence claims against website operators similar to the claim alleged by Plaintiff for failure to identify a legally cognizable duty. *See, e.g., Kangaroo Manufac. Inc. v. Amazon.com Inc.*, 2019 WL 1280945, at *6 (D. Ariz. Mar. 20, 2019) (rejecting argument that Amazon was negligent because it had a duty to remove counterfeit products and holding that “[Amazon] was acting as an interactive computer service and the Plaintiff’s claims arise out of the Defendant’s course of action while acting as such”).

Accordingly, Defendants’ Motion is granted with respect to Plaintiff’s sixth claim, and that claim is dismissed.

E. Leave to Amend Would Be Futile

The Ninth Circuit has instructed that “a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *See, e.g., Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (*en banc*) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). However, “[a] district court may dismiss a complaint without leave to amend if amendment would be futile.” *Airs Aromatics, LLC v. Opinion Victoria’s Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (citation and

quotation marks omitted); *Gardner v. Martino*, 563 F.3d 981 (9th Cir. 2009) (finding no abuse of discretion in denying leave to amend when amendment would be futile); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile").

In this case, the Court concludes that it would be futile and, thus, unnecessary to provide Plaintiff another opportunity to amend the claims alleged in the FAC. See, e.g., *Chaset v. Fleer/Skybox Int'l*, 300 F.3d 1083, 1087-88 (9th Cir. 2002) ("The basic underlying facts have been alleged by plaintiffs and have been analyzed by the district court and us. We conclude that the plaintiffs cannot cure the basic flaw in their pleading. Because any amendment would be futile, there is no need to prolong the litigation by permitting further amendment"); *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002) ("Because any amendment would be futile, there was no need to prolong the litigation by permitting further amendment"); *Klamath-Lake Pharmaceutical Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that "futile amendments should not be permitted"). Plaintiff has had two opportunities to allege its claims against Defendants and although Plaintiff argues in its Opposition that it should be given the opportunity to amend its claims, the Court concludes that Plaintiff has failed to demonstrate that there are additional facts that it could allege in order to state a viable claim against Defendants. Because Defendants are immune under Section 230 from Plaintiff's claims, the Court concludes that Plaintiff will not be able to allege new or additional facts that will change Defendants' im-

munity. In addition, even if Defendants were not entitled to immunity under Section 230, Plaintiff's claims fail for additional reasons, and Plaintiff has failed to demonstrate that given the allegations contained in the FAC and the prevailing legal authority, Plaintiff will be able to allege new or additional facts that will allow it to successfully maintain a claim against Defendants.

Accordingly, all the claims alleged in Plaintiff's FAC are dismissed without leave to amend.

IV. Conclusion

For all the foregoing reasons, Defendants' Motion is GRANTED. Plaintiff's FAC is DISMISSED without leave to amend, and this action is DISMISSED with prejudice.

IT IS SO ORDERED.

**Additional Materials Available
in the Clerk's Office**