

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE

TENTATIVE RULINGS - February 27, 2025

HEARING DATE: 2/28/2025 HEARING TIME: 10:30am DEPT.: 64

JUDICIAL OFFICER: Loren G. Freestone

CASE NO.:37-2024-00020896-CU-MC-CTL

CASE TITLE: The People of The State of California vs Coast Runner Industries Inc [IMAGED]

CASE TYPE: (U)Other Complaint (Not Specified): Other Complaint

HEARING TYPE: Motion

TENTATIVE RULING

Defendants Coast Runner Industries Inc., Ghost Gunner Inc., and Defense Distributed’s anti-SLAPP motion to strike the complaint filed by the People of the State of California (acting by and through the County of San Diego) is **DENIED**.

“Anti-SLAPP motions are evaluated through a two-step process. Initially, the moving defendant bears the burden of establishing that the challenged allegations or claims ‘arise from’ protected activity in which the defendant has engaged. If the defendant carries its burden, the plaintiff must then demonstrate that its claims have at least minimal merit.” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061.)

Step 1 – Protected Activity

“At the first step of the analysis, the defendant must make two related showings. Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection. And comparing that protected activity against the complaint, it must also demonstrate that the activity supplies one or more elements of a plaintiff’s claims.” (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887.)

Defendants argue that the People’s claims arise from its opposition to California laws regarding CNC milling machines, “first with political advocacy and then with prior federal litigation.” It also argues that the People’s claims arise from “covered acts of free commercial speech.”

Political Advocacy/Prior Litigation

The People do not dispute that political advocacy and litigation qualify for protection. However, the People do dispute that its claims “arise from” any such conduct.

“A claim arises from protected activity when that activity underlies or forms the basis for the claim.” (*Park, supra*, 2 Cal.5th at p. 1062.) The “focus is on determining what the defendant’s activity is that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.” (*Id.* at p. 1063.) The protected activity must be the “conduct by which plaintiff claims to have been injured.” (*Ibid.*) “In short, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.” (*Ibid.*)

The “fact an action was filed after protected activity took place,” or that a cause of action “arguably may have been triggered by protected activity,” does not mean it arose from that activity. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76–78.) It is critical to “respect the distinction between activities that form the basis for a claim and

those that merely lead to the liability-creating activity or provide evidentiary support for the claim.” (*Park, supra*, 2 Cal.5th at p. 1064.)

“As is true with summary judgment motions, the issues in an anti-SLAPP motion are framed by the pleadings. Thus, the act or acts underlying a claim for purposes of an anti-SLAPP statute is determined from the plaintiff’s allegations.” (*Alfaro v. Waterhouse Mgmt. Corp.* (2022) 82 Cal.App.5th 26, 31–32.)

The People’s first cause of action is brought under Civil Code section 3273.62, which states:

“A person shall not sell, offer to sell, transfer, advertise, or market a CNC milling machine or three-dimensional printer in a manner that knowingly or recklessly causes another person in this state to engage in conduct prohibited by Section 29185 of the Penal Code [use of a CNC machine to manufacture a firearm / possession, purchase, or receipt of a CNC milling machine that has the sole or primary function of manufacturing firearms], or in a manner that otherwise knowingly or recklessly aids, abets, promotes, or facilitates conduct prohibited by that section.”

(Civ. Code, § 3273.62, subd. (a).) As alleged, and consistent with the statute, it is the actual sale and marketing of the Coast Runner that gives rise to Defendants’ liability. (Compl. ¶¶ 67–72.)

The People’s second cause of action is brought under Business and Professions Code section 17200, which prohibits “unfair” and “unlawful” business practices, which would include violations of Civil Code section 3273.62. (Bus. & Prof. Code, § 17200.) As alleged, it is again the actual sale and marketing of the Coast Runner that gives rise to Defendants’ liability. (Compl. ¶¶ 79–82.)

Neither cause of action specifically references any political statements or prior litigation as a basis for liability. Such conduct is not sales, marketing, or advertising, and therefore it is not clear how such conduct even could supply an element of either claim. (See *Alfaro, supra*, 82 Cal.App.5th at p. 35 [noting the plaintiffs “did not allege, and could not have meritoriously alleged,” that prior litigation was itself a statutory violation].)

The complaint undoubtedly includes allegations explaining how and why the Coast Runner was conceived. But such allegations are background and context, whereas the People’s actual claims are based on the ensuing marketing and sale of the Coast Runner. (See *Ratcliff v. The Roman Catholic Archbishop of Los Angeles* (2022) 79 Cal.App.5th 982, 1005–1006 & fns. 14–15 [taking the complaint “at its word” that claim was based on the conduct “actually identified” as a basis for liability, and that the “allegations of litigation conduct [were] simply incidental allegations that provide context”].)

Defendants argue that each cause of action incorporates all of the preceding paragraphs of the complaint (Compl. ¶¶ 64, 75), and therefore each incorporates allegations of political advocacy and prior litigation. But incorporating all prior allegations is a common practice and does not convert the fundamental nature of the causes of action. (See *Oakland Bulk, supra*, 54 Cal.App.5th at pp. 758–759; *Nirschl v. Schiller* (2023) 91 Cal.App.5th 386, 408; *Kajima, supra*, 95 Cal.App.4th at p. 932; see, e.g., *Ratcliff, supra*, 79 Cal.App.5th at pp. 1005–1006 & fns. 14–15 [rejecting the defendant’s to “mischaracterize[] the complaint” and “cherry-pick[] allegations of litigation conduct” that were incorporated by reference].)

Defendants also argue that prior advocacy and litigation are alleged to have been “key material steps in the overall effort to supposedly help people evade state and federal firearms laws and to create ghost guns.” Again, there is a “distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity.” (*Park, supra*, 2 Cal.5th at p. 1064.) The People do not seek to hold Defendants liable for their acts leading up to the development of the Coast Runner, but rather the marketing and sale of the Coast Runner itself. (See, e.g., *Golden Gate Land Holdings LLC v. Direct Action Everywhere* (2022) 81 Cal.App.5th 82, 90–91 [claims against activist group did not arise from petition calling for shut down, but rather from the ensuing protest that constituted a trespass]; *Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation Inc.* (2019) 32 Cal.App.5th 458, 464–465, 470 [defendants were not being sued for joining a political group to influence local ordinances, but rather for the acts the group took to restrain trade and monopolize the market].)

Defendants further argue that the UCL claim specifically alleges that they “only began marketing the Coast Runner after they lost their legal challenge to AB 1621 in California.” (Compl. ¶ 82.) Again, the “fact an action was filed after protected activity took place” does not mean it arose from that activity. (*City of Cotati, supra*, 29 Cal.4th at pp. 76–78.) The People do not seek to hold Defendants liable simply based on when they began manufacturing the Coast Runner, much less because Defendants unsuccessfully challenged AB 1621. The People instead allege that Defendants are engaging in unfair business practices by “evad[ing] AB 1089 and AB 1621 by selling their ‘Coast Runner’ machine—identical in all but name to the ‘Ghost Gunner’—in California.” (Compl. ¶ 82.) The wrongful conduct is the sale of the Coast Runner. The timing of when Defendants began manufacturing the Coast Runner may constitute evidence bearing on whether they are intentionally trying to evade the law, but neither the timing nor the prior unsuccessful challenge is itself the basis for the claim. (See *People ex rel. Fire Ins. Exchange v. Anapol* (2012) 211 Cal.App.4th 809, 823 [explaining the focus is on the allegedly wrongful conduct, not evidence of that conduct or the motives for that conduct]; see, e.g., *Park, supra*, 2 Cal.5th at p. 1068 [comments may have supplied evidence of discriminatory animus, but it was the adverse employment action, not the statements themselves, that were the basis for liability].)

For the reasons set forth above, the complaint does not “arise from” any political advocacy or prior litigation.

Commercial Speech

The People do not dispute that their claims arise from Defendants’ commercial marketing and advertising of the Coast Runner (in addition to the actual sale as set forth above). However, the People dispute that such speech is protected.

The People argue (1) that Defendants’ marketing is illegal and therefore not protected, and (2) that such commercial speech is exempt under the anti-SLAPP statute. The second argument is dispositive and therefore it is unnecessary to address the first.

The anti-SLAPP statute contains a commercial speech exemption. (See Code Civ. Proc., § 425.17, subd. (c).) “The exemption has four elements: (1) the defendant is engaged in the business of selling or leasing goods or services, (2) the claim arises from representations of fact about defendant’s or a business competitor’s operations, goods or services, (3) the representations were made for the purpose of selling or delivering the defendant’s goods or services, and (4) the intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential customer.” (*WasteXperts Inc. v. Arakelian Enterprises Inc.* (2024) 103 Cal.App.5th 652, 664.)

“What matters for purposes of the commercial versus noncommercial speech analysis is whether the speech at issue is about the speaker’s product or service or about a competitor’s product or service, whether the speech is intended to induce a commercial transaction, and whether the intended audience includes an actual or potential buyer for the goods or services.” (*JAMS, Inc. v. Superior Court* (2016) 1 Cal.App.5th 984, 995.) Application of the exemption does not depend on whether the statements are “true, false, or otherwise nonactionable.” (*Id.* at pp. 995–996.)

Here, Defendants are primarily engaged in the business of selling CNC mills and related parts, tools, materials, and software. The People’s claims arise, in part, from Defendants’ commercial representations about the Coast Runner. Those representations were made for the purpose of selling the Coast Runner, and they were directed toward potential buyers of the Coast Runner.

Defendants do not argue that the four elements of the commercial speech exemption are satisfied. They instead argue that there is essentially a fifth element, that the commercial speech be “comparative advertising.”

Defendants’ argument is premised on language in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133 suggesting that the exemption only applies to a subset of commercial speech, “specifically comparative advertising.” (*Id.* at p. 147.) But the parties in that case agreed the commercial speech exemption did not apply. (*Id.* at p. 147, fn. 4.) The issue in *FilmOn* was not whether the exemption in section 425.17 applied to otherwise protected speech, but rather whether the speech at issue was protected in the first place under section 425.16. (See *id.* at pp. 139–140.)

“Because no case is authority for a proposition not therein considered, nothing in *FilmOn* precludes the applicability of the commercial speech exempt under the facts” presented here. (See *WasteXperts, supra*, 103 Cal.App.5th at p. 665; accord *Neurelis Inc. v. Aquestive Therapeutics Inc.* (2021) 71 Cal.App.5th 769, 787, fn. 5; *Xu, supra*, 73 Cal.App.5th at p. 816, fn. 15.)

For the reasons set forth above, the commercial marketing and advertising from which the People’s claims in part arise is exempt from the anti-SLAPP statute.

Step 2 – Minimal Merit

If the motion fails at step 1, it is unnecessary to address step 2. (See *Golden Gate, supra*, 81 Cal.App.5th at p. 95.)

The court therefore expresses no opinion on the merits of the People’s claims.

Conclusion

The anti-SLAPP motion is denied.