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To: James Campbell

FYI: Law 360 -- Turn Sued Over Role in Use of Verizon's "Supercookie"

Marketing Firm Sued Over Verizon Supercookie Tracking

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By Joe Van Acker

Law360, New York (June 22, 2015, 6:11 PM ET) -- A complaint filed in California court on Friday targeted marketing firm Turn Inc. for allegedly tracking Verizon Inc. Internet subscribers' browsing history and app usage without their knowledge or permission by using "supercookies" it conceals on phones and computers.

Deena Kay said that even computer experts have struggled to detect the tracking IDs Turn created for her and other Verizon users to track their behavior for targeted advertising and claimed that the marketing company offers only a bogus opt-out mechanism that raises a logical catch-22.

"Although Turn appears to have an opt out mechanism, Verizon users have no knowledge that Turn exists or is tracking them, rendering the opt out idea wholly ineffective," Kay's complaint said. "There is no reason why consumers would know to visit Turn's page to attempt to avoid tracking if they have no knowledge of its practices."

Further, the opt-out option doesn't even require Turn to stop the tracking — it's just a request that Turn can choose to ignore, according to Kay.

As a result of the tracking program, Turn has compiled "deeply personal and private information" on users without their knowledge or consent and designed its supercookies to be practically "indestructible," according to the plaintiff, who added that deleting cookies from a browser won't remove Turn's code.

Kay proposed a class including all of the "thousands or millions" of Californians who used Verizon Wireless to access the Internet or use applications on their phones or computers. She also said the statute of limitations doesn't apply because Turn concealed its tracking.

On Friday, Kay accused Turn of violating California laws against trespass and invasion of privacy, as well as the state's Unfair Competition Law.

"We're just trying to stop these kind of practices because it really upsets the public, and the only way we can do it is to go after the people who profit from it," said Brian Kabateck, an attorney for Kay.

Verizon isn't a defendant in this suit but has suffered considerable blowback since the supercookies first came to light last year, when an Electronic Frontier Foundation staffer tweeted about a report detailing how the company was tracking more than 100 million mobile device users.

After being hit with a class action in February, Verizon announced in March that customers could opt out of the tracking program. The U.S. Federal Communications Commission said the following month that it will investigate whether Verizon broke consumer privacy and data security rules with the supercookies.

Representatives for Turn didn't respond to requests for comment on Monday.

Kay is represented by Brian S. Kabateck, Joshua H. Haffner and Levi M. Plesset of Kabateck Brown Kellner LLP.

Counsel information for Turn was not available.

The case is Kay v. Turn Inc. et al, case no. BC585695 in the California Superior Court for Los Angeles County.

--Additional reporting by Emily Field, Allison Grande and Kurt Orzeck. Editing by Christine Chun.

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