

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

ADMINISTRATIVE DISPOSITION

Case Number: 57-2015

COMPANY:)
Outbrain, Inc.)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

DISPOSITION

DATE: November 4, 2015

SUMMARY

A company engaged in interest-based native advertising failed to meet all of the standards of the Transparency Principle. However, because the company independently initiated its own compliance review and made substantial progress to remediate all issues before it received a letter of inquiry, the Online Interest-Based Advertising Accountability Program (Accountability Program) has exercised its discretion to close the case by means of an Administrative Disposition rather than a decision.¹

BACKGROUND

This case arises out of the Accountability Program’s review of interest-based native advertising² in connection with its Interest-Based Native Advertising Compliance Warning.³ This compliance

¹ See, e.g., In re: Volkswagen (29-2013), Nov. 18, 2013 at 1 (“In cases where a company independently initiates and has made substantial progress to remediate issues before it receives an Accountability Program letter of inquiry, the Accountability Program may exercise its discretion to close the case via an Administrative Disposition.”).
² In the online context, a native ad “matches the form and function of the platform on which it appears.” (Wikipedia, Native Advertising, https://en.wikipedia.org/wiki/Native_advertising (last visited Oct. 6, 2015)). See also Interactive

warning put the digital advertising industry on notice that the Accountability Program views interest-based native ads as no different from other common, more traditional types of Internet ads, such as banner ads. Therefore, companies in the ad serving chain involved in interest-based native ads have the same obligations to provide notice, enhanced notice, and choice as other companies engaged in interest-based advertising (IBA) covered by the Digital Advertising Alliance (DAA) Self-Regulatory Principles for Online Behavioral Advertising (Principles).⁴

As part of its review, the Accountability Program examined a content recommendation widget provided by Outbrain, Inc. (Outbrain). In its own privacy policy, Outbrain explained that it may use consumers' browsing behavior across websites and over time to tailor its sponsored content recommendations. The Accountability Program confirmed through testing that data collection for IBA occurred as part of the network calls to Outbrain's servers. However, the Accountability Program noted that Outbrain did not provide a "clear, meaningful, and prominent" link to a compliant IBA disclosure (enhanced notice link) in or around its recommendation widgets.⁵ Additionally, the Accountability Program could not locate a statement of adherence to the DAA Self-Regulatory Principles (DAA Principles) anywhere in Outbrain's privacy policy, as is also required under the Principles.

During its visits to the Outbrain website (<http://www.outbrain.com>), the Accountability Program observed data collection by third parties known to engage in IBA. However, the Accountability Program did not find the required enhanced notice link on any page where this collection occurred. Further, the Accountability Program could not find a disclosure of third-party IBA activity occurring on the Outbrain website or a compliant opt-out link(s).

Outbrain responded to the Accountability Program's inquiry by acknowledging the Accountability Program's findings and providing evidence that it had already begun taking steps to remedy those issues of which it was aware, including:

- Contacting one publisher whose website incorrectly implemented the widget, thereby disabling the active disclosure link that should have accompanied it;
- Generating and testing the feasibility of various methods to protect the functionality of its disclosure links when the widget was deployed by third party web publishers;
- Modifying the location of its IBA opt-out button in its privacy policy in an effort to make it more prominent; and

Advertising Bureau, The Native Advertising Playbook, *available at* <http://www.iab.net/media/file/IAB-Native-Advertising-Playbook2.pdf> (Dec. 4, 2013) (Native Advertising Playbook).

³ Online Interest-Based Accountability Program, Interest-Based Native Advertising Compliance Warning, *available at* <http://www.ascreviews.org/wp-content/uploads/2014/12/Compliance-Warning-CW-03-2014-Native-Advertising.pdf> (Dec. 9, 2014) (Native Ads Compliance Warning).

⁴ For a detailed discussion of third-party compliance for providers of interest-based native advertising, see In re: Gravity (56-2015), Nov. 4, 2015, *available at* <http://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/gravity-decision.pdf>.

⁵ See Digital Advertising Alliance, Self-Regulatory Principles for Online Behavioral Advertising, *available at* <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf> (July 2009) (Principles) (requiring a "clear, meaningful, and prominent" link to a compliant disclosure (enhanced notice link) anywhere on webpages where data is collected for or where an interest-based ad is served. As explained more fully below, the enhanced notice link may be provided in a number of different ways.)

- Planning further revisions to its widget's disclosure pop-up box and its company privacy policy.

Outbrain also laid out a provisional compliance plan subject to Accountability Program review and conducted an initial review of more than 2,000 instances of its widget to check for broken or non-existent links to its disclosure dialogue box. Outbrain then consulted with the Accountability Program to craft its final compliance plan.

In its final plan, Outbrain has committed to conducting routine audits of both its widget and the websites that host implementations of its widget. Outbrain plans to further increase its levels of communication regarding compliance with the Principles, both by expanding in-house training for Outbrain staff and by reaching out to web publishers to proactively ensure compliance is maintained.

In addition to its prospective commitments, Outbrain has already taken the necessary steps to bring its practices into full compliance. To start, Outbrain modified the text in the pop-up dialogue box generated by the "Powered by Outbrain" link that accompanies implementations of its widget. The pop-up disclosure now references IBA and links users directly to Outbrain's IBA disclosure.⁶

Outbrain also modified its privacy policy with an eye to clarity, taking care to distinguish its disclosures *as a third party* from its disclosures *as a first party*. As part of these changes, Outbrain added language disclosing that third parties may be collecting data for IBA on the Outbrain website. Outbrain also moved its opt-out button to the IBA disclosures section of its privacy policy to ensure that consumers had ready access to it. Additionally, Outbrain added a statement of adherence to the DAA Principles to its privacy policy. Finally, Outbrain placed a clear, meaningful, and prominent link in the footer of its website that takes users directly to its IBA disclosures.

The Accountability Program appreciates Outbrain's proactive and thoughtful approach to privacy compliance. Prior to the Accountability Program's inquiry, Outbrain had already satisfied most of its obligations as a third party, and it had already taken stock of the remaining areas in which it needed to make adjustments to come into full compliance. Outbrain's response to the Accountability Program's inquiry demonstrated that it saw the Accountability Program's work as another component of a robust compliance process as opposed to an unwanted interruption. The company developed a rigorous compliance plan without hesitation that went above and beyond requirements. Outbrain's execution of this plan has proven similarly swift, and the Accountability Program has confirmed that Outbrain is now in full compliance with the Principles.

Outbrain's commitment to its users' privacy and to self-regulation is a model for others.

⁶ "We use interest-based targeting to recommend content that is more likely to be of interest to you. To view Outbrain's privacy policy and opt out click here."

DISPOSITION

Case closed.

A handwritten signature in black ink, appearing to read "Genie B.", with a horizontal line extending to the right.

Genie Barton
Vice President and Director
Online Interest-Based Advertising Accountability Program and Mobile Marketing
Initiatives