

FTC Says “Listening” Service Was All Talk

Gonzalo E. Mon

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Have you ever talked to your friends about something only to see an ad for it appear on your phone a moment later? Like maybe you were talking about Kelley Drye and a moment later saw [this post](#) announcing that more than 25 of the firm’s attorneys were recognized by Chambers USA? You may have wondered whether your technology was listening to you. Maybe, but probably not if it was provided by Cox Media Group (“CMG”).

CMG and two of its agencies—MindSift and 1010 Digital Works—advertised a service that could use a special algorithm to listen in on and detect pertinent conversations from smart devices in order to target ads to consumers within a specific geographic region. According to CMG’s ads: “We can identify buyers based on casual conversations in real time. It may seem like black magic, but it’s not—it’s AI.”

According to the FTC, though, it was neither black magic nor AI. In fact, the FTC alleged that the service did not listen in on consumers’ conversations or use voice data at all. Moreover, the service did not accurately place ads in customers’ desired locations. Instead, the FTC alleged that the service consisted of CMG reselling—at a significant markup—email lists obtained from other data brokers.

The companies also claimed that consumers had opted in to the (non-existent) listening by agreeing to terms of service for certain apps. According to the FTC, accepting an app’s terms does not constitute consent for an “invasive service” of this type. In fact, in its press release, the FTC notes that if the “service had functioned as advertised, this collection and use of consumers’ voice data without adequate consent would itself violate Section 5 of the FTC Act.”

The FTC charged all three companies with violating the FTC Act. The FTC also charged MindSift and 1010 Digital Works with a second count of violating the FTC Act by providing CMG with the “means and instrumentalities” to deceive customers through marketing materials, sales pitches, and responses to questions that misled potential customers about the service.

Under the proposed settlement orders, CMG must pay \$880,000 while MindSift and 1010 Digital Works will each pay \$25,000, which will be used to provide redress to customers impacted by the companies’ practices. In addition, each company agreed not to make certain misrepresentations about its services.

In 2023, the FTC provided some helpful guidance to companies making AI claims. Among other things, the FTC warned against claiming that something is powered by AI if it isn’t. “FTC technologists and others can look under the hood and analyze other materials to see if what’s inside matches up with your claims.” Although the current administration seems to have taken that guidance down, you can read our summary [here](#).