

Phhphoto Survived a Motion Meta Usually Wins: A Competitor Recruited, and Then Excluded is a Different Legal Animal Than a Competitor Turned Away at the Door

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On March 30, 2026, the Eastern District of New York denied Meta’s renewed motion to dismiss Phhphoto’s Sherman Act § 2 monopoly-maintenance claim. Three theories now head to discovery: Meta’s March 2015 termination of Phhphoto’s Find Friends API access; Meta’s October 2015 launch of Boomerang on the day Phhphoto planned to announce Android; and Meta’s March 2016 Instagram feed algorithm, allegedly calibrated to suppress rivals rather than personalize. *Phhphoto Inc. v. Meta Platforms Inc.*, 1:21-cv-06159, in the U.S. District Court for the Eastern District of New York.

The ruling sits oddly with the headlines. Meta beat the FTC at trial last year on the same market it is accused of monopolizing here. Judge Boasberg held that Meta competes with TikTok, YouTube, and other entrants in a crowded social-media market. The D.C. Circuit dismissed the state AG’s parallel case in 2023 on refusal-to-deal grounds. Against that backdrop, a private plaintiff whose product went dark nine years ago just cleared the pleading stage on the same underlying conduct.

The Timeline That Drives the Case

Phhphoto launched July 7, 2014, as an iPhone app for looping, burst-style photos. Registrations ran near 20,000 per day by late 2014. The app crossed 10 million users by 2016. Much of the growth traced to interoperability with Instagram—Find Friends API access, pre-populated hashtags, “phhphotos” shared by users and celebrities.

In February 2015, Brian Hurren—Facebook’s strategic partnerships manager and, per the complaint, Mark Zuckerberg’s “right-hand man”—approached Phhphoto about integrating into the Facebook newsfeed. Phhphoto signed an NDA and shared operational detail. On

March 31, 2015, while integration talks continued, Meta pulled Phhphoto's Find Friends API access. Hurren told Phhphoto that Meta did not like how Phhphoto was growing through Instagram.

The integration never launched. Meta partnered with GIPHY instead. On October 22, 2015—the day Phhphoto planned to announce its launch for Android devices—Meta released Boomerang. A looping-video app, pre-populated “Made with Boomerang” caption, with a download link back to Boomerang. Phhphoto's Android announcement landed in an empty room.

In March 2016, Instagram switched to an algorithmic feed. Phhphoto's App Store ranking fell from 11th to 41st in a month. Phhphoto shut down in June 2017. Its founders could not pin down the cause until fall 2017, when a Phhphoto Instagram post vanished and a Meta contact privately said the account had been flagged and downranked.

Phhphoto sued in November 2021.

The Second Circuit Rewrote the Clock

Judge Matsumoto first dismissed the case in March 2023 as time barred. The Second Circuit reversed in part. *Phhphoto Inc. v. Meta Platforms, Inc.*, 123 F.4th 592 (2d Cir. 2024).

The majority held that Phhphoto had adequately pleaded fraudulent concealment—that Meta's public statements about the Instagram algorithm affirmatively misled the market by listing neutral ranking criteria while omitting suppression of third-party content. A press release is not silence, the majority explained, when it is calibrated to “exclude suspicion and prevent inquiry.” Judge Chin dissented, arguing inquiry notice before October 2017.

Market Definition That Holds Despite a Contrary FTC Ruling

Meta's first argument in the Eastern District of New York case was market definition. Meta argued Phhphoto could not coherently allege a Personal Social Networking Services (“PSNS”) market that excludes TikTok, YouTube, Twitter, LinkedIn, Snapchat, and WhatsApp—particularly after Judge Boasberg's 2025 ruling concluding that “Facebook, Instagram, TikTok, and YouTube have thus evolved to have nearly identical main features.”

Judge Matsumoto refused to import that ruling. The relevant period is 2014 to 2017. “The court will not assess apps, such as TikTok, by their current uses in 2026 to determine if

they invalidate Phhphoto's market definition." That line does heavy work. Convergence in 2026 does not retroactively rewrite a market 10 years earlier. Market definition is fact-bound and time-bound. Phhphoto's allegation that Meta held 70% of monthly and 65% of daily active users during the relevant period is enough at *Twombly*—whatever the same market looks like today.

Monopoly power followed the same split.

Direct evidence—Phhphoto attempts to allege Meta's monopoly power directly by the exclusion of competition, and how Meta's data pricing is supracompetitive compared to its then closest competitors, such as Snapchat (assuming that a user's data constitutes the price users pay to use PSNS platforms) failed.

Indirect evidence—such as 70% of the market share with monthly active users and at least 65% of the market share with daily active users share, combined with high barriers to entry such as powerful network effects, and high switching costs, cleared *Twombly*.

Not a Refusal to Deal. A Nascent Competitor Case

Meta's second argument was that Phhphoto's case was, in substance, a refusal-to-deal claim—and therefore foreclosed by *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004), and the D.C. Circuit's decision in *New York v. Meta Platforms, Inc.*, 66 F.4th 288 (D.C. Cir. 2023).

Judge Matsumoto distinguished both. The states in the earlier action challenged Meta's policy, the change to rescind API access to apps considered to be an actual or potential competitive threat. As a private business, Meta is free to choose its business partners and is not required to allow competitors to access its platform or its user base. The court rejected the states' claims because they challenged Meta's policies—not Meta's implementation of those policies.

Phhphoto challenges now the implementation of Meta's policies against a specific competitor, after a meeting in which Meta admitted concern about that competitor's growth. And Phhphoto was not a small firm asking to be let in. Phhphoto operated its own platform. Meta initiated the integration. Meta absorbed information during the NDA period. And Meta then cut Phhphoto off and cloned its feature set.

According to the court, these facts trigger a nascent-competitor theory, not a refusal-to-deal one. The allegation is not that Meta refused to deal with a competitor. It is that Meta used the offer of a deal to extract information, withdraw access and copied the product.

Refusal-to-deal claims rarely succeed in federal court since *Trinko*. Nascent-competitor claims are active doctrine—cited in the *FTC’s Amazon* case, briefed in *Google Search*, and now applied at the pleading stage against *Meta*. A competitor recruited, embraced, and then excluded is a different legal animal than a competitor turned away at the door.

Three Antitrust Allegations In, Three Out

Judge Matsumoto states that when, as here, a plaintiff alleges monopoly maintenance through multiple anticompetitive acts, the court should first assess each act individually to determine if it had an anticompetitive effect on the relevant antitrust market and only then consider the acts determined to be anticompetitive together.

He then proceeds to assess each of the six alleged antitrust injuries on its own before weighing their synergistic effect, consistent with *United States v. Google LLC*, 687 F. Supp. 3d 48 (D.D.C. 2023).

Three survived:

- 1 The termination of Phhphoto’s access to Instagram’s Find Friends API—ending Phhphoto’s users’ ability to “recreate their social graph from Instagram.”—because Meta’s own statement that it was upset by Phhphoto’s growth supports the inference that the cutoff served an anticompetitive purpose rather than a legitimate one.
- 2 The Boomerang launch, because Phhphoto alleged Meta cloned its feature set after using the integration process to learn Phhphoto’s operations. And because the launch timing neutralized Phhphoto’s largest product moment—the same day that Phhphoto planned to announce its launch for Android devices, in addition to its pre-existing iPhone application.
- 3 Algorithmic suppression from Facebook’s and Instagram’s newsfeeds, because Phhphoto alleged the algorithm was used to reduce rival visibility rather than to compete on the merits, and because registrations dropped sharply after deployment. In March 2016, Instagram changed the order of its posts from reverse chronological order to an order determined by an algorithm that purportedly ordered posts according to what would be most interesting to the individual Instagram user.

Three did not survive:

- 1 The failed integration, because Meta’s later partnership with GIPHY supplied a legitimate business explanation. By choosing to partner with GIPHY instead of Phhphoto, Meta made a legitimate business decision that may have harmed Phhphoto, did not harm competition in the PSNS market.
- 2 Hashtag removal—eliminating Phhphoto’s ability to benefit from Instagram’s policy to allow hashtags to be pre-populated when a “phhphoto” was shared from Phhphoto’s app to Instagram—because Phhphoto offered nothing to rebut Meta’s user-feedback rationale.
- 3 Attempted engineer recruitment, because neither hire happened, and ordinary hiring does not state an antitrust claim absent allegations that the monopolist sought the employees for the purpose of depriving the rival.

What the Case Signals for Platform Antitrust

First, market definition in platform litigation is not settled by the FTC’s loss. A plaintiff can define the PSNS market narrowly if the time period and conduct warrant it. Defendants who expected Judge Boasberg’s ruling in *Fed. Trade Comm’n v. Meta Platforms, Inc.* (D.D.C. Nov. 18, 2025) to be a universal shield were wrong.

Second, the difference between a refusal-to-deal claim and a nascent-competitor claim now matters at the pleading stage. In particular, when a monopolist initiates contact, offers an integration but then withdraws it, or if confidential information moves one direction before the door is closed. Those facts pull the claim out of *Trinko*. A sweeping *Trinko* defense under these circumstances no longer carries a motion to dismiss on its own.

Third, fraudulent concealment is a live statute-of-limitations workaround when the conduct involves algorithmic opacity. A press release framed around neutral criteria can be an affirmative act of concealment when it omits anticompetitive effects. A platform that describes a ranking algorithm that later shows how it was used to suppress rivals should expect plaintiffs to argue the clock did not start running.

Lessons Learned So Far

The case proceeds to discovery. Expect document discovery on integration communications, API decisions, Boomerang development, and the 2016 algorithm. Expect depositions of the individuals named in the complaint, starting with Brian Hurren. Expect a summary-judgment motion on the refusal-to-deal argument, this time on a real record.

Meta has signaled it will keep fighting. It should. Plausibility is not proof. But the case has survived every procedural effort to end it: once at the Second Circuit, now at the district court on a full amended complaint. That alone distinguishes Phhphoto from the private platform cases that have died quietly over the past decade.

For companies that depend on a platform they do not control, this order is a template. For the platforms themselves, it is a warning. Either side facing a similar dispute should audit its integration record and public algorithm disclosures before a complaint arrives—not after.

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