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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ADWEEK LLC, a Delaware limited
4 liability company,

5 Plaintiff,

New York, N.Y.

6 v.

18 Civ. 9923 (GHW)

7 CARNYX GROUP LIMITED, a UK
8 company, doing buisness as The
9 Drum, a New York company,
CARNYX INC., a Delaware
corporation, and GORDON YOUNG,
a U.K. citizen,

10 Defendants.

11 -----x
12 June 3, 2019
13 3:36 p.m.

14 Before:

15 HON. GREGORY H. WOODS,

District Judge

16 APPEARANCES (via speakerphone)

17 ST. ONGE STEWARD JOHNSTON & REENS LLC

18 Attorneys for Plaintiff

19 BY: ALYSON JO DILENA
JONATHAN ADAM WINTER

20 RJM LITIGATIN GROUP

21 Attorneys for Defendants

22 BY: RICHARD J. MOONEY
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1 (In chambers; speakerphone call connected)

2 THE COURT: This is Judge Woods. Do I have counsel
3 for plaintiff on the line?

4 MS. DILENA: Yes, your Honor. Good afternoon. This
5 is Alyson Dilena on behalf of Adweek. Along with me in the
6 room is Jonathan Winter and our summer law clerk Ivan Wang.

7 THE COURT: Good. Thank you.

8 Is counsel for defendants on the line?

9 MR. MOONEY: Yes, your Honor. This is Richard Mooney.

10 THE COURT: Good. Thank you.

11 So I scheduled this conference to discuss the pending
12 motion to dismiss. Counsel, I have reviewed the materials that
13 the parties have submitted to the Court. I am prepared to rule
14 on the motion based on the information that has been presented
15 to the Court.

16 So, my first item on today's agenda is to ask whether
17 either party wishes to add anything, to supplement the written
18 submissions to the Court in connection with that motion?

19 First, counsel for defendants.

20 MR. MOONEY: The only thing that I would like to
21 briefly mention, your Honor, is that I realize I did not cite
22 any cases, I believe, in which a motion to dismiss, as opposed
23 to a motion for summary judgment, is granted, and so I did, if
24 I may, want to refer the Court to one case. There are many but
25 I did want to refer to one case where that did occur, if that

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1 would be useful to the Court.

2 THE COURT: That is fine.

3 MR. MOONEY: So there is a case called Cintas
4 Corporation v. Unite Here. The cite is 601 F.Supp.2d 571. It
5 is from the Southern District in 2009, and it was affirmed by
6 the Second Circuit at 355 F. App'x 508. And I did want to note
7 that that was in 2009. That was after the 2007 change to the
8 Federal Rules of Appellate Procedure and, therefore, may be
9 citeable.

10 THE COURT: Thank you.

11 Counsel, can you please spell the name of the caption?

12 MR. MOONEY: Yes, your Honor. It is Cintas, which is
13 C-i-n-t-a-s, Corporation, and the defendant is Unite Here, so
14 unite as in united and here as in right next to us.

15 THE COURT: Thank you.

16 And does that case stand for anything other than the
17 fact that a claim such as claims brought here can on some
18 occasions be dismissed at a motion-to-dismiss stage?

19 MR. MOONEY: That is really all I am citing it for,
20 your Honor, yes.

21 THE COURT: Thank you.

22 Counsel for plaintiff, anything that you would like to
23 add?

24 MS. DILENA: Yes, your Honor. This is Alyson Dilena.

25 After reading defendants' reply brief, it did become a

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1 little more clear to me that it appears that the defendants are
2 trying to guide the Court making factual determinations on the
3 likelihood of confusion into a 12(b)(6) motion. And, you know,
4 for instance, they would like the Court, it appears, to examine
5 the exhibits attached to the complaint and determine whether in
6 fact the way that Adweek is being used in those tweets or
7 publications or promotional code is referencing Advertising
8 Week or perhaps referencing my client or perhaps something
9 else, and we believe they're asking the Court to make the
10 factual finding of whether or not that is confusing. And if
11 the Court were to do so, that is actually asking the Court for
12 summary-judgment-type review.

13 And this is highlighted, in fact, by cases that were
14 cited by defendants in their very own reply brief. For
15 instance, U.S. v. International Longshoremen's Association, 518
16 F.Supp. 2d 422. Around page 451 and 452, for instance, the
17 Court delve into how if a party is asking the Court's
18 consideration to information outside of the allegations in the
19 complaint or to make findings on the exhibits, that would
20 constitute actually a motion for summary judgment.

21 And we also believe the case DiFolco v. MSNBC Cable
22 LLC, 622 F.3d 104, similarly supports this proposition that
23 what defendants are trying to do here should be in actuality
24 converted to a summary judgment motion by the Court if the
25 Court does so choose to make a determination on whether or not

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1 the exhibits do in fact confuse or exhibit a likelihood of
2 confusion.

3 And if in hearing on that we believe this is proper,
4 you know, we would also, if the Court is thinking to convert
5 the motion, we would ask to be able to submit evidence in
6 response, as we would in a summary judgment motion, and we
7 think it would be appropriate probably for defendants to
8 supplement and give their list of, you know, facts that are not
9 in dispute so that we could address those and then submit any
10 evidence to show they are disputed.

11 So I think as an initial matter, that is something
12 that we did not raise in our briefing because, like I said,
13 until reading the reply brief, it wasn't that apparent to us.

14 As far as if we are only considering the allegations
15 in the First Amended Complaint, we feel that the First Amended
16 Complaint is very adequately pleaded and we believe addresses
17 our burdens here. And that is, you know, especially because we
18 have pleaded the incontestable trademark registration and shown
19 on defendants' own admission at least ten times where the exact
20 same mark was used. And it is our position that the Court on a
21 motion to dismiss does not engage in a likelihood-of-confusion
22 analysis.

23 THE COURT: Thank you. Good.

24 So can I ask you, counsel, to please place your phones
25 on mute. I am going to rule on the motion for the most part

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1 now. I will tell you when you should take your phones off of
2 mute.

3 MS. DILENA: Yes, your Honor.

4 THE COURT: Thank you.

5 Today, I am going to rule on Defendants' motion to
6 dismiss Plaintiff Adweek LLC's First Amended Complaint. For
7 the reasons that follow, Defendants' motion to dismiss is
8 denied with respect to all of Plaintiff's claims, except for
9 Plaintiff's claim for false advertising under Section
10 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), which
11 the Court will address in a separate written opinion to be
12 issued later today.

13 The parties are familiar with the underlying facts and
14 procedural history. Therefore, I will not recite those in
15 detail. To the extent that any of the facts alleged in the
16 First Amended Complaint are pertinent to my decision, those
17 facts are embedded in my analysis.

18 I. Legal Standard

19 Under Federal Rule of Civil Procedure 8(a)(2), a
20 pleading must contain "a short and plain statement of the claim
21 showing that the pleader is entitled to relief." Rule 8 "does
22 not require 'detailed factual allegations,' but it demands more
23 than an unadorned, the-defendant-unlawfully-harmed-me
24 accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
25 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

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1 "To survive a motion to dismiss, a complaint must contain
2 sufficient factual matter, accepted as true, to 'state a claim
3 to relief that is plausible on its face.'" Iqbal, 556 U.S. at
4 678 (quoting Twombly, 550 U.S. at 570). "A claim has facial
5 plausibility when the plaintiff pleads factual content that
6 allows the court to draw the reasonable inference that the
7 defendant is liable for the misconduct alleged." Id. (citing
8 Twombly, 550 U.S. at 556). It is not enough for a plaintiff to
9 allege facts that are consistent with liability; the complaint
10 must "nudge" claims "across the line from conceivable to
11 plausible." Twombly, 550 U.S. at 570.

12 In determining the adequacy of a claim under Rule
13 12(b)(6), a court is generally limited to "facts stated on the
14 face of the complaint," "documents appended to the complaint or
15 incorporated in the complaint by reference," and "matters of
16 which judicial notice may be taken." Goel v. Bunge, Ltd., 820
17 F.3d 554, 559 (2d Cir. 2016). The court must accept all facts
18 alleged in the complaint as true and draw all reasonable
19 inferences in the plaintiff's favor. Burch v. Pioneer Credit
20 Recovery, Inc., 551 F.3d 122, 124 (2d Cir. 2008). Legal
21 conclusions, unlike facts, are not entitled to an assumption of
22 truth. Iqbal, 556 U.S. at 678. A complaint that offers
23 "labels and conclusions" or "naked assertions" without "further
24 factual enhancement" will not survive a motion to dismiss. Id.
25 (internal alteration omitted) (citing Twombly, 550 U.S. at 555,

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1 557).

2 II. Count I (Trademark Infringement under Section
3 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)(a))
4 and Count II (False Designation of Origin under
5 Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C.
6 § 1125(a)(1)(A))

7 Plaintiff claims that Defendants' ongoing use of
8 Plaintiff's "Adweek" mark constitutes both trademark
9 infringement and false designation of origin under Sections
10 32(1) and 43(a)(1)(A) of the Lanham Act. Defendants have moved
11 to dismiss these claims. For the reasons that follow,
12 Defendants' motion is denied.

13 Section 32(1) prohibits the "use in commerce [of] any
14 reproduction, counterfeit, copy, or colorable imitation of a
15 registered mark in connection with the sale, offering for sale,
16 distribution, or advertising of any goods or services on or in
17 connection with which such use is likely to cause confusion, or
18 to cause mistake, or to deceive." 15 U.S.C. § 1114(1)(a).
19 Section 43(a)(1)(A) prohibits the "use[] in commerce [of] any
20 word, term, name, symbol, or device, or any combination
21 thereof, or any false designation of origin, false or
22 misleading description of fact, or false or misleading
23 representation of fact, which is likely to cause confusion, or
24 to cause mistake, or to deceive as to the affiliation,
25 connection, or association of such person with another person,

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1 or as to the origin, sponsorship, or approval of his or her
2 goods, services, or commercial activities by another person.”
3 15 U.S.C. § 1125(a)(1)(A). As a general rule, “to prevail
4 under either statute, Plaintiff must demonstrate that (1) it
5 has a valid mark meriting protection, and (2) Defendant’s use
6 of a similar mark is likely to cause consumer confusion.” Sage
7 Dining Servs., Inc. v. Ash Rest. Grp., Inc., No. 17-CV-09738
8 (NSR), 2019 WL 2074596, at *6 (S.D.N.Y. May 10, 2019) (citing
9 Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings,
10 Inc., 696 F.3d 206, 216-17 (2d Cir. 2012)).

11 Defendants advance two arguments in support of their
12 motion to dismiss Plaintiff’s Lanham Act Section 32(1) and
13 43(a)(1)(A) claims: (1) that Defendants did not use
14 Plaintiff’s mark in connection with a potential sale of goods
15 or services, and (2) that no consumer could be confused by
16 Defendants’ use of Plaintiff’s mark. Defendants’ Memorandum of
17 Law in Support of Motion to Dismiss Complaint, Dkt. No. 35
18 (“Def. Mem.”), at 5. Neither argument is persuasive.

19 First, Defendants insist that Plaintiff’s complaint
20 must be dismissed because, even accepting Plaintiff’s
21 allegations are true, “there are no goods or services being
22 offered for sale.” Id. But Plaintiff’s complaint identifies a
23 number of activities in which Defendants engage – most notably,
24 providing content both through their website and at the
25 Advertising Week conference – which qualify as services under

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1 the Lanham Act. See United We Stand Am., Inc. v. United We
2 Stand, Am. New York, Inc., 128 F.3d 86, 90 (2d Cir. 1997)
3 (issuing press releases is a service under the Lanham Act); cf.
4 Opal Fin. Grp., Inc. v. Opalesque, Ltd., No. 3:08-CV-1403 CSH,
5 2014 WL 5587004, at *1 (D. Conn. Nov. 3, 2014), *aff'd*, 634 F.
6 App'x 26 (2d Cir. 2015) (describing "organizing and conducting
7 ... conferences" as a service for purposes of Lanham Act
8 analysis). Furthermore, the Lanham Act does not only prohibit
9 the use of a protected mark during the sale of goods or
10 services. To the contrary, Section 32(1) on its face applies
11 to the use of a protected mark "in connection with the sale,
12 offering for sale, distribution, or advertising" of any goods
13 or services. 15 U.S.C. § 1114(1)(a) (emphasis added). Section
14 43(a)(1)(A) similarly covers any "use" of a protected mark "in
15 commerce." 15 U.S.C. § 1125(a)(1)(A).

16 Plaintiff has alleged sufficient facts to support its
17 claim that Defendants used its protected mark in connection
18 with the services Defendants provide both through their website
19 and at the Advertising Week conference. For instance,
20 Plaintiff's complaint cites a number of examples of Defendants'
21 use of the "Adweek" mark in social media posts promoting
22 Defendants' panels and events at the Advertising Week
23 conference. Am. Compl. Ex. 4. Indeed, Defendants acknowledge
24 that the complaint alleges that they "use[d] the putative mark
25 on their website, as part of ... articles The Drum published

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1 about Advertising Week.” Def. Mem. at 5. Plaintiff has
2 therefore adequately pled that Defendants used the protected
3 mark in connection with the distribution and advertising of
4 Defendants’ services.

5 Second, Defendants argue that their use of Plaintiff’s
6 mark could not possibly cause any consumer to be confused as to
7 the origin or sponsorship of Defendants’ goods or services.
8 Def. Mem. at 5. As a preliminary matter, Defendants’ focus on
9 consumer confusion regarding the source of goods is too narrow.
10 “[P]rotection [under the Lanham Act] is not exclusively limited
11 for any type of mark to cases in which there may be confusion
12 as to source. Rather, ‘the modern test of infringement is
13 whether the defendant’s use is likely to cause confusion not
14 just as to source, but also as to sponsorship, affiliation or
15 connection.” Int’l Info. Sys. Sec. Certification Consortium v.
16 Sec. Univ., LLC, 823 F.3d 153, 161 (2d Cir. 2016) (quoting
17 McCarthy on Trademarks and Unfair Competition) (internal
18 alterations omitted)). Defendants’ argument that “[i]t is ...
19 impossible for someone to spend time on www.thedrum.com ... and
20 believe that they are consuming goods or services from Adweek
21 LLC,” Def. Mem. at 6, is therefore misplaced.

22 In determining whether there is a likelihood of
23 consumer confusion for trademark infringement, courts use the
24 eight-factor test laid out in Polaroid Corp. v. Polarad
25 Electronics Corp., 287 F.2d 492 (2d Cir. 1961). “The eight

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1 factors are: (1) strength of the trademark; (2) similarity of
2 the marks; (3) proximity of the products and their
3 competitiveness with one another; (4) evidence that the senior
4 user may 'bridge the gap' by developing a product for sale in
5 the market of the alleged infringer's product; (5) evidence of
6 actual consumer confusion; (6) evidence that the imitative mark
7 was adopted in bad faith; (7) respective quality of the
8 products; (8) sophistication of consumers in the relevant
9 market." Int'l Info. Sys., 823 F.3d at 161 (2d Cir. 2016)
10 (quoting Starbucks Corp. v. Wolfe's Borough Coffee, Inc., 588
11 F.3d 9, 115 (2d Cir. 2009)). "However, likelihood of confusion
12 is a fact-intensive analysis that ordinarily does not lend
13 itself to a motion to dismiss." Sage Dining Servs., 2019 WL
14 2074596, at *7 (internal quotation and alteration omitted).
15 "As such, it is 'well settled' that a plaintiff need not
16 address every Polaroid factor in order to adequately plead
17 likelihood of confusion." Id. (citing World Trade Centers
18 Ass'n, Inc. v. Port Auth. of New York & New Jersey, No. 15 CV
19 7411-LTS, 2016 WL 8292208, at *2 (S.D.N.Y. Dec. 15, 2016).

20 Here, Plaintiff has pled that Defendants' use of the
21 word "Adweek" is identical to Plaintiff's trademark and brand.
22 Am. Compl. ¶ 22. Plaintiff has alleged that Defendants are
23 Plaintiff's direct competitors, offering similar services and
24 content related to media online and in New York. Am. Compl. ¶
25 21. Plaintiff has also pled that its mark is famous in the

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1 industry as a result of its investment of considerable
2 resources in the mark, and marketing and promotion of the mark
3 and brand, and that Plaintiff is a leader in its field. Am.
4 Compl. ¶¶ 18-20. See Schutte Bagclosures Inc. v. Kwik Lok
5 Corp., 48 F. Supp. 3d 675, 700 (S.D.N.Y. 2014) (investment of
6 significant resources into advertising and promotion is
7 indicative of a strong mark). Plaintiff has therefore met its
8 burden of pleading likelihood of confusion. Defendants' motion
9 to dismiss this claim is denied.

10 III. Count IV (Dilution under Section 43(c) of the
11 Lanham Act, 15 U.S.C. § 1125(c)) and Count V
12 (Injury to Business Reputation under NY Gen.
13 Bus. Law § 360-1)

14 Defendants' motion to dismiss Plaintiff's Lanham Act
15 dilution claim and NY Gen. Bus. Law § 360-1 claim is also
16 without merit. Plaintiff asserts that Defendants' use of its
17 mark has caused dilution of the mark by blurring, which occurs
18 when a defendant has created an "association arising from the
19 similarity between a mark or trade name and a famous mark that
20 impairs the distinctiveness of the famous mark." 15 U.S.C. §
21 1125(c)(2)(B). To plead a claim for trademark dilution under
22 the Lanham Act, Plaintiff must allege that "(1) its mark is
23 famous; (2) the defendant is making commercial use of the mark
24 in commerce; (3) the defendant's use began after the mark
25 became famous; and (4) the defendant's use of the mark dilutes

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1 the quality of the mark by diminishing the capacity of the mark
2 to identify and distinguish goods and services.”

3 CourtAlert.com, Inc. v. e-Law, LLC, No. 12 Civ. 2473 DAB, 2013
4 WL 4754819, at *7 (S.D.N.Y. Aug. 26, 2013) (quoting Louis
5 Vuitton Malletier v. Dooney & Bourke, Inc., 454 F.3d 108, 118
6 (2d Cir. 2006)). Similarly, “New York law provides that a
7 ‘likelihood of injury to business reputation or of dilution of
8 the distinctive quality of a mark or trade name shall be a
9 ground for injunctive relief notwithstanding the absence of
10 competition between the parties or the absence of confusion as
11 to the source of goods or services.’” Starbucks Corp., 588
12 F.3d at 114 (2d Cir. 2009) (quoting N.Y. Gen. Bus. Law § 3601).
13 Although some differences exist between Lanham Act § 43(c)
14 claims and NY Gen. Bus. Law § 360-1 claims, “New York
15 anti-dilution law is substantively similar to federal law, such
16 that claims under the two laws may be analyzed together.”
17 Louis Vuitton Malletier, S.A. v. My Other Bag, Inc., 156 F.
18 Supp. 3d 425, 435 (S.D.N.Y.), aff’d, 674 F. App’x 16 (2d Cir.
19 2016).

20 Defendants argue that Plaintiff’s dilution claim must
21 fail because “there is and could be no allegation that
22 Defendants used Plaintiff’s putative mark to identify [their]
23 own goods or services, or even goods or services of anyone.”
24 Def. Mem. at 8 (emphasis in original). Within this statement
25 are two related, but distinct, arguments: (1) that because

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1 Defendants are not using the mark to identify any goods or
2 services, Plaintiff's dilution claim must fail and (2) that
3 because Defendants are not using the mark to identify their own
4 goods or services, Plaintiff's dilution claim must fail.

5 Neither of these arguments is persuasive.

6 Defendants' first argument misunderstands the factual
7 allegations in the Amended Complaint. Plaintiff alleges that
8 Defendants have used its trademark to identify the Advertising
9 Week conference - a service which is distinct from the services
10 offered by Plaintiff under its "Adweek" trademark. See, e.g.,
11 Am. Compl. Ex. 4. Plaintiff has therefore clearly pled that
12 Defendants are using the trademark to identify some services.

13 Defendants' second argument is more subtle.
14 Defendants appear to argue that Plaintiff must allege that
15 Defendants used the mark to identify their own services. To
16 support this proposition, Defendants point to Tiffany (NJ) Inc.
17 v. eBay Inc., 600 F.3d 93 (2d Cir. 2010). In Tiffany, the
18 Second Circuit rejected a dilution claim, stating as part of
19 its analysis that "[defendant] has not used the [protected]
20 mark to identify its own goods and services." However, in
21 Tiffany, the plaintiff's dilution claim ultimately failed
22 because "[t]here [was] no second mark or product at issue ...
23 to blur with or to tarnish [the protected mark]." Id. at 112.
24 As noted before, that is not the case here: Plaintiff has
25 clearly alleged that Defendants are using the "Adweek" mark to

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1 identify the Advertising Week conference. The Court does not
2 read the Tiffany case as supporting a requirement that, in
3 order to be liable for dilution, a defendant must have used the
4 protected mark to identify its own goods or services, not the
5 goods or services of a third-party. Therefore, Defendants'
6 motion to dismiss this claim is also denied.

7 IV. Count III (New York Common Law Trademark
8 Infringement) and Count VIII (New York Common Law
9 Unfair Competition)

10 Defendants also move to dismiss Plaintiff's New York
11 common law trademark infringement and unfair competition
12 claims. Defendants argue that the Court must dismiss these
13 claims if it dismisses Plaintiff's Lanham Act claims because
14 the scope of the New York common law claims extends no farther
15 than the Lanham Act. See Gym Door Repairs, Inc. v. Young
16 Equip. Sales, Inc., 206 F. Supp. 3d 869, 901 (S.D.N.Y. 2016)
17 ("It is well-established that the elements necessary to prevail
18 on causes of action for trademark infringement and unfair
19 competition under New York common law 'mirror the Lanham Act
20 claims.'" (quoting Volmar Distribs. v. New York Post Co., 899
21 F. Supp. 1187, 1197 (S.D.N.Y. 1995))). Because the Court has
22 denied Defendants' motion to dismiss with respect to
23 Plaintiff's Lanham Act claims, Defendants' motion to dismiss
24 Plaintiff's New York common law claims is also denied.

25 V. Request for Judicial Notice

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1 Defendants also request that the Court take judicial
2 notice of the fact that Advertising Week is the name of a
3 recurring advertising industry convention that is sometimes
4 held in New York, and which is often referred to by industry
5 participants as "AdWeek." Request for Judicial Notice in
6 Support of Motion to Dismiss, Dkt. No. 36. The Court declines
7 to do so.

8 In support of their motion, Defendants provide
9 screenshots of the Advertising Week website and a Google search
10 purporting to show that the search term "adweek nyc" returns
11 results referring to the Advertising Week conference. Under
12 Federal Rule of Evidence 201, a court may take judicial notice
13 of "a fact that is not subject to reasonable dispute because it
14 (1) is generally known within the trial court's territorial
15 jurisdiction; or (2) can be accurately and readily determined
16 from sources whose accuracy cannot reasonably be questioned."
17 Screenshots of websites and Google searches are simply not
18 "sources whose accuracy cannot reasonably be questioned." See,
19 e.g., King Zak Industries, Inc. v. Toys 4 U USA Corp., 2017 WL
20 6210856, at *9-10 (S.D.N.Y. Dec. 8, 2017) (refusing to
21 "consider the screenshots of the Google image searches attached
22 to Defendant's reply brief because 'the results of a Google
23 search are continually changing and thus cannot be accurately
24 and readily determined from sources whose accuracy cannot
25 reasonably be questioned.'" (quoting Better Homes Realty, Inc.

1 v. Watmore, No. 16-CV-1607, 2017 WL 1400065, at *3 (S.D. Cal.
2 Apr. 18, 2017))). Defendants' motion for judicial notice is
3 therefore also denied.

4 Good. So thank you very much, counsel, for bearing
5 with me as I got through the oral component of my decision.
6 That will be available on the record of today's conference. As
7 I noted earlier, I will also be issuing a separate written
8 opinion later today, which grants the defendants' motion in the
9 singular way that I believe that the motion was correct.

10 Good. So, you should see that shortly.

11 Is there any other business that we should accomplish
12 during the course of this conference? First, counsel for
13 plaintiff.

14 MS. DILENA: No. No, your Honor. From plaintiff's
15 perspective, we do not have any outstanding matters that the
16 Court needs to consider. Thank you.

17 THE COURT: Thank you very much.

18 Counsel for defendants.

19 (Pause)

20 Counsel, if you are still on mute, please take the
21 phone off mute.

22 (Pause)

23 Counsel for defendants?

24 (Pause)

25 Counsel for defendants.

1 (Pause)

2 MS. DILENA: I'm sorry, your Honor. This is counsel
3 for plaintiff. I didn't receive an email or anything from
4 counsel for defendants saying that they had been cut out. So
5 I'm not -- if that helps. We did have a conference call line,
6 but I haven't received any communication from him so I can't
7 comment on the silence.

8 THE COURT: Thank you.

9 MR. MOONEY: I apologize, your Honor. I got a new
10 phone and I hit the wrong button to unmute my phone.

11 THE COURT: That is all right.

12 MR. MOONEY: I'm sorry. I have been off for the last
13 30 seconds or so.

14 THE COURT: That is fine.

15 Anything else you wanted to raise here?

16 MR. MOONEY: No. Thank you, your Honor.

17 THE COURT: Good. Thank you very much.

18 I'll issue the written opinion shortly. Hopefully, it
19 will be docketed later today. Thank you, all.

20 MR. MOONEY: Thank you, your Honor.

21 MS. DILENA: Thank you, your Honor.

22 (Adjourned)

23

24

25