ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 87-2018

COMPANY: Ledbury Inc.

CHALLENGER: Online Interest-Based Advertising Accountability Program

DECISION
DATE: September 26, 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 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

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.


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.”).
collected. This disclosure should explain the IBA activity occurring on the first party’s site, provide consumers with a means to opt out of IBA, and state the website’s adherence to the DAA Principles. Additionally, covered companies must comply with section V. of the OBA Principles, also known as the Material Changes provision, if they apply any material change to their IBA data use policies or practices.

COMPANY STATUS

Ledbury Inc. (Ledbury) is a clothing company headquartered in Richmond, Virginia.4

INQUIRY

This case arises from the Accountability Program’s regular monitoring activities. During our review of websites for compliance with the DAA Principles, we observed that Ledbury’s website (https://ledbury.com/) appeared to allow third parties to collect users’ data for use in IBA without providing enhanced notice to these users as required under the OBA Principles. This prompted a full examination of Ledbury’s compliance with all applicable requirements of the DAA Principles.

The Accountability Program first looked for an enhanced notice link on the Ledbury website. At the time of our review, we located a link in the company’s website footer entitled “Privacy Policy.” When clicked, this link directed us to the top of the webpage containing the company’s privacy policy and a terms and conditions document. We then looked for a link, separate from this “Privacy Policy” link, that would direct us to a disclosure of the third-party IBA activity occurring on the Ledbury website. However, we could find no such link.

We then manually searched the Ledbury privacy policy and terms and conditions page for the presence of a compliant IBA disclosure. Scrolling through this page, we found that Ledbury 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. Though the privacy policy included a section that explained that Ledbury may collect “Browsing Information” including “cookies” in order to “assess shoppers’ experiences and modifies (sic) the site to enhance the offering to customers” and for “Site administration as well as to understand Site use,” it made no mention of IBA. Neither this language nor any other language we found on the Ledbury website appeared to constitute a compliant disclosure of third-party IBA. Further, we did not locate either a link to an industry developed opt-out page or a list of third parties with corresponding opt-out links.

Finally, Ledbury’s disclosures did not include a statement of the company’s adherence to the DAA Principles.

During our review, the Accountability Program also located language in Ledbury’s disclosures stating the following:

We reserve the right to change our Privacy Policy and our Terms of Use at any time. Non-material changes and clarifications will take effect immediately, and material changes will take effect within 30 days of their posting on this site. If we

make changes, we will post them. If we make material changes to this policy, we will notify you here, by email, or through notice on our home page.5

This language did not specify whether Ledbury would apply future material changes retroactively to data previously collected under earlier versions of its privacy policy. This ambiguity raised a possible compliance issue under the Material Changes provision of the OBA Principles.

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

ISSUES RAISED

I. 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 http://aboutads.info/choices) 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.

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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(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.”).
The link may be provided directly by the first party or by one of the third parties active on its website.\textsuperscript{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.

II. Material changes provision

Under section V. of the OBA Principles, covered entities should acquire users’ consent before making material changes to their IBA data use policies or practices.\textsuperscript{12} Specifically, a company must obtain opt-in consent if (1) it makes a material change to its IBA practices resulting in more expansive uses of data than previously disclosed to the user, and (2) the company applies this material change retroactively to data previously collected from the user under an earlier version of its privacy policy. Consent is defined in the OBA Principles as “an individual’s action in response to a clear, meaningful, and prominent notice.”\textsuperscript{13}

COMPANY RESPONSE AND ANALYSIS

I. Enhanced notice of website data collection for IBA

Ledbury responded to our inquiry by conducting a thorough review of its compliance with the DAA Principles. The company worked with the Accountability Program to revise its privacy disclosures, embracing the requirements of the DAA Principles. To reach full compliance, Ledbury also added an enhanced notice link labeled “Interest-Based Ads Policy,” 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 a dedicated webpage which describes third-party IBA activity occurring on the Ledbury website and provides a link to the DAA’s WebChoices page.\textsuperscript{14} This webpage also includes a statement of adherence to the DAA Principles. These actions resolved the compliance issue under section II.B. of the OBA Principles.

II. Material changes provision

To resolve the compliance issue under the material changes provision, Ledbury amended its privacy disclosures to make clearer to consumers that they may be presented with choices about certain changes to the company’s data collection and use practices for IBA. Ledbury confirmed

\textsuperscript{11} First Party Enhanced Notice Compliance Warning at 3.
\textsuperscript{12} OBA Principles Section V. at 16 (“Entities should obtain Consent before applying any material change to their Online Behavioral Advertising data collection and use policies and practices prior to such material change.”).
\textsuperscript{13} OBA Principles Definition D at 10.
that its business practice is not to apply material changes to its IBA activity retroactively to previously-collected data. These actions resolved Ledbury’s compliance issues under section V. of the OBA Principles.

CONCLUSION

Today’s case continues the Accountability Program’s mission to ensure that enhanced notice is provided to users across the web. We have spent considerable effort both in educating first parties and bringing related enforcement actions. In part this has been to dispel a common misunderstanding: namely, that the DAA Principles apply only to third-party advertising companies. Another reason, of course, is that first parties are the conduit to consumers, the junction between the deeper machinery of digital advertising and quotidian physical reality.

Given their position, these companies must police their own privacy practices to ensure that consumers receive notice and choice about third-party IBA activity. This is as true for direct-to-consumer startups as it is for major online publishers. The Accountability Program urges new direct-to-consumer companies to follow the example set by Ledbury, which worked swiftly to reach compliance with the DAA Principles and now provides consumers with robust notice of IBA activity. We appreciate Ledbury’s hard work in reaching compliance and its evident commitment to digital advertising privacy standards.

COMPANY’S STATEMENT

Ledbury strongly supports the OBA Principles and is committed to maintaining responsible online advertising practices that are consistent with legal and self-regulatory requirements. We appreciate the Accountability Program’s guidance to ensure that we achieve compliance with the DAA Principles.

DISPOSITION OF DECISION

Practices voluntarily corrected.

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