 ADMINISTRATIVE CLOSURE

DATE: October 14, 2013

CONSOLIDATED ADMINISTRATIVE CLOSURES

IN RE FIRST PARTY ENHANCED NOTICE

Summary:

The Online Interest-Based Advertising Accountability Program (Accountability Program) has exercised its discretion under its Procedures\(^1\) to close formal reviews of seven companies whose websites did not provide the requisite enhanced notice of third-party data collection for online behavioral advertising (OBA) based on the following four factors: 1) each of the companies had longstanding compliance with all other requirements of the OBA Principles; 2) the enhanced notice requirement appears to have confused a significant number of companies; 3) there had been no prior FTC or industry best practice regarding this precise form of enhanced notice which is an innovation of the OBA Principles; and 4) each company promptly began working with the Accountability Program to implement its recommendations and has achieved or will soon achieve full compliance.

Background:

As part of its compliance monitoring activities, the Accountability Program conducted a thorough review of numerous first-party websites. This review included a comprehensive examination of each first-party site for compliance with all of the first-party requirements of the Self-Regulatory Principles for OBA (OBA Principles). While many companies’ websites were in full compliance with all the first-party obligations of the OBA Principles, a significant number of the first parties whose websites we reviewed did not meet the enhanced notice requirement.\(^2\) During the course of our communications with companies whose websites lacked enhanced notice (including seven companies that were otherwise in full compliance with the OBA Principles), we came to realize that some first parties had failed to recognize their responsibility

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\(^2\) OBA Principle, II.B.
for enhanced notice. For that reason, we decided the Accountability Program would provide
general guidance in a Compliance Warning to make sure that all companies understood this
requirement and had a reasonable amount of time to come into compliance before enforcement.
Accordingly, today the Accountability Program issued its first Compliance Warning, giving
companies until January 1, 2014 to meet this specific first party compliance obligation.3

Under these circumstances, the Accountability Program felt that it would be inequitable to single
out the seven companies that were otherwise in full compliance with the OBA Principles for an
enforcement action, without giving them the same opportunity as we were affording other
companies to benefit from this general Compliance Warning. Accordingly, we are exercising our
discretion to close these cases without further action based on the following four factors:

1) each of the companies demonstrated that it had made assiduous efforts to comply with the
   OBA Principles and had, in fact, achieved compliance with all requirements except the
   enhanced notice of third-party OBA activity and was therefore substantially compliant;
2) the enhanced notice requirement appears to have confused a significant number of
   companies;
3) there had been no prior FTC or industry best practice regarding this precise form of
   enhanced notice which is an innovation of the OBA Principles; and
4) each company promptly began working with the Accountability Program to implement its
   recommendations and has achieved full compliance or has demonstrated that it will achieve
   full compliance within a reasonable time frame no greater than the grace period afforded
   other companies in the industry by the Compliance Warning that was issued by the
   Accountability Program today.

While Administrative Closures of this nature will be rare, the Accountability Program will
exercise the discretion afforded to self-regulatory and regulatory enforcement programs,
particularly given the number and range of companies subject to the OBA Principles and the fact
that this market is subject to rapid changes and innovations.4

Disposition:

Cases closed.

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3 See: Accountability Program First Party Enhanced Notice Compliance Warning CW-01-2013
4 We note that in the Accountability Program Formal Decision of February 4, 2013 in re Facebook, Inc., available at
   http://www.bbb.org/us/storage/16/documents/Facebook-Decision-Final.pdf, the Accountability Program decided not
to take action against the fourteen Facebook Exchange (FBX) partners it had investigated when its inquiries
determined that these companies had no technical means to comply without Facebook’s facilitation and Facebook
   worked cooperatively with its partners to enable them to comply. That case should be sufficient to clarify the
   compliance obligations of companies serving ads through similar technologies without the issuance of a prior
   Compliance Warning before enforcement.