

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

## ***ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM***

### **ADMINISTRATIVE CLOSURE**

Case Numbers AC-01-2013, AC-02-2013, AC-03-2013, AC-04-2013, AC-05-2013, AC-06-2013, AC-07-2013

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<sup>1</sup> 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.<sup>2</sup> 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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<sup>1</sup> The Accountability Program Procedures are available at <http://www.ascreviews.org/wp-content/uploads/2012/04/OBA-Procedures2.pdf>.

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

Disposition:

Cases closed.

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<sup>3</sup> See: [Accountability Program First Party Enhanced Notice Compliance Warning CW-01-2013](#)

<sup>4</sup> 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.