

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., NW
Washington, DC 20580,

and

PEOPLE OF THE STATE OF NEW
YORK, by LETITIA JAMES,
Attorney General of the State of New York,
28 Liberty Street
New York, NY 10005

Plaintiffs,

vs.

GOOGLE LLC,
a Delaware limited liability company,
1600 Amphitheatre Parkway
Mountain View, CA 94043

and

YOUTUBE, LLC,
a Delaware limited liability company,
901 Cherry Ave.
San Bruno, CA 94066

Defendants.

Case No.: 1:19-cv-2642

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES,
AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and The People of the State of New York (“State of New York”), by their attorney Letitia James, Attorney General of the State of New York (collectively, “Plaintiffs”), for their Complaint allege that:

1. Plaintiffs bring this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a)(1), and Sections 1303(c), 1305(a)(1), 1306(d) of the Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6502(c), 6504(a)(1), and 6505(d), to obtain monetary civil penalties and damages, interest, or other compensation, a permanent

injunction, and other equitable relief for Defendants' violations of the Children's Online Privacy Protection Rule ("Rule" or "COPPA Rule"), 16 C.F.R. Part 312, and Section 5 of the FTC Act.

Personal information is “collected or maintained on behalf of an operator when . . . [t]he operator benefits by allowing another person to collect personal information directly from users of such Web site or online service.” 16 C.F.R. § 312.2. The definition of “personal information” includes, among other things, “first and last name,” “online contact information,” and a “persistent identifier that can be used to recognize a user over time and across different Web sites or online services,” such as a “customer number held in a cookie . . . or unique device identifier.” 16 C.F.R. § 312.2.

6. The Rule can also apply to websites or online services that collect personal

- c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children.
8. The Rule prohibits the collection of persistent identifiers for behavioral advertising absent notice and verifiable parental consent. 16 C.F.R. §§ 312.5(c)(7), 312.2. Behavioral advertising, which also is referred to as personalized, targeted, or interest-based advertising, involves the tracking of a consumer's online activities in order to deliver tailored advertising based on the consumer's inferred interests.

PLAINTIFFS

acting alone or in concert with others, Google LLC has advertised, marketed, and distributed its YouTube video sharing platform to consumers throughout the United States. At all times material to this Complaint, acting alone or in concert with Defendant YouTube, LLC, Google LLC formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

12. Defendant YouTube, LLC is a Delaware limited liability company with its principal place of business in San Bruno, California and is a wholly owned subsidiary of Google LLC. YouTube, LLC transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with Defendant Google LLC, YouTube, LLC has advertised, marketed, and distributed its YouTube video sharing platform to consumers throughout the United States. At all times material to this Complaint, acting alone or in concert with Defendant Google LLC, YouTube, LLC formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

COMMERCE

13. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

14. For purposes of this Complaint, the terms “child,” “collects,” “collection,” “Commission,” “disclosure,” “Internet,” “operator,” “parent,” “personal information,” “obtaining verifiable consent,” “third party,” and “website or online service directed to children,” are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

OVERVIEW

15. As described below, commercial entities operating child-directed “channels” on Defendants’ YouTube platform are “operators” under the COPPA Rule, as they permit Defendants to collect personal information, such as persistent identifiers for use in behavioral advertising, on behalf of those commercial entities. In numerous instances, Defendants have actual knowledge they are collecting personal information directly from users of these child-directed channels. Through this actual knowledge, Defendants are deemed to be operators of a website or online service directed to children. At no time have Defendants attempted to provide parents with the COPPA-specified notice of their information practices or obtain verifiable parental consent.

DEFENDANTS’ BUSINESS PRACTICES

16. Defendants provide a video-sharing platform on the Internet at www.youtube.com and on mobile applications (collectively, “YouTube”) on which, among other things, consumers can view videos or upload video content to share.

17. In general, Defendants do not require users to register or create an account in order to view videos on YouTube. As a result, anyone can view most content on YouTube regardless of age. Defendants do limit certain activities on the platform, such as commenting on videos, to users that are logged in to a Google account. Comments can display the user’s name and are publicly available for others to view.

18. In order to create a Google account, Defendants require the user to provide first and last name, e-mail address, and date of birth. A user can create an account by linking to an account “set up” page from any video or channel on YouTube, including videos and channels that are directed to children. Defendants prevent users who identify as under 13 from creating an

22. Defendants provide additional options for channel owners to earn revenue through remarketing to viewers of their channels when they visit other websites and online services. For example, a toy company with a YouTube channel can set its account so that it serves advertisements for its toys to viewers of its channel when they visit other websites. Defendants also earn revenue when channel owners remarket to viewers of their channels.

██

23. Defendants market YouTube to popular

Google's employee responded, "we don't have

YouTube Kids in order to serve the best interests of children. Instead, Defendants use YouTube Kids solely to target children with contextual advertising.

8

YouTube has numerous channels that are directed to children under the COPPA Rule. Pursuant to Section 223 of the COPPA Rule, the determination of whether a website or online service is directed to children depends on factors such as the subject matter, visual content, language, and use of any other characteristics of children's activities and incentives. An assessment of these factors demonstrates that YouTube channels have content directed to children under the COPPA Rule. Paragraph 20. Moreover, these channels self-identify as being for children as they specifically state, for example in the About section of their YouTube channel page or in communications with Defendants, that they are intended for children. In addition, many of these channels include their own child-directed content, such as age-appropriate characters and/or depictions of children playing with toys or engaging in other child-oriented activities. Moreover, Defendants' automated systems selected content from each of these channels described in Paragraph 20 appear in YouTube Kids, and in many cases, Defendants manually curated content from these channels to feature on the YouTube Kids homepage.

9 Toy Band Matel has several popular YouTube channels, including Brbee,

After High, Hot Wheels, and The As Friends. Content from each of these channels regularly appears on YouTube Kids and has been featured on its homepage. These channels each show videos related to popular children's toys. For example, the Brbee YouTube channel has an animated video with Brbee and her friends including, for example, "Meet the Princess Rai Princesses." The channel also includes depictions of Brbee Drea and a, as well as

channel owner describes as “targeting 3-6 year olds.” The keywords the channel owner set that help viewers find the Barbie channel on YouTube include “Barbie doll” and “Malibu Dreamhouse.” According to Mattel, the target demographic for Monster High is girls ages 6-10. Defendants gave the Thomas & Friends channel a rating of Y.

30. Cartoon Network is a popular YouTube channel that shows animated kids television shows, including Steven Universe, Powerpuff Girls, and Teen Titans Go. The channel’s content regularly appears on YouTube Kids and has been featured on its home canvas. Defendants selected a clip from the Cartoon Network YouTube channel in a “Creating for Kids Playbook,” as a resource for other channels looking to make family-friendly content. In one marketing presentation, Defendants referred to the channel as a “popular YouTube Channel[] kids are watching.”

31. Hasbro’s popular YouTube channel shows episodes of many animated kids programs, including My Little Pony, Little Pet Shop, Hanazuki, and Play-doh Town. The channel’s content regularly appears on YouTube Kids and has been featured on its home canvas. According to the channel owner, the target demographic for My Little Pony is children ages 5-8 and the Hanazuki show is aimed at children ages 8-10.

32. Dreamworks TV is a popular YouTube channel that shows several animated children’s shows, including Dragons: Race to the Edge, Trollhunters, and Shrek. The channel’s content regularly appears on YouTube Kids and has been featured on its home canvas. The “About” section of its YouTube channel webpage describes the channel as “made just for kids!” The channel owner uses key words for its channel that include “kung fu panda,” “how to train your dragon,” and “YouTube Kids.” In addition, at least one video appearing on this channel was one of the most popular videos on YouTube Kids during a 90-day period in 2016.

3 YouTube channel Msh a and the Bar shows an edited video about a girl named Msh a and her friend, a bar. The channel is regularly appears on YouTube Kids and is featured on its homepage. The popular YouTube channel's About section on its YouTube channel webpage says the channel is "entertaining and educational for children and parents." In a present affidavit to Defendants, the show creator describes the target audience of Msh a and the Bar as children. Defendants gave the channel a rating for YouTube through their automated annual review. The channel uses keywords that include "kids cartoons." In addition, at least one video appearing on this channel was the most popular video on YouTube Kids for a 24-hour period.

4 YouTube channel Batayley is a popular channel featuring children engaging in a variety of scenarios with their parents. The channel is regularly appears on YouTube Kids and is featured on its homepage. The About section of its YouTube channel webpage states: "Family friendly content EVERYDAY? Yes! That's right. Watch these crazy kids as they take everyday an adventure." It describes the show include "Eric Pi llow Fi gh t" and "Amie's Hair is Purple!" In an affidavit, Defendants' expert lists Batayley as targeting children ages 8 based on Defendants' Age Classifier tool. In addition, at least one video appearing on this channel was the most popular video on YouTube Kids during a 24-hour period.

5 YouTube channel CheSwirlC is a popular children's unboxing channel, which includes videos with titles such as, "Gabriella! Brbe Princess Fairy Tea Party - Toy Video" Unboxing video feature products, soft toys, birthday dresses and a demonstration of how the products work. The channel is currently appears on YouTube Kids and has been featured on its homepage. In the About section on its YouTube channel

web page, CBSwirlC describes itself as a type of channel consisting of ... family friendly videos inspired by sugary cute. Although Defendant stated the CBSwirlC channel as Defendant also rated several of the videos appearing on the channel as Y, meaning those videos were generally intended for over age 7. In addition, at least one video appearing on this channel was one of the most popular videos on YouTube Kids during a 24-hour period.

6 YouTube channel SandarKids is a popular channel showing family friendly parties and skits for kids. The channel is a regular on YouTube Kids. The About section on its YouTube channel webpage sa

Brother & Sister.” The “About” section on its YouTube channel page describes it as “[t]he best nursery rhyme videos for children on YouTube.” Defendants gave the channel a rating of Y. In addition, at least one video appearing on this channel was one of the most popular videos on YouTube Kids during a 90-day period in 2016.

39. YouTube channel Mother Goose Club is a popular channel showing videos of

11/13

11/13

11/13

11/13

11/13

11/13

11/13

11/13

11/13

11/13

11/13

11/13

11/13

3

11/13

CKA ~~AWC~~

~~NDCT~~

SzK ~~THC~~ o

~~SE, dM~~

~~Ch Ab~~

~~idg~~

~~lath~~

~~dS~~

~~BMH~~

~~HB~~

D ~~ME~~ ~~lath~~

6 A ~~HPD~~ ~~lath~~

~~lath~~ ~~lath~~

~~lath~~ ~~D~~

~~lath~~ ~~lath~~

~~lath~~ ~~lath~~

~~lath~~

7 A ~~lath~~ ~~lath~~

~~lath~~

~~lath~~

~~lath~~

~~lath~~ COPPA-~~lath~~

~~lath~~

~~lath~~

SECTION

6

8 D ~~lath~~ ~~lath~~ C.F.R. ~~lath~~

9 D ~~lath~~ ~~lath~~

~~lath~~ ~~lath~~

~~lath~~

~~lath~~ ~~lath~~

~~lath~~ ~~lath~~

~~lath~~

~~lath~~

~~lath~~

~~lath~~

COPPA R ~~lath~~ ~~lath~~

~~lath~~

~~lath~~

50. In numerous instances, in connection with the acts and practices described above, Defendants collected, used, and/or disclosed personal information from children in violation of the Rule, including by:

- a. Failing to provide sufficient notice on their website or online service of the information they collect, or is collected on their behalf, online from children, how they use such information, their disclosure practices, and all other required content, in violation of Section 312.4(d) of the Rule, 16 C.F.R. § 312.4(d);
- b. Failing to provide direct notice to parents of the information Defendants collect, or information collected on Defendants' behalf, online from children, how they use such information, their disclosure practices, and all other required content, in violation of Sections 312.4(b) and (c) of the Rule, 16 C.F.R. § 312.4(b)-(c); and
- c. Failing to obtain verifiable parental consent before any collection or use of personal information from children, in violation of Section 312.5 of the Rule, 16 C.F.R. § 312.5.

51. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

FOUR

52. Defendants violated the COPPA Rule as described above with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

53. Each collection, use, or disclosure of a child's personal information in which Defendants violated the Rule in one or more ways described above constitutes a separate violation for which Plaintiff the Federal Trade Commission seeks monetary civil penalties.

54. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, amended by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award

