

**ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER
BUSINESS BUREAUS**

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 86-2018

COMPANY:)
Finish Line, Inc.)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

DECISION

DATE: September 26, 2018

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). Any operator of a website (a first party)² that allows unaffiliated entities (third parties)³ to

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.

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* Online Interest-Based Advertising Accountability Program, *First Party Enhanced Notice Compliance Warning* CW-01-2013,

collect visitors' web browsing data for IBA must provide visitors with notice and enhanced notice as prescribed in the OBA Principles. Additionally, mobile app publishers⁴ that authorize third parties⁵ to collect data through their apps for use in cross-app⁶ IBA must provide users with notice and enhanced notice, as described in the Mobile Guidance. Finally, before allowing third parties to collect precise location data for IBA, mobile app publishers must provide users with the opportunity to consent to this collection, in addition to standard notice and enhanced notice of this fact.

COMPANY STATUS

Finish Line, Inc. (Finish Line) is a retailer specializing in athletic shoes headquartered in Indianapolis, Indiana. The company maintains over 900 retail locations across 47 states.⁷ It was recently acquired by JD Sports Fashion Plc.⁸

INQUIRY

This case arises from a consumer complaint alleging that the Finish Line website (<https://www.finishline.com/>) allowed third parties to collect users' data for use in IBA without providing notice and choice to these users as required under the OBA Principles. In response to the complaint, the Online Interest-Based Advertising Accountability Program (Accountability Program) reviewed the Finish Line website, where we observed data collection by a number of third-party companies known to engage in IBA.⁹ This prompted a full examination of Finish Line's compliance with all applicable requirements of the DAA Principles. Below, we describe our review in detail.

<http://www.ascreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

³ In the desktop context, third parties are entities that collect data for IBA from non-affiliate websites. *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.”).

⁴ In the context of mobile applications, the first party is defined as the entity that owns or exercises control over the app, or its affiliates. Mobile app publishers are first parties under the Mobile Guidance. *See Mobile Guidance* Definition G at 7.

⁵ In the mobile app context, the term “third party” refers to entities that collect data for IBA through non-affiliate mobile apps, *Mobile Guidance* Definition N at 12 (“An entity is a Third Party to the extent that it collects Cross-App or Precise Location Data from or through a non-Affiliate’s application, or collects Personal Directory Data from a device.”).

⁶ *Mobile Guidance* Definition D at 5 (“Cross-App Data is data collected from a particular device regarding application use over time and across non-Affiliate applications. Cross-App Data does not include Precise Location Data or Personal Directory Data.”).

⁷ *ABOUT US*, Finish Line, <https://www.finishline.com/store/corporate/ourCompany.jsp> (last visited June 18, 2018).

⁸ *The Finish Line, Inc. Announces Entry Into Merger Agreement With JD Sports Fashion Plc*, Business Wire (Mar. 26, 2018), <https://www.businesswire.com/news/home/20180325005104/en/Finish-Line-Announces-Entry-Merger-Agreement-JD>.

⁹ For more information on the Accountability Program, and to read prior decisions referenced herein, please visit <http://www.ascreviews.org/accountability-program-decisions/>.

I. Desktop data collection review

The Accountability Program navigated to the Finish Line website where we attempted to locate a compliant enhanced notice link. We located a “Privacy Policy” link in the page’s footer, which directed us to the top of the webpage containing the company’s privacy policy. No other link on the website appeared to direct us to a dedicated disclosure of the third-party IBA activity occurring there.

Since there was no link directly to a compliant IBA disclosure, the Accountability Program manually reviewed Finish Line’s privacy policy for such a disclosure. Scrolling through this document, we found that Finish Line did not appear to provide a description of the third-party data collection occurring on its website. While Finish Line’s privacy disclosures included a section on “Aggregate Information” and mentioned the use of cookies and web beacons by third parties for “research purposes, including helping [Finish Line] to measure and analyze how visitors click to and use [Finish Line’s] Site,” this section did not describe data collection by third parties for the purpose of serving users with tailored advertising.

Further, we did not locate either a link to an industry-developed opt-out page or a list of third parties with corresponding opt-out links. Finally, Finish Line’s disclosures did not include a statement of the company’s adherence to the DAA Principles.

II. Mobile data collection review

Following its review of the Finish Line website, the Accountability Program checked whether the company provided any mobile app offerings to consumers. Finding that it did, we assessed the company’s compliance with the Mobile Guidance.

i. Cross-app data collection review

The Accountability Program tested Finish Line’s mobile application, entitled “Finish Line – Winner’s Circle” (Finish Line app), offered on both the Android¹⁰ and iOS¹¹ mobile operating systems. While monitoring network traffic sent to and from the Android version of the Finish Line app, the Accountability Program documented third parties¹² known to engage in IBA collecting data through the app. Specifically, we recorded evidence that at least one third party was collecting cross-app data, including unique advertising identifiers, from our testing devices.¹³

The Accountability Program analyzed the Finish Line app to determine if the company fulfilled its first-party enhanced notice obligations under the Mobile Guidance. We were unable to find an

¹⁰ *Finish Line – Winner’s Circle*, Google Play, <https://play.google.com/store/apps/details?id=com.WinnersCircle> (last visited July 17, 2018).

¹¹ *Finish Line – Winner’s Circle*, Apple App Store, <https://itunes.apple.com/us/app/finish-line-winners-circle/id905940653> (last visited July 17, 2018).

¹² *Mobile Guidance* Definition N at 12.

¹³ *Id.* Definition D at 5. See also IAB Mobile Marketing Center of Excellence, *Mobile Identity Guide for Marketers* 4, June 2017, <https://www.iab.com/wp-content/uploads/2017/06/Mobile-Identity-Guide-for-Marketers-Report.pdf> (“The most prevalent Advertising Identifiers today offering the scale needed for marketing purposes are the ... IDFA [and] AAID.”).

enhanced notice link at any of the times or locations prescribed by the Mobile Guidance. While the Finish Line app provided links to the company’s privacy policy within its listing on the Google Play Store and within its in-app settings, these links did not take users directly to a section of the privacy policy that disclosed the third-party IBA activity Finish Line allows through its app.¹⁴ Moreover, we also could not locate a disclosure of third-party IBA activity taking place through mobile apps within Finish Line’s privacy policy page.¹⁵ Finally, we could not locate a statement of adherence to the DAA Principles.

ii. Precise location data collection review

During our testing, the Accountability Program observed a third-party company known to engage in IBA collecting location information through the Finish Line app. The location information was in the form of latitude and longitude coordinates to the sixth decimal place.¹⁶

Notice review

During our review of Finish Line’s privacy disclosures, we were unable to locate in Finish Line’s disclosures any language that provided notice of third parties’ collection of precise location data for IBA, instructions for opting out, or a statement of adherence.

Enhanced notice review

During our review, the Accountability Program was unable to locate any enhanced notice disclosure or link that informed users about the collection of precise location data for IBA in any of the compliant times and locations prescribed by the Mobile Guidance.

User consent review

Finally, the Accountability Program noted that the Finish Line app utilized a system-default permissions dialogue to request consent before it collected location data from the device. The permissions request dialogue displayed the following language to users: “Allow Finish Line to access this device’s location?” Users could click “Deny” or “Allow” in order to proceed. However, this dialogue did not include any language disclosing that third parties received precise location data through the Finish Line app for IBA purposes. Looking further, we could not locate any disclosure that would make clear to users that this consent mechanism would result in third-party collection of their precise location data for IBA, raising a compliance issue under this provision of the Mobile Guidance.

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

¹⁴ See *Mobile Guidance* Commentary to § III.A.(3) at 18 (explaining that when a link is provided within the application market, it must direct users to the relevant section of the privacy policy).

¹⁵ Finish Line, *Online Policies – Privacy Statement* (June 25, 2008), <https://www.finishline.com/store/corporate/privacyPolicy.jsp>.

¹⁶ *Mobile Guidance* Definition K at 9 (“Precise Location Data is data obtained from a device about the physical location of the device that is sufficiently precise to locate a specific individual or device.”).

ISSUES RAISED

I. OBA Principles

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.¹⁷ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.¹⁸ 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.¹⁹ Additionally, a first party must state its adherence to the DAA Principles on its website.²⁰

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.²¹ 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. The link may be provided directly by the first party or by one of the third parties active on its website.²²

Enhanced notice provides consumers with two benefits. One, the enhanced notice 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

¹⁷ *OBA Principles* § II.B. at 13–14.

¹⁸ *Id.*

¹⁹ *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.

²⁰ *OBA Principles* § II.B. at 13–14. See, e.g., *In re: Best Buy Co., Inc. (39-2014)*, Oct. 28, 2014, at 4, <http://www.asrcreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-39.20141.pdf>.

²¹ *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.").

²² *First Party Enhanced Notice Compliance Warning* at 3.

providing one or more choice mechanisms, enhanced notice helps consumers understand IBA and make choices about the use of their data for IBA.

II. Mobile Guidance

The Mobile Guidance adapts the desktop-oriented rules of the OBA Principles to the mobile world, including the core requirements to provide transparency and consumer control of IBA. In particular, when first parties permit third parties to collect data through their apps for use in IBA, they must provide enhanced notice and choice about such third-party data collection for IBA.²³

i. First-party cross-app enhanced notice link requirement

According to section III.A.(3) of the Mobile Guidance, first parties that affirmatively authorize a third party to collect or use cross-app data for IBA must provide a clear, meaningful, and prominent link to a disclosure that (1) describes the third-party collection, (2) points to a choice mechanism/setting or lists all third parties with links to their opt outs, **and** (3) contains a statement of adherence to the DAA Principles.²⁴ The enhanced notice link must be provided prior to download (e.g., in the app store on the application’s page), during download, on first opening of the app, **or** at the time cross-app data is first collected, **and** in the application’s settings or any privacy policy.²⁵

These enhanced notice requirements make information about privacy more accessible to users so they can make an informed decision about whether to participate in data collection and use for IBA. The enhanced notice link must go **directly** to the place where the app explains its IBA practices. Moreover, the link must be provided **at or before** the moment a user’s engagement with the app results in third-party data collection for IBA. This replaces the old-fashioned practice of burying information about IBA—if it was provided at all—somewhere in the privacy policy for the consumer to unearth. It also requires that the company’s disclosure explain to consumers how they can opt out of IBA, including providing links to easy-to-use opt-out mechanisms like the DAA’s AppChoices tool.

ii. Precise location data

Notice requirement

According to section IV.A.(1) of the Mobile Guidance, first parties must provide clear, meaningful, and prominent notice when they affirmatively authorize third parties to collect precise location data for use in IBA from or through their application(s).²⁶ This notice must be placed on the company’s website or be accessible through its app(s) and provide clear descriptions of: (1) the fact that precise location data is transferred to or collected by any third

²³ *Mobile Guidance* at 17.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Mobile Guidance* at 21.

party, (2) instructions for accessing and using a tool for providing or withdrawing consent, (3) **and** the fact that the first party adheres to the DAA Principles.²⁷

Enhanced notice requirement

In addition to the general notice requirement under section IV.A.(1) of the Mobile Guidance, first parties must provide enhanced notice as discussed in section IV.A.(3).²⁸ This enhanced notice must be a clear, meaningful, and prominent notice of the fact that the first party authorizes third-party collection of precise location data (or transfers such data to third parties). The first party must also provide a link within the enhanced notice to the disclosure required under section IV.A.(1) of the Mobile Guidance.²⁹ This notice and link can be provided during the process of downloading the application, at the time the application is opened, **or** at the time such data is collected **and** in the application's settings or any privacy policy.³⁰ Companies may use the mechanisms provided by the application store to fulfill this notice requirement.³¹ A company may also supply its own method of enhanced notice as long as it is as clear, meaningful, and prominent as the notice required by § IV.A.(3) of the Mobile Guidance.³²

Consent requirement

Further, under section IV.B.(1), first parties should obtain consent to allow third parties to collect precise location data for IBA purposes prior to collection.³³ This consent tool should be easy to use and should apply to the application and device from which the consent is provided.³⁴ The first party is also required to provide an easy-to-use tool for withdrawing consent at any time.³⁵ Under the Mobile Guidance, valid consent requires an action in response to a “clear, meaningful, and prominent notice.”³⁶ A company can satisfy this principle by allowing consumers to provide or withdraw consent as a part of the process of downloading and installing an application or through an application's settings.³⁷ A company may also use permissions tools provided by an application platform or application market provider to satisfy this requirement.³⁸

²⁷ *Id.* at 21-22.

²⁸ *Id.* at 23-24.

²⁹ *Id.* § IV.A.(3)(b) at 24.

³⁰ *Id.* See *id.* Commentary to § IV.A.(3) at 24 (“A First Party can satisfy the requirement to provide download notice under Section IV.A.3.a by participating in a notice mechanism that satisfies this Principle and is offered by an application platform or an application market provider that makes the application available for download.”)

³¹ *Mobile Guidance* at 24-25. We note that in order to be compliant, any application store notice must meet the requirements of the Mobile Guidance, including notice of transfer to third parties.

³² *Id.* at 23.

³³ *Id.* at 25-26.

³⁴ *Id.* § IV.B.(1)(a) at 25.

³⁵ *Id.* § IV.B.(1)(b) at 26.

³⁶ *Id.* § I.B. at 4.

³⁷ *Id.* Commentary to § IV.B.(1) at 27. The application settings may only be used by the first party to satisfy this requirement if it provides specific notice of transfer of location data to a third party.

³⁸ *Id.*

COMPANY RESPONSE AND ANALYSIS

In response to the Accountability Program’s inquiry letter, Finish Line immediately conducted a thorough review of its compliance with the DAA Principles. The company provided detailed descriptions of its data collection practices and consulted with the Accountability Program on its plan to come into compliance with the DAA Principles, as explained below.

I. OBA Principles

Finish Line’s authorization of third-party data collection for IBA on its website triggered its obligations under section II.B. of the OBA Principles to provide enhanced notice to website visitors. The company acknowledged the issues raised by the Accountability Program’s inquiry and agreed to take action to meet its obligations. To reach compliance, Finish Line added an enhanced notice link labeled “Interest-Based Ads Policy,” separate from its “Privacy Policy” link, on each page of its website through which third-parties collect information for IBA.³⁹ This link takes users directly to a page, also entitled Interest-Based Ads Policy, that includes a disclosure of third-party activity occurring on the Finish Line website as well as two links to industry developed opt-out pages: one to the DAA’s WebChoices page and the other to the Network Advertising Initiative’s opt-out page. Finding that not all of its third-party partners were listed through these opt-out mechanisms, Finish Line also implemented its own custom opt-out mechanism, which it describes on its Interest-Based Ads policy and links to via its privacy policy. The company’s revised privacy policy now includes a detailed section describing the types of third-party tracking on its sites and mobile apps along with instructions for a variety of opt-out methods as well as a statement of adherence to the DAA Principles. These changes brought the company into full compliance with its first-party obligations under the OBA Principles.

II. Mobile Guidance

i. Compliance with cross-app data collection requirements

Finish Line’s authorization of third-party collection of unique identifiers for IBA in its mobile app triggered compliance responsibilities under the first-party cross-app provisions of the Mobile Guidance. To meet these obligations, Finish Line took a number of actions. The company first ensured that its new Interest-Based Ads Policy included a description of third-party IBA taking place through its mobile app. Finish Line also ensured that this document contained a link to the DAA’s AppChoices app and a description of how users can otherwise stop Finish Line’s collection of mobile IBA. The company’s addition of a statement of adherence to its privacy policy, as described above, rounded out its compliance with the notice obligations.

To meet its enhanced notice compliance obligations under the Mobile Guidance, Finish Line added a link to its Interest-Based Ads policy near the top of its privacy policy page. This, when coupled with the privacy policy links available from the Finish Line app’s listings on popular app stores, is a compliant means of providing enhanced notice of mobile IBA.

³⁹ Finish Line, *Interest-Based Ads Policy* (June 15, 2018), <https://www.finishline.com/interest-based-ads-policy>.

The Mobile Guidance prescribes particular times and locations where consumers can receive enhanced notice that directs them to a compliant IBA disclosure.⁴⁰ The link should appear either before or concurrent with the initial collection of data for IBA.⁴¹ One means for providing enhanced notice before collection occurs is by providing it through a link on the app’s listing in an app store. Where possible, this can be done through a dedicated enhanced notice link, but this is not always the case. The Mobile Guidance recognizes that app stores may allow only a finite set of links dedicated to specific resources, such as company websites and privacy policies. The flexibility of the Mobile Guidance allows app publishers to use the dedicated privacy policy link as its enhanced notice link where necessary.⁴² To do so, app publishers must place an IBA disclosure or a link to a disclosure at the top of the privacy policy linked from the app store. This ensures that when a user taps on a privacy policy link in an app store listing, they are directed immediately to relevant information about IBA and an opt-out mechanism.

By ensuring that its privacy policy includes a prominent link at the top to its IBA disclosure, Finish Line met this requirement and provided users with the ability to readily access the Interest-Based Ads policy when they tap on the privacy policy links in the Apple App Store and Google Play. Through this means, a mobile app user is able to reach important information about IBA occurring through the Finish Line app by simply tapping on a privacy policy link on the app’s pages in the app stores. The Accountability Program found that these steps resolved Finish Line’s first-party cross-app issues under the Mobile Guidance.

ii. Compliance with precise location data requirements

The first DAA Principles recognized the distinction between standard data types for IBA versus more sensitive data like financial or medical information.⁴³ The Mobile Guidance reserved those notions of sensitivity and recognized that other, mobile-specific data types may also bear heightened scrutiny. Consequently, the Mobile Guidance requires consumers to provide consent when first parties authorize the collection of precise location data for IBA purposes. This consent is in addition to the standard notice and enhanced notice that must be given to consumers regarding precise location information. These requirements were crafted by industry in recognition of the sensitivity surrounding these particular categories of data.⁴⁴

⁴⁰ *Mobile Guidance* § III.A.(3) at 17. See also *In re: Sega (65-2016)*, July 14, 2016; *In re: Spinrilla (61-2016)*, May 4, 2016; *In re: Bearbit Studios (62-2016)*, May 4, 2016; *In re: Top Free Games (63-2016)*, May 4, 2016.

⁴¹ *Mobile Guidance* § III.A.(3) at 17.

⁴² *Mobile Guidance* Commentary at 18 (“Where a Third Party elects to satisfy Section III.A.2.ii.1 or a First Party elects to satisfy Section III.A.3.a by providing a link prior to installation through an application market that does not permit active links, the entity satisfies this Principle if it provides an active link to a privacy policy that contains the disclosure described in Section III.A.1 and directs consumers to the relevant section of the privacy policy where the disclosure is located.”).

⁴³ OBA Principles §VI.at 16-17.

⁴⁴ *In re: Spinrilla (61-2016)*, May 4, 2016, <https://www.bbb.org/globalassets/local-bbbs/council113/media/behavioral-advertising/spinrilla-decision.pdf> (“As mobile apps are technically markedly different from websites, entities that engage in IBA through apps require specific guidance for compliance implementation that takes into account the technical issues of providing transparency and choice in the mobile world. The Mobile Guidance also takes account of apps’ and websites’ abilities to collect both precise location and user directory data, information that consumers feel is more sensitive than typical cross-site or cross-app data.”).

Finish Line’s authorization of the collection of location data sufficient to identify a particular user or device for IBA purposes triggered its obligations to provide notice, enhanced notice, and a consent mechanism to users. The company worked with the Accountability Program to take the following actions to come into compliance with the precise location data provisions of the Mobile Guidance.

Notice requirement

Finish Line updated its privacy disclosures to include language indicating that the company may collect precise location data for IBA purposes. Finish Line also provided full instructions to users for disabling this collection by modifying device-level app permissions or simply uninstalling the app. As discussed above, Finish Line also added a statement of adherence to the DAA Principles to its privacy disclosures. These actions provided consumers with a clear notice of the collection of this category of sensitive data and the ability to exercise choice about this collection. These steps resolved Finish Line’s compliance issue under the notice provision of the DAA Principles.

Enhanced notice requirement

To resolve its compliance issues under this provision of the Mobile Guidance, Finish Line developed a pop-up dialogue that is presented to users after they first open the Finish Line app. This notification describes the collection and use of location data that takes place through the app if users allow the app to have location permissions. The dialogue also provides users with a link to the precise location data section of Finish Line’s IBA disclosure, described above. By providing an up-front notification directing users to a disclosure about the collection of precise location data for IBA purposes, Finish Line ensured that users are informed not only about the fact that their precise location will be collected, but also about how their data is used. The Accountability Program found that this update resolved Finish Line’s compliance with its enhanced notice obligations under the precise location data provisions of the Mobile Guidance.

Consent requirement

To address the consent requirement attached to precise location data for IBA, Finish Line added relevant information to its custom location permissions dialogue, described above. The dialogue box appears before the default system-level dialogue that allows users to consent (or not) to the collection of location data through the Finish Line app. This system permission dialogue, when coupled with the compliant notice and enhanced notice provided through custom location permissions dialogue, meets the consent requirement of the Mobile Guidance.⁴⁵ Finish Line has

⁴⁵ The Accountability Program has addressed compliance implementations regarding the consent requirement of the Mobile Guidance in previous decisions, noting that permissions tools that do not disclose third-party collection and use of precise location data for IBA are not sufficient for complying with section IV.B.(2) of the Mobile Guidance. *In re: LKQD Technologies, Inc. (77-2017)* at 4, Dec. 11, 2017 (“While we noted during testing that [the first-party app] requested permission through the operating system’s permissions tool to use the device’s location prior to installation of the application, the permissions tool did not mention the collection of precise location data by LKQD or explain the potential use of this data for IBA.”). *See also In re: Vdopia, Inc. DBA Chocolate (85-2018)* at 10, Aug. 20, 2018 (“To obtain reasonable assurances and comply with the third-party consent requirements of the Mobile Guidance, Chocolate agreed to update its contractual terms to ensure that its first-party partners obtain users’ consent to the third-party collection of precise location data for IBA.”).

kept to the mission of the Principles, empowering users to make specific choices about the use of this sensitive category of data for IBA. The Accountability Program found that this update to Finish Line's mobile app resolved this issue under the Mobile Guidance.

CONCLUSION

Today's case follows in a long line of cases outlining the requirements that app and website publishers must follow to achieve full compliance with the DAA Principles. In the mobile environment as well as the desktop space, first parties must ensure that consumers are provided with enhanced notice of third-party data collection occurring on their digital properties. And where certain sensitive data types are at issue, companies should be especially careful to get consumers' consent before using them for IBA. The requirement to provide timely, up-front notice to consumers sits at the heart of a self-regulatory regime that relies on respect for individual autonomy.

Here, Finish Line demonstrated its commitment to serving its customers by eagerly and thoroughly adapting its business practices to comply with the DAA Principles. Finish Line took the laudable step of engineering a custom pop-up dialogue in its mobile app that provides users with enhanced notice about IBA and the ability to access Finish Line's location data-specific disclosures. Now, consumers will encounter this customized enhanced notice prior to being shown the system dialogue box that enables location permissions for the app, giving them ample time to review and understand their options before making their choice.

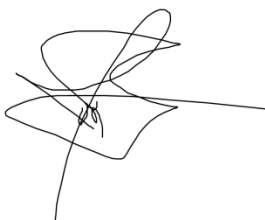
The Accountability Program recognizes the effort that Finish Line expended in developing this solution and applauds the company for its commitment to industry self-regulation and user privacy. Other companies looking to develop their own solutions to meet the requirements of the Mobile Guidance would do well to study Finish Line's example.

COMPANY'S STATEMENT

Finish Line is committed to the responsible collection and use of our customers' personal information. We continuously strive to maintain online advertising practices that are consistent with legal and self-regulatory requirements. We appreciate the opportunity to work with the Accountability Program in our efforts to promote our customers' awareness of, and ability to exercise, their privacy choices.

DISPOSITION OF DECISION

Practices voluntarily corrected.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jon M. Brescia
Director, Adjudications and Technology
Online Interest-Based Advertising Accountability Program