

**ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER
BUSINESS BUREAUS**

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

ADMINISTRATIVE DISPOSITION

Case Number: 35-2014

COMPANY:)
MediaMind Technologies, Inc.)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

ADMINISTRATIVE DISPOSITION

DATE: June 5, 2014

SUMMARY

Where a company contractually requires its client to comply with the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles) as a condition of using its ad serving platform on a self-serve basis and provides its client with instructions on how to use the platform to serve the Advertising Option Icon (AdChoices Icon) when required, then the client assumes the responsibility for compliance. In such a case, the Accountability Program may exercise its discretion to close the inquiry involving the self-serve platform by means of an Administrative Disposition.

BACKGROUND

The Accountability Program opened a formal inquiry into the OBA practices of MediaMind Technologies, Inc. (MediaMind) believing that the company may have been engaged in interest-based advertising as defined in the OBA Principles. In multiple tests, the Accountability Program visited the LifeLock, Inc. (LifeLock) website (www.lifelock.com), where we observed MediaMind collecting user data through a script on the LifeLock homepage. After leaving the

LifeLock website, the Accountability Program visited, within the same browsing session, non-affiliated websites and was immediately served ads for LifeLock where MediaMind was observed in the ad serving chain. However, many of the LifeLock ads delivered to the Accountability Program when MediaMind was involved did not contain the enhanced notice—typically provided through the Digital Advertising Alliance’s (DAA) AdChoices Icon—required by the OBA Principles.

In its response to the Accountability Program, MediaMind confirmed that its ad serving platform was used to serve the non-compliant LifeLock ads. MediaMind explained that Initiative was a MediaMind client and that it had used its account with MediaMind to secure the ad platform on a self-serve basis to serve the LifeLock ads.

MediaMind stated that it did not provide any OBA services for Initiative or LifeLock for the campaign in question. MediaMind explained that when it provides OBA services to its clients, it takes responsibility for ensuring that all interest-based ads it delivers through the MediaMind platform include the AdChoices Icon. When clients choose to employ another party’s OBA services and only use the MediaMind platform to serve the OBA ad, MediaMind contractually requires that clients implement the AdChoices Icon through the party providing OBA services. This requirement is made explicit in MediaMind’s Terms of Use, which state in pertinent part:

Third Party Tracking.

You should not append any third party tags to the MediaMind tags, nore [sic] should you allow any third party tracking or tagging (collectively: “Third Party Tags”) through the MediaMind Platform unless you comply with the following:

- a. All vendors requesting to implement Third Party Tags (“Third Party Vendors”) must be in full compliance with our Privacy Policy and, where applicable, with the Self-Regulatory Program for Online Behavioral Advertising. Such compliance includes presenting users with notice and choice to opt-out of such Third Party Tags;
- b. You will provide us and any advertiser you represent, where applicable, with notice of any Third Party Tags you wish to implement in the Platform;
- c. MediaMind reserves the right to validate any Third Party Tag or Third Party Vendor for compliance with law and policy and for authenticity [sic] and is under no obligation to allow Third Party Tagging;¹

In a recent decision, the Accountability Program examined the responsibilities for compliance with the Transparency Principle when a company offers its ad platform to clients on a self-serve basis.² In that decision, the Accountability Program found that the company that was the subject of its inquiry had not made it sufficiently clear that as a condition of using the ad platform on a self-serve basis, its clients were required to comply with the requirements of the OBA Principles on OBA campaigns. Moreover, while the self-serve platform had the capability of serving the AdChoices Icon, its on-boarding process did not clearly and explicitly explain to clients how to

¹ <http://www.mediaind.com/terms-of-use>

² In re MediaMath (No. 32-2013, Nov.20, 2013), available at <http://www.asrcreviews.org/wp-content/uploads/2013/11/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-32.2013.pdf>

use this capability when operating the ad platform. The Accountability Program explained that in order to discharge its own responsibility for compliance, the company needed to take these steps or their equivalent.

Here, in contrast, the Accountability Program finds that MediaMind took the steps necessary to ensure that when its clients chose the self-serve option they were both on notice of their responsibilities and were technically capable of serving the AdChoices Icon. First, MediaMind's Terms of Use explicitly require that any client that uses the MediaMind platform on a self-serve basis ensure that all third parties fully comply with the OBA Principles. By so doing, MediaMind put its self-serve platform clients on clear notice that they were assuming this responsibility. Second, the ad platform was designed to serve the AdChoices Icon, where required. Finally, as MediaMind explained to the Accountability Program, it "provides training on its platform and provides operations teams to assist clients."

In light of the foregoing, MediaMind's only active role was to provide an ad serving platform for the LifeLock OBA campaign. This role is consistent with the OBA Principles' definition of "ad delivery."³ As stated in the Commentary to the OBA Principles on page 21, "Such Ad Delivery is not covered by the definition of Online Behavioral Advertising and is thus outside of the requirements in the Principles."

DISPOSITION

Case closed.



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Online Interest-Based Advertising Accountability Program and Mobile Marketing Initiatives

³ "Ad Delivery is the delivery of online advertisements or advertising-related services using Ad Reporting data. Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on the preferences or interests inferred from information collected over time and across non-Affiliate sites because this type of collection and use is covered by the definition of Online Behavioral Advertising." (OBA Principles Definition A at 9).