

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Empowering Parents and Protecting Children in an) MB Docket No. 09-194
Evolving Media Landscape)

**COMMENTS OF THE
FEDERAL TRADE COMMISSION**

Introduction

The Federal Trade Commission (FTC) supports the Federal Communications Commission’s (FCC) important initiative to examine the evolving media landscape with a view toward empowering parents and protecting children from inappropriate contact, conduct and content. The FTC uses its resources to enforce the nation’s consumer protection laws and to educate citizens of all ages about making smart choices, whether they are watching television, playing games, on their computers, or using applications on their phones.

An independent administrative agency, the FTC is charged with promoting consumer protection, competition, and the efficient functioning of the marketplace. Our law enforcement authority is based in Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce.”¹ Section 5 encompasses a wide range of business practices, including advertising and marketing.

This comment describes the FTC’s existing law enforcement authority as it relates to protecting children in traditional and new media environments. It offers an overview of the agency’s recent education campaigns targeted to parents and children, teachers and mentors. In addition, it highlights recent FTC reports examining food, beverage and entertainment marketing targeted to children, and our recommendations that industry participants (and media companies involved in children’s marketing) ramp up their self-regulatory efforts to protect the nation’s youngsters. Finally, the comment describes the FTC’s 2009 report examining the incidence of explicit sexual and violent content in online virtual worlds and its recommendations to reduce the risk of children’s exposure to it on these websites.

A. Protecting Children Through Vigorous Law Enforcement

Making the Internet more secure for all consumers, including children, is central to the agency’s law enforcement mission. The FTC has used its general statutory mandate of preventing unfair and deceptive acts and practices to protect the right of consumers to avoid unwanted and potentially offensive content online. The FTC also has

¹ 15 U.S.C. § 45(a).

several specific statutory tools that deal with what children see in emails and what they share on websites.

For example, the FTC has settled with operators of adult websites to limit their use of ads. In one case, the operator used spyware and adware to deliver pop-up ads with sexually explicit images to lure people to their sites. These images often were served up to consumers, including children, who simply were surfing the web rather than visiting sexually oriented websites. The FTC's order bars the operator from disseminating sexually explicit advertisements to people who are not looking for sexually explicit material; it also requires the operator to monitor its marketing affiliates and other third parties involved in advertising its sexually explicit websites.²

In addition, Congress gave the FTC specific authority in 2003 to tackle the problem of sexually explicit email communications. The CAN-SPAM Act³ and the FTC's Adult Labeling Rule⁴ aim to be a barrier between "X-rated" email and children. Commercial e-mailers must use the subject line to alert recipients to the presence of sexually explicit content; they also must make sure that the initially viewable area of the email message does not contain any graphic sexual images. The FTC has brought more than 10 cases involving the Adult Labeling Rule, garnering more than \$2 million in civil penalties, and disgorging more \$900,000 in ill-gotten gains.⁵

The FTC also enforces the Children's Online Privacy Protection Act of 1998 (COPPA), which gives parents control over the personal information websites may collect about their children under the age of 13 and how the websites can use that information. The FTC has brought 15 cases against operators of child-directed and general audience websites that failed to comply with COPPA, obtaining more than \$3 million in civil penalties.⁶ Indeed, in one case, *Sony BMG Music Entertainment*, a subsidiary of Sony Corporation of America, paid a \$1 million civil penalty to resolve allegations that it knowingly collected a broad range of personal information from at least 30,000 underage children without either notifying their parents or getting their

² *FTC v. Various, Inc. d/b/a AdultFriendFinder*, No. 5:07-cv-6181 (N.D. Cal. filed Dec. 6, 2007), available at <http://www.ftc.gov/opa/2007/12/afriendfinder.shtm>. See also *FTC v. Zuccarini*, No. 01-CV-4854 (E.D. Pa. filed Oct. 1, 2001), available at <http://www.ftc.gov/os/caselist/0123095/index.shtm> (alleging unfairness and deception against a defendant who registered various misspellings of a children's cartoon site and a pop star to redirect users to sites showing pornographic images); *FTC v. Pereira*, No. 99-1367-A (E.D. Va. filed Apr. 14, 1999), available at <http://www.ftc.gov/os/caselist/9923264/990922comp9923264.shtm> (case alleging deception and unfairness against defendants who "hijacked" certain web pages and forced consumers who had searched for non-sexually explicit topics to be taken to adult websites).

³ 15 U.S.C. §§ 7701-7713.

⁴ 16 C.F.R. Part 316.4.

⁵ See, e.g., *U.S. v. Cyberheat, Inc.*, No: CIV 05-0457 (D. Ariz.) (2008) (\$413,000 civil penalty), available at <http://www.ftc.gov/os/caselist/0523042/0523042.shtm>.

⁶ See FTC law enforcement cases at http://www.ftc.gov/privacy/privacyinitiatives/childrens_enf.html.

consent to collect the information.⁷ The children had registered on 196 of *Sony BMG's* music fan sites.

The FTC plans to seek public input in its review of the COPPA Rule in 2010. The FTC believes that changes to the online environment over the past five years, including but not limited to children's increasing use of mobile technology to access the Internet, warrant reexamining the Rule at this time. The review had originally been scheduled for 2015.

B. Consumer and Business Education

Several FTC consumer education initiatives encourage children and adults to use media safely and responsibly. For example, www.OnGuardOnline.gov, a partnership of the federal government and the technology community, provides practical and plain-language information in a variety of formats – including articles, games, quizzes, and videos – to help computer users be on guard against Internet fraud, secure their computers, and protect their personal information. A total of 13 federal agencies, including the FCC, are partners on the site, contributing content and helping to promote and disseminate consistent messages.

Net Cetera: Chatting With Kids About Being Online is a recent addition to www.OnGuardOnline.gov. This guide, written by the FTC for the OnGuardOnline brand, gives practical tips on how parents, teachers and other trusted adults can help children reduce the risks of inappropriate conduct, contact and content that come with living life online – and engage in conduct they can be proud of.⁸ The guide focuses on the need for communication rather than a knowledge of technology, and takes on issues from cyberbullying to sexting, social networking to phishing and file sharing. *Net Cetera* was written in response to the Broadband Data Improvement Act of 2008, which directed the FTC to implement a national program that promotes the safe use of the Internet by children. It is available in both English and Spanish.

The FTC also has education initiatives to teach children to be smarter consumers in general, including how to understand the role of advertising. For example, recognizing that spending habits are formed at an early age, the FTC created ftc.gov/YouAreHere, a website to educate children in 5th to 8th grades about the role the FTC plays in the marketplace. Set in a shopping mall, the site takes an experiential approach to the antitrust, consumer protection and economic issues that underlie children's commercial interactions every day. It features games to demonstrate the relationship between pricing and production, and supply and demand, as well as truth in advertising, the importance of protecting personal information, and the facts behind those literally fabulous claims for cure-all products.

⁷ *United States of America v. Sony BMG Music Entertainment*, No. 08 CV 10730 (S. D. NY) (2008) available at <http://www.ftc.gov/os/caselist/0823071/index.shtm>.

⁸ See Federal Trade Commission, *Net Cetera: Talking with Kids About Being Online*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/tech/tec04.pdf>.

Visitors to www.ftc.gov/YouAreHere can design and print ads for a shoe store, decode suspicious claims, and learn to identify the catches behind bogus modeling and “free” vacation offers. In the mall’s Security Plaza, visitors also can learn the importance of protecting personal information online and off. The food court features lessons on making smart choices based on product attributes and price, and the cinema features a movie on the history of monopolies and how the antitrust laws stopped them from harming the nation’s consumers. The official kids’ portal for the U.S. government, www.Kids.gov, chose YouAreHere as “site of the month” for November 2008.

During the second quarter of 2010, the FTC will launch a multi-media initiative, called AdMongo, designed to promote advertising literacy among tweens – children aged 8-12. Children spend billions of dollars a year on products and services, and influence billions more in family purchases. Advertising is ubiquitous, and the distinction between advertising and other content in new media – advergames, for example – often is blurred. It is likely that many children may not understand when they are being “pitched” a product or service.

The goals of Admongo are to: (1) teach children to be aware of advertising and marketing messages; (2) teach them how to read, analyze, and understand ads; and (3) show them the benefits of being an informed consumer. The campaign focuses on three key questions that are central to helping children develop these critical thinking skills:

- (1) Who is responsible for the ad?
- (2) What does the ad actually say?
- (3) What does the ad want you to do?

The heart of the campaign is Admongo.gov, an interactive site that teaches core ad literacy concepts through an entertaining game with multiple levels and challenges. A curriculum, developed in partnership with Scholastic, Inc., has been designed to equip children with the skills they need to recognize why, where, and how commercial messages are constructed and placed. The FTC will work with Scholastic and other partners to disseminate the free materials to schools, libraries, and other organizations so teachers, parents and others can use it to educate the tweens in their lives.

In addition to preparing and disseminating information and education for consumers, the FTC also does extensive outreach to businesses to foster knowledge of – and compliance with – the FTC’s business rules. The FTC’s business outreach efforts are grounded in a comprehensive set of written compliance materials, and in individual guidance to website operators, or their counsel, on an “as needed” basis.

For example, to facilitate COPPA compliance, the FTC has a section at www.ftc.gov dedicated to children’s privacy (*see* <http://www.ftc.gov/privacy/privacyinitiatives/childrens.html>), where businesses can find publications including guides like *How to Comply with the Children’s Online Privacy Protection Rule; You, Your Privacy Policy and COPPA*; and *How to Protect Kids’ Privacy Online*, as well as answers to Frequently Asked Questions (or “FAQs”) about

COPPA. Periodically, the FTC issues guidance on specific topics, like the Rule’s requirements for the contents of online privacy notices, and the COPPA “actual knowledge” standard for operators of general audience websites. In addition, the agency maintains a COPPA Hotline, where staff offer fact-specific guidance in response to questions from site operators. Indeed, the demand for COPPA compliance assistance is burgeoning, as new websites and technologies emerge.

C. Policy Development and Study

The FTC has reviewed and reported on how the marketing practices of the food and beverage industry and the electronic game, movie, and music industries relate to children. In addition, the agency recently studied the incidence of explicit sexual and violent content in online virtual worlds and how children can be protected from it. In each of these efforts, the FTC recommended that industry participants, along with media companies involved in children’s marketing, ramp up their efforts at self-regulation. Because of possible First Amendment considerations in addressing each of these areas, the Commission has recognized the importance of focusing on self-regulatory efforts.

1. Food and Beverage Marketing to Children

Concern about the dramatic increase in childhood obesity prompted Congress to ask the FTC to study food and beverage marketing to children and adolescents. The FTC analyzed expenditures and activities by 44 companies in 2006, including spending on traditional measured media, like television, radio, and print; activities on the Internet and other new electronic media; and previously unmeasured forms of marketing to youngsters like packaging, in-store advertising, event sponsorship, and in-school promotions.⁹

The companies reported spending an estimated \$1.6 billion to promote food and beverages to American children and teenagers in 2006.¹⁰ Traditional “measured media” (television, radio, and print) accounted for \$853 million, or 53 percent of the reported expenditures on youth-directed marketing. Use of cross promotions – say, linking a food or beverage to a licensed character, a new movie, or a popular television program – accounted for \$208 million, or 13 percent of all reported youth-directed marketing, with cross-promotions in certain food categories (restaurant food, fruit and vegetables) representing nearly 50% of child-directed marketing expenditures. New media – the

⁹ Federal Trade Commission, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* (2008), available at <http://www.ftc.gov/os/2008/07/P064504foodmktngreport.pdf>. In a separate earlier report, economists in the FTC’s Bureau of Economics compared children’s exposure to television advertising in 1977 with their exposure in 2004. They concluded that children’s exposure to food ads on television has not risen and has actually fallen modestly, although their advertising exposure is more concentrated on children’s programming. See Federal Trade Commission, Bureau of Economics Staff Report, *Children’s Exposure to TV Advertising in 1977 and 2004: Information for the Obesity Debate* ES-3-7 (2007), available at www.ftc.gov/os/2007/06/cabecolor.pdf.

¹⁰ About \$300 million of these expenditures were addressed to both age groups; hence, the total spending is less than the sum of the separate expenditures for the two age groups.

Internet, digital (such as email and text messaging), and word-of-mouth/viral marketing – accounted for \$77 million, or 5 percent of reported marketing aimed at young people. With the cost of Internet display advertising substantially lower than the cost of advertising in traditional media, this figure may underestimate the extent to which marketers relied on the Internet to advertise to children and teenagers – at least back in 2006.

The FTC report recommended that food and beverage companies and media and entertainment companies step up their self regulatory efforts to help address the childhood obesity problem, for example by: (1) expanding their self-regulatory practices to cover all forms of advertising and promotional techniques and (2) limiting character licensing to healthier foods and beverages marketed to children. A second study, scheduled to be completed next year, will assess whether industry implemented the FTC's recommendations.

2. Marketing Violent Entertainment to Children

Since 2000, the FTC has called on the movie, music, and video game industries to be more vigilant in three areas: restricting the marketing of mature-rated products to children; clearly and prominently disclosing rating information in advertising and labeling; and restricting children's access to mature-rated products at retail. In 2009, the FTC released its seventh report on the marketing of violent entertainment to children, which included the results of undercover shopping trips by underage shoppers.¹¹ The Commission found that movie theaters denied 72 percent of underage shoppers admission to R-rated movies (the best results obtained to date), and video game retailers denied 80 percent of such shoppers access to M-rated games. On the other hand, music retailers permitted seven in ten underage shoppers to buy CDs with a Parental Advisory Label and more than half to buy violent R-rated and unrated DVDs.

The report also found that marketers can do much more to restrict the promotion of mature-rated or -labeled products to children. The music industry still has not adopted limits on ad placements for explicit content music, a void that has resulted in ads on television shows that disproportionately attract young teenagers. Movie studios directly and pervasively market PG-13 movies to children under 13 on television, in print, and on the Internet, even though the rating is supposed to represent a strong caution to parents that some material may be inappropriate for children under 13. Moreover, the growing practice of releasing unrated DVDs – particularly with packaging that hypes the lack of an MPAA rating – disparages the industry's rating system, and confuses parents. Finally, all three industries can do more to limit ad placements on websites that disproportionately attract children and teenagers.

Given important First Amendment considerations, the FTC supports private sector initiatives by industry and individual companies to implement its suggestions. The

¹¹ Federal Trade Commission, *Marketing Violent Entertainment to Children: A Sixth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (2009), available at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf>.

FTC will continue to monitor this area, particularly as new technologies change the way these products are marketed and sold. For example, mobile applications are quickly changing the ways that children access entertainment, and may be less familiar to parents and more difficult for them to supervise. Given the sheer volume of applications currently available for mobile devices and the dramatic rate at which applications are proliferating, in the near term, responsibility falls on wireless carriers and individual publishers to provide content information and effective parental controls. The FTC will continue to work with the industry and others to encourage efforts to give parents practical information to help them decide which products are appropriate for their children.

3. Online Virtual Worlds and Children

In December 2009, the FTC issued a report examining the incidence of explicit sexual and violent content in online virtual worlds.¹² “Virtual Worlds and Kids: Mapping the Risks,” surveyed 27 online virtual worlds, including those specifically intended for young children, worlds that appealed to teenagers, and worlds intended only for adults. The FTC found at least one instance of explicit content in 19 of the 27 worlds, a heavy amount of explicit content in five of the virtual worlds, a moderate amount in four worlds, and a low amount in the remaining 10 worlds. The Commission observed a greater concentration of explicit content in worlds that permitted teenagers to register.

The report urges operators of virtual worlds to take a number of steps to keep explicit content away from children and teenagers, and recommends that parents visit the virtual worlds their youths visit. For example, the FTC suggested that virtual world operators make certain enhancements aimed at reducing the risk of youth exposure to explicit content, including: (1) ensuring that the age-screening mechanisms virtual world operators employ do not encourage underage registration and (2) implementing or strengthening age-segregation techniques to help ensure that minors and adults interact only with their peers and view only age-appropriate material. Given the important First Amendment considerations, the Commission supports virtual world operators’ self-regulatory efforts to implement these recommendations.

D. Conclusion

The FTC is pleased to draw on its long and deep experience in enforcing consumer protection laws and educating the nation’s citizens on the safe and smart use of new technologies to assist the FCC in crafting policies to help America’s families meet the challenges of the ever-changing media landscape.

¹² Federal Trade Commission, *Virtual Worlds and Kids: Mapping the Risks* (2009), available at <http://www.ftc.gov/os/2009/12/oecd-vwrpt.pdf>.