

CONSENT IN THE AGE OF ALEXA, WITH DANIELLE IZZO

By Meghan Hemingway | April 22, 2024 | Lawyer Limelights, Labaton Sucharow



With technology advancing at a breakneck speed, it's a practical axiom that burnt out consumers aren't reading the fine print before they accept terms and conditions. We know our data is being mined, and often feel at a loss about any possible recourse. This is where Danielle Izzo is stepping into the ring.

Izzo is a rising star at Labaton Keller Sucharow. She started as a summer intern and before ink was dry on her bar exam, Izzo had accepted an offer at Labaton and was building her role in Consumer Protection and Data Privacy at the firm. She's been with them ever since and has steadily built her practice, more than earned her salt and established herself as an associate to watch.

Currently, Izzo's desk is filled with impactful work – like a data privacy case she has against Flo Health, an app that tracks pregnancy and menstrual cycles in women. Flo Health assures users in their privacy policy that they will not share information with third parties, and yet somehow these third parties end up receiving pieces of this “private” data. These third parties, by the way, are companies like Meta, Google and Flurry – all of whom have profit models based on data aggregation.

The Flo case is especially meaningful for Izzo as it impacts women's rights. “The case was filed prior to the *Dobbs* decision coming down,” says Izzo. “The case was always important to us. We obviously felt really strongly about it, but it took on a whole new meaning after the Supreme Court made that decision.”

This is the kind of work that got Izzo fired up about law in the first place. Early on, Izzo knew that in the age of social media, privacy and consumer rights was an area that she was passionate about. In an ongoing case against Amazon, Izzo taps into a novel legal argument that has a chance of subverting the seemingly irrefutable rise of pervasive technology giants. “Tap” being the operative word.

“We have alleged that with the Alexa devices that Amazon has developed – they're wiretapping,” says Izzo. “The unregistered individuals may just live near an Alexa device or have walked by one once upon a time. We're arguing that they're recording the unregistered individuals without their consent.”

A “registered” user has knowingly purchased the device, set it up and clicked the box agreeing to terms. But with Izzo's argument for the “unregistered” individuals, the skilled attorney has homed in on an inevitable by-product of these household norms by focusing on the “secondhand smoke” of technology. The stuff the innocent bystander certainly didn't consent to.

In addition to the cases against Flo and Amazon, Izzo is actively involved in litigating cases against NBCUniversal and Match Group. Big names, major cases, defining implications. Izzo is more than up for the challenge and as her star continues to rise, we will certainly be watching.

Lawdragon: What made you want to become a lawyer?

Danielle Izzo: I wanted to be a lawyer for my whole life. When I was younger, I didn't really understand why. It wasn't until, prior to law school, I had a mock trial experience that it became clear to me, that, “This is something that I would love to do.” When it came time to pick a college, I had law school in the back of my head. A lot of my friends who were thinking of law school were taking more of a political science route, but I really wanted to build my understanding of the business side because I knew that was going to impact any area of law that I might go into. So I studied finance and international business for my undergrad. Then in law school, the finance piece helped me to understand big complex issues. I took a liking to consumer protection work, especially in the digital age that we're in – the age of social media. That's kind of what got me into that space.

“ *The Alexa devices that Amazon has developed – they're wiretapping. They're recording people without their consent.* ”

LD: How did you come to focus on data privacy?

DI: Some things are just luck – you're in the right place at the right time. During law school, I had a chance to have my note on the subject published. When I was thinking of what I wanted to write about, I kept seeing the use of Instagram as a new marketing tool aimed at kids. It just didn't seem right to me. I think using Instagram for marketing is fine, but I think it's replete with consumer protection issues that most of the time go unaddressed, so that's where I wanted to focus my research efforts. At the same time, I was applying for summer associate positions, and I knew I wanted to be on the plaintiff side. I knew Labaton had such a strong reputation in that field.

I summered at Labaton on the securities side. It was a great place to grow and learn and a great culture fit. Oddly enough, they called me right before I was about to take the bar exam and said, "Hey, we are making a run at all of these data privacy cases that are growing. Would you be interested in switching gears and coming to that side?" And I had just published my note on these very issues. It was really exciting, and I've been working in this space ever since.

LD: Can you talk about this case that you have against Flo Health?

DI: Yes, the case is coming off the heels of an FTC order. We have data privacy claims against Flo Health, a menstruation and pregnancy tracking app, and the other defendants are Meta, Google and Flurry. So those are all companies that make their profits off of data at some capacity. Flo Health had put in their privacy policy that they would not share any information with other third parties. And lo and behold, the way that the app is built, there are pieces of code that end up transmitting some user information to companies like Meta, Google and Flurry. Obviously, that's really problematic because people are using this as a tool to record their health information. It comes as no surprise that most women wouldn't want to have their health information shared with these third-party companies. We've been litigating that now for about three years.

The case was filed prior to the *Dobbs* decision coming down. The case was always important to us, we felt really strongly about it – but it took on a whole new meaning after the Supreme Court made that decision. I think it remains as important as it was on the day we filed, but even more so now. I mean, you just hear horror stories.

LD: What can you tell us about the case that you have against Amazon?

DI: We have alleged that with the Alexa devices that Amazon has developed – they're wiretapping. They're recording people without their consent. We are representing a combination of what we call registered users and unregistered individuals. The unregistered individuals may just live near an Alexa device or have walked by one once upon a time. We're arguing that they're recording the unregistered individuals without their consent. These are people who have, in most cases, never even seen the Alexa app before, let alone read the terms of service or privacy policy.

As for the registered users, the people who may have purchased the device and set it up, it's the Consumer Protection Act side of the case. Those people registered these devices and presumably took a look at the privacy policy, and the privacy policy didn't adequately disclose what Amazon was doing with the recordings that they collect from users.

LD: It sounds a bit like secondhand smoke.

“ Flo Health had in their privacy policy that they would not share information with third parties. And lo and behold, pieces of code end up transmitting user information to companies like Meta, Google and Flurry.

DI: Yes! I think here the distinction is that disclosing to someone that they might be recorded is very different from a whole host of other things that a company might do with a recording. It's like saying one thing and doing another – and if a company finds itself doing another, that's where our antennas go up. We say, "Wait, that's not what my client understood that to mean." In a world where tech is so complex and ever-changing, it's very hard for consumers to keep up to date with the full scope of how everything actually is pieced together.

LD: How do these cases generally come to you?

DI: We're in a really lucky place, where consumers know that they can turn to us with protection issues. That being said, as much as people might knock on our door and come to us with a problem, we are always staying abreast of the data privacy issues and cybersecurity issues that are being publicized every single day. Every morning I open my alerts from the news and it's just endless – the data breaches alone span pages, let alone privacy issues. We're also always monitoring things for our existing privacy clients, too. It takes a lot of vigilance. It's a good problem to have when you find companies doing the wrong thing because you get to hopefully help to correct the bad behavior. It's also really rewarding when you see companies starting to get on the right track in terms of privacy because they're following the examples laid out – maybe even from our previous work.

LD: What do you appreciate about Labaton as a platform for your work?

DI: First and foremost, it's the people. I think the people at Labaton culturally are a great fit for people who are trying to grow their careers and get opportunities early on. It's a super entrepreneurial environment. So if you raise your hand with an idea and a plan, you are not only given the runway to execute it, but you're given mentors and guidance to get there. So I don't pretend to know everything, and I certainly don't pretend to be managing cases on my own. I have amazing mentors. I have Carol Villegas and Mike Canty overseeing me and spending an inordinate amount of time with me on a day-to-day basis to make sure that I have the tools that I need to take the next step.

As a second-year associate, I wrote a brief in a case, with help from Mike Canty to put it together. The judge wanted to hear an argument on it and Mike called me and he said, "I want you to argue it." That is the type of place that Labaton is. He identified that I

could have this opportunity and do something that I know a lot of other associates at a lot of other firms wouldn't get to do so early on. He also sat with me for hours, not just teaching me how to argue this motion, but teaching me how to argue motions in general. And to learn that from a former AUSA, who has a ton of experience speaking in front of a judge – I learned more than anything a law school professor could have taught me.

LD: Sounds like there's a strong mentorship mentality at Labaton.

DI: Absolutely. We do have a formal program. So I am a mentor to three of our female associates here, and that's through our formal program. I also have an assigned mentor, James Christie. He's a partner mentor and I can ask him to get lunch whenever and pick his brain for things that he's done, how he's done it, and try to get some advice on how to incorporate some of his good feedback into my own practice. Then there's also informal mentors. For example, when I was a summer associate, I had a summer mentor, Lisa Streljau, who's a current associate. That organic relationship that she and I had just never ended. When you're working in the trenches with someone, and they lend a hand or have advice for you, it's a really organic mentorship that just comes naturally.

“ *In a case against the Match Group, we're alleging that they have surreptitiously collected biometric information from users of their dating sites.*

LD: Are there any other cases that are on your plate right now?

DI: We recently got involved and filed an amended complaint in a case against the Match Group – their sites include Match, Hinge, Plenty of Fish, Our Time, BLK, and Chispa. We're alleging that they have surreptitiously collected biometric information from users of their dating sites, including some of the apps. Everyone, I think, has swiped on an app before. Illinois has a statute known as the Biometric Information Privacy Act, and it protects users from having their biometric information taken without a very specific, explicit form of consent. I think the reason for that is that people might not know exactly what they're agreeing to in the privacy policy. They felt the need to put it separately upfront so people understand that their face ID, for example, might be taken.

LD: As a young female lawyer, I'd love to hear your thoughts on what we can do to help keep women in law for the long term?

DI: This is such an important topic. I know from my law school classes, there're so many women who are so good at this stuff and you want to keep them engaged. Labaton has a women's initiative. I almost feel like I'm in this bubble, whereas in the rest of the world where maybe women have more obstacles, at Labaton, it almost feels like they don't exist. First of all, there're so many women in our partnership, so there're so many role models who have been doing this for such a long time. Those women – those partners – are such an incredible resource. We also have a strong associate showing as well. When you have that kind of network around you, that support system, it really helps to make you want to stay. I think that might be the secret recipe to keeping women for the long term – the support system. And to be clear, it's not just women in the support system. It's all of the partners collectively having that mentality and building that support system, it naturally cultivates young women, not only feeling a part of the firm today, but seeing a future at the firm or seeing a future in the practice of law.