

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Mark R. Meador

In the Matter of

MINDSIFT LLC, a limited liability company.

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that MindSift LLC, a limited liability company (“MindSift” or “Respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent, MindSift LLC, is a New Hampshire limited liability company with its principal office or place of business at 142 Main Street, Suite 405, Nashua, NH 03060.
2. Respondent, working in concert with 1010 Digital Works LLC (“1010 Digital”) and its sole member Dmitriy Shteynbuk, has advertised, offered for sale, and sold advertising and marketing services to small businesses.
3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
4. In 2023, Respondent, in concert with 1010 Digital, offered “Active Listening,” a marketing service, directly to small businesses and on a white-label basis to a large marketing firm, CMG Media Corporation d/b/a Cox Media Group (“CMG”), for resale to CMG’s small business customers. Respondent described Active Listening as a marketing service that would allow a local advertiser to know exactly when a potential consumer is in the market for the advertiser’s services, in real time and in their local area, based on the consumer’s conversations overheard by smart devices.
5. From 2023 through mid-2024, in presentations to customers considering using or offering Respondent’s Active Listening service, Respondent claimed the following:
 - a. Active Listening relies on “the power of voice.”
 - b. Active Listening can “identify buyers based on real-time conversations.”

- c. Active Listening “technology [] harvest[s] virtually all pre-purchase discussions in real time around the specific keywords set, based on your company’s product or service.”
- d. “Yes, your devices are listening to you.”

6. Respondent provided language for CMG to use when marketing Active Listening to its small business customers, encouraging CMG to ask: “Where do you want us to listen?”

Respondent also ghost-wrote responses to skeptical CMG customers:

Our platform consumes opted-in user behaviors that are unmatched to a user at the time of our acquisition. Our algorithm will use a personal identifier, most commonly an email address to match behaviors generated via Voice from IoT devices, Search, DSP’s [sic], Data Providers, Publishers and predict where they are in the “buying funnel” and how likely they are to convert for a specific product or service based on other users that have displayed such behaviors. We generate a Custom Audience List that can be uploaded into variety of platforms, thus you will receive additional validation when Facebook or Google will match those users; validate they are opted in and serve ads. Voice related behaviors make up 40%-50% of behavior volumes we consume....

7. Respondent represented, and furnished marketing copy to CMG stating, that through Active Listening, small businesses could advertise to potential new consumers in the small businesses’ desired locations, for example a ten mile radius around certain zip codes.

8. Respondent represented, and furnished marketing copy to CMG stating, that consumers “opted-in” to voice data collection and use. When questioned about the purported lawfulness of the service, Respondent maintained that users “opted-in” to the voice data collection and use: “Google will ... validate they are opted in...” As evidence of this opt-in, Respondent relied on purported consent buried in the terms of service for apps and devices that consumers are required to accept before using the product: “You may not realize it, but when you download apps, set up new devices you ‘accept’ the terms, and those terms include allowing them to access your microphone.”

9. Respondent separately represented, and furnished information to CMG to relay to its customers, that “all data we sell is sourced exclusively from users who have explicitly opted in to share their data.”

10. Respondent’s representations about its Active Listening service were false or misleading. Contrary to Respondent’s statements, smart devices with voice collection capabilities did not transmit voice data to Respondent’s Active Listening service. In fact, Respondent’s Active Listening service did not collect or use voice data in any manner. Rather, Respondent’s advertising and marketing services were nothing more than consumer email list buying, an industry practice where data brokers sell lists of email addresses of individuals presumed to have particular interests or demographic characteristics. Respondent resold these lists at a significant markup over the cost of the data.

11. Contrary to Respondent's representations that consumers had consented to the collection and use of their voice data, Respondent did not obtain consent from consumers to collect or use voice data for marketing purposes.

12. Although Respondent claimed to allow small businesses to reach consumers in particular localities (for example, within a ten-mile radius of Orlando, Florida), Respondent's Active Listening service generated lists of consumers from across the country, with only a fraction of consumers located near the small business advertising customer.

Count I

Misrepresentations – Collection and Use of Voice Data; Consent; Geotargeting

13. As described in Paragraphs 4-9, in connection with the advertising, promotion, offering for sale, or sale of Respondent's Active Listening marketing service, including through the use of the service name, Respondent has represented, directly or indirectly, expressly or by implication, that its service:

- a. Collected and used voice data from smart devices;
- b. Used voice data from users that gave consent for this purpose; and
- c. Created lists of consumers solely located in particular geographic areas of interest to small businesses.

14. In fact, as set forth in Paragraphs 10-12, Respondent did not collect or use voice data as part of the Active Listening service, did not obtain consent for the collection or use of voice data, and did not create lists targeting consumers in particular geographic areas. Therefore, the representations set forth in Paragraph 13 are false or misleading.

Count II

Means and Instrumentalities to Engage in Deception

15. Through the means described in Paragraphs 4-9, Respondent has furnished CMG with language for Active Listening's marketing materials, sales pitches, and responses to customer questions that misleads small businesses about the material qualities of the Active Listening service, such as by falsely stating that Active Listening relies upon voice data from smart devices in the small businesses' local areas.

16. By furnishing CMG with such materials, Respondent has provided the means and instrumentalities for the commission of deceptive acts and practices. Consequently, this practice is a deceptive act or practice.

Violations of Section 5

17. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this _____ day of _____, 20 __, has issued this complaint against Respondent.

By the Commission.

April J. Tabor
Secretary

SEAL: