BBB NATIONAL PROGRAMS

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

SERVICE CORPORATION INTERNATIONAL, Corporation,

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM, *Challenger*.

Case No. 124-2022 Filed February 3, 2022

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 must provide visitors with notice and enhanced notice as prescribed in the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).

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* Digital Advertising 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.

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.").

II. **Company Status**

Service Corporation International (SCI) is a company in the United States that provides funeral goods and services, operating more than 1500 funeral homes and 400 cemeteries. It operates the Dignity Memorial, Dignity Planning, Advantage, Funeraria del Angel, Memorial Plan, National Cremation Society, and Neptune Society brands, among others.

III. Inquiry

This case arises from the Accountability Program's ongoing monitoring of websites and mobile apps. The Accountability Program identified SCI and its websites, and reviewed them for compliance with the OBA Principles. During that review, the Accountability Program detected signs of data collection by companies known to us to engage in interest-based advertising ("IBA") on SCI websites, including those of Advantage Funeral & Cremation Services, 4 the Cremation Society of Virginia, 5 Dignity Memorial,⁶ the Dignity Planner,⁷ the National Cremation Society,⁸ the Neptune Society,9 the Neptune Society of Northern California,10 Rose Hills Memorial Park & Mortuary, 11 the SCI corporate website, 12 and the Trident Society. 13

As the company that owns or controls websites on which user data appeared to be collected or used for IBA, SCI is a first party under the OBA Principles.¹⁴ But when entities engage in IBA on websites with which they are unaffiliated, they are acting as third parties under the OBA Principles. 15 Based on the observation of apparent third-

⁴ http://www.advantagefunerals.com/

⁵ https://virginiacremate.com/

⁶ https://www.dignitymemorial.com/

⁷ https://www.thedignityplanner.com/

⁸ https://www.nationalcremation.com/

⁹ https://www.neptunesociety.com/

¹⁰ https://www.neptune-society.com/

¹¹ https://www.rosehills.com/

¹² http://www.sci-corp.com/

¹³ https://www.tridentsociety.com/

¹⁴ OBA Principles, Definition F at 10 (defining a first party as "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").

¹⁵ OBA Principles, Definition C at 9 (defining an affiliate as "an entity that Controls, is Controlled by, or is under common Control with, another entity"); id., Definition J at 11 (defining a third party as an entity that "engages in Online Behavioral Advertising on a non-Affiliate's Web site").

party IBA activity, the Accountability Program evaluated SCI's compliance with its First Party responsibilities under the *OBA Principles*.

As previously noted, a first party that allows third parties to collect visitors' web browsing data for IBA must provide visitors with notice and enhanced notice and an opportunity to exercise choice regarding that data collection, as prescribed in the OBA principles. While SCI's websites provided nearly complete IBA disclosures, they lacked the required enhanced notice links to complete IBA disclosures.

The Accountability Program found nearly complete IBA disclosures on most SCI websites, including those of Advantage Funeral & Cremation Services, the Cremation Society of Virginia, Dignity Memorial, the Dignity Planner, the National Cremation Society, the Neptune Society, the Neptune Society of Northern California, Rose Hills Memorial Park & Mortuary, and the Trident Society. The privacy policies on these websites disclosed the existence of third-party IBA activity and provided links to opt-out mechanisms provided by the DAA or the Network Advertising Initiative, ¹⁶ although none included statements of adherence to the DAA Principles.

In contrast, the SCI corporate website's privacy policy lacked a discussion of third-party IBA occurring on the site, an opt-out tool, and a statement of adherence to the DAA Principles.¹⁷ The Accountability Program was unable to find any IBA disclosure covering the site.

For all reviewed SCI websites, the Accountability Program found no enhanced notice. We could find no link, separate and distinct from a privacy policy link, that took users directly to an IBA disclosure. While each website provided a privacy policy hyperlink in its footer, this type of link does not constitute enhanced notice, as it is not distinct from a general privacy policy link and does not direct users to an IBA disclosure. And while several websites had "Opt Out" hyperlinks on their homepages, these links did not lead to disclosures about IBA activity and therefore did not serve as enhanced notice. 18 For the foregoing reasons, the Accountability

¹6 Advantage Funeral & Cremation Services, *Privacy Policy*, available at http://www.advantagefunerals.com/en-us/privacy.page; Cremation Society of Virginia, *Privacy Policy*, available at https://virginiacremate.com/privacy; Dignity Memorial, *Privacy Policy*, available at https://www.dignitymemorial.com/privacy-policy; Dignity Planner, *Privacy Policy*, available at https://www.thedignityplanner.com/privacy, National Cremation Society, *Privacy Policy*, available at https://www.nationalcremation.com/privacy; Neptune Society, *Privacy Policy*, available at https://www.neptunesociety.com/privacy; Neptune Society of Northern California, *Privacy Policy*, available at https://www.neptune-society.com/privacy-policy; Rose Hills Memorial Park & Mortuary, *Privacy Policy*, available at https://www.rosehills.com/privacy-policy; Trident Society, *Privacy Policy*, available at https://www.tridentsociety.com/privacy/.

¹⁷ Service Corporation International, *Privacy Policy*, http://www.sci-corp.com/en-us/privacy-policy.page.

¹⁸ *See, e.g.*, Trident Society, Homepage, available at https://www.tridentsociety.com/; *Id.*, Customer Service, available at https://www.tridentsociety.com/customer-service/.

Program believed that SCI had possible compliance issues under the first-party enhanced notice provisions of the OBA Principles.

IV. Issues Raised

A. Notice of website data collection for IBA

First-party duties under the OBA Principles are set out in section II.B of the Principles. 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.¹⁹ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.²⁰ 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.²¹ Additionally, a first party must state its adherence to the DAA Principles on its website.²²

B. Enhanced Notice of website data collection for IBA

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.²³ Alternatively, the link may point directly to an industry-developed website containing "mechanisms for choosing whether each participating entity may collect and use data for online behavioral advertising purposes."²⁴

¹⁹ OBA Principles § II.B.

²⁰ *Id*.

²¹ *Id.* We note that when first parties choose to list third parties individually, "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.

²² OBA Principles § II.B. See also, e.g., In re Best Buy Co., Inc., No. 39-2014, at 4 (2014).

²³ 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.").

²⁴ Id. § II.B; id., Summary, at 6.

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.²⁵ The link may be provided directly by the first party or by one of the third parties active on its website.²⁶ But "both parties are independently responsible for ensuring that enhanced notice is provided. . . . 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."²⁷

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, SCI changed its privacy practices, as described below.

A. Notice of website data collection for IBA

SCI unified its privacy policies by redirecting the privacy link on each page to the privacy policy on its main corporate site at sci-corp.com.²⁸ SCI additionally modified its privacy policy to contain the missing elements of First-Party Notice by adding a discussion of third-party IBA occurring on its sites, provided links to the opt-out tools offered by the Network Advertising Initiative and the Digital Advertising Alliance, individually listing third-party cookies on their sites and their purposes, and adding a statement of adherence to the DAA principles. These changes brought SCI's First-Party Notice of website data collection for IBA into compliance with the DAA principles.

²⁵ *Id.* at 31.

²⁶ First Party Enhanced Notice Compliance Warning at 3.

²⁷ In re Wayfair Inc., No. 71-2017 at 4 (2017).

²⁸ Service Corporation International, *Privacy Policy* (April 9, 2021), https://www.sci-corp.com/privacy-policy.

B. Enhanced Notice of website data collection for IBA

SCI added a copy of the DAA AdChoices icon to the footer of each of its sites.²⁹ It then linked that icon to the privacy policy on SCI's main corporate site as a means of providing Enhanced Notice on every page where data collection was occurring.

But this in itself is not sufficient: "[t]he requirement to provide clear, meaningful, and prominent notice [is not] satisfied by providing notice hidden in lengthy terms and conditions." And if the required elements of Notice are in a website's privacy policy, any Enhanced Notice 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." Discourse is located and not just generally to the privacy policy."

Consequently, SCI linked its Enhanced Notice, provided by the DAA AdChoices icon, directly to the portion of the privacy policy where its First Party Notice was located. By doing this, SCI ensured that consumers wishing to learn more about how their data was being collected and used by third parties, who click on the AdChoices icon on any SCI-owned web page, would be directly delivered to relevant information about their choices. These changes brought SCI's First Party Enhanced Notice into compliance with the DAA Principles.

VI. Company statement

Service Corporation International ("SCI") seeks to align with the Digital Advertising Alliance ("DAA") Principles. SCI appreciates that the Digital Advertising Accountability Program ("DAAP") recognized SCI's nearly complete IBA disclosures, and SCI has voluntarily cooperated to resolve the DAAP's concerns with respect to enhanced notice linking. SCI respects the work of the DAA and similar organizations in the areas of transparency and consumer choice.

VII. Disposition of decision

Practices voluntarily corrected.

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²⁹ Digital Advertising Alliance, *Put the YourAdChoices Icon to Work for You*, https://youradchoices.com/learn (last visited November 5, 2021).

³⁰ OBA Principles, Commentary, at 32.

³¹ *Id*.