

United States Senate

WASHINGTON, DC 20510

November 13, 2018

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Phillips
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Slaughter
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine Wilson
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson:

We write regarding the use of manipulative marketing practices by apps designed for children. Kids are uniquely vulnerable to advertising and are increasingly turning to online applications for entertainment. Yet a recent study published in the *Journal of Developmental & Behavioral Pediatrics* points to numerous examples of advertising techniques in games for kids that appear to constitute unfair and deceptive practices under Section 5 of the Federal Trade Commission (FTC) Act. The report includes evidence of children's games disguising advertisements and making advertisements integral to games themselves; games using characters to coerce children into making in-app purchases; children's apps being marketed as "free," when those apps actually require additional spending in order to play; and children's apps characterizing

themselves as educational, when they are in fact saturated with advertising.¹ As experts continue to express concerns about these practices,² we request that you initiate an investigation into the evidence outlined above in particular and the business models of children’s apps in general. Following such an investigation, we urge the Commission to take necessary and appropriate action to protect children and families from unfair and deceptive practices in children’s apps.

Children should be able to entertain themselves and play without being bombarded by promotional messages, which young people may not be able to accurately assess and identify as marketing. Children are often unable to distinguish between advertising and non-sponsored content, and it is not until they are much older that they can comprehend the “selling intent” of marketing.³ Unfortunately, the aforementioned research shows that children – often at very young ages – are often the subject of advertising. The authors of the report analyzed 135 apps targeted to or commonly used by children younger than five years of age. Strikingly, over 95% of the reviewed children’s apps included advertising of some sort. The ubiquity of advertising in the apps that children commonly engage with is deeply troubling.

Even more concerning, however, is the manipulative nature of the advertisements in children’s apps. The new research clearly demonstrates that many apps deeply integrate advertisements into games and make engagement with advertisements unavoidable. In one app, for example, players who are collecting supplies to treat sick animals are told that they are able to obtain more effective medicines by watching a video advertisement. In another game, a cartoon hand guides users’ attention to the bottom of the screen, where advertising banners are located. Integrating ads into games in this way and masking marketing messages makes it nearly impossible for young children to distinguish advertising from harmless fun.

In other apps, the characters that child players engage with and connect to explicitly encourage users to make in-app purchases. For example, in a game narrated by the character Barbie, the familiar doll urges players to put on clothing that can only be “unlocked” through an extra purchase. In another app, an animated character begins to weep if the player clicks out of an in-app store. Since we know children are particularly susceptible to communications initiated by characters in media,⁴ using these types of characters to nudge children to make purchases that are integral to games manipulates kids during playtime.

¹ Meyer, M., Adkins, V., Yuan, N., Weeks, H. M., Chang, Y., & Radesky, J. (2018). Advertising in Young Children’s Apps: A Content Analysis. *Journal of Developmental & Behavioral Pediatrics*.

² Letter from Angela J. Cambell, Director, Institute for Public Representation, Georgetown University Law Center, et al. to Donald S. Clark, Secretary of the Commission, Federal Trade Commission, and Andrew Smith, Director, Bureau of Consumer Protection (Oct. 30, 2018).

³ Carter, O. B. J., Patterson, L. J., Donovan, R. J., Ewing, M. T., & Roberts, C. M. (2011). Children’s understanding of the selling versus persuasive intent of junk food advertising: implications for regulation. *Social Science & Medicine*, 72(6), 962–968.
<https://doi.org/10.1016/j.socscimed.2011.01.018>

⁴ Bond, B. J., & Calvert, S. L. (2014). A model and measure of US parents’ perceptions of young children’s parasocial relationships. *Journal of Children and Media*, 8(3), 286–304.
<https://doi.org/10.1080/17482798.2014.890948>

As the new research reveals, many apps further deceive users because they are marketed as free when, in actuality, players must spend money in order to fully participate. Some apps, for example, allow children to glimpse the multitude of characters that comprise the world of the game, but require payment in order to play with all but one of those characters. In other apps, children are only able to succeed and win a game if they buy specific tools. Apps in which extra payment is requisite in order to enjoy a game and succeed should not be characterized as “free.”

Finally, the report reveals examples of apps that are labeled as educational, but are riddled with advertisements. In one puzzle game, for example, children are regularly exposed to pop-up advertisements that are not easy to navigate away from within the game. In total, a striking 93% of the reviewed applications characterized as educational included advertising. As the study’s authors point out, recurrent interruptions and marketing messages decrease the educational value of an experience for children. Games should not include frequent and overt advertising and still be characterized to parents as educational.

The FTC has a statutory obligation to protect consumers from unfair and deceptive advertising practices. That responsibility is all the more urgent when the potential victims of such practices are children. As parents increasingly permit kids to engage in online games and apps for entertainment and fun, it is imperative to ensure that these playtime options are compliant with existing laws. We, therefore, encourage you to immediately investigate the findings outlined above and protect children and families from unfair and deceptive practices in children’s apps.

Thank you for your attention to this matter. We respectfully request a written response by December 4, 2018.

Sincerely,



Edward J. Markey
United States Senator



Tom Udall
United States Senator



Richard Blumenthal
United States Senator