

ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

ADMINISTRATIVE CLOSURE Case Numbers 74-2017, 75-2017, 76-2017

DATE: August 1, 2017

ADMINISTRATIVE CLOSURES

IN RE: THIRD-PARTY DATA COLLECTION ON STATE HEALTH CARE INSURANCE WEBSITES

SUMMARY

The Online Interest-Based Advertising Accountability Program (Accountability Program) has exercised its discretion under its Procedures to close its compliance inquiries regarding three companies in connection with its review of state health care insurance websites. These websites, established under 42 USC 18031 *et seq.*, offer online platforms for purchasing health care insurance. The purpose of these reviews was to determine if any covered entities were engaged in data collection for interest-based advertising (IBA) on these sites, and if so, assess their compliance under the DAA's suite of Self-Regulatory Principles (DAA Principles).¹ After conducting inquiries into the activities of several companies which were present on these websites, the Accountability Program concluded that these three companies were not in fact engaged in IBA on these websites and that the companies had no other outstanding compliance issues. For those reasons, the Accountability Program has administratively closed these cases.

BACKGROUND

As part of its compliance monitoring activities, the Accountability Program routinely reviews a number of websites.² As part of this effort, the Accountability Program conducted a comprehensive examination of the state health care insurances websites where third parties appeared to be engaged in IBA to determine if these entities were compliant with the Self-

¹ The DAA Principles consist of a suite of four documents: the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), the Self-Regulatory Principles for Multi-Site Data (MSD Principles), the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance) and the Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance) (collectively, the Principles), *available at* <http://www.aboutads.info/principles>.

² *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.")

Regulatory Principles for Online Behavioral Advertising (OBA Principles).³ The three cases addressed herein arose from this review.

The facts presented in these three investigations appeared at first to be in line with our prior work regarding enhanced notice on websites where collection—but not concurrent use—for IBA occurred.⁴ Using the Accountability Program’s testing equipment, we found evidence that suggested that the companies in question were engaged in IBA on the websites of a number of state health exchanges. However, we could not find an enhanced notice link that would take us to compliant disclosures of those companies’ IBA practices and their opt-out mechanisms, as required if they were in fact engaged in IBA.

The OBA Principles require third parties to provide transparency (notice and enhanced notice) and consumer control (an easy-to-use opt out from IBA) when collecting or using consumers’ browsing data for IBA on non-affiliate websites.⁵ As discussed in its First Party Enhanced Notice Compliance Warning⁶ and a number of the Accountability Program’s cases, this may require third parties to work with the first parties on whose sites they collect data.⁷

Both the third party and the first party share responsibility for provision of enhanced notice. Because the third party which is collecting the data generally has no direct means to provide notice and choice on the website where its data collection is occurring, providing just-in-time notice of collection and an opt out requires cooperation between the third party engaged in the collection and the first party on whose website such collection is permitted. Unfortunately, sometimes first and third parties do not work together sufficiently to ensure that this requirement is fully met.⁸

After analyzing the websites of the companies in question, the Accountability Program also found possible issues in the disclosures of two of the companies. These disclosures raised concerns about the granularity of location data which the companies collected from users’ mobile devices. Under the Mobile Guidance, third parties who collect data precise enough to locate a specific person or device must provide clear, meaningful, and prominent notice of and

³ *OBA Principles* Definition J at 10. (“An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate’s Web site.”)

⁴ See *In re: Wayfair Inc. (71-2017)*, Jan. 25, 2017, available at <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/Wayfair-Decision-71-2017.pdf>. (“In practice, this first party enhanced notice link can be provided by either the first or the third party. However, both parties are independently responsible for ensuring that enhanced notice is provided. To achieve compliance, companies should work with one another to make sure that this requirement is met.”) See also *In re: Anheuser-Busch Companies, Inc. (70-2017)*, Jan. 25, 2017 available at <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/Anheuser-Busch-Decision-70-2017.pdf>. See also *In re: AAA of Northern California, Nevada & Utah (69-2017)*, Jan. 25, 2017, available at <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/AAA-NCNU-Decision-69-2017.pdf>.

⁵ *OBA Principles* §§ II.A.(1), II.A.(2), and III.(A) at 12-13.

⁶ Online Interest-Based Advertising Accountability Program, *First Party Enhanced Notice Compliance Warning*, available at <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

⁷ *OBA Principles* Summary at 2-3.

⁸ Accountability Program, *First Party Enhanced Notice Compliance Warning*.

obtain consent prior to the collection of such data.⁹ Following its initial review, the Accountability Program sent inquiry letters to the three companies detailing its findings in order to determine if there were compliance issues.

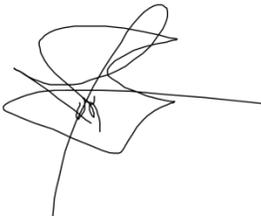
The companies' responses demonstrated to the satisfaction of the Accountability Program that these companies had no outstanding compliance issues. As a result, the Accountability Program exercised its discretion to close these cases without further action for the following reasons:

- 1) Based on technical explanations provided by the companies, the Accountability Program determined that none of the three companies were engaged in IBA on the examined state health insurance websites.
- 2) The Accountability Program determined that the companies with possible compliance issues under the Mobile Guidance were not collecting precise location data as defined by the Mobile Guidance.¹⁰
- 3) The companies are affirmatively committed to industry-self regulation under the DAA Principles.

When a company's response to the Accountability Program's inquiry demonstrates that the company has not violated the DAA Principles, the Accountability Program will normally close the case administratively. The Accountability Program was pleased to find that the companies in question cooperated fully with its investigation and provided evidence that demonstrated that they were not engaged in IBA on the websites in question.

DISPOSITION:

Administratively closed.



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⁹ *Mobile Guidance* §§ IV.A.(2), IV.A.(3) and IV.B.(2) at 21-30.

¹⁰ *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.”)