ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW Case Number: 82-2018

COMPANY:)
Liftopia, Inc.)
)
<u>CHALLENGER:</u>)
Online Interest-Based)
Advertising Accountability Program)
)
)

DECISION

DATE: March 14, 2018

SYNOPSIS

Companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance's (DAA) Self-Regulatory Principles (DAA Principles). Any operator of a website (a first party) that allows unaffiliated entities (third parties) to collect visitors' web browsing data for IBA must comply with the enhanced notice requirement of the DAA

¹ The DAA Principles are embodied in 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). These documents may be found online at http://www.aboutads.info/principles.

² See 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 Online Interest-Based Advertising Accountability Program, First Party Enhanced Notice 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.

³ Third parties are entities that collect data for IBA from non-affiliate websites or entities that collect data for IBA through non-affiliate mobile apps. *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.")

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 site, provide consumers with a means to opt out of IBA, and state the website's adherence to the DAA Principles.

COMPANY STATUS

Liftopia, Inc. is a private California-based company that provides an ecommerce platform enabling ski resorts to sell advance-purchase lift tickets online.⁴

INQUIRY

This case arises from a consumer complaint alleging that Liftopia was allowing third parties to collect users' data for IBA through its website (https://www.liftopia.com/) without providing enhanced notice as required under the OBA Principles. In response to the complaint, the Accountability Program reviewed Liftopia's website, where we observed data collection by third-party companies known to engage in IBA. This prompted a full examination of Liftopia's compliance with all applicable requirements of the DAA Principles.

The Accountability Program first looked for an enhanced notice link on the Liftopia website. At the time of our review, we noted that the Liftopia website included a "Privacy" link as part of the footer of each page. When clicked, this link led to the top of the webpage containing the company's privacy policy. We then looked for a link, separate from this privacy policy link, that directed us to a disclosure of the third-party IBA activity occurring on the Liftopia website. However, we could find no such link.

We then manually searched the Liftopia privacy policy for the presence of a compliant IBA disclosure. Under the heading, "Advertising," the Liftopia privacy policy included a description of the third-party IBA taking place on the Liftopia website along with links to TRUSTe's Preference Manager tool (http://preferences-mgr.truste.com/) as well as the homepages of industry opt-out websites, including the DAA's Self-Regulatory Program (http://www.aboutads.info/), the Network Advertising Initiative (http://www.youronlinechoices.eu/), and the European Interactive Digital Advertising Alliance (http://www.youronlinechoices.eu/). However, the disclosure lacked a statement of adherence to the DAA Principles, and we could not find such a statement anywhere else on the Liftopia website.

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

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

⁴ See generally Liftopia, The only advance purchase & pricing platform for eCommerce in ski, https://about.liftopia.com/index.html (last visited Sept. 15, 2017).

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.⁵ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there. 6 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.8

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, and 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.

Either the first or third party can provide the enhanced notice link on a website where third parties are collecting data for IBA. However, both parties are independently responsible for ensuring that enhanced notice is, in fact, provided. To achieve compliance, companies should work with one another 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, the Accountability Program has cautioned first parties that,

[u]nless 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*). 10

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

⁵ OBA Principles § II.B. at 13–14.

⁷ *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.

⁸ OBA Principles § II.B. at 13–14. See, e.g., In re: Best Buy Co., Inc. (39-2014), Oct. 28, 2014, at 4 available at http://www.asrcreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-39.20141.pdf.

⁹ 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.")

¹⁰ First Party Enhanced Notice Compliance Warning at 3 (emphasis in original).

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 the time of collection or use. 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.

COMPANY RESPONSE AND ANALYSIS

After some initial difficulty establishing contact with Liftopia, the Accountability Program spoke with Liftopia about its concerns. Liftopia responded by immediately conducting a thorough review of its compliance with the DAA Principles. The company provided detailed descriptions of its data collection practices and consulted with the Accountability Program on its plan to come into full compliance with the OBA Principles.

Specifically, Liftopia added an enhanced notice link labelled "Your Ad Choices," separate from its privacy policy link, on each page of its website through which third-parties collect information for IBA. This link takes users directly to the section of the Liftopia website privacy policy that addresses third-party IBA, which in turn includes a link to the industry-developed consumer choice page www.aboutads.info.11 Liftopia also added a statement of adherence to the DAA Principles to this section of the privacy policy. These changes brought Liftopia into full compliance with the DAA Principles.

CONCLUSION

Today, we once again remind any first party that allows data collection or use for IBA on its website that it must provide consumers with real-time notice of this fact. Though best known as a marker attached directly to interest-based ads, enhanced notice remains equally important on pages where no ads are displayed but through which data is collected for IBA purposes. Proper enhanced notice removes the need for consumers to search through lengthy privacy policies on every website they visit to determine whether their browsing habits will be noted by or shared with third parties for IBA. In addition, enhanced notice links take concerned consumers to an easy tool for opting out of IBA, providing timely access to choice.

We note that this case falls squarely within our large body of cases enforcing the provision of enhanced notice on companies' websites. We are now four years beyond the publication of our 2013 First Party Enhanced Notice Compliance Warning. Given the large body of published Accountability Program decisions and the coverage they have received in the press, first parties that allow IBA on their sites should now fully understand their compliance obligations. Providing consumers with real-time notice and the opportunity to exercise choice about IBA is now a clear industry standard. Companies therefore have no excuse for burying notice of IBA deep within their privacy policy. Website operators should also note well that in addition to the Accountability Program's own compliance monitoring and research, a number of our cases, including this one, have arisen from consumer complaints. We have seen a rise in consumer complaints about the lack of enhanced notice. Companies who wish to play the odds in hopes of

¹¹ Liftopia, *Privacy Statement*, https://www.liftopia.com/privacy-statement#advertising (last visited Sept. 15, 2017).

evading our scrutiny and that of the general public may well find themselves the subject of yet another Accountability Program inquiry.

We thank Liftopia for its cooperation with the Accountability Program and its sincere commitment to compliance with the DAA Principles. We also appreciate that Liftopia had made good faith efforts to provide consumers with notice and opt-out links within its privacy policy before we contacted the company. Once fully informed of our concerns, the company moved quickly to resolve its compliance issues. Successful self-regulation depends on the collaboration and commitment that Liftopia demonstrated here.

COMPANY'S STATEMENT

Liftopia is committed to protecting its users' privacy. As part of its commitment, Liftopia provides users with information about third-parties that collect information for IBA on its website. We appreciate the Council of Better Business Bureaus' efforts to help make it easier for consumers to locate information regarding IBA through "enhanced notice."

DISPOSITION OF DECISION

Practices voluntarily corrected.

Jon M. Brescia

Director, Adjudications and Technology

Online Interest-Based Advertising Accountability Program