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Seventh Circuit holds Zestimates constitute non-actionable opinions

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Takeaway: A consumer fraud class action must be grounded on allegations of false or deceptive statements of *fact*. Opinions, including estimates clearly labeled as estimates, do not constitute statements of fact that can support a consumer fraud class action. The Seventh Circuit recently confirmed this demarcation between fact and opinion in a case involving Zillow's well-known "Zestimates" of property values. *See Patel v. Zillow, Inc.,* -- F.3d --, No. 18-2130, 2019 WL 491797, at *2 (7th Cir. Feb. 8, 2019).

Zillow, an on-line real estate marketplace, offers Zestimates, estimated values for pieces of real estate generated by applying an algorithm to public data. Zillow discloses on its website that it does not inspect any properties and that its Zestimates might be inaccurate.

Vipul Patel discovered that the Zestimate for his property was lower than his asking price. He requested that Zillow either modify the Zestimate or take it down. After Zillow refused, he brought a putative class action against Zillow, asserting claims under the Illinois Uniform Deceptive Trade Practices Act and the Illinois Consumer Fraud and Deceptive Business Practices Act. The district court granted Zillow's motion to dismiss. Mr. Patel appealed, and the Seventh Circuit, in an opinion written by Judge Frank Easterbrook, affirmed.

The trade practices and consumer fraud acts deal with statements of fact, "while Zestimates are opinions, which canonically are not actionable." *Id*. Zillow's refusal to "correct" or take down a particular estimate, moreover, "does not make a Zestimate less an opinion." *Id*. And Mr. Patel's selective request to remove the Zestimate for his property would not benefit the real estate market, because, "[i]n general, the accuracy of algorithmic estimates cannot be improved by plucking some numbers out of the distribution or 'improving' others in ways that depart from the algorithm's output. The process is more accurate, overall, when errors are not biased to favor sellers or buyers." *Id*.

Attorneys defending consumer fraud class actions must be aware of the dichotomy between fact and opinion, because an opinion or estimate – even an allegedly false one – cannot support a fraud-based claim. The *Zillow* case represents a pithy and user-friendly precedent on this important limitation.