

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

**THE STATE OF MISSISSIPPI, *ex rel.*, JIM
HOOD, Attorney General for the State of Mississippi**

PLAINTIFF

VS.

CIVIL ACTION NO.

17-22-B

GOOGLE INC.

DEFENDANT

COMPLAINT

Plaintiff, the State of Mississippi, by Jim Hood, Attorney General for the State of Mississippi ("the State") brings this Complaint against Defendant, Google Inc. ("Google"), and alleges as follows:

I. INTRODUCTION

1. This action arises out of Google's unfair methods of competition and unfair and deceptive trade practices that pertain to Google's statements about its processing of data and account information pertaining to Mississippi K-12 students who use Google's G Suite for Education (GSFE) accounts (formerly known or referred to as Google Apps for Education) and Google Chrome Sync.

2. Through misrepresentations, material omissions, and false statements, Google assures the Mississippi public and approximately half of Mississippi's K-12 schools that it services its GSFE products in accordance with contractual limitations, policy limitations, and limitations to which it agreed through the K-12 School Service Provider Pledge to Safeguard Student Privacy ("The Pledge"). However, Google does not abide by its statements contained in its multiple terms and policies, and as adopted from the Pledge. Through a child's GSFE account, Google tracks, records, uses, and saves the online activity of Mississippi's children, all for the purpose of processing student data to build a profile, which in turn aids its advertising business. These deceptive practices allow Google to gain an unfair advantage over its competitors and to deceive the Mississippi public in violation of Mississippi law.

III. JURISDICTION

7. Subject matter jurisdiction for the instant controversy is conferred upon the Chancery Court of Lowndes County pursuant to Miss. Const. art. 6, § 159 (1890), and Miss. Code Ann. §§ 9-5-81 and 75-24-9. Google is subject to personal jurisdiction in Lowndes County pursuant to Miss. Code Ann. § 13-3-57 as it does business and performs services in this State and in Lowndes County.

8. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332 because Mississippi is not a citizen for purposes of diversity jurisdiction. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked because the State alleges exclusively state law claims against Google pursuant only to Miss. Code Ann. §§ 75-24-1, *et seq.* Nowhere does the State plead, expressly or implicitly, any cause of action or request any remedy that arises under or is founded upon federal law, nor does it bring this action or seek any relief on behalf of any person, a class, or any group of persons that can be construed as a class. The relief sought by the State pursuant to Miss. Code Ann. §§ 75-24-9 and 75-24-19 is only afforded to the Attorney General and not individual persons, and the State pursues such relief in its singular sovereign capacity. The State seeks no relief pursuant to Miss. Code Ann. § 75-24-15, and it seeks no relief on behalf of any person(s) pursuant to §§ 75-24-11 and 75-24-13. The State specifically disclaims any such claims that would support removal of this action to a United States District Court on the basis of diversity or jurisdictional mandates under the Class Action Fairness Act of 2005 (28 U.S.C. §§ 1332(d), 1453, 1711-1715). The issues presented in the allegations of the instant, well-pleaded Complaint do not implicate significant or substantial federal issues and do not turn on the necessary interpretation of any federal law. The State expressly avers that the only causes of action

11. A Customer School allows (or requires) the Customer's students, faculty, and staff to sign up and use GSFE products as GSFE users. In this enrollment process, each GSFE user is given a user name and password identifying that GSFE user with a particular GSFE account.

12. When a K-12 student signs into ("logs" into) their GSFE account, Google knows (a) the person using the account is a student, (b) the user's identity and account information, and (c) that the account was created for educational purposes.

B. The Pledge & Google's Adoption of Its Terms

13. On or about October 7, 2014, The Future of Privacy Forum (FPF) and The Software & Information Industry Association (SIIA) introduced the K-12 School Service Provider Pledge to Safeguard Student Privacy ("The Pledge") to protect student privacy regarding the collection, maintenance, and use of students' personal information. The Pledge was aimed at K-12 school *service providers* to safeguard student privacy. The Pledge applies to all student personal information and to all student GSFE user accounts.

14. Google is a school service provider as defined by The Pledge.

15. Google signed the Pledge in January of 2015. By so doing, Google affirmatively committed to the representations made in the Pledge and affirmatively represents it abides by its terms.

16. As it relates to GSFE accounts, Google expressly commits, in pertinent part, to:

- Not collect, maintain, use or share student personal information beyond that needed for authorized educational/school purposes, or as authorized by the parent/student. ...
- Not use or disclose student information collected through an educational/school service (whether personal information or otherwise) for behavioral targeting of advertisements to students.
- Not build a personal profile of a student other than for supporting authorized educational/school purposes or as authorized by the parent/student ...

21. Google expressly intends to be bound by and specifically refers Mississippi educators, parents, and students to review the terms of the GSFE Agreement as it relates to the GSFE services.

22. In the Agreement, Google states:

1.4 Ads. Google does not serve Ads in the Services or *use Customer Data for Ads purposes.*

(Emphasis added).

23. “Customer Data” includes “data, including email, provided, generated, transmitted or displayed via the Service by Customer *or End Users.*” (Emphasis added).

24. Google’s definition of “End User”—the GSFE users—includes Mississippi K-12 students using GSFE through their respective schools.

25. Google’s “Customer Data” definition includes the Mississippi K-12 student GSFE account information; student identity; information pertaining to a student; and data from the student’s computer, computing device, and/or mobile/smart phone device which is generated, transmitted, or displayed via the Service by the student.

26. Accordingly, Google expressly commits in the GSFE Agreement that when a Mississippi K-12 student logs in using a GSFE account and remains logged in, Google will not use any information or data associated with that student’s account; that student’s identity; personal information pertaining to that student; or, data from that student’s computer, computing device, or mobile/smart phone device for any advertising purposes.

27. Despite its expressed assurances, when a Mississippi K-12 student logs into a GSFE account, remains logged in to that GSFE account, and then uses Google services such as YouTube, Google Maps, Google Books, or Google News, Google uses the student’s data for advertising purposes.

35. Despite its expressed contractual assurances, when a Mississippi K-12 student logs into a GSFE account, remains logged in to that GSFE account, and then uses Google services such as YouTube, Google Maps, Google Books, or Google News, Google uses the student's data for purposes beyond Google's exercise of rights and obligations under the GSFE Agreement.

36. Further, when a K-12 student logs into a GSFE account on a computer which has Google Chrome Sync enabled, remains logged in, and then uses the Chrome browser to conduct internet activities, Google uses the student's data obtained from the GSFE account for purposes beyond Google's exercise of rights and obligations under the GSFE Agreement.

37. Accordingly, Google's statements are false, misleading, unfair and deceptive.

E. Google's Data Processing Amendment to the GSFE Agreement

38. As part of the GSFE Agreement, Google incorporates by reference its Data Processing Amendment to G Suite Agreement (hereinafter "DPA Agreement").

39. Google expressly intends to be bound by and specifically refers Mississippi educators, parents, and students to review the terms of the DPA Agreement as it relates to Google's conduct toward Mississippi student data.

40. The DPA Agreement specifically states, "5.3. Processing Restrictions. Notwithstanding any other term of the Agreement, *Google will not process Customer Data for Advertising purposes* or serve Advertising in the Services." (Emphasis added).

41. "Customer Data" in the DPA Agreement includes Mississippi K-12 student "data (which may include personal data and the categories of data referred to in Appendix 1) submitted, stored, sent or received via the Services."

49. Despite its expressed assurances, when a Mississippi K-12 student logs into a GSFE account, remains logged in to that GSFE account, and then uses Google services such as YouTube, Google Maps, Google Books, or Google News, Google uses information “associated with” the student’s GSFE account to target advertisements.

50. Further, when a K-12 student logs into a GSFE account on a computer which has Google Chrome Sync enabled, remains logged in, and then uses the Chrome browser to conduct internet activities, Google uses the student’s data obtained in association with the students’ GSFE account to target advertising.

51. Accordingly, Google’s statements are false, misleading, unfair and deceptive.

G. Google Does Not Clearly Disclose Its Practices in Violation of its Pledge

52. In Google’s Pledge to Mississippi educators, parents, and students, Google expressly commits to: “Disclose clearly in contracts or privacy policies, including in a manner easy for parents to understand, what types of student personal information we collect, if any, and the purposes for which the information we maintain is used or shared with third parties.”

53. Despite this expressed and assumed obligation, Google does not clearly disclose in a manner easy for parents to understand what types of student personal information is collected, maintained, and used, nor does it accurately disclose that it takes certain rights to which it is contractually prohibited from doing.

54. In fact, an educator, a parent, or a K-12 student would have to review the following Google contracts, agreements, terms, and policies to begin to glean what Google does to Mississippi K-12 student information: GSFE Agreement, DPA Agreement, GSFE Privacy Notice, Google’s adoption of the Pledge, Google Terms of Service, and the Google Privacy Policy, any help or information pages, and multiple hyperlinks in the help or information pages.

60. Thus, Google's expressed statement that it clearly discloses, in a manner easy for parents to understand, what types of student personal information Google collects from GSFE accounts, the purposes for which the information is maintained by Google, the purposes for which the information is used by Google, or the purposes for which the information is shared with third parties is false, misleading, unfair and deceptive.

H. Google's False Representations Of Its Rights

The Terms of Service:

61. In Google's Terms of Service, Google states the following:

When you upload, submit, store, send or receive content to or through our Services, you give Google (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones. This license continues even if you stop using our Services (for example, for a business listing you have added to Google Maps).

(Emphasis added).

62. Google's statement of (1) being able to take or requiring the taking of a perpetual "worldwide license" to K-12 students' content, (2) for the uses indicated, and (3) for the duration of such a license even after discontinuance of service expressly contradicts, violates, or causes a misrepresentation of Google's rights in the GSFE Agreement, Google's Pledge, the DPA Agreement, and the GSFE Privacy Notice.

63. Accordingly, Google's Terms of Service are false, misleading, unfair and deceptive.

Google's Privacy Policy:

64. In Google's Privacy Policy, Google states that it may collect information to provide better services to all of its users by collecting information given by K-12 students,

Notice, and the purported taking of such rights is false, misleading, unfair and misrepresents Google's ability to do so.

71. Google States in its Privacy Policy:

We may combine personal information from one service with information, including personal information, from other Google services.

72. Google has no authority to use or combine student information for any purposes beyond those provided in the GSFE Agreement, Google's Pledge, the DPA Agreement, and the GSFE Privacy Notice and the purported taking of such rights is false, misleading, and unfair, and it misrepresents Google's ability to do so.

VII. VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT, MISS. CODE ANN. §§ 75-24-1, ET SEQ. ("MCPA")

73. The State re-alleges and incorporates all prior paragraphs of this Complaint as if stated fully herein.

74. Google is a "person" within the meaning of, and subject to, the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-3(a).

75. Google's marketing, implementing, and administering GSFE accounts (formerly GAFE accounts); its contractual agreements with GSFE customers (and prior versions of agreements); and its statements, terms, and policies expressed to GSFE users amount to conduct of "any trade or commerce," as defined by Mississippi law.

76. As described herein, through Google's false marketing, implementing, and provision of the GSFE accounts, to include Google's statements made in relation to its GSFE Services, Google has in the past and continues to affect commerce through unfair methods of competition and unfair or deceptive trade practices, as prohibited by Miss. Code Ann. § 75-24-5.

77. At all times material to its actions, Google knowingly and willfully violated Miss. Code Ann. § 75-24-5.

82. Through its scheme, Google affected commerce by engaging in unfair methods of competition and deceptive acts and trade practices in violation of Miss. Code Ann. § 75-24-5(1).

83. In addition, Miss. Code Ann. § 75-24-5(2) defines “deceptive trade practice[s]” as:

(e) Representing that goods or services have sponsorship, approval, *characteristics*, ingredients, *uses*, *benefits*, or quantities *that they do not have* or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; . . .

(g) Representing that goods or services are of a *particular standard, quality, or grade*, or that goods are of a particular style or model, *if they are of another*; . . .

(i) Advertising goods or services with intent not to sell them as advertised; . . .

Miss. Code Ann. § 75-24-5(2)(e), (g), & (i) (emphasis added).

84. Through the scheme, Google violated § 75-24-5(1), (2)(e), 2(g), & 2(i).

85. With the opening of each Mississippi GSFE user account and/or by requiring GSFE users to agree to the contradictory Terms of Service and Privacy Policy and other terms, Google committed and continues to commit a separate violation of Miss. Code Ann. § 75-24-5 with each GSFE user account.

86. Google’s conduct described herein constitutes multiple, separate, distinct, knowing and willful violations of Miss. Code Ann. § 75-24-5 for each GSFE user account created.

87. Because Google is exploiting some of Mississippi’s most vulnerable citizens through its false, misleading, unfair and deceptive statements and practices, the Attorney General has determined that Google has used and continues to use methods, acts, and/or practices prohibited by Miss. Code Ann. § 75-24-5, that these proceedings are in the public’s interest, and that the imposition of an injunction against Google prohibiting the unfair and deceptive conduct

practices in violation of Mississippi law and ordering temporary, preliminary, or permanent injunction;

3. Declaring that each act by Google as described in this Complaint constitutes multiple, separate violations of Mississippi law;

4. Imposing civil penalties in the amount of \$10,000 for each GSFE account opened in the State of Mississippi in violation of Miss. Code Ann. §§ 75-24-1, *et seq.*; and,

5. Granting the State:

- a. The cost of investigative and reasonable attorneys' fees, as authorized by Miss. Code Ann. §§ 75-24-1, *et seq.* and, specifically, § 75-24-19(1)(b);
- b. Pre-judgment and post-judgment interest; and,
- c. All other general relief as provided by law and/or as the Court deems appropriate and just.

Plaintiff asserts claims herein in excess of the minimum jurisdictional requirements of this Court.

Respectfully submitted, this the 13th day of January, 2017.

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

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