

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

ADMINISTRATIVE CLOSURE

Case Number 78-2017

DATE: December 11, 2017

ADMINISTRATIVE CLOSURE

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 inquiry regarding a company in connection with the Accountability Program's review of state health care insurance websites.¹ 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).² After conducting inquiries into the activities of a company which was present on a number of these websites, the Accountability Program concluded that this company was not in fact engaged in IBA on these websites and that the company had only a de minimis compliance issue on its own website which it swiftly resolved. For those reasons, the Accountability Program has administratively closed this case.

¹ See generally *In re: Third-Party Data Collection on State Health Exchange Care Insurance Websites* (74-2017, 75-2017, 76-2017), August 1, 2017, available at <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/consolidated-health-care-closures.pdf>.

² 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>.

BACKGROUND

As part of its compliance monitoring activities, the Accountability Program routinely reviews a number of websites.³ As part of this effort, the Accountability Program conducted a comprehensive examination of the state health care insurance websites where third parties appeared to be engaged in IBA to determine if these entities were compliant with the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).⁴ The case addressed herein arose from this review.

Using the Accountability Program's testing equipment, we found evidence that suggested that the company in question was 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 this company's IBA practices and its opt-out mechanism, as would be required if it were 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

³ *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.")

⁴ *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.")

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*. See also *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>.

During its examination, the Accountability Program also noted a minor issue with the company's privacy disclosures on its own website. Following its initial review, the Accountability Program sent an inquiry letter to the company in question detailing its findings in order to assess the company's compliance status under the DAA Principles.

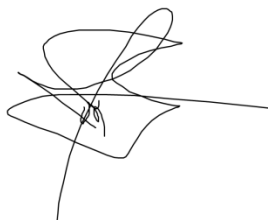
The company's response demonstrated to the satisfaction of the Accountability Program that the company had no outstanding compliance issues with respect to any collection occurring on the state health exchange site. As a result, the Accountability Program exercised its discretion to close this case without further action for the following reasons:

- 1) Based on technical explanations provided by the company, the Accountability Program determined that the company was not engaged in IBA on the examined state health insurance websites.
- 2) The company in question swiftly resolved the de minimis compliance issue with its privacy disclosures.
- 3) The company is 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, or the Accountability Program finds that only a de minimis compliance violation occurred, the Accountability Program will normally close the case administratively. The Accountability Program was pleased to find that the company in question cooperated fully during the inquiry and provided evidence that demonstrated that it was not engaged in IBA on the websites in question.

DISPOSITION:

Administratively closed.

A handwritten signature in black ink, appearing to read 'Jon M. Brescia', with a long horizontal line extending to the right.

Jon M. Brescia
Director, Adjudications and Technology
Online Interest-Based Advertising Accountability Program