Judge approves FTC's $22.5M fine of Google

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A federal judge has approved a $22.5 million fine to penalize Google for an alleged privacy breach, rejecting a consumer-rights group's plea for tougher punishment.

The blessing from U.S. District Judge Susan Illston came late Friday. She made her ruling a few hours after a hearing in San Francisco for final arguments about a fine that's the cornerstone a settlement reached three months ago between the Federal Trade Commission and Google Inc.

The rebuke resolves around allegations that Google duped millions of Web surfers using the Safari browser into believing their online activities couldn't be tracked by the company as long as they didn't change the browser's privacy settings. That assurance was posted on Google's website earlier this year, even as the Internet search leader was inserting computer coding that bypassed Safari's automatic settings and enabled the company to peer into the online lives of the browser's users.

The FTC concluded that the contradiction between Google's stealth tracking and its privacy assurances to Safari users violated a vow the company made in another settlement with the agency last year. Google had promised not to mislead people about its privacy practices.

While the FTC hailed its actions as proof of its resolve to protect the public interest, a consumer-rights group attacked the settlement as an example of ineffectual regulation. The group, Consumer Watchdog, is trying to bring more attention to the issue as the FTC wraps up a separate investigation into complaints that Google has been stifling competition and raising online ad prices by highlight its own services in its influential search engine.

Illston, though, found that the fine and other facets of the settlement were all "fair, adequate and reasonable."

"We're glad the court agreed there was no merit to this challenge," Google said in a statement.

Consumer Watchdog attorney Gary Reback said he is hoping to pressure the FTC to take Google to court in the antitrust investigation instead of negotiating consent decrees and other types of settlements, as it did in the Safari privacy flap.

A consent decree "is not a good way to police Google," Reback said in an interview after Friday's court hearing. Reback also is representing some of the Internet companies that have filed complaints against Google in the antitrust case.

FTC Chairman Jon Leibowitz has said he expects regulators to decide whether to sue, settle or simply close the antitrust investigation by the end of this year.

In the Safari case, Consumer Watchdog argued that the fine amounts to loose change for a company like Google, which generates about $22.5 million in revenue every four hours. In legal briefs, Reback asserted that Google should be fined at least $3 billion because of the number of people potentially affected. The FTC estimates about 190 million people use Safari to browse the Web on computers, smartphones and tablets made by Google's rival Apple Inc. But the agency said the impact of Google's breach was relatively small, estimating the company picked up about $4 million in revenue from the intrusion.

The FTC considers the fine to be a milestone because it's the largest the agency has ever levied for a civil violation.

Consumer Watchdog also contended the settlement lacked teeth because it allowed Google to deny any liability for its conduct. That echoed a concern of FTC Commissioner J. Thomas Rosch, who voted against the Google settlement. Leibowitz and three other FTC commissioners voted for the settlement anyway because they believe it will deter similar breaches in the future.

Google insists it didn't intentionally bypass Safari's default settings.

Finally, Consumer Watchdog blasted the settlement for allowing Google to retain the data that it got from Safari users without authorization.

Illston brushed off the objections about the magnitude of the fine and Google's denial of liability. During Friday's court hearing, she probed deeper into Google's retention of the Safari browser data, raising the possibility that she might require revisions to that portion of the settlement.

In her final ruling, Illston accepted the FTC's assertion that the settlement "sufficiently protects consumers from ongoing harm without exposing them to additional risks." She cited legal precedent compelling her to "pay deference" the government agency that negotiated and submitted a proposed settlement such as the Safari case. The FTC and Google spent more than two months working out the details of the settlement, Illston noted in her ruling.

Analyzing Web surfing data helps Google gain a better understanding of people's preferences so it can customize online ads to appeal to different tastes.

But Google lawyer David Kramer told Illston that the data gathered from Safari browsers during the period covered by the settlement would be too stale to be of practical use to the company's advertising network. He also maintained that much of the data transmitted to Google would have been sent even without the unauthorized insertion of additional computer coding.

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