

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

TAWAINNA ANDERSON, Individually
and as Administratrix of the ESTATE
OF NYLAH ANDERSON, a deceased
minor,

Plaintiff,

vs.

TIKTOK INC. AND BYTEDANCE,
INC.,

Defendants.

Case No.: 2:22-cv-01849-PD

MOTION TO DISMISS

Defendants TikTok Inc. (“TTI”) and ByteDance Inc. (“BDI”) move to dismiss Plaintiff’s Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

First, this Court lacks personal jurisdiction over Defendants. Neither Defendant is “at home” in Pennsylvania, nor have they taken any actions directed at Pennsylvania to “purposely avail” themselves of Pennsylvania law in connection with Plaintiff’s Complaint. *See Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003); *Ziencik v. Snap, Inc.*, Civil Action No. 21-49, 2021 WL 4076997, at *4 (W.D. Pa. Sept. 8, 2021).

Second, Section 230 of the federal Communications Decency Act (CDA) bars Plaintiff's state-law claims. 47 U.S.C. § 230(e)(c); *e.g.*, *Obado v. Magedson*, 612 Fed. Appx. 90, 93 (3d Cir. 2015).

Third, separate from Section 230 immunity, Plaintiff cannot state a claim for any of the individual causes of action in the Complaint because:

- TikTok is not a “product” or a “seller” subject to strict product liability (Count I);
- Defendants have no legal duty of care to protect against third-party depictions of dangerous activity that would give rise to a negligence claim (Count II);
- Defendants did not engage in any “unfair or deceptive” conduct—and Plaintiff does not otherwise state a claim—under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) (Count III) or the California Consumer Legal Remedies Act (“CLRA”) (Count IV); and
- Plaintiff's derivative wrongful death (Count V) and survival (Count VI) claims—which both require the existence of an underlying tort—also fail.

Because these legal defects cannot be cured by amendment, Plaintiff's Complaint should be dismissed with prejudice.

Defendants further rely upon the attached Brief in Support and Declaration, which are incorporated by reference.

Dated: July 18, 2022

Respectfully submitted,

/s/ Joseph E. O'Neil

Joseph E. O'Neil

Katherine A. Wang

CAMPBELL CONROY & O'NEIL, P.C.

1205 Westlakes Drive, Suite 330

Berwyn, PA 19083

Telephone: (610) 964-1900

Facsimile: (610) 964-1981

JONeil@CampbellTrialLawyers.com

kwang@campbell-trial-lawyers.com

Albert Giang (*Pro Hac Vice pending*)

KING & SPALDING LLP

633 West Fifth Street, Suite 1600

Los Angeles, CA 90071

Telephone: (213) 443-4355

Facsimile: (213) 443-4310

agiang@kslaw.com

Geoffrey M. Drake (*Pro Hac Vice pending*)

TaCara D. Harris (*Pro Hac Vice pending*)

KING & SPALDING LLP

1180 Peachtree Street, NE, Suite 1600

Atlanta, GA 30309

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

gdrake@kslaw.com

tharris@kslaw.com

Counsel for TikTok Inc. and ByteDance Inc.