

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 67-2016

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

DECISION

DATE: September 22, 2016

SYNOPSIS

All companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles). First parties who allow third parties to collect or use visitors’ web browsing data for IBA must comply with section II.B. of the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).¹

¹ The DAA Principles consist 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>.

COMPANY STATUS

Harte Hanks, Inc. (Harte Hanks) is a marketing company.² The company maintains a website located at www.hartehanks.com.

INQUIRY

As part of its routine monitoring and enforcement efforts, the Accountability Program opens inquiries based on consumer complaints regarding alleged noncompliance. This particular case arises from a consumer complaint about Harte Hanks' website, which alleged that Harte Hanks was not in compliance with the Transparency Principle of the OBA Principles.

In response to the consumer complaint, the Accountability Program visited the Harte Hanks website (www.hartehanks.com) to review the company's IBA practices. During its visit, the Accountability Program observed data collection by third-party companies known to engage in IBA. This finding appeared to confirm the concerns expressed in the consumer complaint. We then examined the Harte Hanks website for the presence of an enhanced notice link required under the OBA Principles.

When the Accountability Program examined Harte Hanks' home page, we located a link in the footer labeled "Privacy." When clicked, this link directed us to the top of the webpage containing the company's privacy policy. In the privacy policy we found links to the DAA Consumer Choice page and Network Advertising Initiative Consumer Opt-Out page; however, these links occurred only as part of a discussion of Harte Hanks' own use of cookies. There was no description of the third-party data collection for IBA occurring on the Harte Hanks website in the privacy policy or anywhere on the website. Since the "Privacy" link did not lead directly to a disclosure of third-party IBA activity on the Harte Hanks website, it did not constitute a compliant enhanced notice link, and we could find no other links that would satisfy the enhanced notice requirement. Finally, the Accountability Program did not find a statement of the company's adherence to the DAA Principles, which is also required under section II.B. of the OBA Principles.

Based on the above review, the Accountability Program sent an inquiry letter to Harte Hanks explaining the compliance issues we had found on the Harte Hanks website.

COMPANY'S POSITION

Upon receiving the Accountability Program's inquiry letter, Harte Hanks immediately committed to coming into compliance with the DAA Principles. Harte Hanks worked with the Accountability Program to form and execute a plan to modify its website to fulfill the requirements of the OBA Principles. To achieve compliance with the OBA Principles, Harte Hanks committed to adding a clear, meaningful, and prominent link to the footer of its webpages that allow third-party advertising. This link, labelled "Cookies & Advertising," will be distinct

² Harte Hanks, *Smarter customer journeys start here*, <http://www.hartehanks.com/about> (last visited Aug. 25, 2016). ("Harte Hanks is a global marketing services firm specializing in insight-driven, multichannel marketing solutions, connecting clients with their customers in powerful ways.")

from the Privacy link on the Harte Hanks website. The link will direct users to a page entitled “Cookies, Advertising and Your Choices” which will include an IBA disclosure describing third-party data collection on the Harte Hanks website. This page will also include a link to the DAA’s website (www.aboutads.info) and a statement of adherence to the DAA Principles.

DECISION

In this case, because Harte Hanks authorizes third parties to collect data on its website for IBA, the company has duties as a “first party”³ under the OBA Principles. This case falls squarely within our line of cases dealing with first parties’ responsibilities under the OBA Principles to provide enhanced notice when third parties collect data on their websites or mobile applications. We provide a brief overview of the Accountability Program’s many prior cases that have dealt with this issue.

When the Accountability Program first focused on this area of compliance, it found that many first parties did not understand that they had responsibility to provide enhanced notice regarding data collection and use for IBA when they allowed third parties to collect data for IBA on their site. To respond to confusion among a number of first parties with respect to their enhanced notice obligations under the OBA Principles, on October 14, 2013, the Accountability Program released a Compliance Warning which provided detailed guidance about enhanced notice and established a January 1, 2014 deadline for websites to come into compliance or risk being subject to an Accountability Program action.⁴ Since then, the Accountability Program has released more than a dozen cases that address the responsibilities of first parties under the DAA Principles, providing website owners and operators ample notice and clear guidance about their responsibilities under the OBA Principles.⁵ The Accountability Program restates these responsibilities again below.

First-party duties are set out in section II.B. of the OBA Principles. According to this section, when first parties allow third-party IBA data collection or use on their websites, or when they transfer first-party data to third parties for tailoring ads on non-affiliated websites, they must provide consumers with appropriate notice and an opportunity to exercise choice about whether to participate in IBA.⁶ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.⁷ 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

³ *OBA Principles* Definition F at 10. *See also* Online Interest-Based Advertising Accountability Program, *Compliance Warning*, available at <http://www.ascreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

⁴ *First Party Enhanced Notice Compliance Warning* (CW-01-2013), available at <http://www.ascreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

⁵ *See, e.g., In re: Answers Corporation* (38-2014, Oct. 28, 2014), *In re: Best Buy Co.* (39-2014, Oct. 28, 2014), *In re: Yelp* (40-2014, Oct. 28, 2014), *In re: TWiT, LLC* (46-2015, May 14, 2015), and *In re: The Hollywood Reporter, Inc.* (58-2015, Jan. 14, 2016).

⁶ *OBA Principles* § II.B. at 13-14.

⁷ *Id.*

third party conducting IBA activity on the first-party website.⁸ Additionally, a first party must state its adherence to the DAA Principles on its website.⁹

The OBA Principles require first parties to provide consumers with real-time notice when third parties are collecting or using their data for IBA on a first party’s website. Termed “enhanced notice,” this real-time indicator must be in the form of a “clear, meaningful, and prominent” link—distinct from the company’s privacy policy link—that directs consumers to the first party’s IBA disclosure, described above.¹⁰ This link must appear on every page where data collection or use for IBA occurs on the first party’s website, and it must take users directly to the first party’s IBA disclosure, not just to the top of a privacy policy or help center landing page.¹¹

In practice, this first-party enhanced notice link can be provided by either the first or the third party. However, both parties are responsible for ensuring that enhanced notice is provided. Therefore, companies should communicate to make sure that this requirement is met. Where third parties are unable to place enhanced notice, the first party must take whatever steps are necessary either to provide the notice itself or to empower third parties on its site to do so. Further, first parties are cautioned that

unless an ad bearing in-ad notice is served on **every** Web page of a publisher’s site where third parties are collecting data for [... IBA] and that notice directs a consumer to the choice mechanisms of all third parties collecting on that Web page or to an industry-developed choice mechanism, the Transparency Principle’s **enhanced notice** requirement for **collection** is not satisfied, and the website operator cannot rely on the third party’s in-ad enhanced notice as provided under Section II.A.2. of the OBA Principles (*Third Party Advertisement Notice*) (Emphasis in original).¹²

Enhanced notice provides two important benefits to consumers. One, the enhanced notice link informs consumers that third parties are engaged in IBA on a particular website. Two, by linking to a disclosure that describes the IBA activities occurring on that website and providing one or more choice mechanisms, the enhanced notice link brings relevant information to a consumer’s attention at the time of collection and use and gives them control. Absent enhanced notice, consumers would have to read through a privacy policy to unearth language about IBA. In sum, enhanced notice equips users with the ability to exercise choice about use of their data for IBA

⁸ 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.

⁹ *OBA Principles* § II.B. at 13-14.

¹⁰ *Id.*

¹¹ *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.”)

¹² *First Party Enhanced Notice Compliance Warning* at 3.

by informing consumers that the activity is taking place, describing IBA in plain language, and providing consumers with one or more choice mechanisms.

Following consultation with the Accountability Program, Harte Hanks committed to adding an enhanced notice link to its website. This enhanced notice link will direct users to an IBA disclosure page that includes a link to an industry-developed opt-out page and a statement of adherence to the DAA Principles.

CONCLUSION

This case underscores the importance of first-party enhanced notice and its benefit to consumers. Enhanced notice informs consumers of third-party IBA taking place on a website and directs them to relevant information and control mechanisms that they need to exercise choice about companies' use of their data for IBA. As discussed in the Accountability Program's body of first-party cases,¹³ website publishers and operators must fulfill this requirement to achieve compliance with the DAA Principles.

The Accountability Program will continue monitoring the digital advertising ecosystem for companies that are out of compliance with the desktop-oriented OBA Principles. Consumers may contact the Accountability Program to inform us of any possible compliance violations, and companies may reach out to us in order to ensure they are compliant before becoming subject to an Accountability Program inquiry.

The Accountability Program would also like to recognize that Harte Hanks demonstrated a sincere commitment to its users' privacy. Through the course of the Accountability Program's inquiry Harte Hanks cooperated and worked to achieve compliance with the DAA Principles. Self-regulation depends on industry support and companies' willingness to work with the Accountability Program. We appreciate Harte Hanks' adherence to industry self-regulation and compliance.

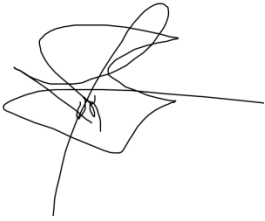
COMPANY'S STATEMENT

We appreciate the work of the Council of Better Business Bureaus and other consumer-oriented organizations working to protect consumer privacy. As a global marketing services firm, Harte Hanks appreciates the importance of protecting consumers' privacy rights, as evidenced by our full cooperation to swiftly address the disclosure shortcomings brought to our attention.

¹³ See *In re: Hollywood Reporter (58-2016)*, Jan. 14, 2016, available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/hollywood-reporter-decision.pdf>. See also *In re: Imgur (45-2015)*, May 15, 2015, available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/imgur-decision.pdf>.

DISPOSITION OF DECISION

Practices voluntarily corrected, jurisdiction retained pending website updates.

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