

Tripscout claims it had such a relationship with Steinars. Beginning in 2017, its accounts shared and reposted her content— with her permission, Tripscout alleges. See id. ¶ 14. It contends Steinars encouraged it to share her works in a series of social media exchanges with accounts that Tripscout purports to control.

To illustrate, it offers screenshots of these conversations. In one, an unidentified person—whom Tripscout now identifies an “associate”—messed Steinars at 7:54 p.m. on an otherwise undated Tuesday that “[w]e love your content” and wondered whether they could “feature it on our account (of course with full credit and tagging).” Id. ¶ 12. Steinars replied: “Hey yeah go ahead 😊👉❤️.” Id. On a different, also undated occasion, an unidentified Instagram user messaged Steinars “Aw love this! Will deff share ❤️,” and Steinars gushed “❤️ ❤️ ❤️ ❤️” in response. Id. ¶ 13. Yet another screenshot depicts Steinars “mentioning” an unidentified account in her story. Id. ¶ 14. And several others show Steinars “heart reacting” to reposts of her content—also by unnamed accounts. See id.

By March 2021, however, Tripscout claims Steinars had a change of ❤️. Id. ¶ 19. That’s when she contacted the company and accused it of using over 30 of her works without her permission. Id.; see also ECF 26-1 (Third Am. Compl.), at 123 (page numbers designated by CM/ECF) (March 22, 2021, email from Steinars to Tripscout). She asked Tripscout to pay for those works. Third Am. Compl. at 123. Tripscout refused, insisting that it was within its rights to feature her content based on her prior engagement with its accounts and under Instagram’s Terms of Use and Privacy Policy. Id. at 124, 130. It also pointed out that Steinars’s following had ballooned since Tripscout started reposting her content. Id. at 130. But Steinars retorted that any interactions she had with Tripscout’s accounts had been years before and did not serve to grant the company carte blanche to use all her content forever. Id. at 125.

2022); Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”).

D.C. law does not require a person suing for fraud to have been lied to directly. Boomer Dev., LLC v. Nat’l Ass’n of Home Builders, 325 F.R.D. 6, 14 (D.D.C. 2018). Instead, a plaintiff can sue a defendant for his “material misrepresentations” even if the plaintiff did not “personally hear” them, so long as the plaintiff “falls within an identifiable class of persons that the defendant intended to influence.” Id.

Multiple problems with Tripscout’s fraudulent inducement counterclaim warrant dismissal. First, Tripscout has not pled this claim with particularity. The crux of its fraudulent inducement claim is the “Hey yeah go ahead 😊👉❤️” message. But its pleadings do not indicate the time and date of this interaction. Nor do they “identif[y] [the] individuals allegedly involved”—most notably, the owner of the account with which Steinars corresponded and the Tripscout “associate” who may have written the messages. Aston v. Johnson & Johnson, 248 F. Supp. 3d 43, 49 (D.D.C. 2017) (citations omitted). In fact, Tripscout has not identified *any* of the accounts or people that allegedly engaged with Steinars on social media.

Turning next to specific elements, Tripscout has not pled the first—“a false representation.” Steinars’s “secret[.]” intentions do not bear on the truth of whether she consented to Tripscout using her content. Countercls. ¶ 31. Instead, whether she gave the company consent is an objective fact; she either told Tripscout it could use her content, or she did not. Cf. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973) (“[W]hether a consent to a search was in fact ‘voluntary’ or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.”). If, as Tripscout alleges, she unambiguously told the company it could, then it is not “erroneous” to say that it had