ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 70-2017

COMPANY:
Anheuser-Busch Companies, Inc.

CHALLENGER:
Online Interest-Based Advertising Accountability Program

DECISION
DATE: January 25, 2017

SYNOPSIS

All companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles). Owners or operators of websites who allow third parties to collect or use visitors’ web browsing data for IBA must comply with section II.B. of the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), which governs first parties.

1 The DAA Principles consist 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). Available at http://www.aboutads.info/principles.

2 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, Compliance Warning, available at http://www.asrreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf.
COMPANY STATUS

Anheuser-Busch Companies, Inc. (Anheuser-Busch) is an American beer brewing company that is a wholly-owned subsidiary of Anheuser-Busch InBev, a Belgian beer brewing company. The company operates a website for its beer brand, Budweiser, located at http://www.budweiser.com/.

INQUIRY

As part of its routine monitoring and enforcement efforts, the Accountability Program opens investigations based on consumer complaints regarding alleged noncompliance with the DAA Principles. This particular case arises from a consumer complaint alleging that Anheuser-Busch’s website for its beer brand, Budweiser, was not in compliance with the requirements of the Transparency Principle of the OBA Principles.

In response to the consumer complaint, the Accountability Program visited the website (www.budweiser.com) to review Anheuser-Busch’s compliance with the Principles. During its visit, the Accountability Program observed data collection by third-party companies known to engage in IBA.

We located a “Privacy Policy” link in the website’s footer. When clicked, this link directed us to the top of the webpage containing the company’s privacy policy (http://www.budweiser.com/en/privacy-policy.html). Scrolling through the privacy policy, we found a description of third-party IBA taking place on the Budweiser website and links to industry opt-out pages, including the DAA’s AdChoices page (www.aboutads.info/choices) and the Network Advertising Initiative’s Consumer Opt-out page (http://networkadvertising.org/choices).

However, the footer link that directed to this privacy policy page did not comply with the enhanced notice link requirements of the Transparency Principles because, under the DAA Principles, a company must provide a link, distinct from the privacy policy link, on each page where third-party data collection for IBA occurs which takes users directly to its IBA disclosure. Moreover, we could not locate a statement of adherence to the DAA Principles anywhere on the Budweiser site.

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

COMPANY’S POSITION

Upon receiving the Accountability Program’s inquiry letter, Anheuser-Busch immediately committed to coming into compliance with the DAA Principles. Anheuser-Busch worked with the Accountability Program and developed a plan to modify its website to fulfill the requirements of the OBA Principles. Specifically, Anheuser-Busch added an enhanced notice link, separate

---

from the privacy policy link and featuring the DAA’s AdChoices Icon, on each page of the Budweiser website where third-party companies collect information for IBA. This link takes users directly to the section of the Budweiser website privacy policy that addresses third-party IBA on the website and includes a link to www.aboutads.info/choices. Anheuser-Busch also added a statement of adherence to the DAA Principles to this section of the privacy policy.

DECISION

Because Anheuser-Busch authorizes third parties to collect data on its website for IBA, the company has duties as a first party under the OBA Principles. This case continues our line of cases dealing with first parties’ responsibilities under the OBA Principles to provide enhanced notice when third parties collect data on their websites or mobile applications.

First party duties are set out in section II.B. of the OBA Principles. According to this section, when first parties allow third parties to collect visitors’ browsing data for use in IBA on their websites, or when they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate notice and an opportunity to exercise choice about whether to participate in 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 notice when third parties are collecting or using their data for IBA on a first party’s website. Termed “enhanced notice,” 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, described above. This link must be distinct from the company’s privacy policy link and appear on every page where data collection or use for IBA occurs on the first party’s website. It must also take users directly to the first party’s IBA disclosure, not just to the top of a privacy policy.

7 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.”)
8 OBA Principles § II.B. at 13-14.
9 Id.
10 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.
11 OBA Principles § II.B. at 13-14.
12 Id.
13 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...
In practice, this first party enhanced notice link can be provided by either the first or the third party. However, both parties are independently responsible for ensuring that enhanced notice is provided. To achieve compliance, companies should communicate 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, first parties are cautioned 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)* (Emphasis in original.).

Enhanced notice provides consumers with two benefits. One, the enhanced notice communicates to consumers the fact that third parties are engaged in IBA on a website. Two, by linking 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 illuminating in real time this otherwise invisible background activity, explaining it in plain language, and pointing to one or more choice mechanisms, enhanced notice helps consumers understand IBA and provides them with the ability to make choices about the use of their data.

Following consultation with the Accountability Program, Anheuser-Busch added a separate and distinct enhanced notice link on the footer of each page of the Budweiser website where third parties collect data for IBA. The link, in the form of the DAA’s AdChoices Icon (®) directs users to an IBA disclosure that includes a link to [www.aboutads.info/choices](http://www.aboutads.info/choices) and a statement of adherence to the DAA Principles.

**CONCLUSION**

This case highlights the Accountability Program’s prior work to explain that first and third parties alike have the responsibility to ensure that consumers have the enhanced notice the advertising industry worked hard to create. All first parties authorizing third parties to engage in IBA on their websites must provide consumers with meaningful notice and choice through enhanced notice. Enhanced notice ends the need for consumers to search through lengthy a lengthy privacy policy where information about third-party data collection and use for personalized advertising may be buried. Moreover, concerned consumers can easily exercise choice rather than having to write to the company with an opt-out request.

---

*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.”)*.

14 *First Party Enhanced Notice Compliance Warning* at 3.
The Accountability Program appreciates Anheuser-Busch’s cooperation during our inquiry process to quickly resolve its compliance issues. Anheuser-Busch moved with speed and seriousness to address the issues raised in our inquiry letter. Industry self-regulation depends on the collaboration and commitment Anheuser-Busch demonstrated here. We commend Anheuser-Busch’s support for self-regulation.

The Accountability Program appreciates consumers’ assistance in identifying companies with potential compliance issues under the DAA Principles. Consumer complaints are an integral part of our compliance monitoring activities. The Accountability Program, will, as part of the exercise of its discretion to determine what inquiries to pursue, determine whether to open an investigation to resolve germane issues raised in a complaint, as well as any other compliance issues we discover during the course of such an inquiry.

Finally, we want to encourage companies to contact us confidentially if they have questions about their responsibilities. We urge industry members to come to us if they need guidance or find that they have a compliance issue rather than waiting for us to bring a compliance action.

COMPANY’S STATEMENT

Anheuser-Busch regards online privacy and the responsible collection of consumer data as essential to maintaining a safe, robust and transparent online experience. We also recognize the vital role self-regulation plays in ensuring consumers are aware of how behavioral data is collected, and given a choice regarding how it’s used. We are grateful for the Council of Better Business Bureaus’ guidance in this matter, and are committed to maintaining a constructive relationship with the Accountability Program to ensure full DAA compliance in this continually evolving area.

DISPOSITION OF DECISION

Practices voluntarily corrected.

Jon M. Brescia
Director, Adjudications and Technology
Online Interest-Based Advertising Accountability Program