

## Full Summary of the VIZIO Complaint and Stipulated Order

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*By Alex Reynolds, Paul Glist, and Christin S. McMeley*

### The Complaint

The FTC and New Jersey AG alleged violations of the FTC Act and the New Jersey Consumer Fraud Act (CFA), both of which prohibit unfair and deceptive acts and practices. The agencies identified problems with (1) VIZIO's business practices and (2) its representations to consumers regarding its data collection practices. VIZIO's practices allegedly caused consumer injury.

#### Business Practices

According to the Complaint, VIZIO did the following actions that informed the agencies' unfairness analysis:

- Sold televisions that “continuously track what consumers are watching, and transmit that information to [VIZIO] through VIZIO Inscape Service’s proprietary ACR software, which is turned on by default.”
- Remotely installed ACR software on previously-sold televisions that did not have ACR software on them at the time of sale.
- Transmitted what a consumer was watching on a “second-by-second” basis using the ACR software, and stored those transmissions indefinitely on VIZIO’s servers.
- Periodically collected device level information (such as MAC addresses) about the television and nearby wireless devices.
- Earned “revenue by providing consumers’ television viewing history to third parties through licensing agreements, on a television-by-television basis” for the purposes of audience measurement (using persistent identifiers), analyzing advertising effectiveness (including cross-device tracking), and targeting advertising to consumers based on their television viewing data.
- Provided consumers’ IP addresses to a data aggregator that matched that information to particular consumers or households, and in turn created demographic data.

The Complaint alleged that these actions met the test for unfairness in the FTC Act and “unconscionable” practices in the CFA.

## Representations to Consumers

The Complaint also alleged that VIZIO customers “received no onscreen notice of the collection of viewing data” and that ACR tracking was on by default in televisions sold after February 2014. On televisions that previously did not have ACR software, but were updated to include it, consumers received a short pop-up notification that “provided no information about the collection of viewing data or ACR software. Nor did it directly link to the settings menu or privacy policy.” The agencies further described how the settings menu labeled “Smart Interactivity” did not reference data collection. Accordingly, the Complaint alleged that VIZIO made misrepresentations to consumers about the nature of its data collection.

These omissions meant that “[c]onsumers have no reason to expect that [VIZIO] engaged in second-by-second tracking of consumer viewing data by surreptitiously decoding content and sending it back to their own servers. Further, [VIZIO’s] representation were not sufficiently clear or prominent to alert consumers to their practices related to data collection and sale of licenses.”

The FTC and New Jersey AG made three claims against VIZIO:

*Unfair Tracking:* VIZIO’s use of ACR technology to “comprehensively” collect viewers’ “sensitive” information from VIZIO televisions and attached devices, and its disclosure of that data to third parties for advertising purposes, were “practices through a medium that consumers would not expect to be used for tracking.” Additionally, VIZIO did not obtain consumers’ consent. Such collection without consent met the test for unfairness under the FTC Act; namely, VIZIO “has caused or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves.” Similarly, the complaint alleged that VIZIO’s tracking was an “unconscionable commercial practice” that violated the CFA.

*Deceptive Omission Regarding Smart Interactivity:* VIZIO’s failure to adequately disclose that its Smart Interactivity feature collected data was a deceptive practice under the FTC Act and an unconscionable commercial practice and/or omission of material fact under the CFA.

*Deceptive Representation Regarding Smart Interactivity:* VIZIO represented that the Smart Interactivity feature would provide program offers and suggestions to consumers, but it did not. Again, this gap between representation and practice was alleged to be a deceptive under both the FTC Act and CFA.

## Stipulated Order

The Stipulated Order settling the case imposed the following conditions on VIZIO (which did not admit or deny any of the agencies' allegations):

- VIZIO must not misrepresent the extent to which it collects, uses, maintains, or protects the privacy and security of the Covered Information, which is “information collected from a VIZIO internet-connected device” that includes product registration data, content viewing data, IP address, user identifiers, geolocation data, and any data in combination with those data points. It also must not represent the purpose for which it collects this data.
- Prior to collecting viewing data (information about the content of what is being viewed and information derived from or combined with it), VIZIO must “prominently disclose” to the consumer—separate from its privacy policy or terms of use—information about the type and purpose of viewing data that is collected. It must also obtain the consumer’s affirmative express consent to collect and use viewing data at the time the disclosure is made, and at any time material changes are made. It must allow the consumer to revoke consent and explain how that revocation mechanism works.
- Within 120 days of the entry of the order, VIZIO is required to delete viewing data collected prior to March 1, 2016 unless a consumer has given consent or as required by law.
- VIZIO must establish a comprehensive privacy program tailored to its size and complexity that addresses privacy risks of new and existing products to consumers and protect the privacy and confidentiality of Covered Information.
- VIZIO must obtain an initial and thereafter biennial privacy assessments from a third party for 20 years.
- One year after the date of issuance of the Order, VIZIO must make a compliance report to the FTC and New Jersey AG detailing the actions it has taken to remedy its privacy and security practices.
- VIZIO must maintain records related to its collection and use of Covered Information for 20 years.
- VIZIO must pay the FTC \$1.5 million and the New Jersey Division of Consumers Affairs \$1 million. (\$300,000 of this sum will be automatically vacated after 5 years from the effective date of the Order if VIZIO complies with it.)