

ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

ADMINISTRATIVE CLOSURE

Case Number 60-2016

DATE: January 14, 2016

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IN RE CASE NUMBER 60-2016

Summary:

The Online Interest-Based Advertising Accountability Program (Accountability Program) has exercised its discretion under its Procedures to close its investigation into Escape Media Group, Inc., (d/b/a “Grooveshark”), a company whose music streaming website allowed third parties to collect and use visitors’ data for interest-based advertising (IBA). Because Grooveshark ceased all business operations, turned over ownership of its website, and relinquished all rights in its intellectual property in response to an adverse class action, the Accountability Program’s inquiry has been rendered moot.¹

Background:

The Accountability Program provides independent, industry-wide enforcement of the Digital Advertising Alliance’s (DAA) suite of Self-Regulatory Principles (DAA Principles).² As part of its ongoing enforcement processes the Accountability Program monitors website operators to determine whether they provide consumers with transparency and control in interest-based advertising (IBA).

¹ UMG Recordings, Inc. et al v. Escape Media Group, No. 11 Civ. 8407 (S.D.N.Y. Sep. 29, 2014); *See also* Grooveshark Agrees To Cease Operations, Recording Industry Association of America, (Last visited Dec. 4, 2015). https://www.riaa.com/newsitem.php?content_selector=newsandviews&news_month_filter=4&news_year_filter=2015&id=4EE664D0-E245-4331-680F-89260EDB8385. It should be noted that an administrative closure does not preclude further inquiries into sites the Grooveshark domain may redirect to.

² The Digital Advertising Alliance’s Self-Regulatory Principles consist of four documents: the Self-Regulatory Principles for Online Behavioral Advertising, the Self-Regulatory Principles for Multi-Site Data, the Application of Self-Regulatory Principles to the Mobile Environment, and the Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (collectively, the DAA Principles). To learn more about the Digital Advertising Alliance and its Self-Regulatory Principles, please visit <http://aboutads.info/> and <http://www.youradchoices.com>.

Under the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles),³ a web publisher must place a real-time, “clear, meaningful and prominent” link (enhanced notice link) on its website when third parties are collecting data for IBA. This link should take consumers directly to a disclosure that describes the third-party IBA activities that the publisher allows on its website. This disclosure must also direct consumers to an industry-developed opt-out mechanism or list every third party engaged in IBA activity on the website and link to their respective opt outs. Finally, the first party’s disclosure must affirm its adherence to the DAA Principles.⁴

In this case, after an investigation, the Accountability Program sent Grooveshark a formal letter of inquiry seeking the company’s cooperation in determining whether it properly complied with the first party requirements to provide an enhanced notice link and a complete, compliant disclosure of third-party IBA activity on its website. When Grooveshark failed to respond within fifteen business days, the period designated by the Accountability Program’s Procedures for a company to file its formal response to an inquiry letter,⁵ the Accountability Program made repeated attempts across several weeks to contact the company, all of which failed.

Pursuant to its Procedures, the Accountability Program has discretion to refer any company that fails to respond to its inquiry letter within the procedurally designated time to the appropriate government agency.⁶ As a result of Grooveshark’s silence, the Accountability Program began preparing Grooveshark’s case referral documents. However, during the pendency of the Accountability Program’s preparation for referral, we learned that Grooveshark had agreed to cease operations as part of its settlement in an unrelated legal dispute. Because Grooveshark is no longer in operation and has transferred the ownership of its domain to another entity, the Accountability Program hereby closes its formal inquiry into the company as moot.

Disposition:

Administratively closed.

³ Digital Advertising Alliance, Self-Regulatory Principles for Online Behavioral Advertising (July 2009), *available at* <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf> (OBA Principles).

⁴ OBA Principles § II.B at 13-14.

⁵ Online Interest-Based Advertising Accountability Program, Procedures (April 2012), § 5.1.(A) at 9-10, *available at* <http://www.ascreviews.org/wp-content/uploads/2012/04/OBA-Procedures2.pdf> (Accountability Program Procedures).

⁶ Accountability Program Procedures § 5.2.(A)(2) at 11.