

FTC Reaches \$950,000 Settlement Over Location Tracking

JUNE 24, 2016

The FTC announced this week that it has reached a settlement with a Singapore-based advertising network that provides advertising platforms for mobile apps, with 19% of its revenue generated through North America. According to the FTC's complaint, InMobi's software development kit for app developers lets apps display third party ads (including banner, native, and interstitial ads) on iOS and Android devices. To serve ads, InMobi offers geo-targeting solutions, include targeting based on current location, types of geo-activities, and based on historic locations.

According to the FTC, even if consumers had elected not to have their location tracked, InMobi would still gather location information using WiFi networks to serve geo-targeted ads. In its advertising, InMobi represented to potential clients that consumers could control whether or not their locations were tracked for advertising purposes, and many clients made representations about these choices to end consumers. In fact, the FTC alleged, consumers might be tracked through WiFi information even if they had opted out of having their location tracked. These practices, the FTC alleged, were deceptive in violation of the FTC Act.

In addition to FTC Act violations, the FTC also alleged that InMobi violated the COPPA Rule. As part of the software purchase process, clients who integrate the InMobi software were able to indicate to InMobi that their apps are directed to children under 13. However, the InMobi location services were still used on these apps, without –the FTC alleged- InMobi taking steps to make sure it complied with COPPA. Indeed, according to the FTC, the COPPA Rule was violated as the privacy notice did not fully explain information collection practices, and parents were not provided with direct notice, nor was consent obtained, prior to collection of information from children.

As part of the settlement, InMobi agreed to remedy the COPPA violations and not to collect location information without first ensuring that consumers consented to such collection and have not revoked that consent. Information already gathered, InMobi agreed, also would no longer be used, and agreed to put together a comprehensive privacy program that took into account privacy during product development, among other things. In addition, InMobi will have regular privacy assessments conducted by third party providers. As part of the settlement there was a civil penalty of \$4,000,000, which was suspended with payment by InMobi of \$950,000 “based [per the FTC] on its financial conditions.”

TIP: This case demonstrates the FTC's concerns about compliance with COPPA and the FTC Act in the mobile environment. Companies operating mobile apps that include third party advertising can use this decision as a

framework for assessing the practices of their ad network and development vendors. Questions to ask include not only if there is geo-targeting, but also if geo-targeting is done through information gathered on WiFi networks.

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