

Class Action for Aaron's Spyware May Continue

Customers whose images were captured by spyware put on their rental computers from a franchisee of Aaron's, Inc. may file a class action, the Third Circuit ruled, reversing a trial court's decision.

The appellate court found that the plaintiffs' proposed classes were ascertainable and not vague. As a result, the plaintiffs may proceed with their case alleging violations of the Electronic Communications Privacy Act of 1986.

The plaintiffs allege that they leased a laptop from Aspen Way, a franchisee of Aaron's. When an agent came to repossess the laptop for alleged non-payment, he showed the plaintiffs a screenshot of a poker website one of the plaintiffs had visited as well as a picture of him taken by the laptop's camera. The screenshot and picture were taken by spyware that the franchisee had placed on the computer. In an 11-day period, the spyware secretly accessed plaintiffs' laptop 347 times, the plaintiffs allege.

The plaintiffs seek class-action certification to assert claims against Aaron's, Aspen Way, more than 50 other independent Aaron's franchisees, and DesignerWare, LLC, the software developer. In denying the class certification, the magistrate judge concluded the proposed classes were under-inclusive because they did not "encompass all those individuals whose information [was] surreptitiously gathered by Aaron's franchisees." He also found that the two classes were "overly broad" because not "every computer upon which Detective Mode was activated will state a claim under the ECPA for interception of an electronic communication." The District Court adopted the magistrate judge's findings.

The appellate court reversed, finding the District Court "abused its discretion" in determining the proposed classes were not ascertainable because they were underinclusive as well as overinclusive.

In October, 2013, Aaron's entered into a consent decree with the Federal Trade Commission over the use of the PC Rental Agent software and its "Detective Mode," the subject of the class-action complaint. Under the consent decree, Aaron's is prohibited from using monitoring technology that captures keystrokes or screenshots from its rental computers. See our [earlier article](#) on the consent decree and a copy of the FTC complaint.

Crystal Byrd; Bryan Byrd v. Aaron's Inc., Aspen Way Enterprises et al., 3d Circuit No. 14-3050, Filed April 16, 2015.

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