

Principles. Specifically, under section II.B. of the OBA Principles, first parties must post a clear, meaningful, and prominent link to a disclosure on any web page through which IBA data is collected. This disclosure should explain the IBA activity occurring on the first party's site, provide consumers with a means to opt out of IBA, and state the website's adherence to the DAA Principles.

COMPANY STATUS

Purple Innovations LLC (Purple) is a mattress company headquartered in Alpine, Utah.⁴

INQUIRY

This case arises from a consumer complaint that Purple's website (<https://purple.com/>) allowed third parties to collect users' data for use in IBA without providing notice to these users as required under the OBA Principles. In response to the complaint, the Accountability Program reviewed Purple's website, where we observed data collection by third-party companies known to engage in IBA. This prompted a full examination of Purple's compliance with all applicable requirements of the DAA Principles.

The Accountability Program first looked for an enhanced notice link on the Purple website. At the time of our review, we located a link in the company's website footer entitled "Terms." When clicked, this link directed us to the top of the webpage containing the company's terms and conditions of use as well as its privacy policy. We then looked for a link, separate from this "Terms" link, that would direct us to a disclosure of the third-party IBA activity occurring on the Purple website. However, we could find no such link.

We then manually searched the Purple terms and conditions page for the presence of a compliant IBA disclosure. Scrolling through this document, we found that Purple did not provide a description of the third-party data collection occurring on its website that would satisfy the notice requirement. Though the privacy policy included a section on "Third Party Services," this part of the document did not mention IBA.⁵ This section explained that third parties who "provide marketing services" for Purple will "in general ... only collect, use and disclose your information to the extent necessary to allow them to perform the services they provide." Neither this language nor any other language we found on the Purple website constituted a compliant disclosure of third-party IBA under the DAA Principles. Further, we did not locate either a link to an industry developed opt-out page or a list of third parties with corresponding opt-out links. Finally, Purple's disclosures did not include a statement of the company's adherence to the DAA Principles.

Following our review, the Accountability Program sent an inquiry letter to Purple detailing these compliance issues in order to bring the company into compliance with the DAA Principles.

⁴ See generally Purple, *Purple*, <https://purple.com/> (last visited Apr. 16, 2018).

⁵ Purple, *Purple's Terms and Conditions of Use* (August 10, 2017), <https://onpurple.com/terms-and-privacy>.

ISSUE RAISED

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.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 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

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.¹⁰ 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.¹¹

Enhanced notice provides consumers with two benefits. One, the enhanced notice informs consumers of the fact that third parties are engaged in IBA on a website. Two, 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 empowers them to make choices about the use of their data for IBA.

⁶ *OBA Principles* § II.B. at 13–14.

⁷ *Id.*

⁸ *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.

⁹ *OBA Principles* § II.B. at 13–14. *See, e.g., In re: Best Buy Co., Inc. (39-2014)*, Oct. 28, 2014, at 4, <http://www.ascreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-39.20141.pdf>.

¹⁰ *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.").

¹¹ *First Party Enhanced Notice Compliance Warning* at 3.

COMPANY RESPONSE AND ANALYSIS

Purple responded to our inquiry by conducting a thorough review of its compliance with the DAA Principles. To reach compliance, Purple added an enhanced notice link labeled “Interest-based Ads,” separate from its “Terms & Privacy”¹² link, on each page of its website through which third-parties collect information for IBA. This link takes users directly to an updated section of Purple’s privacy policy which includes a disclosure of third-party IBA activity occurring on the Purple website and a link to the DAA’s WebChoices page.¹³ Purple also added a statement of adherence to the DAA Principles to this section of the privacy policy. These changes brought Purple into full compliance with the DAA Principles.

CONCLUSION

Today’s case reiterates the need for enhanced notice on first parties’ websites. Purple now provides enhanced notice in an easily-accessible footer menu, allowing privacy-minded consumers easy access to information about IBA, including a means to opt out of this kind of advertising. In doing so, it joins an ever-growing number of websites that have implemented enhanced notice, whether proactively or as a result of the dozens of Accountability Program cases addressing this particular issue.

We thank Purple for its cooperation with the Accountability Program and its sincere commitment to compliance with the DAA Principles. Its enthusiastic participation in our review process and speedy resolution of outstanding compliance issues emblemize the responsible corporate behavior that makes self-regulation so successful.

COMPANY’S STATEMENT

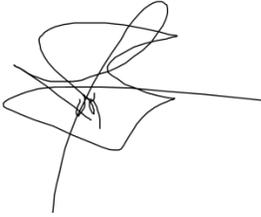
Purple is pleased to have had the opportunity to work with the Advertising Self-Regulatory Council’s Online Interest-Based Advertising Accountability Program, and provide enhanced notice to consumers on our website. We appreciate the efforts of self-regulatory organizations like the Advertising Self-Regulatory Council that are making the web a better place. Helping to keep consumers informed is as important to us as a good night’s rest! We thank the Advertising Self-Regulatory Council for its hard work in keeping companies accountable.

¹² As part of its website revisions, Purple also changed its “Terms” link to read “Terms & Privacy” to highlight that both documents—its terms of use and its privacy policy—can be found using the same link.

¹³ Purple, *Purple’s Terms and Conditions of Use*, <https://purple.com/terms-and-privacy#interest-based-ads> (last visited Apr. 16, 2018) (“On certain of our webpages we may allow third parties to collect your data for use in Interest-based advertising. We are committed to adhering to the Digital Advertising Alliance self-regulatory principles (‘DAA Principles’) that govern best practices for Interest-based advertising. Consistent with DAA Principles, if you would like to opt-out from such third party data collection for use in Interest-based advertising, please visit the Digital Advertising Alliance Consumer Choice Page at www.aboutads.info/choices.”) [<https://perma.cc/A9R5-GG2T>].

DISPOSITION OF DECISION

Practices voluntarily corrected.

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