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Client Alert: Smart TV Manufacturer to Pay \$2.2 Million to Settle FTC Data Privacy Suit

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CLIENT ALERT | 2.8.2017

“Smart” television manufacturer VIZIO, Inc. has agreed to pay \$2.2 million to settle charges brought by the Federal Trade Commission (FTC) and New Jersey Attorney General arising from VIZIO’s alleged collection and use of detailed viewing history on 11 million of its smart TVs without consumers’ knowledge or consent. The settlement underscores the importance of clearly communicating data collection and use practices, and obtaining affirmative consent when such collection and use would not have been reasonably anticipated by a consumer.

The complaint alleges that since 2014 VIZIO’s smart TVs had been transmitting certain pixel information via the TV’s internet connection. When this information was compared with a database of television and movie content, VIZIO was able to assemble a consumer’s second-by-second viewing history. Using the television’s IP address, VIZIO used a data aggregator to tie this viewing history to a consumer’s demographic information, including sex, age, income, marital status, household size, education, home ownership, and household value. The complaint alleges that VIZIO sold this data to third parties, who used it for various purposes, including targeted advertising.

The FTC and New Jersey Attorney General asserted that VIZIO’s smart TV tracking is unfair and deceptive under the FTC Act and New Jersey consumer protection law. Notably, the complaint charges that VIZIO had an affirmative obligation to disclose its data tracking practices and obtain affirmative consent because it “engaged in these practices through a medium that consumers would not expect to be used for tracking.”

In addition to the \$2.2 million payment, the court settlement requires VIZIO to prominently disclose its data tracking practices to consumers separate and apart from any privacy policy, terms of use, or other similar document, and to obtain affirmative express consent before collecting any such data. VIZIO also agreed to delete all viewing history that it collected prior to March 1, 2016, to implement a comprehensive privacy program for new and existing technology, and to obtain

biennial assessments of its privacy program from a third-party professional.

This action highlights that a business must customize its notice and consent practices based on the expectations of a reasonable consumer for novel or unexpected data collection practices, or risk facing allegations that the failure to provide the consumer with heightened notice and an affirmative opt-in when needed constitutes an unfair or deceptive practice. For questions regarding your data collection practices, please contact John Landolfi, Chris Wager, or your Vorys attorney.