

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 14-2012

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

DECISION

DATE: September xx, 2012

SYNOPSIS

The Transparency Principle requires that covered entities provide consumers with enhanced notice when an interest-based ad is served.

COMPANY STATUS

Rocket Fuel, Inc. (Rocket Fuel or the company) is an ad network that engages in the collection and use of data for online behavioral advertising (OBA) purposes as defined in the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).¹

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.).

OBA PRACTICE AT ISSUE

The Transparency Principle is designed to give 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 third parties to provide real-time notice, called “enhanced notice,” whenever the third party is collecting data for OBA or serving an OBA ad. This is an important step forward in providing transparency about OBA because consumers have notice and an opportunity to make a choice about participation in OBA at the time the third party collects data or serves an interest-based advertisement.

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 The third party is provided with flexibility in how the enhanced notice link is provided and whether it is provided by the third party (either itself or using a provider) or on behalf of the third party by a first party (also called the website operator or publisher).

If the third party provides the enhanced notice, it generally uses the Digital Advertising Alliance’s (DAA) Advertising Option Icon (AdChoices Icon) as the link to direct the consumer to its OBA disclosure and opt-out mechanism. The third party may place the link: 1) in or around the advertisement it delivers on the publisher’s website; or, 2) in coordination with the website operator, elsewhere on the website operator’s Web page. Clicking on the link takes the consumer directly to that part of the third party’s own website where the third party discloses its OBA practices and provides an opt out.

If the first party website operator is providing the enhanced notice link on behalf of the third party, it generally uses a footer link. This footer link, which must be distinct from the website operator’s own privacy policy link, should take the consumer directly to the website operator’s disclosure of third-party OBA activity, which should then either: 1) link to an industry-developed choice page such as the DAA Consumer Choice Page where the third party’s opt-out mechanism is available; or 2) individually list all third parties collecting or using data on the operator’s website and provide a link to each third party’s website OBA disclosure and opt-out mechanism.⁴

The practice at issue is whether Rocket Fuel was providing the consumer with enhanced notice on interest-based ads it was serving for a Kia Motors America (Kia) campaign.

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

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

⁴ OBA Principles at 13, Principle II.A.(2).

BASES OF INQUIRY

The Accountability Program believes that Rocket Fuel may have served, or facilitated the serving of, retargeted ads lacking the requisite enhanced notice. 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 Rocket Fuel collecting user data through tracking pixels embedded throughout the site. After browsing the Kia website for a time, the Accountability Program continued to visit, within the same browsing session, non-affiliated websites. In several tests, the Accountability Program was served ads for Kia and Rocket Fuel was observed in the ad serving chain.

The ease with which the Accountability Program was able to reproduce this test on different devices and with different browsers appears to indicate that the Kia ads we received were likely the result of our recent visit to the Kia website. However, none of the Kia ads delivered to the Accountability Program contained enhanced notice as required by the OBA Principles.

COMPANY'S POSITION

In its response to the Accountability Program's formal inquiry, Rocket Fuel confirmed that it was serving OBA ads as part of a Kia campaign. The company also conceded that it was not providing enhanced notice on OBA ads served as part of this campaign. According to the company, it provides enhanced notice on OBA ads it serves through use of the AdChoices Icon. However, Rocket Fuel stated that as requested, Rocket Fuel disabled the AdChoices Icon from serving with OBA ads in the Kia campaign. Upon receiving notice of the Accountability Program's formal review of Rocket Fuel's OBA practices, the company stated it communicated with Kia's advertising agency regarding the request. It was agreed that going forward the AdChoices Icon should accompany Kia's OBA ads.

Rocket Fuel also explained that it promptly conducted a comprehensive internal review of its provision of enhanced notice through the AdChoices Icon on all its active campaigns. The company stated that it then took immediate steps to resolve any potential compliance issues. Further, Rocket Fuel stated that it will no longer honor requests from clients to disable the AdChoices Icon from OBA ads that it serves and has explicitly communicated this policy to its sales team. The policy going forward, the company explained, is to educate clients who wish to disable the AdChoices Icon of "the importance of the self-regulatory program and the necessity for all parties in the online advertising chain to comply." If a client continues to push for disabling of the AdChoices Icon, Rocket Fuel has stated that it will turn down that client's business.

DECISION

The Accountability Program finds that Rocket Fuel did not comply with the Transparency Principle because it did not provide consumers with enhanced notice on interest-based ads it served as part of the Kia campaign. Rocket Fuel took immediate steps to resolve areas of non-

compliance and revise internal policies around the provision of enhanced notice to ensure its ongoing compliance with the Transparency Principle. Rocket Fuel has also provided the Accountability Program with evidence that the AdChoices Icon now accompanies OBA ads served as part of the Kia campaign.

We commend Rocket Fuel for its cooperation with the self-regulatory process and its recognition of the importance of compliance with the OBA Principles. The Accountability Program is also very pleased with Rocket Fuel's efforts to work with its clients to ensure enhanced notice is being provided to consumers.

Self-regulation requires the commitment all in the advertising industry to comply with these industry best practices. A key element in achieving compliance is education about the OBA Principles and their positive impact on consumer trust on the Internet. Rocket Fuel has set a constructive example for others in the industry, not only by immediately acknowledging and rectifying its non-compliance, but also by its internal compliance review and education of its staff. Rocket Fuel has also reached out to educate its clients about the OBA Principles, ensuring that advertisers understand how giving consumers enhanced notice and choice through the use of the AdChoices Icon builds trust in their brands.

CONCLUSION

The credibility of self-regulation depends on compliance with the industry standards contained in the OBA Principles by all companies in the industry that engage in OBA. 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. We are pleased that Rocket Fuel has diligently undertaken to fully comply with the OBA Principles and that it has made arrangements with its business partners to do so as well.

A central part of the Accountability Program's mission is education to ensure that all companies in the advertising industry understand and comply with the Principles. By publishing our decisions we ensure that the compliance process is transparent and public. This can help to educate companies about the OBA Principles and each company's role in their implementation.

The object of the Accountability Program is to promote trust, encourage adherence to the OBA Principles and weed out non-compliance. Self-regulatory enforcement can promote industry compliance quickly and nimbly and can encourage compliant entities to educate their staff, colleagues and clients about the value of best practices and a self-regulatory model for achieving these best practices.

COMPANY'S STATEMENT

Rocket Fuel is committed to the principles of transparency and consumer choice, the principles reflected in the industry's Online Behavioral Advertising (OBA) self-regulatory program. As members of the Network Advertising Initiative and the Digital Advertising Alliance, the

organizations that put these principles into practice, we believe that compliance with the OBA Principles promotes consumer trust in online interest-based advertising, and we are committed to honoring those principles. We thank the Accountability Program for recognizing our prompt response to its inquiry and for helping us identify an area for improvement.

DISPOSITION OF DECISION

Practices voluntarily corrected.

A handwritten signature in black ink, appearing to read "Genie Barton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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