

## FTC Asked to Review Mobile Advertising Practices

By Louis J. Levy<sup>f</sup>

On January 13, 2009, the Center for Digital Democracy (“CDT”) and the U.S. Public Interest Research Group (“USPIRG”) filed a complaint with the Federal Trade Commission, reflecting concerns over

mobile advertising’s impact on privacy and dissatisfaction with the mobile advertising industry’s self regulatory efforts.

The complaint amends a November 2006 complaint raising similar concerns

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about online advertising. It asks the FTC to launch a formal investigation of mobile advertising practices in five areas: behavioral targeting, location-based targeting, user tracking/mobile analytics, audience segmentation and data mining.

The privacy issues raised in this most recent mobile advertising complaint are similar to those mentioned in the earlier online advertising complaint, but they also reflect technological advances of the last few years that make it easier for consumer information to be collected, analyzed and used. For example, the complaint notes that mobile ad-serving platforms can generate targeted advertisements to mobile devices based on information collected about a user's past behavior. However, users, particularly young users, may be unaware that this data, which may be personally identifiable, is being collected at all.

The complaint also explains that mobile advertisers can use global positioning and related technologies to pinpoint a user's location and match that user's profiles to generate ads for nearby businesses, again without the user's notice and consent. Similarly, the complaint details the ability of mobile advertisers to segment consumers according to age, race, ethnicity and sexual orientation, observing that "mobile data mining practices are constantly improving as companies devise new ways to extract greater quantities of more precise personal data from consumers."

To address these issues, USPIRG and CDT have asked the FTC to:

- Mandate "true notice and disclosure" requirements regarding the type of

information collected by mobile advertisers and how that information will be used;

- Redefine "unfair and deceptive" to apply to the mobile arena so "consumers understand how tracking and targeting technologies can exploit their geographic location and Mobile Identification Number . . . of their phones;"
- Review existing mobile marketing standards groups and the self-regulatory proposals that currently exist;
- Open an inquiry and propose rules to protect youth from unfair or deceptive mobile marketing practices.

Whether or when the FTC will act on this complaint is an open question. However, the FTC has taken action against several online advertisers for unfair and deceptive practices over the last few years, enjoining deceptive practices such as drive-by downloads, generation of pop-up advertisements without attribution, and providing software that is difficult to uninstall. Underlying all of these cases is the principle that consumers are entitled to notice and the opportunity to give informed consent to the installation of software programs on their computers, and to the collection and use of data garnered from their computers.

The FTC's actions in the online advertising arena may provide some indication of how the agency could address privacy and related issues in mobile advertising.