Strict Liability for Content Providers is Gaining Traction in New York

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Last month, another New York trial court allowed strict products liability claims against a social media company to proceed past a motion to dismiss, joining a growing minority of courts around the country that have concluded such claims might have legs.

In *Nazario v. ByteDance Ltd. et al.*, Norma Nazario brought a wrongful death action against several defendants, including major social media companies—ByteDance (owner of TikTok), Meta (owner of Instagram)— the Metropolitan Transit Authority (MTA), and the New York City Transit Authority (NYCTA) alleging that their platforms and operations contributed to her son Zackery's death.

Zackery was killed while "subway surfing" atop a moving J train in New York City. Nazario alleged that Zackery had become addicted to TikTok and Instagram, and that their algorithms repeatedly exposed him to dangerous "subway surfing" content.

She claimed that the platforms were designed to maximize engagement at the expense of user safety, especially for minors, and that they failed to warn users or redesign their products to mitigate foreseeable harm.

As such, she claimed, TikTok and Instagram were defective products subject to New York's common law of strict products liability.

The social media defendants moved to dismiss the case, invoking Section 230 of the Communications Decency Act (CDA), which generally shields online platforms from liability for distributing third-party content created by others.

They argued that they were not responsible for the content Zackery viewed, and that the claims improperly treated them as "publishers."

They also claimed that any role they played in aggregating and streaming that content was protected by the First Amendment, and that their respective apps were "services," not "products," and therefore not subject to strict liability.

The social media defendants' arguments were in line with several recent court decisions—both in- and outside New York—treating these platforms as "publishers" and concluding that Section 230 does indeed shield social media platforms from these claims.

Take *Nasca v. Bytedance Ltd.*, No. 607250/2023, 2025 N.Y. Misc. LEXIS 2255, at *7 (Sup. Ct., Suffolk Cty., Apr. 14, 2025). There, the parents of a teenager who died by suicide after walking in front of a train in 2022, sued TikTok for, among other claims, strict products liability.

Granting TikTok's motion to dismiss, the court concluded that "the crux of plaintiffs' complaint is that TikTok guided [decedent] to third party video content that promoted suicide or self-harm ultimately resulting in his death," and that plaintiffs' claims are "fundamentally based upon the way TikTok publishes its materials to users by use of its algorithms." See *M.P. by & through Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 525 (4th Cir. 2025) (affirming dismissal of products liability claim against Facebook because it was "inextricably intertwined with Facebook's role as a publisher of third-party content").

But the *Nazario* court took a markedly different tack. In denying the social media defendants' motion, the court reasoned that Ms. Nazario plausibly alleged that TikTok and Instagram went beyond merely publishing third-party content and instead designed their products to specifically target her son.

According to Ms. Nazario, her son became addicted to TikTok and Instagram not because he searched for subway surfing videos, but because the platforms' algorithms actively pushed them into his feed based on his age and usage profile.

The *Nazario* court found that at least at the pleading stage, this type of algorithmic amplification, especially when designed to maximize user engagement and retention among minors, could amount to material contribution to harm.

The court reasoned that if the platforms' design was responsible for exposing Zackery to risk, they were not neutral intermediaries—they were co-creators of a dangerous "product."

The court stressed that such claims, if borne out by discovery, could fall outside of Section 230 and the First Amendment's protections, especially since Nazario purported to challenge how the platforms were built and operated.

This reasoning parallels another New York case, decided last year, arising from the Tops Friendly Market (Tops) shooting in Buffalo, *Patterson v. Meta Platforms, Inc.*, No. 805896/2023 (Sup. Ct., Erie Cty., March 18, 2024).

In *Patterson*, the trial court permitted strict products liability claims to proceed against various social media platforms based on allegations that their purportedly addictive design and their capacity to direct users toward extremist content "radicalized" the Tops shooter and caused him to carry a heinous racially-motivated mass-shooting of dozens of Tops shoppers.

What makes *Nazario* and *Patterson* so striking that both trial courts rejected at the pleading stage the seemingly well-established principle of New York's common law of products liability that for strict liability to attach, there must be a direct, physical connection between the allegedly defective product and the plaintiff's specific injury.

Put another way, in a traditional case where a brake failure causes a car crash or a medicine causes an unexpected side effect.

But in both *Nazario* and *Patterson*, the plaintiffs' actual injuries were approximately caused by a multitude of intervening factors—in each case it was alleged that someone saw third-party content on a social media platform and then undertook at least one other action that specifically caused alleged injury.

While these decisions are all on motions to dismiss, and all are certain to lead to interlocutory appeals—indeed, the *Patterson* appeal has already been argued and is expected to be decided soon—if the reasoning of *Patterson* and *Nazario* is ultimately adopted by appellate courts it will represent a significant expansion of the scope of conduct that can fall within New York's common law of strict products liability.

Such a change would not only have a significant impact on how social media companies operate in New York, but could also have downstream implications for any other platform that provides content, such as artificial intelligence-based services.

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