

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REDBOX AUTOMATED RETAIL, LLC,)	Case No. CV 18-00677 DDP (AGRx)
)	
)	
Plaintiff,)	
)	
v.)	ORDER RE: DEFENDANTS' MOTION TO DISMISS
)	
BUENA VISTA)	
HOMEENTERTAINMENT, INC.,)	
DISNEY ENTERPRISES, INC.,)	
LUCASFILM LTD, LLC, MVL FILM)	
FINANCE LLC, AND MOVIES)	[Dkt 58]
ANYWHERE LLC,)	
)	
Defendants.)	
)	

Presently before the court is Defendants Buena Vista Home Entertainment, Inc., Disney Enterprises, Inc., Lucasfilm Ltd. LLC, MVL Film Finance LLC, and Movies Anywhere, LLC (collectively, "Disney")'s Motion to Dismiss Plaintiff's First Amended Complaint ("FAC"). Having considered the submissions of the parties and heard oral argument, the court grants the motion in part, denies the motion in part, and adopts the following Order.

I. Background¹

¹ The general factual background underlying this dispute is

1 Disney is a major movie production studio. (FAC ¶ 34.)
2 Disney's market share of movies rented or sold for home
3 entertainment is greater than 50%. (Id. at ¶¶ 34-35.)
4 Plaintiff Redbox Automated Retail, LLC ("Redbox") rents and sells
5 movies on DVD and Blu-Ray discs via automated self-service kiosks,
6 which are located in grocery stores, fast-food restaurants, and
7 other locations throughout the country. (Id. at ¶¶ 25-29.) Redbox
8 generally acquires its stock of Disney movies by purchasing them at
9 retail outlets such as big-box stores and grocery stores. (Id. at
10 ¶ 45.) Redbox often bought Disney movies as part of a "Combo
11 Pack," which includes a DVD, a Blu-ray disc, and a digital movie
12 that can be accessed with a code contained within the Combo Pack.
13 (Id. at ¶ 46.) Each digital movie code can only be redeemed once,
14 through one of two Disney websites (the "redemption websites").
15 (Id. at ¶ 47.)

16 In summer 2017, Redbox began selling the digital movie codes
17 from its kiosks. (Id.) Soon after, Redbox alleges, Disney began
18 pressuring distributors into refusing to sell retail copies of
19 Disney titles to Redbox. (Id. at ¶¶ 49-56.) Disney also includes
20 statements on Combo Pack packaging and on the digital movie codes
21 representing that the components of Combo Packs cannot be rented or
22 transferred separately. (Id. at ¶ 60.) The redemption websites
23 also represent that Disney owns "[a]ll digital movie codes," which
24 can only be redeemed by a person (or family member) who obtains the

25 _____
26 ¹(...continued)
27 laid out in more detail in this Court's orders in a closely related
28 case before this Court, Disney Enterprises, Inc., et al. v. Redbox
Automated Retail, CV 17-08655 DDP ("Redbox I"). The relatively
brief recitation of the facts herein is based upon Redbox's FAC in
this case.

1 code as part of a Combo Pack, and that the codes may not be sold
2 separately. (Id. at ¶¶ 61-62.) Redbox alleges that these
3 representations are false because, as a purchaser of a Disney Combo
4 Pack, Redbox has an unfettered right to dispose of the DVDs, Blu-
5 rays, and digital movie codes contained within the Combo Packs.
6 (Id. at ¶¶ 64-65.)

7 Redbox alleges that Disney's actions and misrepresentations
8 have stifled competition and dissuade consumers from purchasing
9 digital movies from Redbox. (FAC ¶¶ 92, 94.) The FAC alleges
10 causes of action for declaratory relief, copyright misuse, tortious
11 interference with prospective economic advantage, false advertising
12 under both state and federal law, unfair competition, and state and
13 federal antitrust violations. Disney now moves to dismiss all
14 claims.

15 **II. Legal Standard**

16 A complaint will survive a motion to dismiss when it
17 "contain[s] sufficient factual matter, accepted as true, to state a
18 claim to relief that is plausible on its face." Ashcroft v. Iqbal,
19 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6) motion, a
21 court must "accept as true all allegations of material fact and
22 must construe those facts in the light most favorable to the
23 plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).
24 Although a complaint need not include "detailed factual
25 allegations," it must offer "more than an unadorned,
26 the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at
27 678. Conclusory allegations or allegations that are no more than a
28 statement of a legal conclusion "are not entitled to the assumption

1 of truth.” Id. at 679. In other words, a pleading that merely
2 offers “labels and conclusions,” a “formulaic recitation of the
3 elements,” or “naked assertions” will not be sufficient to state a
4 claim upon which relief can be granted. Id. at 678 (citations and
5 internal quotation marks omitted).

6 “When there are well-pleaded factual allegations, a court
7 should assume their veracity and then determine whether they
8 plausibly give rise to an entitlement of relief.” Id. at 1950.
9 Plaintiffs must allege “plausible grounds to infer” that their
10 claims rise “above the speculative level.” Twombly, 550 U.S. at
11 555-56. “Determining whether a complaint states a plausible claim
12 for relief” is “a context-specific task that requires the reviewing
13 court to draw on its judicial experience and common sense.” Iqbal,
14 556 U.S. at 679.

15 **III. Discussion**

16 A. Antitrust Claims

17 Disney argues that Redbox has not adequately alleged an
18 antitrust violation. Section 1 of the Sherman Antitrust Act
19 prohibits contracts, combinations, and conspiracies that
20 unreasonably restrain trade.² 15 U.S.C. § 1; Brantley v. NBC
21 Universal, Inc., 675 F.3d 1192, 1197 (9th Cir. 2012). Some
22 restraints, typically horizontal agreements between competitors,
23 are unreasonable *per se*. Ohio v. Am. Express Co., 138 S. Ct. 2274,
24 2284 (2018). All other restraints must be analyzed under the “rule

25

26 ² The parties agree that federal cases interpreting the
27 Sherman Act are applicable to claims under California’s Cartwright
28 Act. See, e.g. Pecover v. Elecs. Arts Inc., 633 F. Supp. 2d 976,
984 (N.D. Cal. 2009); Marin Cty. Bd. of Realtors, Inc. v. Palsson,
16 Cal. 3d 920, 925 (1976).

1 of reason." Id.; Brantley, 675 F.3d at 1197. "In its design and
2 function the rule distinguishes between restraints with
3 anticompetitive effect that are harmful to the consumer and
4 restraints stimulating competition that are in the consumer's best
5 interest." Leegin Creative Leather Prod., Inc. v. PSKS, Inc., 551
6 U.S. 877, 886 (2007). To state a Section 1 claim under the
7 rule of reason, a plaintiff must allege (1) an agreement,
8 conspiracy, or combination between two or more entities that
9 (2) the entities intend to harm or restrain trade and (3)
10 actually injures competition with (4) resulting "antitrust
11 injury" to the plaintiff. Brantley, 675 F.3d at 1197.; Auto.
12 Sound Inc. v. Audiovox Elec. Corp., No. 12-762, 2012 WL
13 12892938, at *3 (C.D. Cal. Dec. 3, 2012).

14 1. Relevant Market

15 Generally, to demonstrate injury to competition, a plaintiff
16 "must delineate a relevant market and show that the defendant plays
17 enough of a role in that market to impair competition
18 significantly." Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1413 (9th
19 Cir. 1991). "Without a definition of the market, there is no way
20 to measure the defendant's ability to lessen or destroy
21 competition." Am. Express, 138 S.Ct. at 2285 (internal alteration
22 and quotation marks omitted). The relevant market is the "area of
23 effective competition," including, where applicable, different
24 products or services that serve as substitutes for each other.
25 Id.; Oltz v. St. Peter's Cmty. Hosp., 861 F.2d 1440, 1446 (9th Cir.
26 1988) ("The product market includes the pool of goods or services
27 that enjoy reasonable interchangeability of use and
28 cross-elasticity of demand."). The market, which must include a

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.