



Alert

Consumer Protection Group

To: Our Clients and Friends

March 17, 2011

FTC Takes A Bite Out Of Cookie-Based Behavioral Advertising

On March 14, 2011, the Federal Trade Commission (“FTC”) announced a settlement with a behavioral advertising company that places cookies in consumers’ internet browsers to track online activities. This settlement marks one of the agency’s first enforcement actions against a behavioral advertising company. The settlement also signals that the FTC has begun to act on its repeated warnings about scrutinizing behavioral advertising more closely.

According to the FTC’s complaint against Chitika, Inc., a behavioral advertising company, the company represented to consumers that they could “opt-out” of online tracking; however, the company continued to track consumers after they opted-out, often reinstating cookies that permitted online tracking in as little as 10 days. The complaint and consent order emphasize the FTC’s belief that consumers’ decisions to opt-out should be durable. The consent order also provides what the FTC views as best practices when engaging in behavioral advertising including:

- Placing visible opt-out links in ads,
- Placing visible notices on company homepages about data collection practices, and
- Creating a simple mechanism that allows consumers to opt-out of data collection.

The enforcement action against Chitika may be the start of the “day of reckoning” referred to by FTC Chairman Jon Leibowitz in February 2009 in connection with the *FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising*. The action comes just months after Chairman Leibowitz’s statement in December 2010 that “self-regulation of privacy has not worked adequately and is not working adequately for American consumers,” and that he expects to “see more privacy cases in the coming weeks and months.”

If you would like further information on how to comply with the data privacy and security laws, or on the FTC’s recent enforcement action, feel free to contact [Josh James](#) or [David Zetoony](#) in Washington D.C., at 202-508-6000; [Rebecca Nelson](#) in St. Louis, at 314-259-2000; or [Andrew Klungness](#) in Santa Monica, at 310-576-2100.

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