ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 27-2013

COMPANY: BMW of North America, LLC

CHALLENGER: Online Interest-Based Advertising Accountability Program

DECISION
DATE: November 18, 2013

SYNOPSIS

When third-party data collection for online behavioral advertising occurs on a first-party website, companies must meet the notice and choice obligations of the Transparency and Consumer Control Principles.

COMPANY STATUS

BMW of North America, LLC (BMW or the company) is the U.S. distributor of BMW motor vehicles. BMW allows third-party data collection for online behavioral advertising (OBA), as defined in the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), on its website (www.bmwusa.com).1

1 OBA Principles at 9-10, Definition G (“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.”).
INQUIRY

The Online Interest-Based Advertising Accountability Program (Accountability Program) opened an inquiry into BMW’s OBA practices after observing data collection on the BMW website by third-party companies known to engage in OBA without the requisite transparency and choice required by the OBA Principles. Specifically, despite a thorough review of the BMW website, the Accountability Program did not observe: any language notifying consumers that BMW allowed third-party data collection for OBA on the BMW website, enhanced notice of third-party collection on any of the Web pages where such collection appeared to be taking place, an opt out from interest-based advertising, or a statement of adherence to the OBA Principles.\(^2\)

COMPANY’S POSITION

In its response to the Accountability Program’s inquiry, BMW was forthright in stating that while it had long adhered to the Digital Advertising Alliance’s (DAA) OBA Principles’ third-party advertising notice and choice requirements by ensuring that the Advertising Option Icon (AdChoices Icon) was placed on BMW interest-based ads, the company had neglected to implement the Transparency and Consumer Control requirements regarding third-party OBA collection occurring on its website, nor had it made arrangements with those third parties collecting data on its website to do so.

BMW took steps to come into compliance with the Accountability Program recommendations by first adding a “Cookies and Tracking” section to its privacy policy, which includes a thorough description of the third-party data collection practices on its website and links to the DAA Consumer Choice opt-out page.\(^3\) Second, the company updated this new section to include a statement of adherence to the OBA Principles.

BMW also added an enhanced notice link to the footer on all Web pages of its website where it allowed data collection for interest-based ads, using both the AdChoices Icon and the phrase "AdChoices." Clicking the link opens a modal dialogue box featuring a list of the third parties engaged in data collection for OBA on the BMW website as well as a brief description of BMW’s data collection practices. The dialogue box also provides opt outs from OBA by third parties collecting data on the BMW website and a link to the DAA Consumer Choice opt-out page where consumers can opt out of over 90 percent of all third parties engaged in OBA.

\(^2\) OBA Transparency Principle II.B. (“When data is collected from or used on a Web site for Online Behavioral Advertising purposes by Third Parties, the operator of the Web site should include a clear, meaningful, and prominent link on the Web page where data is collected or used for such purposes that links to a disclosure that either points to the industry-developed Web site(s) or individually lists such Third Parties. […] A Web site should also indicate adherence to these Principles in its notice.”).

\(^3\) http://www.bmwusa.com/Standard/Content/PrivacyPolicy/CookiesandTracking.aspx
DECISION

When first parties (website operators or Web publishers) allow third-party OBA data collection or use on their websites, or when they transfer first-party data to third parties for tailoring ads on non-affiliated websites, they must meet the first-party obligations laid out in the OBA Principles. First, a first party must include an OBA disclosure somewhere on its website that describes the OBA activity occurring there. Second, this disclosure must contain either a link to an industry-developed consumer choice page or a list of every third party conducting OBA activity on the first-party website. When first parties choose to list third parties individually, the Commentary to the Consumer Control Principle instructs companies that “choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.” Third, a first party must ensure that an enhanced notice link is present on every page of its website where data collection or use for OBA occurs, providing just-in-time notice to visitors that OBA activity may be occurring on the website. This link should further direct visitors to the website’s OBA disclosure. Fourth, a first party must indicate its adherence to the OBA Principles on its website. The statement of adherence requirement can be satisfied by a written statement indicating adherence to the OBA Principles in a privacy policy or OBA disclosure, or by using either the AdChoices Icon or DAA-approved wording in its enhanced notice link.

Here, BMW did not meet its first-party obligations on its website. While its privacy policy included a section on its own use of cookies, that section did not disclose that third-party data collection for OBA was taking place on the BMW website or provide either a link to an industry-developed consumer choice page or individually list third-parties there-engaged in OBA. Additionally, BMW did not provide enhanced notice that linked to an OBA disclosure or a statement of adherence.

After receiving communications from the Accountability Program about its website’s non-compliance with the OBA Principles, BMW investigated the matter, prepared a plan to come into compliance, and began to implement it. BMW now explains in its privacy policy that third-party data collection for OBA is occurring on its site and provides a link to the DAA Consumer Choice Page from that disclosure. BMW also contracted with a DAA-approved provider which placed an enhanced notice link on the pages of its website where third-party OBA data collection occurs. When clicked, this enhanced notice link provides access to the opt outs of third parties collecting data on the website and also points to the places where consumers can learn more about OBA. BMW’s achievement of full compliance once again demonstrates the strong

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4 OBA Transparency Principle II.B.
5 OBA Principles Commentary, Page 35.
6 The Accountability Program recently issued a Compliance Warning to the industry clarifying that first parties share with third parties the responsibility to provide enhanced notice to the consumer when third parties are collecting data for OBA on their website. Those first parties which are otherwise in complete compliance with the Principles have been given until January 1, 2014 to implement this single aspect of the OBA Principles. See “First Party Enhanced Notice Compliance Warning” available at http://www.bbb.org/us/Storage/113/Documents/First-Party-Compliance-Warning-20131008.pdf. The instant case is distinguishable, given that BMW had not implemented any of the first-party requirements for notice and choice.
7 The DAA-approved phrases that may be used to indicate adherence to the OBA Principles are “Ad Choices,” “Interest Based Ads,” and “Why did I get this ad?” (http://www.aboutads.info/participants/icon/).
industry support for the OBA Principles that makes this self-regulatory program work effectively to protect consumers’ interests.

CONCLUSION

By its very nature, OBA can easily escape consumers’ detection. Thus, it is important for first parties to inform consumers that third-party OBA data collection may be occurring on their websites by providing clear descriptions of this activity and including links to opt-out mechanisms for each of the third parties collecting data on their websites or to an industry-developed opt-out page. In the same way that placing the AdChoices Icon on third-party interest-based ads serves to give real-time notice to consumers that they are receiving an interest-based ad, so providing enhanced notice on first-party sites that links to a proper OBA disclosure equips consumers with the information and tools to exercise meaningful control over their participation in OBA.

COMPANY’S STATEMENT

BMW is committed to honoring the principles of transparency and consumer choice. We thank the Accountability Program for bringing this matter to our attention.

DISPOSITION OF DECISION

Practices voluntarily corrected.

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