BBB NATIONAL PROGRAMS

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

COMPANY: Abbott Laboratories

CHALLENGER: Digital Advertising Accountability Program

FORMAL REVIEW
Case Number: 121-2020

DECISION
DATE: December 1, 2020

SYNOPSIS

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles)\(^1\) cover entities engaged in interest-based advertising (IBA) across websites or mobile applications (apps). Any operator of a website (a first party)\(^2\) that allows unaffiliated entities (third parties)\(^3\) to collect visitors’ web browsing data for IBA must provide visitors with notice and enhanced notice as prescribed in the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles). Mobile app publishers that authorize third parties to collect data through their apps

\(^1\) The DAA Principles include a suite of four documents related to interest-based advertising which may be read in full at http://www.aboutads.info/principles. The relevant documents are titled: Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), Self-Regulatory Principles for Multi-Site Data (MSD Principles), Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance), and Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance).

\(^2\) The DAA Principles assign responsibilities to an entity based on its role in a particular situation. Thus, an entity can be a first party, third party, or service provider depending on the function it is performing. Website operators are first parties. 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.”). See also Accountability Program, First Party Enhanced Notice Compliance Warning, CW-01-2013, https://www.bbb.org/us/Storage/113/Documents/First-Party-Compliance-Warning-20131008.pdf. In the context of mobile applications, the first party is defined as the entity that owns or exercises control over the app, or its affiliates. Mobile app publishers are first parties under the Mobile Guidance. See Mobile Guidance Definition G at 7.

\(^3\) In the desktop context, third parties are entities that collect data for IBA from non-affiliate websites. See OBA Principles Definition J at 11 (“An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate’s Web site.”). In the mobile app context, the term “third party” refers to entities that collect data for IBA through non-affiliate mobile apps, Mobile Guidance Definition N at 12 (“An entity is a Third Party to the extent that it collects Cross-App or Precise Location Data from or through a non-Affiliate’s application, or collects Personal Directory Data from a device.”).
for use in cross-app IBA must provide users with notice and enhanced notice, as described in the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance).

COMPANY STATUS

Abbott Laboratories (Abbott) is a multinational corporation in the business of health care and medical devices. The company is headquartered in Abbott Park, Illinois.

INQUIRY

This case arises from a consumer complaint alleging that companies were collecting data for interest-based advertising on the website for Abbott Cardiovascular (https://www.cardiovascular.abbott/), which focuses on Abbott’s cardiovascular health products and therapies. Specifically, the complaint alleged that the website did not provide enhanced notice under the DAA Principles. In response to this complaint, the Accountability Program visited the Abbott Cardiovascular website and detected signs of data collection for IBA. This prompted us to review the Abbott Cardiovascular website and Abbott’s other websites and apps for compliance with the DAA Principles, with a focus on its consumer-oriented products. Below, we describe our examination in detail.

I. Desktop data collection review


On the majority of Abbott sites we reviewed, the Accountability Program identified apparent third-party IBA activity. For each of these websites, we could not find enhanced notice of data collection.

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4 Mobile Guidance Definition D at 5 (“Cross-App Data is data collected from a particular device regarding application use over time and across non-Affiliate applications. Cross-App Data does not include Precise Location Data or Personal Directory Data.”).
6 While the Accountability Program’s review focused mainly on Abbott’s consumer-oriented websites, we observed similar activity on Abbott’s industry-oriented websites.
collection for IBA. While each website we reviewed featured a hyperlink to Abbott’s nutrition privacy policy, corporate privacy policy, or other policy pages, no hyperlink we identified led directly to a policy’s IBA disclosure.

During our review, we also noted that these websites did not provide complete IBA disclosures. Most of the sites provide a link to the Abbott nutrition privacy policy, while the Abbott company website, Abbott Store, Diabetes Care, FreeStyle, FreeStyle Libre, and MitraClip sites link to the corporate privacy policy. While the relevant disclosures in both privacy policies described IBA activity on the sites and linked to opt-out tools, they lacked statements of adherence to the DAA Principles. Further, we noted that while the Abbott Cardiovascular page allowed users to click through to a separate global privacy policy document via a “Policies” link that led to a landing page for a number of Abbott’s policies, this document did not appear to clearly describe the apparent IBA-related data collection taking place on the Abbot Cardiovascular site or provide a compliant opt-out mechanism.

II. Mobile data collection review

The Accountability Program went on to identify and test mobile apps apparently offered by Abbott Labs, and we observed potential IBA-related data collection by a third party through the iOS version of the Similac Baby Journal app (Similac app). However, we were unable to confirm that this app met the standards laid out for first parties in the Mobile Guidance for cross-

8 See OBA Principles, II.B (Implying that enhanced notice must appear on every page where data is collected for IBA, and not only the homepage: “When data is collected from or used on a Web site for Online Behavioral Advertising purposes by Third Parties, the [first party] should include a clear, meaningful, and prominent link on the Web page where data is collected or used for such purposes that links to a disclosure . . . .” (emphasis added)).
11 Though the MitraClip site featured an additional “Privacy and Cookies” banner on its homepage, the banner linked to the top of the corporate Privacy Policy, rather than directly to the IBA disclosure. Additionally, because this banner can be dismissed, it does not necessarily provide enhanced notice on every page on which IBA activity takes place. If a user elects to dismiss a cookie banner on one page of a website where IBA occurs and navigates to a different page where IBA occurs absent a banner, they will not have enhanced notice of IBA activity taking place on the second page. See generally OBA Principles II.B.
14 The Accountability Program notes that the global privacy policy stated that third-party cookies are used “to measure the effectiveness of our marketing or advertisements.” We note that this does not constitute a clear disclosure that companies may collect website visitor data for the purpose of serving targeted ads based on visitors’ interests.
15A section in the global privacy policy called “How can you manage the use of cookies?” notes that a user can change their browser settings or visit www.allaboutcookies.org. The Accountability Program notes that these instructions do not constitute an easy-to-use means to opt users out of IBA.
app enhanced notice. Specifically, we could not find an enhanced notice link to an IBA disclosure for the Similac app at any stage of the download and installation process, during use, through a related privacy policy link, or in the app’s settings. Likewise, we were unable to find a compliant IBA disclosure in or through the app.

Following our review, the Accountability Program sent an inquiry letter to Abbott detailing these issues and explaining the requirements of the DAA Principles.

ISSUES RAISED

I. Enhanced notice of website data collection for IBA

First-party duties under the OBA Principles are set out in section II.B. According to this section, if first parties allow third parties to collect visitors’ browsing data for use in IBA on their websites, or if they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate transparency and an opportunity to exercise control over IBA. A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there. This disclosure must contain either a link to an industry-developed consumer choice page (such as http://aboutads.info/choices) or a list of every third party conducting IBA activity on the first-party website. Additionally, a first party must state its adherence to the DAA Principles on its website.

Most significantly, the OBA Principles require first parties to provide consumers with real-time “enhanced notice” when third parties are collecting or using data for IBA on a first party’s website. This real-time indicator must be in the form of a “clear, meaningful, and prominent” link that directs consumers to the first party’s IBA disclosure, not just to the top of a privacy policy. In addition, this link must be distinct from the company’s privacy policy link and must appear on every page where data collection or use for IBA occurs on the first party’s website. The link may be provided directly by the first party or by one of the third parties active on its website.

II. Enhanced notice of mobile data collection for IBA

17 OBA Principles § II.B. at 13–14.
18 Id.
19 Id. We note that when first parties choose to list third parties individually, the Commentary to the Consumer Control Principle instructs companies that “choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.” OBA Principles Commentary at 35.
21 OBA Principles Commentary at 32 (“The Principles also state that the Web sites at which Third Parties are collecting data for Online Behavioral Advertising purposes should include a new clear, meaningful, and prominent link on their Web sites when Third Parties do not provide the notice described in II.A.(2)(a). This would link from the Web page where data is collected to specific language in a disclosure. If the disclosure language is in the privacy notice, the link should go directly to the relevant section of the privacy policy where the disclosure is located and not just generally to the privacy policy.”).
22 Id. at 31.
23 First Party Enhanced Notice Compliance Warning at 3.
The Mobile Guidance adapts the desktop-oriented rules of the OBA Principles to the mobile world, including the core requirements to provide transparency and consumer control of IBA. In particular, when first parties permit third parties to collect data through their apps for use in IBA, they must provide enhanced notice and choice about such third-party data collection for IBA.\footnote{24}{Mobile Guidance at 17.}

According to section III.A.(3) of the Mobile Guidance, first parties that affirmatively authorize a third party to collect or use cross-app data for IBA must provide a clear, meaningful, and prominent link to a disclosure that (1) describes the third-party collection, (2) points to a choice mechanism/setting or lists all third parties with links to their opt outs, and (3) contains a statement of adherence to the DAA Principles.\footnote{25}{Id.} The enhanced notice link must be provided prior to download (e.g., in the app store on the application’s page), during download, or at the time cross-app data is first collected, and in the application’s settings or any privacy policy.\footnote{26}{Id. We note that where the third party is unable to provide enhanced notice and choice in an app, the first party should work with the third party to ensure that such notice and choice are provided. \textit{See id.} § III.B.(1) at 18-19. \textit{Compare Accountability Program, Compliance Warning,} http://www.asrecviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf at 2 (“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.”).}

These enhanced notice requirements make information about privacy more accessible to users and require that a company’s disclosure explain to consumers how they can opt out of IBA, including providing links to easy-to-use opt-out mechanisms like the DAA’s AppChoices tool.

\textbf{COMPANY RESPONSE AND ANALYSIS}

\textbf{I. Enhanced notice of website data collection for IBA}

Abbott responded to the Accountability Program inquiry by conducting a thorough review of its compliance with the DAA Principles. The company worked with the Accountability Program to revise its privacy disclosures and pledged to implement the Accountability Program’s recommendations in order to make its websites fully compliant with the DAA Principles. To achieve this, the company identified over 60 websites it controlled where IBA occurred and added an enhanced notice link labelled “Ad Preferences” to the vast majority of these sites.

When clicked, this link directs users to a TrustArc opt-out page\footnote{27}{TrustArc, Abbott, \textit{Your Advertising Choices,} http://preferences-mgr.trustarc.com/?pid=abbott01&aid=Corporate01&type=abbott (last visited Oct. 16, 2020)} which includes a description of IBA activity occurring on Abbott websites, lists third parties collecting data on Abbott sites along with their opt-out mechanisms, and links to the DAA’s WebChoices page.\footnote{28}{We note that the Abbott TrustArc page includes the AdChoices Icon, which may constitute a company’s statement of adherence to the DAA Principles. \textit{See OBA Principles} Commentary at 30 (“Finally, this Principle requires that all entities indicate adherence to these Principles in their notice. This Principle can be satisfied either by wording or the logo/icon of a self-regulatory accountability program. Taken together, these mechanisms for clearly disclosing and informing the public and consumers about data collection and use practices will significantly enhance the transparency of Online Behavioral Advertising practices and address certain perceived gaps in current practices.”). \textit{See also In re: Yelp, Inc. (40-2014),} October 28, 2014 at 3.} Abbott further
committed to ensuring that enhanced notice is provided across all of its websites by the end of November 2020.

II. Enhanced notice of mobile data collection for IBA

Abbott conducted an audit of its mobile app products to determine if any third-party IBA activity occurred. Working with a vendor, it found that the iOS version of the Similac app did not authorize the third-party collection of data for IBA, and that only one of its app products authorized this type of collection. Abbott swiftly decommissioned the app that authorized this collection and removed it from the Google Play and Apple App stores. Weighing Abbott’s claims against its own monitoring results, the Accountability Program found no reason to question the company’s assertions. Noting that there were no longer any issues that triggered the first-party enhanced notice requirements of the Mobile Guidance, the Accountability Program found that this issue was resolved.

CONCLUSION

Today’s case again highlights the responsibility of publishers to provide consumers with enhanced notice of background data collection for IBA—whether this collection occurs in through the mobile apps or the traditional web environment. When publishers control and operate web properties that focus on the sale of medical products or services that may be regarded as sensitive, this responsibility is amplified. The Accountability Program strongly appreciates Abbott’s work to prioritize the data privacy of its end users during a major public health crisis.

COMPANY’S STATEMENT

Abbott declined to provide a company statement.

DISPOSITION OF DECISION

Practices voluntarily corrected, jurisdiction retained until all website updates complete.

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Digital Advertising Accountability Program