UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

James Treis, On Behalf of Himself and All Others Similarly Situated,	
Plaintiff,	Case No.
vs.	
Google, Inc., a Delaware Corporation,	**DEMAND FOR JURY TRIAL**
Defendant.	

CLASS ACTION COMPLAINT

Plaintiff James Treis ("Plaintiff"), by and through his attorneys, hereby brings this class action complaint on behalf of himself and all others similarly situated, and alleges as follows:

INTRODUCTION

1.   Without disclosure to consumers, and without their permission, Google, Inc., inserted code into its Google Ads that deactivated the security protections built into the Safari web browser and enabled tracking cookies to be installed on Safari-users' computers and smartphones.

2.   This class action seeks to redress the violations of law arising from Google, Inc.'s surreptitious code. This lawsuit seeks damages for Plaintiff and the Class, including, but not limited to: damages and other available relief under the Federal Wiretap Act, the Computer Fraud and Abuse Act; and the Stored Electronics Communications Act; Plaintiff's attorneys' fees; and the costs of this lawsuit.

Jurisdiction and Venue

3.   This Court has subject matter jurisdiction over this civil action under 28 U.S.C. § 1331, in that Plaintiff alleges violations of federal law, namely the Federal Wiretap Act as

amended by the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, and the Stored Electronics Communications Act, 18 U.S.C. § 2701 *et seq*.

4.   Jurisdiction in this civil action is further authorized pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), as some Class Members' citizenship is diverse from Defendant, there are more than 100 putative Class Members, and the amount in controversy is in excess of $5,000,000.

5.   This Court has personal jurisdiction over the parties because Defendant conducts substantial business in this state and has systematic and continuous contact with this state.

6.   Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

Parties

7.   Plaintiff James Treis is a resident of the State of Missouri. Plaintiff owns an iPhone that uses the Safari web browser. Within the past year, Plaintiff has used his iPhone to visit the Google website and has viewed ads on various websites that have Google Ads.

8.   Defendant Google, Inc., is a Delaware corporation, headquartered in Mountain View, California, with additional offices all over the world, including offices in Australia, Brazil, Canada, China, France, Germany, India, Ireland, Israel, Japan, Kenya, and the United Kingdom.

Facts

9.   Google describes itself as "a global technology leader focused on improving the ways people connect with information." *See* http://investor.google.com/corporate/faq.html#toc-located.

10.   Google sets forth that: "Google primarily generates revenue by delivering relevant, cost-effective online advertising. Businesses use our AdWords program to promote their products and services with targeted advertising. In addition, third-parties that comprise our

Google network use our Google AdSense program to deliver relevant ads that generate revenue and enhance the user experience." *Id.*

11.   Through Google's AdWords and AdSense programs, businesses and other third parties could have their ads displayed on various websites (hereinafter "Google Ads").

12.   Safari is an Internet web browser offered by Apple, Inc., that is pre-installed on iPhones, iPads, and Mac computers, and can be installed on PCs. To protect consumers' privacy, Safari's default settings block tracking the behavior of its users, which includes blocking third-party cookies.

13.   On February 17, 2012, The Wall Street Journal reported that Stanford University researcher Jonathan Mayer had discovered that Google inserted certain code in the Google Ads, and that the code circumvents Safari's default privacy settings that block third-party cookies.[1] By circumventing Safari's default privacy settings, cookies can then be placed on Safari users' devices and track the users' browsing activity ("tracking cookies").

14.   Consumers' browsing activity has economic value. Google's Screenwise program pays up to $25 in gift cards for information on participants' web usage. *See* http://www.google.com/landing/screenwisepanel/

15.   Prior to The Wall Street Journal's reporting, Google provided browser instructions for Safari users: "Safari is set by default to block all third-party cookies. If you have not changed those settings, this option effectively accomplishes the same thing as setting the [Google advertising cookie opt-out plugin]."

[1.] A "cookie" is "a small file or part of a file stored on a World Wide Web user's computer, created and subsequently read by a Web site server, and containing personal information (as a user identification code, customized preferences, or a record of pages visited)." *See* http://www.merriam-webster.com/dictionary/cookies.

16.   Google has since removed the above-quoted language from its webpage.

17.   Google admits that it used code that was designed to ascertain whether Safari users were also signed into Google and that, as a result of this code, tracking cookies could be and were placed on a Safari user's browser.

18.   Within the past year, Plaintiff has used his iPhone to visit the Google website and has viewed ads on various websites, including, *inter alia*, youtube.com. On information and belief, visiting these websites allowed Google's tracking cookies to be placed on Plaintiff's device without appropriate authorization and allowed Google to obtain, again without appropriate authorization, information from Plaintiff's iPhone pertaining to the websites that Plaintiff visited.

19.   It has been reported that Google has begun to disable the concerned code after being contacted by The Wall Street Journal.

Class Action Allegations

20.   Plaintiff brings this action on behalf of himself and, additionally, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all persons throughout the United States whose iPhone, iPad, Mac, or other device with Safari web browser installed on it, which was subjected to the Google code that circumvented Safari's third-party cookie blocking feature and placed tracking cookies on their device(s).

21.   Excluded from the Class is Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or which Defendant otherwise controls or controlled; and any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant.

22.   This action satisfies the requirements for class certification: numerosity, commonality, typicality, adequacy, predominance, and superiority.

23.   This action has the requisite numerosity. The Safari web browser is installed on millions of devices and millions of Safari-users have viewed Google Ads. Thus, the Class

consists of millions of persons, and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

24. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including, among others:

a) Whether Google code in Google Ads circumvents Safari's third-party cookie blocking feature;

b) Whether the concerned Google code allows tracking cookies to be placed on Plaintiff's and Class Members' devices;

c) Whether Google collects the browsing history of Plaintiff and Class Members through the concerned Google code and tracking cookies;

e) Whether Google's conduct is a violation of the Federal Wiretap Act;

f) Whether Google's conduct is a violation of the Computer Fraud and Abuse Act;

g) Whether Google's conduct is a violation of the Stored Electronic Communications Act;

h) Whether members of the Class have sustained damages and other compensable losses and, if so, the proper measure thereof; and

i) Whether Class Members are entitled to statutory damages and other relief under the federal statutes referenced herein.

25. The claims asserted by Plaintiff are typical of the claims of the members of the Class because they are similarly affected by the Google code.

26. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained attorneys experienced in class and complex litigation.

27. Predominance and superiority exist here for at least the following reasons:

a) Absent a class action, Class Members, as a practical matter, will be unable to obtain redress for Defendant's illegal conduct;

b)   It would be a substantial hardship for individual members of the Class if they were forced to prosecute individual actions;

c)   When the liability of Defendant has been adjudicated, the Court will be able to determine the claims of all members of the Class;

d)   A class action will permit an orderly and expeditious administration of Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions;

e)   The lawsuit presents no difficulties that would impede its management by the Court as a class action;

f)   Defendant has acted on grounds generally applicable to Class Members, making class-wide relief appropriate; and

g)   The prosecution of separate actions by individual members of the Class would create a risk of incompatible standards of conduct for Defendant and of inconsistent or varying adjudications for all parties.

COUNT I
FEDERAL WIRETAP ACT

28.   Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

29.   Under the Federal Wiretap Act, it is unlawful for any person to "intentionally intercept[], endeavor[] to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication." 18 U.S.C. §2511 (a).

30.   The Act also makes it unlawful for any person to disclose or use the contents of any electronic communication "knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection." 18 U.S.C. §2511 (c) and (d).

31.   By placing code in Google Ads that circumvented Safari's third-party cookie blocking feature, which allowed tracking cookies to be placed on Plaintiff's and Class Members'

devices, Google intentionally intercepted Plaintiff's and Class Members' electronic communications and then used the communications, as the cookies track the users' browsing history.

32.   Statutory damages, punitive damages, reasonable attorneys' fees, litigation costs reasonably incurred, and other appropriate relief is available in a civil action for any person whose electronic communication is intercepted, disclosed, or intentionally used in violation of the Act. 18 U.S.C. § 2520(b). The Court may assess statutory damages of "whichever is the greater of $100 a day for each day of violation or $10,000." 18 U.S.C. § 2520(c)(2)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, requests that the Court enter judgment against Defendant as follows:

A.   Certifying the proposed Class under Federal Rule of Civil Procedure 23, and appointing Plaintiff and Plaintiff's counsel of record to represent the Class;

B.   Finding that Defendant has violated the Federal Wiretap Act, as alleged herein;

C.   Awarding Plaintiff and Class Members statutory damages, punitive damages, and other appropriate relief against Defendant in an amount to be determined at trial;

D.   Awarding Plaintiff and Class Members the reasonable costs and expenses of suit, including attorneys' fees; and

E.   Granting additional legal or equitable relief as this Court may find just and proper.

COUNT II
VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

33.   Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

34.   Under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, "the term 'computer' means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data

storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device[.]" 18 U.S.C. § 1030(e)(1).

35.   Under the Computer Fraud and Abuse Act, "the term 'protected computer' means a computer − . . . (B) which is used in or affecting interstate or foreign commerce or communication . . ." 18 U.S.C. § 1030(e)(2).

36.   Plaintiff's iPhone falls within the definition of a protected computer, as it is used in interstate commerce or communication.

37.   The Computer Fraud and Abuse Act makes it unlawful to intentionally access a computer without authorization, or to exceed authorized access, and thereby obtain information from any protected computer. 18 U.S.C. § 1030(a)(2)(C).

38.   The "term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter[.]"18 U.S.C. § 1030(e)(6).

39.   The Computer Fraud and Abuse Act also makes it unlawful to intentionally access a computer without authorization and, as a result of such conduct, cause damage and loss. 18 U.S.C. § 1030(a)(5)(C).

40.   The "term 'damage' means any impairment to the integrity or availability of data, a program, a system, or information[.]"18 U.S.C. § 1030(e)(8).

41.   The "term 'loss' means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service[.]"18 U.S.C. § 1030(e)(11).

42.   Plaintiff and members of the Class have suffered loss and economic damage as a result of Google's tracking cookies, which allowed Google to access their web browsing activity that Google was not entitled to obtain.

43.   A civil action may be brought by any person who suffers damage or loss by reason of a violation of the Computer Fraud and Abuse Act, provided that the conduct involves one of four factors set forth in subsection (c)(4)(A)(i) of the Act.

44.   The aggregated loss to Plaintiff and members of the Class during the previous year exceeds $5,000 in value. 18 U.S.C. § 1030(c)(4)(A)(i)(I).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, requests that the Court enter judgment against Defendant as follows:

A.   Certifying the proposed Class under Federal Rule of Civil Procedure 23, and appointing Plaintiff and Plaintiff's counsel of record to represent the Class;

B.   Finding that Defendant has violated the Computer Fraud and Abuse Act, as alleged herein;

C.   Awarding Plaintiff and Class Members economic damages as provided for under the Computer Fraud and Abuse Act, and other appropriate relief against Defendant in an amount to be determined at trial;

D.   Awarding Plaintiff and Class Members the reasonable costs and expenses of suit, including attorneys' fees; and

E.   Granting additional legal or equitable relief as this Court may find just and proper.

COUNT III
VIOLATION OF THE STORED ELECTRONIC COMMUNICATIONS ACT

45.   Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

46.   The Stored Electronic Communications Act, 18 U.S.C. § 2701 *et seq.*, makes it unlawful to intentionally access, without authorization or by exceeding authorization, a facility through which an electronic communication service is provided, and thereby obtain, alter, or

prevent authorized access to a wire or electronic communication while it is in electronic storage in such system. 18 U.S.C. § 2701(a)(1)-(2).

47.   Any person aggrieved by any violation of the Stored Electronics Communications Act, in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind, may recover from that entity appropriate relief, including:

> (1) such preliminary and other equitable or declaratory relief as may be appropriate;
>
> (2) damages under subsection (c); and
>
> (3) a reasonable attorney's fee and other litigation costs reasonably incurred.

18 U.S.C. § 2707(b).

48.   Subsection (c) of the statute further provides that:

> The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

18 U.S.C. § 2707(c).

49.   Through its Google Ads and tracking cookies, Defendant intentionally accessed, without authorization or by exceeding its authorization, Plaintiff's and Class Members' computers and smartphones and obtained the users' online browsing activity while it was in electronic storage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, requests that the Court enter judgment against Defendant as follows:

A.   Certifying the proposed Class under Federal Rule of Civil Procedure 23, and appointing Plaintiff and Plaintiff's counsel of record to represent the Class;

B.   Finding that Defendant has violated the Stored Electronic Communications Act, as alleged herein;

C.   Awarding Plaintiff and Class Members actual damages, Defendant's profits, or the statutory minimum of $1,000 per person, as provided for under the Stored Electronic Communications Act, and punitive damages and any other appropriate relief against Defendant in an amount to be determined at trial;

D.   Awarding Plaintiff and Class Members the reasonable costs and expenses of suit, including attorneys' fees; and

E.   Granting additional legal or equitable relief as this Court may find just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury.

Respectfully submitted,

 /s/ John S. Steward
John S. Steward, #45932MO
STEWARD LAW FIRM, LLC
1717 Park Avenue
St. Louis, Missouri 63109
314-571-7134
314-594-5950 fax
Glaw123@aol.com

Geoffrey S. Meyerkord, #46556MO
Stephen F. Meyerkord, #25779MO
MEYERKORD & MEYERKORD, LLC
1717 Park Avenue
St. Louis, Missouri 63104-2941
314-436-9958
314-446-4700 fax
gsm@meyerkordlaw.com
sfm@meyerkordlaw.com

ATTORNEYS FOR PLAINTIFF