

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Storm Productions LLC, on behalf of itself
and others similarly situated,

Plaintiff,

v.

Capital One Financial Corporation, Wikibuy
LLC, and Wikibuy Holdings LLC,

Defendants.

Civil Action No. 1:25-cv-102

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Storm Productions LLC brings this class action complaint, on behalf of itself and all others similarly situated, against Defendants Capital One Financial Corporation, Wikibuy LLC, and Wikibuy Holdings LLC (together, “Capital One”) for surreptitiously stealing their rightfully earned affiliate marketing commissions through the Capital One Shopping browser extension. Storm Productions makes these allegations based on personal knowledge as to itself and on information and belief as to all other matters.

INTRODUCTION

1. Capital One Shopping is a free browser extension with over ten million users that claims to help online shoppers search for discounts, find better prices, and earn rewards. But behind this consumer-friendly facade, Capital One uses the extension to poach affiliate marketing commissions from bloggers, influencers, and other content creators who drive online sales.

2. Content creators earn these commissions by promoting products and services to their audiences through affiliate links. These links, provided by online merchants or third-party affiliate networks, contain a unique code identifying the content creator. When a consumer clicks an affiliate link and visits a merchant's website, that unique code is stored in a cookie on the consumer's browser. And if the consumer completes a purchase, the merchant uses the cookie to credit the sale to the content creator and ensure they receive a commission.

3. But Capital One hijacks this system by inserting itself into the transaction at the last minute. Before the consumer completes their purchase, the Capital One Shopping browser extension deletes the content creator's affiliate cookie and replaces it with its own. The result: Capital One pockets the commission, leaving the content creator who generated the sale empty-handed.

4. Storm Productions brings this class action, on behalf of itself and all others similarly situated, to halt Capital One's deceptive practices and seek redress for the harm it has caused.

PARTIES

5. Plaintiff Storm Productions is a limited liability company with its principal place of business in New York, New York.

6. Defendant Capital One Financial Corporation is a holding company incorporated in Delaware with its principal place of business in McLean, Virginia. It holds all assets and liabilities of Defendants Wikibuy, LLC and Wikibuy Holdings, LLC, two subsidiary corporations that originally developed the Capital One Shopping browser extension.

7. Defendants Capital One Financial Corporation, Wikibuy LLC, and Wikibuy Holdings, LLC are collectively referred to in this complaint as "Capital One."

8. Capital One transacts business and is headquartered within this judicial district at 1680 Capital One Drive, McLean, Virginia, 22102-3491.

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because there are at least 100 class members, the total amount in controversy exceeds \$5 million, and at least one class member is diverse in citizenship from Capital One.

10. This Court has general personal jurisdiction over Capital One because Capital One is headquartered in McLean, Virginia, does business in Virginia, and has sufficient minimum contacts with Virginia such that it has purposefully availed itself of the state's laws.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Capital One maintains its principal place of business in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district, including decisions made by Capital One's governance and management personnel.

FACTUAL ALLEGATIONS

I. Affiliate Marketing: A Performance-Based Strategy

12. Affiliate marketing is a multi-billion-dollar industry built on partnerships between online merchants and content creators. Through affiliate marketing programs, merchants enable content creators to promote their products and services in exchange for commissions on resulting sales. These programs aim to drive traffic to merchants' websites and boost sales by leveraging the trust and influence content creators have cultivated with their audiences. Merchants may oversee these programs directly or use affiliate networks, which are third-party intermediaries that connect merchants with content creators and manage their partnerships.

13. Here is how affiliate marketing works. A content creator advertises a merchant’s product or service to their audience and shares a unique affiliate link that directs consumers to the merchant’s website. When a consumer clicks on the link, a cookie—a small text file that ties the consumer’s activity to the content creator—is placed on their browser. Merchants then use this cookie to confirm the content creator referred the consumer and attribute any resulting sale, and the resulting commission, to the creator. The cookie remains active for a set period (commonly 14 or 30 days), ensuring the content creator receives credit for a sale if the consumer completes a purchase within that time frame.

II. The Capital One Shopping Scam: A Free Browser Extension That Comes at a Cost

14. Capital One markets its Capital One Shopping browser extension as a free tool that helps consumers save time and money while shopping online.¹ The tool is available to everyone—“you don’t need to be a Capital One customer to use it.”² “All you need to do,” Capital One explains, “is add the extension to your desktop browser” or download the mobile app.³ Installing Capital One Shopping takes seconds, and it works with all major browsers. Once added, Capital One Shopping promises to “automatically search[] for online coupons, better prices[,] and rewards at over 30,000 online retailers.”⁴ The browser extension boasts over 10 million users.

15. But Capital One Shopping does more than just try to find deals for free. Behind the scenes, the browser extension acts to steal affiliate commissions from content creators by swapping

¹ *Meet Capital One Shopping*, Capital One, <https://www.capitalone.com/learn-grow/money-management/capital-one-shopping/> (last visited Jan. 21, 2025). A browser extension is a small piece of software that adds features to a web browser or to programs used in a browser. *Everything to Know About Browser Extensions*, Microsoft (Mar. 6, 2023), <https://www.microsoft.com/en-us/edge/learning-center/everything-to-know-about-browser-extensions?form=MA13I2>.

² *Id.*

³ *Id.*

⁴ *Id.*

their affiliate cookies for Capital One's own, right as its users are about to complete their purchases. By doing so, Capital One Shopping turns its 10 million unsuspecting users into unwitting participants in a large-scale scheme against content creators, who have themselves also been misled by Capital One Shopping advertisements.

16. When a Capital One Shopping user clicks on a content creator's affiliate link, the link sends them to a merchant's website. Once there, a tracking cookie is placed on the user's browser that identifies the content creator as the source of the referral. The user then adds a product to their cart. At this point, a Capital One Shopping pop-up might appear, offering two options: "Try Codes" or "No Thanks, Activate Rewards." Clicking either button triggers Capital One Shopping to replace the content creator's affiliate cookie with its own—without the user's knowledge.

17. Even when Capital One Shopping fails to find a discount, it still displays a message such as, "We searched for you but didn't find any deals" or "You already have the best price." Clicking these messages likewise prompts Capital One Shopping to replace the original affiliate cookie with its own.

18. But that is not all. Capital One Shopping also has a reward system that offers users points redeemable for gift cards, and the extension entices users to click on pop-ups when they visit merchants' websites with the promise of rewards. Each click allows Capital One to replace the original affiliate cookie with its own.

19. This covert practice of systematically overriding affiliate cookies enables Capital One to divert affiliate commissions from the content creators who rightfully earned them to itself by exploiting the "last-click attribution" industry standard. Under this attribution model, the

affiliate who last referred a consumer to the website before the consumer completes a purchase receives full credit for the sale.

20. Capital One's scheme to steal content creators' affiliate commissions is deceptive, unfair, and unlawful. And as a direct result of Capital One's wrongful actions, Storm Productions and class members regularly lose commissions they rightfully earn.

III. Storm Productions' Experience

21. Since 2008, Storm Productions has operated a popular shopping blog called Madison Avenue Spy that showcases the best deals in the fashion world via affiliate links. The blog has nearly 22,000 subscribers and generates significant traffic. Storm Productions also runs an Instagram account by the same name and a Substack called MadSpy, where it also regularly posts fashion affiliate links. The Instagram account has approximately 110,000 followers, and the Substack has over 12,000 subscribers. In addition to these platforms, Madison Avenue Spy has an online presence on Pinterest, TikTok, X (formerly Twitter), Facebook, and Telegram.

22. Storm Productions invests substantial time and effort into cultivating its follower-base, searching for the best fashion deals from online merchants, and promoting those deals online. Storm Productions regularly partners with merchants, either directly or through third-party affiliate networks, to advertise their products through affiliate links. Storm Productions directly influences millions of dollars in retail purchases every year.

23. For years, Storm Productions has earned substantial commissions on sales generated via affiliate links.

24. On information and belief, Storm Productions would have earned more in commissions but for Capital One's scheme to poach commissions via its Capital One Shopping browser extension. Through this extension, Capital One stole credit for sales that Storm Productions generated with its affiliate links.

CLASS ACTION ALLEGATIONS

25. Under Federal Rule of Civil Procedure 23(a) and (b)(3), Storm Productions asserts claims on behalf of itself and the following proposed class and subclass:

Nationwide class: All persons (corporate or individual) in the United States who have participated in an affiliate marketing program with a United States online merchant and had their commissions diverted to Capital One via the Capital One Shopping browser extension.

New York subclass: All persons (corporate or individual) residing in New York who have participated in an affiliate marketing program with a United States online merchant and had their commissions diverted to Capital One via the Capital One Shopping browser extension.

26. The proposed classes expressly exclude Capital One, its officers, employees, subsidiaries, and affiliates; and the judicial officers presiding over this action, their immediate family members, and judicial staff.

27. This action satisfies all the relevant Rule 23 requirements.

28. The classes are so numerous that joinder of all members is impracticable. On information and belief, members of the class and subclass number in the tens of thousands. The precise number of class members and their identities are unknown to Storm Productions at this time but may be determined through discovery, including of Capital One's records.

29. Storm Productions' claims are typical of other class members' claims because, like every class member, Storm Productions has participated in an affiliate marketing program with at least one United States online merchant and, upon information and belief, has had its commissions diverted by Capital One via its Capital One Shopping browser extension. Storm Productions' claims arise from the same practices and course of conduct that give rise to the claims of the class members.

30. Common questions of law and fact exist as to all class members, and those questions predominate over questions affecting only individual class members. Common legal and

factual questions include but are not limited to: (1) whether Capital One designed its Capital One Shopping browser extension to systematically divert commissions earned by content creators to Capital One; (2) whether the Capital One Shopping browser extension in fact diverted commissions earned by content creators to Capital One; (3) as to the New York subclass, whether Capital One's acts and practices violated the New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349; (4) whether Capital One's acts and practices harmed Storm Productions and class members; (5) whether Storm Productions and class members are entitled to damages and other monetary relief, and if so, what is the appropriate measure of such relief; (6) whether Storm Productions and class members are entitled to declaratory and injunctive relief; and (7) whether Storm Productions and class members are entitled to reasonable attorney fees.

31. Storm Productions is an adequate representative of class members because its interests do not conflict with their interests, it has retained competent counsel experienced in prosecuting class actions, and it intends to prosecute this action vigorously. The interests of class members will be fairly and adequately protected by Storm Productions and its counsel.

32. The class mechanism is superior to other available means for the fair and efficient adjudication of class members' claims. Individual class members may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Capital One's liability. Individual litigation would increase the delay and expense to all parties and multiply the burden on the judicial system by the complex legal and factual issues of this case. Individual litigation would also present a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive

supervision by a single court on the issue of Capital One's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication.

33. Additionally, Capital One has acted or refused to act on grounds that apply generally and uniformly to Plaintiff and class members, such that classwide final injunctive relief and corresponding declaratory relief is appropriate.

CAUSES OF ACTION

Count I

Unjust Enrichment

(On behalf of Storm Productions and the class)

34. Storm Productions repeats and realleges all preceding paragraphs.

35. Storm Productions and class members have an interest, both equitable and legal, in the affiliate commissions to which they were wrongfully deprived. These commissions were rightfully earned by Storm Productions and class members, not Capital One.

36. Through its unjust and improper use of the Capital One Shopping browser extension, Capital One received benefits in the form of commissions for sales that were generated by Storm Productions and class members, not Capital One.

37. Capital One understood that it so benefitted, and it also understood and appreciated that its Capital One Shopping browser extension would cause the harm described in this complaint.

38. But for Capital One's unjust and improper use of its Capital One Shopping browser extension, Capital One would not have received commissions on sales generated by Storm Productions' and class members.

39. Because of Capital One's wrongful conduct, Capital One has been unjustly enriched by the payment of commissions rightfully earned by Storm Productions and class members.

40. Capital One continues to benefit and profit from the Capital One Shopping browser extension, while Storm Productions and class members continue to have their rightful commissions wrongfully diverted to Capital One.

41. Capital One has no justification or authorization for this conduct, and it would be inequitable and unjust for Capital One to retain these benefits. Capital One should be required in equity to make restitution of the diverted commissions to the content creators who earned them.

42. Storm Productions, on behalf of itself and the class, seeks relief as further described below.

Count II
Interference with Prospective Economic Advantage or Expectancy
(On behalf of Storm Productions and the class)

43. Storm Productions repeats and realleges paragraphs 1 through 33.

44. Storm Productions and class members had and have ongoing economic partnerships or business expectancies with merchants whereby they refer their audiences to merchants' websites through affiliate links. In return, the merchants, directly or through affiliate networks, pay them commissions on sales they generate.

45. Capital One is aware or should have been aware of these partnerships and expectancies.

46. Capital One intentionally and unlawfully interferes with and disrupts these partnerships and expectancies through its Capital One Shopping browser extension. As alleged above, this extension replaces Storm Productions' and class members' affiliate cookies with Capital One's cookies, improperly diverting their commissions to Capital One.

47. Capital One either intended to usurp commissions from Storm Productions and class members through the conduct alleged in this complaint or knew that its conduct would divert those commissions to Capital One.

48. As a direct and proximate result of Capital One's intentional and wrongful conduct, Storm Productions and class members have suffered damages in that they were deprived of the commissions they earned for originating sales via their affiliate links.

49. Storm Productions, on behalf of itself and the class, seeks relief as further described below.

Count III
Intentional Interference with Contractual or Business Relations
(On behalf of Storm Productions and the class)

50. Storm Productions repeats and realleges paragraphs 1 through 33.

51. Storm Productions and class members had and have existing contractual or business relationships with at least one online merchant, under which Storm Productions and class members drive sales by promoting merchants' products and services through affiliate links in exchange for commissions on the sales they generate.

52. Capital One knew about these contractual or business relationships. Specifically, Capital One knew that Storm Productions and class members work with merchants to promote products and services via affiliate links. Capital One also knew that Storm Productions and class members earn commissions and that merchants use last-click attribution to assess the sales generated.

53. Capital One's conduct disrupted these pre-existing contractual or business relationships by replacing Storm Productions' and class members' cookies with its own, thereby preventing them from realizing their entitlements under these contracts.

54. Capital One acted intentionally or knew that its actions made performance more expensive or burdensome and would disrupt these pre-existing contractual or business relationships.

55. As a direct and proximate result of Capital One's conduct, Storm Productions and class members suffered economic harm in that they were deprived of the commissions they earned for generating sales via their affiliate links.

56. Storm Productions, on behalf of itself and the class, seeks relief as further described below.

**Count IV
Conversion**

(On behalf of Storm Productions and the class)

57. Storm Productions repeats and realleges paragraphs 1 through 33.

58. Storm Productions and class members had the right to commissions that they earned from online merchants by referring consumers to products and services sold by those merchants via affiliate links.

59. Capital One intentionally and substantially interfered with Storm Productions' and class members' personal property by using its Capital One Shopping browser extension to divert commissions to itself that rightfully belong to Storm Productions and class members.

60. Capital One took possession of these commissions without authorization or justification and exercised ownership over them, depriving Storm Productions and class members of their rightful property. This unauthorized control over the commissions constitutes conversion.

61. Storm Productions' and class members' rightful commissions poached by Capital One are specific sums capable of identification.

62. Capital One's actions have caused Storm Productions and class members significant economic harm by depriving them of their rightful commissions.

63. Storm Productions, on behalf of itself and the class, seeks relief as further described below.

Count V
Violation of the New York Deceptive Practices Act
N.Y. Gen. Bus. Law § 349
(On behalf of Storm Productions and the New York subclass)

64. Storm Productions repeats and realleges paragraphs 1 through 33.

65. Under the New York Deceptive Practices Act, it is unlawful for any person or entity to use deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state of New York.

66. Storm Productions and the members of the New York subclass are considered “persons” for the purpose of the Act.

67. Capital One’s acts, omissions, practices, and nondisclosures as alleged in this complaint constitute unlawful deceptive acts or practices within the meaning of the Act.

68. Capital One engaged in consumer-oriented conduct by directing their deceptive acts and practices to the consuming public and the marketplace, thereby impacting the consumer decision-making process.

69. Capital One’s acts or practices were deceptive and misleading in a material way. Capital One’s actions are likely to mislead a reasonable consumer acting under reasonable circumstances.

70. Storm Productions and members of the New York subclass suffered an injury as a result of Capital One’s deception. Capital One covertly replaces their affiliate cookies with its own to divert their commissions to itself, with no corresponding benefit to Storm Productions or the subclass members. And because the Capital One Shopping extension acted in a covert manner, Storm Productions and subclass members could not have avoided the harm.

71. As a direct and proximate result of Capital One’s wrongful conduct, Storm Productions and subclass members have suffered damages, including lost affiliate commissions

that rightfully belonged to them. The full extent of the damages is not yet fully known and continues to impact Storm Productions and subclass members.

72. There is a causal relationship between Storm Productions' and subclass members' loss and Capital One's actions and practices. But for Capital One's deceptive acts and practices, Storm Productions and subclass members would not have had their commissions diverted to Capital One.

73. At all relevant times, Capital One was willfully and knowingly engaged in the use of an unfair, unlawful, and deceptive practice or act.

74. Storm Productions, on behalf of itself and the subclass, seeks relief as further described below.

PRAYER FOR RELIEF

Storm Productions respectfully requests that the Court:

- a. Certify this case as a class action, designate Storm Productions as class representative, and appoint its attorneys as class counsel;
- b. Enter judgment in favor of Storm Productions and class members;
- c. Award injunctive and declaratory relief as is necessary to protect the interests of Storm Productions and class members, including to prevent Capital One from diverting commissions to itself for sales it did not generate;
- d. Award damages, including actual, general, special, incidental, statutory, treble, punitive or exemplary, liquidated, and consequential damages, to which Storm Productions and class members are entitled;

- e. Award disgorgement of all ill-gotten profits and restitution of all revenues obtained from Storm Productions and class members as a result of Capital One's unlawful conduct;
- f. Award reasonable attorney fees and costs;
- g. Award pre- and post-judgment interest as allowed by law;
- h. Grant any further relief that the Court deems necessary and proper.

JURY TRIAL DEMAND

Plaintiff demands a jury trial for all issues so triable.

Dated: January 21, 2025

Respectfully submitted,

/s/ Steven T. Webster

Steven T. Webster (VSB No. 31975)

WEBSTER BOOK LLP

2300 Wilson Blvd., Suite 728

Arlington, VA 22201

Telephone: (888) 987-9991

swebster@websterbook.com

Norman E. Siegel* (Missouri Bar No. 44378)

Barrett J. Vahle* (Missouri Bar No. 56674)

Joy D. Merklen* (Missouri Bar No. 77069)

STUEVE SIEGEL HANSON LLP

460 Nichols Road, Suite 200

Kansas City, Missouri 64112

Telephone: (816) 714-7100

siegel@stuevesiegel.com

vahle@stuevesiegel.com

merklen@stuevesiegel.com

Counsel for Plaintiff

** Pro hac vice forthcoming*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Storm Productions LLC

(b) County of Residence of First Listed Plaintiff New York (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Webster Book LLC, 300 North Washington Street, Suite 404, Alexandria, VA 22314 (888) 987-9991

DEFENDANTS

Capital One Financial Corporation, Wikibuy LLC, and Wikibuy Holdings LLC

County of Residence of First Listed Defendant Fairfax (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 440 Other Civil Rights, 625 Drug Related Seizure, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332(d) - CAFA. Brief description of cause: Misappropriate of affiliate marketer commissions

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Trenga DOCKET NUMBER 25-cv-0023

DATE January 21, 2025

SIGNATURE OF ATTORNEY OF RECORD /s/ Steven T. Webster

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE