Online Interest-Based Advertising Accountability Program Formal Review: 02.2011

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW

Case Number: 02-2011

COMPANY:
Veruta/MyBuys, Inc.

CHALLENGER:
Online Interest-Based Advertising Accountability Program

DECISION DATE:
November 8, 2011

SYNOPSIS

A company has responsibility to ensure that the mechanisms it employs to fulfill the Transparency and Consumer Control Principles are fully functional.

COMPANY STATUS

Veruta/MyBuys, Inc. (Veruta or the company) is a provider of online retargeting and product remarketing services. Veruta 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 (Principles):

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 2 or device based on the preferences or interests inferred from such Web viewing behaviors. (Principles at 9-10, Definition G.).

OBA PRACTICE AT ISSUE

One of the cornerstones of the Principles is “consumer control." (Principles at 14, Principle III.). A third party must provide the consumer with an easy-to-use mechanism that allows the consumer to exercise choice regarding the collection and use of data from his or her device for OBA purposes. The practice at issue is whether the company was providing consumers with choice as required under the Consumer Control Principle.

The obligation of a third party to enable a consumer to exercise choice is explained in the Principles as follows:

A Third Party should provide consumers with the ability to exercise choice with
respect to the collection and use of data for Online Behavioral Advertising purposes or the transfer of such data to a non-Affiliate for such purpose. Such choice should be available from the notice described in II.A.(2)(a); from the industry-developed Web page(s) as set forth in II.A.2.(b)(i); or from the Third Party’s disclosure linked to from the page where the Third Party is individually listed as set forth in II.A.2.(b)(ii). (Principles at 14, III.A.).

BASIS OF INQUIRY

On August 22, 2011, the Online Interest-Based Advertising Accountability Program (Accountability Program) tested the functionality of the consumer choice mechanism provided in the company’s privacy policy: “You can also choose to opt-out by clicking here.”¹ Trials using five Internet browsers—Internet Explorer, Firefox, Safari, Chrome and Opera—revealed that the link to the opt-out mechanism was missing. Therefore, a consumer could not initiate an opt-out request. Repeated visits to the company’s privacy policy continued to reveal the same problem, demonstrating that the problem was persistent and was not corrected by the company during the month that testing was repeated.

COMPANY’S POSITION

In response to the Accountability Program’s inquiry, the company acknowledged that the consumer choice mechanism that was ostensibly available in its privacy policy was not functioning. The company reported that the opt-out link was inadvertently omitted during a software upgrade. The company stated that upon receipt of the notice of inquiry, it took immediate steps to correct the problem and provide the required opt-out mechanism.

DECISION

All companies have the obligation to monitor their data collection and advertising practices to ensure compliance with the Principles, including ensuring that their notice and choice mechanisms are fully functional at all times. The Accountability Program finds that Veruta was not compliant with the Consumer Control Principle because it failed to exercise reasonable care to ensure that its consumer choice mechanism was functioning properly.

Upon notification by the Accountability Program, the company promptly supplied the link that enables the consumer to initiate an opt-out request. The Accountability Program has conducted subsequent tests on the opt-out mechanism on all browsers previously tested and found the link to be active and the opt-out mechanism to be functioning as required by the Principles.
CONCLUSION

The Accountability Program’s goal is to ensure that companies engaged in OBA comply with the Self-Regulatory Principles. The Accountability Program’s monitoring and complaint processes are designed to identify areas of possible non-compliance, to make companies aware of potential non-compliance and to work with companies to rectify noncompliance. Veruta has implemented the Accountability Program’s recommendations and the practice at issue has been resolved.

COMPANY’S STATEMENT

My Buys appreciates the opportunity to participate in the self regulatory process, and thanks the Online Interest-Based Advertising Accountability Program for bringing this issue, which was an unintended by-product of a software upgrade, to its attention. We are pleased that we were able to correct the issue promptly.

DISPOSITION OF DECISION

Practice voluntarily corrected.

1. The company’s privacy policy stated, “You may choose to Opt-Out of Veruta’s services at any time; however please note that by Opting-Out, you will not be able to take full advantage of retargeted advertising or have your Veruta account login information remembered for you. To delete all cookies on your browser, simply check your browser settings to do so. By deleting your cookies in this manner, you will disable Veruta and its Partners to deliver ads that are targeted to your interests. You will have to clear your cookies each time you visit Veruta.com or one of our Subscriber’s websites to ensure you are not receiving retargeted advertisements. You can also choose to opt-out by clicking here. When you Opt-Out of Veruta’s services in this manner, a cookie will be set on your browser. Verutat (sic) must maintain the cookie on your browser in order to recognize you as an Opted-Out visitor. You must Opt-Out again if you clear that cookie from your browser, use a different internet browser, or use a new computer to access the internet.”