BBB NATIONAL PROGRAMS, INC.

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW

Case Number: 106-2019

<u>COMPANY:</u> PVH Corp.)))
<u>CHALLENGER:</u> Digital Advertising)
Accountability Program)

DECISION

DATE: October 28, 2019

SYNOPSIS

Companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance's (DAA) Self-Regulatory Principles (DAA Principles).¹ Any operator of a website (a first party)² that allows unaffiliated entities (third parties)³ to collect visitors' web browsing data for IBA must comply with the enhanced notice requirement of the DAA 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,

¹ The DAA's interest-based advertising 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 Accountability Program, First Party Enhanced Notice Compliance Warning CW-01-2013, http://www.asrcreviews.org/wp-

content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf.

³ 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.").

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

COMPANY STATUS

PVH Corp. (PVH) is a global apparel company which owns a number of fashion brands, including True&Co, Calvin Klein, and Tommy Hilfiger. The company is headquartered in New York, New York.⁴

INQUIRY

This inquiry case arises from a consumer complaint that the True&Co website (https://trueandco.com/) allowed third parties to collect users' data for use in IBA without providing notice and choice to these users as required under the OBA Principles. Specifically, the consumer described seeing a number of retargeted ads for True&Co products on unaffiliated websites yet was unable to find information on how to opt out of these ads. These complaints prompted a full examination of True&Co's compliance with all applicable requirements of the DAA Principles.

The Accountability Program first reviewed the True&Co website, where we observed data collection by third-party companies known to engage in IBA. We then looked for an enhanced notice link on the True&Co website that met the requirements of section II.B of the OBA Principles. At the time of our review, we noted that each page of the website included a "Privacy" link in the footer. When clicked, this link directed us to the top of a webpage containing the company's privacy policy. We then looked for a link, separate from this "Privacy" link, that would direct us to a disclosure of the third-party IBA activity occurring on the True&Co website. However, we could find no such link.

The Accountability Program then examined the privacy policy document for the True&Co website in order to locate a compliant IBA disclosure. We found that True&Co did not provide a description of the third-party data collection occurring on its website that would satisfy the notice requirement of the OBA Principles.⁵ Though the privacy policy included a section on "Online Tracking," which described data collection in some detail, it did not explicitly describe third-party collection on the website own site, and only described the use of first-party cookies for website analytics purposes. Looking further, we found that the document did not explicitly describe third this type of disclosure. Finally, we could not locate a statement of adherence to the DAA Principles.

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

⁴ See generally PVH, https://www.pvh.com/ (last visited April 5, 2019). See also PVH, Our Brands, https://www.pvh.com/brands (last visited April 8, 2019).

⁵ PVH, *Privacy Policy* (June 20, 2017), https://trueandco.com/privacy_policy [perma: http://web.archive.org/web/20180906173339/https://trueandco.com/privacy_policy].

ISSUES RAISED

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.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 <u>http://aboutads.info/choices</u>) 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.

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.

⁶ OBA Principles § II.B. at 13–14.

⁷ Id.

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.asrcreviews.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

In response to our inquiry, PVH, the owner of the True&Co brand, conducted a thorough review of its compliance with the DAA Principles, committing to providing enhanced notice for all its consumer-facing brands. The company informed the Accountability Program that that at the time of our review, it was in the middle of a code freeze and required additional time to make updates to its websites. Finding this request commercially reasonable, the Accountability Program accommodated this concern, and PVH provided the Accountability Program with a timeline for completion.

Within this timeline, PVH took clear and concrete steps to attempt to come into compliance with the DAA Principles, described below.

Enhanced notice of website data collection for IBA

PVH added an enhanced notice link labeled "Interest Based Ads," separate from its "Privacy Policy" link, on each page of the True&Co website where third parties collect information for IBA. This link takes users directly to a new section in True&Co's revised privacy policy that discloses third-party tracking activity occurring on the site and includes a link to the DAA's aboutads.info page.¹² PVH also updated the websites for its other brands to include a similar notice directing visitors to disclosures about third-party IBA occurring on the website. Further, the company committed to ensuring that the websites' IBA disclosures would include statements of adherence to the DAA Principles by December 2019. After reviewing PVH's suite of websites, the Accountability Program found that the company had provided enhanced notice links throughout these sites and was on its way to achieving full compliance.

CONCLUSION

The Digital Advertising Accountability Program is in the eighth year of its self-regulatory mission to provide consumers with information and choices about their data privacy. Today's case continues the Accountability Program's efforts ensure that publishers 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. When publishers control and operate a number of websites that are frequently visited by users, it is critical they fulfill this responsibility.

Here, PVH worked diligently with the Accountability Program to provide enhanced notice on all of its websites where IBA occurs. The Accountability Program appreciates the company's sincere support of consumer privacy.

COMPANY'S STATEMENT

PVH Corp. values consumer privacy and is committed to providing transparency, accountability, and security in handling our consumers' personal information. We appreciate the opportunity to

¹² PVH, *Privacy Policy*, (Feb. 12. 2019) https://trueandco.com/privacy_policy#online-tracking.

work with the DAA to bolster our privacy practices as we continue to focus on compliance with self-regulatory and legal requirements.

DISPOSITION OF DECISION

Practices substantially corrected, jurisdiction retained until final updates complete

Jon M. Brescia Vice President Digital Advertising Accountability Program