IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

EQUAL RIGHTS CENTER, **Plaintiff,** **v.** **META PLATFORMS, INC.,** **Defendant.**	**2025 CAB 000814** **Judge Yvonne Williams**

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Before the Court is Defendant Meta Platforms, Inc.'s Motion to Dismiss ("Motion"), filed on April 4, 2025. Plaintiff filed its Opposition to Defendant's Motion on May 19, 2025, to which, Defendant replied on June 2, 2025. For the reasons set forth below, Defendant's Motion is **DENIED**.

I. BACKGROUND

This matter arises out of a Complaint for violations of the District of Columbia Consumer Protection Procedures Act ("CPPA"). Plaintiff's allegations are summarized as follows. Defendant, formerly known as Facebook, Inc., is a Delaware corporation with its headquarters and principal place of business at 1 Meta Way, Menlo Park, CA 94025. Compl. at ¶ 15. Defendant operates several social media platforms, including Facebook and Instagram, which are available to users online through the internet and their mobile cellular devices. *Id.*

Facebook is a social media platform that operates a website and mobile phone application and maintains approximately 2.11 billion daily active users. Compl. at ¶ 18. More than 223 million Americans use Facebook per month. *Id.* At least 296,200 Facebook users reside in the District of Columbia. *Id.* Users who create accounts on Facebook can add fellow users as "friends," create and join groups with other users, and post photographs, videos, text, and links to other websites.

Id. Instagram is also a social media platform that operates a website and mobile phone application and maintains approximately 2 billion active monthly users. *Id.* at ¶ 20. More than 160 million Americans use Instagram per month. *Id.* At least 492,600 Instagram users reside in the District of Columbia. *Id.*

Each platform provides its users with personalized screens, referred to as "feeds." Compl. at ¶¶ 19-20. Users can explore their Facebook feeds to view their friends' posts and posts from other groups and pages on Facebook. *Id.* at ¶ 19. Facebook users' feeds contain paid advertisements, which Facebook refers to as "sponsored" posts. *Id.* Facebook users can engage with such sponsored posts by clicking on, "liking," sharing, saving, or commenting on the posts. *Id.* Defendant offers Facebook users access to an instant messaging service called "Messenger," as well as a short-form video service called "Reels," both of which also contain paid advertisements. *Id.* On their feed, Instagram users may view posts from accounts that they follow. *Id.* at ¶ 20. Instagram users can post and view "stories" in photographic and video form, which disappear after 24 hours. *Id.* Instagram users' feeds and stories contain paid advertisements, which Instagram refers to as "sponsored" posts. *Id.* Instagram also offers a short-form video service called "Reels," which similarly contains paid advertisements. *Id.*

Users agree to permit Defendant to collect, analyze, and utilize their data in exchange for their use and enjoyment of Facebook and Instagram. *See* Compl. at ¶ 21. Defendant can glean user data from: (i) user-provided information, such as names, addresses, and photographs; (ii) user behavior on Defendant's platforms; (iii) third parties; (iv) device information; and (v) the user's "friends" on Facebook and Instagram. *Id.* at ¶ 23. From its collection of the user's data, Defendant can infer a user's actual or perceived race, ethnicity, and skin color. *Id.* at ¶ 52.

Defendant employs its collection of user data to operate a "personal advertising" system. Compl. at ¶ 55. Personal advertising directs ads to individual users—and can be based upon the inferred physical traits, interests, or behaviors of the user—such that each user receives a customized set of ads. *Id.* Defendant's personal advertising system operates in two stages: targeting and delivery. *Id.* at ¶ 56. At the targeting stage, Defendant and advertisers collaborate to determine a target audience by projecting which users will be eligible to receive, or will be receptive to, particular ads. *Id.* At the delivery stage, Defendant acts alone to determine which Facebook and Instagram users actually receive the ads from a superset of users identified as a target audience by Defendant and advertisers. *Id.*

At the delivery stage, Defendant allegedly employs its ad delivery algorithm to "steer[] ads for for-profit colleges and universities disproportionately to Black users, and ads for public colleges and universities disproportionately to white users." Compl. at ¶ 88. In turn, Black users are allegedly denied access to information about public colleges and universities. *Id.* at ¶¶ 99-101, 125. Plaintiff alleges that this practice violates the CPPA by virtue of: (i) Defendant's violation of the District of Columbia Human Rights Act ("DCHRA") (Count I); and (ii) Defendant's employment of unfair and deceptive trade practices (Count II). *Id.* at ¶¶ 26, 31.

Accordingly, Plaintiff filed its Complaint on February 11, 2025. On February 20, 2025, Plaintiff filed an Affidavit of Service upon Defendant. The Court entered an Order Granting Civil I Certification on March 3, 2025. Plaintiff filed the instant Motion on April 4, 2025. Defendant filed its Opposition on May 19, 2025, to which, Defendant replied on June 2, 2025. The instant Motion is, therefore, ripe for adjudication.

II. LEGAL STANDARD

A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the requirement of Rule 8(a) that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011) (quoting D.C. Super. Ct. Civ. R. 8(a)). "To survive a motion to dismiss, a complaint must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist." *Williams v. District of Columbia*, 9 A.3d 484, 488 (D.C. 2010) (citation and quotations omitted); *see Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1266 (D.C. 2015) ("To survive a motion to dismiss, a complaint must set forth sufficient facts to establish the elements of a legally cognizable claim.") (citations and quotations omitted)). In resolving a motion to dismiss, "the court accepts as true all allegations in the Complaint and views them in a light most favorable to the nonmoving party." *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005) (citations and quotations omitted).

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); see *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1128-29 (D.C. 2015) ("[W]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (Citations and quotations omitted)). "To satisfy Rule 8(a), plaintiffs must nudge their claims across the line from conceivable to plausible." *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 246 (D.C. 2016) (citation and quotations omitted). However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether

they plausibly give rise to an entitlement to relief." *Carlyle Inv. Mgmt., L.L.C. v. Ace Am. Ins. Co.*, 131 A.3d 886, 894 (D.C. 2016) (alteration in original) (citation and quotations omitted).

"A complaint should not be dismissed because a court does not believe that a plaintiff will prevail on its claim; indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Carlyle Inv. Mgmt., L.L.C.*, A.3d at 894 (citation, quotations, and brackets omitted). In addition, the Court should "draw all inferences from the factual allegations of the complaint in the [non-movant's] favor." *Id*. (citation omitted). However, legal conclusions "are not entitled to the assumption of truth," *Potomac Dev. Corp*., 28 A.3d at 544 (quoting *Iqbal*, 556 U.S. at 664), so "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Sundberg*, 109 A.3d at 1128–29 (quoting *Iqbal*, 556 U.S. at 678). The complaint must plead "factual content that allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Poola v. Howard Univ*., 147 A.3d 267, 276 (D.C. 2016) (citation and quotations omitted).

III. DISCUSSION

Defendant's Motion is denied. Defendant argues that Plaintiff fails to plausibly claim that its ad delivery algorithm violates the CPPA to avoid dismissal. *See generally* Mot. The Court will address each of Defendant's arguments in turn.

A. Plaintiff's Standing Under the CPPA

Defendant first argues that the Court should dismiss Counts I and II of Plaintiff's Complaint because Plaintiff fails to plausibly allege that it maintains statutory standing to bring its CPPA claims. Mot. at 5. The Court disagrees.

The CPPA protects District of Columbia consumers against false, deceptive, or unfair business practices. *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 663 (D.C. 2024). It is a

broad consumer protection statute enacted to "assure that a just mechanism exists to remedy all improper trade practices." D.C. Code § 28-3901(b)(1); *see also Baylor v. Mitchell Rubenstein & Assocs., P.C.*, 857 F.3d 939, 947-48 (D.C. Cir. 2017) (the CPPA "embraces both an expansive understanding of the conduct which constitutes a 'trade practice'…and provides an extensive list of unlawful trade practices" (citing D.C. Code § 28-3901(b)(1)). Thus, the CPPA "establishes an enforceable right to truthful information from merchants about consumer goods and services," and it is to be "construed and applied liberally" to effectuate that purpose. D.C. Code § 28-3901(c).

In relevant part, the CPPA provides that:

> "[i]t shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby, including to:
>
> (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
> …
> (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another…
> (e) misrepresent as to a material fact which has a tendency to mislead;
> (f) fail to state a material fact if such failure tends to mislead;
> (f-1) use innuendo or ambiguity as to a material fact, which has a tendency to mislead; …
> (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered."

D.C. Code § 28-3904 (a), (d), (e), (f), (f-1), (h). There is no requirement that the "alleged misleading statement or omission…be willful or intentional," at least not under the CPPA subsections that are relevant here. *Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1073 & n.20 (D.C. 2008) (discussing D.C. Code § 28-3904 (e) and (f)). Nor is there any requirement that the contested statement be false; factually true statements that have a tendency to mislead, including omitting a material fact, or using innuendo and ambiguity as to a material fact, may also violate the CPPA. *See Earth Island Inst.*, 321 A.3d at 668. Further, there is no requirement that any consumer actually be misled by the deceptive statements. *Id.* at 664.

(citing D.C. Code § 28-3904). To assert a misrepresentation claim under the CPPA, one need only plausibly allege that the "merchant 'misrepresented' or 'failed to state' a material fact" related to its good or services. *Frankeny v. District Hosp. Partners, LP*, 225 A.3d 999, 1005 (D.C. 2020) (citing *Fort Lincoln*, 944 A.2d at 1073). The CPPA does not cover all consumer transactions, and instead only covers "trade practices arising out of consumer-merchant relationships." *Snowder v. District of Columbia*, 949 A.2d 590, 599 (D.C. 2008) (quoting *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981)).

Notably, the CPPA confers standing upon "public interest organization[s]" bringing suit "on behalf of the interests of a consumer or a class of consumers," so long as they have a "sufficient nexus" to "adequately represent those interests." D.C. Code § 28-3905(k)(1)(D). "That recent addition to the CPPA conveys a clear legislative intent to modify Article III's strictures with a statutory test governing public interest organizations' standing to bring a CPPA claim." *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 179 (D.C. 2021).

In its Motion, Defendant argues only that Plaintiff lacks standing to proceed on Counts I and II because Plaintiff has not sufficiently identified a specific consumer or class of consumers that could bring this suit in their own right. *See* Mot. at 5-7. The Court, however, concludes otherwise. Plaintiff first alleges that Defendant targeted a class of Black Facebook and Instagram users in the District of Columbia with a discriminatory ad delivery algorithm in violation of the DCHRA and, therefore, the CPPA (Count I). Compl. at ¶ 26. Defendant's use of its discriminatory ad delivery algorithm, Plaintiff asserts, economically harmed Black Facebook and Instagram users in the District of Columbia by "den[ying] Black users valuable information about public colleges and universities" and caused them with non-economic injury by "stigmatizing Black users as having inferior educational aptitude and not deserving of the same educational opportunities as

other users." *Id.* at ¶ 125. Plaintiff next alleges that by employing its discriminatory ad delivery algorithm, Defendant engaged in unfair and deceptive trade practices in violation of the CPPA (Count II). *Id.* at ¶ 31. Plaintiff has, therefore, explicitly identified a class of consumers—Black Facebook and Instagram users in the District of Columbia—on behalf of whom it initiated this CPPA action. *Id.* By doing so, Plaintiff has identified a sufficient "consumer or class of consumers" to establish the requisite standing to proceed in this action.[1] *See* D.C. Code § 28-3905(k)(1)(D); *Animal Legal Def. Fund*, 258 A.3d at 179; *Earth Island*, 321 A.3d at 662-63; *Ctr. for Inquiry Inc. v. Walmart, Inc.*, 283 A.3d 109, 116 (D.C. 2022). As such, Defendant's standing argument fails.[2]

B. Count I

The Court now turns to Defendant's argument as to Count I of Plaintiff's Complaint. Defendant argues that Plaintiff fails to sufficiently allege any violation of the CPPA to avoid dismissal of Count I of Plaintiff's Complaint. The Court Disagrees.

As noted *supra*, the CPPA applies to "unfair or deceptive trade practices." D.C. Code § 28-3904. The District of Columbia Code defines "trade practice" as "any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer to effectuate, a sale, lease or transfer, of consumer goods or services." D.C. Code §

[1] Defendant also appears to argue that "[Plaintiff] cannot bring its CPPA claims on behalf of such a broad swath of the public." Here too, Defendant's argument fails. By its terms, the CPPA is to be construed liberally. D.C. Code § 28-3901(c). Accordingly, the DCCA has permitted public interest and non-profit groups to proceed on behalf of the "general public" of the District of Columbia, *see Earth Island*, A.3d at 662-63, and District of Columbia "customers." *Walmart*, 283 A.3d at 116. The Court, therefore, cannot conclude that Plaintiff's class of Black Facebook and Instagram users in the District of Columbia is too broad a class to establish Plaintiff's standing.

[2] Whether Plaintiff maintains standing to initiate this action is a threshold matter and not, as Defendant implies, any indication of Plaintiff's likelihood of success on the merits. *See Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990) (standing a threshold issue, not one of merits); *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011) (holding superseded statutorily on other grounds); *see also* Mot. at 7 ("And there are zero factual allegations about how many Black users in the District, if any, received such ads…let alone how many sought out and attended for-profit higher education institutions and suffered worse educational, professional, and life outcomes as a result.").

28-3901(a)(6). The CPPA provides a non-exhaustive list of practices that constitute unlawful trade practices. D.C. Code § 28-3904.

In its Complaint, Plaintiff alleges that Defendant violates the DCHRA by denying, directly or indirectly, Black Instagram and Facebook users in the District of Columbia the "full and equal enjoyment of personalized advertisements on Facebook and Instagram—which are services, privileges, advantages, and accommodations that Facebook and Instagram provide to their users—wholly or partially because of users' actual or perceived race, color, and personal appearance or proxies for users' race, color, and personal appearance." Compl. at ¶ 121. Plaintiff further alleges that by virtue of its violating the DCHRA in the context of a merchant-consumer trade practice, Defendant also violates the CPPA. *Id.* at ¶¶ 116, 121, 126. Courts in this jurisdiction have consistently held that the violation of a District of Columbia statute, including the DCHRA, in a merchant-consumer context may constitute a violation of the CPPA. *See, e.g., Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 723 (D.C. 2003) (finding that plaintiffs could predicate their CPPA claim upon defendant's alleged violation of common law); *District of Columbia v. Evolve*, LLC, 2020 D.C. Super. LEXIS 6, *13 (Feb. 25, 2020) (finding defendant liable for CPPA violation where it had violated DCHRA in context of merchant-consumer relationship); *Atwater v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 566 A.2d 462, 466 (D.C. 1989) ("[t]he [CPPA] obviously contemplates that procedures and sanctions provided by the Act will be used to enforce trade practices made unlawful by other statutes"). Thus, the Court concludes that Plaintiff permissibly predicates Count I of its Complaint upon Defendant's alleged violation of the DCHRA. *Evolve*, LLC, 2020 D.C. Super. LEXIS at *13. At issue is, therefore, whether Plaintiff plausibly alleges that Defendant's conduct violates the DCHRA.

a. The DCHRA

Defendant sets forth multiple unconvincing arguments as to why the Court should dismiss Count I for Plaintiff's failure to plausibly allege that Defendant violated the DCHRA. The Court will address each argument in turn.

i. Plausibility of Plaintiff's § 2-1402.31(a)(1) Claim

Defendant first argues that Plaintiff fails to state a sufficient claim under § 2-1402.31(a)(1) of the DCHRA to avoid dismissal of Count I of its Complaint. Mot. at 7. The Court disagrees.

The DCHRA "is a remedial civil rights statute that must be generously construed." *Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 731 (D.C. 2000). To that end, D.C. Code § 2-1402.31(a)(1) provides that "[i]t shall be an unlawful discriminatory practice" to "deny, directory or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations" when done so "wholly or partially for a discriminatory reason based on the actual or perceived: race, color,…personal appearance,…genetic information,…". D.C. Code § 2-1402.31(a)(1) ("Full and Equal Enjoyment Provision"). A "'[p]lace of public accommodation' means any person or place that provides, to a person in the District, access to an accommodation, service, or good, whether or not that person or place maintains a physical location in the District or charges for those goods or services, such as…establishments dealing with goods or services of any kind…". D.C. Code § 2-1401.02(24) (broadly defining public accommodation and providing non-exhaustive list of public accommodations).

In Count I of its Complaint, Plaintiff alleges that Defendant's employment of its ad delivery algorithm violates the DCHRA by denying, directly or indirectly, Black Instagram and Facebook users in the District of Columbia the "full and equal enjoyment of personalized advertisements on

Facebook and Instagram—which are services, privileges, advantages, and accommodations that Facebook and Instagram provide to their users—wholly or partially because of users' actual or perceived race, color, and personal appearance or proxies for users' race, color, and personal appearance." Compl. at ¶ 121. Plaintiff, therefore, alleges that: (i) Defendant's online social media platforms are places of public accommodation; (ii) Defendant's delivery of personalized advertisements to users on its platform constitutes a service provided by Defendant; (iii) Defendant's employment of its ad delivery algorithm denies Black users the full and equal enjoyment of personalized advertisement delivery on its platforms; and (iv) Defendant's denial of the full and equal enjoyment of personalized advertisement delivery occurs wholly or partially for a discriminatory reason based upon the actual or perceived race of Black users of its platforms. *See generally id.* In so doing, Plaintiff sets forth an archetypal allegation that Defendant's employment of its ad delivery algorithm violates § 2-1402.31(a)(1) of the DCHRA sufficient to avoid dismissal at this juncture. *See* D.C. Code § 2-1402.31(a)(1).

ii. Applicability of D.C. Code § 2-1402.31(a)(2)

Defendant, therefore, contends that the Court should: (i) reject Plaintiff's attempt to "shoehorn [Defendant's] ad delivery [algorithm] into the [DCHRA's] general Full and Equal Enjoyment Provision, D.C. Code § 2-1402.31(a)(1);" and instead, (ii) analyze Count I through the lens of D.C. Code § 2-1402.31(a)(2); to, (iii) conclude that Count I is barred by D.C. Code § 2-1402.31(a)(2). *See* Mot. at 8. The Court is, however, not convinced that D.C. Code § 2-1402.31(a)(2) applies to the conduct alleged.

D.C. Code § 2-1402.31(a)(2) provides that that "[i]t shall be an unlawful discriminatory practice" to "print, circulate, post, or mail, or otherwise cause, directly or indirectly, to be published a statement, advertisement…*which indicates* that the full and equal enjoyment of the

goods, services…of a place of public accommodation will be unlawfully refused, withheld from or denied an individual…". D.C. Code § 2-1402.31(a)(2) (emphasis added). "[W]hen the language [of a statute] is unambiguous and does not produce an absurd result," the Court will "give effect to the plain meaning." *Yazam, Inc. v. D.C. Dep't of For-Hire Vehicles*, 310 A.3d 616, 623 (D.C. 2024) (quoting *In Re Macklin*, 286 A.3d 547, 553 (D.C. 2022)).

In its Complaint, Plaintiff predominantly alleges that Defendant's implementation of its ad delivery algorithm impermissibly steers certain third-party advertising content toward Black users based upon their actual or perceived race. Compl. at ¶ 121. Plaintiff does not allege that Defendant advertises in a manner "which indicates" that the full and equal enjoyment of its goods or services will be refused, withheld from, or denied to an individual on the based on actual or perceived race.[3] *See generally* Compl. Thus, contrary to Defendant's reasoning, the Court concludes that pursuant to its plain meaning, D.C. Code § 2-1402.31(a)(2) is inapplicable to the conduct alleged by Plaintiff. *Yazam, Inc.*, 310 A.3d at 623 (quoting *In Re Macklin*, 286 A.3d at 553). Accordingly, Defendant's argument fails and the Court will not analyze Count I of Plaintiff's Complaint through the lens of D.C. Code § 2-1402.31(a)(2).

iii. Viability of Plaintiff's Disparate Impact Allegations

Finally, Defendant argues that the Court should dismiss Count I because Plaintiff does not sufficiently allege that Defendant "intentionally discriminates or that its ad delivery has an unjustified disparate impact." Mot. at 11. The Court disagrees.

To state a disparate-impact claim under § 2-1402.31(a)(1) of the DCHRA, a plaintiff must "identify a specific policy or practice which the defendant has used to discriminate…." *Garcia v. Johanns*, 444 F.3d 625, 633 (2006) (assuming *arguendo* that disparate-impact doctrine applies

[3] For example, Plaintiff does not allege that Defendant advertises that its goods or services are not available to Black users.

under Equal Credit Opportunity Act); *Cf. Smith v. City of Jackson, Miss.*, 544 U.S. 228, 241 (2005) (affirming grant of summary judgment against plaintiff in age-discrimination case resting on disparate-impact theory; "[I]t is not enough to simply allege that there is a disparate impact on workers, or point to a generalized policy that leads to such an impact. Rather, the employee is responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities.") (internal quotation marks omitted)); *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 373 n.36 (D.C. 1993) ("Under a disparate impact theory,…there is a need to show a causal connection between the disparity and some identifiable employment practice.").

In its Complaint, Plaintiff alleges that: (i) Defendant knowingly employs its ad delivery algorithm; (ii) to impermissibly steers third-party advertising content toward Black users based upon their actual or perceived race; which (iii) results in a higher likelihood that Black users of Defendant's platforms view certain paid advertisements or sponsored content than other users. *See generally* Compl. The Court finds that Plaintiff alleges a causal connection between a practice employed by Defendant—the use of its ad delivery algorithm to steer certain paid advertisements and sponsored content to its Black users—and a disparity—the higher likelihood that Black users of Defendant's platforms view certain paid advertisements or sponsored content. Thus, the Court concludes that Plaintiff has sufficiently tied Defendant's alleged conduct to a disparate impact upon Black users of its platforms. *See Arthur Young & Co.*, 631 A.2d at 373 n.36. As such, the Court reiterates that Plaintiff sufficiently claims that Defendant's employment of its ad delivery algorithm violates § 2-1402.31(a)(1) of the DCHRA to avoid dismissal of Count I at this juncture.

C. Count II

Defendant argues that the Court must dismiss Count II of Plaintiff's Complaint because it is "premised on alleged misrepresentations, but [Plaintiff] does not identify the alleged misrepresentations at issue; and even if its decontextualized allegations of misrepresentations sufficed, they are not misleading as a matter of law." Mot. at 13. The Court disagrees.

As a threshold issue, the Court reiterates that a plaintiff need not prove that a consumer actually be misled to succeed on a CPPA claim. *Frankeny*, 225 A.3d 999, 1005 (D.C. 2020) (citing *Fort Lincoln*, 944 A.2d at 1073) (finding that a plaintiff need only plausibly allege that the "merchant 'misrepresented' or 'failed to state' a material fact" related to its good or services). Thus, whether Defendant's alleged misrepresentations are "misleading as a matter of law" is of no consequence at this juncture. *See Earth Island Inst.*, 321 A.3d at 664.

Further, and contrary to Defendant's contentions, Plaintiff explicitly identifies multiple misrepresentations allegedly made by Defendant. Specifically, Plaintiff alleges in Count II of its Complaint that Defendant employs unfair and deceptive trade practices in violation of the CPPA by: (i) misrepresenting that its services have characteristics or benefits that they do not have (D.C. Code § 28-3904(a)), *e.g.*, "represent[ing] to Black users that its advertising system [] giv[es] Black users the educational opportunity advertisements that are most relevant and valuable to [them], when…[Defendant's ad delivery algorithm]…steer[s]…advertisements at least in part based on the user's race," Compl. at ¶ 132; (ii) misrepresenting that its services are of a particular standard, quality, grade, or style, (D.C. Code § 28-3904(d)), *e.g.*, "represent[ing] that its [ad delivery algorithm] [] match[es] ads to users based on relevance and maximizing value to the user and advertiser, when in fact [Defendant's ad delivery algorithm] steer[s] educational opportunity advertisements at least in part based on race," *Id.* at ¶ 133; and (iii) misrepresenting to Black users

a material fact which tends to mislead (D.C. Code § 28-3904(e)), *e.g.*, "fail[ing] to explain that its [ad delivery algorithm] [] deliver[s] educational opportunity advertisements at least in part based on race." *Id.* at ¶ 134. Plaintiff, therefore, pleads "factual content that allows the court to draw the reasonable inference" that Defendant's employment of its ad delivery algorithm violates D.C. Code § 28-3904(a), (d), and (e) of the CPPA. *See Poola*, 147 A.3d at 276 (citation and quotations omitted). Thus, accepting Plaintiff's allegations as true, as it must upon review of the instant Motion, the Court finds that Plaintiff sufficiently alleges that Defendant's employment of its ad delivery algorithm violates D.C. Code § 28-3904(a), (d), and (e) of the CPPA to avoid dismissal of Count II at this juncture.

D. Section 230

Finally, the Court turns to Defendant's argument that it is immunized from Plaintiff's claims by Section 230. Congress enacted the Communications Decency Act of 1996 ("CDA") to modernize protections against obscenity and harassment in the digital age. S. Rep. No. 104-23, at 59 (1995); *see* Congressional Research Service, "Section 230: An Overview," January 4, 2024, at 1-2. The CDA's provisions increased the penalties for obscene, indecent, harassing, and other wrongful uses of telecommunications facilities by persons who knowingly and intentionally create and send prohibited messages or otherwise use telecommunications devices to harm others. S. Rep. No. 104-23, at 59. The statute also contains an immunity provision that was specifically intended to "exclude from liability telecommunications and information service providers and systems operators who are not themselves knowing participants in the making of or otherwise responsible for the content of the prohibited communications." *Id.*

The CDA's immunity provision is codified at 47 U.S.C. § 230, giving rise to the term "Section 230 immunity." Section 230 states, in subsection (c)(1), that "[n]o 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." Section 230 states further, in subsection (e)(3), that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. §§ 230(c)(1), (e)(3). Together, subsections (c)(1) and (e)(3) provide immunity for telecommunications and information service providers and systems operators from claims that seek to treat them as publishers of information provided by other content providers. *See, e.g., Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 n.3 (11th Cir. 2006).

Defendant contends that in Counts I and II, Plaintiff seeks to hold Defendant liable as a publisher for content—the higher education paid advertisement and sponsored content—shared by third-party advertisers upon Defendant's platforms. *See* Mot. at 15. Defendant, therefore, argues that the Court should dismiss Counts I and II of Plaintiff's Complaint because they are barred under Section 230. *Id.* The Court disagrees.

The Ninth Circuit, in *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir, 2009), explained the analytical framework for determining whether Defendant is immunized by Section 230: "(1) a provider or user of an interactive computer service (2) whom plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *Barnes*, 570 F.3d at 1100-01. The Parties do not appear to dispute that Defendant is a "provider…of an interactive computer service…". *See generally* Mot.; Opp'n. The Parties, however, dispute whether Plaintiff attempts to hold Defendant liable as a publisher or speaker of information provided by third parties upon its platforms. *Id.* Although neither the Supreme Court, nor the District of Columbia Court of Appeals have considered a dispute over the third prong of *Barnes* on the merits, Judge Kravitz recently addressed the issue in this Court.

Notably, Judge Kravitz recognized that the Ninth Circuit has held that "'[b]y its plain terms, and as the last part of the *Barnes* test recognizes, § 230(c)(1) cuts off liability only when a plaintiff's claim faults the defendant for information provided by third parties.'" *District of Columbia v. Meta Platforms, Inc.*, 2024 D.C. Super. LEXIS 27, *24 (quoting *Lemmon v. Snap, Inc.*, 955 F.3d 1085, 1093 (9th Cir. 2021). Accordingly, Judge Kravitz concluded that "a social media company satisfies the third prong of the *Barnes* test and thereby qualifies for immunity under Section 230 *only for harms arising [originating] from particular third-party content displayed on the company's platform*." *Id.* (emphasis added). The Parties do not argue that the Court should deviate from Judge Kravitz's conclusion. *See generally* Mot.; Opp'n. Thus, for the purposes of this Motion, the Court affirms that Defendant is immunized only for harms that *originate* from third-party content displayed upon its platforms.

The issue is, therefore, whether Plaintiff alleges any claims against Defendant for harms that *originate* from third-party content displayed upon its Platforms. In Count I of its Complaint, Plaintiff alleges that Defendant violates the DCHRA by denying, directly or indirectly, Black Instagram and Facebook users in the District of Columbia the "full and equal enjoyment of personalized advertisements on Facebook and Instagram—which are services, privileges, advantages, and accommodations that Facebook and Instagram provide to their users—wholly or partially because of users' actual or perceived race, color, and personal appearance or proxies for users' race, color, and personal appearance." Compl. at ¶ 121. Plaintiff further alleges that Defendant violates the CPPA by virtue of its violating the DCHRA. *Id.* In Count II of its Complaint, Plaintiff alleges that Defendant employs unfair and deceptive trade practices in violation of the CPPA by: (i) misrepresenting that its services have characteristics or benefits that they do not have (D.C. Code § 28-3904(a)), *e.g.*, "represent[ing] to Black users that its advertising

system [] giv[es] Black users the educational opportunity advertisements that are most relevant and valuable to [them], when…[Defendant's ad delivery algorithm]…steer[s]…advertisements at least in part based on the user's race," *Id.* at ¶ 132; (ii) misrepresenting that its services are of a particular standard, quality, grade, or style, (D.C. Code § 28-3904(d)), *e.g.*, "represent[ing] that its [ad delivery algorithm] [] match[es] ads to users based on relevance and maximizing value to the user and advertiser, when in fact [Defendant's ad delivery algorithm] steer[s] educational opportunity advertisements at least in part based on race," *Id.* at ¶ 133; and (iii) misrepresenting to Black users a material fact which tends to mislead (D.C. Code § 28-3904(e)), *e.g.*, "fail[ing] to explain that its [ad delivery algorithm] [] deliver[s] educational opportunity advertisements at least in part based on race." *Id.* at ¶ 134.

Contrary to Defendant's argument, Plaintiff does not seek to hold Defendant liable for third-party content, *i.e.*, the paid advertisements and sponsored content for for-profit colleges and universities. *See generally* Compl. Instead, Plaintiff's alleged harms originate solely from Defendant's directing its ad delivery algorithm to steer paid advertisements and sponsored content for for-profit colleges and universities impermissibly toward Black users based on actual or perceived race. *Id.* It is this act—the impermissible steering of the paid advertisements and sponsored content for for-profit colleges and universities toward Black users based upon their actual or perceived race—from which Plaintiff's alleged harms originate.[4] Thus, the Court finds that Plaintiff does not seek to "blame [Defendant] for the content that [the third-party advertisers]

[4] A defendant might argue that the third prong of the *Barnes* test is satisfied so long as a plaintiff's claims would not exist "but for" the defendant's publication of third-party content. Here, this hypothetical would require Defendant to argue that it is shielded by Section 230 immunity because Plaintiff seeks to hold it liable for third-party advertisements, given that there would be nothing to impermissibly steer to certain users if not for the existence of said third-party advertisements. Judge Kravitz addressed a similar argument in *District of Columbia v. Meta Platforms, Inc.* before opining that "but-for" causation is insufficient to trigger Section 230 immunity. *District of Columbia v. Meta Platforms, Inc.*, 2024 D.C. Super. LEXIS at *24. Upon review of the instant Motion, the Court finds no reason to depart from Judge Kravitz's conclusion.

generate" on its platforms, only for the "tool[]" that Defendant employs to direct the content of third-party advertisers to certain users based on actual or perceived race. *Lemmon*, 955 F.3d at 1094. Accordingly, given that the Court must accept as true the well-pled facts within Plaintiff's Complaint, the Court concludes that Section 230 does not warrant dismissal of Plaintiff's Complaint at this juncture. *See District of Columbia v. Meta Platforms, Inc.*, 2024 D.C. Super. LEXIS at *24.

IV. CONCLUSION

Finding none of Defendant's arguments persuasive, the Court concludes that Plaintiff has sufficiently pled Counts I and II to avoid dismissal of its Complaint. As such, Defendant's Motion is **DENIED**. Defendant shall file its Answer to Plaintiff's Complaint within 21 days of the entry of this Order, on or before August 14, 2025, and the Parties shall file their proposed Scheduling Order within 40 days of the entry of this Order, on or before September 2, 2025.

Accordingly, it is on 24th day of July, 2025, hereby,

ORDERED that Defendant's Motion to Dismiss is **DENIED**; and it is further;

ORDERED that Defendant shall file its Answer to Plaintiff's Complaint within 21 days of the entry of this Order, on or before August 14, 2025; and it is further

ORDERED that the Parties shall file their proposed Scheduling Order within 40 days of the entry of this Order, on or before September 2, 2025.

IT IS SO ORDERED.

Judge Yvonne Williams

Date: July 24, 2025

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