

BBB NATIONAL PROGRAMS, INC.

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW

Case Number: 100-2019

COMPANY:)
Dine Brands Global, Inc.)

CHALLENGER:)
Digital Advertising)
Accountability Program)
)
)

DECISION

DATE: September 5, 2019

SYNOPSIS

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles)¹ cover entities engaged in interest-based advertising (IBA) across websites or mobile applications (apps).

¹ The DAA Principles include a suite of four documents related to interest-based advertising which may be read in full at <http://www.aboutads.info/principles>. The relevant documents are titled: Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), Self-Regulatory Principles for Multi-Site Data (MSD Principles), Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance), and Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance). The DAA also maintains a set of self-regulatory principles dedicated to political advertising, the Application of the Self-Regulatory Principles of Transparency & Accountability to Political Advertising, which are unrelated to this decision.

Any operator of a website (a first party)² that allows unaffiliated³ entities (third parties)⁴ to collect visitors' web browsing data for IBA must provide visitors with notice and enhanced notice as prescribed in the OBA Principles.

COMPANY STATUS

Dine Brands Global, Inc. (Dine Brands) is a full-service dining company that owns and operates the International House of Pancakes (IHOP) and Applebee's restaurant brands. The company is headquartered in Glendale, CA.⁵

INQUIRY

This case arises from the Accountability Program's regular monitoring activities. The Accountability Program visited the website of Dine Brands' restaurant brand IHOP, located at <https://www.ihop.com/en>. There, we observed a number of third-party entities known to engage in interest-based advertising (IBA) collecting data about our visit. However, the IHOP website did not appear to provide notice and enhanced notice about this collection as required under the OBA Principles.⁶ This prompted us to observe the website for Dine Brands' restaurant brand Applebee's (<https://www.applebees.com/en>), where we observed the same issues. Subsequently, the Accountability Program conducted a review of Dine Brands' compliance with all applicable elements of the DAA Principles.

The Accountability Program first examined the IHOP website for a compliant enhanced notice link. During our review, we located a link labelled "Privacy Policy" in the website's footer. When clicked, this link directed us to the top of Dine Brands' privacy policy for the IHOP website. We could find no link that was distinct from a general privacy policy link and took users directly to a disclosure about IBA. The Accountability Program went on to review the Applebee's website, where we identified the same issue.

We then manually searched the IHOP and Applebee's privacy policy documents for a description of third-party data collection occurring on these websites that would satisfy the notice requirement of the OBA Principles.⁷ We were unable to locate explicit language stating

² The DAA Principles assign responsibilities to an entity based on its role in a particular situation. Thus, an entity can be a first party, third party, or service provider depending on the function it is performing. Website operators are first parties. *OBA Principles* Definition F at 10 ("A First Party is the entity that is the owner of the Web site or has Control over the Web site with which the consumer interacts and its Affiliates."). *See also* Accountability Program, *First Party Enhanced Notice Compliance Warning* CW-01-2013, <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

³ *OBA Principles* Definition C at 9 ("An Affiliate is an entity that Controls, is Controlled by, or is under common Control with, another entity.").

⁴ In the desktop context, entities that collect data for IBA from non-affiliate websites are third parties. *See OBA Principles* Definition J at 11 ("An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate's Web site.").

⁵ *See generally* Dine Brands, *Our Brands*, <https://www.dinebrands.com/en> (last visited March 15, 2019).

⁶ The Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles) were the first set of industry-wide principles adopted by the DAA. For more information, please see <http://www.aboutads.info/obaprinciples>.

⁷ Dine Brands, *Privacy Policy* (Aug. 16, 2017), <https://www.ihop.com/en/legal/privacy-policy>. [perma: <https://web.archive.org/web/20181230171241/https://www.ihop.com/en/legal/privacy-policy>]. *See also* Dine

that third parties may collect data for IBA on the IHOP website. Moreover, we could locate neither a link to an industry-developed opt-out page nor a list of third parties with corresponding opt-out links, a core requirement of the DAA Principles.⁸ Finally, Dine Brands' disclosures did not appear to include a statement of the company's adherence to the DAA Principles.

Following our review, the Accountability Program sent an inquiry letter to Dine Brands detailing these issues and explaining the requirements of the DAA Principles.

ISSUES RAISED

First-party duties under the OBA Principles are set out in section II.B. According to this section, if first parties allow third parties to collect visitors' browsing data for use in IBA on their websites, or if they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate transparency and an opportunity to exercise control over IBA.⁹ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.¹⁰ This disclosure must contain either a link to an industry-developed consumer choice page (such as <http://aboutads.info/choices>) or a list of every third party conducting IBA activity on the first-party website.¹¹ Additionally, a first party must state its adherence to the DAA Principles on its website.¹²

Most significantly, the OBA Principles require first parties to provide consumers with real-time "enhanced notice" when third parties are collecting or using data for IBA on a first party's website. This real-time indicator must be in the form of a "clear, meaningful, and prominent" link that directs consumers to the first party's IBA disclosure, not just to the top of a privacy policy.¹³ In addition, this link must be distinct from the company's privacy policy link and must appear on every page where data collection or use for IBA occurs on the first party's website.¹⁴ The link may be provided directly by the first party or by one of the third parties active on its website.¹⁵

Brands, *Privacy Policy* (March 26, 2018), <https://www.applebees.com/en/privacy-policy> [perma: <https://web.archive.org/web/20190222063718/https://www.applebees.com/en/privacy-policy>].

⁸ The Accountability Program notes that the privacy policy for IHOP in place at the time of our review included some general guidelines on deleting cookies. *Id.* ("You may be able to manage how your browser handles cookies by adjusting your browser's privacy or security settings. If you set your browser to reject cookies, please note that you may not be able to access certain features on our Sites."). This language did not function as a compliant opt-out mechanism under section II.B. of the OBA Principles.

⁹ *OBA Principles* § II.B. at 13–14.

¹⁰ *Id.*

¹¹ *Id.* We note that when first parties choose to list third parties individually, the Commentary to the Consumer Control Principle instructs companies that "choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed." *OBA Principles* Commentary at 35.

¹² *OBA Principles* § II.B. at 13–14. *See, e.g., In re: Best Buy Co., Inc. (39-2014)*, Oct. 28, 2014, at 4. All prior cases cited herein can be found at <http://www.asrcreviews.org/accountability-program-decisions/>.

¹³ *OBA Principles* Commentary at 32 ("The Principles also state that the Web sites at which Third Parties are collecting data for Online Behavioral Advertising purposes should include a new clear, meaningful, and prominent link on their Web sites when Third Parties do not provide the notice described in II.A.(2)(a). This would link from the Web page where data is collected to specific language in a disclosure. If the disclosure language is in the privacy notice, the link should go directly to the relevant section of the privacy policy where the disclosure is located and not just generally to the privacy policy.").

¹⁴ *Id.* at 31.

¹⁵ *First Party Enhanced Notice Compliance Warning* at 3.

Enhanced notice provides consumers with two benefits. One, it informs consumers of the fact that third parties are engaged in IBA on a website. Two, by linking directly to a disclosure that describes the IBA activities occurring on that website and providing a method by which consumers can exercise choice, enhanced notice serves as a bridge to relevant information consumers need at precisely the time they need it. By drawing attention to this otherwise invisible background activity in real time, explaining it in plain language, and providing one or more choice mechanisms, enhanced notice helps consumers understand IBA and make choices about the use of their data for IBA.

COMPANY RESPONSE AND ANALYSIS

Dine Brands responded to the Accountability Program inquiry by conducting a thorough review of its compliance with the DAA Principles. The company worked with the Accountability Program to revise its privacy disclosures, embracing the requirements of the DAA Principles. To meet its obligations, the company committed to adding to the IHOP and Applebee's websites an enhanced notice link labelled "Your Advertising Choices." When clicked, this link will direct users to updated sections of the IHOP and Applebee's privacy policies, which include a disclosure about third-party IBA occurring on the website and a links the DAA's youradchoices.com and aboutads.info pages. The company also committed to ensuring that an enhanced notice link would be available on any other website controlled by Dine Brands that authorizes third-party data collection for IBA. Finally, Dine Brands also committed to updating its privacy documents to include a statement of adherence to the DAA Principles. The company pledged to the Accountability Program that all updates would be live by the beginning of September 2019.

CONCLUSION

This decision continues the Accountability Program's line of cases which explain the requirement for website owners and operators to provide enhanced notice to website visitors. All first parties authorizing third parties to engage in IBA on their websites must provide consumers with meaningful notice and choice in the form of enhanced notice, which replaces the practice of burying information about a company's data collection practices in lengthy privacy policy pages. When large brands known to consumers allow this type of collection and use to occur, it is imperative that they provide this type of notice.

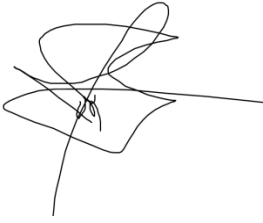
The Accountability Program appreciates the cooperation of Dine Brands during our inquiry process, and we commend the company's commitment to consumer privacy and industry self-regulation.

COMPANY'S STATEMENT

Dine Brands values the work of the Better Business Bureau and other organizations advancing industry standards on consumer privacy. We also recognize the importance of transparency, notice, and choice. Over the past several months, our organization has collaborated with the Digital Advertising Accountability Program to improve our privacy policy and provide more convenient opt-out features on our sites. We endeavor to adhere to self-regulatory advertising principles, and appreciate the Accountability Program's recognition of the company's efforts.

DISPOSITION OF DECISION

Practices voluntarily corrected, jurisdiction retained until all website updates complete.

A handwritten signature in black ink, appearing to read 'Jon M. Brescia', with a long horizontal line extending to the right.

Jon M. Brescia
Vice President
Digital Advertising Accountability Program