SYNOPSIS

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles) cover entities engaged in interest-based advertising (IBA) across websites or mobile applications (apps). Any operator of a website (a first party) that allows unaffiliated entities (third parties) 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). Similarly, mobile app publishers that authorize third parties to collect precise location data for IBA purposes must provide users with notice, enhanced notice, and the
opportunity to consent to this collection in accordance with the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance). DAA codes of conduct are independently enforced by the Digital Advertising Accountability Program (Accountability Program), a division of BBB National Programs, Inc.5

COMPANY STATUS

Luxottica Group S.p.A. (Luxottica) is a company engaged in the eyeglass and eyewear business based in Milan, Italy, with a United States office based in New York.6 The company is known for a number of eyewear products, websites, and retail chains, including Ray-Ban, Oakley, LensCrafters, and Glasses.com. The company’s web properties receive approximately 8.8 million visits per month.7

INQUIRY

This case arises from the Accountability Program’s regular monitoring activities. The Accountability Program visited the website of the Ray-Ban sunglasses brand, located at https://www.ray-ban.com/usa, where we observed a number of third-party entities known to engage in IBA collecting data about our visit. However, the Ray-Ban website did not appear to provide notice and enhanced notice about this collection as required under the OBA Principles.8

Below, we describe our examination in detail.

I. Desktop data collection review

The Accountability Program examined the Ray-Ban website for an enhanced notice link, which is required by the OBA Principles. We located a link labelled “Legal” in the website’s footer. When clicked, this link directed us to the top of a terms of use disclosure for the Ray-Ban website.9 However, we could find no link that was distinct from a general privacy policy link that took users directly to a disclosure about third-party IBA occurring on the Ray-Ban website.

We then manually searched the Ray-Ban website for a description of third-party data collection occurring on the website that would satisfy the notice requirement of the OBA Principles. Identifying a privacy policy for the Ray-Ban website, we scrolled through the document in order to find a compliant IBA disclosure containing the elements required by the DAA Principles. During our review, we did not locate either a link to an industry-developed opt-out page or a list

---

7 The Accountability Program notes that it calculated estimates for these figures utilizing the following tool: https://www.similarweb.com/.
8 The Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles) were the first set of industry-wide principles adopted by the DAA. For more information, please see http://www.aboutads.info/obaprinicples.
of third parties with corresponding opt-out links. Looking further, we observed that while Luxottica did provide a description of third-party data collection occurring on its website, it appeared to be unclear enough as to raise questions under the Principles, particularly in regard to informing users that third parties might collect data from website visitors for the purpose of providing tailored advertising based on a user’s interests. Finally, the Ray-Ban privacy policy did not include a statement of Luxottica’s adherence to the DAA Principles.

As the Accountability Program understood Luxottica to own or control multiple fashion brands, we proceeded to review a number of Luxottica’s brand websites, where we identified similar compliance issues.

II. Mobile data collection review

The Accountability Program tested a number of mobile apps apparently offered by Luxottica. We noted one instance of the collection of data that appeared to be precise enough to locate our test device from a domain we were not able to identify. Since we did not know who was collecting the data or for what purpose, the collection of this data raised a possible issue under the precise location data provisions of the Mobile Guidance.

Following our review, the Accountability Program sent an inquiry letter to Luxottica 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,

---

10 The Accountability Program notes that the privacy policy for the Ray-Ban website included some general guidelines on deleting cookies. This type of language does not function as a compliant opt-out mechanism under section II.B. of the OBA Principles. Id. (“You can choose to have your computer warn you each time a cookie is being sent or you can choose to turn off all cookies. You do this through your browser settings. Please note, however, that by deleting our cookies or disabling future cookies you may not be able to access certain areas or features of our website. ... If you object to web beacons, we recommend that you follow the instructions for deleting existing cookies and disabling future cookies.”).

11 Luxottica, Internet Privacy Policy (Feb. 9, 2011), https://www.ray-ban.com/usa/privacy-policy [https://web.archive.org/web/20181026021546/https://www.ray-ban.com/usa/privacy-policy] (“We also work with other companies who use tracking technologies, including web beacons, to serve ads on our behalf across the internet. These companies may collect non-personally identifiable information about your visit to our website about your interaction with our communications, including advertising and e-mails. If you object to web beacons, we recommend that you follow the instructions for deleting existing cookies and disabling future cookies. We will still know how many of our e-mails are opened and we will automatically receive your IP address, a unique identifier for your computer or other access device but we will not identify you as an individual.”).

12 During our review, the Accountability Program identified the website for the Luxottica brand Oakley (https://www.oakley.com/en-us), finding the website had the same issues compliance issues as the Ray-Ban website. We then identified other websites apparently owned by Luxottica, some of which had possible compliance issues under the DAA Principles.

13 Mobile Guidance § IV at 21-30.
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.

Enhanced notice provides consumers with two benefits. First, it informs consumers of the fact that third parties are engaged in IBA on a website. Second, by linking directly to a disclosure that describes the IBA activities occurring on that website and providing a method by which consumers can exercise choice, enhanced notice serves as a bridge to relevant information consumers need at precisely the time they need it. By drawing attention to this otherwise invisible background activity in real time, explaining it in plain language, and providing one or more choice mechanisms, enhanced notice helps consumers understand IBA and make choices about the use of their data for IBA.

II. Precise location data provisions of the Mobile Guidance

The Mobile Guidance adapts the desktop-oriented rules of the OBA Principles to mobile devices, including the core requirements to provide transparency and consumer control of IBA. In particular, when first parties permit third parties to collect precise location data through their

---

14 OBA Principles § II.B. at 13–14.
15 Id.
16 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.
18 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.”).
19 Id. at 31.
20 First Party Enhanced Notice Compliance Warning at 3.
apps for use in IBA, they must provide notice, enhanced notice and choice about such third-party data collection for IBA.\textsuperscript{21}

**Notice requirement**

According to section IV.A.(1) of the Mobile Guidance, first parties must provide clear, meaningful, and prominent notice when they affirmatively authorize third parties to collect precise location data for use in IBA from or through their application(s).\textsuperscript{22} This notice must be placed on the company’s website or be accessible through its app(s) and provide clear descriptions of: (1) the fact that precise location data is transferred to or collected by any third party, (2) instructions for accessing and using a tool for providing or withdrawing consent, (3) and the fact that the first party adheres to the DAA Principles.\textsuperscript{23}

**Enhanced notice requirement**

In addition to the general notice requirement under section IV.A.(1) of the Mobile Guidance, first parties must provide enhanced notice as discussed in section IV.A.(3).\textsuperscript{24} This enhanced notice must be a clear, meaningful, and prominent notice of the fact that the first party authorizes third-party collection of precise location data (or transfers such data to third parties). The first party must also provide a link within the enhanced notice to the disclosure required under section IV.A.(1) of the Mobile Guidance.\textsuperscript{25} This notice and link can be provided during the process of downloading the application, at the time the application is opened, or at the time such data is collected and in the application’s settings or any privacy policy.\textsuperscript{26} Companies may use the mechanisms provided by the application store to fulfill this notice requirement.\textsuperscript{27} A company may also supply its own method of enhanced notice as long as it is as clear, meaningful, and prominent as the notice required by § IV.A.(3) of the Mobile Guidance.\textsuperscript{28}

**Consent requirement**

Further, under section IV.B.(1), first parties should obtain consent to allow third parties to collect precise location data for IBA purposes prior to collection.\textsuperscript{29} This consent tool should be easy to use and should apply to the application and device from which the consent is provided.\textsuperscript{30} The first party is also required to provide an easy-to-use tool for withdrawing consent at any time.\textsuperscript{31} Under the Mobile Guidance, valid consent requires an action in response to a “clear, meaningful,\textsuperscript{\textbullet}
and prominent notice.”32 A company can satisfy this principle by allowing consumers to provide or withdraw consent as a part of the process of downloading and installing an application, or through an application’s settings.33 A company may also use permissions tools provided by an application platform or application market provider to satisfy this requirement.34

COMPANY RESPONSE AND ANALYSIS

I. Enhanced notice of website data collection for IBA

Luxottica responded to the Accountability Program inquiry by conducting a thorough review of its compliance with the DAA Principles. The company identified 26 of its U.S.-facing web properties and worked with the Accountability Program to revise its privacy disclosures to make its suite of U.S.-facing websites compliant with the DAA Principles.

To resolve its compliance issues under section II.B. of the OBA Principles, Luxottica updated the privacy policies of the vast majority of its websites to provide a clearer description to users that third-party entities may collect data for IBA purposes on its websites.35 The changes helped make clear to users in plain language the fact that other entities besides Luxottica may collect data from Luxottica’s website visitors to serve them with tailored advertising based on their browsing behavior. Further, Luxottica ensured that these updated disclosures included a link to an opt-out mechanism and a statement of adherence to the DAA Principles. Finally, Luxottica added to the vast majority of its U.S.-facing websites an enhanced notice link directing to a disclosure describing third-party data collection occurring on these sites for IBA. By providing an enhanced notice link to an IBA disclosure that contains clear language about background data collection for IBA and an opt-out tool, Luxottica now provides transparency and control to the millions of users of its websites. The company further committed to ensuring that all of its web properties be updated in the future to reach full compliance with the DAA Principles.

II. Mobile data collection issues for IBA

In response to the Accountability Program’s letter, Luxottica conducted an audit of the data collection practices on its entire suite of U.S. mobile apps, which at the time of its review included 16 properties. The company found that it did not authorize the third-party collection or transfer of precise location data for IBA purposes. Luxottica indicated that should it ever engage in practices that would be covered by the Mobile Guidance it would ensure that appropriate disclosures, notices, and consent tools were provided to consumers. Weighing Luxottica’s claim against the Accountability Program’s own monitoring results, the Accountability Program found

32 Mobile Guidance Definition B at 4.
33 Id. Commentary to § IV.B.(1) at 27. The application settings may only be used by the first party to satisfy this requirement it provides notice of transfer of location data to a third party.
34 Id.
35 Luxottica, Luxottica Privacy & Security (Jan. 1, 2020), https://www.ray-ban.com/usa/privacy-policy#12_question (‘We may engage and work with service providers and other third parties to serve advertisements on the service and/or on third-party services. Some of these ads may be tailored to your interests based on your browsing of the service and elsewhere on the Internet, sometimes referred to as “interest-based advertising” and “online behavioral advertising” (“Interest-based Advertising”), which may include sending you an ad on a third-party service after you have left the service (i.e., “retargeting”).’
no reason to question this assertion. Since there were, in fact, no IBA practices that triggered the precise location data requirements of the Mobile Guidance, the Accountability Program found that this issue was resolved.

CONCLUSION

Today’s case again highlights the responsibilities 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. Notably, when publishers control and operate a significant number of mobile and web properties, this responsibility is amplified. Brands that enjoy massive consumer audiences and employ technologies that facilitate IBA must honor consumer privacy and provide their website visitors with transparency and choice about data collection.

The Accountability Program thanks Luxottica for its commitment to consumer privacy and industry self-regulation.

COMPANY’S STATEMENT

Luxottica did not wish to provide a statement.

DISPOSITION OF DECISION

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

Jon M. Brescia
Vice President
Digital Advertising Accountability Program