



January 23, 2023

VIA EMAIL

Dona J. Fraser, Senior Vice President
Children's Advertising Review Unit
BBB National Programs
dfraser@bbbn.org

Re: Walmart Universe of Play

Dear Ms. Fraser:

We write to you on behalf of Truth in Advertising, Inc. ("TINA.org"),¹ Fairplay,² Center for Digital Democracy,³ and National Association of Consumer Advocates⁴ because Walmart Universe of Play, an advergame targeted at – and accessible to – young children on Roblox, is deceptively marketing its goods and services to players by blurring the distinction between advertising content and organic content, and failing to provide any clear or conspicuous disclosures that the game (or contents within the game) are ads.⁵ As such, the advergame fails to comply with CARU's Advertising Guidelines, as well as truth in advertising laws. To add insult to injury, Walmart is using the Children's Advertising Review Unit's (CARU) COPPA Safe Harbor Program seal⁶ to convey the message that its advergame, which is directed at children, is not deceptive, unfair, or inappropriate⁷ when that simply is not the case.

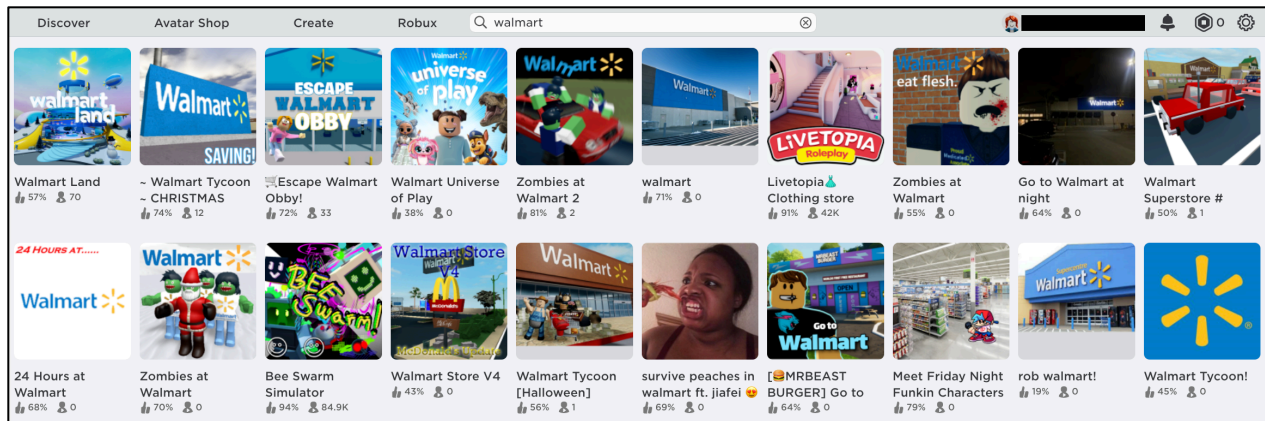
For these reasons, which are explained in more detail below, we urge CARU to conduct an immediate audit of Walmart Universe of Play and take appropriate action.

Walmart Universe of Play

As you are mostly likely aware, Walmart Universe of Play was developed in 2022 on Roblox to create "brand favorability among younger audiences,"⁸ and is accessible to children of all ages. According to Walmart, the experience allows kids to play with the "year's best toys," and make a "wish list" of toys that can then be purchased at Walmart. While children will find a multitude of toys advertised in this universe, what they (and their parents) will not find are clear and conspicuous disclosures informing them that they are playing in an advergame.

A. Search Results

A search for "walmart" in Roblox experiences populates an array of Walmart game options.⁹

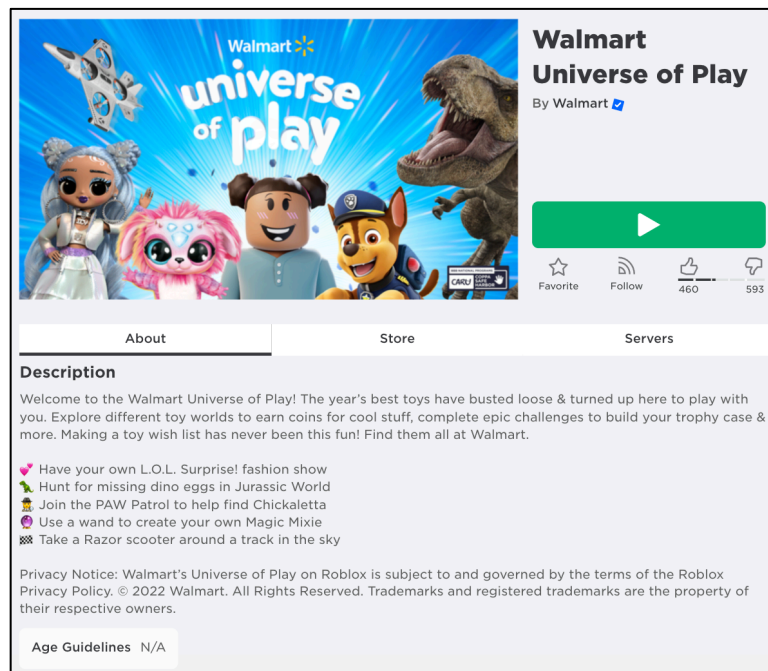


Sampling of search results that populate when searching Roblox for “walmart”

However, the search results do not include any indication of which of the games or experiences are unsponsored authentic content and which are corporate-controlled advertisements.

B. Landing Page

Once a user arrives at the Walmart Universe of Play landing page, small print beneath the game name ambiguously says “By Walmart” – an indicator that most Roblox users are unlikely to see, and even if they do see it, many Roblox users (especially children) may not understand that this means the virtual world is an advertisement disguised as a game.



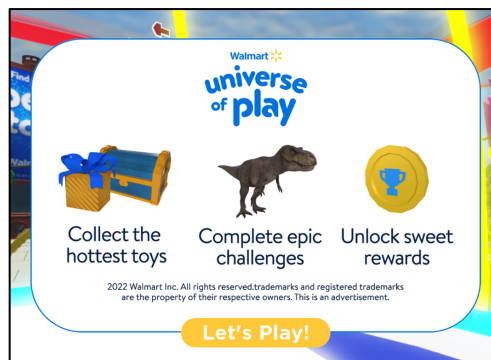
Despite having no clear and conspicuous disclosure to inform children that Walmart Universe of Play is an advergaming, the marketing has already begun. Not only is the game named and modeled after the retail giant’s Universe of Play toy catalog,¹⁰ but some of the

year’s “best toys” are featured in an image carousel at the top of the page, and kids are told that if they enter this experience, they can “Have [their] own L.O.L. Surprise! fashion show,” “Hunt for missing dino eggs in Jurassic World,” “Join the PAW Patrol to help find Chickaletta,” “Use a wand to create [their] own Magic Mixie,” and “Take a Razor scooter around a track in the sky”¹¹ – all products sold in Walmart stores and on Walmart.com.

C. Inside Walmart Universe of Play

Once inside Walmart Universe of Play, children of all ages are immediately immersed in a never-ending undisclosed advertisement.

Upon entry kids are told, among other things, they can “Collect the hottest toys.” The disclosure to inform players that this is an advertisement is relegated to miniscule fine print that is easily ignored.



And as kids’ avatars walk around the virtual world, they encounter mysterious, large wrapped gift boxes, a surefire manipulative tactic used to entice them to “open” undisclosed surprise . . . advertisements.¹²



Player approaches gift box



Player “opens” gift box



“Gift” is revealed

Walmart admits after the gift box is opened – in illegible black fine print at the very bottom of the pop-up box featuring a colorful toy geared for children “3 Years & Up”¹³ – that “This is an advertisement.”

Other gift boxes located throughout Walmart Universe of Play unknowingly contain other advertisements for a Vtech KidiZoom Smartwatch DX3,¹⁴ a Rainbow High Shadow High Were Cat Doll,¹⁵ an Adventure Force 24” NASCAR Race Car Hauler,¹⁶ and a Mermaze Mermaidz Nera Mermaid Fashion Doll,¹⁷ among other toys, all of which are products intended for young children, are sold on Walmart.com and are only disclosed as ads in the same illegible fine print after the user has opened the gift box.





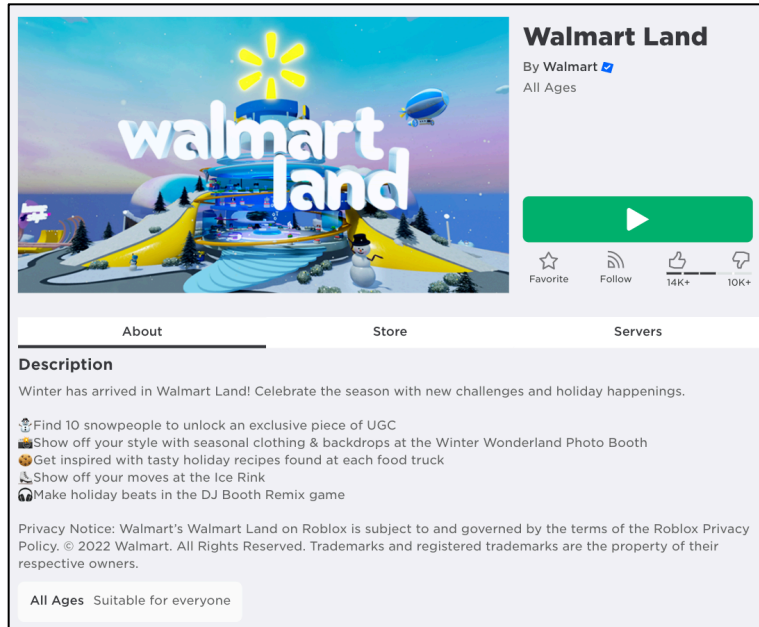
Additional inconspicuous and unclear ad disclosures exist in Walmart Universe of Play in fine print at the bottom of virtual signs that avatars walk by in their quest to collect coins, find toy boxes, or engage in other virtual activities.



These disclosures are neither conspicuous as they are easily missed, nor clear as Universe of Play users who do happen to notice them and read them are not likely to understand whether the language “This is an advertisement” applies to the virtual signs or to the entire experience.

Walmart Land

Walmart has a second undisclosed advergaming on Roblox called Walmart Land, where children can “Show off [their] moves at the Ice Rink” and “Make holiday beats in the DJ Booth Remix game,” among other things.¹⁸



Walmart deceptively advertises its Universe of Play within this virtual experience.



Virtual billboard in Walmart Land advertising Walmart Universe of Play (“More fun awaits!”) with no disclosure that the billboard is an ad for another adverage

Walmart Land, which has attracted more than 11 million visits since its launch in September, has neither an age restriction¹⁹ nor any clear or conspicuous disclosure that the virtual experience is an advertisement for Walmart.²⁰

Walmart’s Advergaming Violate FTC Law and CARU Guidelines

As explained above, children of *any* age can access Walmart Universe of Play, as well as Walmart Land.²¹ In fact, on the Walmart Universe of Play landing page, the “Age Guidelines” are labeled as “N/A,”²² suggesting to even the most vigilant of parents that there is no reason to prohibit their young children from entering the undisclosed advertisement.

(The only children who cannot access Walmart Universe of Play are those whose parents have taken the time to go into the settings of their children’s Roblox accounts and set the “Allowed Experiences” to “All Ages (Suitable for everyone).”²³ If that Roblox setting is enabled, children under 13 can no longer access Walmart Universe of Play. In other words, Walmart – with its imagery of little kid toys and its suggestion that age guidelines are inapplicable – deceptively shifts the burden of protecting young children entirely to their parents. Of note, this Settings change on Roblox has no impact on the children who access Walmart Land as that advergaming is categorized as “Suitable for everyone.”)

Despite Walmart’s utter lack of age-gating, the target audience for its misleading and undisclosed advertising is indisputably young children, as shown in Walmart.com’s listings for the advertised products.

Products deceptively advertised on Walmart Universe of Play landing page:

♥ Have your own L.O.L. Surprise! fashion show

L.O.L. Surprise Fashion Show Playset sold on Walmart.com: “Ages 4 and up”²⁴



Ages 4 and Up

🦖 Hunt for missing dino eggs in Jurassic World

Jurassic World Egg toy sold on Walmart.com: “Ages 3 and up”²⁵



Ages 3 and up.

🐶 Join the PAW Patrol to help find Chickaletta

PAW Patrol toy sold on Walmart.com: “makes a great gift for kids aged 3 and up”²⁶



makes a great gift for kids aged 3 and up.

🪄 Use a wand to create your own Magic Mixie

Magic Mixie toy sold on Walmart.com:
"5 Years & Up"²⁷



Age Range
5 Years & Up

🛴 Take a Razor scooter around a track in the sky

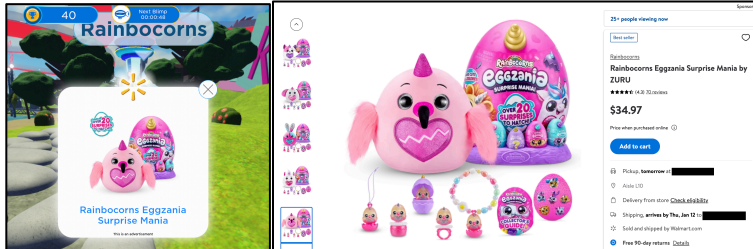
Razor scooter sold on Walmart.com:
"Ages 5+"²⁸



Age: 5+

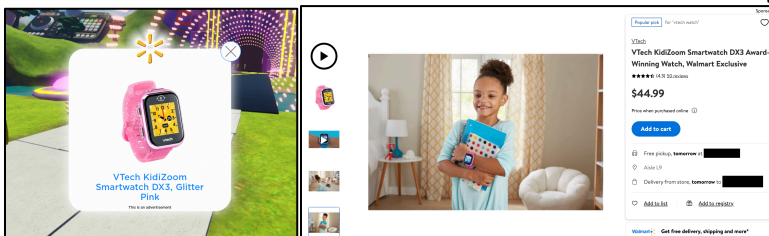
Products deceptively advertised throughout Walmart Universe of Play advergaming:

Rainbocorns Eggzania Surprise Mania sold on Walmart.com: "3 Years & Up"²⁹



Age Range
3 Years & Up

Vtech KidiZoom Smartwatch DX3 sold on Walmart.com: "Intended for ages 4+ years"³⁰



Intended for ages 4+ years

Rainbow High Shadow High Were Cat Doll sold on Walmart.com:
 “Great Gift for Kids 6-12”³¹



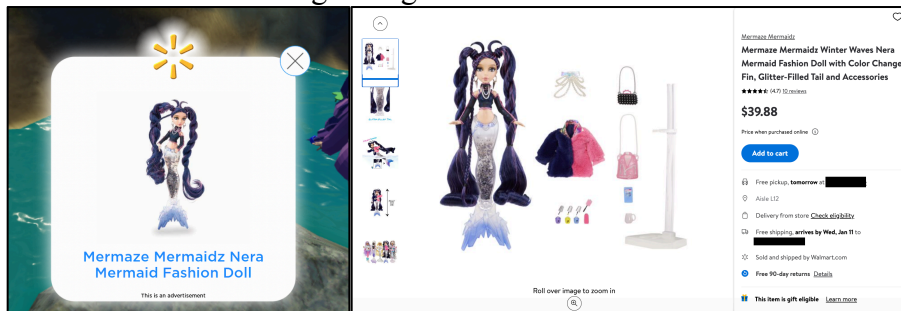
Great Gift for Kids 6-12

Adventure Force 24” NASCAR Race Car Hauler sold on Walmart.com:
 “Age Range 3 to 7 Years”³²



Age Range
3 to 7 Years

Mermaze Mermaidz Nera Mermaid Fashion Doll sold on Walmart.com:
 “Age Range 4 to 14 Years”³³



Age Range
4 to 14 Years

As CARU is well aware, children are a vulnerable consumer group,³⁴ and those under the age of five are unable to identify advertising.³⁵ Even at the age of five, the distinction between commercials and other content is only possible when there are perceptual cues (as there are in television programming), such as verbal separators (“We’ll be right back after this message”) or because commercials are shorter.³⁶ Moreover, even five year old children do not understand the persuasive intent of the ads.³⁷

With respect to advergaming, children as old as 11 are unable to recognize the promotional nature of such entertainment marketing.³⁸ And even if children could

identify this type of ad content, which they cannot, children under 13 do not fully understand the persuasive intent of such marketing material.³⁹

According to the FTC, when advertising mimics, or is blended with, organic content as is the case with Walmart's advergames on Roblox, the promotional content must be clearly and conspicuously disclosed in a manner that will be easily understood *by the intended audience*.⁴⁰ And in this case, the intended audience is young children who may not be able to identify obvious commercials let alone the persuasive intent of Walmart's advergames.

Similarly, according to CARU's Guidelines,

Advertisements must be easily identifiable as Advertising. Therefore, Advertising should not be presented in a manner that blurs the distinction between Advertising and non-Advertising content. ... Given the increasing difficulty of distinguishing between Advertising and non-Advertising content, especially in the online context, Advertisers should take extra care to be transparent when Advertising to Children. ... In online services directed to Children, Advertisements integrated into the content of a game or activity should be easily identifiable as Advertising.⁴¹

Further, CARU requires that all disclosure material to children be clear, meaning understandable to the children in the intended audience taking into account their limited vocabularies and level of language skills, and conspicuous, meaning easily noticeable and prominent so children are likely to see and hear them.⁴²

Finally, with respect to the metaverse specifically, CARU recently stated in its August 2022 Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse that:

In metaverse spaces, the risk of blurring between advertising and content is intensified. As brands increasingly create sponsored worlds in the metaverse, it is imperative that these spaces, often designed as advergames, conspicuously disclose to children in language they can understand that these are advertising. In addition, 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.

Without clear and conspicuous advertising disclosures, appropriately tailored to the media sources where they appear, the blurring of advertising and non-advertising will undermine children's ability to discern or assess the multiple advertising messages targeted to them.⁴³

As this letter illustrates, Walmart Universe of Play (as well as Walmart Land) and the specific ads within these experiences are not easily identifiable to children as advertising.

As such, they violate FTC law, as well as CARU's Advertising Guidelines and Compliance Warning.

Conclusion

Walmart's deceptive marketing on Roblox is manipulating millions of children on a daily basis, and to make matters worse, the company is using CARU's COPPA Safe Harbor seal on its website and on its undisclosed advergaming⁴⁴ as a shield to insulate it from any claims of wrongdoing, and immunize it from possible FTC action.⁴⁵ Given CARU's recent statement that it "will strictly enforce its Advertising Guidelines in the metaverse"⁴⁶ and its enforcement actions against marketers using similar deceptive marketing tactics,⁴⁷ we strongly urge CARU to conduct an immediate audit of Walmart Universe of Play and take appropriate action to promptly and effectively dispel any notion that Walmart's advergaming is in compliance with the law, as well as address the underlying deceptive marketing.

If you have any questions, please do not hesitate to contact Laura Smith, Legal Director at TINA.org, directly at lsmith@tina.org or (203) 421-6210.

Sincerely,

Truth in Advertising, Inc.

Fairplay

Center for Digital Democracy

National Association of Consumer Advocates

Cc: Karen Roberts, General Counsel, Walmart Inc.
Mark Reinstra, General Counsel, Roblox
Samuel Levine, Director, Bureau of Consumer Protection, FTC

¹ TINA.org is a nonprofit consumer advocacy organization dedicated to protecting consumers from deceptive advertising.

² Fairplay is the leading nonprofit organization committed to helping children thrive in an increasingly commercialized, screen-obsessed culture, and the only organization dedicated to ending marketing to children.

³ The Center for Digital Democracy is a nonprofit organization using education, advocacy, and research into commercial data practices to ensure that digital technologies serve and strengthen democratic values, institutions, and processes.

⁴ The National Association of Consumer Advocates is a nonprofit association of more than 1,500 attorneys and consumer advocates committed to representing consumers' interests.

⁵ TINA.org's investigation of Walmart Universe of Play, and the related Walmart Land, focused on Walmart's compliance with truth-in-advertising guidelines and laws. Other potential issues include, but are not limited to, privacy, data collection, and COPPA compliance, both with respect to Walmart, as well as Roblox, which also has access to user information. These legal issues are beyond the scope of this letter.

⁶ Privacy Certifications, Walmart's Universe of Play, <https://corporate.walmart.com/privacy-security/privacy-certifications>.

⁷ Walmart Joins BBB National Programs' CARU COPPA Safe Harbor Program for Roblox Product, Dec. 12, 2022, <https://bbbprograms.org/media-center/prd/walmart-joins-caru-coppa-safe-harbor>.

⁸ Walmart Enters Metaverse With Massive Roblox Effort, Sept. 26, 2022, <https://adage.com/article/marketing-news-strategy/walmart-enters-metaverse-roblox-activations/2433451>. *See also* Walmart Jumps Into Roblox With Launch of Walmart Land and Walmart's Universe of Play, Sept. 26, 2022, <https://corporate.walmart.com/newsroom/2022/09/26/walmart-jumps-into-roblox-with-launch-of-walmart-land-and-walmarts-universe-of-play>.

⁹ Roblox search for "walmart," <https://web.roblox.com/discover/?Keyword=walmart>.

¹⁰ *See* Our toy catalog, "Find 500+ most-wished-for gifts," <https://www.walmart.com/cp/toy-catalog/8360617>; Our 2022 toy catalog is here! <https://www.walmart.com/shop/toy-catalog-2022>. *See also* <https://www.youtube.com/watch?v=wsjULTdGvHw>.

¹¹ Walmart Universe of Play, <https://web.roblox.com/games/10980366634/Walmart-Universe-of-Play>.

¹² CARU's Advertising Guidelines and case decisions make clear that advertisers' special responsibilities to children prohibit their use of manipulative tactics to induce children to view or interact with advertising. *See e.g.*, CARU, Self-Regulatory Guidelines for Children's Advertising, https://bbbnpp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf ("Advertisements, apps, or games should not use unfair, deceptive, or other manipulative tactics, including but not limited to deceptive door openers or social pressure or validation, to encourage ad viewing ... or to cause Children to inadvertently or unknowingly engage with an ad."); CARU Case #6440, Outright Games Ltd., Bratz Total Fashion Makeover

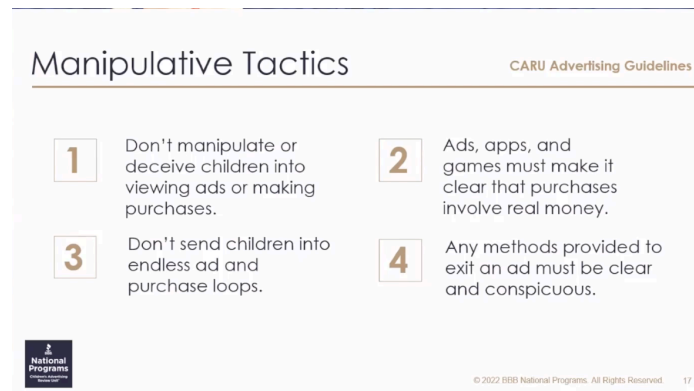
App, June 27, 2022 (“The App failed to use simple, clear and conspicuous language, such as use of the disclosure ‘Advertising’ or ‘This is an Ad’ to let children know that if they clicked on the button, they would be sent to view an ad.”)

Further, CARU has stated that:

The risk of manipulating children into unwittingly viewing ads is heightened where advertising is interwoven into children’s content. In metaverse and augmented reality (“AR”) and virtual reality (“VR”) worlds, the potential to manipulate children through similar problematic advertising practices is escalated by the fact that children can directly engage in activities and interactions with character avatars and influencers, potentially creating a sense of personal connection to and trust in the messages. CARU warns advertisers, brands, influencers, developers, and others in metaverse ... spaces directed to children to take extra care to ensure that advertising does not violate the Guidelines through manipulation of any sort.

CARU’s August 23, 2022 Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7&_ga=2.159589305.520320079.1673392478-660962920.1672866251&_gl=1*6txgsn*_ga*NjYwOTYyOTIwLjE2NzI4NjYyNTE.*_ga_FXP6NWPNYM*MTY3MzZM5MjQ3Ny40LjAuMTY3MzZM5MjQ3Ny42MC4wLjA.

CARU’s position vis-à-vis manipulative tactics was also reiterated in October 2022 at the FTC’s conference regarding Protecting Kids from Stealth Advertising in Digital Media. *See* Protecting Kids from Stealth Advertising in Digital Media, Oct. 19, 2022, <https://www.ftc.gov/media/protecting-kids-stealth-advertising-digital-media>; https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-Protecting-Kids-from-Stealth-Advertising-in-Digital-Media%E2%80%93October-19-2022.pdf. There, CARU took the position that advertisers should not “make [their] ads...look like they are actually part of gameplay.”



“Another topic that we addressed in our CARU guidelines and that was updated specifically to cover digital advertising is the issue of manipulative tactics. What CARU has said is in online spaces, particularly in games where there is advertising, you need to take special care to be sure that you clearly and conspicuously disclose what is advertising within those spaces. The flip side of that is don't manipulate or deceive children into viewing ads or making purchases, and by that we mean don't make your ads or your purchases look like they are actually part of gameplay, right? So it goes back to the idea of blurring, but blurring to the point of actually manipulating children.”

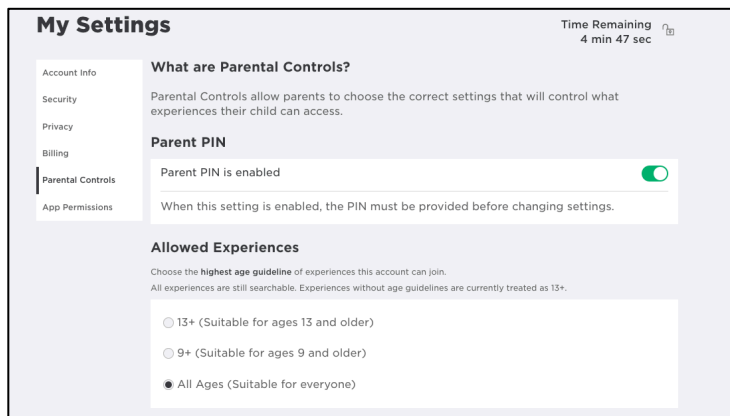
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- ¹³ Walmart Rainbocorns Eggzania Surprise Mania by ZURU, <https://www.walmart.com/ip/Rainbocorns-Eggzania-Surprise-Mania-by-ZURU/645480145> (“Age Range 3 Years & Up”).
- ¹⁴ Walmart.com Vtech KidiZoom Smartwatch DX3 Award-Winning Watch, Walmart Exclusive, https://www.walmart.com/ip/VTech-KidiZoom-Smartwatch-DX3-Award-Winning-Watch-Walmart-Exclusive/618246557?wmlspartner=wlp&selectedSellerId=0&w13=2232&&adid=22222222227433699836&w10=&w11=g&w12=c&w13=513430142817&w14=aud-1651068664746:pla-1219150333086&w15=9003336&w16=&w17=&w18=&w19=pla&w110=8175035&w111=local&w112=618246557&veh=sem&gclid=CjwKCAiAk--dBhABEiwAchlwkJxJWycEObuIgvZIDK2wsX5W5jbmB2JtVZkLOtyjTlzwbdOZWchdhoC-ZUQAvD_BwE&gclsrc=aw.ds (“Intended for ages 4+ years”).
- ¹⁵ Walmart.com Rainbow Vision COSTUME BALL Rainbow High – Violet Willow (Purple) Fashion Doll. 11 inch Kitty Cat Costume and Accessories. Great Gift for Kids 6-12 Years Old & Collectors, <https://www.walmart.com/ip/Rainbow-Vision-COSTUME-BALL-High-Violet-Willow-Purple-Fashion-Doll-11-inch-Kitty-Cat-Costume-Accessories-Great-Gift-Kids-6-12-Years-Old-Collectors/362895929>.
- ¹⁶ Walmart.com Adventure Force 24” NASCAR Race Car Hauler Play Vehicle with 4 Stock Cars and Course Markers, 12 Pieces, <https://www.walmart.com/ip/Adventure-Force-24-NASCAR-Race-Car-Hauler-Play-Vehicle-with-4-Stock-Cars-and-Course-Markers-12-Pieces/289676314> (“Recommended for ages 3 and up.”)
- ¹⁷ Walmart.com Mermaze Mermaids Winter Waves Nera Mermaid Fashion Doll with Color Change Fin, Glitter-Filled Tail and Accessories, <https://www.walmart.com/ip/Mermaze-Mermaidz-Winter-Waves-Nera-Mermaid-Fashion-Doll-with-Color-Change-Fin-Glitter-Filled-Tail-and-Accessories/188578858> (“Age Range 4 to 14 Years”).
- ¹⁸ Walmart Land, <https://web.roblox.com/games/10895555747/Walmart-Land>.
- ¹⁹ Unlike Walmart Universe of Play, there is no mechanism for parents to prohibit access to Walmart Land to their children by changing the settings of their Roblox account.
- ²⁰ Of note, Walmart also uses social media influencers to promote its virtual experiences. *See, e.g.,* <https://www.tiktok.com/t/ZTRV4foxW/>; https://www.instagram.com/p/Cj8p_2AjGIU/?hl=en; https://www.tiktok.com/@rachelocoolmua/video/7154196132866886955?is_copy_url=1&is_from_webapp=v1&lang=en; https://www.tiktok.com/@rachelocoolmua/video/7158186896617688366?is_copy_url=1&is_from_webapp=v1&lang=en; https://www.tiktok.com/@walmart/video/7156681460081020203?is_from_webapp=v1&item_id=7156681460081020203; <https://www.instagram.com/p/CjYvo3nP2QU/>; https://www.tiktok.com/@christifritz/video/7153790368713067818?is_from_webapp=v1&item_id=7153790368713067818; <https://www.youtube.com/watch?v=XVxOJ8H-gqI>; https://www.tiktok.com/@christifritz/video/7156378100006210858?is_copy_url=1&is_from_webapp=v1; https://www.instagram.com/p/CjYw2l_p2hI/?hl=en; https://www.instagram.com/p/CjY3nSYPds_/?igshid=YmMyMTA2M2Y=; <https://www.instagram.com/p/CjYy5GqvWmJ/?igshid=YmMyMTA2M2Y=>; <https://www.instagram.com/p/CjY4mRbPZia/?igshid=YmMyMTA2M2Y=>.

To the extent these influencers are playing Walmart's advergames and appearing in the virtual experiences in the form of their avatars (i.e., avatar influencers) without clearly and conspicuously disclosing to other users their material connection to the company, this would also be deceptive and a violation of truth in advertising laws. *See* April 19, 2022 Letter from TINA.org to FTC regarding Deceptive Marketing on Roblox, https://truthinadvertising.org/wp-content/uploads/2022/04/4_19_22-Complaint-to-FTC-re-Roblox.pdf.

²¹ TINA.org gained access to Walmart Universe of Play with a user account using a January 1, 2018 birth date.

²² Walmart Universe of Play, <https://web.roblox.com/games/10980366634/Walmart-Universe-of-Play>.

²³ Roblox Parental Controls, <https://web.roblox.com/my/account#!/parental-controls>.



²⁴ Walmart LOL Surprise Fashion Show Mega Runway Playset, https://www.walmart.com/ip/L-O-L-Surprise-Fashion-Show-Mega-Runway-Runway-Playset-80-Surprises-1500-Mix-Match-Looks-Fashion-Dolls-Collectible-Dolls-Runway-Set-Fashion-Toy-Girls/292226440?athcpid=292226440&athpgid=AthenaContentPage_9746323&athcgid=null&athzid=ItemCarousel_3f4ef0b3-a2a5-4c0a-83ee-e97420f9b90a_items&athieid=v0&athstid=CS020&athguid=wU65LFMmbaZ192y2aFJgRnmUBICgZjDMgv1z&athancid=null&athena=true.

²⁵ Walmart Jurassic World Captivz Clash Edition Random Slime Egg, <https://www.walmart.com/ip/Jurassic-World-Captivz-Clash-Edition-Random-Slime-Egg/392108466>.

²⁶ Walmart PAW Patrol Super PAWs 2-in-1 Transforming Mighty Pups Jet Command Center with Lights and Sounds, <https://www.walmart.com/ip/PAW-Patrol-Super-PAWs-2-in-1-Transforming-Mighty-Pups-Jet-Command-Center-with-Lights-and-Sounds/841042235>.

²⁷ Walmart Magic Mixies Magical Misting Cauldron with Exclusive Interactive 8 inch Rainbow Plush Toy, <https://www.walmart.com/ip/Magic-Mixies-Magical-Misting-Cauldron-with-Exclusive-Interactive-8-inch-Rainbow-Plush-Toy-and-50-Sounds-and-Reactions-Toys-for-Kids-Ages-5/393795107?athbdg=L1100>.

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- ²⁸ Walmart Razor S Folding Kick Scooter with Light Up Wheel, <https://www.walmart.com/ip/Razor-S-Folding-Kick-Scooter-with-Light-Up-Wheel-Blue-Ages-5-and-Riders-Up-to-110-lbs/820660054?athbdg=L1100>.
- ²⁹ Walmart Rainbocorns Eggzania Surprise Mania by ZURU, <https://www.walmart.com/ip/Rainbocorns-Eggzania-Surprise-Mania-by-ZURU/645480145> (“Age Range 3 Years & Up”).
- ³⁰ Walmart.com Vtech KidiZoom Smartwatch DX3 Award-Winning Watch, Walmart Exclusive, https://www.walmart.com/ip/VTech-KidiZoom-Smartwatch-DX3-Award-Winning-Watch-Walmart-Exclusive/618246557?wmlspartner=wlp&selectedSellerId=0&w13=2232&&adid=22222222227433699836&w10=&w11=g&w12=c&w13=513430142817&w14=aud-1651068664746:pla-1219150333086&w15=9003336&w16=&w17=&w18=&w19=pla&w110=8175035&w111=local&w112=618246557&veh=sem&gclid=CjwKCAiAk--dBhABEiwAchIwkJxJWycEObuIgvZIDK2wsX5W5jbmB2JtVZkLOtyjTlzwbdOZWchdhoC-ZUQAvD_BwE&gclsrc=aw.ds (“Intended for ages 4+ years”).
- ³¹ Walmart.com Rainbow Vision COSTUME BALL Rainbow High – Violet Willow (Purple) Fashion Doll. 11 inch Kitty Cat Costume and Accessories. Great Gift for Kids 6-12 Years Old & Collectors, <https://www.walmart.com/ip/Rainbow-Vision-COSTUME-BALL-High-Violet-Willow-Purple-Fashion-Doll-11-inch-Kitty-Cat-Costume-Accessories-Great-Gift-Kids-6-12-Years-Old-Collectors/362895929>.
- ³² Walmart.com Adventure Force 24” NASCAR Race Car Hauler Play Vehicle with 4 Stock Cars and Course Markers, 12 Pieces, <https://www.walmart.com/ip/Adventure-Force-24-NASCAR-Race-Car-Hauler-Play-Vehicle-with-4-Stock-Cars-and-Course-Markers-12-Pieces/289676314> (“Recommended for ages 3 and up.”)
- ³³ Walmart.com Mermaze Mermaids Winter Waves Nera Mermaid Fashion Doll with Color Change Fin, Glitter-Filled Tail and Accessories, <https://www.walmart.com/ip/Mermaze-Mermaidz-Winter-Waves-Nera-Mermaid-Fashion-Doll-with-Color-Change-Fin-Glitter-Filled-Tail-and-Accessories/188578858> (“Age Range 4 to 14 Years”).
- ³⁴ Matthew A. Lapierre et al., The Effect of Advertising on Children and Adolescents, 140(2) PEDIATRICS S152, S153 (2017), <https://doi.org/10.1542/peds.2016-1758V> (“For decades, researchers have recognized children as a vulnerable consumer group because of their budding developmental abilities.”); Angela J. Campbell, Rethinking Children’s Advertising Policies for the Digital Age, 29 LOYOLA CONSUMER L. REV. 1, 40 (2017) (“Because they are just developing their cognitive capabilities, children are more trusting than adults and thus, more vulnerable to ‘commercial pitches’ by program hosts, a practice known as ‘host selling.’”); *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010) (the Supreme Court observing that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”)
- ³⁵ Deborah Roedder John, *Consumer Socialization of Children: A Retrospective Look at Twenty-Five Years of Research*, 26 J. of Consumer Rsch. 183 (1999), <https://doi.org/10.1086/209559>; Angela Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 Loy. Consumer L. Rev. 1, 36-37 (2017), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2969&context=facpub>; Rita-

Marie Cain Reid, *Embedded Advertising to Children: A Tactic That Requires a New Regulatory Approach*, 51 Am. Bus. L. J. 721, 727 (2014), <https://doi.org/10.1111/ablj.12038>.

³⁶ See Reid, *supra* note 32, at 727.

³⁷ *Id.*

³⁸ See Soontae An & Susannah Stern, *Mitigating the Effects of Advergaming on Children*, 40 J. OF ADVERT. 43, 50 (2011); Rita-Marie Cain Reid, *Embedded Advertising to Children: A Tactic That Requires a New Regulatory Approach*, 51 AM. BUS. L.J. 721, 727-28 (2014) (“By blurring the boundaries between advertising and entertainment, advertisers may simply overwhelm the defenses children are still in the process of building,” quoting Elizabeth Moore, *Children and the Changing World of Advertising*, 52 J. OF BUS. ETHICS 161 (2004)). See also Katarina Panic et al., *Comparing TV Ads and Advergaming Targeting Children: The Impact of Persuasion Knowledge on Behavioral Responses*, 42 J. OF ADVERT. 264, 266 (2013).

³⁹ See Angela J. Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 LOYOLA CONSUMER L. REV. at 38-39 (“Not only are young children unable to identify sponsored videos as commercials, but they lack the ability ‘to attribute persuasive intent to advertising and to adjust their interpretation of commercial messages consistent with that knowledge.’ Studies conducted since the 1980s have corroborated the finding that children develop an understanding of persuasive intent at about age eight. However, recent work suggests that merely understanding persuasive intent may be insufficient to moderate the effects of advertising. Rather, children also need to understand ‘source bias, that is, that ads tend to exaggerate. This capacity develops around age twelve.’”(internal citations omitted); Soontae An & Susannah Stern, *Mitigating the Effects of Advergaming on Children*, 40 J. OF ADVERT. at 50 (“[C]hildren between 7 and 11 years old often experience difficulty in recognizing and evaluating advertising information. . . . Combined with similar findings over the years, it has thus been concluded that children between ages 7 and 11 often do not instinctually use their persuasion knowledge [i.e., knowledge about marketers’ motives and tactics] and must be cued to do so.”)

It is for precisely this reason that the Federal Communications Commission has a longstanding policy that prohibits product placements in television programs produced and broadcast to children 12 years old and under. The FCC Order states, among other things: “Any material which constitutes advertising should be confined to identifiable commercial segments which are set off in some clear manner from the entertainment portion of the program.” See Angela J. Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 LOYOLA CONSUMER L. REV. 1; Rita-Marie Cain Reid, *Embedded Advertising to Children: A Tactic That Requires a New Regulatory Approach*, 51 AM. BUS. L. J. 721.

⁴⁰ FTC .com Disclosures: How to Make Effective Disclosures in Digital Advertising, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>; (Disclosures must be “understandable to the intended audience.”); FTC Policy Statement on Deception, https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (“When representations or sales practices are targeted to a specific audience, such as children, the elderly, or the terminally ill, the Commission determines the effect of the practice on a reasonable member of that group.”); FTC Enforcement Policy Statement on Deceptively Formatted Advertisements, https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf (“Deception occurs when an advertisement misleads reasonable consumers as to its true nature or source, including that a party other than the sponsoring

advertiser is the source of an advertising or promotional message, and such misleading representation is material. ... [F]ailing to clearly and prominently disclose the paid nature of such advertising results is deceptive.”)

⁴¹ CARU, Self-Regulatory Guidelines for Children’s Advertising, https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf.

⁴² *Id.*; CARU’s August 23, 2022 Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7&_ga=2.159589305.520320079.1673392478-660962920.1672866251&_gl=1*6txgsn*_ga*NjYwOTYyOTIwLjE2NzI4NjYyNTE.*_ga_FXP6NWPNYM*MTY3MzM5MjQ3Ny40LjAuMTY3MzM5MjQ3Ny42MC4wLjA.

⁴³ CARU’s August 23, 2022 Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7&_ga=2.159589305.520320079.1673392478-660962920.1672866251&_gl=1*6txgsn*_ga*NjYwOTYyOTIwLjE2NzI4NjYyNTE.*_ga_FXP6NWPNYM*MTY3MzM5MjQ3Ny40LjAuMTY3MzM5MjQ3Ny42MC4wLjA.

This position vis-à-vis marketing to children in the metaverse was reiterated at the FTC’s conference regarding Protecting Kids from Stealth Advertising in Digital Media. *See* Protecting Kids from Stealth Advertising in Digital Media, Oct. 19, 2022, <https://www.ftc.gov/media/protecting-kids-stealth-advertising-digital-media>; https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-Protecting-Kids-from-Stealth-Advertising-in-Digital-Media%E2%80%93October-19-2022.pdf. There, CARU explained, among other things, how extra care is required to distinguish advertising from non-advertising content within virtual gaming worlds, particularly when the games include virtual simulations of real products.



“So if you can take a few seconds to look at this world created by our team, there’s a lot going on here. The point here is that this is an experienced space that children can come into. Depending on what the real facts are here, as you can see, this might be a branded site and the whole site may be advertising for the brand, or it might be an organic game. But as you can see to the right of your screen, you’ve got language. You’ve got a big sign, ‘Grab your gear here.’ If these are in fact a real virtual simulations of real products, this could likely be advertising for those products. There might be coins involved or actual purchases with real money. These sorts of worlds point out that advertisers need to take care to determine whether in fact the whole experience is an ad or if advertisers are advertising on others games and platforms to take care to ensure that where that advertising is, it’s clear to children.”

⁴⁴ Privacy Certifications, Walmart’s Universe of Play on Roblox, <https://corporate.walmart.com/privacy-security/privacy-certifications>; Walmart Universe of Play, <https://web.roblox.com/games/10980366634/Walmart-Universe-of-Play>.

⁴⁵ Walmart Joins BBB National Programs’ CARU COPPA Safe Harbor Program for Roblox Product, Dec. 12, 2022, <https://bbbprograms.org/media-center/prd/walmart-joins-caru-coppa-safe-harbor>. *See also* COPPA Safe Harbor Services, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services> (“Benefits[:] The confidence that your CARU COPPA Safe Harbor certified product is fully compliant with COPPA, CARU’s Privacy Guidelines, and protected from enforcement actions by the Federal Trade Commission.”)

⁴⁶ CARU’s August 23, 2022 Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7&_ga=2.159589305.520320079.1673392478-660962920.1672866251&_gl=1*6txgsn*_ga*NjYwOTYyOTIwLjE2NzI4NjYyNTE.*_ga_FXP6NWPNYM*MTY3MzM5MjQ3Ny40LjAuMTY3MzM5MjQ3Ny42MC4wLjA.

⁴⁷ *See e.g.*, CARU Case #6445, Gameloft S.A., Disney Getaway Blast App, Sept. 28, 2022; CARU #6444, Titling Point Media LLC, SpongeBob – Krusty Cook-Off App, Aug. 12, 2022; CARU Case #6442, Firefly Games Mobile, Inc., LOL Surprise! Room Makeover App, July 22, 2022; CARU Case #6440, Outright Games Ltd., Bratz Total Fashion Makeover App, June 27, 2022; CARU Case #6255, My Talking Tom, Feb. 27, 2019.