

purposes, as these terms are defined in the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).¹

OBA PRACTICE AT ISSUE

The OBA practice at issue is whether consumers in the United States were given notice and choice as required under the Transparency Principle whenever they received an interest-based ad during a Kia Motors America (Kia) campaign.

The Transparency Principle is designed to give U.S. consumers knowledge about OBA data collection and use practices that take place invisibly behind the scenes. One of the innovations provided by the Transparency Principle is the requirement for certain third parties such as ad networks to provide real time notice, called “enhanced notice,” whenever the third party is collecting data for OBA or serving an OBA ad as part of an online advertising campaign.

Enhanced notice is provided through a “clear, meaningful and prominent link” (i.e., the “enhanced notice link”) from the Web page on which the third party is collecting data for OBA purposes or serving an advertisement based on user interests inferred from a user’s Web browsing activities.² The enhanced notice link directs the consumer to information about the third-party’s OBA data collection and use practices and an opportunity to exercise choice.³ This enhanced notice is most often provided on OBA ads through the Digital Advertising Alliance’s (DAA) Advertising Option Icon (AdChoices Icon) which serves as the link to direct the consumer to an OBA disclosure and opt-out mechanism. Consumers can click on the AdChoices Icon to find out more about the OBA ad that they have been served and, if they choose, to opt out of participation in OBA.

BASIS OF INQUIRY

The Accountability Program has reviewed whether transparency was being provided for interest-based advertisements during an online advertising campaign for Kia. In multiple tests, using five Web browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and Safari), the Accountability Program visited the Kia website (www.kia.com) where we observed third parties known to engage in OBA collecting user data through various tracking pixels embedded throughout the site. After browsing the website for a time, the Accountability Program continued to visit, within the same browsing session, non-affiliated websites where we were served ads for Kia vehicles. The ease with which the Accountability Program was able to reproduce this test on different devices and with different browsers appeared to indicate that the Kia ads we received were likely

¹ “Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.” (OBA Principles at 9-10, Definition G.)

² OBA Principles at 13, Principle II.A.(2)(a).

³ The DAA Consumer Choice Page is located at www.aboutads.info/choices.

the result of our recent visit to the website and therefore were tailored to us because of our recent browsing history. However, none of the ads delivered to the Accountability Program contained enhanced notice as required by the OBA Principles. The Accountability Program had been informed that Initiative acted as Kia's media agency for the campaign in question. Therefore, the Accountability Program initiated a formal inquiry with Initiative to determine why the ads did not contain the requisite notice.

COMPANY'S POSITION

In response to the Accountability Program's inquiry, Initiative confirmed that it has served as Kia's media agency including with respect to OBA campaigns. Initiative stated that it supports the OBA Principles and has presented a series of educational materials and OBA webinars led by senior level digital management to help clients such as Kia understand the OBA Principles and inform their decision making process. We appreciate that when the OBA Principles were launched, Initiative took steps to educate its clients about new industry best practices and to help ramp up the OBA Program. We also understand that Initiative has recently received instruction from Kia to work closely with Kia to ensure that going forward all of Kia's OBA campaigns are compliant with the OBA Principles.

DECISION

The OBA Principles provide new solutions that address two of consumers' biggest concerns: their lack of knowledge about and control over OBA. One of the major innovations of the OBA Principles is the requirement that consumers receive notice and choice about OBA in real time. This benefits consumers by making disclosure about and consumer control of OBA a granular and dynamic, just-in-time experience, unlike disclosures provided in a privacy policy or choice offered through a preset browser header. But consumers are not the only beneficiaries of the OBA Principles. The entire advertising ecosystem—including advertisers and ad agencies—benefit by increasing consumer trust.

The Accountability Program is pleased that Initiative is working at Kia's direction to implement the Accountability Program's recommendations with respect to Kia, so that all ads in the campaign in question and all future Kia campaigns comply with the OBA Principles. The Accountability Program also commends Initiative's support for self-regulation.

To best ensure the success of the OBA Principles, advertising networks and other similarly situated third parties throughout the ecosystem must share the responsibility for communicating and implementing mechanisms to ensure that consumers are provided with real-time notice whenever an advertiser engages with the consumer's browser in the delivery of OBA ads. We are pleased we also are seeing some entities beyond these third parties step forward in the advertising ecosystem to clearly assume responsibility for providing notice and choice.⁴ The

⁴ For example, many brands have chosen to serve the AdChoices Icon themselves as a positive way to engage directly with their customers on an issue of consumer concern.

Accountability Program believes where responsibility is contractually recognized or clearly assumed, including by brands or other companies in the advertising ecosystem, compliance is essential for the OBA Principles to succeed. In so stating, the Accountability Program understands that we have been in a transitional period in the development of the OBA Program and further recognizes that in this instance there may have been a communication breakdown between parties with respect to implementation of mechanisms to support the OBA Principles. Moreover, our conclusion in this matter is not to cast blame or fault, but to remind everyone in the ecosystem that responsibility, whether due to a party's having a primary role in delivery of OBA advertisements, or taken on willingly by other parties, is a core principle the Accountability Program will monitor and enforce going forward.

CONCLUSION

The credibility of self-regulation depends on compliance with the industry standards contained in the OBA Principles by all companies in the advertising ecosystem. We appreciate Initiative's cooperation throughout our investigation and their ongoing support of the OBA Principles. The Accountability Program's monitoring and complaint processes are designed to identify areas of possible non-compliance and to work with companies to expeditiously rectify non-compliance.

The Accountability Program's mission is to build trust between consumers and businesses by ensuring that all in the advertising industry comply with the OBA Principles. When it created the OBA Principles, the advertising industry chose to make independent and vigorous accountability one of its seven core Principles. Strong accountability is essential for successful self-regulation. The support of the advertising industry for the Accountability Program's work creates a virtuous cycle of implementation and compliance.

COMPANY'S STATEMENT

Initiative supports the OBA Principles, and looks forward to helping advance their adoption throughout the advertising ecosystem.

DISPOSITION OF DECISION

Recommendations implemented.



Genie Barton
Vice President and Director
Online Interest-Based Advertising Accountability Program