

Accountability Program Releases “Enhanced Notice” Decisions

DECEMBER 5, 2013

The Online Interest-Based Advertising Accountability Program recently released five case decisions regarding advertisers’ obligations when collecting consumer information for online behavioral advertising purposes. The decisions reiterate the need to provide “enhanced notice” and choice to consumers in order to comply with the Self-Regulatory Principles for Online Behavioral Advertising (OBA) – a concern also noted in a Compliance Warning the Accountability Program sent to the industry in October. That warning reminded advertisers of their OBA obligations, and to be sure to have their “OBA houses” in order by January 1, 2014. Companies that engage in OBA activities can address the Accountability Program’s “enhanced notice” concerns by having a clear, prominent link on their websites (usually in the footer of the site or along a sidebar) to a disclosure of third-party OBA activity, and either a link to an industry-developed website that provides an opt-out mechanism or an individual list of all third parties engaged in OBA on the website with links to their respective choice mechanisms. The Accountability Program has emphasized that the link about OBA should be separate from the link to the privacy policy. In these most recent cases, the Accountability Program found that BMW’s privacy policy did not disclose that BMW allowed third-party data collection for OBA, its website did not have enhanced notice, nor did it have an OBA opt-out. Similarly, the Accountability Program found that Scottrade’s website did not have enhanced notice, nor was there an OBA opt-out, even though the company engaged in OBA activity. All parties have since voluntarily corrected their practices in response to the inquiries by revising their privacy policies and adding a stand-alone link to new OBA disclosures in the footer on all web pages of their websites where data collection for interest-based ads occurs.

Tip: The Compliance Warning and these recent cases make clear that in 2014 the Accountability Program will be pursuing companies that have OBA activities on their sites but don’t have enhanced notice. To avoid potential problems, companies should thus check their websites – using tools like [ghostery.com](#) – to see if information is being gathered for behavioral advertising purposes.

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