

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 32-2013

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

DECISION

DATE: November 20, 2013

SYNOPSIS

The Transparency Principle requires that consumers receive real-time enhanced notice when they are served an interest-based ad.

COMPANY STATUS

MediaMath, Inc. (MediaMath or the company) is a demand-side platform that provides clients with the ability to buy ad inventory through a real-time auction across a number of ad networks, exchanges and supply-side platforms. MediaMath engages in the collection and use of data for online behavioral advertising (OBA) purposes as defined in the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).¹

¹ “Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.” (OBA Principles at 9-10, Definition G.).

INQUIRY

The Online Interest-Based Advertising Accountability Program (Accountability Program) opened an inquiry into the OBA practices of MediaMath upon observing the company serve what appeared to be retargeted ads absent the enhanced notice link required by the OBA Principles.² In multiple tests, the Accountability Program visited the 23andMe, Inc. (23andMe) website (www.23andMe.com) where it identified a MediaMath tracking pixel present on the website. After browsing the 23andMe website for a short time and confirming receipt of a persistent MediaMath HTTP cookie whose contents included a long, alphanumeric string, such as is often used to uniquely identify a user's browser across websites, the Accountability Program proceeded to visit non-affiliated websites within the same browsing session. Without fail, soon after leaving the 23andMe website, the Accountability Program was served ads for the 23andMe service, and calls to a MediaMath server were observed at various points in the ad serving chain. However, none of the 23andMe ads observed by the Accountability Program featured the enhanced notice link, typically provided through the Digital Advertising Alliance's (DAA) Advertising Option Icon (AdChoices Icon), as required under the OBA Principles when retargeting based on previous website visits occurs.

The ease with which the Accountability Program was able to replicate this experience appeared to indicate that the 23andMe ads were delivered to the Accountability Program as a result of our recent visit to its website. Therefore, the 23andMe ads served to the Accountability Program did not appear to be in compliance with the transparency requirements of the OBA Principles.

COMPANY'S POSITION

In response to the Accountability Program's inquiry, MediaMath explained that while its platform was indeed involved in the delivery of the 23andMe ads in question, the campaign itself was entirely managed by 3Q Digital (formerly PPC Associates), a MediaMath client, using MediaMath's software-as-a-service version of its buying platform (the self-serve platform or white label service). The company stated that unlike MediaMath's managed service, in which MediaMath employees manage the whole campaign on behalf of its clients, MediaMath's white label service offering requires clients to manage all aspects of digital advertising campaigns themselves. MediaMath also indicated that its white label service provides clients with the ability to automatically include the AdChoices Icon on all interest-based ads if the client manually enables that function.

The company stated that it contractually requires its clients to carry out campaigns in accordance with applicable laws and industry standards. However, in the course of conversations with the Accountability Program, MediaMath recognized that the language in its master services agreement was not clear. It promptly revised the pertinent language to explicitly require adherence to the OBA Principles.

² See OBA Transparency Principle II.A.2(a) ("Third Party Advertising Notice" requires a clear and prominent link in or around the interest-based ad, that takes the consumer to an explanation of OBA and an easy-to-use mechanism to exercise choice.).

In its response to the Accountability Program’s inquiry, the company also provided a copy of a letter it had sent to all clients in June 2011 that announced MediaMath’s participation in the DAA Self-Regulatory Program for OBA and detailed how enhanced notice would be implemented for OBA served through the MediaMath platform. MediaMath indicated that this letter is also sent to clients as part of the “onboarding process,” but it was unable to confirm for the Accountability Program that 3Q Digital ever received the letter. Soon thereafter, MediaMath informed the Accountability Program that it had updated this process to ensure its clients achieved a greater understanding of their obligations under the OBA Principles. To this end, the company stated that it had recently distributed a notice to all its clients reminding them of their compliance obligations and also provided clear instructions on how to enable the AdChoices Icon on their interest-based ads through the MediaMath platform. These compliance obligations are also included in MediaMath’s New Marketing Institute client onboarding curriculum.

DECISION

The Transparency Principle is designed to give consumers greater knowledge about data collection and use for OBA that occurs invisibly behind the scenes. One of the innovations provided by the Transparency Principle is the requirement for companies to provide enhanced notice whenever third parties are collecting data for OBA or serving an interest-based ad. Enhanced notice gives consumers real-time information about the collection and use of data for OBA and the opportunity to choose whether to participate in this type of advertising. As such, it provides a granular and transparent view into what was previously an opaque system.

The type of enhanced notice at issue in this case is real-time notice that an ad is based on interests inferred from a prior website visit. Specifically, when an ad for 23andMe is targeted to a consumer because that consumer’s browser has previously visited the 23andMe website, the ad must carry enhanced notice, usually provided through the AdChoices Icon. When consumers click on the AdChoices Icon, they are taken to a location where they can learn about OBA and make an informed choice about participating in interest-based advertising.

Generally speaking, enhanced notice of interest-based ads is provided by the ad network or a similar entity. However, increasingly, self-serve platforms are providing advertisers or their agencies with the opportunity to manage the ad campaign on a “do-it-yourself” basis. Software-as-a-service products continue to grow, bringing more choices to companies. MediaMath’s self-serve platform is representative of this trend. While the company that is employing the self-serve platform has the knowledge of the nature of the campaign (e.g., is it an interest-based ad campaign) and is therefore ultimately responsible for providing the notice through the self-serve platform or otherwise, the provider of the self-service platform, such as MediaMath, is often in the best position to understand the compliance obligations of the OBA Principles and how to enable the use of the AdChoices Icon on its platform. As such, the providers of these sophisticated technologies that collect and use OBA data cannot be merely passive suppliers in these times of heightened privacy concerns.

Indeed, the Accountability Program understands that MediaMath never intended otherwise. MediaMath was one of the earliest adopters of the AdChoices Icon and has been a model of compliance since the inception of the DAA Self-Regulatory Program. It is clear that the tenets of transparency and consumer choice have been embraced and socialized throughout the company. However, the non-compliant ads served through its self-service platform have called attention to the greater role that platform providers must play in advancing industry-wide awareness of and compliance with the OBA Principles.

The Accountability Program recognizes that MediaMath had already made efforts to educate its clients about the OBA Principles prior to receiving our letter of inquiry. However, this education, without more, was insufficient to guide MediaMath's self-serve clients. MediaMath now also provides clear instructions to its clients using its self-serve platform on how to access and enable the functionality that will automatically serve the AdChoices Icon with the client's interest-based ads. MediaMath has also made changes to its master services agreement and onboarding process to further explain the OBA Principles and how to implement them. The Accountability Program believes that these changes are critical and should serve as a baseline for providers of self-service OBA offerings.

MediaMath's pledge to provide greater education to all of its clients about the DAA Self-Regulatory Principles and the benefits that strong industry self-regulation bring to advertisers in improving consumer trust, coupled with its provision of clear instructions to clients about how to use the self-serve compliance mechanism embedded in the self-serve platform, will ensure that all MediaMath's clients are well-informed about their obligations. With these best practices in place, the ultimate compliance responsibility for notice and choice rests with the client and any advertising agency or other party acting on its behalf that uses the MediaMath self-serve platform. To be sure, when MediaMath is providing a full-service platform, it must shoulder the responsibility for delivering the AdChoices Icon on behalf of any of its clients engaging in an interest-based advertising campaign. In the final analysis, however, all parties in the advertising ecosystem must work together to ensure that consumers receive the benefits of Transparency and Consumer Control. These benefits accrue not only to the consumer, but also to the advertising industry, which benefits from better consumer understanding, engagement and trust of interest-based advertising.

CONCLUSION

With innovations come new challenges. The use of self-serve platforms for OBA enables companies that want to reach consumers most likely to find their products relevant with greater flexibility to leverage technology on their own terms. This flexibility increases competition and lowers prices, while preserving the ad-supported Internet. But this must not come at the cost of providing consumers with transparency and choice. Without the transparency and choice provided under the OBA Principles, targeted ads can feel "creepy." Real-time notice demystifies interest-based advertising as it occurs, and with improved understanding, consumers are able to make informed choices about whether they prefer tailored or random ads. Therefore, all in the advertising industry have a stake in ensuring that responsibility for implementing the Self-Regulatory Principles evolves along with the evolution of business models. Self-regulatory

enforcement will continue to examine these changing business models and find ways of equitably guiding all responsible parties to work together to provide consumers with transparency and control of interest-based ads while supporting the benefits of innovation in the marketplace.

COMPANY'S STATEMENT

MediaMath is appreciative of the feedback and guidance provided by the DAA Accountability team, and we're pleased by the outcome of this decision as it further clarifies the current self-regulatory rule set.

DISPOSITION OF DECISION

The Accountability Program's recommendations have been implemented.

A handwritten signature in black ink, appearing to read "Genie Barton", with a long horizontal stroke extending to the right.

Genie Barton
Vice President and Director
Online Interest-Based Advertising Accountability Program