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The \$200 billion playbook that kneecapped Big Tobacco is coming for Mark Zuckerberg and his social media offspring

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Lawyers for Meta and its chief Mark Zuckerberg will likely argue the platforms cannot be held responsible for harms to users under Section 230 protections.

AURORA SAMPERIO—NURPHOTO/GETTY IMAGES

With the attorney generals of more than 40 states teamed up and alleging that a multibillion-dollar company's product is addictive and harming youth, the stakes couldn't be any higher.

That was the situation in 1998, when [Philip Morris](#), along with several other of the world's largest tobacco companies, ended years of litigation with 46 states through a master settlement agreement that has now resulted in [more than \\$200 billion in payments](#). Nearly three decades later, a burgeoning legal battle looks strangely familiar—this time with the internet's social media giants in the role of Big Tobacco.

On Tuesday, 42 state [attorneys general sued Instagram's parent company Meta](#) for allegedly damaging children's mental health with its social media technologies. The complaint, which is 233 pages long, mentions "addiction" over 30 times, featuring evidence from the company as well as psychology experts who allege Meta has intentionally and deceptively addicted children to its technologies with the goal of maximizing profits.

And on Friday, Northern California District Judge Yvonne Gonzalez Rogers will hear arguments on a personal injury lawsuit against [YouTube](#), [Snap](#), TikTok, and Meta [claiming that the platforms addicted youth](#) and spurred a mental health crisis with associated injuries. The plaintiffs leading this suit include attorneys from [Lief Cabraser](#) and [Motley Rice](#), two of the law firms involved in 1998's landmark tobacco settlement. Levin Sedran & Berman, which represented plaintiffs in recent suits against Juul that effectively made its e-cigarette products illegal in the U.S., is also involved in the case.

For years, critics of social media have likened the feeds of viral videos, photos, and likes to [digital cigarettes](#). Now the effort to rein in social media may be adopting the [same legal playbook that anti-smoking activists used in the 1990s](#) to hold tobacco companies accountable.

A source close to the plaintiffs in the lawsuit against TikTok and the other social media firms told *Fortune* that the tobacco litigation is an apt parallel to the current situation. In particular, the current lawsuits take a page from tobacco by focusing on how social media platforms allegedly compel kids to keep using over and over and over again.

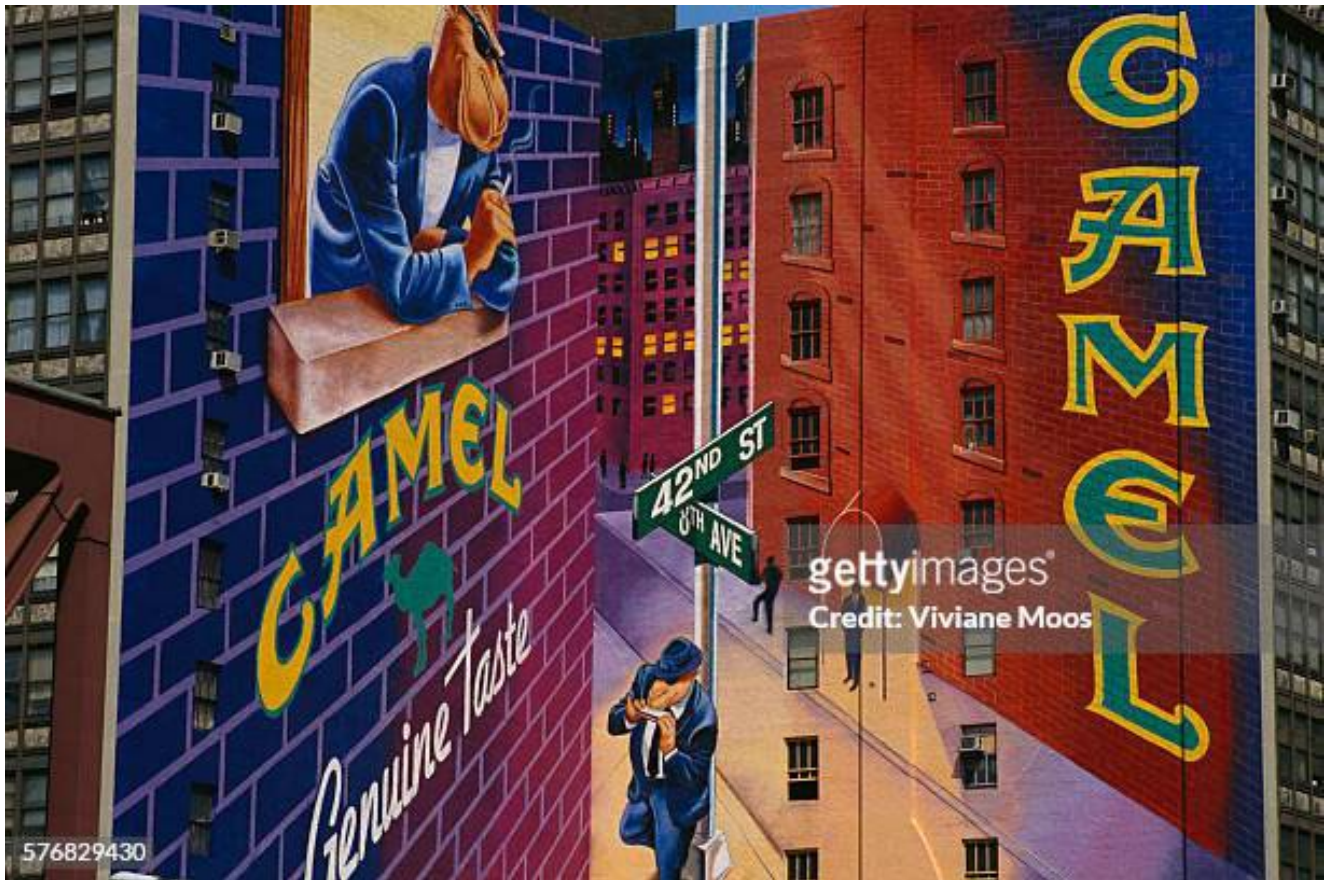
Representatives from TikTok and Meta did not respond to *Fortune* by the time of this article's publication, though Meta noted in its latest 10-Q filing that it believes the lawsuits "are without merit, and we are vigorously defending them." A YouTube spokesperson said that the allegations in the lawsuits are false. "Protecting kids across our platforms has always been core to our work. In collaboration with child development specialists, we have built age-appropriate experiences for kids and families on YouTube, and provide parents with robust controls."

A spokesperson for Snap distanced the company from its social media peers, noting that the Snapchat app opens directly to a camera rather than onto a feed that would encourage "passive scrolling," and that the app doesn't encourage perfection or popularity. "While we will always have more work to do, we feel good about the role Snapchat plays in helping friends feel connected, informed, happy, and prepared as they face the many challenges of adolescence."

Social media algorithms versus Joe Camel

It's not clear if the attorneys general will combine with the private personal injury suits filed by the law firms, or hire some of the leading plaintiffs' lawyers to advise and work with the states, as was the case in the 1990s. But the source close to the plaintiffs said the fact that the attorneys general have filed a concurrent suit in California, the same state as the ongoing master personal

injury suit litigated by the big tobacco plaintiffs is a vote of confidence in the strategy and a sign that the states are serious about regulating social media.



Before the 1998 legal settlement, cigarette advertisements with cartoon characters like Joe Camel were easy to find.
VIVIANE MOOS—CORBIS/GETTY IMAGES

The allegations in the complaints echo those made against Big Tobacco decades ago, with claims of marketing and deceiving the public about social media's benefits while allegedly being fully aware of its addictiveness and harmful impact on mental health.

In the litigation against Big Tobacco, the plaintiffs argued that R.J. Reynolds Tobacco company's adorable Joe Camel cartoon mascot was a ploy to attract children to cigarettes. The plaintiffs in the social media lawsuits allege that personalized recommendation algorithms, "likes" features, visual filters, and content presentation formats that include infinite scroll are similarly attracting—and subsequently addicting—children.

"The claim was that [Joe Camel] was meant to bring in young people and get them started on tobacco as a lifelong habit that would be extremely deleterious to their health," says Kenneth Rashbaum, an adjunct professor of law at Fordham Law School and partner at Barton LLP focused on technology regulation. "In the case against Meta, substitute algorithms for Joe Camel."

The social media lawsuits are far from perfect parallels to the tobacco litigation. First, social media users do not experience physical withdrawal in absence of the platforms, says Erin Calipari, the associate director of Vanderbilt University's Center for Addiction Research. This

will make it harder for the attorneys general to argue that social media is an addiction akin to drugs or tobacco ones. What's more, Calipari notes that social media has some benefits, such as helping people foster connections with others and to communicate with people around the world. "The question is, how do you balance that with the potential risk?" she asks.

The legal attack on social media companies may also run against the Supreme Court's decision last May on *Gonzalez v. Google*, which ruled that platforms cannot be held liable for users' content that they host under Section 230 of the Communications Decency Act of 1996. Rashbaum says that the attorneys general will argue their case is not about content, but promotion; therefore, outside of Section 230's scope. Meta will counteract on the grounds that promotion is, at the end of the day, content, predicts Fordham's Rashbaum.

"It's going to be marketing versus content," says Rashbaum, who believes the case will eventually make it to the Supreme Court.

The courtroom showdowns

In an encouraging sign for the plaintiffs, a Los Angeles judge earlier this month declined to dismiss the personal injury lawsuits levied against Meta, TikTok, Snap, and Google on the grounds of Section 230. Los Angeles Superior Court Judge Carolyn Kuhl rejected the companies' motion to wield Section 230, [saying](#) that "the fact that the design features of the platforms—and not the specific content viewed" caused users' injuries.

Though users addicted to social media will not experience physical withdrawal in its absence, some experts argue it is more nefarious than cigarettes in other ways. "[Social media algorithms] are akin to each time you smoke a cigarette, the cigarette itself increases in nicotine content," says Vikram Bhargava, an assistant professor at George Washington School of Business who researches ethics and technology policy. "Social media is vastly more sophisticated [than cigarettes] and has the ability to influence the psychologies of large populations."

For Meta and the other social media companies, the risk of facing similar legal consequences as the tobacco companies did in the 1990s is no trivial matter. In its [third-quarter earnings release](#) on Wednesday, Meta cited "legal and regulatory headwinds" that could "significantly impact our business and our financial results."

If the attorneys general and personal injury plaintiffs are successful, could the regulated social media industry wind up looking like tobacco today?

Imagine: Users are subjected to warning labels prior to logging on; the companies are forced to fund social media use prevention groups as well as treatment programs for people maimed by addictions and obligated to curb or eliminate features that are harmful or particularly appealing to children. And of course, they'd have to pay billions of dollars for damaging society.

We're still a long way from anything like that, and the social media companies do not currently seem to have any desire to negotiate. But a social media future that resembles the post-1998 tobacco industry looks like a good one to GWU's Bhargava. "We really need to take digital health literacy seriously," he says.