

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

***ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM***

**FORMAL REVIEW**  
Case Number: 15-2012

COMPANY: )  
Specific Media LLC )  
)  
)  
CHALLENGER: )  
Online Interest-Based )  
Advertising Accountability Program )  
)  
)

**DECISION**

DATE: September xx, 2012

**SYNOPSIS**

The Transparency Principle requires that covered entities provide consumers with enhanced notice when an interest-based ad is served. There are alternative ways to provide enhanced notice and the responsible third party must ensure that compliant notice is provided by one of the several methods allowed under the OBA Principles.

**COMPANY STATUS**

Specific Media LLC (Specific Media or the company) is an advertising network that 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).<sup>1</sup>

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<sup>1</sup> “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.).

## OBA PRACTICE AT ISSUE

The Transparency Principle is designed to give consumers knowledge about OBA data collection and use practices that take place invisibly behind the scenes. One of the innovations provided by the Transparency Principle is the requirement for third parties to provide real-time notice, called “enhanced notice,” whenever the third party is collecting data for OBA or serving an OBA ad. This is an important step forward in providing transparency about OBA because consumers have notice and an opportunity to make a choice about participation in OBA at the time the third party collects OBA data or serves an interest-based advertisement.

Enhanced notice is provided through a “clear, meaningful and prominent link” (i.e., the “enhanced notice link”) *from the Web page on which the third party is collecting data for OBA purposes or serving an advertisement based on user interests inferred from a user’s Web browsing activities.*<sup>2</sup> The enhanced notice link directs the consumer to information about the third party’s OBA data collection and use practices and an opportunity to exercise choice.<sup>3</sup> The third party is provided with flexibility in how the enhanced notice link is provided and whether it is provided by the third party (either itself or using a provider) or on behalf of the third party by a first party (also called the website operator or publisher).

If the third party provides the enhanced notice, it generally uses the Digital Advertising Alliance’s (DAA) Advertising Option Icon (AdChoices Icon) as the link to direct the consumer to its OBA disclosure and opt-out mechanism. The third party may place the link: 1) in or around the advertisement it delivers on the publisher’s website; or, 2) in coordination with the website operator, elsewhere on the website operator’s Web page. Clicking on the link takes the consumer directly to that part of the third party’s own website where the third party discloses its OBA practices and provides an opt out.

If the first party website operator is providing the enhanced notice link on behalf of the third party, it generally uses a footer link. This footer link, which must be distinct from the website operator’s own privacy policy link, should take the consumer directly to the website operator’s disclosure of third-party OBA activity, which should then either: 1) link to an industry-developed choice page such as the DAA Consumer Choice Page where the third party’s opt-out mechanism is available; or 2) individually list all third parties collecting or using data on the operator’s website and provide a link to each third party’s website OBA disclosure and opt-out mechanism.<sup>4</sup>

The practice at issue is whether Specific Media was providing the consumer with enhanced notice on interest-based ads it was serving for a Kia Motors America (Kia) campaign or whether its publisher partners were providing compliant notice and choice on its behalf.

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<sup>2</sup> OBA Principles at 13, Principle II.A. (2)(a).

<sup>3</sup> The DAA Consumer Choice Page is located at [www.aboutads.info/choices](http://www.aboutads.info/choices).

<sup>4</sup> OBA Principles at 13, Principle II.A. (2).

## **BASIS OF INQUIRY**

The Accountability Program believes that Specific Media served, or facilitated the serving of, retargeted ads lacking the requisite enhanced notice. In multiple tests, using five Web browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and Safari), the Accountability Program visited the Kia website ([www.kia.com](http://www.kia.com)) where we observed Specific Media collecting user data through tracking pixels embedded throughout the site. After browsing the Kia website for a time, the Accountability Program continued to visit, within the same browsing session, non-affiliated websites. In several tests, the Accountability Program was served ads for Kia and Specific Media was observed in the ad serving chain.

The ease with which the Accountability Program was able to reproduce this test on different devices and with different browsers appears to indicate that the Kia ads we received were likely the result of our recent visit to the Kia website. However, none of the Kia ads delivered to the Accountability Program contained enhanced notice as required by the OBA Principles.

## **COMPANY'S POSITION**

In its response to the Accountability Program's formal inquiry, Specific Media confirmed that it was serving OBA ads as part of a Kia campaign. The company stated that these ads did not contain the AdChoices Icon, which the company said it typically employs on all OBA ads it serves. Specific Media explained that it only disables the AdChoices Icon from running on an OBA ad if it receives instruction from an advertising agency or client that the client or its agent will be providing enhanced notice by some alternative means, as it did in this case.

Specific Media argued that although the AdChoices Icon was not served, the company was nonetheless compliant with the Transparency Principle because its publisher partners were required by contract to provide enhanced notice. The company explained that its Web publisher contracts required a link to the publisher partner's privacy policy on each Web page where OBA activity occurred. Further, the company stated that the Web publisher's privacy policy was required to include a link to an industry-developed website, in this case the Network Advertising Initiative's (NAI) opt-out page where Specific Media is listed.

## **DECISION**

We agree that the Transparency Principle allows a first-party website operator to provide enhanced notice on behalf of the third party serving an OBA ad.<sup>5</sup> But this option requires that the website operator provide notice of third-party OBA activity that meets the requirements of

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<sup>5</sup> See Section II.A.(2)(b)(i) of the OBA Principles which permits a third party to obtain agreement from a website operator on whose website it is collecting and/or using data for OBA to provide enhanced notice on behalf of the third party, so long as that notice is compliant with the requirements of section II.B.

section II.B of the OBA Principles. Section II.B. clearly states that the website disclosure of third-party OBA activity, which may reside in the website’s privacy policy and link to the industry-developed website[s], must be *linked to* from a “clear, meaningful and prominent *link on the Web page where data is collected or used*” for OBA. (Emphasis added). And, as stated on page 31 of the Commentary to the OBA Principles, this link “must be **distinct** from the Web publisher’s link to its privacy policy.” (Emphasis added). Further, where the notice of third-party OBA activity that the first party Web publisher is providing is contained in the Web publisher’s privacy policy, “the link should go directly to the relevant section of the privacy policy where the disclosure is located.”<sup>6</sup>

While the Accountability Program commends Specific Media for writing into its contractual arrangements with its publisher partners the obligation for them to provide enhanced notice as a complement to Specific Media’s general icon-based approach, Specific Media’s instructions to its publisher partners did not fully implement the OBA Principles. Specific Media misunderstood the requirements for utilizing first-party notice of third-party data collection and use as a method of enhanced notice. Specific Media did not require its publisher partners to create a separate and distinct link from their own privacy policy link that links directly to that place in their privacy policy where the OBA practices of third parties on their website were explained and where a link to an industry-developed choice page was provided. Therefore, Specific Media’s contract with its publisher partners did not provide compliant enhanced notice under the OBA Principles.

Specific Media acknowledged that Specific Media itself did not provide enhanced notice through the AdChoices Icon. Further, as explained above, Specific Media’s contracts with its publisher partners did not provide compliant notice. Therefore, the Accountability Program finds that Specific Media was not in compliance with the Transparency Principle’s requirement that it provide consumers with enhanced notice on interest-based ads Specific Media served as part of the Kia campaign.

Specific Media has agreed to implement the Accountability Program’s recommendations. Accordingly, Specific Media will redraft that section of its publisher contracts that deals with compliance and instruct its publisher partners on the correct implementation of the OBA Transparency Principle to ensure that they are providing compliant enhanced notice on Specific Media’s behalf. Specific Media will require its publisher partners to provide a distinct link separate from the publisher’s own link to their website privacy policy. That distinct link will link to the place where the publisher partners disclose third-party OBA practices occurring on their website and where they provide a link to the third party’s opt out. When the publisher partner provides disclosure of third-party OBA collection and use in the publisher partner’s privacy policy, Specific Media has also undertaken to require that the link from each Web page where OBA data is collected or used go directly to that part of the publisher’s privacy policy where they provide a link to the industry-developed opt-out Web page where Specific Media is listed.

In view of the fact that these changes must be phased in, Specific Media has also determined that until it has fully implemented this enhanced notice solution with its publishing partners, it will decline to work with clients that require Specific Media to serve ads without delivering enhanced notice through the AdChoices Icon unless the client undertakes and demonstrates that it is

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<sup>6</sup> OBA Principles Commentary at 32.

capable of and is delivering the requisite compliant notice and choice. With respect to the Kia campaign at issue, Specific Media confirmed that it has been directed by the advertising agency to deliver the AdChoices Icon on all Kia interest-based ads.

## **CONCLUSION**

The credibility of self-regulation depends on compliance with the industry standards contained in the OBA Principles by all companies in the industry that engage in OBA. The Accountability Program's monitoring and complaint processes are designed to identify areas of possible non-compliance and to work with companies to expeditiously rectify non-compliance. We are pleased that Specific Media has agreed to fully comply with the OBA Principles and that it is undertaking to perform due diligence to ensure that any client that wishes to implement its own compliant enhanced notice solution in Specific Media's stead is ready, willing and able to do so.

A central part of the Accountability Program's mission is education to ensure that all companies in the advertising industry understand and comply with the OBA Principles. By publishing our decisions we ensure that the compliance process is transparent and public. This can help to educate companies about the OBA Principles and each company's role in their implementation.

The object of the Accountability Program is to promote trust, encourage adherence to the OBA Principles and weed out non-compliance. Self-regulatory enforcement can promote industry compliance quickly and nimbly and can encourage compliant entities to educate their staff, colleagues and clients about the value of best practices and a self-regulatory model for achieving these best practices.

## **COMPANY'S STATEMENT**

Specific Media takes privacy and self-regulation very seriously, and makes a concerted effort to safeguard consumer notice and choice regarding anonymous data collected for ad measurement and targeting purposes. Specific Media is an active member of the Network Advertising Initiative (NAI), the Digital Advertising Alliance, the Interactive Advertising Bureau and other related associations. The company also fully supports the Online Behavioral Advertising (OBA) Program, and the review process of the Better Business Bureau (BBB).

The issue that the OBA Program identified was isolated strictly to a single campaign being run by Specific Media, based on instruction that the client was seeking to implement its own compliance solution. All other clients' advertisements were being served with inclusion of the "Advertising Option Icon" around the advertisement to fulfill the enhanced notice requirement of the Transparency Principle. As a failsafe mechanism, Specific Media had previously understood compliance with the Transparency Principle would nonetheless be fulfilled via its requirement of publishers' inclusion of a link to the NAI opt-out page on the websites where all client ads were being served. Specific Media welcomes and appreciates the clarifying feedback provided by the OBA Program as to proper utilization of this second method of enhanced notice.

Specific Media has corrected the issue by ceasing to serve ads that do not include the Advertising Option Icon. Going forward, it will vigilantly require that all clients agree to the inclusion of the icon on such client's ads. In the event such inclusion is impracticable or impossible due to unforeseen circumstance, it will contractually look to its publisher partners for inclusion of the correct opt-out mechanism to ensure compliance with the Transparency Principle.

Specific Media would like to thank the efforts of BBB and the Online Interest-Based Advertising Accountability Program for providing feedback in assisting it to continue to ensure continued compliance with the OBA Principles. It is pleased that the OBA Program is working and that the BBB has openly recognized its prompt response to this issue.

#### **DISPOSITION OF DECISION**

Practices voluntarily corrected.

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

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