

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 36-2014

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

DECISION

DATE: June 5, 2014

SYNOPSIS

The Transparency Principle requires that consumers receive real-time enhanced notice on websites where the website publisher allows third parties to collect data for interest-based advertising and on ads based on consumers' interests as inferred from data collection across websites and over time.

COMPANY'S STATUS

LifeLock, Inc. (LifeLock or the company) is a provider of identity theft protection, risk assessment and fraud prevention services for consumers and enterprises. LifeLock allows third-party companies to collect data from visitors to its website for use in online behavioral advertising (OBA) campaigns. These third parties engage in the collection and use of data for OBA purposes as defined in the cross-industry Self-Regulatory Principles for Online Behavioral

Advertising (OBA Principles).¹ LifeLock also advertises its products and services through OBA campaigns.

INQUIRY

The Online Interest-Based Advertising Accountability Program (Accountability Program) opened an inquiry into the OBA practices of LifeLock upon observing what appeared to be retargeted LifeLock ads without enhanced notice as required by the OBA Principles. In several tests, using different devices and browsers, the Accountability Program visited the LifeLock website (www.lifelock.com) where we observed third parties known to engage in OBA collecting user data through various tracking technologies embedded in the homepage. After browsing the LifeLock website, the Accountability Program continued to visit, within the same browsing session, non-affiliated websites where we were served ads for LifeLock. We continued to receive LifeLock ads on various websites for several days thereafter. The ease with which the Accountability Program was able to reproduce this result appears to indicate that the LifeLock ads we received were likely the result of our recent visit to the LifeLock website. However, some of the LifeLock ads delivered to the Accountability Program did not contain enhanced notice and choice, typically provided through the Digital Advertising Alliance's (DAA) Advertising Option Icon (AdChoices Icon), as required by the OBA Principles.

Further, in the Accountability Program's review of the LifeLock website, we could not find any information explaining LifeLock's policies with respect to third-party data collection and use for OBA. Nor did we observe the presence of a link to an opt-out mechanism such as to the DAA Consumer Choice Page or to the websites of third parties observed collecting data on the LifeLock website.² Moreover, the Accountability Program did not find either a statement of adherence to the OBA Principles anywhere on LifeLock's website, or an enhanced notice link on any of the Web pages where we observed third party collection for OBA.

Based on the foregoing, the Accountability Program initiated an inquiry with LifeLock regarding the foregoing issues.

LIFELOCK'S POSITION

In response to the Accountability Program's inquiry, LifeLock stated that it had been unaware of the requirements of the OBA Principles. LifeLock said that it did not know that its website needed to provide consumers with notice and choice regarding third-party collection and use of data for interest-based ads or that all OBA ad campaigns must provide users with notice and choice on every interest-based advertisement served under the OBA Principles.

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

Regarding compliance with the OBA Principles' requirements for Transparency and Control on interest-based ads, LifeLock stated that it had employed Initiative to manage the OBA campaign in question, and that Initiative had neither explained to LifeLock that enhanced notice and choice were needed on interest-based ads served as part of its campaign nor how the AdChoices Icon fulfilled this requirement. LifeLock said that although it had followed Initiative's recommendation to participate in AOL Advertising's AdChoices service, it did not understand that this was a compliance responsibility. LifeLock acknowledged that in January of 2013, Initiative had briefed it about the pricing to employ one of the DAA-Approved Providers to serve the AdChoices Icon on its behalf, but LifeLock maintained that Initiative had neither informed LifeLock that some third-party ad networks were already providing the AdChoices Icon as part of its OBA campaign nor explained the significance of providing notice and choice through the use of the AdChoices Icon.

LifeLock further stated that shortly thereafter, LifeLock followed Initiative's recommendation to transition from its prior ad server to the MediaMind Technologies, Inc. (MediaMind) ad serving platform, but that the decision was based entirely on performance factors and the issue of serving the AdChoices Icon on the new platform was not addressed.

LifeLock said that it only fully understood the requirements of the OBA Principles after receiving the Accountability Program's inquiry letter. The company indicated that as soon as it learned of its compliance obligations under the OBA Principles from the Accountability Program, it researched the issue of the missing AdChoices Icon and discovered that when the ad serving platform was transitioned to MediaMind, AOL Advertising had discontinued serving the AdChoices Icon. LifeLock said that it contacted AOL Advertising and the issue was quickly remedied. LifeLock said that it also contacted Initiative to make sure that all web publishers and ad networks involved in the campaign were now serving the AdChoices Icon as needed.

Regarding the compliance issues with the company's website, once LifeLock received the Accountability Program's inquiry letter and its counsel explained its responsibilities under the OBA Principles, LifeLock detailed that it acted quickly to put in place a schedule for addressing the compliance issues the Accountability Program raised about www.lifelock.com.

The LifeLock privacy policy now includes a statement of LifeLock's adherence to the OBA Principles. It also contains a section entitled "Behavioral or Interest-based Advertising" that explains in detail that LifeLock permits third parties to engage in data collection for OBA on its website and links to both the DAA and the NAI industry opt-out Web pages. LifeLock has also added an enhanced notice link, called "Advertising Choices," that, when clicked, takes the consumer to an OBA disclosure that features an opt-out tool provided by a DAA-approved provider.

DECISION

This is the third set of cases in which the Accountability Program has examined the interlocking responsibilities of parties in an OBA campaign, including the advertiser, media agency, ad network or other third party, in which the AdChoices Icon failed to be served on interest-based

ads. All these cases share a common theme: the need for all parties in the advertising ecosystem to work together to ensure that the OBA Principles are implemented in the OBA campaign. These cases also share a common problem: the reliance of each party involved on another company in the ad chain to shoulder the responsibility for compliance.

We also have dealt with several cases in which website operators have either been ignorant of or misunderstood their responsibilities for giving consumers notice and choice on their websites.³ We have also found that otherwise fully compliant websites have been confused about the need to provide enhanced notice of third-party data collection on every page where such collection occurred unless the third party was providing enhanced notice on that page.⁴

With respect to LifeLock's unfamiliarity with the OBA Principles and their application, the Accountability Program believes that consumer-facing brands must accept responsibility for keeping abreast of and following industry best practices. Throughout discussions with the Accountability Program, LifeLock stated that it was unaware of what the OBA Principles required of companies engaging in the collection or use of consumer data for OBA. LifeLock stated that it relied on its media agency, Initiative, to conduct its advertising campaign in compliance with the requirements of the OBA Principles. Although we appreciate that LifeLock may not be as well versed in the intricacies of OBA as companies that are directly involved in the advertising industry, a major brand has a responsibility to understand and adhere to those industry self-regulatory principles that govern the way its brand interacts with consumers in its advertising and when consumers visit its website, particularly where consumers' online privacy preferences may be implicated. In particular, LifeLock's business model rests on the safeguarding of sensitive consumer data against unauthorized use. We therefore believe that it should be especially cognizant of self-regulatory standards that provide consumers with greater transparency and control over how their data is used.

That said, the Accountability Program is pleased with LifeLock's swift response to uncover where the breakdown in communication over the AdChoices Icon occurred and to fix the issue directly with AOL Advertising. We also commend LifeLock's prompt attention to the issues with its website. The Accountability Program appreciates LifeLock's responsible participation in the self-regulatory process and its prompt efforts to remediate the issues we brought to its attention.

CONCLUSION

Compliance with an industry code of conduct that increases consumer privacy choices online should not be a reactive process. Industry-wide compliance is essential to build consumer trust. This decision once again emphasizes how critical it is that all parties involved in the life cycle of

³ See, for example, *In re BMW* (No. 27-2013, Nov. 18, 2013), available at <http://www.ascreviews.org/wp-content/uploads/2013/11/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-27.2013.pdf>, and *In re Scottrade* (No. 28-2013, Nov. 18, 2013), available at <http://www.ascreviews.org/wp-content/uploads/2013/11/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-28.2013.pdf>.

⁴ First Party Enhanced Notice Compliance Warning (CW-01-2013, Oct. 14, 2013), available at <http://www.ascreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>

an OBA campaign understand the OBA Principles and the part that they play in ensuring that consumers receive enhanced notice and consumer control on interest-based ads and when third parties collect their information. The fact that compliance with the OBA Principles slipped through the cracks here is certainly reason for extra vigilance by all involved in brand advertising in the future.

Interest-based advertising can bring consumers information about relevant products and services. At the same time, its greater effectiveness can reduce a brand's overall advertising costs, which can result in savings being passed on to the consumer. But consumer acceptance and trust of OBA is dependent on industry educating the consumer and complying with best practices.

COMPANY'S STATEMENT

LifeLock appreciates the Better Business Bureau's due diligence in its careful assessment of this issue and, in particular, its recognition of LifeLock's prompt and effective action to come into full compliance with the requirements of the Online Interest-Based Advertising Accountability Program. LifeLock also appreciates the opportunity to participate in meaningful self-regulatory actions like this which have the effect of enhancing the consumer experience in a balanced and effective manner.

DISPOSITION OF DECISION

Recommendations implemented.



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