



March 27, 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 in response to your January 31 letter regarding CARU's acceptance of Walmart Universe of Play into its COPPA safe harbor program.¹ In your letter, you made clear that CARU would not audit or take any action with respect to the advergaming on Roblox in response to the serious concerns we raised, having previously determined that the experience complied with the FTC Act, COPPA and CARU's Advertising and Privacy Guidelines. CARU's refusal to reexamine the safe harbor program participant in this instance was disappointing, especially considering that CARU was paid by Walmart – the world's largest company by revenue – to ensure its advergaming perpetually complied with the law. Given these facts, we had hoped that CARU would do everything in its power to dispel any appearance of impropriety and take our concerns seriously as we raised substantive issues in an effort to protect children and eradicate the deceptive marketing at issue.

Nevertheless, we are pleased that earlier this month Walmart removed its Universe of Play from Roblox search results and locked the experience on the platform so that children cannot access this undisclosed advergaming.² However, given the possibility that CARU may consider auditing other experiences on Roblox for COPPA compliance, we thought it would be prudent to voice our on-going concerns with regard to CARU's COPPA safe harbor program.

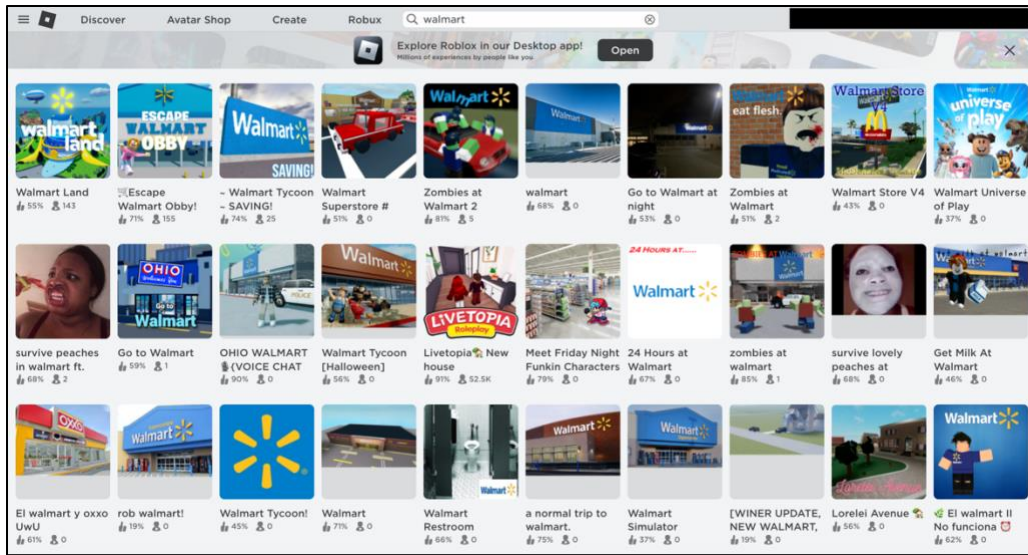
To begin, CARU's approval of a single experience within Roblox's closed platform metaverse for COPPA compliance was a worrying development. As you know, children were not able to enter Walmart Universe of Play without first signing in to Roblox, agreeing to Roblox's terms and conditions and using its platform (which clearly implicates privacy and data collection issues) to gain access to Walmart's advergaming. As such, parents and other reasonable consumers would have assumed that CARU had verified Roblox's compliance with COPPA as it pertained to Walmart Universe of Play – a review that CARU did not disclose undertaking. This raises larger issues of how a safe

harbor program can operate effectively when platforms are not approved by the program but applications on the platforms are.

Further, the claim that Walmart clearly and conspicuously disclosed to children that Walmart Universe of Play was an advergame was belied by the facts and conflicted with CARU’s own precedent. CARU has repeatedly taken the position that advertisements must be easily identifiable as advertising.³ This means “[a]dvertising should not be presented in a manner that blurs the distinction between Advertising and non-Advertising content,”⁴ and if disclosures are required to help children identify the ad content, such disclosures should be unavoidable.⁵

CARU’s position – that “[t]he combination of the use of Walmart’s logo, branding, trademarks, etc. throughout the game, and the fact that the game is modeled after Walmart’s popular Universe of Play catalog, demonstrates the commercial nature of the game, and provides users, including children, the visual cues they need to understand the experience is advertising”⁶ – did not withstand scrutiny.

On the Roblox platform, there are many experiences featuring Walmart’s “logo, branding, trademarks, etc.,” most of which are not ads. As such, how did these elements, in and of themselves, make it clear to children that Walmart Universe of Play was advertising when other experiences with the same logo, branding and trademarks are not advergames?

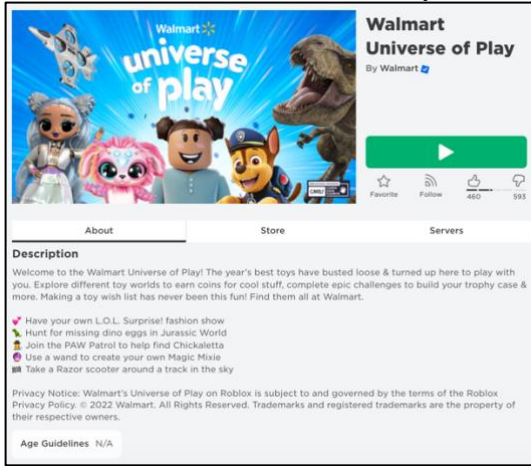


Sampling of search results that populate when searching Roblox for “walmart”⁷

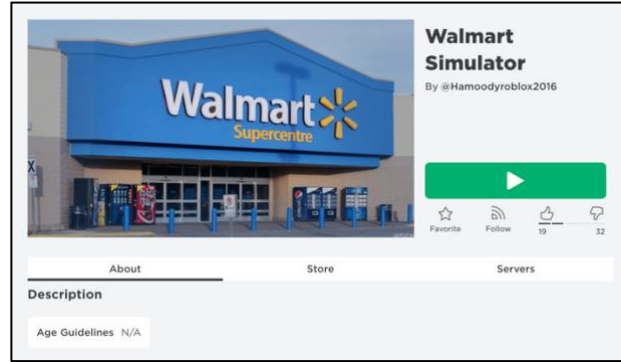
Walmart Universe of Play’s landing page was also visually similar to other unsponsored “Walmart” experiences on Roblox. As such, how did the “logo, branding, trademarks, etc.” make it clear to children as young as five years old that Walmart Universe of Play was advertising, as compared to other Walmart games that are not sponsored?

Desktop View Comparison of Landing Pages

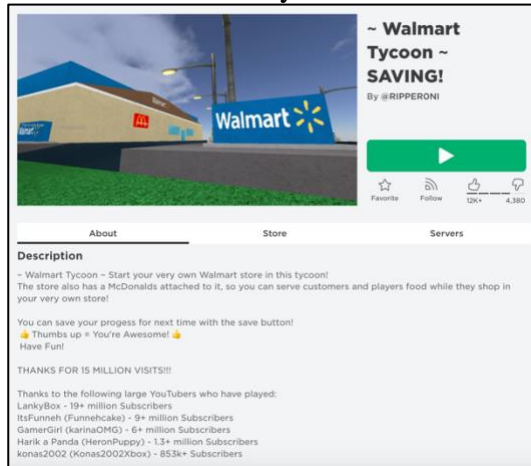
Walmart Universe of Play⁸



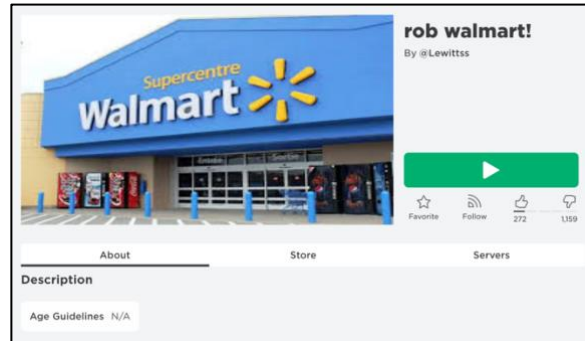
Walmart Simulator⁹



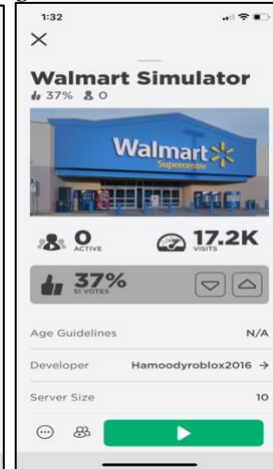
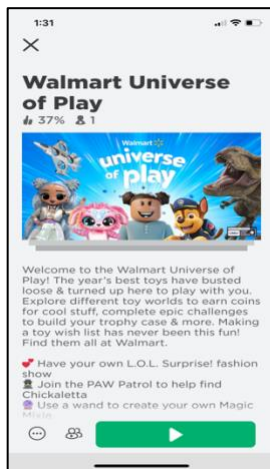
Walmart Tycoon¹⁰



rob walmart!¹¹



Mobile Device View Comparison of Landing Pages



Once inside Walmart Universe of Play, where ambiguous ad disclosures were relegated to illegible fine print and Walmart logos were easily missed, how did such disclosures and logos make it clear to children that Walmart Universe of Play was advertising, particularly as compared to other Walmart games that are not sponsored?

Inside Walmart Tycoon¹² (not sponsored)



Inside Walmart Store V4¹³ (not sponsored)



Inside walmart¹⁴ (not sponsored)



Inside Walmart simulator¹⁵ (not sponsored)



Inside Walmart Universe of Play (sponsored)



As these images show, users were able to spend significant time in Walmart Universe of Play and never see any company branding. By way of example, there was no Walmart

branding to be found when an avatar was swimming in the stream, playing in the L.O.L. Surprise! fashion show, driving the bumper cars, exploring Magic Mixies' Forest of Mixia, climbing the PAW Patrol Lookout tower, or circumnavigating the outer perimeter of the experience.

Your letter was also silent with regard to Walmart's use of deceptive door openers to entice children to open and interact with ads. CARU (and the FTC) have repeatedly taken the position that advertisements should not use manipulative tactics such as deceptive door openers to cause children to unknowingly engage with an ad.¹⁶ In fact, this is an issue CARU has flagged in numerous case decisions.¹⁷ Similarly, at the FTC's October 2022 "Protecting Kids from Stealth Advertising in Digital Media" workshop, CARU's then-Vice President stated:

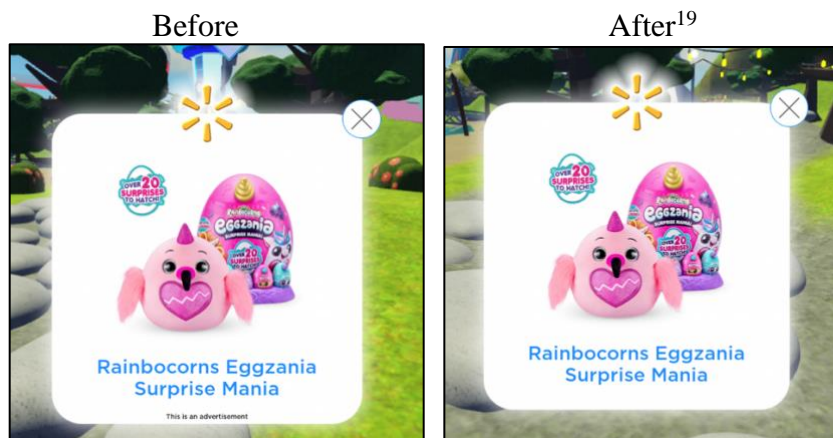
[D]on't manipulate or deceive children into viewing ads or making purchases, and by that we mean don't make your ads or your purchases look like they are actually part of gameplay...¹⁸

Yet, when presented with a virtual game that incorporated mysterious wrapped gift boxes and treasure chests scattered throughout the game, which, when opened, revealed ads for toys sold at Walmart, CARU's position was that it was fine.

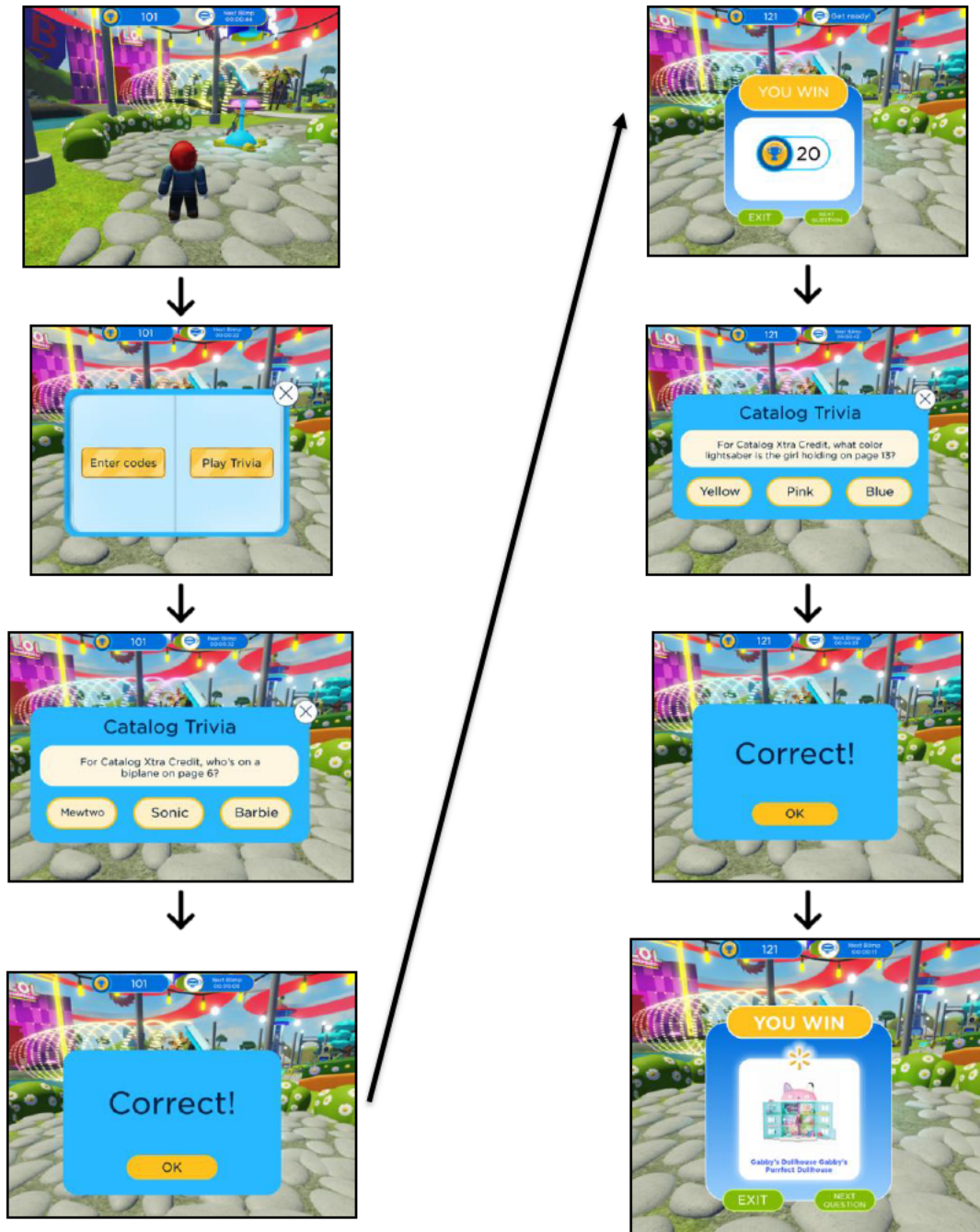
Screenshots showing a wrapped gift box in the game that reveals an ad when opened



It is also worth noting that after bringing this matter to CARU's attention in January, Walmart removed the illegible fine print ad disclosures at the bottom of the ads that popped-up when the gift boxes and treasure boxes were opened.



Additionally, our investigation revealed other deceptive door openers in the form of trivia questions about Walmart’s toy catalog that, when answered correctly, led to undisclosed pop-up ads for toys, as exemplified below:



Moreover, Walmart Universe of Play’s admission to CARU’s safe harbor program raises further concerns about the efficacy of CARU’s review process.²⁰ In the Walmart press release it issued, CARU stated that:

Companies who participate in CARU's COPPA Safe Harbor Program also comply with CARU's Advertising Guidelines – a set of standards for advertising that help ensure advertising directed to children is not deceptive, unfair, or inappropriate...²¹

CARU's expansion of its COPPA safe harbor program to also include a broader advertising safe harbor is impermissible. Specifically, while safe harbor programs are tasked with ensuring member companies comply with children's privacy rights under COPPA, CARU appears to indicate that its safe harbor program also ensures that its member companies are complying with its advertising guidelines. CARU represents that:

BBB National Programs' CARU COPPA Safe Harbor Program is the first and longest-running COPPA Safe Harbor Program in the U.S. and it is the only one designed to ensure both a company's products and the product's advertising comply with COPPA and CARU's Advertising and Privacy Guidelines.²²

Not only are such representations beyond the scope of COPPA's safe harbor provisions but such statements send the misimpression to consumers and companies alike that false and deceptive advertising claims are beyond the scope of FTC review pursuant to the FTC's COPPA Rule. CARU has also stated:

when customers are faced with the question of who to trust in a dynamic child-directed marketplace, only a COPPA Safe Harbor seal can ensure that your products comply with the stringent requirements of the COPPA Rule, and only CARU's COPPA Safe Harbor seal can demonstrate that your product's advertising does as well. 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.²³

Despite sweeping assurances by CARU, a company's marketing and advertising are not exempt from a Commission enforcement action under the FTC's COPPA Rule,²⁴ which means that at present, it appears that CARU is misusing its COPPA safe harbor program by misrepresenting what participation in its program encompasses and what its program seal signifies. As such, we urge that CARU review its safe harbor program to ensure its actions remain within the bounds of the COPPA program²⁵ and that its statements surrounding the program appropriately define its limitations so CARU does not deceive U.S. consumers and companies.

We trust that CARU will seriously consider the issues raised above so that it can be at the forefront of working to establish more robust and effective safeguards to protect children on platforms like Roblox. Clearly, there are a host of new challenges concerning how best to protect children from the barrage of stealth advertising directed at them through sophisticated digital platforms and the brands that utilize these platforms. We hope that

CARU will stand with us in the future to help ensure that America's young kids are safe online and not manipulated by such digital deception.

Sincerely,

Truth in Advertising, Inc.

Fairplay

Center for Digital Democracy

National Association of Consumer Advocates

Common Sense Media

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

¹ TINA.org, Fairplay, Center for Digital Democracy, and National Association of Consumer Advocates, the groups who first brought this serious matter to CARU’s attention on January 23, 2023, are joined today by Common Sense Media. Common Sense Media is the nation’s leading organization dedicated to helping kids and families thrive in a rapidly changing digital world.

² See Walmart Universe of Play, <https://web.roblox.com/games/10980366634/Walmart-Universe-of-Play>. We understand, however, that this change was not due to any action by CARU.

³ CARU Self-Regulatory Guidelines for Children’s Advertising, https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf; CARU Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, Aug. 23, 2022, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7.

⁴ CARU Self-Regulatory Guidelines for Children’s Advertising, https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf; CARU Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, Aug. 23, 2022, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7.

⁵ FTC – Protecting Kids from Stealth Advertising in Digital Media – October 19, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-Protecting-Kids-from-Stealth-Advertising-in-Digital-Media%20%80%93October-19-2022.pdf (“Business needs to have guidance on how to make their ads clear, but they also need to have flexibility to be able to look at that space and say, ‘Where in this space can I make it clear and unavoidable that what someone is seeing is advertising?’ Whether the entire space is advertising or whether there’s advertising within a content space, this, as you know, is a central focus of CARU’s guidance to business.”)

⁶ See January 31, 2023 letter from CARU, https://truthinadvertising.org/wp-content/uploads/2021/12/1_31_23-CARU-Response.pdf.

⁷ Roblox search for “walmart,” <https://web.roblox.com/discover/?Keyword=walmart>.

⁸ Walmart Universe of Play, <https://web.roblox.com/games/10980366634/Walmart-Universe-of-Play>.

⁹ Walmart Simulator, <https://web.roblox.com/games/2348707655/Walmart-Simulator>.

¹⁰ Walmart Tycoon SAVING, <https://web.roblox.com/games/480590623/Walmart-Tycoon-SAVING>.

¹¹ rob walmart, <https://web.roblox.com/games/870420979/rob-walmart>.

¹² Walmart Tycoon SAVING, <https://web.roblox.com/games/480590623/Walmart-Tycoon-SAVING>.

¹³ Walmart Store V4, <https://web.roblox.com/games/598488549/Walmart-Store-V4>.

¹⁴ walmart, <https://web.roblox.com/games/9155579315/walmart>.

¹⁵ Walmart Simulator, <https://web.roblox.com/games/2348707655/Walmart-Simulator>.

¹⁶ CARU Self-Regulatory Guidelines for Children’s Advertising, https://bbbnp-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 in-app or in-game purchases, or to cause Children to inadvertently or unknowingly engage with an ad.”); CARU Compliance Warning Regarding Advertising Practices Directed to Children in the Metaverse, Aug. 23, 2022, https://assets.bbbprograms.org/docs/default-source/caru/compliancewarning-metaverse.pdf?sfvrsn=b9937f2b_7 (“Advertisers should be particularly cautious to avoid advertising that blurs the distinction between advertising and non-advertising content, that uses manipulative tactics, including but not limited to social pressure or validation, deceptive door openers, or misleading design techniques, or that fails to make clear and conspicuous disclosures to children where needed to distinguish advertising from non-advertising content.” ... “CARU has addressed deceptive door openers and other practices in the realm of dark patterns in several of its mobile app decisions.”); FTC Native Advertising: A Guide for Businesses, <https://www.ftc.gov/business-guidance/resources/native-advertising-guide-businesses> (“Under FTC law, advertisers cannot use ‘deceptive door openers’ to induce consumers to view advertising content. Thus, advertisers are responsible for ensuring that native ads are identifiable as advertising before consumers arrive at the main advertising page. In addition, no matter how consumers arrive at advertising content, it must not mislead them about its commercial nature.”)

¹⁷ 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.

¹⁸ FTC – Protecting Kids from Stealth Advertising in Digital Media – October 19, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-Protecting-Kids-from-Stealth-Advertising-in-Digital-Media%E2%80%93October-19-2022.pdf; FTC Protecting Kids from Stealth Advertising in Digital Media, <https://www.ftc.gov/media/protecting-kids-stealth-advertising-digital-media>.

¹⁹ The following is an example of how the treasure boxes function the same as the gift boxes:



²⁰ 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>; Walmart's Universe of Play on Roblox, Privacy Certifications, <https://corporate.walmart.com/privacy-security/privacy-certifications>.

²¹ 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>.

²² 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* Children's Advertising Review Unit, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit> ("The Children's Advertising Review Unit (CARU), the nation's first Safe Harbor Program under the Children's Online Privacy Protection Act (COPPA), helps companies comply with laws and guidelines that protect children under age 13 from deceptive or inappropriate advertising...").

²³ CARU COPPA Safe Harbor Services, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services>. *See also* Statement of Commissioner Rohit Chopra Regarding Miniclip and the COPPA Safe Harbors, Commission File No. 1923129, https://www.ftc.gov/system/files/documents/public_statements/1575579/192_3129_miniclip_statement_of_cmr_chopra.pdf ("According to CARU, '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).'")

²⁴ 16 C.F.R. § 312.11 (2001).

²⁵ In its 2013 submission to the FTC after COPPA was revised, CARU represented to the Commission that its program was limited to monitoring and overseeing "the regulations governing the collection of online and mobile data by third parties for advertising and other purposes" and that it would engage in "[o]ngoing monitoring and review" of program participants' websites to assess and ensure compliance with the safe harbor program. *See* 2013 CARU Request for FTC Approval for Continuance of its Safe Harbor Signatory Status, <https://www.ftc.gov/system/files/attachments/press-releases/revised-childrens-online-privacy-protection-rule-goes-effect-today/130701carusafeharborapp.pdf>. At that time, CARU also provided a sample Self-Assessment Form and a sample Attestation Form, which would be completed and signed by its safe harbor participants (both focused exclusively on privacy and information collection practices). *Id.* In fact, the only law CARU's Attestation form requires that participants pledge adherence to is the COPPA Rule, 16 C.F.R. Part 312. *Id.*

On its website, CARU describes the "comprehensive audit" it conducts for safe harbor program members by explaining three components of review:

Data Collection Evaluation: CARU will evaluate your product's data collection practices for compliance with COPPA, CARU's Privacy Guidelines, and other relevant standards and laws, such as CaCPA, CAN-SPAM, data security/breach laws, Canada's PIPEDA and CASL (anti-SPAM) laws, and others.

Tracking Assessment: CARU will review your product to vet all data collection, including first- and third-party trackers, through any digital advertisements, APIs,

plugins, and third-party vendors (such as credit card processors, analytics providers, ad networks, etc.).

Document Review: CARU will give your product’s privacy policy, terms of service, consumer notices, and/or EULAs a thorough review to ensure necessary requirements pertaining to targeting a child audience (directly or indirectly) are met.

See CARU COPPA Safe Harbor Services, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit/COPPA-Safe-Harbor-Services>.

No mention is made of evaluating products or their advertising for compliance with CARU’s advertising guidelines, or ensuring the product’s advertising is not false, deceptive, or misleading. Indeed, such a representation would be beyond the scope of COPPA and its safe harbor program provisions.