



2022 ANA Masters of Advertising Law Conference

Welcome to Hollywood Kids! Navigating Children's Advertising and Privacy on TikTok, YouTube and the Metaverse

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- I. **INTRODUCTION AND OVERVIEW: REGULATION AND SELF-REGULATION OF CHILDREN’S ADVERTISING AND PRIVACY**
- a. **Federal Trade Commission (FTC):** The FTC has the authority to bring actions against children’s advertisements that are unfair or deceptive under Section 5 of the FTC Act. The FTC also can bring actions for violations of the Children’s Online Privacy Protection rule (COPPA Rule), which generally requires that online services (including web sites and apps) obtain verifiable parental consent before collecting personal information (e.g., first and last name, email address, telephone number, home/physical address, social security number etc.) from children under 13 years of age. An update of the FTC’s COPPA Rule in 2013 expanded the COPPA Rule to prohibit the collection of geolocation information and videos or photos that contain a child’s image or voice without verifiable parental consent. The updated COPPA Rule also restricts the use of persistent identifiers, such as cookies, to engage in behavioral advertising to children. ([See Section III](#) for more information regarding COPPA).
- b. **Federal Communications Commission (FCC):** The FCC enforces a series of rules and guidelines implementing the Children’s Television Act (CTA), which Congress enacted to increase the educational programming for children on television. Pursuant to the CTA, the FCC requires broadcast television stations to include core programming to serve the educational needs of children 16 years of age and under. The FCC rules also limit the amount of commercial matter that can be aired during children’s programming, and prohibit the practice of “host-selling,” where a program character is used to sell products in commercials during or adjacent to the show in which the character appears. The FCC also restricts host selling in websites where the website address is displayed in a children’s program.
- c. **The Children’s Advertising Review Unit (CARU):** CARU is a self-regulatory program that was established to promote responsible children’s advertising. CARU is administered by BBB National Programs, Inc. (BBB NP) and is funded by members of the children’s advertising industry. CARU monitors and reviews all aspects of “national advertising” primarily directed to children. CARU enforces its Self-Regulatory Guidelines regardless of whether or not the advertiser is a member of CARU. The revised CARU Self-Regulatory Guidelines went into effect on January 1, 2022 and cover all aspects of children’s advertising, including deception, claim substantiation, material disclaimers, unsafe and inappropriate advertising, endorsers and influencers, the blurring of advertising and editorial/program content, premiums, sweepstakes, contests, loyalty programs, online sales, sales pressure, and online privacy protection. CARU’s jurisdiction covers all forms of advertising, including television and radio commercials, print and online advertisements, promotions, labeling, influencer content, event-based media, advergames, and advertising trailers, as well as web sites, apps and social media channels directed to children. As an extension of its mission to help companies comply with COPPA and properly address the collection and retention of children’s data in an online environment, CARU established its COPPA Safe Harbor

Program to provide guidance to companies on how best to comply with COPPA and the CARU Guidelines. Program participants who adhere to CARU's Guidelines are deemed in compliance with COPPA and essentially insulated from enforcement actions by the Federal Trade Commission (FTC). (*See Section IV* for more information regarding the CARU Guidelines).

- d. Television Network Guidelines:** The television broadcast networks (*i.e.*, ABC, CBS, FOX, NBC, and most child-directed networks such as Nick and Cartoon Network) require that all advertisements directed to children comply with their self-regulatory guidelines with respect to advertisements directed to children under 12. The network guidelines typically mirror the CARU Self-Regulatory Guidelines.
- e. Children's Food and Beverage Advertising Initiative (CFBAI):** The CFBAI, also administered by BBB National Programs, Inc., is a self-regulatory program that is comprised of the top 20 children's food and beverage advertisers (*e.g.*, Campbell Soup, Pepsico, Coca-Cola, Unilever, General Mills, Post Foods, Kellogg Company, Nestle, Mars, The Hershey Company, McDonald's, Burger King etc.), whose members have voluntarily agreed to not market any of their food products to children under 12 or only products that meet certain nutritional criteria. This is a voluntary group that was created to address concerns about childhood obesity in the United States.

II. THE CHILDREN'S ADVERTISING REVIEW UNIT'S SELF-REGULATORY GUIDELINES

- a. The Children's Advertising Review Unit's Self-Regulatory Guidelines ("CARU Guidelines") cover the following areas of concern:**
 - i.** Deception
 - ii.** Product Presentations and Claims
 - iii.** Making Material Disclosures to children
 - iv.** Endorsers and Influencers
 - v.** Blurring of advertising and editorial/program content
 - vi.** Premiums, Loyalty Programs, Sweepstakes and Contests
 - vii.** Online Sales
 - viii.** Sales Pressure
 - ix.** In-app or In-game advertising and purchases
 - x.** Unsafe and inappropriate Advertising to Children

- b. The Revised CARU Guidelines:** On January 1, 2022, the revised CARU Guidelines (the “Revised CARU Guidelines”) went into effect. The Revised CARU Guidelines address the new media formats directed to children, including digital media, influencer marketing, apps, in-game advertising and social media. Despite these changes, the CARU Guidelines’ core principles, including ensuring advertising directed to children is truthful and not misleading, remain the same. Key changes include:
- **Age of a Child:** Applying the CARU Guidelines to children under the age of 13, while the previous CARU Guidelines applied to children under the age of 12.
 - **Primarily directed to children:** Replacing the television-centric factors for determining whether an ad is “primarily directed to children” with the following factors that more aptly reflect the digital advertising environment:
 - the subject matter and content of an advertisement;
 - use of child-oriented animated characters;
 - child-oriented activities or incentives;
 - age of models;
 - presence of child celebrities or celebrities who appeal to children;
 - language or other characteristics;
 - competent and reliable empirical evidence regarding audience composition; and
 - evidence regarding the intended audience.
 - **Diversity and Inclusion:** Encouraging advertisers to create content that is welcoming to children of all races, religions, cultures, genders, sexual orientations, and physical and cognitive abilities and prohibiting advertising that encourages negative social stereotyping, prejudice, or discrimination.
 - **Blurring:** Ensuring that advertisements integrated into the content of a game or activity on digital media are easily identifiable as advertising in light of children’s limited sophistication, experience and maturity.
 - **Endorsers and Influencers:** Emphasizing the importance of having clear and conspicuous disclosures when influencers are being paid or receive free product in return for promoting products or services in language that children can easily understand.
 - **In-App and In-Game Advertising and Purchases:** Prohibiting unfair or manipulative advertising in in-app and in-game advertising and purchases, including with respect to deceptive door openers, social pressure or validation to encourage ad viewing or purchases, and ensuring that methods to dismiss or exit an ad are clear and conspicuous to children.

- **Material Disclosures:** Clarifying the clear and conspicuous disclosure requirement in the context of different advertising formats, including when advertisers should make such disclosures in both audio and video form and when advertisers should repeat disclosures so that children are more likely to receive their messages.
- c. **Social Media and Children:** As a general rule, most social media sites (*e.g.*, Facebook, Twitter, Instagram, and Pinterest) are considered inappropriate for children, as they are intended for users who are at least 13 years of age and older. It is important to be mindful of this provision when building campaigns that may be promoted via television and social media, particularly when using social media sites that do not implement an age-gate to prevent access by children (such as Twitter). In situations where the site is intentionally directed to children, the site may have specific guidelines for advertisers that a general audience site does not. (*See, e.g.*, YouTube Kids, Advertising Policy available at <https://support.google.com/youtube/answer/6168681?hl=en>.) Advertising that appears on child-directed sites must comply with the site’s policies as well as the COPPA Rule.

III. COPPA AND THE COLLECTION OF PERSONAL INFORMATION FROM CHILDREN

The Children’s Online Privacy Protection Act (COPPA) applies to online services, including mobile applications, that are “directed to children” under the age of 13. COPPA requires these services provide notice and obtain prior parental consent before collecting, using, or disclosing “Personal Information” from children with limited exceptions. The definition of “Personal Information” under COPPA is broader than name, email address and phone number and includes geolocation data and videos and recordings that include a child’s image or voice. Although there is an exception for the collection of persistent identifiers (such as cookies, device identifiers and IP addresses) to support the internal operations of a site or service, COPPA explicitly prohibits the use of personal information for behavioral advertising, profile building, and any other purpose not stated in the law.

Operators have strict liability for all data collected through a child-directed website or app, including data collected through third party plug-ins and analytics providers. Third parties also may be liable when they have actual knowledge they are being used on a child-directed service or they are collecting Personal Information from a child under 13.

When designing online services (including apps) that are “directed to children” under the age of 13, a number of factors can contribute to a determination of whether or not an online service is “directed to children” including but not limited to:

- a. Subject matter
- b. Visual content
- c. Use of animated characters or child-oriented activities
- d. If it looks like a cartoon

- e. Music or other audio content
- f. Age of models
- g. Presence of child celebrities or celebrities who appeal to children
- h. Language or other characteristics
- i. Whether child-directed advertising appears on the site.

If a service is directed to children and requires the submission of personal information from the children using it, the FTC requires that it obtain “verifiable parental consent” before such collection unless it falls into an exception (*e.g.*, one-time response exception (16 C.F.R. § 312.5(c)(3)).

The FTC has strict requirements for obtaining “verifiable parental consent”, including the specific disclosures which need to be included in the notice sent to the child’s parent. Some of the approved methods for obtaining verifiable parental consent are set forth below:

- Providing a consent form to be signed by the parent and returned by mail, fax, or electronic scan;
- Requiring the parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
- Having the parent call a toll-free telephone number staffed by trained personnel who ask questions to determine they are talking to a parent, or have the parent connect to trained personnel via video-conference; or
- Verifying a parent’s identity by checking a form of government-issued ID against databases of such information;

If the site or app is using children’s Personal Information only for internal purposes, “email plus” is another method of requesting parental consent. As the name suggests, this involves emailing the parent for consent, and then taking an additional confirming step after receiving the parent’s reply – a follow up email, call, or letter.

The CARU Guidelines also contain a section specifically addressing privacy concerns with respect to online data collection, which essentially mirror COPPA.

IV. RECENT DEVELOPMENTS IN CHILDREN'S ADVERTISING AND PRIVACY**a. The Federal Trade Commission**

- i. FTC Action Against OpenX:**¹ On behalf of the FTC, the Department of Justice filed a complaint against OpenX, a programmatic advertising company, alleging that the company failed to comply with COPPA. The FTC investigation revealed that OpenX failed to flag hundreds of child-directed apps that were on the company's ad exchange. According to the FTC, OpenX also knowingly collected personal information from children under 13 years of age in violation of COPPA. In December 2021, OpenX agreed to pay \$2 million to settle FTC charges and to implement a comprehensive COPPA compliance program.
- ii. FTC Action Against WW International:**² In March, WW International, formerly known as Weight Watchers, agreed to pay \$1.5 million to settle FTC allegations related to the company's collection of personal information from children under 13 through its subsidiary Kurbo Inc. (Kurbo). WW International and Kurbo marketed a weight loss app called Kurbo by WW for use by children that tracks its users' food intake, activity, and weight. The app also obtains users' personal information including name, email address, and birth date. According to the FTC, from 2014 to 2019, hundreds of users who signed up for the app claiming to be over the age of 13 later changed their birthdates on their profiles to indicate they were really under 13. The FTC also alleged that the app retained personal information from children under 13 indefinitely and that privacy notices were noncompliant because they were buried in a string of links. As part of the settlement order, WW International agreed to delete the personal information collected from children under 13 and destroy affected work product derived from the data.
- iii. FTC Policy Statement on Education Technology and the Children's Online Privacy Protection Act:**³ In May, the FTC unanimously approved a Policy Statement focusing on COPPA's application to education technology. The Policy Statement prohibits educational technology companies from conditioning a child's participation in an activity on mandatory disclosure of information that is not reasonably necessary to collect. It also forbids education technology companies from using children's information for commercial purposes, making it only permissible to use the information to provide the online education service. Further, companies must have reasonable security procedures in place to protect children's personal information or they may be found liable for violating COPPA. The Policy

¹ <https://www.ftc.gov/news-events/news/press-releases/2021/12/advertising-platform-openx-will-pay-2-million-collecting-personal-information-children-violation>

² <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-company-formerly-known-weight-watchers-illegally-collecting-kids-sensitive>

³ https://www.ftc.gov/system/files/ftc_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Education%20Technology.pdf

Statement indicates that the government is making children’s privacy a priority, so it is imperative that education technology companies ensure COPPA compliance.

iv. FTC’s “Protecting Kids from Stealth Advertising in Digital Media” Event:⁴

On October 19, 2022, the FTC hosted a virtual event to examine the guidelines for protecting children from manipulative marketing practices. According to the FTC, as the “kid influencer” marketplace grows, it creates a deceptive environment where children may be unable to recognize the blurred line between unsponsored and promotional content. At the virtual event, the FTC covered various topics, including children’s capacity to understand advertising content, the potential harms of advertising to children, best measures to protect children, and the need for effective disclosures. In conjunction with this event, the FTC sought additional public comments on how children are affected by digital advertising and marketing messages that may blur the line between ads and entertainment. The public will have until November 18, 2022 to submit comments to accommodate those who wish to provide input on the topics discussed at the event.

b. Other Government Action and Enforcement

- i. Government Response to Social Media Harms:⁵** In President Biden’s first State of the Union Address, the President called upon Congress to strengthen privacy protections to prevent technology companies from collecting the personal data of children and targeting advertising to children. Relatedly, Biden urged Congress to recognize recent research showing the negative consequences of social media on children, and hold social media platforms accountable for the “national experiment they’re conducting on our children for profit.”⁶

Biden’s address is reflective of an overall trend towards recognizing concerns about social media on children. For example, a congressional hearing held at the end of last year analyzed leaked internal research gathered by Instagram revealing the negative effects of the application on the body image of teenagers.⁷

⁴ <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hold-virtual-event-protecting-kids-stealth-advertising-digital-media>

⁵ <https://www.dglaw.com/social-medias-potential-harms-continue-to-be-in-the-spotlight/>

⁶ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/>

⁷ <https://www.cnn.com/business/live-news/instagram-adam-mosseri-congress-teens-12-08-21/index.html>

State Attorneys General are also investigating the mental and emotional harms caused by social media, which may violate state consumer protection laws. For example, at least 11 states are involved in an ongoing investigation into Meta, Facebook's parent company, for promoting Instagram despite knowing of the aforementioned harms and failing to protect children and teens on its platforms, while at least eight states announced that they are investigating TikTok to determine whether the design and promotion of its platform harms teenagers' and young adults' physical and mental health.

- ii. **FCC Action Against Nexstar Media Group and Sinclair Broadcast Group:** In September, the FCC proposed a combined \$3.4 million fine against 21 broadcast licensees, including Nexstar Media Group and Sinclair Broadcast Group, for repeatedly airing Hot Wheels commercials during a Hot Wheels-themed kids TV show. The Children's Television Act ("CTA") prohibits mixing toy commercials and content when advertising. According to the FCC, the broadcasters violated the FCC rules and the CTA's limits by airing Hot Wheels ads during the Hot Wheels show, as kids could confuse the TV content and the ads themselves. Notably, the broadcasters explained that the Hot Wheels ads were aired inadvertently, and disclosed the inadvertent ads in their license renewal applications to the FCC. The FCC found that the inadvertent nature of airing ads did not excuse the otherwise egregious violation.

c. Privacy Legislation Update

i. California Age-Appropriate Design Code Act (ADCA)

On September 15, 2022, California enacted the ADCA, becoming the first state to pass a law aimed at protecting children's privacy online and regulating companies that collect and process minors' personal information.

The ADCA broadly applies to businesses "that provide an online service, product, or feature likely to be accessed by children," and goes into effect on July 1, 2024. Violators may be subject to a penalty of up to \$2,500 per affected child for each negligent violation and up to \$7,500 per affected child for each intentional violation. The ADCA provides a 90-day period to cure any violations for which a business receives notice from the California AG.

The ADCA *requires* covered businesses to take the following actions:

- Complete a Data Protection Impact Assessment (DPIA) before offering any new online services or products to children. A DPIA addresses topics such as:
 - whether the design of the product or service may result in children being exposed to or targeted by harmful content or contacts,
 - the use of algorithms or targeted advertising systems that could harm children,

- elements of the product or service that are designed to increase, sustain or extend time spent online (e.g. the automatic playing of media, rewards for time spent and notifications), and
- whether the product or service processes sensitive personal information of children
- To the extent the DPIA identifies any risk of material detriment to children, businesses must create a timed plan to mitigate or eliminate the risk before the product or service is accessed by children
- Make a DPIA available to the California AG within 5 business days of a written request
- Estimate the age of child users with a reasonable level of line certainty
- Configure all default privacy settings offered by the product or service to offer the highest level of privacy, unless the business can demonstrate a compelling reason that a different setting is in the best interests of children
- Provide privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access the product or service
- Provide clear and conspicuous indications to children where the product or service enables a parent, or another consumer, to monitor the child's online activity or track the child's location, and where children can access tools to exercise their privacy rights and report concerns.

In addition, the ADCA ***prohibits*** covered businesses from taking any of the following actions:

- Using children's personal information in a way that is materially detrimental to a child's physical health, mental health or well-being.
- Profiling a child by default, unless the business demonstrates that (1) it has appropriate safeguards in place to protect children AND (2) profiling is necessary for providing the product or service, and only with respect to the aspects of the product or service that the child is actively and knowingly engaged or the business can demonstrate a compelling reason that profiling is in the best interests of children.

- Using personal information for any reason other than why it was collected; or collecting, selling, sharing or retaining children’s personal information that is not necessary to provide the product or service, unless the business can demonstrate a compelling reason that doing so in the best interest of the child.
- Collecting, selling or sharing children’s precise geolocation information by default, unless it is strictly necessary to the product or service, and then only for the limited time that such collection is necessary.
- Collecting children’s precise geolocation information without providing an obvious sign to children for the duration of such collection.
- Using dark patterns to lead or encourage children to provide personal information beyond what is reasonably expected to provide the product or service, to forego privacy protections, or to take any action that is materially detrimental to the child’s physical health, mental health, or well-being.
- Using children’s personal information to estimate age for any other purpose or retaining that personal information longer than necessary to estimate age.

ii. The Children and Teens’ Online Privacy Protection Act

In July, the U.S. Senate Committee on Commerce, Science and Transportation approved an update to the COPPA – the Children and Teens’ Online Privacy Protection Act (CTOPPA) – which aims to update rules for children’s data under the existing COPPA and expand upon the existing rules for children younger than 13 to teenagers 13 to 15.⁸ The bill is headed to the floor for a full vote in the Senate.

The proposed bill would:

- Prohibit internet companies from collecting personal information from users who are 13 to 15 years old without the user’s consent and establish a “Digital Marketing Bill of Rights for Teens” that limits the collection of personal information of teens
- Prohibit targeted advertising (as opposed to contextual advertising) directed at children

⁸ <https://www.markey.senate.gov/news/press-releases/senators-markey-and-cassidy-propose-bipartisan-bill-to-update-childrens-online-privacy-rule>

- Revise COPPA’s “actual knowledge” standard to a “constructive knowledge” standard so that websites that should reasonably know that kids are on their websites need to get consent in order to collect children’s data
- Create an “Eraser Button” for parents and kids by requiring companies to permit users to eliminate personal information from a child or teen when technologically feasible
- Require online companies to explain the types of personal information collected, how that information is used and disclosed, and the policies for collection of personal information
- Require manufacturers of connected devices targeted to children and minors to prominently display on their packaging a privacy dashboard detailing how information is collected, transmitted, retained, used, and protected
- Propose a new Youth Privacy and Marketing Division at the FTC that reports on the effectiveness of the COPPA safe harbor program.

iii. Kids Online Safety Act (KOSA)

In July, the U.S. Senate Committee on Commerce, Science and Transportation unanimously approved the Kids Online Safety Act. The bill is headed to the floor for a full vote in the Senate.

KOSA would impose obligations on covered platforms to protect children online. A “covered platform” under KOSA is defined as “commercial software application or electronic service that connects to the internet and that is used, or is reasonably likely to be used, by a minor”, while a minor is defined as any individual who is age 16 or younger.

The bill would require social media platforms put the interests of children first by requiring platforms to make safety the default and to give kids and parents tools to help prevent the destructive impact of social media, which includes the following:⁹

- Provides parents and kids safeguards and tools to protect kids’ experiences online: The bill requires social media platforms provide minors with options to protect their information, disable addictive product features, and opt-out of algorithmic recommendations — and requires platforms to enable the strongest settings by default. The bill also gives parents new controls to help support their children and spot harmful behaviors, including by providing children and parents with a dedicated channel to report harms to kids to the platform.

⁹ https://www.blumenthal.senate.gov/imo/media/doc/kids_online_safety_act_-_one_pager.pdf

- **Creates accountability for social media’s harms to kids:** The bill creates a duty for social media platforms to prevent and mitigate harms to minors, such as content promoting of self harm, suicide, eating disorders, substance abuse, and sexual exploitation. It also requires social media platforms perform an annual independent audit assessing risks to minors, their compliance with this Act, and whether the platform is taking meaningful steps to prevent those harms.
- **Opens up black box algorithms:** The bill provides academic researchers and non-profit organizations with access to critical datasets from social media platforms to foster research regarding harms to the safety and well-being of minors.

v. CHILDREN’S ADVERTISING REVIEW UNIT (CARU) ENFORCEMENT

- a. **Compliance Warning Regarding Advertising Practices Directed To Children In The Metaverse:** In August, CARU issued a warning highlighting that CARU’s Guidelines apply to advertising in the metaverse and that CARU will strictly enforce its Guidelines against metaverse advertising. CARU emphasized that advertisers should be particularly cautious in the following areas:
- Avoid blurring advertising and non-advertising content.** In metaverse spaces, the risk of blurring advertising and content is intensified – many metaverse worlds, whether brand-sponsored or independently operated, feature advertising that is woven into the theme and content of the game and is not likely to be easily identifiable to children as advertising. CARU’s Guidelines require that advertising must be easily identifiable as advertising. On this issue, CARU will examine whether and how advertising is identified.
 - Influencer and endorser advertising must be clearly disclosed.** In the metaverse, influencer marketing, including through avatar influencers that can interact directly with children to promote brands, creates potential confusion as to whether influencers are advertising or simply expressing their own preferences. CARU emphasized that both advertisers and their influencers are responsible for claims made and will be looking for clear and conspicuous disclosures identifying the material relationship between the influencer and advertiser.
 - Manipulative tactics in advertising are prohibited.** Because advertising is interwoven into children’s content in the metaverse, the risk of manipulating children into unwittingly viewing ads or making purchases is heightened. CARU’s Advertising Guidelines state that advertising directed to children cannot use manipulative tactics to induce children to view or interact with advertising or make in-game purchases, and CARU will be on the lookout for the use of other prohibited advertising practices that put undue social or emotional pressure on children.

- iv. **Use clear and conspicuous disclosures.** Not only does CARU require advertisers to avoid manipulation, blurring, and other deceptive advertising techniques, but CARU’s Guidelines require disclosures of material information to be clear and conspicuous. This means disclosures must be understandable to the children in the intended audience, taking into account their limited vocabularies and level of language skills, and must be presented so that they are easily noticeable and prominent so children are likely to see and hear them.

b. Moose Toys Fail Fix Total Makeover Doll (Case #6443(8/3/2022))

CARU brought an inquiry against the advertising for Fail Fix Total Makeover dolls as it was concerned that the messages shown on the product packaging and in the commercial directed to children propagated negative stereotypes regarding personal appearance and beauty standards. CARU was concerned that the depiction and characterization of a girl with imperfect makeup and messy hair as a failure and the subject of public embarrassment would likely to perpetuate negative and harmful stereotypes about girls, and, specifically, that they must look perfect to feel good about themselves. According to CARU, such advertising messages placed undue pressure on girls to conform to artificial standards of beauty and perfection.

CARU also considered the diversity of the dolls, such as the Kawaii Qtee doll appeared to be an Asian girl who is obsessed with anime, while the Dance.Stylz doll was a black girl who was characterized as a master of “hip hop” dance, and the PreppiPosh doll with light skin and brown hair was described as a “hardworking scholar.” CARU found the characteristics and personalities attributed to each doll were likely to perpetuate racial and cultural stereotypes rather than promote inclusivity.

c. Primark US Corp (Case #6441(06/30/2022))

CARU’s inquiry focused on advertising for children’s clothing products manufactured by Primark US Corp (“Primark”) which appeared on its website (“the website”), on social media, and in stores. CARU questioned whether the Primark Products containing various slogan messages and their associated advertising comply with the CARU Guidelines, which provide that advertising should not portray or encourage negative social stereotyping, prejudice, or discrimination. CARU determined that Primark violated the CARU Guidelines by including different, stereotypical slogans on clothing advertised to girls and boys, such as slogans on shirts advertised to girls such as “Be Kind, Be Happy,” and slogans on shirts advertised to boys such as “Born to win.” CARU found that the slogans created a dichotomous world of goals and attributes that portrayed or encouraged negative social stereotyping, and recommended that Primark modify the slogans, and be respectful of human dignity and diversity in its advertising. Primark informed CARU that it had already taken various corrective actions to address CARU’s concerns and if appropriate, plans to take additional curative actions in the future. Notably, this was CARU’s first decision on gender restrictive child-directed advertising.

d. Outright Games – Bratz Total Fashion Makeover (Case #6440(06/27/2022))

CARU opened an investigation of the Bratz Total Fashion Makeover mobile application to determine whether it was in violations of CARU’s Guidelines and COPPA. The application, which was rated 4+ in the Apple App Store and E for everyone in the Google Play Store, hosted a puzzle game featuring Bratz doll characters. Because Bratz dolls are geared toward children aged 4 to 6 and up, the content of the game was particularly appealing to children. While the developer, Outright Games, initially claimed that the game targeted nostalgic millennials, it then stated that the goal was to create a dual market to also apply to the 3 to 10 year olds to whom the physical dolls are aimed.

CARU’s investigation found multiple problems related to COPPA compliance. Despite the fact that the application had an age gate, CARU was able to re-enter birthday information after initially being denied access, which resulted in full access to the application. CARU also found that the privacy policy of Outright Games indicated that the company may process personal data to customize advertising. Although Outright Games stated that it did not track users that identify as under the age of 13, a tracking prompt would still appear when the application was launched.

Within the application, CARU also identified issues with the internal advertisements. The advertisements ran after the players completed a level of the game but were also used as an incentive to collect additional Bratz Bucks. Because the advertisements themselves were games that mimicked the application and either provided a link to or automatically loaded the advertisement’s listing, CARU found them to be misleading. In thematic material, many of the advertisements were also not age appropriate, including a casino game and a romantic encounters game, which were both designated for users 17 and older.

CARU concluded that the lack of advertisement disclosures and exit disclosures and the deceptive practice of encouraging children to view advertisements were violations of its advertising guidelines. As a result, CARU recommended clear disclosures and exit methods, along with proper monitoring to ensure appropriate advertisements for children. CARU also concluded that the application needed to comply with COPPA by implementing a compliant age gate, ensuring that no personal information was collected from child users without parental consent, and providing sufficient notice of its information collection policy.

e. Jazwares, LLC – Micro Machines Corvette Playset (Case #6439(03/10/2022))

Through its routine monitoring, CARU identified two misleading television advertisements that allegedly inaccurately portrayed the quantity and quality of toy vehicles in Jazwares Micro Machines playsets.

The first advertisement was for the Micro Machines Corvette Raceway. It showed the Corvette Playset opening up to reveal approximately 50 different vehicles, even though the playset included one vehicle. Using visual and sound effects, the advertiser also embellished the performance of the cars on the playset. The second advertisement promoted the Micro Machines Original Playset, which also contained only one vehicle. Similarly, the advertisement showed approximately 50 different vehicles, while the words “100+ You Can Collect” were shown on screen.

CARU's guidelines emphasize that advertisers need to consider the limited capacity of children to evaluate credibility. As a result, CARU found that the two advertisements were likely to mislead children about what is included in the purchase because the advertisements did not adequately disclose that the playsets only contain one vehicle. In response, CARU recommended that the advertiser modify the advertisements to display exactly which items are included in the playset alongside wording that is clear and conspicuous.

Specific to the Corvette Playset, CARU also determined that the audio and visual effects in the advertisement would mislead children about the product's performance and recommended that the Corvette Playset be used in the ad in a manner that children can duplicate. Additionally, the Corvette Playset's packaging also did not give a noticeable disclosure about the adult assembly required, which CARU recommended the advertiser modify.

f. TickTalk Tech, LLC (Case #6438(03/04/2022))

CARU brought an inquiry into the COPPA compliance of TickTalk Tech, the company that operates the TickTalk 4 Smart Watch phone and its corresponding website and application. TickTalk's products were marketed to children, and the company collected personal information from children under 13, including name, phone, address, email address, age, gender, the content of text messages, photographs and audio files containing a child's image or voice, and identifiers that could be used to track children for targeted advertising. CARU's concern was whether TickTalk provided proper notice to parents of the information collected from children and how that information would be used or disclosed. Relatedly, CARU also investigated whether the company failed to obtain parental consent.

CARU found several issues with TickTalk's policies. Parents enabled the smart watch for their child's use by accessing the website and registering for an account with their own information. To view the website's privacy policy, parents would have to scroll several page lengths to reach the footer, which contained many links to other policies. The website's privacy policy was ambiguous about the kinds of personal information collected from children. It also designated device-specific identifiers as non-personal information, which was in direct conflict with COPPA. TickTalk neither allowed for the deletion of personal information from third parties nor identified the third parties with whom it shared such personal information. Additionally, the smart watch application's privacy policy stated that the developer did not collect any data, which directly contradicted the website's privacy policy.

To address these issues, CARU recommended that TickTalk revise its website and application to provide adequate notice to parents of what personal information the company collects from children and how it may be used. After such notice, the company would need to also provide a clear means of obtaining verifiable consent from parents. Similarly, CARU urged the company to correct the inconsistencies in its privacy policies and feature the website's privacy policy prominently. CARU's guidance also emphasized the importance of ensuring that advertising and marketing materials present such material information prior to registration and setup.

VI. YOUTUBE'S POLICIES

a. Determining whether Your Content Is Made for Kids

Since the 2019 settlement of the FTC/New York AG case against YouTube for violations of COPPA, YouTube content creators are required to inform YouTube whether their videos are made for kids¹⁰:

- **Made for Kids**
If the video features actors, characters, activities, games, songs, stories, or other subject matter that reflect an intent to target children, it's likely made for kids.
- According to the FTC's guidance on COPPA, a video is "made for kids" if:
 - Children are the primary audience of the video.
 - Children are not the primary audience, but the video is still directed at children because it features actors, characters, activities, games, songs, stories, or other subject matter that reflect an intent to target children.

Simply because content may include some of these factors does not automatically mean it's made for kids. YouTube suggests carefully consider who you're trying to reach with your videos as you evaluate your content and the factors above.

Once a video or a channel is tagged "made for kids", YouTube limits the collection or use of personal information of visitors. In practice this means it will not serve behaviorally-targeted advertising (though contextually-targeted advertising will still be served), and it will disable certain features that made use of personal data, including comments and notifications, save to playlist, and mini-player.¹¹

b. Advertising on YouTube Kids

All advertisements sold in the YouTube Kids app must comply with YouTube's additional advertising policies outlined below, as well as YouTube's general advertising policies.¹² All YouTube Kids Paid Ads must be pre-approved by YouTube's policy team prior to being served in the YouTube Kids app. Advertisers must also comply with applicable laws and regulations (including any relevant self-regulatory or industry guidelines).

YouTube prohibits interest-based advertising in YouTube Kids and Paid Ads with remarketing or other tracking pixels on YouTube Kids.

The content of the advertisement and the type of product marketed is also regulated by YouTube. The following are examples of restricted and prohibited products and ad content.

¹⁰ <https://support.google.com/youtube/answer/9528076?hl=en>

¹¹ https://support.google.com/youtube/answer/9527654#what_happens&zippy=%2Cif-you-set-a-video-or-live-stream-as-made-for-kids

¹² <https://support.google.com/youtube/answer/6168681?hl=en>

- Paid Ads for the following products are prohibited.

Age Sensitive Media Content	Online or Virtual Communities
Beauty And Fitness	Political Ads
Dating or Relationship	Religious Ads
Food and Beverages	Video Games
Illegal or Regulated Products	

- Paid Ads that feature or promote any of the following content are strictly prohibited.

Adult and Sexually Suggestive Content	Incitement to Purchase
Branding	Misleading and Deceptive Claims
Contests	Violent Content
Dangerous Content	

YouTube only accepts in-stream video ad format in YouTube Kids. The maximum time length is 15-20 seconds long for non-skippable (depending on where the viewer is based) and 60 seconds for skippable. This excludes the 3 second ad bumper. Ads in YouTube Kids will not be clickable, and destination URLs and outbound links are disabled. Third-party served ads are prohibited.

Videos uploaded by users to YouTube are not Paid Ads and therefore they are not marked as an Ad nor are they subject to our advertising policies. This may also include content about or from companies who may have also purchased Ads in the app.

c. Updated Google Policies 2022

Advertising on Google that is intended for children must not be deceptive, unfair or inappropriate for its intended audience, must not make use of any third party trackers or otherwise attempt to collect personal information without first obtaining parental consent, and must otherwise comply with all applicable laws and regulations. The following categories are restricted¹³:

Adult and Sexually Suggestive Content	Gambling
Age Sensitive Media Content	Health and Wellness
Alcohol/Tobacco/Recreational Drugs	Mobile Subscriptions
Astrology/Occult/Paranormal	Online or Virtual Communities
Beauty and Cosmetics	Pharmaceuticals and Supplements

¹³ <https://support.google.com/adspolicy/answer/9683742?hl=en#>

Contests and Sweepstakes	Political Ads
Dangerous Content	References to Death
Dating and Relationships	Religion
Fight Sports	Spray Paint and Glass Etching
Food and Beverage	Video Games

Prohibited content includes:

Violent and Graphic Content	Significant Skin Exposure
Scary Imagery	Incitement to Purchase
Crude Humor	Misleading or Deceptive Claims
Profanity and Sexual Innuendo	

As of August 2022, Google’s Ad-serving Protections for Teens policy implements safeguards for those above the digital age of consent but under 18. For such users, Google disables ads personalization and restricts sensitive ad categories. Now, the following categories are filtered for those above the digital age of consent but under 18 on Google products¹⁴:

Adult and Sexually Suggestive Content	Gambling and Casino Games
Alcohol/Tobacco/Recreational Drugs	Pharmaceuticals and Supplements
Body Modification and Weight Loss	Shocking Content
Contests and Sweepstakes	Speculative Financial Products
Dating and Relationships	Spying and Arrest Records
Dangerous Content	Virtual Worlds and Chat Rooms Intended for Adults

VII. ADDITIONAL RESOURCES

For more information regarding children’s advertising and privacy, see below:

FTC COPPA FAQs	https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions
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¹⁴ https://support.google.com/adspolicy/answer/12205906?hl=en&ref_topic=1626336

COPPA Rule	https://www.ftc.gov/system/files/documents/federal_register_notices/2013/01/2012-31341.pdf
CARU Guidelines	https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf