

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**ANN JONES, individually and on behalf of
all others similarly situated,**

Plaintiff,

v.

BED BATH & BEYOND INC.,

Defendant.

CASE NO. 4:23-cv-00082

JURY TRIAL DEMANDED

COMPLAINT - CLASS ACTION

Plaintiff Ann Jones (“Plaintiff”), individually and on behalf of all others similarly situated, hereby files this class action complaint against Defendant Bed Bath & Beyond Inc. (“Defendant”) and in support thereof alleges the following:

INTRODUCTION

1. This is a class action brought against Defendant for surreptitiously intercepting and wiretapping the electronic communications of visitors to its website, www.bedbathandbeyond.com. Defendant procures third-party vendor, Quantum Metric, to utilize “session replay” spyware to intercept Plaintiff’s and the Class members’ electronic computer-to-computer data communications (“Electronic Communications”) with Defendant’s website, including how they interacted with the website, their mouse movements and clicks, keystrokes, search terms, information inputted into website, and pages and content viewed while visiting the website. Defendant intercepted, stored, and recorded electronic communications regarding the webpages visited by Plaintiff and the Class Members, as well as everything Plaintiff and the Class Members did on those pages, *e.g.*, what they searched for, what they looked at, the information they inputted, and what they clicked on.

2. The “session replay” spyware utilized by Defendant is not a traditional website cookie, tag, web beacon, or analytics tool. It is a sophisticated computer spyware that allows Defendant to contemporaneously intercept, capture, read, observe, re-route, forward, redirect, and receive incoming Electronic Communications to its website. Plaintiff’s and Class Members’ Electronic Communications are then stored by Defendant using an outside vendor’s services and can later be viewed and utilized by Defendant to create a session replay, which is essentially a video of a Class Member’s entire visit to Defendant’s website.

3. Defendant’s conduct violates the Missouri Wiretap Act, Mo. Ann. Stat. §§ 542.400 *et seq.*, the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*, the Electronic Communications Privacy Act, 18 U.S.C. § 2511(1) *et seq.*, 18 U.S.C. § 2511(3)(a) *et seq.*, and 18 U.S.C. § 2701 *et seq.*; Title II, 18 U.S.C. § 2702 *et seq.*; the Computer Fraud and Abuse Act, (“CFAA”) 18 U.S.C. § 1030, *et seq.*; and constitutes (i) an invasion of the privacy rights of website visitors and (ii) a trespass to chattels.

4. Plaintiff brings this action individually and on behalf of a class of all natural persons in the United States (1) who visited Defendant’s website, www.bedbathandbeyond.com, and (2) whose electronic communications were intercepted by Defendant or on Defendant’s behalf. (the “Nationwide Class”) and on behalf of a subclass of all natural persons in the State of Missouri (1) who visited Defendant’s website, www.bedbathandbeyond.com, and (2) whose electronic communications were intercepted by Defendant or on Defendant’s behalf. (the “Missouri Class”) and seeks all civil remedies provided under the causes of action, including but not limited to compensatory, statutory, and/or punitive damages, and attorneys’ fees and costs.

5. Plaintiff brings this action individually and on behalf of a class of all persons whose electronic communications were intercepted and seeks all damages allowed by law.

PARTIES

6. Plaintiff Ann Jones is a citizen of the State of Missouri, and at all times relevant to this action, resided and was domiciled in St. Louis County, Missouri. Plaintiff is a citizen of Missouri.

7. Defendant Bed, Bath & Beyond Inc. is, and has been at all times mentioned herein, a New York corporation with its principal place of business in New Jersey. Defendant is therefore a citizen of New York and New Jersey.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there are 100 or more members of the proposed class, and at least one member of the proposed class, including Plaintiff, is a citizen of a state different than Defendant.

9. This Court further has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under 18 U.S.C. § 2510, *et seq.*, 18 U.S.C. § 2701, *et seq.*, and 18 U.S.C. § 1030, *et seq.*, and this Court has supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367 because the state law claims form part of the same case or controversy under Article III of the United States Constitution.

10. This Court has personal jurisdiction over Defendant because a substantial part of the events and conduct giving rise to Plaintiff's claims occurred in Missouri. The privacy violations complained of herein resulted from Defendant's purposeful and tortious acts directed towards Class Members while they were located within Missouri.

11. Defendant markets its products online via its website and ships products to Missouri

residents—*i.e.*, Defendant intends for Missouri residents to purchase its products online and, in turn, delivers its products to Missouri. During this process, Plaintiff alleges Defendant surreptitiously intercepted and wiretapped Plaintiff’s electronic communications on its website while Plaintiff and Class Members were located in Missouri. At all relevant times, Defendant knew its practices would directly result in collection of information from Missouri citizens while browsing www.bedbathandbeyond.com. Defendant chose to avail itself of the business opportunities of marketing and selling its goods in Missouri and collecting real-time data from website visit sessions initiated by customers located in Missouri, and the claims alleged herein arise from those activities. Additionally, Bed Bath & Beyond Inc. has at least 12 physical brick and mortar stores located in Missouri, five (5) of which are within this District.¹ As such, it would not offend the “traditional notion of fair play and substantial justice” to order Bed Bath & Beyond Inc. to defend the claims lodged against it in Missouri.

12. Defendant also knows that many users visit and interact with Defendant’s website while they are physically present in Missouri. Both desktop and mobile versions of Defendant’s website allow a user to search for nearby stores by providing the user’s location, as does the Defendant’s app. Users’ employment of automatic location services in this way means that Defendant is continuously made aware that its website is being visited by people located in Missouri, and that such website visitors are being wiretapped in violation of federal and Missouri statutory law and common law.

13. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District.

¹ <https://www.bedbathandbeyond.com/locations/state/MO> (last visited: January 24, 2023).

FACTUAL ALLEGATIONS

A. Website User and Usage Data Have Immense Economic Value.

14. The “world’s most valuable resource is no longer oil, but data.”²

15. Earlier this year, Business News Daily reported that some businesses collect personal data (*i.e.*, gender, web browser cookies, IP addresses, and device IDs), engagement data (*i.e.*, how consumers interact with a business’s website, applications, and emails), behavioral data (*i.e.*, customers’ purchase histories and product usage information), and attitudinal data (*i.e.*, data on consumer satisfaction) from consumers.³ This information is valuable to companies because they can use this data to improve customer experiences, refine their marketing strategies, capture data to sell it, and even to secure more sensitive consumer data.⁴

16. In a consumer-driven world, the ability to capture and use customer data to shape products, solutions, and the buying experience is critically important to a business’s success. Research shows that organizations who “leverage customer behavior insights outperform peers by 85 percent in sales growth and more than 25 percent in gross margin.”⁵

17. In 2013, the Organization for Economic Cooperation and Development (“OECD”) even published a paper entitled “Exploring the Economics of Personal Data: A Survey of

² *The world’s most valuable resource is no longer oil, but data*, The Economist (May 6, 2017), <https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longeroil-but-data>.

³ Max Freedman, *How Businesses Are Collecting Data (And What They’re Doing With It)*, Business News Daily (Aug. 5, 2022), <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html>.

⁴ *Id.*

⁵ Brad Brown, Kumar Kanagasabai, Prashant Pant & Goncalo Serpa Pinto, *Capturing value from your customer data*, McKinsey (Mar. 15, 2017), <https://www.mckinsey.com/business-functions/quantumblack/our-insights/capturing-value-from-your-customer-data>.

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