



July 18, 2022

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
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Re: Protecting Kids from Stealth Advertising in Digital Media

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following in conjunction with the Federal Trade Commission’s (“Commission,” “Agency” or “FTC”) May 19, 2022 request for comments regarding its upcoming virtual event on protecting kids from stealth advertising in digital media.

INTRODUCTION

With their own financial resources, the power to influence their parents’ purchasing decisions and as future adult consumers, children are a valued target audience for marketers.¹ Given children’s predilection for digital media,² advertising dollars directed at them have followed, with advertisers spending billions of dollars each year on digital marketing.³ Concomitant with these increased digital ad spends has been an increase in the number of products and services being deceptively marketed⁴ – including those that have the potential to cause real harm to minors, who are a prime and susceptible target for stealth digital advertising.⁵

At the same time, marketplace fairness dictates that children, like any other consumer group, should be afforded the right to be protected from deceptive advertising in the digital landscape. To date, not only have regulations lagged behind the ingenuity of advertisers but a growing body of evidence demonstrates that many children lack the cognitive capability to recognize and understand blurred content in digital marketing.

Starting from the premise that it is never legally permissible for a company or individual to deceive children for monetary gain, TINA.org addresses the following issues in this comment: how a child should be defined for purposes of considering who is entitled to enhanced protection from stealth marketing in digital media; children’s capacity to identify and understand advertising; the efficacy of digital disclosures for young children; the harms that stealth marketing inflicts on children; and possible measures that could be taken to minimize the harms of stealth advertising on children.

INTEREST OF PETITIONER

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in our economy.

At the center of TINA.org's efforts is its website, www.tina.org, which aims to reboot the consumer movement for the 21st century. The site provides information about common deceptive advertising techniques, consumer protection laws and alerts about specific deceptive marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad,⁶ pillows and essential oils falsely marketed as able to treat chronic diseases,⁷ and a delivery meal kit service that falsely advertises free meals.⁸ The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities. The website is also a repository of information relating to consumer protection lawsuits and regulatory actions.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud, and has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.⁹ TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies and appears as *amicus curiae* in cases raising important questions of consumer protection law.¹⁰

Since its inception, TINA.org has filed legal actions against more than 300 companies and entities, published more than 1,200 ad alerts, written over 900 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained more than \$250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

TINA.org has taken an active role in working to hold brands accountable for deceptive marketing campaigns that target children. The nonprofit has documented and made publicly available on its website thousands of examples of brands using stealth advertising tactics on digital platforms to deceive minors.¹¹ TINA.org has also issued two warning letters to brands and influencers concerning stealth marketing directed at kids on social media platforms, one of which notified multiple alcohol companies of the deceptive promotion of alcohol on Snapchat and Instagram by celebrity music producer DJ Khaled, and the other concerning a multilevel marketing company that targeted teenagers.¹² The nonprofit has filed seven complaints with federal and state regulators regarding more than 75 companies and influencers, providing ample documentation of deceptive and misleading digital marketing campaigns aimed at children.¹³ It has also advocated for the FTC and state attorneys general to take a more active role in protecting minors from stealth marketing on tech platforms in multiple forums.¹⁴ Most recently, TINA.org filed a

complaint with the FTC against Roblox, documenting numerous examples of undisclosed advergames, endorsements and sponsored content targeting minors in the company’s metaverse, and urging the Commission to take appropriate enforcement action to protect children.¹⁵

In addition to tracking stealth marketing that is used to persuade kids to purchase specific goods or services, among other things, TINA.org has also focused on documenting hundreds of atypical earnings claims used by various entities over the years to market business opportunities to children, including, for example, the aforementioned online gaming platform Roblox,¹⁶ alleged pyramid scheme Vemma Nutrition Company and a multilevel marketing skincare company, Willagirl. In each of these instances, the company used a multitude of deceptive earnings claims to recruit minors to join a business opportunity that was most liking a losing proposition.

In short, TINA.org’s data regarding false and deceptive marketing targeting minors leaves no doubt that stealth marketing directed at children on tech platforms is a widespread problem that significantly impacts an incredibly vulnerable population of consumers.

All Children Need Protection From Manipulative Marketing in Digital Media

“False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue.”¹⁷

For more than 60 years, the FTC has acknowledged that children are a vulnerable consumer group in need of unique protections.¹⁸ But what has been far less clear is where the dividing line between child and adult takes place when addressing various types of deceptive marketing. A child is legally defined as a person younger than the age of majority,¹⁹ and within this broad and overarching definition, different terms are generally employed to segment specific age ranges including toddler, tween, teenager and minor. How a child is defined in the context of commercial advertising and marketing laws, policies, guidance and self-regulatory codes also varies with unique protections afforded to children under the age of 13, those under 18, minors under the age of 21, and in some cases the age is not specified. Indeed, the FTC made no attempt to limit or define “kids” or “children” in its current request for comment.²⁰

TINA.org urges the Commission to adopt a broad and inclusive definition of children that does not exclude teenagers when addressing issues surrounding stealth advertising in digital media. While the available scientific and academic literature indicates that as children age, they are incrementally better able to identify and then appreciate the persuasive intent of marketing messages, that does not mean that stealth marketing techniques do not deceive, exploit, manipulate and uniquely harm older children such as teenagers.²¹

Moreover, self-regulatory programs are not a viable alternative to FTC enforcement in protecting older children from digital deception. For starters, the Children’s Advertising Review Unit (CARU) only focuses on advertising directed to children under the age of 13,²² and more narrowly tailored self-regulatory codes such as the Code of Responsible Practices for the Distilled Spirits Council or the Wine Institute Guidance Note on Digital Marketing Communications have been ineffective, to say the least, at protecting teens and younger children from stealth alcohol advertising on digital platforms.²³

Compounding issues relating to age gap protections for children in self-regulation is the fact that many social media platforms, at least in writing, preclude children under the age of 13 from using their services, which provides a convenient excuse for tech platforms as well as the advertising industry and brands to largely ignore the unique and pervasive forms of stealth marketing that deceive and harm younger children in these digital spaces.²⁴

When the Commission last updated its Endorsement Guides,²⁵ social media was in a relatively nascent stage. Much has changed in the intervening years. The market has been inundated with new social media platforms, including Snapchat, Instagram, Twitch and TikTok, to name a few. And many social media platforms have experienced exponential growth thanks in large part to the adoption of the technology by minors.²⁶ Undisclosed ads for alcohol, vaping products and so-called detox products, get-rich-quick schemes involving crypto assets and multilevel marketing companies, and infomercials targeting toddlers blanket the digital landscape.²⁷ These types of deceptive, misleading and unfair marketing messages do more than simply affect families’ pocketbooks – they may also influence children’s behavior and may even encourage kids to engage in risky, unhealthy and, at times, dangerous behavior.²⁸ As such, all children, including teenagers, need protection from stealth marketing in digital media.²⁹

Children’s Capacity to Identify and Understand Advertising

Although children are adept at handling technology, that does not mean they have the cognitive capability to understand all of the content on digital platforms.³⁰ When it comes to advertising, it is beyond dispute that children do not interpret and/or understand marketing material in the same ways that adults do – not all children have the ability to recognize advertising messages, and even those that do may not be able to critically evaluate the underlying marketing message. While there seems to be a clear consensus that children’s abilities to identify and scrutinize advertising develops gradually as they pass through successive stages of cognitive development, current available research varies with respect to the specific ages at which such cognitive milestones are achieved, especially when it comes to nontraditional, stealth marketing.

More focused research on children’s capacity to recognize and understand various forms of digital marketing and distinguish it from other content would be helpful in guiding policy decisions and regulations.³¹ Nevertheless, there is a large repository of research at this time to guide tech platforms, the advertising industry and regulators, among others, to establish some bright-line rules with respect to when and how marketing messages should be conveyed to children. Below is some of the pertinent information relating to the

cognitive capabilities of children to identify and critically understand various forms of marketing that has been gleaned from the literature.

- Children under the age of five are unable to identify advertising, including television commercials with clear ad breaks, or distinguish them from other forms of content.³²
- At age 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.³³
- Even at age five – when children begin to be able to at least identify traditional ads – the selling intent behind the ads is not understood.³⁴
- Children seven years old and younger do not have the ability to detect persuasive intent in advertising.³⁵
- Children under age eight may believe they are really interacting with branded characters.³⁶
- At about seven or eight, children begin to understand the persuasive intent of advertising, and around the age of nine, kids are aware that the purpose of advertising is to persuade consumers to buy something.³⁷
- Around the age of eight, “most children understand the persuasive intent of advertising and can differentiate advertising from other content.” But, “[g]iven the embedded nature of social media advergames, it remains unknown whether those 8-year-old children recognize social media advergames as a type of advertising.”³⁸
- “Less than 40 percent each of 8- and 10-year-old children were able to identify the persuasive goal of advertisements.”³⁹
- “[C]hildren demonstrated a significantly more sophisticated understanding of television advertising compared with all five examples of non-traditional advertising. Even the 10-year-old children failed to recognize the persuasive intent of nontraditional techniques in the same way they did with TV advertisements. Instead many children asserted that the non-traditional techniques were merely something to enjoy and to be entertained by.”⁴⁰
- Children under twelve are unable to recognize the promotional nature of advergames.⁴¹
- “People incrementally gain an array of skills and knowledge throughout childhood and adolescence that increasingly enhances their ability to cope with advertising. Before fully developing such knowledge (approximately age 13), children are likely to develop affect-laden knowledge structures for advertised products without skeptical processing.”⁴²
- “During the analytical stage, which corresponds to the ages 7-11, children are seen as cognizant of the intent of advertising, albeit unaware that the message they present could be false or biased. The reflective stage corresponds to the ages of 11-16, during which children show greater appreciation for the intent of advertising and the accompanying use of exaggeration or false claims to persuade consumers.”⁴³
- “Even if they recognize advertising, however, children’s understanding of persuasive intentions may not be fully developed until their teenage years.”⁴⁴

- “Most children approach adultlike levels of skepticism and knowledge of advertising tactics in adolescence, in approximately eighth grade or at about age 13.”⁴⁵
- Children under thirteen do not fully understand how to interpret marketing material as they do not yet have the ability to understand that ads tend to exaggerate and therefore take them at face value.⁴⁶
- The commercial content is so covert in advergimes that even after adults enter sponsored worlds they can have trouble accurately identifying them as advergimes.⁴⁷

The scientific data referenced above makes clear that marketers should be held to a different standard when it comes to advertising directed at children, especially as it pertains to non-traditional advertising formats on the internet. The Agency should publicly recognize and acknowledge that children in certain age ranges can neither recognize nor understand various forms of advertising content.

Disclosures Do Not Work for Young Children on Digital Platforms

“If it is unfair and deceptive to seek to bypass the defenses that adults are presumed to have when they are aware that advertising is addressed to them, then it must likewise be considered unfair and deceptive to advertise to children in whom these defenses do not yet exist.”⁴⁸

Under what circumstances is it legally permissible for a company or individual to deceive consumers for monetary gain? Should scammers who spend weeks talking to the elderly get a free pass for stealing assets because they made a senior feel less lonely? Are snake oil salespeople absolved of their actions if they give hope to cancer patients with sham products? Would it be permissible to ignore dating app scams if the victims had fun while interacting online with the fraudsters? As ridiculous as these hypotheticals may sound, this is the issue that we are now grappling with – when is it permissible to advertise to a cognitively defenseless child for monetary gain? This should not be a hard question to answer – in TINA.org’s opinion the answer is: never.

The FTC currently states in its .com Disclosures publication that disclosures must be “understandable to the intended audience.”⁴⁹ However, there are certain audiences for whom disclosures simply do not work.

To illustrate this point, TINA.org draws the Commission’s attention to its 2019 complaint regarding Ryan ToysReview, one of the most viewed YouTube channels of all time.⁵⁰ TINA.org’s investigation revealed that the YouTube channel, which is now called Ryan’s World and has more than 32 million subscribers, thousands of posted videos and more than 30 billion views,⁵¹ deceptively promoted a multitude of products to millions of preschool-aged children by misleadingly blurring the distinction between advertising and organic content for its intended audience: preschoolers under the age of five.

As examined above, children under the age of five are a particularly susceptible consumer group requiring special protections because they are unable to identify marketing content or distinguish it from other forms of content.⁵² At age five, the distinction between commercials and other content is only possible when there are perceptual cues, such as verbal separators (“We’ll be right back after this message”) or because commercials are shorter and independent of the other content.⁵³ Further, even at age five – when children begin to be able to at least identify traditional ads – the selling intent behind the ads is not understood.⁵⁴ The perceptual cues present in television programming that allow five-year-olds to identify ads are completely lacking on digital platforms such as YouTube, where videos natively embed sponsored content within the program, as does Ryan ToysReview.⁵⁵ Thus, it is not surprising that preschoolers do not realize that they are being marketed to in these online settings.⁵⁶

Because [an] audience of ages five and under lacks the capacity to distinguish advertising from content in traditional television programming, it is inconceivable that they would be able to distinguish between sponsored and unsponsored videos on [YouTubeKids]. Even if sponsored videos in [YouTubeKids] were identified as advertising, its audience is too young to comprehend what that means.⁵⁷

In other words, when a post, video or virtual world directed to children five and under mixes advertising with program content, the preschool audience is unable to understand or even identify the difference between marketing material and organic content, even when there is a verbal indicator that attempts to identify the marketing content.⁵⁸

Thus, the typical remedy for such blending of advertising and organic content – *e.g.*, disclosures of material connections between the endorser and the seller of the advertised product – does not work in such circumstances as the intended audience is unable to understand them. In fact, 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.⁵⁹

There is simply no support for the proposition that preschool content on digital platforms, such as Ryan ToysReview, can present its target audience with native advertising videos and expect that any disclosure will clearly and conspicuously inform this young and vulnerable cohort that they are being lobbed a sales pitch.

The Harms of Stealth Marketing on Children

"In the absence of factors that would distort the decision to advertise, we may assume that the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising."⁶⁰

Companies and brands would not be targeting children with stealth marketing in digital media if it were not economically advantageous for them to do so. According to the FTC’s Policy Statement on Deception, “injury and materiality are different names for the same concept.”⁶¹ That is to say, a finding of materiality is also a finding of injury (or harm). The

Policy statement goes on to state that “[i]njury exists if consumers would have chosen differently but for the deception. If different choices are likely, the claim is material, and injury is likely as well.”⁶² Kids are inundated with stealth marketing on digital platforms in order to influence what they want and what they buy, and that impact alone is enough to establish a cognizable claim under Section 5 of the FTC Act.

Unfortunately, in addition to impacting purchasing decisions, there are other wide-ranging and serious harms resulting from stealth marketing directed at children. Such harms include, but are not limited to:

- Honest brands and competitors being economically injured by, among other things, the loss of sales;⁶³
- Significant financial losses (either by influencing their parents’/guardians’ purchasing decisions or spending their own resources directly);⁶⁴
- Family conflicts and tension, particularly between children and their parents/guardians;⁶⁵
- Low self-esteem and negative body image, particularly among teenage girls;⁶⁶
- Inducing adolescents to use dangerous products;⁶⁷
- Heightened sense of materialism;⁶⁸
- Increase in risky and harmful behaviors, including, among other things, underage drinking, vaping and unsafe dieting;⁶⁹
- Devastating life decisions, such as teenagers dropping out of college⁷⁰ or canceling plans to attend university⁷¹ due to promises of riches that never materialize;
- Poor food choices, an increase in diet-related diseases (including obesity, diabetes and heart disease) and diet-related health disparities affecting communities of color;⁷² and
- The loss of privacy as a result of commercial surveillance and data extraction.⁷³

More needs to be done and appropriate measures taken to protect America’s kids – including children of all ages, races, genders and ethnicities – from the harms inflicted from stealth marketing practices in the digital landscape.⁷⁴

Possible Steps to Minimize the Harms of Stealth Advertising

It is axiomatic that parents and guardians are primarily responsible for the upbringing and development of their children. Nevertheless, they should not be expected to go it alone when it comes to countering stealth marketing that targets minors in the digital space.⁷⁵ Brands, tech platforms, educators, the advertising industry, self-regulatory councils, and state and federal agencies all have a role to play to ensure that children are not deceived by the marketing messages they continually encounter on digital platforms.

And while there are many complex issues involved in preventing the deceptive marketing that is directed toward children in digital media, there are steps that can be taken to minimize the exposure and harms associated with stealth marketing, including, but not limited to:

- **Age Gating/Age Verification:** The profound change that has taken place in how children socialize and consume content on the internet has been transformative. But the technological advances have come at a price and disproportionately impact vulnerable populations, such as children. At the same time, technology has a possible role to play in being part of the solution. Age gating and/or age verification could be used on social media platforms and closed metaverses to prevent minors from viewing inappropriate and deceptive content such as stealth marketing. Moreover, platforms could require the utilization of temporal markers that help distinguish organic content from marketing material for content directed at children, as well as limiting ad targeting options for children.
- **Education:** It is imperative that children be educated to identify marketing in all its various forms, and understand and develop the skills necessary to comprehend advertising bias, including the persuasive intent of advertising messages in digital marketing. To that end, parents, the educational system, the advertising industry and governmental agencies all have a role to play in ensuring that children become media literate. Such media literacy education, of course, must align with the cognitive development and skills of the child.
- **Platform & Company Standards:** Most tech platforms and many companies have acknowledged in their corporate policies and terms and conditions (and committed to) higher standards of care when it comes to advertising targeting minors.⁷⁶ The problem is that these companies fail to abide by their own self-imposed rules.⁷⁷ Companies and tech platforms should be required to adhere to the standards and policies they have put in place to protect children.
- **Corporate Citizenship:** Social media companies' and tech platforms' business models and their profits are primarily derived from advertising. As such, they have a financial incentive to keep as many minors as possible engaged on their platforms. These companies need to acknowledge that they play a unique role in how children are consuming marketing, and that the decisions they make have a direct impact on the health and welfare of this vulnerable population.⁷⁸ Social media and tech companies decide what is and what is not allowed on their platforms and how that content is presented, both explicitly through content moderation and implicitly through content dissemination via algorithms. With this power comes the need for accountability. These corporations need to implement safeguards to better protect children from inappropriate and deceptive content such as stealth marketing. For example, these companies could establish filters that enable parents, at their discretion, to block certain kinds of marketing content from their children, or they could help create middleware, third-party content moderation systems, that could filter out marketing content when appropriate.
- **Self-regulatory Enforcement:** With a broad mandate to “monitor[] child-directed media to ensure that advertising is truthful, accurate, appropriate, and compliant with its self-regulatory guidelines, and that online marketing is compliant with both [its] guidelines and the Children’s Online Privacy Protection (“COPPA”),” CARU

is an independent self-regulatory entity administered by the Council of Better Business Bureaus.⁷⁹ Limited in scope and resources, CARU only examines marketing and advertising directed at children 12 and under with a goal to “protect children under age 13 from deceptive or inappropriate advertising” While its advertising guidelines, appropriately so, touch on ethical issues that are beyond the scope of the law, CARU’s guidance fails to tackle the issues of marketing to young children that do not yet have the cognitive ability to identify advertising and/or comprehend its marketing bias. This is an area that CARU should address head on.

- **Legal Enforcement:** While industry standards and self-regulatory codes may support and enhance compliance with the law, government agencies have a vital role to play in ensuring that vulnerable populations, such as children, are protected from deception as more and more ad revenue flows to digital platforms. Social media and tech platforms as well as the companies and brands that market on these platforms must be subject to a level of regulation that ensures children are not deceived and manipulated. To that end, TINA.org urges the FTC to, among other things, use its Penalty Offense Authority to hold brands, influencers and marketers accountable for deceptive and misleading endorsement marketing.⁸⁰ If the Commission takes decisive action against brands and endorsers that target children with deceptive influencer marketing, the advertising industry will have no option but to take notice and reevaluate some of the ways they market to minors in the digital space.⁸¹

CONCLUSION

The nature, diversity and volume of marketing directed at children has changed significantly since the FTC last updated its Endorsement Guidelines in 2009. Clearly, there are a host of new challenges concerning how best to protect children from the barrage of stealth advertising directed at them through increasingly sophisticated digital platforms. But the enormity of the problem should not dissuade the Commission from working to establish more robust and effective safeguards to protect children. More than 70 million kids are counting on it.

Very truly yours,



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¹ *Keeping Up With Gen Z: Fall 2019 Consumer View*, National Retail Federation, 2019, <https://cdn.nrf.com/sites/default/files/2019-10/NRF%20Consumer%20View%20Fall%202019.pdf>.

² U.S. children aged 10 to 18 now spend an average of five to eight hours per day in front of a screen. *The Common Sense Census: Media Use By Tweens and Teens*, Common Sense Media, 2021, <https://www.commonsensemedia.org/research/the-common-sense-census-media-use-by-tweens-and-teens-2021>; Megan Marples, *Kids Nearly Doubled Screen Time During the Pandemic, But There Is Something You Can Do About It*, CNN, Nov. 1, 2021, <https://www.cnn.com/2021/11/01/health/children-screen-time-increase-pandemic-study-wellness/index.html>.

³ See Katie Joseff, *Social Media Is Doing More Harm Than Good*, Common Sense Media, Dec. 17, 2021, <https://www.commonsensemedia.org/kids-action/articles/social-media-is-doing-more-harm-than-good>; *Digital Advertising Soared 35% to \$189 Billion in 2021 According to the IAB Internet Advertising Revenue Report*, Interactive Advertising Bureau, Apr. 12, 2022, <https://www.iab.com/news/digital-advertising-soared-35-to-189-billion-in-2021-according-to-the-iab-internet-advertising-revenue-report/>; *Social Media Forecast to Overtake TV in Ad Spend This Year*, Marketing Charts, Jan. 10, 2022, <https://www.marketingcharts.com/advertising-trends/spending-and-spenders-119385>; *Social Network Advertising Spending in the United States from 2016 to 2022*, Statista, Feb. 23, 2022, <https://www.statista.com/statistics/736971/social-media-ad-spend-usa/>; *Digital Advertising to Exceed 60% of Global Adspend in 2022*, Zenith Media, Dec. 6, 2021, <https://www.zenithmedia.com/digital-advertising-to-exceed-60-of-global-adspend-in-2022/>; Brad Adgate, *Agencies Agree; 2021 Was a Record Year for Ad Spending, With More Growth Expected in 2022*, Forbes, Dec. 8, 2021, <https://www.forbes.com/sites/bradadgate/2021/12/08/agencies-agree-2021-was-a-record-year-for-ad-spending-with-more-growth-expected-in-2022/?sh=1292feb57bc6>. See also Ashley Wehrli, *McDonald's Is Targeting Youth in Social Media Ads*, Moms, Jan. 10, 2022, <https://www.moms.com/mcdonalds-targeting-youth-social-media-ads/>.

⁴ See Agnes Nairn and Cordelia Fine, *Who's Messing With My Mind? The Implications of Dual-Process Models for the Ethics of Advertising to Children*, 27 Int'l J. of Advert. 447, 453 (2008) (“A recent review of children’s internet sites showed that 73% of online advertising was covert in that it was integrated into the entertaining content rather than clearly labelled on a separate part of the screen.” (citation omitted)).

⁵ See, e.g., Dissenting Statement of Commissioner Rohit Chopra, at 4, *In the Matter of Google LLC and YouTube, LLC*, Commission File No. 1723083 (Sept. 4, 2019), https://www.ftc.gov/system/files/documents/public_statements/1542957/chopra_google_youtube_dissent.pdf.

Not only are kids watching their videos on YouTube, it is clear that they are a big part of the YouTube audience. They are spending a lot of time watching a significant amount of content, averaging nearly an hour and a half each day. Kids-themed channels and videos are amongst the most popular on the platform. According to Pew, videos directly aimed at a young audience that featured a child under the age of 13 have more views than any other content on the platform. Indeed, Google plays a significant role in shaping kids’ YouTube content experience. A recent study on how kids find content on YouTube found 60% of kids report using the search bar, 43% use YouTube’s “suggested videos” function, 39% browse channels, 35% use “history,” and 30% use “popular” suggestions.

There is growing concern about how all of this is affecting children. Google’s behavioral advertising business model, and the technology that supports it, seems to fuel dark and disturbing content, which includes the content on YouTube Kids. Parents and medical experts are concerned about the prevalence of fear-inducing videos that influence

brain development and negatively affect mental health. The long-term harmful effects of the company's conduct are difficult to measure. (footnotes omitted)

⁶ TINA.org's Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz/>.

⁷ TINA.org's MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/>;

TINA.org's doTerra Investigation, <https://truthinadvertising.org/brands/doterra/>; TINA.org's Young Living Investigation, <https://truthinadvertising.org/brands/young-living/>.

⁸ TINA.org's HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

⁹ *Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com.*, 117th Congress (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising),

<https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; *Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp.*, 117th Congress (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising),

<https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

¹⁰ For example, TINA.org participated as *amicus curiae* in *AMG Capital Management, LLC v. Federal Trade Commission*. Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, No. 19-508 (U.S. Dec. 7, 2020),

https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf. TINA.org also filed an *amici curiae* brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), https://www.truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.

¹¹ See TINA.org's Kardashian Investigation, <https://truthinadvertising.org/brands/kardashians/>; TINA.org's DJ Khaled Investigation, <https://truthinadvertising.org/brands/dj-khaled/>; TINA.org's Cîroc Investigation, <https://truthinadvertising.org/brands/ciroc/>; TINA.org's Ryan ToysReview Investigation, <https://truthinadvertising.org/brands/ryan-toysreview/>; TINA.org's Roblox Investigation, <https://truthinadvertising.org/brands/roblox/>; TINA.org's Justin Bieber NFT Database, <https://truthinadvertising.org/evidence/justin-bieber-nft-database/>; TINA.org's Warner Brothers Investigation, <https://truthinadvertising.org/brands/warner-brothers/>; TINA.org's Vemma Investigation, <https://truthinadvertising.org/brands/vemma/>; TINA.org's WillaGirl Investigation, <https://truthinadvertising.org/brands/willagirl/>. See also *Fifi the Flossing Sloth*, Truth In Advertising, Mar. 18, 2021, <https://truthinadvertising.org/articles/fifi-the-flossing-sloth/>; Bonnie Patten, *Flat Tummy's Outrageous Marketing Tactics Need to Stop*, Truth In Advertising, July 17, 2019, <https://truthinadvertising.org/blog/flat-tummys-outrageous-marketing-tactics/>.

¹² TINA.org's DJ Khaled Investigation, <https://truthinadvertising.org/brands/dj-khaled/>;

TINA.org's WillaGirl Investigation, <https://truthinadvertising.org/brands/willagirl/>.

¹³ TINA.org's Cîroc Investigation, <https://truthinadvertising.org/brands/ciroc/>; TINA.org's Electronic Arts Investigation, <https://truthinadvertising.org/brands/electronic-arts-ea/>; TINA.org's Kardashians Investigation, <https://truthinadvertising.org/brands/kardashians/>; TINA.org's Roblox Investigation, <https://truthinadvertising.org/brands/roblox/>; TINA.org's Ryan ToysReview Investigation, <https://truthinadvertising.org/brands/ryan-toysreview/>; TINA.org's Vemma Investigation, <https://truthinadvertising.org/brands/vemma/>; TINA.org's Warner Brothers Investigation, <https://truthinadvertising.org/brands/warner-brothers/>.

¹⁴ TINA.org's Comment to the FTC Regarding the Endorsement Guides (June 22, 2020), <https://truthinadvertising.org/wp-content/uploads/2020/06/TINA.org-Endorsement-Guides-Comment.pdf>; Bonnie Patten, Exec. Dir., Truth In Advertising, Presentation at the Int'l Council for Advert. Self-Regul. (ICAS): Deceptive Advertising in the Roblox Metaverse (July 2022);

Bonnie Patten, Exec. Dir., Truth In Advertising, Presentation at the World Federation of Advertisers: Roblox Metaverse: Playing Games with Consumers (May 2022); Bonnie Patten, Exec. Dir., Truth In Advertising, Panelist at the Nat'l Ass'n of Attorneys General (NAAG) Consumer Prot. Conf.: Influencer Marketing & Consumer Harm: Alcohol, E-Cigs, & Cryptocurrency (May 2018); Bonnie Patten, Exec. Dir., Truth In Advertising, Presentation at the U.S. Alcohol Pol'y All. Ann. Conf.: Influencer Marketing of Alcohol to Minors: DJ Khaled + Diageo, Bacardi, Sovereign Brands (May 2018); Bonnie Patten, Exec. Dir., Truth In Advertising, Presentation at Middle Atl. Ass'n of Coll. of Bus. Admin. (MAACBA) Ann. Conf.: Not Keeping Up with the Kardashians: Advertising Challenges in the Digital Age (Oct. 2017); Bonnie Patten, Exec. Dir., Truth In Advertising, Panelist at the Nat'l Ass'n of Attorneys General (NAAG) Consumer Prot. Conf.: Deceptive Social Media Marketing (May 2017); Hartford Healthcare, *Sen. Blumenthal Discusses What the FDA Should Do to Protect Consumers*, YouTube (Sept. 4, 2019), <https://www.youtube.com/watch?v=E1-gwVYwPsM>.

¹⁵ Letter from TINA.org to the Fed. Trade Comm'n Regarding Deceptive Marketing on Roblox (Apr. 19, 2022), https://truthinadvertising.org/wp-content/uploads/2022/04/4_19_22-Complaint-to-FTC-re-Roblox.pdf.

¹⁶ Excerpt from Roblox webpage (August 2, 2021):



See Web Archive, Roblox.com/create, <https://web.archive.org/web/20210802073311/https://www.roblox.com/create>. After August 2021, Roblox removed the “Earn Serious Cash” claim, as well as others, from its website. See Roblox: Create, <https://web.roblox.com/create>.

¹⁷ *In Re Ideal Toy*, 64 F.T.C. 297, 310 (1964).

¹⁸ See 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 Commission determines the effect of the practice on a reasonable member of that group.”) See also *Bates v. Arizona*, 433 U.S. 350, 383 n.37 (1977) (“The determination whether an advertisement is misleading requires consideration of the legal sophistication of its audience.”).

¹⁹ *Child*, Merriam-Webster Dictionary (2022).

²⁰ Press Release, Fed. Trade Comm'n, FTC to Hold Virtual Event on Protecting Kids from Stealth Advertising in Digital Media (May 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hold-virtual-event-protecting-kids-stealth-advertising-digital-media>.

²¹ See *infra* pp. 7-8. See also Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, Wall St. J., Sept. 14, 2021, https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739?mod=series_facebookfiles; Alan Mozes, *Teens on TikTok: Fun, But Addictive and Maybe Harmful*, U.S. News, Apr. 28, 2022, <https://www.usnews.com/news/health-news/articles/2022-04-28/teens-on-tiktok-fun-but->

[addictive-and-maybe-harmful](#); Denis Campbell, *Facebook and Twitter ‘harm young people’s mental health’*, *The Guardian*, May 29, 2017, <https://www.theguardian.com/society/2017/may/19/popular-social-media-sites-harm-young-peoples-mental-health>; Virginia Hughes, *Does Social Media Make Teens Unhappy? It May Depend on Their Age.*, *N.Y. Times*, Mar. 28, 2022, <https://www.nytimes.com/2022/03/28/science/social-media-teens-mental-health.html>; Melinda Wenner Moyer, *Kids as Young as 8 Are Using Social Media More Than Ever, Study Finds*, *N.Y. Times*, Mar. 24, 2022, <https://www.nytimes.com/2022/03/24/well/family/child-social-media-use.html>; Tori Powell, *Young People Discuss How Phones and Social Media Create Connection – And Self-Doubt: “Compared to The, I Am a Nobody”*, *CBS News*, May 24, 2022, <https://www.cbsnews.com/news/mental-health-impacts-phones-social-media/>, Letter from Everytown Law to Fed. Trade Comm’n Regarding Complaint and Request for Investigation of Daniel Defense LLC (July 15, 2022), <https://everytownlaw.org/documents/2022/07/daniel-defense-ftc-complaint.pdf>. See also, Letter from Everytown Law to Samuel Levine, Director, Bureau of Consumer Protection, *Complaint and Request for Investigation of Daniel Defense, LLC* at 30 (July 15, 2022), <https://everytownlaw.org/documents/2022/07/daniel-defense-ftc-complaint.pdf> (“Adolescents and young adults . . . exhibit increased susceptibility to advertisements, and research indicates that they are particularly receptive to advertisements that depict impulsive, thrill-seeking behavior. [Cornelia Pechmann et al., *Impulsive and Self-Conscious: Adolescents’ Vulnerability to Advertising and Promotion*, *J. Pub. Policy & Marketing*, 202, 202, 214 (2005), available at <https://journals.sagepub.com/doi/10.1509/jppm.2005.24.2.202>.] For instance, companies promoting products such as tobacco and alcohol have exploited the vulnerability of young consumers to advertisements that promote thrill-seeking conduct in order to hook them early and convert them into lifelong purchasers of their products. [See Center on Alcohol Marketing and Youth, *Alcohol Advertising and Youth*, John Hopkins Bloomberg School of Public Health (2007) (“Research clearly indicates that, in addition to parents and peers, alcohol advertising and marketing have a significant impact on youth decisions to drink.”), <https://web.archive.org/web/20201201221507/http://www.camy.org/resources/fact-sheets/alcohol-advertising-and-youth/>; John J. Pierce et al., *Ass’n Between Receptivity to Tobacco Advertising and Progression to Tobacco Use in Youth and Young Adults in the PATH Study*, 172 *JAMA Pediatrics* 444 (2018) (“Our study reinforces that tobacco product marketing continues to be an important contributor to tobacco use among young people.”), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2676069>.]”)

²²See CARU Self-Regulatory Guidelines for Children’s Advertising, Section 2.a (effective Jan. 1, 2022), https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru_advertisingguidelines.pdf (“These Guidelines apply to national advertising that is primarily directed to children under age 13 in any medium.”)

²³See Truth In Advertising’s DJ Khaled Investigation, <https://truthinadvertising.org/brands/dj-khaled/>; Truth In Advertising’s Ciroc Investigation, <https://truthinadvertising.org/brands/ciroc/>. According to the Code of Responsible Practices for the Distilled Spirits Council, “[b]everage alcohol advertising and marketing should be placed in . . . internet/digital communications only where at least 71.6% of the audience is reasonably expected to be of legal purchase age (determined by using reliable, up-to-date audience composition data.)” Distilled Spirits Council Code of Responsible Practices, at 3 (May 26, 2011), https://www.distilledspirits.org/wp-content/uploads/2018/03/May_26_2011_DISCUS_Code_Word_Version1.pdf. According to the Wine Institute Guidance Note on Digital Marketing Communications, “[d]igital marketing communications should not be placed in media where more than 28.4% of the audience is underage (determined by using reliable, up-to-date audience composition data.)” Wine Institute Digital Marketing Guidelines (effective Jan. 1, 2014), <https://wineinstitute.org/our-work/responsibility/social/ad-code/>.

²⁴ Instagram’s Terms of Use, <https://help.instagram.com/581066165581870>; Facebook’s Terms of Service, <https://www.facebook.com/terms.php>; Twitter’s Terms of Service, <https://twitter.com/en/tos#:~:text=You%20are%20responsible%20for%20your,are%20comfortable%20sharing%20with%20others>; TikTok for Younger Users, <https://newsroom.tiktok.com/en-us/tiktok-for-younger-users>; TikTok’s Guardian’s Guide, <https://www.tiktok.com/safety/en/guardians-guide/>; SnapChat’s Terms of Service, <https://snap.com/en-US/terms>.

²⁵ See Guides Concerning the Use of Endorsements and Testimonials in Advertising, 74 Fed. Reg. 53124 (Oct. 15, 2009).

²⁶ See *The Common Sense Census: Media Use by Tweens and Teens*, Common Sense, 2021, https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf; *Twitter Use Appears to be on the Rise Among US Youth*, Marketing Charts, May 2, 2022, <https://www.marketingcharts.com/digital/social-media-225599>; Melinda Wenner Moyer, *Kids as Young as 8 Are Using Social Media More Than Ever, Study Finds*, N.Y. Times, Mar. 24, 2022, <https://www.nytimes.com/2022/03/24/well/family/child-social-media-use.html>; Aaron Holms, *Instagram Spends the Majority of its \$390 Million Global Advertising Budget on Targeting Teens, According to a New Report*, Business Insider, Oct. 16, 2021, <https://www.businessinsider.com/most-of-instagram-global-ad-spend-targets-teens-report-2021-10>; Tori Powell, *Young People Discuss How Phones and Social Media Create Connection – And Self-Doubt: “Compared to The, I Am a Nobody”*, CBS News, May 24, 2022, <https://www.cbsnews.com/news/mental-health-impacts-phones-social-media/>; Mahnoor Sheikh, *30 TikTok Stats Marketers Need to Know in 2022*, Sprout Social, Mar. 17, 2022, <https://sproutsocial.com/insights/tiktok-stats/>.

²⁷ See, e.g., TINA.org’s Ciroc Investigation, <https://truthinadvertising.org/brands/ciroc/>; TINA.org’s DJ Khaled Investigation, <https://truthinadvertising.org/brands/dj-khaled/>; TINA.org’s DSA Companies’ Income Claims Database, <https://truthinadvertising.org/industries/mlm-income/>; TINA.org’s Ryan ToysReview Investigation, <https://truthinadvertising.org/brands/ryan-toysreview/>; Lesley Fair, *FTC’s Teami Case: Spilling the Tea About Influencers and Advertisers*, Fed. Trade Comm’n: Business Blog (Mar. 6, 2020), <https://www.ftc.gov/business-guidance/blog/2020/03/ftcs-teami-case-spilling-tea-about-influencers-and-advertisers>; Erin Digitale, *Teens Vulnerable to Social-Media Promotion of Vaping*, Stanford Medicine: Scope Blog (Feb. 19, 2020), <https://scopeblog.stanford.edu/2020/02/19/teens-vulnerable-to-social-media-promotion-of-vaping/>.

²⁸ See, e.g., Letter from Everytown Law to Samuel Levine, Director, Bureau of Consumer Protection, *Complaint and Request for Investigation of Daniel Defense, LLC* at 29-30 (July 15, 2022), <https://everytownlaw.org/documents/2022/07/daniel-defense-ftc-complaint.pdf/>. (“Adolescents and young adults—who are disproportionately represented among the most destructive mass shooters—are more likely than other age groups to engage in risky, thrill-seeking, violent, and impulsive behavior. [citation omitted.] They are also highly susceptible to product advertising. Decades of scientific evidence demonstrate that the onset of intense, thrill-seeking urges associated with puberty outpaces the development of the area of the brain responsible for judgment and impulse control, which continues into young adulthood. As a result, adolescents and post-adolescents have less capacity for mature judgment and self-control than older adults and are more likely to engage in risky behaviors. [Cornelia Pechmann et al., *Impulsive and Self-Conscious: Adolescents’ Vulnerability to Advertising and Promotion*, J. Pub. Policy & Marketing, 202, 203-07 (2005), available at <https://journals.sagepub.com/doi/10.1509/jppm.2005.24.2.202>; See also Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *Developmental Rev.* 78 (2008), available at <https://www.ncbi.nlm.nih.gov/pubmed/18509515?dopt=Abstract>; Agnieszka Tymula et al., *Adolescents’ risk-taking behavior is driven by tolerance to ambiguity*, 109 *PNAS* 17135 (Oct. 16, 2012), <https://www.pnas.org/content/109/42/17135>; Nina S. Mounts, *Why Are Teen Brains Designed for Risk-taking?*, *Psychology Today* (Jun. 9, 2015),

<https://www.psychologytoday.com/us/blog/the-wide-wide-world-psychology/201506/why-are-teen-brains-designed-risk-taking>; Newport Academy, *The Truth About Teens and Risky Behavior* (Apr. 24, 2017), <https://www.newportacademy.com/resources/mental-health/truth-about-teens-risky-behavior/>.] Moreover, negative emotions such as anger, depression, and anxiety—which are more strongly felt by adolescents—can dilute the already weak control adolescents and post-adolescents exercise over their impulses and urges. [Pechmann et al., *supra* note 47, at 207-09; see also Lisa Rapaport, *Emotional distress tied to weapon use for teens*, Reuters (Feb. 5, 2016), <https://www.reuters.com/article/us-health-adolescents-arms/emotional-distress-tied-to-weapon-use-for-teens-idUSKCN0VE2A3>; Renata Sikora, *Risk behaviors at late childhood and early adolescence as predictors of depression symptoms*, 17 *Current Problems of Psychiatry* 173 (2016), <https://sciendo.com/article/10.1515/cpp-2016-0018>.] Studies have further shown that this predilection for risky, thrill-seeking behavior extends to violent criminal behavior. Indeed, a disproportionate amount of violent crime in the United States is committed by individuals between the ages of 15 and 24, and 18- to 20-year-olds are offenders in gun homicides at a rate nearly *four times higher* than adults 21 and older. [Brad J. Bushman et al., *Youth Violence: What We Know and What We Need to Know*, 71 *Am. Psychologist* 17, 19 (2016), available at <https://escholarship.org/uc/item/1ck4f58h>; Everytown for Gun Safety, *Permitless Carry: Carrying a Concealed Gun in Public with No Permit and No Training* (Feb. 2020), https://everytownresearch.org/permitless-carry/#foot_note_anchor_10.]”]

²⁹ See The White House, “FACT SHEET: President Biden to Announce Strategy to Address Our National Mental Health Crisis, As Part of Unity Agenda in his First State of the Union,” Mar. 1, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/> (“[C]hildren under 18 are disproportionately vulnerable to the dangerous and harmful content they might encounter online.”).

³⁰ See Iulia Grad, *Ethical Considerations on Advertising to Children*, 6 *Postmodern Openings* 43, 51 (2015), <https://postmodernopenings.com/archives/2535> (“There is no evidence that children’s cognitive development is any more rapid now than it ever was. There is therefore no reason to believe that contemporary young children have greater insights into the nature of advertising than their predecessors had.”)

³¹ Fran Blumberg et al., *Linkages Between Media Literacy and Children’s and Adolescents’ Susceptibility to Advertising in Advertising to Children: New Directions, New Media* 158, 163 (Mark Blades et al. eds., Palgrave Macmillan, 2014) (“[T]he point at which children understand advertising and its intent to persuade them to buy a product may be equivocal with respect to specific age. However, . . . , that understanding, even during adolescence, may be manipulated by the marketing techniques used by advertisers, . . .”).

³² 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>.

³³ See Reid, *supra* note 32, at 727.

³⁴ *Id.*

³⁵ Matthew Lapierre et al., *The Effect of Advertising on Children and Adolescents*, 140 *Pediatrics* S152, S153 (2017), <https://doi.org/10.1542/peds.2016-1758V>. See also 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>; Seth Stevenson, *World of Adcraft: The Government Video Game That Teaches Kids About the Perils of Advertising*, *Slate*, May 10, 2010, <https://slate.com/business/2010/05/admongo-the-government-video-game-that>

[teaches-kids-about-the-perils-of-advertising.html](#) (“The FTC says it couldn’t design the content for younger kids because at that age [younger than eight] the little moppets aren’t yet capable of understanding persuasive intent—or even the difference between advertising and editorial content. But doesn’t that suggest those younger kids are even more in need of the FTC’s protection?”).

³⁶ Sandra Calvert, *Children as Consumers: Advertising and Marketing*, 18 *The Future of Children* 205, 216 (2008),

https://www.researchgate.net/publication/49852129_Children_as_Consumers_Advertising_and_Marketing?enrichId=rgreq-26510d809a229033cb793ba9c923d769-XXX&enrichSource=Y292ZXJQYWdlOzQ5ODUyMTI5O0FTOjk3NjM2NDAxMDI1MDMzQDE0MDAyODk3NDA0Njk%3D&el=1_x_3&_esc=publicationCoverPdf.

³⁷ Maria Chu et al., *The Development of Children’s Scepticism About Advertising in Advertising to Children: New Directions, New Media* 38 (Mark Blades et al. eds., Palgrave Macmillan, 2014) (citations omitted).

³⁸ Soontae An & Hannah Kang, *Korean Children’s Understanding of Social Media Advergaming: An Exploratory Study of Ad Recognition and Skeptical Attitudes Toward Advertising*, 18 *J. Consumer Behav.* 387, 389 (2019) (citation omitted). See also Laura Owen et al., *Is Children’s Understanding of Nontraditional Advertising Comparable to Their Understanding of Television Advertising?*, 32 *J. of Pub. Pol’y & Mktg.* 195 (2013) (“Advergaming, for example, are a recent Internet-based promotional tool designed to entice children to play in branded environments. They may be more persuasive than traditional television advertising as a result of the frequent use of animated imagery and children’s immersion in the game. Because the game itself is likely to be the focus of attention, fewer cognitive resources are available to scrutinize messages, and therefore brands may be processed within an understanding of the activity. Video games similarly promote increased involvement alongside sensory immersion, and players frequently control the brands themselves; for example, games in which players drive branded cars. All these factors combine to form stronger, more positive attitudes toward the placed brands, distracting attention from the commercial message. Thus, identifying and understanding the intent of these messages becomes much more challenging for adults as well as children.” (citations omitted)).

³⁹ Fran Blumberg et al., *Linkages Between Media Literacy and Children’s and Adolescents’ Susceptibility to Advertising in Advertising to Children: New Directions, New Media* 158, 163 (Mark Blades et al. eds., Palgrave Macmillan, 2014).

⁴⁰ Laura Owen et al., *Under the Radar: How Embedded Commercial Messages in TV and the New Media Influence Children Without their Conscious Awareness in Advertising to Children: New Directions, New Media* 178, 182 (Mark Blades et al. eds., Palgrave Macmillan, 2014).

⁴¹ 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),

<https://doi.org/10.1111/ablj.12038> (“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); Soontae An & Hannah Kang, *Korean Children’s Understanding of Social Media Advergaming: An Exploratory Study of Ad Recognition and Skeptical Attitudes Toward Advertising*, 18 *J. Consumer Behav.* 387, 389 (2019) (“in a survey of Canadian children in Grades 4 to 11, over three quarters answered that advergaming are just games, not mainly advertisements (Media Awareness Network, 2005).”).

⁴² Paul Connell et al., *How Childhood Advertising Exposure Can Create Biased Product Evaluations That Persist into Adulthood*, 41 *J. of Consumer Rsch.* 119, 121 (2014).

See also Iulia Grad, *Ethical Considerations on Advertising to Children*, 6 *Postmodern Openings* 43, 52 (2015), <https://postmodernopenings.com/archives/2535> (“the ability of children aged less than 12 to detect advertising messages and to properly understand them is disputed, more than that, since the new advertising strategies increasingly manage to bypass the cognitive mechanisms of defense. (UN Report, 2014, p. 14)”).

⁴³ Fran Blumberg et al., *Linkages Between Media Literacy and Children’s and Adolescents’ Susceptibility to Advertising in Advertising to Children: New Directions*, *New Media* 158, 159 (Mark Blades et al. eds., Palgrave Macmillan, 2014).

⁴⁴ Soontae An & Hannah Kang, *Korean Children’s Understanding of Social Media Advergaming: An Exploratory Study of Ad Recognition and Skeptical Attitudes Toward Advertising*, 18 *J. Consumer Behav.* 387, 389 (2019) (citations omitted). See also Agnes Nairn & Cordelia Fine, *Who’s Messing With My Mind? The Implications of Dual-Process Models for the Ethics of Advertising to Children*, 27 *Int’l J. of Advert.* 447, 458-460 (“The phenomenon of ‘implicit persuasion’ – together with the modern formats of advertising to children – provides a compelling explanation for why cognitive defence (as traditionally understood) does not protect older children with more developed cognitive capacities any better than it does younger children in an earlier stage of cognitive development. An age-stage approach no longer provides the right ethical benchmark for assessing the fairness of advertising to children. Instead, the ethically appropriate question for contemporary advertising formats is, at what age can children resist implicit persuasion?”) (“[W]e have outlined data to suggest that not only will pre-adolescent children fail to possess sufficient cognitive control capacities to resist implicit persuasion, but that even adolescents may have difficulty, relative to adults.”)

⁴⁵ Paul Connell et al., *How Childhood Advertising Exposure Can Create Biased Product Evaluations That Persist into Adulthood*, 41 *J. of Consumer Rsch.* 119, 120 (2014) (citations omitted).

⁴⁶ See Angela Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 *Loy. Consumer L. Rev.* 1, 38-39 (2017), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2969&context=facpub> (“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.’”) (citations omitted); Soontae An & Susannah Stern, *Mitigating the Effects of Advergaming on Children*, 40 *J. of Advert.* 43, 50 (2011) (“[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 Campbell, *supra*; Rita-Marie Cain Reid, *Embedded Advertising to Children: A Tactic That Requires a New Regulatory Approach*, 51 *Am. Bus. L. J.* 721, 742 (2014), <https://doi.org/10.1111/ablj.12038>.

⁴⁷ Nathaniel Evans & Mariea Grubbs Hoy, *Parents' Presumed Persuasion Knowledge of Children's Advergaming: The Influence of Advertising Disclosure Modality and Cognitive Load*, 37 J. of Current Issues & Rsch. in Advert. 146 (2016), https://www.ftc.gov/system/files/attachments/putting-disclosures-test-materials/parents_presumed_persuasion_knowledge_of_children_s_advergaming_the_influence_of_advertising.pdf (“Existing research has demonstrated that children have difficulty understanding the commercial nature of advergaming. However, given the highly integrated commercial and entertainment content in advergaming, Evans et al. (2013) state that ‘adults’ recognition of and defense against the persuasive intent in these immersive forms of advertising may also be hindered by the integrated and hidden nature therein.’ While parents may more closely supervise their child’s online time and overestimate their control over such activities online, ‘it is unclear how much oversight parents actually give to their children’s activities in commercial websites.’ ... As evidenced by parents’ inability to accurately identify advergaming even when given examples and a definition, they too may not fully understand this more covert form of advertising.”)

⁴⁸ Brian Wilcox et al., *Report of the APA Task Force on Advertising and Children*, Am. Psych. Ass’n, at 40 (Feb 20, 2004), <https://www.apa.org/pi/families/resources/advertising-children.pdf>.

⁴⁹ *FTC’s .com Disclosures: How to Make Effective Disclosures in Digital Advertising* (Mar. 2013), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

⁵⁰ Letter from TINA.org to Fed. Trade Comm’n Regarding Ryan ToysReview’s Deceptive Native Advertising (Aug. 28, 2019), https://www.truthinadvertising.org/wp-content/uploads/2019/08/8_28_19-ltr-to-FTC-re-Ryan-ToysReview_Redacted.pdf.

⁵¹ Ryan’s World YouTube Channel, https://www.youtube.com/channel/UChGJGhZ9SOOHvBB0Y4DOO_w.

⁵² Matthew Lapierre et al., *The Effect of Advertising on Children and Adolescents*, 140 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 Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 Loy. Consumer L. Rev. 1, 40 (2017),

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2969&context=facpub> (“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.’”); 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>; 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>.

⁵³ See 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>.

⁵⁴ *Id.*

⁵⁵ *Id.* at 729-30 (“By blurring the boundaries between advertising and entertainment, advertisers may simply overwhelm the defenses children are still in the process of building.”).

⁵⁶ Matthew Lapierre et al., *The Effect of Advertising on Children and Adolescents*, 140 Pediatrics S152, S153-S154 (2017), <https://doi.org/10.1542/peds.2016-1758V>.

⁵⁷ 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> (note that this publication reports the age of children who cannot distinguish traditional ads from other forms of content as five and under, whereas other sources report the age as under five); see also Soontae An & Susannah Stern, *Mitigating the Effects of Advergaming on Children*, 40 J. of Advert. 43, 50 (2011) (an experiment designed to test the effect of “ad breaks,” *i.e.*, disclosing

that an advergame is a commercial, on children aged eight to eleven, found that the inclusion of an ad break did not increase children's understanding that the purpose of the advergame was to sell a product).

⁵⁸ *Id.*

⁵⁹ 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." Rita-Marie Cain Reid, *Embedded Advertising to Children: A Tactic That Requires a New Regulatory Approach*, 51 Am. Bus. L. J. 721, 742 (2014), <https://doi.org/10.1111/ablj.12038>. See also Sandra Calvert, *Children as Consumers: Advertising and Marketing*, 18 *The Future of Children* 205, 223 (2008), https://www.researchgate.net/publication/49852129_Children_as_Consumers_Advertising_and_Marketing?enrichId=rgreq-26510d809a229033cb793ba9c923d769-XXX&enrichSource=Y292ZXJQYWdlOzQ5ODUyMTI5O0FTOjk3NjM2NDAxMDI1MDMzQDE0MDAyODk3NDA0Njk%3D&el=1_x_3&_esc=publicationCoverPdf.

⁶⁰ *Cent. Hudson Gas & Elec. Co. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 567-568 (1980).

⁶¹ FTC Policy Statement on Deception, at 6,

https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

⁶² *Id.*

⁶³ See *supra* note 61 at n.58 ("The prohibitions of Section 5 are intended to prevent injury to competitors as well as to consumers. The Commission regards injury to competitors as identical to injury to consumers. Advertising and legitimate marketing techniques are intended to "lure" competitors by directing business to the advertiser. In fact, vigorous competitive advertising can actually benefit consumers by lowering prices, encouraging product innovation, and increasing the specificity and amount of information available to consumers. Deceptive practices injure both competitors and consumers because consumers who preferred the competitor's product are wrongly diverted.")

⁶⁴ See *Keeping Up With Gen Z: Fall 2019 Consumer View*, National Retail Federation, 2019,

[https://cdn.nrf.com/sites/default/files/2019-](https://cdn.nrf.com/sites/default/files/2019-10/NRF%20Consumer%20View%20Fall%202019.pdf)

[10/NRF%20Consumer%20View%20Fall%202019.pdf](https://cdn.nrf.com/sites/default/files/2019-10/NRF%20Consumer%20View%20Fall%202019.pdf) (87 percent of parents say their children influence purchasing decisions, over 4 in 5 parents say they involve their children in purchases more than their own parents did with them, and 67 percent of parents involve their children in purchasing decisions by having them help research products online); Ozge Sigirci et al., *Children in Marketing: A Review, Synthesis and Research Agenda*, *Int'l J. of Consumer Stud.*, 2022, at 1-46 ("children consumers are important for marketing practitioners because today's children have their own financial resources coming from their pocket money or gifts, they have the power to influence their parents' purchase decisions and finally, they are the future consumers." (internal citations omitted)). See also Consumer complaints submitted to the FTC regarding Roblox; Letter from TINA.org to Fed. Trade Comm'n Regarding Deceptive Marketing of Roblox (Apr. 19, 2022), https://truthinadvertising.org/wp-content/uploads/2022/04/4_19_22-Complaint-to-FTC-re-Roblox.pdf.

⁶⁵ See Agnes Nairn and Cordelia Fine, *Who's Messing With My Mind? The Implications of Dual-Process Models for the Ethics of Advertising to Children*, 27 *Int'l J. of Advert.* 447, 462 (2008) ("Studies from the US, the Netherlands and the UK have shown links between advertising, materialism, pester power and, ultimately, with children's self-esteem, life satisfaction and relationship with parents." (citations omitted)); Ridhi Sharma, *Effect of Advergames on Children: A Qualitative Analysis*, 9 *Int'l J. of Bus. Ethics and Developing Econ.* 24, 27 (2020) ("[M]any researchers and regulators have advocated that advergames are also responsible for exploiting a child's relationship with parents and peers. . . . [P]arental refusal to a child's purchase demand can lead to family conflicts and cause tension in family relationships."); Matthew Lapierre et al., "The Effect of Advertising on Children and Adolescents," 140 *Pediatrics* S152, S153 (2017), <https://doi.org/10.1542/peds.2016-1758V> ("Harm may also be caused by the overwhelming

exposure to all types of marketing, and the images within this marketing, that children and adolescents experience. For example, a review of research found a consistent relationship between advertising exposure, materialism, and parent-child conflict. . . .”).

⁶⁶ *Id.* See also Selena Amurgis, *Big Tech & Body Image: Is Enough Being Done?*, Berkley Law, Nov. 26, 2020, <https://sites.law.berkeley.edu/thenetwork/2020/11/26/big-tech-body-image-is-enough-being-done/>; Ozge Sigirci et al., *Children in Marketing: A Review, Synthesis and Research Agenda*, *Int'l J. of Consumer Stud.*, 2022, at 1-46; Agnes Nairn & Suzanna Oprea, *TV Adverts, Materialism, and Children's Self-Esteem: The Role of Socio-Economic Status*, 63 *Int'l J. of Mkt. Rsch.* 161 (2020), <https://journals.sagepub.com/doi/full/10.1177/1470785320970462>; Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, *Wall St. J.*, Sept. 14, 2021, https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739?mod=series_facebookfiles.

⁶⁷ See, e.g., Letter from Everytown Law to Samuel Levine, Director, Bureau of Consumer Protection, *Complaint and Request for Investigation of Daniel Defense, LLC* (July 15, 2022), <https://everytownlaw.org/documents/2022/07/daniel-defense-ftc-complaint.pdf/>.

⁶⁸ Ridhi Sharma, *Effect of Advergaming on Children: A Qualitative Analysis*, 9 *Int'l J. of Bus. Ethics and Developing Econ.* 24, 27 (2020); Matthew Lapierre et al., *The Effect of Advertising on Children and Adolescents*, 140 *Pediatrics* S152, S153 (2017), <https://doi.org/10.1542/peds.2016-1758V>; Ozge Sigirci et al., *Children in Marketing: A Review, Synthesis and Research Agenda*, *Int'l J. of Consumer Stud.*, 2022, at 1-46; Agnes Nairn & Suzanna Oprea, *TV Adverts, Materialism, and Children's Self-Esteem: The Role of Socio-Economic Status*, 63 *Int'l J. of Mkt. Rsch.* 161 (2020), <https://journals.sagepub.com/doi/full/10.1177/1470785320970462>.

⁶⁹ See, e.g., Letter from TINA.org to Fed. Trade Comm'n Regarding Deceptive Advertising by Diageo (Dec. 10, 2018), https://truthinadvertising.org/wp-content/uploads/2018/12/12_10_18-letter-from-TINA-to-FTC-re-Diageo-Ciroc_Redacted.pdf; Press Release, Fed. Trade Comm'n, FTC, FDA Take Action Against Companies Marketing E-liquids That Resemble Children's Juice Boxes, Candies, and Cookies, May 1, 2018, <https://www.ftc.gov/news-events/news/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids-resemble-childrens-juice-boxes-candies>; Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. Teami, LLC, et al.*, No. 8:20-cv-518, (M.D. Fla. Mar. 5, 2020), https://www.ftc.gov/system/files/documents/cases/complaint_4.pdf; Letter from Senators Blumenthal and Baldwin to Weight Watchers Regarding Dangerous Dieting App Targeted at Children (Oct. 3, 2019), <https://www.baldwin.senate.gov/imo/media/doc/2019.10.03%20Final%20Signed%20Letter%20to%20WW%20re%20Kurbo.pdf>.

⁷⁰ *Has Your College Student Been Recruited by a Questionable MLM?*, Truth In Advertising, Aug. 26, 2014, <https://truthinadvertising.org/articles/college-student-recruited-questionable-mlm/>.

⁷¹ Simon Parkin, *The Trouble with Roblox, The Video Game Empire Built on Child Labour*, *The Guardian*, Jan. 9, 2022, <https://www.theguardian.com/games/2022/jan/09/the-trouble-withroblox-the-video-game-empire-built-on-child-labour>.

⁷² Ozge Sigirci et al., *Children in Marketing: A Review, Synthesis and Research Agenda*, *Int'l J. of Consumer Stud.*, 2022, at 1-46; *Rudd Report: Increasing Disparities in Unhealthy Food Advertising Targeted to Hispanic and Black Youth* (Jan. 2019), <https://media.ruddcenter.uconn.edu/PDFs/TargetedMarketingReport2019.pdf>; Emma Boyland & Rosa Whalen, *Food Advertising to Children and Its Effects on Diet: Review of Recent Prevalence and Impact Data*, 16 *Pediatric Diabetes* 331 (2015), https://blogs.deakin.edu.au/apfnc/wp-content/uploads/sites/119/2015/06/Boyland_2015_Food-advertising-to-children-and-its-effects-on-diet-review-of-recent-prevalence-and-impact-data.pdf.

⁷³ The Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. §§ 6501–6506, does not apply to teenagers.

⁷⁴ For example, consumers under the age of 20 are entirely omitted from the FTC’s “Age and Fraud” analysis. Tableau’s Age and Fraud Infographic Based on FTC Data from 2022 (updated June 19, 2022),

<https://public.tableau.com/app/profile/federal.trade.commission/viz/AgeandFraud/Infographic>.

⁷⁵ Placing sole responsibility on parents is problematic because many parents lack the expertise to understand and identify stealth marketing in digital media, and its negative impact on children. Nathaniel Evans & Marea Grubbs Hoy, *Parents’ Presumed Persuasion Knowledge of Children’s Advergaming: The Influence of Advertising Disclosure Modality and Cognitive Load*, 37 J. of Current Issues & Rsch. in Advert. 146, 146-147 (2016)

https://www.ftc.gov/system/files/attachments/putting-disclosures-test-materials/parents_presumed_persuasion_knowledge_of_children_s_advergaming_the_influence_of_advertising.pdf (“Existing research has demonstrated that children have difficulty

understanding the commercial nature of advergaming. However, given the highly integrated commercial and entertainment content in advergaming, Evans et al. (2013) state that ‘adults’ recognition of and defense against the persuasive intent in these immersive forms of advertising may also be hindered by the integrated and hidden nature therein.’ While parents may more closely supervise their child’s online time and overestimate their control over such activities online, ‘it is unclear how much oversight parents actually give to their children’s activities in commercial websites.’ ... As evidenced by parents’ inability to accurately identify advergaming even when given examples and a definition, they too may not fully understand this more covert form of advertising.”). Moreover, social media platforms, advertisers and regulatory agencies, among other, may not abdicate their social and legal responsibilities to young consumers based on the fact that children are so vulnerable that they in need of and entitled to the care of an adult.

⁷⁶ Instagram’s Terms of Use, <https://help.instagram.com/581066165581870>; Facebook’s Terms of Service, <https://www.facebook.com/terms.php>; Twitter’s Terms of Service,

<https://twitter.com/en/tos#:~:text=You%20are%20responsible%20for%20your%20comfortable%20sharing%20with%20others>; TikTok for Younger Users, <https://newsroom.tiktok.com/en-us/tiktok-for-younger-users>; TikTok’s Guardian’s Guide,

<https://www.tiktok.com/safety/en/guardians-guide/>; SnapChat’s Terms of Service,

<https://snap.com/en-US/terms>; YouTube Kids Terms of Service, <https://kids.youtube.com/t/terms>;

Twitch Terms of Service, <https://www.twitch.tv/p/en/legal/terms-of-service/>; Roblox Community Standards, <https://en.help.roblox.com/hc/en-us/articles/203313410-Roblox-Community-Standards>.

⁷⁷ What became clear after TINA.org confronted Diageo with the fact that Khaled’s Snap stories were rife with deceptive Ciroc ads in 2018 was that Diageo had completely abdicated its responsibility to appropriately monitor Khaled’s endorsements on Snapchat. Significantly, some months earlier, after the U.K.’s Advertising Standards Authority determined that Diageo had failed to ensure a Snapchat marketing campaign was not targeting minors (*See Advertising Standards Authority (ASA) Ruling on Diageo Great Britain Ltd. (Jan. 3, 2018)*,

<https://www.asa.org.uk/rulings/diageo-great-britain-ltd-a17-390017.html>), the company announced that it was suspending all advertising on the platform, stating, “We have now stopped all advertising on Snapchat globally whilst we assess the incremental age verification safeguards that Snapchat are implementing.” *See Lucy Handley, Diageo Pulls Snapchat Advertising Globally as UK Bans Alcohol Ad for Appealing to Under-18s*, CNBC, Jan. 3, 2018,

<https://www.cnn.com/2018/01/03/diageo-pulls-snapchat-adverts-globally-as-uk-bans-captain-morgan-ad.html>. As TINA.org’s investigation made apparent, the company’s statement was not

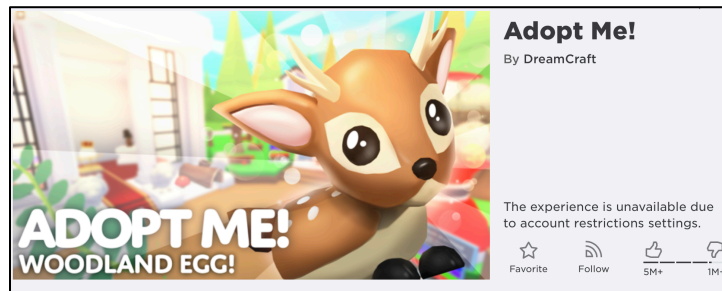
accurate. Diageo clearly was not taking DJ Khaled’s Snap stories (which have no age-gating feature) into consideration, let alone monitoring them.

For all its ingenuity and technological advances, Roblox has completely shirked its responsibility with respect to ensuring that truth in advertising laws are followed on its platform. The only

bright-line rules Roblox appears to require are that “Ads may not contain content intended for users under the age of 13,” and “Ads must comply with the Children’s Online Privacy Protection Act (‘COPPA’), Children’s Advertising Review Unit (‘CARU’) and Children’s Food and Beverage Advertising Initiative (‘CFBAI’) guidelines, and all other applicable local laws and regulations.” See Roblox Community Standards, <https://en.help.roblox.com/hc/en-us/articles/203313410-Roblox-Community-Standards>. As for these divergent requirements, the first does not appear to be enforced (as will be explained below), and as for the second, there is no way of knowing if the platform, developers and corporations are complying with COPPA or CARU and CFBAI guidelines. In short, the company has failed to establish any meaningful guardrails or mandatory disclosure requirements for dynamic advertisements on its site and has generally abdicated its responsibility to ensure compliance with truth in advertising laws to its developers and brands. According to section 10 of Roblox’s Privacy and Cookie Policy entitled “Children’s Privacy and Parental Controls:”

As a user you are entitled to additional protections for your information and privacy online. When you register an account with Roblox, we make sure your account is set to a restrictive mode, which means that you won’t have access to certain features, such as social media links, if you are not 13 or over and your text filtering will be restricted. These additional measures are in place to keep you as safe as possible online.... If you or your parents or guardian would like more information about the restrictive account mode, or parental controls available to them, please review our full privacy policy.”

See Roblox Privacy and Cookie Policy, <https://en.help.roblox.com/hc/en-us/articles/115004630823-Roblox-Privacy-and-Cookie-Policy>. Those few parents that believe Roblox’s additional measures are not enough to keep their children safe may take the time to review the 45-page full privacy policy and learn that if they sign into their child’s account, they can enable “Account Restrictions” in settings, which means that the “account can only access content that is appropriate for all audiences.” Such a setting precludes users from visiting many (but not all) advergames. However, it would also preclude a child from entering the “family-friendly world of Adopt Me!,” and Road to UEFA Women’s EURO, a game intended to “inspire children between eight and 11 to become more active, play and engage in soccer,” among other child-friendly experiences. See Rebecca Stewart, *UEFA Enters Roblox Metaverse With One Goal – to Get More Kids Playing Soccer*, AdWeek, Apr. 18, 2022, https://www.adweek.com/brand-marketing/uefa-enters-roblox-metaverse-with-one-goal-to-get-more-kids-playing-soccer/?utm_source=postup&utm_medium=email&utm_campaign=Adweek_Daily_220418054643&lyt_id=498273. Based on a review of 200 complaints filed with the FTC, it does not appear that most parents are restricting their children’s accounts.





⁷⁸ See, e.g., Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, Wall St. J., Sept. 14, 2021, https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739?mod=series_facebookfiles.

⁷⁹ Children's Advertising Review Unit, <https://bbbprograms.org/programs/all-programs/children's-advertising-review-unit>.

⁸⁰ Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials that the FTC distributed to hundreds of businesses. See FTC's Penalty Offenses Concerning Endorsements, <https://www.ftc.gov/enforcement/penalty-offenses/endorsements>.

⁸¹ See Colin Diver, *The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies*, 79 Colum. L. Rev. 1435, 1464 (1979), <https://www.acus.gov/sites/default/files/documents/1979-03%20Agency%20Assessment%20and%20Mitigation%20of%20Civil%20Money%20Penalties.pdf> (“The penalty for violating a regulation serves as a surrogate ‘cost’ of production – a way to internalize an otherwise external social cost. As such, its severity becomes as much a part of the rational calculus of the producer as any other cost, and the severity of regulatory fines will likely have significant motivational impact.”).