

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

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

**FORMAL REVIEW**

Case Number: 31-2013

COMPANY: )  
3Q Digital (formerly PPC Associates) )  
)  
)  
CHALLENGER: )  
Online Interest-Based )  
Advertising Accountability Program )  
)  
)

**DECISION**

DATE: November 20, 2013

**SYNOPSIS**

The Transparency Principle requires that consumers receive real-time enhanced notice when they are served an interest-based ad.

**COMPANY STATUS**

3Q Digital, formerly PPC Associates, (3Q Digital or the company) is a digital marketing agency that specializes in search engine marketing. 3Q Digital also uses a self-serve demand-side platform service to run online behavioral advertising (OBA) campaigns on behalf of its clients. The self-serve platform used to manage OBA campaigns allows 3Q Digital to 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).<sup>1</sup>

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<sup>1</sup> “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

## INQUIRY

The Online Interest-Based Advertising Accountability Program (Accountability Program) opened inquiries into the OBA practices of the companies involved in an advertising campaign that appeared to be delivering retargeted ads absent the enhanced notice link required by the OBA Principles.<sup>2</sup> In multiple tests, the Accountability Program visited the 23andMe, Inc. (23andMe) website ([www.23andMe.com](http://www.23andMe.com)), browsed the site for a time, and then proceeded to visit non-affiliated websites within the same browsing session. Without fail, soon after leaving the 23andMe website, the Accountability Program was served ads for the 23andMe service. However, none of the 23andMe ads observed by the Accountability Program featured the enhanced notice link, typically provided through the Digital Advertising Alliance's (DAA) Advertising Option Icon (AdChoices Icon), that is required under the OBA Principles when retargeting based on previous website visits occurs.

The ease with which the Accountability Program was able to replicate this experience appeared to indicate that the 23andMe ads were delivered to the Accountability Program as a result of our recent visit to its website. Given these circumstances, the 23andMe ads served to the Accountability Program did not appear to be in compliance with the transparency requirements of the OBA Principles. The Accountability Program was informed that 3Q Digital acted as 23andMe's advertising agency for the campaign in question. Therefore, the Accountability Program initiated a formal inquiry with 3Q Digital to determine why the ads did not contain the requisite enhanced notice.

## COMPANY'S POSITION

The company confirmed that it managed all aspects of the OBA campaign in question using a self-serve demand-side platform provided by MediaMath, Inc. (MediaMath). 3Q Digital stated that it had been unaware of its responsibility to provide the enhanced notice link on the retargeted 23andMe ads prior to the Accountability Program's inquiry. Upon receiving our formal letter of inquiry, 3Q Digital stated that it had recently been contacted by MediaMath and instructed on how to enable the option on its MediaMath account to automatically include the AdChoices Icon on all interest-based ads delivered through the platform. 3Q Digital immediately did so. The company further stated that it promptly undertook a review of all its OBA campaigns managed through other platforms and services to ensure that the AdChoices Icon was being provided. In addition to addressing the compliance issues at the center of the Accountability Program inquiry, 3Q Digital committed to educating current and future clients about the benefits of complying with the OBA Principles and detailed guidance on how to do so.

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inferred from such Web viewing behaviors." (OBA Principles at 9-10, Definition G.).

<sup>2</sup> See OBA Transparency Principle II.A.2(a) ("Third Party Advertising Notice" requires a clear and prominent link in or around the interest-based ad that takes the consumer to an explanation of OBA and an easy-to-use mechanism to exercise choice.).

## DECISION

The Transparency Principle is designed to give consumers greater insight into the data collection and use for OBA that may otherwise occur without consumers' knowledge. In direct response to this lack of knowledge, the Transparency Principle requires third parties, such as advertising networks, to provide "enhanced notice" whenever the third party is collecting data for OBA or serving an interest-based ad. Enhanced notice is designed to provide "just-in-time" information about OBA and the companies involved, and to link to easy-to-use mechanisms, such as the DAA's Consumer Choice Page, through which consumers can exercise choice about whether to participate in this type of advertising.<sup>3</sup>

In this case, enhanced notice should have informed the consumer in real-time that the 23andMe ads they received were the result of a previous visit to the 23andMe website. The retargeted 23andMe ads should have included a "clear, meaningful and prominent" enhanced notice link, usually provided through the AdChoices Icon which, when clicked, takes the consumer to a location where the consumer can learn about OBA and make an informed choice about participating in interest-based advertising.

It is clear that the company now recognizes that when 3Q Digital incorporates transparency and choice into OBA campaigns, it ensures that clients have the benefits of enhanced consumer trust in their brand. The provision of consumer choice ensures that tailored ads continue to reach those consumers who prefer ads based on their preferences and not those consumers who prefer to receive random ads. Compliance with the OBA Principles also demonstrates that the advertising ecosystem is committed to adhering to self-regulatory best practices without the need for government regulation which may offer less flexibility.

The Accountability Program commends 3Q Digital for the immediate action it took to bring the OBA campaign in question into compliance. We are also pleased that 3Q Digital has committed to educate its clients about these benefits and to ensure compliance solutions are available through the various technology platforms or services it uses to manage its clients' OBA campaigns.

The lapse in compliance that prompted this inquiry highlights the need for greater awareness and vigilance from all companies that comprise this diverse and interdependent ecosystem. Where any type of company assumes responsibility, contractually or otherwise, for managing an advertising campaign using OBA data, it cannot walk away from its responsibility to ensure compliance with the OBA Principles in that campaign. Specifically, as in this case, where an advertising agency such as 3Q Digital decides to employ a self-service buying platform instead of a managed-service solution provided by a third party, that company steps into the shoes of companies explicitly covered by the OBA Principles and therefore must be prepared to assume their compliance responsibilities unless it makes other arrangements.

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<sup>3</sup> The DAA Consumer Choice Page is located at [www.aboutads.info/choices](http://www.aboutads.info/choices).

## **CONCLUSION**

This decision focuses on the compliance responsibilities of the company that manages an OBA campaign using a do-it-yourself software-as-a-service advertising platform—a situation not explicitly covered in the OBA Principles. We note that this is one of several decisions that deal with different types of companies that were involved in an OBA campaign using this model. Reading these decisions can serve as a reminder that the Self-Regulatory Principles were developed as an industry-wide solution to an industry-wide problem. As such, these Principles must be adopted and supported by all entities involved in the OBA campaign lifecycle. The OBA Principles are technology neutral and assign responsibility for compliance based on a company's function in a particular situation. Companies must therefore assess their responsibility for compliance based on their role in a specific OBA campaign and the type of technology they are employing. It takes many different players, all working together, to build and deliver an effective OBA campaign. Equally, these different players must all work together to deliver an effective self-regulatory program. It is particularly important when using new technologies or new business models that all entities involved work together to ensure that the requirements of the OBA Principles are being met. Accordingly, the Accountability Program strongly encourages all parties using any new self-service technology platform to understand whether or not that technology is able to provide, or be compatible with, a compliant solution for OBA campaigns. The Accountability Program also urges all providers of such self-service platforms or software to ensure that their clients understand their compliance obligations and have clear directions on how to fulfill them using the technologies provided, where the self-serve platform has the ability to provide a compliant solution.

These decisions also demonstrate that self-regulation can swiftly adapt to changing business models. Self-regulation has the flexibility to treat all technologies and business models neutrally and to look at function over form when determining compliance obligations. Innovation is best served and consumers are best protected by a self-regulatory system that has strong and nimble enforcement, and the broad support of the business community that is subject to its rules.

## **COMPANY'S STATEMENT**

3Q Digital is committed to the OBA Principles and furthering industry self-regulation. We strive to ensure that all campaigns running through our self-service platform enable the Ad Choices icon as default. In addition, we will advise all partners running OBA campaigns on behalf of our clients to provide the Ad Choices icon.

**DISPOSITION OF DECISION**

The Accountability Program's recommendations have been implemented.

A handwritten signature in black ink, appearing to read "Genie Barton", with a horizontal line extending to the right.

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