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

## ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

## FORMAL REVIEW

Case Number: 68-2016

COMPANY:	)
Panasonic Consumer Electronics Company	)
	)
	)
<u>CHALLENGER:</u>	)
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). Owners or operators of websites who allow third parties to collect or use visitors' web browsing data for IBA must comply with the first-party requirements of section II.B. of the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).<sup>1</sup>

## **COMPANY STATUS**

Panasonic Consumer Electronics Company (Panasonic) is a division of the Panasonic Corporation of North America, a technology company that maintains a website located at

<sup>&</sup>lt;sup>1</sup> 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.

http://shop.panasonic.com/. The company is the principal North American subsidiary of Panasonic Corporation,<sup>2</sup> a multinational Japanese electronics company.

## **INQUIRY**

As part of its monitoring and enforcement efforts, the Accountability Program routinely opens investigations based on consumer complaints regarding alleged noncompliant IBA activity. This particular case arises from a consumer complaint alleging that Panasonic's website was not in compliance with the requirements of the Transparency Principle of the OBA Principles.

In response to the consumer complaint, the Accountability Program visited the Panasonic website (<a href="http://shop.panasonic.com/">http://shop.panasonic.com/</a>) to review all of Panasonic's IBA practices. During its visit, the Accountability Program observed data collection by third-party companies known to engage in IBA. We then located a link in the website's footer labeled "Privacy." When clicked, this link directed us to the top of the webpage containing the company's privacy policy (<a href="mailto:shop.panasonic.com/pna-privacy-policies.html#2f">shop.panasonic.com/pna-privacy-policies.html#2f</a>). In reviewing this policy, we were able to locate a description of third-party data collection in the "Use of Cookies, Google Analytics and Adobe Analytics" section. In this section, we noted that Panasonic explains its use of Google and Adobe's services with links to those companies' opt outs. However, this listing only pertained to the analytics functions performed by these companies. Moreover, we noted that the section did not contain opt-out mechanisms for other companies we observed collecting information apparently for IBA on the Panasonic website. We also could not locate a statement of adherence to the DAA Principles.

Based on the above review, the Accountability Program sent an inquiry letter to Panasonic explaining the compliance issues it had found on its website.

## **COMPANY'S POSITION**

Upon receiving the Accountability Program's inquiry letter, Panasonic immediately committed to coming into compliance with the DAA Principles. Panasonic consulted with the Accountability Program and developed a plan to modify its website to fulfill the requirements of the OBA Principles. Specifically, Panasonic added an enhanced notice link, separate from the privacy policy link, on each page of the Panasonic website where third-party companies collect information for IBA. This link takes users directly to the section of Panasonic's website privacy policy that addresses third-party IBA on the website. Panasonic also added new language describing IBA to this section of the privacy policy. Within this section, Panasonic also included a link to the DAA Consumer Choice Page (<a href="www.aboutads.info/choices">www.aboutads.info/choices</a>) and a statement of adherence to the DAA Principles.

#### **DECISION**

Because Panasonic authorizes third parties to collect data on its website for IBA, the company has duties as a first party<sup>3</sup> under the OBA Principles. This case falls squarely within our line of

<sup>&</sup>lt;sup>2</sup> Panasonic, *Company Overview*, http://www.panasonic.com/global/corporate/profile/overview.html (last visited May 19, 2016), *see also* Panasonic, http://shop.panasonic.com/ (last visited May 23, 2016).

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 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.<sup>4</sup> 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 of their responsibilities under the OBA Principles.<sup>5</sup> The Accountability Program here restates these responsibilities.

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-affiliate websites, they must provide consumers with appropriate notice and an opportunity to exercise choice about whether to participate in IBA.<sup>6</sup> A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.<sup>7</sup> This disclosure must contain either a link to an industry-developed consumer choice page (such as <a href="http://aboutads.info/choices">http://aboutads.info/choices</a>) or a list of every third party conducting IBA activity on the first-party website.<sup>8</sup> Additionally, a first party must state its adherence to the DAA Principles on its website.<sup>9</sup>

Most significantly, 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. <sup>10</sup> 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

<sup>&</sup>lt;sup>3</sup> *OBA Principles* Definition F at 10. *See also* Online Interest-Based Advertising Accountability Program, *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.

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

<sup>&</sup>lt;sup>5</sup> 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).

<sup>&</sup>lt;sup>6</sup> OBA Principles § II.B. at 13-14.

<sup>&</sup>lt;sup>7</sup> *Id*.

<sup>&</sup>lt;sup>8</sup> 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.

<sup>&</sup>lt;sup>9</sup> OBA Principles § II.B. at 13-14.

<sup>&</sup>lt;sup>10</sup> *Id*.

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 independently 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 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.).<sup>12</sup>

Enhanced notice provides consumers with two benefits. One, the enhanced notice link alerts consumers to the fact that third parties are engaged in IBA on a website. Two, by linking to a disclosure that describes the IBA activities occurring on that website and providing a method by which consumers can exercise choice, the enhanced notice link serves as a conduit to relevant information consumers need at the time of collection or use. By highlighting in real time this otherwise invisible background activity, explaining it in plain language, and pointing to one or more choice mechanisms, enhanced notice helps consumers understand IBA and empowers them to make choices about the use of their data.

Following consultation with the Accountability Program, Panasonic added a separate and distinct enhanced notice link on the footer of each page of the Panasonic website where third parties collect data for IBA. The link directs users to an IBA disclosure that includes a link to www.aboutads.info/choices. The company also added a statement of adherence to its privacy policy.

## **CONCLUSION**

The Federal Trade Commission asked the advertising industry to find a way to provide just-intime notice and choice to consumers so that it would no longer be buried in a lengthy privacy policy. The industry responded with "enhanced notice," provided through a link on every page where an interest-based ad is served or data is collected for use in IBA. These links signal that

<sup>&</sup>lt;sup>11</sup> 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.

data is being collected by third parties for IBA. Enhanced notice links must take consumers directly to a place where the relevant entity's IBA practices are explained and where the consumer can find an easy-to-use mechanism to opt out.

This case highlights the Accountability Program's prior work to explain that first and third parties alike have the responsibility to ensure that consumers have the enhanced notice the advertising industry worked so hard to create. The Accountability Program will continue its enforcement efforts in the desktop environment to ensure that all first parties authorizing third parties to engage in IBA on their websites provide consumers with meaningful notice and choice.

We also appreciate the assistance of members of the public in identifying potential compliance infractions and bringing them to our attention. We will continue to respond to specific consumer complaints such as this one, and, where necessary, open new investigations to resolve the issues raised in germane complaints along with any other compliance issues we find during the course of our investigation.

And, as always, the Accountability Program encourages companies to review their websites to ensure they are in full compliance with the DAA Principles. We urge them to come to us if they need guidance or find that they have a compliance issue, rather than waiting for us to find them.

Finally, we want to restate our appreciation of the willingness of companies like Panasonic to follow practices that protect consumer privacy and to commit quickly to rectify any compliance issue we bring to their attention. The support of companies such as Panasonic and the many other companies with which we have worked both through counselling and through public compliance actions is what makes self-regulation work.

## **COMPANY'S STATEMENT**

Panasonic Consumer Electronics Company, Division of Panasonic Corporation of North America and the operator of the <a href="www.shop.panasonic.com">www.shop.panasonic.com</a> website, has always been committed to maintaining responsible online advertising practices consistent with legal and self-regulatory requirements. We have long been a strong supporter of the principles of transparency and consumer choice, and we appreciate the opportunity to work with the Accountability Program to ensure compliance with the DAA principles and to promote consumers' awareness of, and ability to exercise, their privacy choices.

## **DISPOSITION OF DECISION**

Practices voluntarily corrected.

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