The Good News: Your Phone Wasn't Listening. The Bad News: They Told Their Customers It Was.

August 30, 2026 - Suppose I told you a company was selling advertisers a rather remarkable new service for advertising. They said they had technology that could listen to conversations picked up by consumers' smart devices. Anything said within earshot of their cell phone. Or maybe a conversation taking place near you smart TV or speaker. Artificial intelligence would figure out what people were talking about, determine what they might want to buy and then help businesses serve ads to those people in specific geographic areas.

Talk about needing a new roof when you're near your phone, and perhaps a roofing ad would find you. Mention that the refrigerator is making a noise that sounds like a small tractor trying to escape from the kitchen, and maybe an appliance dealer would suddenly appear in your advertising feed.
Creepy? Absolutely.

But don't worry. According to the companies selling the service, consumers had "opted in."

Now suppose I told you there were two problems with this business proposition.

First, according to the Federal Trade Commission, consumers had not meaningfully opted in. Second, the service being sold didn't actually have the capability it claimed to have in the first place.

Would you believe me?

Well, according to the FTC, that's essentially what these companies did, and the agency brought a case against CMG Media Corporation, which does business as Cox Media Group, along with marketing companies MindSift LLC and 1010 Digital Works LLC because of it. And it may be one of the more wonderfully ironic consumer protection cases to come along in a while.

The service was called "Active Listening," which, in retrospect, may have been an unfortunate choice of name.

According to FTC complaints, the companies promoted an AI-powered advertising service that supposedly used a special algorithm to identify relevant conversations picked up by smart devices in real time. Advertisers could then use that information to target consumers in particular geographic areas.

There was just one rather substantial problem.

According to the FTC, Active Listening wasn't actively listening... to anything or anyone... because the service didn't function as described. According to the FTC, the Active Listening service did not collect or use consumer voice data at all. Instead, the companies purchased consumer lists from data brokers... just like advertising platforms have always done... and delivered ads based on that information. According to the FTC they were doing this at a significant markup too.

You might think that with this great new service that didn't work anything like the way it was advertised, they would at the very least make sure the part they actually were providing worked well for their customers. Apparently, that didn't go so well either. According to the FTC, the companies also allegedly failed to accurately place advertisements in the geographic areas their customers requested.

That's quite a technological... uh, hum... we mean ethical... journey.

Start with an AI system that supposedly listens to conversations occurring around smart devices, analyzes what people say and turns those private conversations into precision-targeted advertising. End with an email list that apparently couldn't always find the right ZIP code.

But this is where the story goes from merely strange to almost perfectly ironic.

The FTC says the companies also represented that consumers had opted into Active Listening. According to the agency, they hadn't.

Instead, the companies claimed consumers had given permission through the terms of service people agree to when downloading and using apps.

You know those terms. The ones approximately the length of "War and Peace" that appear when you are trying to install an app and stand between you and the "Continue" button.

The FTC was not impressed with that argument. The agency said clicking through mandatory terms of service does not constitute meaningful opt-in consent for an invasive service involving the use of voice data from inside people's homes. And then the FTC delivered the message that makes this entire story special.

If Active Listening had actually worked the way the companies said it worked, the FTC said collecting and using consumers' voice data without adequate consent would itself have violated Section 5 of the FTC Act.

Think about that for a moment. According to the government's case, these companies got themselves into trouble by selling a surveillance capability they didn't actually have. But had they actually possessed that capability and used it without adequate consumer consent, the FTC says that would have violated the law too.

That's quite a predicament. Don't do what you said you were doing without adequate consent because that's illegal. But don't say you're doing it when you're not doing it either because, well, that's how we got here

It's the regulatory equivalent of a true-or-false test where somehow both answers are wrong.

The FTC announced proposed settlements in May and finalized the orders on Aug. 27. Cox Media Group must pay $880,000. MindSift and 1010 Digital Works must each pay $25,000. That's $930,000 altogether, with the money intended to provide redress to Cox Media Group customers affected by the practices alleged by the FTC.

It is important to be precise about what happened here.

The FTC did not find that Cox Media Group secretly activated your phone's microphone. Quite the opposite.

The government's case says the companies represented that their technology could use conversations captured by smart devices when the service actually wasn't based on voice data.

Nor is this a criminal case. The FTC's action concerns alleged violations of federal consumer protection law.

But the government's position on the hypothetical surveillance system is remarkably clear: If the system really had collected and used people's voice data as advertised, without adequate consent, that would itself have violated the FTC Act.

So perhaps the strangest piece of good news to emerge from a federal consumer protection case this year is this:

The alleged privacy invasion wasn't real.

The alleged claim that they could invade your privacy was.

There is another lesson here that goes well beyond these three companies. For years, consumers have wondered whether their phones are secretly listening to conversations in order to serve them eerily appropriate advertisements. You mention a vacation. Suddenly you see hotel ads. You talk about buying a mattress. Mattresses begin following you around the internet like particularly comfortable stalkers.

There are plenty of less dramatic ways advertisers and data brokers can learn an extraordinary amount about consumers without secretly turning on a microphone. Browsing behavior, app activity, location information, purchases, online searches and information assembled by data brokers can all contribute to detailed advertising profiles.

In this case, according to the FTC, the supposedly futuristic AI surveillance product ultimately involved email lists purchased from data brokers. Sometimes Big Brother apparently doesn't need to listen through the wall. He can just buy a mailing list.

The final FTC orders also mean this story isn't over the moment the checks are written. The orders prohibit the companies from misrepresenting the qualities or features of their advertising and marketing services. They also prohibit misrepresentations about collecting or using voice data, whether consumers consented to the collection, use or disclosure of voice data, and the geographic targeting capabilities of their services. And this time there is an additional incentive to pay attention to the rules. A final FTC consent order carries the force of law with respect to future conduct. The FTC says each violation of such an order can result in a civil penalty of up to $53,088. That is per violation.

Exactly how penalties would be calculated in any future case would depend on the facts and the government's enforcement action. It would be wrong to simply multiply $53,088 by every consumer, advertisement or day and announce some imaginary billion-dollar fine. But the important point is straightforward. Before, the FTC accused these companies of making deceptive claims. Now they have final federal orders telling them what they cannot misrepresent. Ignoring those orders could get considerably more expensive.

And the expense of this mistake may not end with the FTC settlement. Advertisers might understandably be a little more cautious about who they purchase advertising services from after reading what the FTC says happened here.

Personally, I try to stay away from doing business with companies that tell customers they can provide something the government says they couldn't actually provide.

But maybe that's just me.

by Jim Malmberg

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