THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, Plaintiff, v. AMAZON.COM, INC., Defendant.	CASE NO. C14-1038-JCC ORDER DENYING DEFENDANT MOTION TO DISMISS

This matter comes before the Court on ismiss for failure to state a claim (Dkt. No. 7) .

The

II. MOTION TO DISMISS, MATERIALS CONSIDERED

A. Standard for Motion to Dismiss Under Fed. R. Civ. P 12(b)(6)

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A the court to draw the reasonable inference that the defendant is liable for the misconduct *Id.* The plaintiff is obligated to provide grounds for his entitlement to relief that amount to more than labels and conclusions or a formulaic recitation of the elements of a cause of action. *Bell Atl. Corp. v. Twombly* ule 8 unadorned, the-defendant-unlawfully-harmed- *Iqbal*, 556 U.S. at 678.

As Amazon has not filed an answer to the complaint, its motion to dismiss for failure to state a claim is timely. Fed. R. Civ. P. 12(b).

B. Documents , Q F R U S R U D W H G L Q W K H & R X U W ¶ V 5 H Y L H Z

The parties dispute whether the Court may consider the documents attached to motion to dismiss. *See* Dkt. No. 7, pp. 7 8; Dkt. No. 11, pp. 19

The documents are as follows:

(A) terms and conditions of use;

(B) The Amazon Appstore conditions of use;

(C)(1) A screenshot depicting t Shop Story, and its description;

(C)(2) A link;

(C)(3) A screenshot confirming a recent in-app purchase and showing a
and;

(D) Copies of customer .

Dkt. No. 7, pp. 31 85.

When ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a district court may not typically consider evidence outside the pleadings without converting the motion into a Rule 56 motion for summary judgment. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). However,

are taken may be considered without conversion into a Rule 56 motion. *Id.* (citing *Van Buskirk v. CNN*, 284 F.2d 977, 908 (9th Cir. 2002)).

been articulated in various ways. Courts typically require that a document be referred to extensively in the complaint or

to be considered incorporated by reference. *Ritchie*, 342 F.3d at 908. An

coverage and a newspaper article containingT1 0 0 1 382.63 695.38 T61.5 3521 0 0 13 405.55 Tm5 Tm51 0 0 103 0 0 1 115.58 488.35 Tm|

Id. Nor is actual knowledge on the part of the consumer a requirement to establish

Amazon argues that its customers have notice of in-app purchases and the opportunity to block purchases with parental controls, and therefore the injuries to customers were reasonably avoidable.

(a) Notice

The complaint acknowledges that users downloading apps subject to in-app purchases are notified of the possibility of in-app purchases. Dkt. No. 1, p. 6. This warning about in-app

Id.

Attachment C(1), which the Court considers in reviewing the motion to dismiss, also includes the

-app purchasing. Dkt. No. 7, pp. 16, 58 59.

This acknowledgment, however, does not mean Amazon customers made a free and informed choice to submit themselves to the risk of in-app purchases. The complaint indicates

ustomers without scrolling down. Dkt. No. 1, p. 6. Only a year and a half after launching the Appstore did Amazon add an

Key D popup. *Id*. There remains a factual question as to how well-informed customers were about which apps included in-app purchasing.

Furthermore, the complaint suggests not all users were aware of the in-app purchases they were making. -app purchase takes

complaint

request any further action before it bills the account holder for the corresponding in-

Id. Until March 2012, the complaint alleges, Amazon did not require a password to be entered by the account holder for an in-app purchase to go through. *Id.* at 7.

(b) Parental Controls

-app purchases is not validly considered on the motion to dismiss. The complaint makes no mention of parental controls. *See generally* Dkt. No. 1. Nor is Attachment C(3), showing button, [2]

Though notice of in-app purchases and the possibility of parental controls may have enabled some customers to avoid in-app purchases, the facts presently before the Court do not suggest so much care and clarity as to warran

The complaint alleges sufficient facts to render it plausible that customer injuries were not outweighed by this vaguely articulated benefit.

V. INJUNCTIVE RELIEF

Amazon argues that injunctive relief is inappropriate because it took measures to improve its in-app purchasing experience. Dkt. No. 7, p. 23. The complaint acknowledges those measures. Whether or not the steps taken by Amazon since launching its Appstore have cured all related unfair billing practices is a question of fact not properly resolved on a motion to dismiss. Even if the unlawful practices have ceased, the Ninth Circuit has established that injunctive relief may still be appropriate. *Fed. Trade Comm'n v. John Beck Amazing Profits LLC*, 888 F. Supp. 2d 1006, 1012 (C.D. Cal. 2012) [I]t is well-established that the court's power to grant such relief survives discontinuance of the illegal conduct, and because the purpose is to prevent future violations, injunctive relief is appropriate when there is a cognizable danger of recurrent violation, something more than the mere possibility. [3]

The specific terms of an injunction would be more properly resolved if necessary at the conclusion of litigation.

VI. CONCLUSION

Considering the complaint and the documents it incorporates by reference, the Court finds that the FTC does not bring this suit under a new legal principle, and that it alleges sufficient facts to create a plausible claim for relief under Section 5 of the FTC Act.

For the foregoing reasons, motion

DATED this 1st day of December 2014.

John C. Coughenour
UNITED STATES DISTRICT JUDGE