

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 14

24STCV14098

LILLIAN JURDI vs MSC CRUISES (USA) LLC

September 17, 2024

8:30 AM

Judge: Honorable Cherol J. Nellon

Judicial Assistant: H. Garcia

Courtroom Assistant: A. Munoz

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Wendy Lynn Robinson Miele (via LACC)

For Defendant(s): Virginia A. Sanderson (via LACC)

NATURE OF PROCEEDINGS: Hearing on Demurrer - without Motion to Strike

The matter is called for hearing.

After hearing oral argument, the Court the Court as follows:

The Demurrer - without Motion to Strike filed by MSC Cruises (USA) LLC on 07/26/2024 is Overruled.

Case Background

This is an action for violation of the California Invasion of Privacy Act (CIPA), specifically Penal Code, section 638.51. Plaintiff alleges that Defendant collaborated with the Chinese government to use TikTok software to gather user details without users' knowledge.

On June 5, 2024, Plaintiff Lillian Jurdi filed her Complaint against Defendant MSC Cruises, LLC.

On July 26, 2024, Defendant filed this demurrer.

On September 4, 2024, Plaintiff filed an opposition.

On September 10, 2024, Defendant filed a reply.

Instant Pleading

Defendant demurs to Plaintiff's Complaint.

Decision

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Defendant's demurrer is **OVERRULED**. Defendant is to Answer within 10 days of this order.

Discussion

Penal Code § 638.51 provides as follows:

“(a) Except as provided in subdivision (b), a person may not install or use a pen register or a trap and trace device without first obtaining a court order pursuant to Section 638.52 or 638.53.

Penal Code § 638.50(b) defines a “pen register” as follows:

“(b) “Pen register” means a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents of a communication. “Pen register” does not include a device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider, or a device or process used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.”

Penal Code § 638.50(c) defines a trap and trace device as “a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.”

Here, Defendant demurs to the Complaint on the grounds that the Complaint fails to allege that Defendant employs a pen register or trap and trace device within the meaning of Penal Code, §638.50. Additionally, Defendant argues users of its website consented to the collection of information through automated technologies.

The Complaint states that Defendant installed software created by TikTok to identify its visitors, collect data about each visitor, and match it with existing data. (Compl., ¶¶11-12.) The software gathers browser information, geographic information, referral tracking, and url tracking by running code or “scripts” on the site to send user details to TikTok. (*Id.*, ¶13.) The software begins to collect information once a user lands on the page and sends the information regardless of the cookie banner which appears on the site. (*Id.*, ¶14.)

The facts alleged state that the TikTok software installed on Defendant's website captures user

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information such as geographic information which would reasonably lead to the source of the users' communications with the website. These facts are sufficient to describe a pen register as defined in Section 638.50(b), and the illegal use of such a pen register as prohibited in Section 638.51(a). Plaintiff is only obliged to plead these ultimate facts; a detailed description of the software and the precise mechanism it employs are evidentiary facts which need not be included. (*C.W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal.App.5th 165, 169.)

Although Defendant argues that CIPA explicitly covers telephone-based communications, the cases Defendant cited in support of this argument do not pertain to Penal Code § 638.51. Defendant also argues that this Court should reject Plaintiff's CIPA claims because other trial courts have sustained similar demurrers. However, the decisions of those courts are not binding on this Court and the outcomes of those demurrers are not relevant here. The plain language of section 638.51 does not limit the statute to telephone-based communications.

Defendant also argues that the information the TikTok software allegedly intercepts speaks to the content of communications, which does not fit the definition of pen register or trap and trace device. The facts alleged state the TikTok software collects data about each visitor such as device, browser, and geographic information without users' knowledge or consent when users land on the website. The Complaint thus alleges the software captures incoming user data which would show where users are located rather than the actual content of users' communications with the website. Therefore, the facts alleged sufficiently describe a pen register or trap and trace device as defined by statute.

Defendant also argues that there are no allegations that the website intercepted any of Plaintiff's user data. However, the Complaint does allege that Plaintiff visited Defendant's website in January 2024, that Defendant deployed a de-anonymization process to identify Plaintiff using electrical impulses from her device, and that Defendant did not obtain Plaintiff's consent to be subjected to data sharing with TikTok. (Compl., ¶¶2, 21.) Therefore, there are allegations that the website intercepted Plaintiff's user data.

As for the argument that Plaintiff gave consent to the tracing simply by visiting the website, the Complaint alleges that the software captured the user data without users' consent or knowledge once a user landed on the website regardless of whether there was a cookie banner. Although Defendant argues that the information being collected is "generated by users," the Court reads this to mean that the data is generated by users' devices, not that users are submitting their information to the website voluntarily to be traced. (Compl., ¶19.) Therefore, the Complaint does not allege that Plaintiff or any other user consented to the TikTok software's data collection.

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Conclusion

Defendant's demurrer is OVERRULED. Defendant is to Answer within 10 days of this order.

The moving party is to give notice.

Certificate of Mailing is attached.