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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK ....
UNITED STATES OF AMERICA,

Plaintiff,

v. ECF CASE

XANGA.COM, INC.,
a corporation,

JOHN HILER,
individually and as an officer of
the corporation, and

MARC GINSBURG,
individually and as an officer of
the corporation,

Defendants. X

Plaintiff, the United States of America, acting upon notification and authorization to the

Attorney General by the Federal Trade Commission ("FTC" or "Comission"), for its Complaint

alleges that:

1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children's

Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. $5 6501-6506,6502(c), and

6505(d), and Sections 5(a)(l), 5(m)(l)(A), 13@), 16(a), and 19 of the Federal Trade Commission

Act ("FTC Act"), 15 U.S.C. $5 41-58,45(a)(l), 45(m)(l)(A), 53(b), 56(a), and 57b,

THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

7. Congress enacted the Children's Online Privacy Protection Act, 15 U.S.C.
$9 6501-6506, in 1998 to protect the safety and privacy of children online by

by the Rule;
c. Obtaining verifiable parental consent prior to collecting, using, andlor
disclosing personal information from children;
d. Giving parents the option to consent to the collection and internal use of
their children's personal information without consenting to the disclosure
of that information to third parties;
e. Providing a reasonable means for parents to review the personal
information collected from their children and to refuse lo permit its further
use or maintenance;
f. Not conditioning children's participation in an activity upon the children
disclosing more personal information than is reasonably necessary to
participate in that activity; and
g. Establishing and maintaining reasonable procedures to protect the
confidentiality, security, and integrity of personal infom~ation collected
from children.

10. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. 5 57a(d)(3), a violation of
the Rule constitutes an unfair or deceptive act or practice d)(3)

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disclosed personal information from children under age 13, with actual knowledge that the
persons submitting such information were under age 13.
The Defendants' Information Collection, Use, and Disclosure Practices
17. Children who sought to create a blog on Xanga.com were presented with a multi- c 1.849 0 Td�(Dir6 age D0 Tc 11.registr under

children to check the terms of use box to proceed with creating a Xanga account.
20. Once a child filled out and submitted the first registration page as described
above, the defendants collected numerous other pieces of personal information from children, including date of birth, first and last names, gender, metro (i.e.,major metropolitan area), state, ZIP code, country, mobile phone number, and instant messenger identifications. Xanga also enabled children to upload pictures, and to enter text into fields labeled "about me," "interests" and "expertise."
21. After collecting dates of birth from children indicating that they are under 13, the
defendants enabled children to create blogs on Xanga.com that allow them to share personal information with the public on the Internet.
22. After collecting dates of birth from children indicating that they are under 13,the
defendants disclosed to the public the personal information they collected from such children by posting the information in the profile area of the children's blogs.
23. After collecting dates of birth from children indicating that they are under 13, the
defendants marketed, and in at least two instances sold, targeted banner ad space on Xanga.com to advertisers based on the personal information, including age, location, and sex, provided by such children.

24. The defendants posted a notice of their information practices on Xanga.com, but
the notice did not clearly, understandably, or completely disclose all of their information collection, use, and disclosure practices for children, as required by the Rule, nor did they malce other Rule-required disclosures, including listing the name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children.
25. The defendants did not take the steps required by the Rule to provide parents with

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a direct notice of their information practices prior to collecting, using, or disclosing their children's personal information.
26. The defendants did not take the steps required by the Rule to obtain verifiable
consent from parents prior to collecting, using, or disclosing their children's personal information.
27. The defendants did not provide the procedures required by the Rule for parents to
review the personal information the defendants collected from their children and to refuse to permit the information's further use or maintenance.
28. As described above, in connection with approximately 1.7 million accounts, the
defendants collected, used, and disclosed personal information from children without first providing their parents with notice of their information practices, either on Xanga.com or directly; without obtaining verifiable consent from the parents prior to the collection, use, or disclosure; and without providing parents with reasonable procedures to access their children's information and to refuse to permit its fiuther use or maintenance.
THE DEFENDANTS' VIOLATIONS OF THE CHILDREN'S ONLIME PWACY PROTECTION RULE

29. Since at least January 1, 2000, the defendants have(January)Tj�-0.0f.758 0 Tg1tt ONformation and per5en's

their disclosure practices, and all other required content, in violation of Section 312.4@) of the Rule, 16 C.F.R. 5 312.4(b);
b. Failing to provide direct notice to parents of what inforn~ation the
defendants collect online from children, how they use such information,
their disclosure practices, and all other required content, in violation of
Section 312.4(c) of the Rule, 16 C.F.R. 5 312.4(c);
c. Failing to obtain verifiable parental consent before any collection, use,
and/or disclosure of personal information from children, in violation of
Section 312.5 of theRule, 16 C.F.R. 5 312,5(a)(l); and,
d. Failing to provide a reasonable means for parents to review the personal
information collected kom their children and to refuse to permit its further
use or maintenance, in violation of Section 312.6 of the Rule, 16 C.F.R. 5

THE DEFENDANTS' UNFAIR OR DECEPTIVE ACTS OR PRACTICES
IN VIOLATION OF THE FTC ACT

31. Section 5(a) of the FTC Act, 15

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THE COURT'S POWER TO GRANT RELIEF

34. The defendants have violated the Rule as described above with lcnowledge as set
fort11 in Section 5(m)(l)(A) of the FTC Act, 15 U.S.C. 5 45(m)(l)(A).
35. Each collection, use, or disclosure of a child's personal information in the five
years leading up to the filing of this Complaint, in which the defendants have violated the Rule in one or more of the ways described above, constitutes a separate violation for which the plaintiff seeks monetary civil penalties.
36. Section 5(m)(l)(A) of the FTC Act, 15 U.S.C. 5 45(m)(l)(A), as modified by
Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990,28 U.S.C. 5 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. 5 1.98(d), authorizes this Court to award monetary civil penalties of not more than $1 1,000 for each such violation of the Rule.
37. Section 13@) of the FTC Act, 15 U.S.C. 5 53@), authorizes this Court to issue a
permanent injunction against the defendants' violation of the FTC Act, as well as such ancillary relief as may be just and proper.
38. Section 19 of the FTC Act, 15 U.S.C. 5 5%, authorizes this Court to grant such
relief as the Court finds necessary to redress injury to consumers or other persons resulting from the Rule.

(1) Enter judgment against the defendants and in favor of the plaintiff for each

violation of the Rule alleged in this Complaint;

(2) Award the plaintiff monetary civil penalties from the defendants for each violation

of the Rule alleged in this Complaint;

(3) Permanently enjoin the defendants f?om violating the Rule and Act; and

(4) Award the plaintiff such additional relief as the Court may deem just, proper, or

necessary to redress injury to consumers resulting fiom the defendants' violations

of the Rule.

Dated: New Yorlc, New York
September 7,2006

OF COUNSEL: FOR THE UNITED STATES OF AMERICA:

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