Antitrust attorney K. Todd Wallace comments on the latest development in Apple iPhone apps antitrust litigation

U.S. Supreme Court will hear Apple's appeal in case brought against Apple by purchasers of iPhones and iPhone applications

K Todd Wallace, Attorney with Wallace Meyaski Law Firm

NEW ORLEANS, LOUISIANA, UNITED STATES, September 24, 2018 /EINPresswire.com/ -- After the Ninth Circuit's decision allowing the litigation to proceed in a case brought against Apple by purchasers of iPhones and iPhone applications (hereinafter "apps"), the U.S. Supreme Court has decided to hear Apple's appeal. In early 2017, the Ninth Circuit Court of Appeals overturned a dismissal by the district court for lack of statutory standing. Attorney K. Todd Wallace of the law firm of Wallace Meyaski, New Orleans, reviews the case.

Plaintiffs in the case are purchasers of iPhones and iPhone apps between 2007 and 2013. Plaintiffs allege "that Apple has monopolized and attempted to monopolize the market for iPhone apps." As familiar to many users, the Ninth Circuit outlined the factual background of the iPhone ecosystem. "The iPhone is a 'closed system,' meaning that Apple controls which apps— such as ringtones, instant messaging, Internet, video, and the like—can run on an iPhone's software. In 2008, Apple launched the 'App Store,' an internet site where iPhone users can find, purchase, and download iPhone apps. Apple has developed some of the apps sold in the App Store, but many of the apps sold in the store have been developed by third-party developers." Noting that Apple receives a 30% commission from any sale of apps developed by third-party developers, the Ninth Circuit went on to explain that "Apple prohibits app developers from selling iPhone apps through channels other than the App Store, threatening to cut off sales by any developer who violates this prohibition. Apple discourages iPhone owners from downloading unapproved apps, threatening to void iPhone warranties if they do so."

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> *K. Todd Wallace, Attorney in New Orleans*

Plaintiffs' complaint went through multiple versions and amendments following complex history of legal procedure at the trial level. The last amended complaint addressed only Apple's monopolization of the iPhone app market. At the trial level, Apple sought and was granted a

dismissal based on statutory standing to sue in an antitrust case.

“Under § 4 of the Clayton Act, ‘any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . . and shall recover threefold the damages by him sustained[.]’” U.S. Supreme Court has limited the definition of any person under the act in Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977) to “only ‘the overcharged direct purchaser, and not others in the chain of manufacture or distribution’". Therefore, the Ninth Circuit framed the issue as “whether Plaintiffs purchased their iPhone apps directly from the app developers, or directly from Apple. Stated otherwise, the question is whether Apple is a manufacturer or producer, or whether it is a distributor. . . . [I]f Apple is a manufacturer or producer from whom Plaintiffs purchased indirectly, Plaintiffs do not have standing. But if Apple is a distributor from whom Plaintiffs purchased directly, Plaintiffs do have standing.”

Apple argued that “it does not sell apps but rather sells ‘software distribution services to developers.’ In Apple's view, because it sells distribution services to app developers, it cannot simultaneously be a distributor of apps to app purchasers. Apple analogizes its role to the role of an owner of a shopping mall that ‘leases physical space to various stores.’" The Ninth Circuit rejected Apple’s argument, noting that “part of the anti-competitive behavior alleged by Plaintiffs is that, far from allowing iPhone app developers to sell through their own ‘stores,’ Apple specifically forbids them to do so, instead requiring them to sell iPhone apps only through Apple's App Store.”

The Ninth Circuit explained that the decision is compelled “on the fundamental distinction between a manufacturer or producer, on the one hand, and a distributor, on the other. Apple is a distributor of the iPhone apps, selling them directly to

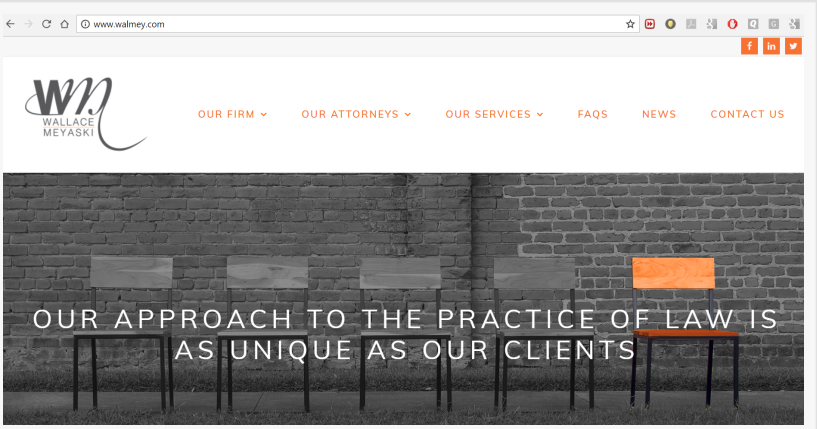
K Todd Wallace, Wallace Meyaski Law Firm, conference room

Office of the law firm Wallace Meyaski (K Todd Wallace)

Logo of Law Firm Wallace Meyaski, K. Todd Wallace

purchasers through its App Store. Because Apple is a distributor, Plaintiffs have standing under Illinois Brick to sue Apple for allegedly monopolizing and attempting to monopolize the sale of iPhone apps."

Mr. Wallace notes: "The issue reached by the Ninth Circuit obviously has potential for far reaching effect in the digital age. Many tech companies, such as Google, will likely be watching the Supreme Court case closely as the Court shapes the antitrust exposure of not only Apple but many others who follow such a business model."



Website of Law Firm Wallace Meyaski, K. Todd Wallace

The Ninth Circuit case is In re Apple iPhone Antitrust Litigation, 846 F.3d 313 (2017), available at https://scholar.google.com/scholar_case?case=13642149723808458466&q=in+re+apple+iphone+antitrust&hl=en&as_sdt=3,47

About K. Todd Wallace

Kenneth Todd Wallace is an attorney and founding partner of the law firm Wallace Meyaski LLC. He has nearly 20 years of experience in the legal and business professions with established excellence in trial advocacy, negotiation, strategic and initiative planning, employment law compliance, government relations, mergers and acquisitions, and team building.

References

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