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Categories:

[Privacy Class Actions](#)

I'm Sorry, Motion Denied: Washington District Court Rejects Second Try at Class Action Suit Over Amazon Alexa's Collection of Voice Data

In June 2022, a group of plaintiffs brought a putative class action against Amazon.com ("Amazon") alleging the company violated several statutory and common law rights through its use of voice data collected through Alexa, its digital assistant software. After the court granted Amazon's motion to dismiss, the named plaintiffs moved for leave to file an amended complaint. On March 29, 2023, in [James Gray and Scott Horton v. Amazon.com, et. al.](#), the United States District Court for the Western District of Washington denied the motion, concluding the plaintiff's proposed amended complaint (PAC) failed to allege new material facts.

The PAC alleged that Amazon failed to disclose to its consumers that it would use the data collected from the voice recordings made by Alexa devices for the purposes of targeted advertising. Accordingly, the plaintiffs asserted, as they had done previously, that Amazon: (1) breached the implied covenant of good faith and fair dealing; (2) violated Washington's Consumer Protection Act (CPA) and Personality Rights Act (PRA); and (3) violated common law privacy rights.

The court dismissed the plaintiffs' implied covenant claim because the PAC "merely repeat[ed] the same arguments the Court ha[d] already rejected." For example, the court previously rejected the plaintiffs' argument that Amazon's terms and conditions failed to inform them of Amazon's use of their personal information for targeted advertising purposes. In the PAC, the plaintiffs sought to base the amended claim on the terms and conditions that were in effect at the time of purchase. The court reaffirmed its prior position that "the applicable policies do not create any implied duty on Amazon's part to refrain from using Alexa-captured voice data to inform targeted advertisements," and noted there were no material differences in the language between the two terms and

conditions. In short, the court found the plaintiffs were on notice of Amazon's policies (both past and present), which allowed for the collection and processing of its voice data for advertising purposes.

The court did observe, however, that the PAC provided an additional allegation that the plaintiffs "'could not have determined how Amazon used their data from Amazon's disclosures at the time they purchased their Alexa-Enabled Device. They therefore could not have avoided injury by making a fully informed decision not to buy the Device.'" According to the plaintiffs, the additional allegation cured the deficiencies of the original complaint and, thus, established a basis for its CPA and common law intrusion upon seclusion claims. Accepting the plaintiffs' contention as true, the court nevertheless reaffirmed its prior position, holding that whether or not Amazon's public statements were deceptive is not at issue because the PAC "failed to plead that the statements caused their alleged injuries."

Finally, under the PRA, "every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness." A cause of action arises under the PRA, therefore, when "any person ... uses or authorizes the use of a living or deceased individual's ... voice ... on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising ... without written or oral, express or implied consent of the owner." The plaintiffs argued this language did not require them to allege Amazon used their voice data in an advertisement in order to sustain a cause of action. The court, however, characterized the argument as an attempt to seek reconsideration of the court's prior holding, which found that the plaintiffs failed to allege that their voice data was "ever incorporated or otherwise used 'on or in goods, merchandise, or products,' or in advertisements for any 'products, merchandise, goods, or services' that were targeted at them (or at anyone else)." Accordingly, the court denied the motion for leave to amend and did not give the plaintiffs another opportunity to amend.

Fed. R. Civ. P. 15 mandates that a motion for leave to amend a complaint shall be freely given "when justice so requires." The *Gray*

v. Amazon.com decision exemplifies the bounds of where that liberal standard ends. Indeed, the addition of a new document or allegation may serve to cure procedural deficiencies only when those additions materially change the facts as alleged in the proposed amended complaint. Therefore, parties bringing or defending against these types of claims should be keenly aware of the need to provide new “material” facts to a proposed amended complaint. If not, such amendments will certainly be considered futile and lead to a dismissal with prejudice.

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