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3   UNITED STATES DISTRICT COURT

4   NORTHERN DISTRICT OF CALIFORNIA

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6   BEIJING MEISHE NETWORK   Case No. 23-cv-06012-SI
     TECHNOLOGY CO., LTD.,
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                  Plaintiff,
8   **ORDER GRANTING IN PART AND
           v.   DENYING IN PART DEFENDANTS'
9   RENEWED MOTION TO DISMISS
     TIKTOK INC., et al.,   PLAINTIFF'S THIRD AMENDED
10   COMPLAINT WITH LEAVE TO
                  Defendants.   AMEND**
11
                                               Re: Dkt. No. 409
12

13   Before the Court is defendants' renewed motion to dismiss plaintiff's third amended

14   complaint. Dkt. No. 409. Plaintiff opposes. Dkt. No. 414. The Court heard oral argument on this

15   motion on April 5, 2024. For the reasons set forth below, the Court GRANTS IN PART defendants'

16   motion to dismiss with leave to amend and DENIES IN PART defendants' motion. Plaintiff shall

17   file its fourth amended complaint no later than **May 14, 2024**.

18

19   **BACKGROUND**[1]

20   Plaintiff Beijing Meishe Network Technology Co., Ltd. ("Meishe") filed its third amended

21   complaint on April 20, 2023 in the Western District of Texas. Dkt. No. 235 ("TAC"). The

22   complaint alleges seven causes of action against defendants TikTok Inc., TikTok Pte. Ltd.,

23   ByteDance Ltd., and ByteDance Inc. (collectively, "defendants"). Four causes of action remain:

24   copyright infringement, misappropriation of trade secrets under the Defend Trade Secrets Act

25   ("DTSA"), misappropriation of trade secrets under the Texas Uniform Trade Secrets Act

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27   [1] For purposes of this motion to dismiss, the Court treats as true the factual allegations as
     stated in plaintiff's complaint and draws all reasonable inferences in plaintiff's favor. *See Usher v.
     City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

1 ("TUTSA"), and Lanham Act false advertising.[2]

2   Meishe is a private company established in 2014 under the laws of the People's Republic of

3 China with a principal place of business in Beijing. *Id.* ¶¶ 3, 10. It is the owner of a copyright in

4 Meishe software (the "Meishe app"), "a computer program that enables users to complete

5 professional-level video and audio editing processing on the mobile side through simple operations,

6 making high quality video and audio clips." *Id.* ¶ 53. Meishe "developed the Meishe app and further

7 developed the Meishe SDK and other software that provide users with video and audio editing

8 functions." *Id.* ¶ 54.

9   TikTok Inc. is a California corporation with a "regular and established place of business in

10 Austin, Texas." *Id.* ¶ 11. TikTok Pte. Ltd. is a Singapore corporation with its principal place of

11 business in Singapore. *Id.* ¶ 12. ByteDance Ltd. is a Cayman Islands corporation with offices in

12 the United States and elsewhere. *Id.* ¶¶ 13, 16. ByteDance Inc. is a Delaware corporation. *Id.* ¶14.

13 ByteDance Ltd. is the parent and owner of TikTok Inc., TikTok Pte. Ltd., and ByteDance Inc. *Id.*

14 ¶ 15. ByteDance Ltd. developed the TikTok app around May 2017 and operates and controls the

15 app in the United States through its subsidiaries and affiliates, including the other defendants in this

16 case. *Id.* ¶¶ 17, 55.[3] The TikTok app "allows users to create short videos, which often feature music

17 in the background and can be sped up, slowed down, or edited with a filter." *Id.* ¶ 55. Defendants

18 operate ByteDance Ltd.'s TikTok business in the United States as a joint enterprise. *Id.* ¶ 21.

19   Meishe brings this action for copyright infringement of its registered and unregistered

20 software, all of which is "subject to copyright protection." *Id.* ¶ 1. Meishe registered portions of its

21 software with the Copyright Protection Centre of China ("CPCC"), with Copyright Registration

22 Nos. 2015SR227927, 2018SR037747, 2018SR037751, 2018SR038324, 2018SR218096,

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25   [2] On February 26, 2024, the Court granted the parties' joint stipulation dismissing the three
state law tort claims, unfair competition by misappropriation under Texas law, unjust enrichment

26 under Texas law, and aiding and abetting a breach of fiduciary duty under Texas law (Counts IV,
VI and VII), with prejudice. Dkt. No. 405.

27   [3] The TikTok app is the international version of a Chinese application called Douyin. *Id.*
¶ 5.

2018SR218287, 2019SR0899912, and 2020SR0291426.[4] *Id.* ¶¶ 1, 54. Meishe lists completion dates for the CPCC-registered copyrighted software. *See id.* ¶ 71. Meishe is also the "owner of copyrights in its source code and software, which have been fixed in tangible mediums before the filing date of this lawsuit regardless of registration, including but not limited to [a long list of software]." *Id.* ¶¶ 1, 54. Meishe "has the exclusive rights to reproduce, display, and distribute the copyrighted software," including the registered copyrights listed above, "as well as its copyrighted source code and software regardless of registration." *Id.* ¶ 72. Prior to filing the TAC, Meishe provided defendants with copies of the China copyright registrations and associated material and copies of other copyrighted works, and defendants' experts "have spent several days reviewing that code." *Id.* ¶ 1.

In March 2021, Meishe discovered that a "series of apps belonging to ByteDance, Ltd. had infringed Meishe's copyright since at least 2018." *Id.* ¶ 56. "Meishe personnel conducted an analysis between code of Meishe app and that of TikTok app [which] shows that the code used to implement video and audio editing functions in the two apps is highly similar, proving that Defendants copied Meishe's copyright work." *Id.*[5]

Defendants allegedly had access to Meishe's source code through Meishe's former employee, Mr. Jing Xie, who is currently working for defendants. *Id.* ¶ 58. Mr. Xie began his employment with a Meishe affiliate in 2007 and began his employment with Meishe in March 2015. *Id.* ¶ 60. As a C++ R&D engineer, Mr. Xie "directly participated in the development of Meishe's software and the subsequent upgrades of various versions until his resignation on or around June 8, 2015." *Id.* Mr. Xie also "had access to and control over Meishe's trade secrets, proprietary software code, and/or other confidential information" during his employment with Meishe and its affiliate. *Id.* ¶ 59. When Mr. Xie resigned on June 8, 2015, he "knowingly took copyrighted and trade secret

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[4] Meishe's TAC lists eighteen copyright registrations that defendants allegedly copied. *See* TAC ¶¶ 54, 71. In a September 29, 2023 letter to defendants, Meishe withdrew the following ten registered copyrights from the case: 2019SR0899799, 2019SR0899814, 2019SR0901166, 2019SR0901175, 2019SR0901188, 2019SR0901198, 2019SR0901209, 2020SR0572704, 2020SR0572713, 2020SR0575533. Dkt. No. 409 at 2 n.2; Dkt. No. 414 at 7 n.4.

[5] Meishe conducted a comparison between "TikTok v8.5.0" object code, obtained from

1   Meishe code that was incorporated into subsequent software including software controlled and

2   distributed by ByteDance and its subsidiaries." *Id.* ¶ 97, *see also* ¶ 63. Mr. Xie began his

3   employment at ByteDance as "multimedia audio and video director" around October 2017. *Id.*

4   ¶¶ 65, 98.

5   Around March 2021, Meishe audited Mr. Xie's activities and "discovered that on or around

6   June 3, 2015, he downloaded [and copied] Meishe's source code and/or other confidential

7   information." *Id.* ¶¶ 94, 101. Each time Mr. Xie modified Meishe software in the "SVN system,"

8   he first had to check "the corresponding subtree of the repository to get a so-called 'working copy.'"

9   *Id.* ¶ 61. The "SVN system recorded all relevant information in its logs," and "[t]hese logs prove

10   that Mr. Jing Xie accessed Meishe's source code and downloaded the source code." *Id.* Around

11   May 14, 2021, Meishe "notarized the SVN log and checked the committed log of Jing Xie on SVN."

12   *Id.* ¶ 101.

13   In addition to the allegations already detailed, Meishe alleges the following with respect to

14   its copyright infringement claim. "On information and belief, the TikTok app consists of Plaintiff's

15   proprietary information, trade secrets, and/or reproduced software code" registered with the CPCC,

16   "as well as its copyrighted source code and software regardless of registration." *Id.* ¶ 73. More

17   specifically, defendants' software, including TikTok, "includes portions of code that are copyrighted

18   and owned by TikTok" and subjected to copyright registrations and portions of plaintiff's software

19   code that were never made public. *Id.* ¶ 74. Defendants infringed on plaintiff's copyright in its

20   software by reproducing Meishe's copyrighted works, preparing derivative works based on

21   Meishe's copyrighted works, and distributing the copyrighted works. *Id.* ¶ 75. Defendants also

22   profited by inducing users to download and use the TikTok app. *Id.* Additionally, "[u]pon

23   information and belief, on or around April 2020, Defendants took steps to obfuscate its software

24   code in order to conceal its infringement." *Id.* ¶ 76.

25   Defendants were aware of the incorporation of Meishe's copyrighted source code into at

26   least the TikTok app and were aware of the use of Meishe's copyrighted source code by users of at

27   least the TikTok app. *Id.* ¶ 77. Defendants also knowingly provided false copyright management

1   "intentionally removed or altered Meishe's copyright management information from the software []

2   copied and distributed for importation." *Id.* ¶¶ 77, 160. Meishe previously filed lawsuits against

3   ByteDance and other defendants in China, including an April 30, 2021 lawsuit, where, according to

4   a National Law Review article, Meishe alleged that "version 3.0 and later of Douyin released on

5   November 1, 2018, copied video and audio editing and processing software code from Meishe

6   Technology's copyrighted beauty photo software. Further, six other apps by Bytedance have traces

7   of code plagiarism, many of which have the same function names and even misspelled code copied

8   from Meishe source code." *Id.* ¶ 79.

9   Plaintiff further alleges the following with respect to its misappropriation of trade secrets

10   claims under the DTSA and TUTSA. "Plaintiff is the owner of trade secrets that include, but are

11   not limited to proprietary, independently-developed software code that allows for video and audio

12   editing, video and audio processing, video and audio release, personalized audio and video

13   recommendations, webcasting, and other confidential business information." *Id.* ¶¶ 87, 119.

14   "Plaintiff's trade secrets are not generally known or readily ascertainable nor could they be properly

15   acquired or duplicated by others," and plaintiff's copyrighted source code has never been made

16   publicly available. *Id.* ¶¶ 88-89, 120-121. Meishe "has taken reasonable and extensive efforts to

17   maintain the secrecy of its source code through the use of employment agreements and other

18   measures. All of Plaintiff's trade secrets are stored on secure servers and are password-protected."

19   *Id.* ¶¶ 89, 121. Defendants wrongfully acquired Meishe's proprietary software code from Mr. Xie

20   and knew or had reason to know that the software code was improperly acquired. *Id.* ¶¶ 102, 131.

21   Defendants also obtained other trade secret information from Mr. Xie, including "information about

22   which portions of Meishe's software were most likely to be popular if incorporated into video

23   editing features in smart phone applications." *Id.* ¶ 103. Defendants induce users to download and

24   use its products and services that include Meishe's software code. *Id.* ¶¶ 105, 133.

25   Meishe further alleges the following with respect to the Lanham Act claim. TikTok "informs

26   users that it owns and has proper rights to the code it uses in its applications." *Id.* ¶¶ 158-159.

27   Meishe provides examples of this in the TAC. *See id.* Through the described conduct, defendants

28   misrepresented to their consumers "the nature, characteristics of their product and commercial

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