BBB NATIONAL PROGRAMS

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM,
Challenger,

VENUS FASHION, INC.,
Corporation.

Case No. 128-2023
Filed July 11, 2023

FINAL DECISION

I. 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

\(^{1}\) The DAA’s interest-based advertising principles consist of a suite 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). The full text of the Principles can be found at http://www.aboutads.info/principles.

\(^{2}\) 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.”).
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 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).

II. Company Status

Venus Fashion, Inc. (Venus) is a Florida-based company that publishes the online
fashion retail website venus.com. Since 1982, Venus has been a premier online and
catalog retailer for women’s clothing and swimwear.

III. Inquiry

As part of its routine monitoring and enforcement efforts, the Accountability
Program opens investigations based on consumer complaints regarding alleged
noncompliance with the OBA Principles.

This specific case arises from a consumer complaint claiming that Venus’ website
was not in compliance with the requirements of the Transparency Principle of the
OBA Principles.4 In response to the consumer complaint, the Accountability
Program visited the website www.venus.com to review Venus’ compliance with the
Principles. During its visit, the Accountability Program observed data collection by
third-party companies known to engage in IBA.

When the Accountability Program examined Venus’ website, we located a link in the
site footer labeled “Privacy Policy.”5 When we clicked on the Privacy Policy link, it
directed users to the top of the company’s privacy policy. After significant scrolling,
we identified a description of third-party IBA practices on the Venus site. This section
was deficient, however, because the hyperlink to the DAA-developed opt-out tool was
broken and therefore could not redirect users to their opt-out choices for third-party
IBA. Additionally, Venus’ policy failed to include a statement of adherence to the
DAA Principles.

Under the Transparency Principle, Venus must provide a link—distinct from the
privacy policy link—on each page where third-party data collection for IBA occurs.
An enhanced notice link must, unlike the Venus website’s privacy policy link, take
users directly to its IBA disclosure.

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

4 See OBA Principles § II.B. at 13–14.

5 Venus, Privacy Policy, https://www.venus.com/privacy
IV. Issues Raised

A. Website data collection

1. 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 the first party’s website.

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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.


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 Id. at 31.

12 First Party Enhanced Notice Compliance Warning at 3.
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.

V. Company response and analysis

In response to the Accountability Program’s inquiry letter, Venus immediately conducted a comprehensive review of its compliance with the DAA Principles in order to identify any areas in its compliance protocols that needed strengthening. Following this review, Venus changed its privacy practices, as described below.

A. Enhanced Notice of website data collection for IBA

Since the venus.com domain uses a single site footer on all web pages, Venus decided to provide enhanced notice by adding a prominent and conspicuous link titled “My Privacy and Ad Choices” to the site footer. This “My Privacy and Ad Choices” link—which now appears on all public webpages—takes users directly to the top of a newly edited privacy policy section titled “Third-Party Automated Collection and Interest-Based Advertising.” This section contains all elements of enhanced notice, namely (1) a description Venus’ third-party IBA practices, (2) a link to industry-developed IBA opt-out tools, and (3) a statement of adherence to the DAA Principles.

By taking this approach and making these changes, Venus ensured that consumers wishing to learn more about how their data was being collected and used by third parties would be directed to relevant information about their choices. These changes bring Venus’ First Party Enhanced Notice into compliance with the DAA Principles.

VI. Company statement

VENUS Fashion, Inc. (“VENUS”) is proud to participate in the Digital Advertising Alliance’s self-regulatory DAA Accountability Program. VENUS welcomed the opportunity to review its privacy policies and practices with the DAAP and is confident that, by voluntarily implementing the recommended changes, the company is demonstrating its ongoing commitment to consumer privacy and choice.

VII. Disposition of decision

Practices voluntarily corrected.