

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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|---------------------------|---|----------------------------|
| _____ |) | |
| |) | Case No. _____ |
| CALLSOME SOLUTIONS, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | COMPLAINT |
| vs. |) | JURY TRIAL DEMANDED |
| |) | |
| GOOGLE, INC., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |
| | X | |

Plaintiff, Callsome Solutions, Inc. (“Callsome” or “Plaintiff”), by its attorneys, alleges upon knowledge as to itself and its own actions and upon information and belief as to all other matters, as follows:

NATURE OF THE CASE

1. This is an action against Google, Inc. (“Google” or “Defendant”) for tortiously interfering with Callsome’s contracts with third parties, tortiously interfering with Callsome’s prospective business relationships, and trade libel by intentionally misrepresenting to third parties and Callsome that Callsome’s Post Call Manager (“PCM”) Software Development Kit (“SDK”) violated Google’s ad policy.

PARTIES

2. Plaintiff Callsome Solutions, Inc. is a Delaware corporation, with its principal office located at 839 West End Avenue, #4F, New York, NY 10025.

3. Defendant Google, Inc. is a publicly traded Delaware corporation, whose headquarters is located at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Google also maintains an office at 76 Ninth Avenue, 4th Floor, New York, NY 10011.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendant pursuant to CPLR § 301 as it conducts business within the State of New York with sufficient minimum contacts with New York so as to render the exercise of jurisdiction by the courts of this State permissible under traditional notions of fair play and substantial justice. This Court further possesses personal jurisdiction over Defendant pursuant to CPLR § 302.

5. Venue is proper in this Court pursuant to CPLR § 503(c) because Plaintiff's principal place of business is in this County.

SUBSTANTIVE ALLEGATIONS

Background of Google's Business

6. Google is a globally recognized technology leader that offers products and services to consumers. Although best known for its Google search engine, Google is also known for its Android operating system and its consumer products, which include its Google Nexus tablet, Google Glass and Chromecast.

7. Android is an open-source operating system software that is owned by Google, but is made available to the public for free. This open-source model allows anyone to view, modify and customize the Android operating system. The customizable nature of Android has resulted in manufacturers using it as their operating system in mobile phones, tablets, netbooks, televisions and even game consoles. Developers also use Android to create applications or "apps" for these devices. To begin using Android, a potential developer simply downloads the Android SDK.

8. The popularity of Android is manifest. As of September 2013, over a billion mobile devices had been activated that are running Android.¹ According to Google, “every day another million users power up their Android devices for the first time and start looking for apps, games, and other digital content.” See <http://developer.android.com/about/index.html> (last visited August 4, 2014).

9. Android users seeking to find, download and use apps, games and other digital content primarily turn to Google’s digital entertainment store, Google Play. Google Play is the “premier market place for selling and distributing Android apps.” See <http://developer.android.com/about/index.html>.

10. Although not the only app store available to Android users, Google utilizes two particularly effective methods to maintain Google Play as the premier market place: licensing agreements and user warnings.²

11. Most hardware manufacturers who install Android on their devices want the utility, recognition and goodwill associated with Google’s apps, such as Maps, Search and YouTube. Accordingly, these manufacturers enter into licensing agreements with Google to pre-load its apps onto their devices. Google does not allow device manufacturers to pick and choose which Google apps to pre-load. Rather, under the licensing agreements, the device manufacturers must agree to offer a bundle of Google apps, including Google’s Play Store, Gmail, Maps, YouTube and Calendar, among others. Device manufacturers must also agree to set Google’s search engine as the default search provider for all web searches. Thus, device

¹ See <https://www.sec.gov/Archives/edgar/data/1288776/000128877614000020/goog2013123110-k.htm#sD639E991EBB55393BBAF2E71A87E5ECB>.

² Google Play is not the only app store available for Android devices as Amazon and Samsung, among others, offer app stores.

manufacturers who want to install Google's apps on their devices must install the Google Play Store.

12. Users who venture beyond Google Play and attempt to download an app or other digital content are confronted with Google's prominent warning that downloading apps from unknown sources could harm the user's device and the user is responsible for any damage caused by downloading apps outside of the Google Play store.

13. Google's actions to maintain the Google Play store as the premier market place for Android apps and digital content have been effective as "Android users download more than 1.5 billion apps and games from Google Play each month." *See* <http://developer.android.com/about/index.html>.

14. Although Google offers the Google Play store to Android users, it is not the primary developer of the over one million apps on its store. Rather, third parties develop the apps. Some of these developers are large corporations, such as Google, but the vast majority are individuals or small startup companies like Callsome. *See* Amy Cravens, *A demographic and business model analysis of today's app developer* (2012) (<http://research.gigaom.com/report/a-demographic-and-business-model-analysis-of-todays-app-developer/>) (last visited August 4, 2014).

15. Google permits persons to develop and publish apps on the Google Play store by signing up for a developer account and agreeing to Google's "Developer Distribution Agreement" ("Developer Agreement"), a copy of which is attached as Exhibit A. A developer cannot distribute any apps on the Google Play Store without first agreeing to the Developer Agreement. As the Developer Agreement plainly states, it "forms a legally binding contract"

that governs the parties' [the developer and Google] relationship with respect to distributing apps on the Google Play store.

16. The Developer Agreement places the responsibility on the app developer to upload the app to the Google Play store, disclose all information required by Google to Android users, provide any necessary customer support and adhere to the "Google Play Developer Program Policies" ("Developer Policies"), a copy of which is attached as Exhibit B.

17. The Developer Agreement also includes a product takedown provision that permits Google to remove apps from the Google Play store. This provision, in relevant part, states:

While Google does not undertake an obligation to monitor the Products or their content, if Google is notified by you or otherwise becomes aware and determines in its sole discretion that a Product or any portion thereof or your Brand Features . . . (g) violates the terms of this Agreement or the Developer Program Policies for Developers . . . Google may remove the Product from the Market or reclassify the Product at its sole discretion. Google reserves the right to suspend and/or bar any Developer from the Market at its sole discretion.

See Developer Agreement at ¶7.2.

18. Google's Developer Policies set forth Google's policies with respect to content, promotion and advertising. Relevant to this case is Google's ad policy, which provides:

1. Developer Terms apply to the entire user experience of your app

Please be aware that Google's Developer Distribution Agreement and Developer Program Policies (together, "Developer Terms") apply to each app as well as any ads or third-party libraries bundled or made available through the app. Offer your users a consistent, policy compliant, and well communicated user experience.

Ads are considered part of your app for purposes of content review and compliance with the Developer Terms. Therefore all of the

policies referenced above also apply. Please take care to use advertising which does not violate the Developer Terms.

Ads which are inconsistent with the app's content rating also violate our Developer Terms.

2. Ads Context

Ads must not simulate or impersonate the user interface of any app, or notification and warning elements of an operating system. It must be clear to the user which app each ad is associated with or implemented in.

3. Ad Walls and Interstitial Ads

Interstitial ads may only be displayed inside of the app they came with. Forcing the user to click on ads or submit personal information for advertising purposes in order to fully use an app is prohibited. A prominent and accessible target must be made available to users in any interstitial ad so they may dismiss the ad without penalty or inadvertent click-through.

4. Interfering with Apps and Third-Party Ads.

Ads associated with your app must not interfere with other apps or their ads.

See Developer Policies at 5-6 (emphasis in original).

19. A developer that agrees to Google's Developer Agreement and Developer Policies may design, develop and publish apps to the Google Play store. This access is very desirable to developers because "Google Play is the premier market place for selling and distributing Android apps. When you publish an app on Google Play, you reach the huge installed base of Android." *See* <http://developer.android.com/about/index.html>.

20. Google also promotes Google Play as being an "open marketplace" that gives developers the control to decide when to publish, who to publish to and what devices to focus on. Google represents to developers that they "can monetize in the way that works best for your business—priced or free, with in-app products or subscriptions—for highest engagement and

revenues. You also have complete control of the pricing for your apps and in-app products and can set or change prices in any supported currency at any time.” See <http://developer.android.com/about/index.html>.

21. If developers want to use ads to monetize their apps, Google offers its Google Mobile Ads SDK which makes use of Google’s AdMob, DoubleClick and AdSense publishers. Developers may also choose to use other mobile advertising SDKs, such as StartApp, Flurry, Tapjoy or InMobi.

22. The perceived control with which developers have to publish, promote and monetize their apps is facilitated by the fact that Google does not pre-screen apps that are published on the Google Play store. Rather, users, developers or other persons may report apps that violate Google’s policies. As set forth above, Google also voluntarily monitors apps that are published on the Google Play store for compliance and issues warning notices to developers whose apps it determines violate its Developer Agreement and Developer Policies. Google suspends apps whose developers do not bring their apps into compliance with Google’s Developer Agreement or Developer Policies after receiving warning notices.

Callsome and Its Post Call Manager Product

23. Callsome is a startup company that designed and developed CallFlakes. CallFlakes is a free app that is offered to users of Android mobile phones and is published on the Google Play store.

24. CallFlakes is a utility app that enhances a user’s productivity with respect to two of the most commonly used smartphone activities: telephone calls and text messages. Specifically, after ending a telephone call, CallFlakes opens a productivity board that allows users to call the person back, text the person back, send an email, set a meeting, set a reminder or

search the internet for topics related to the call. Similarly, when a text message is received, CallFlakes opens a productivity board that allows the user to respond, call, set a meeting, set a reminder or search the web for topics related to the message. CallFlakes also has the added optional functionality of Facebook caller ID, which allows users to see Facebook friends' posts prior to starting a conversation with the Facebook friend.

25. After releasing CallFlakes, Callsome developed a win-win solution that would benefit app developers and their users alike: Post Call Manager ("PCM").

26. PCM is a "lite" version of CallFlakes that opens a productivity board, like the one in CallFlakes, after the user ends a telephone call.³ Rather than use Google's search engine to power users' internet searches, PCM used Yahoo search which was powered by Microsoft's Bing search engine. PCM also shows a small banner advertisement along with the productivity board and provides a link that the user can press to see an app wall with other apps the user might be interested, but is not obligated to, in downloading.

27. To implement its win-win solution, Callsome partnered with Interchan, an app developer. On April 24, 2013, Interchan agreed to integrate the PCM SDK as part of the apps it developed and published. In return for offering the additional functionality to Interchan's users, Callsome received 25% of the advertising revenue that was generated. Interchan used Google's AdMob as the ad server for its apps.

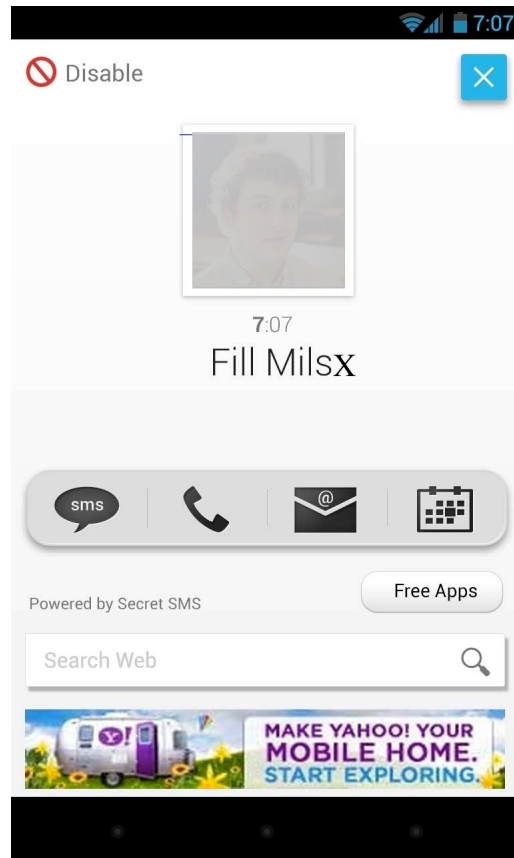
28. Callsome also partnered with StartApp, a mobile advertising platform. A copy of the parties' contract, dated March 18, 2013, is attached hereto as Exhibit C. In August 2013, Callsome and StartApp executed an addendum and amendment to their contract, a copy of which is attached hereto as Exhibit D.

³ PCM is a lite or reduced version of CallFlakes because it does not open the productivity board after a text message is received or offer the Facebook caller ID functionality.

29. StartApp marketed the PCM SDK as an “ad unit” to entice app developers to integrate it into their apps. StartApp informed app developers that PCM would provide their users “an easy way to perform essential tasks once they end a call on their phone. The [PCM] allows users to quickly call back, reply via SMS, send an email, create a calendar event, search the web, and more. The [PCM] SDK is also based on our popular **pay-per-download model.**” *See <http://blog.startapp.com/announcing-suite-sdks/>* (emphasis in original) (last visited August 4, 2014). Thus, developers who integrated the PCM SDK into their app provided their users the added functionality of PCM while also monetizing their app.

30. The additional functionality provided by PCM was not clandestinely installed onto users’ phones. Rather, after downloading an app that integrated the PCM SDK, users were notified that they could also download PCM. The PCM app would be downloaded and activated only with the user’s acknowledgement and consent. If the user decided not to install PCM, the user would still be able to install the app without consequence.

31. Most users decided to install and retain the benefits offered by PCM. An example of a screenshot a user might see when interacting with PCM after a call is set forth below:



32. The productivity board reveals that a user can dismiss it at any time by clicking on the “X” at the top right of the productivity board. If the user does not do anything with PCM for 20 seconds, the PCM productivity board disappears. The user can uninstall PCM at any time by clicking on “Disable” at the top left of the productivity board. The productivity board plainly notifies the user that the productivity board is powered by the app developer that integrated the PCM SDK into the app that was downloaded by the user. Finally, as noted above, the productivity board shows a small banner ad at the bottom of the screen and permits, but does not require, the user to download other free apps by clicking on the associated icon.

33. On or around April 2013, StartApp and Callsome test launched the PCM SDK. Callsome offered the PCM SDK to a limited group of developers to gauge developer interest, evaluate the effectiveness of the monetization strategy and fix any software bugs or glitches.

34. Callsome and StartApp officially launched the PCM SDK on September 15, 2013. This method of distribution turned out to be beneficial and popular for Callsome, developers and users alike. By the end of September, Localytics, an analytics company, sent an email to Callsome which said that PCM was third in data points the previous week, just behind Tumblr® and iHeart® radio.

35. By late November 2013, developers had chosen to integrate the PCM SDK in over 800 apps. By the end of November 2013, less than three (3) months since its official launch, users had downloaded PCM more than 46 million times and logged approximately 1.3 billion user app sessions. Despite having the option to easily uninstall PCM, only a fraction of users chose to do so. Most users used PCM's added functionality on a daily basis to enhance their productivity.

36. The popularity of the PCM SDK among developers and users resulted in Callsome generating a profit from advertising revenue.

37. The growth, popularity and success of the PCM SDK was so tremendous that other companies sought to partner with Callsome to distribute its PCM SDK. Specifically, Callsome began negotiating with Ask Partner Network and Massive Impact to begin distributing the PCM SDK.

Google's Warning Notices and Its Interference with Callsome's Business

38. In November 2013, Google began sending suspension warning notices, via e-mail, to app developers who had integrated the PCM SDK into their apps.

39. Although the PCM SDK works the same no matter what app it is integrated into, Google gave different reasons for why the PCM SDK had to be removed.

40. One developer was told that his app violated section 4.3 of the Developer Agreement because it uploaded users' call logs to a service without informing and obtaining user consent. Google informed this developer that the app could be reinstated if it was brought into compliance with section 4.3 of the Developer Agreement. Subsequently, Google informed the developer that it would reinstate the app if the developer removed "net.mz.callflakesdk." This is the PCM SDK. This reason was false because the PCM SDK does not upload or otherwise track users' call logs.

41. Other developers were told that their apps violated the ad policy in Google's Developer Policies:⁴

REASON FOR WARNING: Violation of the Ad-Policy:

- Ads associated with your app must not interfere with other apps or their ads.

After a regular review, we have determined that your app contains ad functionality which disrupts or interferes with the usage of other apps or their ads. This is in violation of the policy provision cited above.

Your application will be removed if you do not make modifications to bring it into compliance within 7 days of the issuance of this notification. If you have additional applications in your catalog, please also review them for compliance.

All violations are tracked. Serious or repeated violations of any nature will result in the termination of your developer account, and investigation and possible termination of related Google accounts. If your account is terminated, payments will cease and Google may recover the proceeds of any past sales and the cost of any associated fees (such as chargebacks and payment transaction fees) from you.

Before uploading or publishing any new applications, please review the Developer Distribution Agreement and Content Policy.

The Google Play Team

42. After receiving the suspension notices from Google, most of the app developers that integrated the PCM SDK into their apps removed it. The app developers who integrated the

⁴ Inconsistently, not every app developer received a suspension warning notice from Google. For example, Interchan, which was using Google's AdMob ad server, never received warning notices from Google.

PCM SDK were primarily individuals or small startups and could not afford to have their apps suspended for even one day. Further, because Google tracks all violations of its Developer Agreement and Developer Policies, these developers cannot risk having their developer accounts terminated.

43. Accordingly, when Google sent the suspension notices, the developers who integrated the PCM SDK removed the PCM SDK from their apps and pushed the update to their users. Most Android users choose to have their apps update automatically and, consequently, once they received the update, PCM was removed from their phones. The developers did this to avoid suspension and future adverse action from Google.

44. As a result of Google's suspension notices, the download rate for PCM dropped by over 50% in December 2013, to approximately 9 million downloads from approximately 20 million downloads in November 2013. The download rate continued to drastically decrease to 4.7 million downloads in January 2014 and 2.3 million in February 2014.

45. Several developers contacted StartApp after receiving the suspension notices from Google. StartApp and Callsome then began investigating the basis of Google's suspension notices.

46. Following the issuance of these suspension notices, Callsome attempted to contact Google through its appeal and customer support process, as well as through individuals who worked for Google. There was never a response to these attempts. Subsequently, on December 6, 2013, Zach Sivan, Callsome's Director and co-founder, contacted Matthew Bye at Google to ask why app developers that implemented the PCM SDK received suspension notices. Mr. Sivan told Mr. Bye that the app developers "removed our program from their apps and the distributors of this program have ceased all distribution activities which basically stopped our business going

forward completely.” Mr. Sivan also informed Mr. Bye that “[m]ost of app developers [sic] are removing our program from their apps and none of the distributors we engaged is [sic] willing to take a risk and distribute an app that get such suspension notice [sic] from Google Play.”

47. Having not received a response, Mr. Sivan contacted Mr. Bye again on December 12, 2013. Mr. Bye subsequently referred Mr. Sivan’s concerns to Geoff Griffith, Google’s senior counsel.

48. On December 18, 2013, Mr. Sivan wrote Mr. Griffith to determine why Google was sending suspension notices to app developers, providing examples of apps that were suspended.

49. On December 21, 2013, Mr. Griffith responded that the apps had not been suspended, but “received warnings for their implementation of another SDK, Start App Post Call Manager” On the same date, Mr. Sivan responded, informing Mr. Griffith that:

The StartApp Post Call Manager is a reduced version of CallFlakes promoted by our partner Startapp to the developers I mentioned.

I will be happy to learn how this post call manager is violating the Google policy so we can make sure implementation is done in the right way.

None of our partners are willing to move ahead with CallFlakes until we can point out the problem with the post call manager.

50. On January 10, 2014, Mr. Griffith contacted Mr. Sivan, seeking clarification and additional information:

Hi Zach,

Sorry for the delay. It has taken me longer than expected to gather the information needed to respond, due to staff absences on holidays.

I am consulting with our removals team further about this case and should be able to respond early next week.

In the meantime, I'd like to confirm what we are discussing here: my understanding is that the third party apps that received warnings have implemented an SDK, PostCall Manager (PCM) developed by another third party, StartApp. You have said that StartApp is a partner of your business that markets PCM as a reduced version of your product CallFlakes. Can you provide more information on StartApp and its relation to your business?

Thanks,
Geoff

51. On January 10, 2014, Mr. Sivan responded to Mr. Griffith's email, informing him that "PCM is a product developed by [Callsome] and it is a light version of CallFlakes. Startapp is a mobile advertising network who distribute[s] our PCM SDK to their community of app developers."

52. On January 13, 2014, Mr. Griffith proffered the following explanation for the suspension notices:

Hi Zach,

Thanks for the information.

PCM is an SDK that can be implemented in a third party app to provide optional post-call functionality to the app if the user agrees to add it. However, PCM is marketed as an "ad unit" to developers (e.g. on the website here) to help monetize their apps. It also includes promotional content in the form of links to third party apps in the post-call screen. PCM as a whole is therefore considered an advertising service that has been added to an app, rather than being a Play store app itself. As such, PCM (and apps that implement it) are subject to our ad policy. That policy contains the restrictions below:

- Ads may not interfere with other apps and their apps. For the PCM ad unit implementation to be compliant, it must display itself inside of the app it came with. Today, it alters the functioning of the Phone app and the browser on the user's device. Policy provision:

- **Interfering with Apps and Third-party Ads**

- Ads associated with your app must not interfere with other apps or their ads.

- The implementation is an interstitial ad service, since it contains commercial links to third party apps, is full screen and must be dismissed by the user before the user can use the default contacts/phone UI after a phone call. Policy provision:

o Ad Walls and Interstitial Ads

Interstitial ads may only be displayed inside of the app they came with.

This is why the apps implementing PCM received warnings.

Kind regards,

Geoff

53. Despite recognizing that PCM provided additional functionality to a user's mobile phone, Google took the position that PCM was an advertising service because it was marketed as an "ad unit." This position effectively precluded Callsome from distributing its PCM SDK to app developers and destroyed Callsome's business.

54. Callsome forwarded Mr. Griffith's e-mail to StartApp, who provided the following response:

We have learned this answer internally and it is our understanding that the post call manager cannot be distributed as an SDK to app developers through an ad funded model. Therefore, given the distribution cost involved, we will not be able to continue and distribute the Post Call Manager if it can't include an ad to support the business model.

I am really sorry that this is where things stand. As you know, we really liked your product and so did our app developers but we cannot distribute anything that is considered by Google as a violation of its ad policy.

55. In light of Google's position that the PCM SDK violated its ad policy, StartApp advised the developers who had integrated the PCM SDK to remove it from their apps.

56. Google's reasons for claiming the PCM SDK violated its ad policy were false.

57. PCM is not an "ad unit." PCM, as Google itself admitted, provides post-call functionality to users who agree to download it. All users who downloaded an app integrated with the PCM SDK were explicitly notified and agreed to download PCM. Thus, users agreed to download the additional functionality provided by PCM. The ads users see when using PCM are wholly contained within PCM and not outside of the app. In fact, the ads contained within PCM

only take up about 1/16th of the user's screen. Consequently, PCM is neither an ad unit nor displays ads outside of PCM.

58. The PCM SDK does not alter the phone app or the user's web browser. PCM only appears after a call has ended and can easily be dismissed by the user. PCM does not interfere with the user's ability to use or interact with the phone app. PCM also does not change or alter the settings on the user's browser. Although users may enter searches after a phone call has ended, in a search box powered by Yahoo (not Google) contained within PCM, it does not change any of the settings contained on the phone's browser.

59. PCM is not an ad service and, as implemented, does not display interstitial ads.⁵ As set forth above, Google's characterization of PCM as an ad unit or ad service is false because PCM provides additional functionality to increase productivity, which the user is expressly notified of and agrees to. In fact, 90% of the time users used the productivity features offered by PCM. Users only clicked the in-app ads 10% of the time, further demonstrating that users did not consider PCM to be an ad unit or ad service. Accordingly, PCM's implementation and use of ads is consistent with Google's ad policy.

60. Google falsely told Callsome, StartApp and developers implementing the PCM SDK that they were not compliant with Google's Developer Agreement or Developer Policies.

61. Google's false statements to app developers who integrated the PCM SDK caused them to abandon and stop using the PCM SDK. The app developers were compelled to stop integrating the PCM SDK because their success is predicated on being able to publish apps on the Google Play store, the premiere Android marketplace. Simply put, app developers cannot

⁵ As defined by Google, an interstitial is a "rich HTML 5 experience[] or 'web app[] [that appears] at natural app transition points such as launch, video pre-roll or game level load. Web apps are in-app browsing experiences with a simple close button rather than any navigation bar-the content provides its own internal navigation scheme." See <https://developers.google.com/mobile-ads-sdk/docs/admob/advanced> (last visited August 4, 2014).

afford to be suspended or banned from the Google Play store, even if the reason given by Google is false.

62. Google's false statements caused StartApp to stop offering the PCM SDK to app developers and affirmatively advise app developers that they should remove it from their apps. StartApp was compelled to stop offering the PCM SDK because its success as a mobile advertising platform is dependent on being able to offer app developers monetization solutions that comply with Google's Developer Policies so the app developers can publish on the Google Play store, the premiere Android marketplace. Simply put, StartApp cannot afford to offer monetization solutions that will result in app developers being warned or suspended by Google, even if the basis for the warning or suspension is false.

63. After StartApp stopped offering the PCM SDK, Interchan decided that it would no longer integrate the PCM SDK into any of the new apps it was developing and would be releasing. Rather than remove the PCM SDK from its existing apps, Interchan simply left it integrated into the apps knowing that it would stop supporting and promoting these apps after releasing its new apps.

64. Google's false statements have materially harmed Callsome. StartApp and app developers have terminated their relationship with Callsome as a result of Google's false statements. Google's false statements have greatly diminished Callsome's ability to earn income from Interchan and have otherwise foreclosed its ability to earn any income from its PCM SDK with StartApp even though it is fully compliant with Google's Developer Agreement and Developer Policies. Callsome's relationships with third parties that wanted to offer the PCM SDK to app developers have also been terminated. Google's false statements have practically destroyed Callsome's business.

65. Google's false statements have assured that Callsome can no longer develop, distribute, market or receive any benefit from its fully compliant PCM SDK, which was beneficial to users and profitable for Callsome.

FIRST CAUSE OF ACTION
Tortious Interference with Callsome's Contract
with StartApp

66. Callsome re-alleges paragraphs 1-65 as if fully set forth herein.

67. On March 18, 2013, Callsome entered into a contract with StartApp to develop and deliver the PCM SDK in return for StartApp offering the PCM SDK "as a new monetization solution for mobile applications developers." As amended on August 1, 2013, Callsome and StartApp's contract would have expired on July 31, 2015, with automatic 24 month extensions unless either party provided written notice of its desire to terminate.

68. Callsome delivered the PCM SDK to StartApp and StartApp offered it to its developers. As set forth above, the PCM SDK was very popular amongst StartApp's developers with over 200 developers implementing the PCM SDK in 1902 apps.

69. By virtue of Mr. Sivan's e-mail dated December 21, 2013, and Mr. Griffith's e-mail dated January 10, 2014, Google knew that Callsome had a contractual relationship with StartApp to distribute the PCM SDK.

70. Google falsely informed Callsome, StartApp and developers that the PCM SDK violated its ad policy. Google knew that StartApp would not continue offering the PCM SDK if it violated Google's ad policy. Google also knew that Callsome could not bring the PCM SDK into compliance based on the false reasons it gave and the manner in which the PCM SDK was being distributed.

71. Upon learning that Google believed the PCM SDK was an advertising service that violated its ad policy, StartApp terminated its contract with Callsome.

72. Google's tortious conduct has resulted in Callsome's inability to market, sell or otherwise profit from the PCM SDK as no advertiser, advertising service, advertising platform or developer will distribute or integrate an app or SDK that Google claims violates its Developer Agreement or Developer Policies.

SECOND CAUSE OF ACTION
Tortious Interference with Callsome's Contracts
with App Developers

73. Callsome re-alleges paragraph 1-65 as if fully set forth herein.

74. On September 15, 2013, Callsome and StartApp began offering the PCM SDK to developers.

75. During the short period that the PCM SDK was offered, 247 developers integrated the PCM SDK into over 1900 apps. Some of these developers include Wait What and Nikhil Kulria.

76. By integrating the PCM SDK into the apps they developed and offered on the Google Play store, the developers were paid every time a user downloaded PCM along with their app. Developers who integrated the PCM SDK into their apps were not bound to continue using it and could decide to use a different SDK offered by Startapp or any other competitor at any time.

77. Google knows which developers use its advertising SDKs as such developers must sign up to use these SDKs. In testing or reviewing the developers' apps who integrated the PCM SDK for compliance with the Developer Agreement or Developer Policies, Google knew

that these developers were not using Google's advertising SDKs, but were using a competing advertising SDK, in this case StartApp. Google sent these developers suspension notices.

78. The developers who integrated the PCM SDK removed the PCM SDK after receiving suspension warning notices from Google. But for these suspension notices, the developers would have continued using the PCM SDK.

79. Google's suspension notices informed the developers who integrated the PCM SDK into their apps that the PCM SDK violated Google's ad policy or uploaded users' call logs without notifying and obtaining user consent. As set forth above, these reasons were knowingly false because the PCM SDK does not violate Google's ad policy or upload users' call logs.

80. The developers who received these suspension notices were compelled to remove the PCM SDK from their apps because their success is contingent on being able to offer their apps on the Google Play store and maintain good standing with Google as a developer. These developers simply cannot afford to have Google suspend their apps and, as a result, simply capitulate when Google asserts their apps violate Google's policies.

81. In fact, once it became clear Callsome could not bring the PCM SDK into compliance with Google's purported ad policy violation, StartApp e-mailed all of the developers who integrated the PCM SDK to remove it. StartApp was required to take this action to maintain credibility with its developers and because StartApp's success is contingent on being able to offer developers SDKs that are compliant with Google's Developer Agreement and Developer Policies.

82. Google's tortious conduct has resulted in Callsome's inability to market, sell or otherwise profit from the PCM SDK as no advertiser, advertising service, advertising platform or

developer will distribute or integrate an app or SDK that Google claims violates its Developer Agreement or Developer Policies.

THIRD CAUSE OF ACTION
Tortious Interference with Callsome's Prospective Relationship with Ask Partner Network and Massive Impact

83. Callsome re-alleges paragraphs 1-65 as if fully set forth herein.

84. On September 15, 2013, Callsome and StartApp began offering the PCM SDK to developers.

85. During the short period that the PCM SDK was offered, 247 developers integrated the PCM SDK into over 1900 apps. Some of these developers included Escape Mobile, Wait What and Nikhil Kulria.

86. As a result of the PCM SDK's popularity, Callsome began negotiating with Ask Partner Network and Massive Impact to distribute its PCM SDK.

87. Callsome had an agreement in principle with Ask Partner Network to distribute the PCM SDK to app developers.

88. Callsome was also negotiating with Massive Impact to distribute its PCM SDK.

89. In November 2013, Google began sending suspension notices to developers that had integrated the PCM SDK.

90. Ask Partner Network learned that StartApp removed the PCM SDK from its site and was notifying its developers to remove the PCM SDK from their apps. Accordingly, Ask Partner Network contacted Callsome to determine why the PCM SDK was not compliant with Google's policies.

91. As set forth above, Callsome contacted Google to obtain an explanation for the suspension warning notices.

92. In the numerous e-mails sent to obtain an explanation, Callsome informed Google that “[m]ost of app developers [sic] are removing our program from their apps and none of the distributors we engaged is [sic] willing to take a risk and distribute an app that get such suspension notice [sic] from Google Play.” Callsome also told Google that since it began sending suspension warning notices that “all our distributors stopped working with us, an investment deal that was about to sign [sic] has been backed off and basically there is a huge decline in download rate.” Thus, Callsome informed Google that the distributors Callsome had engaged had stopped working with it due to Google’s suspension warning notices.

93. As set forth above, Google falsely told Mr. Sivan that the PCM SDK was an ad unit and advertising service that did not comply with Google’s ad policy. Callsome relayed Google’s response to Ask Partner Network and Massive Impact. Both subsequently declined to work any further with Callsome.

94. Google’s tortious conduct terminated the potential contractual relationships Callsome was negotiating with Ask Partner Network and Massive Impact. Despite knowing of these relationships, Google falsely stated that the PCM SDK was not compliant with its ad policy. Google’s tortious actions have resulted in Callsome’s inability to market, sell or otherwise profit from the PCM SDK as no advertiser, advertising service, advertising platform or developer will distribute or integrate an app or SDK that Google claims violates its Developer Agreement or Developer Policies.

FOURTH CAUSE OF ACTION
Trade Libel

95. Callsome re-alleges paragraphs 1-65 as if fully set forth herein.

96. Google told app developers, StartApp and Callsome that apps which integrated the PCM SDK violated its Developer Policies.

97. Contrary to Google's statements, the PCM SDK is fully compliant with Google's Developer Policies.

98. Google's false statements of non-compliance were intended to prevent app developers from integrating the PCM SDK into their apps.

99. Google's false statements of non-compliance resulted in app developers and StartApp terminating their relationships with Callsome.

100. As a result of Google's false statements, Callsome has suffered the following damages:

- a. \$32,700,000 in estimated lost advertising revenue from StartApp abandoning the PCM SDK and being forced to stop offering the PCM SDK to app developers;
- b. \$19,525,000 in estimated lost advertising revenue from Ask Partner Network who refused to contract with Callsome after learning of Google's suspension notices;
- c. \$19,525,000 in estimated lost advertising revenue from Massive Impact who refused to contract with Callsome after learning of Google's suspension notices; and
- d. Attorney's fees and costs.

PRAYER FOR RELIEF

Wherefore, Callsome respectfully prays for the following relief:

- A. For an order awarding Plaintiff compensatory damages and punitive damages;
- B. For an order awarding Plaintiff attorney's fees and costs; and

C. Granting such additional or different relief that the interests of justice or equity may require.

JURY TRIAL DEMAND

Callsome demands a trial by jury

Dated: August 4, 2014

Respectfully submitted,

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General Information

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| Court | New York Supreme Court, New York County |
| Docket Number | 652386/2014 |
| Status | Open |