

TO THE

SECURITY EXCHANGE COMMISSION

re: question n 2) in the SEC request for comment : *“Are there any other types of information providers whose activities, in whole or in part, may raise investment adviser status issues? If so, which providers, and why?”* in relation to the “BBGB-TE” “BATTERY AND BANDWIDTH GIVE BACK TOKENS EXCHANGE”.

“BBGB-TE” is a platform for “BBGB –TOKENS”. One “BBGB-TOKEN” is awarded to digital mobile devices users, professionals and consumers, for every 10 USD of bandwidth consumed in the single digital mobile device exclusively because of data harvesting and advertising. “BBGB-TE ” provides information on “BBGB-TOKENS” but should not be considered an investment adviser.

Dear Sirs

In relation to the “BATTERY AND BANDWIDTH GIVE BACK - TOKENS EXCHANGE” (acronym “BBGB-TE”) planning to start operations in Italy on 1st of December 2022 as a SRL (Società a responsabilità limitata) registered in Italy, this comment intends to answer to the following question in the SEC’s request for comment:

“2) Are there any other types of information providers whose activities, in whole or in part, may raise investment adviser status issues? If so, which providers, and why?”

Background.

Digital mobile devices uninterruptedly transmit data and receive ads .

Through continuous data harvesting and advertising a number of companies (their ceos , directors, owners etc.) acquired colossal wealth and power. More is piling up : only in the USA in the next ten years the revenues from digital mobile advertising and data harvesting could reach the order of trillions of dollars .

Much of this money comes from offering online services defined or understood by Consumers as "free".

In the current academic and public debate the key to the economic mystery of “free” making billions, appears to have been found as follows : *“ not free at all , you pay online services with your data and attention to ads”* .

According to science and technology, this appears to be just a part of the picture though.

Scientific research finds the answer to the economic paradox of the extraordinary profitability of so called “free” digital mobile services, where it should be found: in the technology.

At closer scrutiny : *“it turns out that ”free” comes at a cost that is paid through our interactions within a digital advertising ecosystem”. As an example : “an (omissis) 300MB/\$20 plan subscriber using popular free apps (omissis) will spend 48% to 1299% more money than if using a purchased, equivalent app”* .

This quotation is from one of tens of scientific studies all coming to the same conclusion, below some of the most notable of such studies are quoted :

“GONG CHEN, *Student Member, IEEE*, JACOB H. COX, JR., *Student Member, IEEE*, A. SELCUK ULUAGAC, *Senior Member, IEEE*, and JOHN A. COPELAND, *Life Fellow, IEEE*.” In - *Depth Survey of Digital Advertising Technologies*”, *IEEE Communications surveys & tutorials*, vol. 18, no. 3, *third quarter* 2016; at 2124, (Sept., 21, 2018).

ROLF LANDAUER, “*Minimal Energy Requirements in Communication.*” *Science*, vol. 272, no. 5270, 1996, pp. 1914–1918. *JSTOR*, JSTOR, [w.jstor.org/stable/2890615](http://www.jstor.org/stable/2890615). ;

NUNO BENTO, “*Historical diffusion of mobile phones and its impact on energy demand: Findings and outlook* “, 2012 pub. da International Institute for Applied Systems Analysis Schlossplatz A- 2361 Laxenburg, Austria, pg 13.

REBECCA BULANDER, MICHAEL DECKER, GUNTHER SCHIEFER, BERNHARD KOLMEL, “*Comparison of Different Approaches for Mobile Advertising*”, 2005, *Proceedings of the 2005 Second IEEE International Workshop on Mobile Commerce and Services (WMCS’05)*, at 7. JÜRGEN CITO + 3, *Ba TTE ry-Aware Transformations in Mobile Applications, 2016*, at 702 *ASE 16 September 3–7, 2016, Singapminuti*, 4-12-2018 from <https://ieeexplminuti.ieee.org/document/7582805/>

ANDREAS PAMBORIS + 4, *AD-APT: “Blurring the Boundary Between Mobile Advertising and User Satisfaction”*, at 175, 2016 *IEEE/ACM International Conference on Mobile Software Engineering and Systems*.

JAMSHEED MANJA PPALLAN + 4, “*Optimizing TCP Zero Window Probes for Power Saving in Smart Devices*”, 2018 *IEEE Wireless Communications and Networking Conference*

PRASHANTH MOHAN, SUMAN NATH, ORIANA RIVA, “*Prefetching mobile ads: Can advertising systems afford it?*” in *Proc. 8th ACM Eur. Conf. Comput. Syst.*, 2013, at 267–280, from iteseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.352.6284: at 267 “*fetching and displaying advertisements (ads) in an application significantly contributes to the application’s energy consumption*”, and at 269: “*2.1 Communication costs for serving ads. Previous work highlighted significant overheads of ads in smartphone apps [17, 28, 37]. In [17], the authors measured non-negligible network traffic due to ads in Android apps*”; at 270: “*Ads consume significant communication energy, even for communication-heavy apps. On average, ads consume 23% of the total energy, or 65% of the communication energy, of an app*”.

AZEEM J. KHAN, V. SUBBARAJU, ARCHAN MISRA, SRINIVASAN SESHAN, “*Mitigating the True Cost of Advertisement- Supported “Free” Mobile Applications*”, in *Proceedings of the 12th Workshop on Mobile Computing Systems & Applications (HotMobile ’12)*.

F. QIAN *et al.*, “*Periodic transfers in mobile applications: Network-wide origin, impact, and optimization*” in *Proc. 21st Int. Conf. World WideWeb*, 2012, at 51 –60

R. J. G. SIMONS, A. PRAS, “*The hidden energy cost of web advertising*” <http://eprints.eemcs.utwente.nl/18066/>, *Centre for Telematics and Information Technology University of Twente, Enschede, Technical Report, June 2010. 7-12-2018*, at 1. <http://eprints.eemcs.utwente.nl/18066/>

NARSEO VALLINA-RODRIGUEZ + 6, “*Breaking for Commercials: Characterizing Mobile Advertising*”, at 344 in *Proceedings of the 2012 ACM Conference on Internet Measurement*.

J. ARON, “Free apps eat up your phone battery just sending ads” www.newscientist.com/article/mg21328566.400.html.

PROCHKOVA + 2, “Energy Cost of Advertisements in Mobile Games on the Android Platform”, 2012 Sixth International Conference on Next Generation Mobile Applications, Services and Technologies. IEEE, at 152, note 9.

ARUNA SENEVIRATNE, KANCHANA THILAKARATHNA, SURANGA SENEVIRATNE, MOHAMED ALI KAAFAR, PRASANT MOHAPATRA, “Reconciling Bi-Metric Rivals: Towards Privacy-Aware and Bandwidth Efficient Mobile Ads Delivery Networks”, 2013, IEEE, p. 2.

KHAN, AZEEM J.; SUBBARAU, VIGNESHWARAN; MISRA ARCHAN; SESHAN, SRINIVASAN. “Mitigating the true cost of advertisement supported “free” mobile applications”. (2012). *HotMobile '12: Proceedings of the 12th Workshop on Mobile Computing Systems & Applications, San Diego, February 28-29*. 1-6. Research Collection School Of Information Systems. Pg. 1. Available at: https://ink.library.smu.edu.sg/sis_research/350.

MARTIN KENNEDY+3, “Adaptive Energy Optimization in Multimedia-Centric Wireless Devices: A Survey”, IEEE vol. 15. N.2 2013

STEVEN ENGLEHARDT + 1, “Digital mobile Tracking: A 1-million-site Measurement and Analysis”, 2016, at 1, from <https://webtransparency.cs.princeton.edu/webcensus/>, 3-12-2018.

ULRICH BARETH, “Privacy-aware and energy-efficient geofencing through reverse cellular positioning”, in 2012 8th International Wireless Communications and Mobile Computing Conference (IWCMC) “To fulfill the needs of tracking, current mobile phones are equipped with several positioning methods that are based on the Global Positioning System (GPS), WiFi [5], [6] or Cell-Id [7], which mostly results in a high energy demand and thus quickly drain the device's battery”, see also by same author “Issues arising from use of multiple BSSIDs on wireless Apps “

ARITZARRATE GALÁN, JOSÉ GONZÁLEZ CABAÑAS, ÁNGEL CUEVAS, MARÍA CALDERÓN, RUBÉN CUEVAS RUMIN, “Large-Scale Analysis of User Exposure to Digital mobile Advertising on Facebook”, 2019, IEEE Access, p.11959.

THOMAS PAUL, DANIEL PUSCHER, STEFAN WILK, AND THORSTEN STRUFE in “Systematic, Large-scale Analysis on the Feasibility of Media Prefetching in Digital mobile Social Networks”, 2015, 12th Annual IEEE Consumer Communications and Networking Conference (CCNC).

JOHN A. COPELAND, “How expensive are Free Smartphone Apps?” In *ACM Mobile Comput. Commun. Rev.*, 2012, vol. 16, no. 3, at 21 –32.; quinet.ucdavis.edu/pubs/journal/Li-2012.pdf

YONGBO LI + 2 “Mobile Ad Prefetching and Energy Optimization via Tail Energy Accounting”, in *IEEE Transactions on Mobile Computing (Early Access)*, 04 October 2018., IEEE digital library: “Current app marketplaces are increasingly dominated by free apps relying on advertising for revenue. Ad modules have become one of the major energy drainers on mobile devices, taking up 65% of apps’ total network energy, or 23% of an app’s overall energy [1]. This inefficiency mainly comes from the fact that mobile apps typically refresh their ads every 12 to 120 seconds [2], resulting in frequent, small transmissions. Since network interfaces often remain in full power state and intermediate state for a certain length of time after data transmission and before transitioning to idle state e.g., 5 to 6 seconds in full

power state, and 11.5 to 12 seconds in intermediate state in 3G [3] and LTE networks [4] – for the purpose of improving network responsiveness, such ad traffic causes network interfaces to constantly stay in full power or intermediate states, leading to considerable energy drain, commonly known as the tail energy.”

JIAPING GUI + 3, “*Truth in Advertising: The Hidden Cost of Mobile Ads for Software Developers.*” ICSE (1) 2015: 100-110, at 105.

CUIYUN GAO +5, “*IntelliAd: Assisting Mobile App Developers in Measuring Ad Costs Automatically*”, 2017 IEEE/ACM 39th IEEE International Conference on Software Engineering Companion, at 253, IEEE Digital Library

RIWA MOUAWI + 3, “*Comparison of in-App Ads Traffic in Different Ad Networks*”, 2015 IEEE, 11th International Conference on Wireless and Mobile Computing, Networking and Communications (WiMob), at 581. IEEE Digital Library “*In recent studies, three approaches have been followed in terms of assessing the effect of in-app ads on the mobile device resources consumption. The first approach evaluates the bandwidth consumption caused by in-app ads: Zhang et al. analyzed the network overhead caused by ads and analytics data in applications and assessed how much this overhead costs in terms of bandwidth consumption and the associated monetary value. They showed that in most cases the free version of an app actually costs more than the paid version due to ads related bandwidth consumption*”. and at 585 “*using an application that hosts (omissis) banner ads for a 10 minutes duration (for a period of one week) costs 2.5\$, whereas using an application that hosts (omissis) video ads for a 5 minutes duration (for a period of one week) costs 6.1\$.*”

YI YANG + 2, “*Energy-Aware Advertising through Quality-Aware Prefetching on Smartphones*”, 2017 IEEE 14th International Conference on Mobile Ad Hoc and Sensor Systems, IEEE Digital Library at 145.

OLGA GALININA “*Wirelessly Powered Urban Crowd Sensing over Wearables: VALUE Energy for Data*”, DOI: 10.1109/MWC.2018.1600468, IEEE.

LI ZHANG + 2, “*How expensive are Free Smartphone Apps?*” In *ACM SIG MOBILE Mobile Comput. Comm. Rev.*, 2012, vol. 16, no. 3, at. 21 –32.; qurinet.ucdavis.edu/pubs/journal/Li-2012.pdf. At 21:

FENG QIAN + 7: “*Periodic Transfers in Mobile Applications: Network-wide Origin, Impact, and Optimization*”, *WWW 2012*, April 16–20, 2012, Lyon, France. ACM 978-1-4503-1229-5/12/04

XIAONAN ZHU + 3, “*Ad Capsule: Practical Confinement of Advertisements in Android Applications*”, DOI 10.1109/TDSC.2018.2814999, IEEE Transactions on Dependable and Secure Computing.

MATTHIEU FAOU +7, “*Follow the traffic: stopping click fraud by disrupting the value chain*”, *IEEE Conferences 2016 14th Annual Conference on Privacy, Security and Trust (PST)* Year: 2016 Pages: 464-476

ARUNA SENEVIRATNE + 4, in “*Reconciling Bi TTE r Rivals: Towards Privacy-Aware and Bandwidth Efficient Mobile Ads Delivery Networks*”, Published in: *2013 Fifth International Conference on Communication Systems and Networks (COMSNETS), IEEE 2013, DOI: 10.1109 /COMSNETS. 2013.6465567.*

XAVIER SANCHEZ-LORO, VICTORIA BELTRAN, JORDI CASADEMONT AND MARISA CATALAN, in “*Ubiquitous Web Access and Application Layer Optimization: Dynamic Content Negotiation over Cellular Links*” at 270. From IEEE downloaded 12\11\2019.

PENG HUANG, DEHUA CHEN, JIAJIN LE, in *“An Improved Referrer-Based Session Identification Algorithm Using Map Reduce”*. -School of Computer Science and Technology Donghua University -Shanghai, China. 2013 Ninth International Conference on Natural Computation (ICNC)- From IEEE downloaded 12\11\2019

ABDURHMAN ALI ALBASIR, KSHIR ASAGAR NAIK, *SMoW: “An Energy-Bandwidth Aware Web Browsing Technique for Smartphones”*, 2015 in *IEEE Access*, 10.1109/ACCESS.2014.2365091, 20-2-2019. at 1435.

ABDURHMAN ALI BASIR, KSHIRASAGAR NAIK, BERNARD PLOURDE, NISHITH GOEL: *“Experimental Study of Energy and Bandwidth Costs of Web Advertisements on Smartphones”*, in 2014 6th International Conference on Mobile Computing, Applications and Services (MobiCASE), 20\2\2019 *IEEE Access*

M. PARSSINEN: *“Environmental Impact Assessment of on line advertising”*, in *Environmental Impact Assessment Review* Volume 73, November 2018 pages 177-200.”

As it clearly flows from the above quoted researches, Users of digital mobile devices, both Consumers and Professionals, make a colossal contribution in real money to the industry of digital mobile data harvesting and advertising, contributing from 20% up to 90% of the value of their data plans and of the energy paid to recharge the digital mobile devices to said industry. Smartphones first of all. These costs can probably only increase with technologies like 5g or 6g.

In the digital mobile data harvesting and advertising ecosystem there is an ocean of money coming out of Consumers\Users' pockets and going to big tech, small tech, middle sized tech. An ocean of money very rarely, if ever, mentioned in the public debate.

Probably nobody would be happy to find out the hard-tech truth : oppss I'm paying big money for this supposedly free digital mobile service .

In the USA as in Europe the Consumers\Users' contribution in battery and bandwidth to the fortunes of the industry of digital mobile data harvesting and advertising might be in the range of 50\100 billion USD yearly . Enough to change results, revenues, valuations for all the industry players interested by these specific technological facts.

Furthermore it must be considered that for the digital mobile data harvesting and advertising industry, the contribution in battery and bandwidth by Consumers\Users - in the USA as all over the World - is tantamount to an inexhaustible shaft from which free cash is mined. Really free because every concoction of new digital mobile services and apps creating revenues with data harvesting and advertising, can be easily financed with Consumers\Users' ever costlier data plans. And there is not even a public debate going on the subject. The telecom industry might be or might not be happy about the whole setup, but probably does not mind digital mobile services consuming more and more bandwidth just for data harvesting and advertising.

Consumer\Users, societal wellbeing and the environment, could all be suffering from a business model founded on free bulimic digital mobile data harvesting and advertising . Free in the sense that the implied battery and bandwidth costs in the digital mobile devices are paid for by the Consumers\Users.

Nor there appears to be very much information about this colossal resources in the statements of the interested public companies to the Authorities, to investors, to the market .

Also the common idea that personal data, harvested from digital mobile devices, has not a precise monetary value is false.

The minimum monetary value for personal data harvested from digital mobile devices, corresponds to the value of the battery and bandwidth digital mobile devices consume while sending the personal data to the platforms doing the harvesting. There might be and generally there is, further value for personal data harvested from digital mobile devices, but the minimum monetary value appears hardly disputable .

A very big monetary value by any estimate. Personal data collected from digital mobile devices has a hefty price tag on it. In real money. Simply the price is not asked by Consumers\Users

Evolution in the background. The invention “BATTERY AND BANDWIDTH GIVE BACK”, acronym “BBGB”, App and apparatus.

As a first step towards the main subject of this comment, the “BATTERY AND BANDWIDTH GIVE BACK” invention came to be in 2019, .

What the invention does is simple: *“BBGB - BATTERY AND BANDWIDTH GIVE BACK” is the instrument consisting of a hardware apparatus with resident software and applications for users' digital mobile devices. The invention quantifies and makes explicit the monetary value of bandwidth resources consumed in digital mobile devices during the use of mobile digital services via the internet exclusively as a result of data harvesting and advertising”.*

Through the BBGB invention each owner of a mobile digital device knows exactly how much money of the data plan is spent not to enjoy the features of the digital mobile services activated on the device, but exclusively because of data harvesting and advertising .

The invention measures only the bandwidth costs caused exclusively by data harvesting and advertising . The energy costs to Consumers\Users, if colossal in the aggregate, are small for the single digital mobile device and measuring such costs would not be economical.

Follow up to the invention “BATTERY AND BANDWIDTH GIVE BACK”: the “BBGB-Tokens” and the “BBGB-TE”

The “BBGB-TE ” is the digital platform open to all Consumers\Users who utilize the above mentioned “BBGB - BATTERY AND BANDWIDTH GIVE BACK” (BBGB) App on their digital mobile devices.

The “BBGB-Token” is an entry on a digital ledger named “BBGB – Token Wallet” at the name of one specific Customer . A digital registration existing only within the “BBGB-TE” platform’s system. The “BBGB-Token” cannot be transferred but only obliterated .

The BBGB-TE’s Customers connect the BBGB App to the “BBGB-TE” platform. The “BBGB-TE” platform awards “BBGB-Tokens” in proportion to the usage measures by the BBGB App.

In the Euro area “BBGB-TE” awards one single “BBGB – Token” for every 10 Euros worth of bandwidth, the digital mobile device has consumed exclusively because of data harvesting and advertising and not to utilize the features of the

digital mobile services (search, map , social , weather , gaming etc. etc.) through which the data harvesting and the advertising has been performed on the digital mobile device.

For “BBGB-TE” Customers in the USD area, it will be one single “BBGB-Token” for every 10 USDs worth of bandwidth the digital mobile device has consumed exclusively because of data harvesting and advertising and not to utilize the features of the digital mobile services (search, map , social , weather , gaming etc. etc.) through which the data harvesting and the advertising has been performed on the digital mobile device.

How BBGB-Tokens are monetized by BBGB-TE’s Customers

On the “BBGB-TE” platform, the “BBGB -Tokens” will be “on offer” in exchange for services, goods or discounts. Services or goods or discount , will be offered by Entities allowed to list such offers on the “BBGB-TE” platform.

The Entities’ offers are made in exchange of “BBGB -Tokens” .

“*In exchange of*” meaning not that the Entities will have the “BBGB -Tokens” transferred to their name, but that the “BBGB -Tokens” will be obliterated from each Customer’s “BBGB-Token Wallet” in relation the offer each Customer has claimed.

“BBGB-TE” will only list the offers Entities will make; the settling of the deals will be executed outside of the “BBGB-TE” system .

“BBGB-TE” will supply the software necessary to communicate the closing of the deal and the obliterating of the “BBGB-Token” from the “BBGB-Token Wallet” of each registered Customer.

As an example: for one single “BBGB-Token” a Telecom Company in the USA offers to US Customers of “BBGB-TE ” a 10% discount on a specific promoted data plan worth 100 USD. Such an offer will be advertised to the “BBGB-TE”s Customers through “BBGB-TE” tools aimed at communicating with Customers.

But “BBGB-TE ” will not claim in any communication with Customers that a “BBGB-Token” is worth 10 USD because of such an offer .

On the contrary : while advertising the promotion , “BBGB-TE” will make clear to Customers such an offer does not mean a “BBGB-Token” is worth 10 USD.

As is appears from what just described, “BBGB-TE” is essentially an advertising platform. Whereby advertising is connected to a real monetary cost incurred into by Customers.

Which connection represents the commercial main pitch of the “BBGB-TE” platform. Together with the fact that free digital mobile are in fact very expensive, that personal data at least when collected from a digital mobile device has a precise and high monetary value, that every Consumer\User should monetize such value and not let it all go to the platforms’ advantage, that bulimic data harvesting is paid by the Consumers/Users and that the societal and environmental damages thereof have ballooned on such a grand scale only because Consumers/Users are giving up for

free the battery and bandwidth they own, that privacy is efficiently protected only by the refusal of Consumer\Users to contribute their own money to let data be harvested in such a bulimic way, etc.etc.

Starting 1st January 2024 it is planned that Consumers\Users and Companies with access to the “BBGB-TE ” should be able to actually “trade” “BBGB - Tokens”, on a new and different platform where “BBGB-Tokens” will be traded and quoted and have a fluctuating money value, with all the implications thereof.

But this will a different platform from the “BBGB-TE” platform.

The similarity of the two platforms coming only from the fact that the same “BBGB-Tokens” will be used in both platforms and that for both platforms Customers will use the BBGB invention on their digital mobile devices to quantify and make “*explicit the monetary value of bandwidth resources consumed in digital mobile devices during the use of mobile digital services via the internet exclusively as a result of data harvesting and advertising*”.

What is the juridical nature of the “BBGB-Tokens” traded on “BBGB-TE ” ?

The “BBGB-Token” could be considered from more than one legal perspective.

Does the “BBGB-Token” represent the credit the Consumer\User has towards the Company or Companies which harvested data from to the digital mobile device and served advertising to the digital mobile device, exploiting the Consumer\User’s bandwidth?

Or the credit towards the entities providing digital mobile services which created the presupposition for such exploitation ?

Such a credit would probably be contested by the Companies who should be considered the debtors.

This possible reconstruction of the juridical nature of “BBGB -Token”, might find rationale in the fact that US Courts appear almost unanimous in considering battery and bandwidth as objects of ownership :

- a) *“With respect to Plaintiffs' injury claims based on battery and bandwidth consumption, courts have found that the unauthorized use of system resources can suffice to establish a cognizable injury.”¹*

¹ See *IN RE GOOGLE, INC. PRIVACY POLICY LITIGATION UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION* 2013 U.S. Dist., Case No. C-12-01382-PSG, LEXIS 171124 December 3, 2013, Decided December 3, 2013, Filed. , at 8 : “With respect to Plaintiffs' injury claims based on battery and bandwidth consumption, courts have found that the unauthorized use of system resources can suffice to establish a cognizable injury. For example, in *Goodman*, the court found standing based upon battery discharge where the application at issue [*21] sent fine location data every three hours or whenever the device's screen was refreshed.⁵² Similarly, in *In re iPhone Application Litigation*, the court found standing where the device systematically collected and transmitted location information.⁵³ In *In re Google Android User Privacy Litigation*, the plaintiffs did not clearly allege how frequently Google collected geolocation data from a phone, but did allege that collecting relocation data was particularly battery intensive, that “their batteries discharged more quickly[,] and that their services were interrupted.”⁵⁴ This later allegation was deemed sufficient to establish standing” omissis “ In addition, like the plaintiffs in *Goodman* and *Android*, Plaintiffs here specifically allege a greater discharge of battery power as a result of unauthorized conduct and as in *iPhone I* the discharge is systemic rather than episodic. This is sufficient to establish more than a de minimis injury.”

- b) damage to battery and bandwidth represents “injury in fact”² and “the Court concludes that Plaintiffs have sufficiently alleged that the Carrier IQ Software has had a "systemic," rather than "episodic," effect on the resources of Plaintiffs' mobile devices. This is sufficient to plausibly allege standing at the pleading stage”³
- c) It appears settled, that appropriation of battery and bandwidth owned by Consumers constitutes “a violation of property rights”⁴.

The above conclusions of the US Courts about the legal nature of “battery and bandwidth” in Consumers\Users’ digital mobile devices, seem to imply that the exploitation of digital mobile devices’ battery and bandwidth to harvest data and serve advertising could violate the ownership of such resources when there is no valid consent to a transfer of said resources by the Consumer\User who own them.

And the theory of Unjust Enrichment and Restitution paired with the Laws, Rules and Regulations regarding the necessity of clear and conspicuous information to Consumers – in this case about the amount of the exploitation of digital devices’ battery and bandwidth to the purpose of harvesting data and serve advertising - could in some cases support the perspective.

²Id at 15 *IN RE CARRIER IQ, INC., CONSUMER PRIVACY LITIGATION - No. C-12-md-2330 EMC- UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA -78 F. Supp. 3d 1051; 2015 U.S. Dist. LEXIS 7123; 85 U.C.C. Rep. Serv. 2d (Callaghan) 568 -January 21, 2015, Decided -January 21, 2015, Filed. Sc. il 3\2\2019. , cit. pg. 15:*” 1. Plaintiffs Have Adequately Alleged [**41] Standing Under Cal. Penal Code § 502 and State Consumer Protection Statutes - Defendants argue that Plaintiffs lack standing to assert a claim under the California Consumer Data Access and Fraud Act (“CCDAFA”), Cal. Penal Code § 502, or any state consumer protection statute because these statutory claims require proof that the Plaintiffs “suffer[ed] damage or loss by reason of a violation.” Cal. Penal Code § 502(e). Plaintiffs respond, however, that they have suffered damage in three ways: (1) diminished battery power and life in their mobile devices as a result of the Carrier IQ Software; (2) alleged collection and disclosure of personal information; and (3) they would not have purchased their mobile devices had they known the Carrier IQ Software was installed. Plaintiffs have sufficiently alleged “damage” for purposes of the pleading stage by alleging that the Carrier IQ Software diminished their mobile devices’ battery life and resources. Accordingly, the Court need not address Plaintiffs’ alternative theories of damage and Defendants’ motion to dismiss on this ground is DENIED.” As detailed above, the SCAC has alleged, for each Plaintiff, that the Carrier IQ Software “was installed and operating on his device, and taxing his device’s battery, processor, and [**42] memory, as alleged herein.” See SCAC ¶¶ 8-25. Defendants contend that these “generalized” allegations are “too vague and speculative” to establish Article III standing. Defendants rely primarily on *Opperman v. Path, Inc.*, No. C13-0453-JST, 2014 U.S. Dist. LEXIS 67225, 2014 WL 1973378 (N.D. Cal. May 14, 2014), for this proposition. In that case, plaintiffs alleged that installed malware on their iDevices resulted in “diminished mobile device resources, such as storage, battery life, and bandwidth.” 2014 U.S. Dist. LEXIS 67225, [WL] at *22. They alleged that the “unauthorized transmissions and operations used iDevice resources, ba ttery life, energy and cellular time at a cost to Plaintiffs and caused loss of use and enjoyment of some portion of each iDevice’s useful life.” *Id.* The court found these allegations insufficient, stating that because the plaintiffs had failed to “quantif[y] or otherwise articulate[] the alleged resource usage, they fail to allege an injury that can serve as the basis of standing.” *Id.* [*1066] At the same time, other courts in this district have “found that unauthorized use of system resources can suffice to establish a cognizable injury” when allegations plausibly suggested a non-de minimis drain on those resources. *In re Google, Inc. Privacy Policy Litigation*, No. C12-01382-PSG, 2013 U.S. Dist. LEXIS 171124, 2013 WL 6248499, at *7 (N.D. Cal. Dec. 3, 2013). For example, [**43] in *In re iPhone Application Litigation*, 844 F. Supp. 2d 1040 (N.D. Cal. 2012), the court found that plaintiffs had standing where they had alleged “diminished and consumed iDevice resources, such as storage, ba ttery life, and bandwidth.” *Id.* at 1054. “ (omissis) “Finally, in *Goodman v. HTC America, Inc.*, No. C11-1793MJP, 2012 U.S. Dist. LEXIS 88496, 2012 WL 2412070 (W.D. Wash. June 26, 2012), the court found allegations of drained [**44] system resources sufficient for standing purposes where it was alleged that the defendant’s application collected, and sent, the user’s geographic information every three hours or whenever the mobile device’s screen was refreshed.

³ *IN RE CARRIER IQ, INC., CONSUMER PRIVACY LITIGATION - No. C-12-md-2330 EMC- UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA -78 F. Supp. 3d 1051; 2015 U.S. Dist. LEXIS 7123; 85 U.C.C. Rep. Serv. 2d (Callaghan) 568 -January 21, 2015, Decided -January 21, 2015, Filed. Sc. il 3\2\2019. , cit. pg. 14.*

⁴ Case law on the point is settled. *Ex multis* : *IN RE: LENOVO ADWARE LITIGATION, This Document Relates to All Cases - Case No. 15-md-02624-RMW -UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION -2016 U.S. Dist. LEXIS 149958 -October 27, 2016, Decided -October 27, 2016, Filed. Dwnl 5-2-2019.*

But such supporting arguments do not seem sufficient for a positive answer to the above question.

What kind of credit and towards whom would a “BBGB-Token” tokenize?

A credit for unjust enrichment? For unlawful appropriation? For the payment due in relation to a tacit sale? And who decides that the Consumer\User has not given a valid consent? Etc.Etc.

“BBGB-Token” cannot tokenize a credit which is so hard to define and therefore is not a tokenization of a credit.

Could the “BBGB-Token” be considered tokenization of equity? A tokenization of the contribution in bandwidth Consumers/Users make to the digital mobile data harvesting and advertising businesses in some kind of implied partnership?

It seems the answer should be negative. Some clever juridical arguing might put forward such an hypothesis but it appears like a difficult path.

“BBGB-Token” does not tokenize equity.

Could the “BBGB-Token” be considered as tokenization of a *bona fide* expected counterparty for the donation of bandwidth Consumers/Users make to the digital mobile data harvesting and advertising businesses?

Most unlikely as, in the first place, it is most unlikely that there is a liberal attitude in the public towards the digital mobile data harvesting and advertising industry. And why should the businesses beneficiaries of such a donation have some kind of obligation for some kind of *bona fide* counterparty?

“BBGB-Token” does not tokenize a juridical situation connected to a donation.

Could the “BBGB-Token” be considered as tokenization of the consideration due by the digital mobile data harvesting and advertising businesses in a barter of bandwidth on Consumers/Users’ side against the digital mobile services that are funded with data harvesting and advertising.

The answer should be negative also for such a hypothesis. The deal between Entities providing digital mobile services and the Consumers/Users could very well be considered to have the nature of a barter: battery and bandwidth + acceptance of advertising + permission to harvest data on the Consumer/Users’ side and digital mobile services on the Entity side.

But this could also mean that the barter is probably fulfilled by the parties involved and that there would be no *in fieri* or unfulfilled juridical position susceptible of being tokenized.

“BBGB-Token” does not tokenize a juridical situation connected to a barter.

For each digital mobile device using the “BBGB” app and registered with “BBGB-TE”, the “BBGB-Tokens” are created and awarded to each Customer’s “BBGB-Token Wallet” in proportion to battery and bandwidth usage caused in the digital mobile devices exclusively by data harvesting and advertising. The “BBGB-Tokens” are awarded within the logic and system of the “BBGB-TE” system. And exist only within such logic and system.

The “BBGB-Tokens” do not incorporate or tokenize legally relevant rights or situations regarding the exploitation of bandwidth, arising from production processes\ business models current in the digital mobile data harvesting and advertising industry.

BBGB-TE is not an index provider

Within the logic and system of the “BBGB-TE” system, there is a market for “BBGB-Tokens”, in the sense that Companies active on BBGB-TE , in exchange for “BBGB-Tokens” offer goods or services or discounts thereto.

But, it should be again repeated , within the logic and system of the “BBGB-TE” system “*in exchange*” means not that the Entities will have the “BBGB -Tokens” transferred to their name, but that the “BBGB -Tokens” will be obliterated from the Customer’s “BBGB-Token Wallet” in relation to the offer the Customer has claimed.

BBGB-TE might achieve a “national presence” in the USA as all Consumers\Users in the USA might be interested in obtaining “BBGB-Tokens” and in having such BBGB-Tokens listed for offer on BBGB-TE .

BBGB-TE lists to the benefit of all registered Customers and Entities, the offers Entities make for BBGB-Tokens and publicizes towards Customers and Entities active on BBGB-TE a plausible value of BBGB-Tokens flowing from said offers.

BBGB-TE might therefore compile and create the methodology for an index of “BBGB-Tokens” value but BBGB-TE does not sponsor, administer, and/or license indexes for “BBGB-Tokens”.

BBGB-TE has no active role in editing the list of offers for “BBGB-Tokens”.

BBGB-TE should therefore not be considered an index provider.

BBGB-TE is not a model portfolio provider

The structure of BBGB-TE excludes in an obvious way the possibility that it could be considered a model portfolio provider .

BBGB-TE is not a pricing service

As the SEC’s request for comment explains: “*Pricing services provide prices, valuations, and additional data about a particular investment (e.g., a security, a derivative, or another investment), to assist users with determining an appropriate value of the investment*”.

By listing offers for the “BBGB-Tokens” and evaluating such offers, “BBGB-TE” provides in fact some kind of valuation on “BBGB-Tokens” but, as written above, “BBGB-Tokens” should not be considered “investments”. “BBGB-Tokens” are awarded to Consumers\Users registered on “BBGB-TE” in proportion to the costs in bandwidth caused to the single Consumer\User’s data plan(s) exclusively by data harvesting and advertising, while utilizing digital mobile services.

BBGB-TE should therefore not be considered a pricing service .

BBGB-TE is not an investment adviser

As explained in the SEC’ s request for comment : *“The Advisers Act generally defines an “investment adviser” as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or any person who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 24 The definition generally includes three elements for determining whether a person is an investment adviser: (i) the person provides advice, or issues analyses or reports, concerning securities; (ii) the person is in the business of providing such services; and (iii) the person provides such services for compensation. Each element must be met in order for a person to be deemed an investment adviser.”*

None of the three elements the SEC lists as necessary to determine the qualification of investment adviser is present in BBGB-TE’ *modus operandi*.

The BBGB-Tokens listed on BBGB-TE are not securities. The BBGB-Tokens exist on “BBGB-TE ” platform and are digital entries in the “BBGB-Token Wallet” of Customers and do not exist outside the BBGB-TE platform and system.

BBGB-TE lists offers for the “BBGB-Tokens” made by Entities admitted to the platform. BBGB-TE makes available to all Customers and Entities active on the BBGB-TE platform an evaluation of such offers.

BBGB-TE does not give advice on the offers.

BBGB-TE should therefore not be considered an investment advisor.

Submitted

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