

IN THE CIRCUIT COURT OF UNION COUNTY, ARKANSAS
CIVIL DIVISION
SIXTH DIVISION

STATE OF ARKANSAS, ex rel.
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

VS. NO. 70CV-23-135

TIKTOK INC.; TIKTOK PTE. LTD.;
BYTEDANCE INC.; and BYTEDANCE LTD.

DEFENDANTS

ORDER

Before this Court is the Defendants’ Motion to Dismiss the State’s First Amended Complaint. The Motion to Dismiss was filed on November 29, 2023. The State of Arkansas filed a response to the Motion on December 14, 2023. A reply was filed by Defendants on December 20, 2023. The matter was argued on March 12, 2024. Following the hearing, additional materials were filed on March 20, 2024, May 17, 2024, and May 22, 2024. For the reasons set forth below, the Defendants’ Motion to Dismiss the First Amended Complaint is DENIED.

Background

The State filed its First Amended Complaint, alleging in a rambling 74 pages, that the Defendants—TikTok Inc., TikTok PTE. LTD; Bytedance Inc., and Bytedance LTD (collectively, “TikTok”)---has violated the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101, et seq., by acquiring and storing sensitive data from Arkansas users of the TikTok computer app and exposing that data to the Chinese government or other nefarious groups in China.

The Defendants have moved to dismiss the complaint on three general grounds. First, the Defendants argue that this Court lacks personal jurisdiction over the Defendants. Second, the Defendants claim that the State’s allegations do not support a claim under the ADTPA both because the ADTPA does not apply to the Defendants’ alleged conduct and because the alleged statements are not deceptive as a matter of law. Finally, they contend that the relief requested by the Plaintiff in the First Amended Complaint would violate the United States Constitution.

Analysis

In considering a motion to dismiss, this Court presumes the facts alleged in the complaint to be true and views those facts in the light most favorable to the plaintiff. All reasonable inferences are resolved in favor of the complaint, and the pleadings are liberally construed. *See Baptist Health v. Murphy*, 2010 Ark. 358 at *7.

1. Personal Jurisdiction

“When personal jurisdiction is raised in a Rule 12(b)(2) motion to dismiss, a circuit court must consider whether the undisputed facts as pled establish personal jurisdiction.” *Lawson v. Simmons Sporting Goods, Inc.*, 2029 Ark. 84 at *5.

Arkansas law provides that its courts shall have personal jurisdiction to the maximum extent allowed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See* Ark. Code Ann. § 16-4-101(A)–(B) (Repl. 2010). Thus, in determining whether the circuit court was authorized to exercise personal jurisdiction over [the defendant], we must determine whether the exercise of jurisdiction comports with due-process limits. *See Int’l Shoe Co. v. Wash.*, 326 U.S. 310 (1945). Due-process requirements are satisfied when personal jurisdiction is asserted over a nonresident corporate defendant that has “minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.* at 316 (cleaned up). Minimum contacts must be based on “some act by which the defendant purposefully avails” himself of the forum state “such that he should reasonably anticipate being haled into court there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

Lawson at *6.

The Defendants contend that the court has neither general or personal jurisdiction over them. The State appears to respond only to the specific jurisdiction argument which will be considered here.

[T]he following criteria are necessary for personal specific jurisdiction: (1) the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state; (2) the cause of action must arise from or relate to the defendant's contacts with the forum state; and (3) the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of personal jurisdiction over the defendant reasonable.

Lawson at *9.

The factors set forth by the Arkansas Supreme Court are met in this case for the exercise of personal jurisdiction. First, TikTok has purposefully availed itself of doing business in Arkansas as it has entered into hundreds of thousands of service contracts with Arkansas residents who have downloaded the TikTok computer app. Having a vast number of subscribers is necessary for TikTok's business model to succeed. To that end, TikTok is able to focus its advertising on those Arkansas consumers who return to the app repeatedly. As alleged in the complaint, TikTok has reported millions of dollars in revenue to the State of Arkansas from the sale of advertising directed to Arkansas residents and consumers. Additionally, TikTok has been able to enter into advertising sale agreements with customers to target advertising to certain Arkansas residents. The first criteria is met.

Next, the allegations raised in the action—that TikTok has violated the ADTPA by falsely representing in the privacy policy how TikTok is collecting and using sensitive data—directly relates to TikTok's contacts with Arkansas. TikTok acknowledged at argument that they have entered into hundreds of thousands of Terms of Service agreements with Arkansans, which TikTok acknowledges are separate contractual agreements. As part of those contracts, Arkansas residents are provided with a boilerplate privacy policy. Because the State alleges that the privacy policy falsely represents what TikTok does with the data, this action relates to TikTok's contacts with the State of Arkansas.

Finally, TikTok's contacts with Arkansas are so substantial that being brought into court in this state on the basis asserted in this complaint is reasonable. TikTok is correct that its presence is nationwide, however, the fact that it has found success everywhere should not prevent it from facing courts beyond its headquarters in California. Unlike those other internet cases cited by the Defendants where a defendant merely advertised products that could be purchased by citizens of another state, here TikTok's entire business model is based on securing downloads of its application from as many individuals as possible. Thus, it should not be surprising to TikTok that it could face lawsuits here. The exercise of personal jurisdiction is reasonable.

The Court finds that the State has pleaded sufficient facts to establish specific personal jurisdiction over Defendants.

2. ADTPA claims

The Defendants argue the Amended Complaint should be dismissed under Arkansas Rule of Civil Procedure 12(b)(6) because the claims made by the State under the ADTPA fail to state a claim. First, the Defendants contend that the ADTPA applies only to “consumer-oriented” conduct, and thus does not apply to TikTok because it is downloaded for free. Further, Defendants contend that TikTok is neither a “good” or “service” as defined by the ADTPA. Second, Defendants argue that the alleged statements or alleged omission are not deceptive or unconscionable as a matter of law. Third, the Defendants claim that the factual allegations in the Amended Complaint are contradictory and thus cannot state a claim for relief.

This Court concludes that the allegations as stated in the complaint, while often difficult to follow in the rambling and largely irrelevant format of the complaint, do state a claim under the ADTPA. First, the contract formed between the Defendants and Arkansas residents when the TikTok app is downloaded does concern consumer-oriented actions. There is no requirement that money be exchanged, instead other valuable consideration is exchanged in the form of user data that is valuable to the Defendants. Even if TikTok does not provide a “good” as contemplated by the ADTPA, it is a “service” as it allows users access to content uploaded to TikTok. Second, The basic allegation of the complaint is that the Defendants misrepresent--either in the terms of service or in other statements--how and to whom the data is shared. Such allegation is a viable claim under the ADTPA. Whether the Plaintiff will be able to put forth sufficient evidence to survive a summary judgment motion or at trial remains to be seen. Third, due to the verbosity of the Amended Complaint, Defendants are arguing that the factual allegations are contradictory. The essential factual allegations are present as to the ADPTA claims.

Thus, the motion to dismiss for failure to state a violation of the ADTPA is DENIED.

3. Preemption

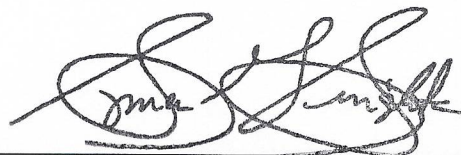
Finally, the Defendants argue that the State’s Amended Complaint violates principles of preemption. As discussed in detail and correctly from the United States District Court, the allegations in this complaint pertain only to violations of the ADTPA. Defendants fail to assert any plausible basis that the State’s Amended Complaint interferes with foreign policy. The motion to dismiss on this basis is REJECTED.

4. Pleading requirement

Arkansas Rule of Civil Procedure 8(a) provides that a complaint should set forth “a statement in ordinary and concise language of facts showing that . . . the pleader is entitled to relief.” The Amended Complaint as presently constituted exceeds 70 pages and, as found by previous courts, is largely “devoted to irrelevant posturing”

The State is directed to further amend the complaint to extract the irrelevant posturing and present to this court a complaint that complies with Rule 8's concise language requirement. An amended complaint is to be filed within 20 days of this order. See Ark. R. Civ. P. 12(f)

IT IS SO ORDERED.



SPENCER G. SINGLETON
CIRCUIT JUDGE

Date: June 28, 2024
