

“Geofencing” and Health-Related Targeted Advertising: Massachusetts AG Has Something to Say

Alysa Z. Hutnik

April 20, 2017

Earlier this month, the Massachusetts Attorney General [announced](#) that her office had reached a settlement with a digital advertising company, Copley Advertising, Inc. (Copley), prohibiting the company from using mobile geofencing technology to target women at or near Massachusetts healthcare facilities to infer the health status, medical condition, or medical treatment of an individual.

Geofencing technology, as the name implies, takes account of a mobile user’s geolocation and enables advertising companies to tag smartphones within a geographic virtual fence and push targeted messages to consumers. Mobile advertisers can place targeted ads within the apps and browsers of these tagged consumer smartphones when users are in the virtual fence and, in some cases, for up to a month after the user has left the virtual fence.

In the advertising campaign at issue, Copley set mobile geofences at or near healthcare facilities to “abortion-minded women” who were sitting in waiting rooms at health clinics in a number of cities around the country. The potentially unwanted ads included prompts such as “Pregnancy Help,” “You Have Choices,” and “You’re Not Alone,” that, when clicked, took the consumer to a webpage with abortion alternatives. According to Copley’s representations, the advertising company had not yet engaged in geofencing campaigns near Massachusetts clinics.

The Assurance of Discontinuance resolves the Massachusetts Attorney General Office’s allegations that Copley’s advertising practices would violate consumer protection laws by:

- Tracking consumers’ geolocation near or within medical facilities,
- Disclosing that information to third-party advertisers, and
- Targeting consumers with potentially unwanted advertising based on inferences about a private and sensitive health condition without the consumer’s consent.

The settlement is a good reminder for both advertisers and ad tech to consider the privacy implications of targeted advertising, whether in geofencing or other digital marketing strategies, and how privacy and broader consumer protection laws may apply.