

1 ALAN PHELPS
2 Trial Attorney
3 Office of Consumer Protection Litigation
4 U.S. Department of Justice
5 PO Box 386
6 Washington, DC 20044
7 Telephone: 202-307-6154
8 Facsimile: 202-514-8742
9 E-mail: alan.phelps@usdoj.gov

6 ANDRÉ BIROTTE JR.
7 United States Attorney
8 Central District of California
9 LEE WEIDMAN, AUSA
10 Chief, Civil Division
11 GARY PLESSMAN, AUSA
12 Chief, Civil Frauds Section
13 Central District of California
14 California State Bar No. 101233
15 Room 7516, Federal Building
16 300 North Los Angeles Street
17 Los Angeles, CA 90012
18 Telephone: (213) 894-2474
19 Facsimile: (213) 894-2380
20 E-mail: gary.plessman@usdoj.gov

14 Attorneys for Plaintiff THE UNITED STATES OF AMERICA
15
16 IN THE UNITED STATES DISTRICT COURT
17
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18 Plaintiff,

19 v.

20 PLAYDOM, INC., a subsidiary of Disney
21 Enterprises, Inc.,

22 and,

23 HOWARD MARKS, individually,
24 Defendants.

26
27 Subject to the approval of this Court, Plaintiff the United States of America
28 and Defendants Playdom, Inc., and Howard Marks, individually, by and through

Stipulation for Entry

BY:

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

11 MAY 11 PM 3:31

FILED

SACV11-00724

Case No. _____

AG (ANX)

**STIPULATION FOR ENTRY
OF CONSENT DECREE AND
ORDER FOR CIVIL
PENALTIES, INJUNCTION
AND OTHER RELIEF**

1 their respective counsel, hereby jointly stipulate to entry of the Consent Decree
2 and Order for Civil Penalties, Injunction and Other Relief (the "Consent Decree")
3 lodged concurrently with this Stipulation. A true and correct copy of the Consent
4 Decree is attached hereto as Exhibit 1.

5
6 OF COUNSEL:
7 FEDERAL TRADE COMMISSION

8 MAMIE KRESSES
9 Attorney
10 600 Pennsylvania Avenue, NW
11 Washington, D.C. 20580
12 (202) 326-2070 (voice)
13 (202) 326-3259 (fax)

14 PHYLLIS HURWITZ MARCUS
15 Attorney
16 Federal Trade Commission
17 600 Pennsylvania Avenue, NW
18 Washington, D.C. 20580
19 (202) 326-2854 (voice)
20 (202) 326-3259 (fax)


21 DATED: May 11, 2011.

22
23 DATED: May 11, 2011.


FOR PLAINTIFF THE UNITED STATES OF AMERICA:

24 TONY WEST
25 Assistant Attorney General,
26 Civil Division
27 U.S. DEPARTMENT OF JUSTICE

28 ANDRÉ BIROTTE JR.
United States Attorney
Central District of California
LEE WEIDMAN, AUSA
Chief, Civil Division


GARY PLESSMAN, AUSA
Chief, Civil Frauds Section
Central District of California
California State Bar No. 101233
Room 7516, Federal Building
300 North Los Angeles Street
Los Angeles, CA 90012
Telephone: 213-894-2474
gary.plessman@usdoj.gov

KENNETH L. JOST
Acting Director
Office of Consumer Protection Litigation


ALAN PHELPS
Trial Attorney
Office of Consumer Protection Litigation
U.S. Department of Justice
PO Box 386
Washington, DC 20044-0386
Telephone: 202-307-6154
alan.phelps@usdoj.gov

*By AUSA Gary Plessman
for email authorization

FOR DEFENDANTS PLAYDOM, INC.,
and HOWARD MARKS:

DATED: May 11, 2011.

Andrew Serwin*
ANDREW SERWIN
Attorney for Playdom, Inc.,
a subsidiary of Disney Enterprises, Inc.
Foley & Lardner LLP
3000 K Street, N.W.
Suite 600
Washington, DC 20007-5109
202-672-5300
Aserwin@foley.com

*By AUSA Gary Plessman
per email authorization

MOZELLE W. THOMPSON
Attorney for Playdom, Inc.,
a subsidiary of Disney Enterprises, Inc.
mozelle@fb.com

DATED: May 11, 2011.

D. Reed Freeman*
D. REED FREEMAN
Attorney for Howard Marks
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 6000
Washington, DC 20006-1888
202-887-6948
rfreeman@mof.com

*By AUSA Gary Plessman
per email authorization

EXHIBIT 1

1 ALAN PHELPS
Trial Attorney
2 Office of Consumer Protection Litigation
U.S. Department of Justice
3 PO Box 386
Washington, DC 20044
4 Telephone: 202-307-6154
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5 E-mail: alan.phelps@usdoj.gov

6 ANDRÉ BIROTTE JR.
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9 Chief, Civil Frauds Section
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Room 7516, Federal Building
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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 PLAYDOM, INC., a subsidiary of Disney
21 Enterprises, Inc.,
22 and,
23 HOWARD MARKS, individually,
24 Defendants.

Case No. _____
**CONSENT DECREE AND
ORDER FOR CIVIL
PENALTIES, INJUNCTION
AND OTHER RELIEF**

25
26 WHEREAS Plaintiff, the United States of America, has commenced this
27 action by filing the complaint herein; Defendants have waived service of the
28 Summons and Complaint; the parties have been represented by the attorneys

1 whose names appear hereafter; and the parties have agreed to settlement of this
2 action upon the following terms and conditions, without adjudication of any issue
3 of fact or law, and without Defendants admitting that any issue of fact or law other
4 than those related to jurisdiction and venue is true;

5 THEREFORE, on the joint motion of Plaintiff and Defendants, it is hereby
6 ORDERED, ADJUDGED, and DECREED as follows:

- 7 1. This Court has jurisdiction of the subject matter and of the parties pursuant
8 to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C.
9 § § 45(m)(1)(A), 53(b), 56(a), and 57b.
- 10 2. Venue is proper as to all parties in the Central District of California under
11 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).
- 12 3. The activities of Defendants are in or affecting commerce as defined in
13 Section 4 of the FTC Act, 15 U.S.C. § 44.
- 14 4. The Complaint states a claim upon which relief may be granted against
15 Defendants under Sections 1303(c) and 1306(d) of the Children's Online
16 Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506,
17 6502(c), and 6505(d); the Commission's Children's Online Privacy
18 Protection Rule, 16 C.F.R. Part 312; and Sections 5(a)(1), 5(m)(1)(A),
19 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15
20 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a). Among other
21 things, the complaint alleges that Defendants violated COPPA by failing to
22 provide notice to parents of their information practices, and to obtain
23 verifiable parental consent prior to collecting, using, and or disclosing
24 personal information from children online.
- 25 5. Defendants have entered into this Consent Decree and Order for Civil
26 Penalties, Injunction, and Other Relief ("Order") freely and without
27 coercion. Defendants further acknowledge that they have read the
28 provisions of this Order and are prepared to abide by them.

1 6. Plaintiff and Defendants hereby waive all rights to appeal or otherwise
2 challenge the validity of this Order.

3 7. Plaintiff and Defendants stipulate and agree that entry of this Order shall
4 constitute a full, complete, and final settlement of this action.

5 8. Defendants have agreed that this Order does not entitle them to seek or to
6 obtain attorneys' fees as a prevailing party under the Equal Access to Justice
7 Act, 28 U.S.C. § 2412, and Defendants further waive any rights to
8 attorneys' fees that may arise under said provision of law.

9 9. Entry of this Order is in the public interest.

10 DEFINITIONS

11 10. "Rule" means the Federal Trade Commission's Children's Online Privacy
12 Protection Rule, 16 C.F.R. Part 312.

13 11. The terms "child," "collects," "collection," "Commission," "delete,"
14 "disclosure," "Internet," "online contact information," "operator," "parent,"
15 "person," "personal information," "third party," "verifiable consent," and
16 "website or online service directed to children," mean as those terms are
17 defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

18 12. "Individual Defendant" means Howard Marks.

19 13. "Corporate Defendant" means Playdom, Inc., and its successors and assigns.

20 14. "Defendants" means both the Individual Defendant and the Corporate
21 Defendant.

22 INJUNCTION

23 15. **IT IS ORDERED** that Defendants, and their officers, agents,
24 representatives, and employees, and all persons in active concert or
25 participation with them who receive actual notice of this Order by personal
26 service or otherwise, are hereby enjoined, directly or through any
27 corporation, subsidiary, division, website, or other device, from:
28

1 A. Failing, on any website or online service directed to children, or on
2 any website or online service through which they, with actual
3 knowledge, collect, use, and/or disclose personal information from
4 children, to provide sufficient notice of the information Defendants
5 collect online from children, how they use such information, their
6 disclosure practices, and all other content, as required by Section
7 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);

8 B. Failing, on any website or online service directed to children, or on
9 any website or online service through which they, with actual
10 knowledge, collect, use, and/or disclose personal information from
11 children, to provide direct notice to parents of what information
12 Defendants collect online from children, how they use such
13 information, their disclosure practices, and all other required content,
14 as required by Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);

15 C. Failing, on any website or online service directed to children, or on
16 any website or online service through which they, with actual
17 knowledge, collect, use, and/or disclose personal information from
18 children, to obtain verifiable parental consent before any collection,
19 use, and/or disclosure of personal information from children, as
20 required by Section 312.5 of the Rule, 16 C.F.R. § 312.5(a)(1); or,

21 D. Violating any other provision of the Children's Online Privacy
22 Protection Rule, 16 C.F.R. Part 312, and as the Rule may hereafter be
23 amended. A copy of the Rule is attached hereto as "Appendix A" and
24 incorporated herein as if fully set forth verbatim.

25 16. **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,
26 representatives, and employees, and all persons in active concert or
27 participation with them who receive actual notice of this Order by personal
28 service or otherwise, are hereby enjoined, directly or through any

1 corporation, subsidiary, division, website, or other device, in connection
2 with the operation of any website or online service, from making any
3 misrepresentation in the website or online service's privacy policy or
4 elsewhere about the website or online service's collection, use, disclosure,
5 or deletion of children's personal information.

6 **DELETION OF CHILDREN'S PERSONAL INFORMATION**

- 7 17. **IT IS FURTHER ORDERED** that Defendants, within ten (10) days from
8 the date of receipt of notice of the entry of this Order shall delete all
9 personal information collected and maintained within their possession,
10 custody, or control in violation of the Rule at any time from April 21, 2000
11 through the date of entry of this Order.

12 **CONSUMER EDUCATION REMEDY**

- 13 18. **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
14 date of entry of this Order, Defendants, in connection with their operation of
15 any website or online service directed to children, and any website or online
16 service through which Defendants, with actual knowledge, collect, use,
17 and/or disclose personal information from children, shall place a clear and
18 conspicuous notice: (1) within the privacy policy required to be posted by
19 Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b); (2) within the direct
20 notice required to be sent to parents by Section 312.4(c) of the Rule, 16
21 C.F.R. § 312.4(c); and, (3) at each location on the website or online service
22 where personal information is collected, which states as follows in bold
23 typeface:

24 **NOTICE: Visit www.OnGuardOnline.gov for tips from the Federal**
25 **Trade Commission on protecting kids' privacy online**
26 **[“www.OnGuardOnline.gov” must contain a hyperlink to**
<http://www.onguardonline.gov/topics/kids-privacy.aspx>]

27 Defendants shall be required to change the hyperlinks/URLs within fifteen
28 (15) days after receipt of notice from the Federal Trade Commission of a
change to such hyperlinks/URLs.

CIVIL PENALTY

1
2 19. **IT IS FURTHER ORDERED** that Defendants, jointly and severally, shall
3 pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC
4 Act, 15 U.S.C. § 45(m)(1)(A), in the amount of three million dollars
5 (\$3,000,000).

6 20. Prior to or concurrently with Defendants' execution of this Order,
7 Defendants shall turn over the full amount of the civil penalty to their
8 attorneys, who shall hold the entire sum for no purpose other than payment
9 to the Treasurer of the United States after entry of this Order by the Court.
10 Within five (5) days of receipt of notice of the entry of this Order,
11 Defendants' attorneys shall transfer the sum of three million dollars
12 (\$3,000,000) in the form of a wire transfer or certified cashier's check made
13 payable to the Treasurer of the United States. The check and/or written
14 confirmation of the wire transfer shall be delivered in accordance with
15 procedures specified by the Office of Consumer Litigation, Civil Division,
16 U.S. Department of Justice, Washington, DC 20530.

17 21. Defendants relinquish all dominion, control, and title to the funds paid to
18 the fullest extent permitted by law. Defendants shall make no claim to or
19 demand return of the funds, directly or indirectly, through counsel or
20 otherwise.

21 22. Defendants agree that they will not contest the Commission's right to any
22 payment or money judgment in any subsequent civil litigation filed by or on
23 behalf of the Commission to enforce its rights to any payment or money
24 judgment pursuant to this Order.

25 23. Defendants agree that the judgment represents a civil penalty owed to the
26 United States Government, and is not compensation for actual pecuniary
27 loss, and therefore, as to the Individual Defendant, it is not subject to
28 discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

1 24. In the event of any default payment, which default continues for ten (10)
2 days beyond the due date of payment, the entire unpaid penalty, together
3 with interest, as computed pursuant to 28 U.S.C. § 1961 (accrued from the
4 date of default to the date of payment) shall immediately become due and
5 payable.

6 COMPLIANCE MONITORING

7 25. **IT IS FURTHER ORDERED** that for the purpose of monitoring and
8 investigating compliance with any provision of this Order:

9 A. Within fourteen (14) days of receipt of a written request from a
10 representative of the Commission, Defendants each shall submit
11 written responses, which are true and accurate and sworn to under
12 penalty of perjury; produce documents for inspection and copying;
13 appear for deposition; and provide entry during normal business
14 hours to any business location in each Defendant's possession or
15 direct or indirect control to inspect the business operation. Provided
16 that, Defendants, after attempting to resolve a dispute without court
17 action and for good cause shown, may file a motion with this Court
18 seeking an order including one or more of the protections set forth in
19 Fed. R. Civ. P. 26(c).

20 B. In addition, the Commission is authorized to use all other lawful
21 means, including but not limited to:

22 1. Obtaining discovery from any person , without further leave of
23 court, using the procedures prescribed by Fed. R. Civ. P. 30,
24 31, 33, 34, 36, 45 and 69;

25 2. Having its representatives pose as consumers and suppliers to
26 Defendants, their employees, or any other entity managed or
27 controlled in whole or in part by any Defendant, without the
28 necessity of identification or prior notice; and,

1 C. Defendants each shall permit representatives of the Commission to
2 interview any employer, consultant, independent contractor,
3 representative, agent, or employee who has agreed to such an
4 interview, relating in any way to any conduct subject to this Order.
5 The person interviewed may have counsel present, including
6 Defendants' counsel and any individual counsel.

7 D. For purposes of the compliance reporting and monitoring required by
8 this Order, the Commission is authorized to communicate directly
9 with each Defendant. Defendants may have counsel present.

10 *Provided however*, that nothing in this Order shall limit the Commission's
11 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC
12 Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible
13 things, testimony, or information relevant to unfair or deceptive acts or
14 practices in or affecting commerce (within the meaning of 15 U.S.C.
15 § 45(a)(1)).

16 COMPLIANCE REPORTING

17 26. **IT IS FURTHER ORDERED** that, in order that compliance with the
18 provisions of this Order may be monitored:

19 A. For a period of four (4) years from the date of entry of this Order,

20 1. The Individual Defendant shall notify the Commission of the
21 following:

22 a. Any changes in the Individual Defendant's residence,
23 mailing address, and telephone number, within ten (10)
24 days of the date of such change;

25 b. Any changes in the Individual Defendant's employment
26 status (including self-employment), and any change in
27 the Individual Defendant's ownership in any business
28 entity, within ten (10) days of the date of such change.

1 Such notice shall include the name and address of each
2 business that the Individual Defendant is affiliated with,
3 employed by, creates or forms, or performs services for;
4 a detailed description of the nature of the business; and a
5 detailed description of the Individual Defendant's duties
6 and responsibilities in connection with the business or
7 employment; and,

8 c. Any changes in the structure of any business entity that
9 the Individual Defendant directly or indirectly controls
10 or has an ownership interest in, that may affect
11 compliance obligations arising under this Order,
12 including but not limited to: incorporation or other
13 organization; a dissolution, assignment, sale, merger, or
14 other action; the creation or dissolution of a subsidiary,
15 parent, or affiliate that engages in any acts or practices
16 subject to this Order; or a change in the business name or
17 address, at least thirty (30) days prior to such change,
18 *provided that*, with respect to any such change in the
19 business entity about which the Individual Defendant
20 learns less than thirty (30) days prior to the date such
21 action is to take place, the Individual Defendant shall
22 notify the Commission as soon as is practicable after
23 obtaining such knowledge; and

24 d. Any changes in the Individual Defendant's name or use
25 of any aliases or fictitious names within ten (10) days of
26 the date of such change.

27 2. The Corporate Defendant shall notify the Commission of any
28 changes in the structure of the Corporate Defendant or any
business entity that it directly or indirectly controls, or has an

1 ownership interest in, that may affect compliance obligations
2 arising under this Order, including but not limited to:
3 incorporation or other organization; a dissolution, assignment,
4 sale, merger, or other action; the creation or dissolution of a
5 subsidiary, parent, or affiliate that engages in any acts or
6 practices subject to this Order; or a change in the business
7 name or address, at least thirty (30) days prior to such change,
8 *provided that*, with respect to any such change in the business
9 entity about which the Corporate Defendant learns less than
10 thirty (30) days prior to the date such action is to take place, it
11 shall notify the Commission as soon as is practicable after
12 obtaining such knowledge.

13 B. Sixty (60) days after the date of entry of this Order, and thereafter for
14 a period of four (4) years, at such times as the Federal Trade
15 Commission shall reasonably require, Defendants each shall provide
16 a written report to the Commission, which is true and accurate and
17 sworn to under penalty of perjury, setting forth in detail the manner
18 and form in which each has complied and is complying with this
19 Order. This report shall include, but not be limited to:

20 1. For the Individual Defendant:

- 21 a. The Individual Defendant's then-current residence
22 address, mailing addresses, and telephone numbers;
23 b. The Individual Defendant's then-current employment
24 status (including self-employment), including the name,
25 addresses, and telephone numbers of each business that
26 the Individual Defendant is affiliated with, employed by,
27 or performs services for; a detailed description of the
28 nature of the business; and a detailed description of the

1 Individual Defendant's duties and responsibilities in
2 connection with the business or employment; and,

3 c. Any other changes required to be reported under Section
4 26.A. of this Order.

5 2. For the Corporate Defendant, and for the Individual Defendant
6 in connection with any business that the Individual Defendant
7 controls, directly or indirectly, or in which he has a majority
8 ownership interest:

9 a. A statement setting forth in detail the criteria and process
10 through which each Defendant's websites or online
11 services register visitors online for any activity requiring
12 the submission of personal information, and a copy of
13 each different version of screen or page providing or
14 collecting registration information;

15 b. A copy of each different version of privacy notice posted
16 on each website or online service operated by each
17 Defendant;

18 c. A statement setting forth in detail each place where the
19 privacy notice on any such website or online service is
20 located and a copy of each different version of screen or
21 page on which such website or online service collects
22 personal information;

23 d. A copy of each different version of privacy notice sent to
24 parents of children that register on each website or online
25 service;

26 e. A statement setting forth in detail when and how each
27 such notice to parents is provided;

28 f. A statement setting forth in detail the methods used to

1 obtain verifiable parental consent prior to any collection,
2 use, and/or disclosure of personal information from
3 children;

4 g. A statement setting forth in detail the means provided for
5 parents to review the personal information collected
6 from their children and to refuse to permit its further use
7 or maintenance;

8 h. A statement setting forth in detail why each type of
9 information collected from a child is reasonably
10 necessary for the provision of the particular related
11 activity;

12 i. A statement setting forth in detail the procedures used to
13 protect the confidentiality, security, and integrity of
14 personal information collected from children;

15 j. A copy of each acknowledgment of receipt of this Order,
16 obtained pursuant to the Section titled "Distribution of
17 Order"; and,

18 k. Any other changes required to be reported under Section
19 26.A. of this Order.

20 C. Each Defendant shall notify the Commission of the filing of a
21 bankruptcy petition by such Defendant within fifteen (15) days of
22 filing.

23 D. For the purposes of this Order, Defendants shall, unless otherwise
24 directed by the Commission's authorized representatives, send by
25 overnight courier (not the U.S. Postal Service) all reports and
26 notifications to the Commission that are required by this Order to the
27 following address:
28

1 Associate Director for Enforcement
2 Bureau of Consumer Protection
3 Federal Trade Commission
4 600 Pennsylvania Avenue, NW
5 Washington, D.C. 20580
6 RE: U.S. v. Playdom, Inc.

7 *Provided* that, in lieu of overnight courier, Defendants may send such
8 reports or notifications by first-class mail, but only if Defendants
9 contemporaneously send an electronic version of such report or
10 notification to the Commission at: DEBrief@ftc.gov.

11 RECORD-KEEPING PROVISIONS

12 27. **IT IS FURTHER ORDERED** that, for a period of seven (7) years from the
13 date of entry of this Order, Defendants, for any business for which they,
14 individually or collectively, are the majority owner or directly or indirectly
15 control, are hereby restrained and enjoined from failing to create and retain
16 the following records:

- 17 A. A print or electronic copy (in HTML format) of all documents
18 necessary to demonstrate full compliance with each provision of this
19 Order, including, but not limited to:
- 20 1. Copies of acknowledgments of receipt of this Order required
21 by Sections titled "Distribution of Order" and
22 "Acknowledgment of Receipt of Order";
 - 23 2. All reports submitted to the Commission pursuant to the
24 Section titled "Compliance Reporting";
 - 25 3. A sample copy of every materially different form, web page, or
26 screen through which personal information is collected, and a
27 sample copy of each materially different document containing
28 any representation regarding Defendants' collection, use, and
disclosure practices pertaining to personal information of a

1 child. Each web page copy shall be accompanied by the URL
2 of the web page where the material was posted online.

3 Electronic copies shall include all text and graphics files, audio
4 scripts, and other computer files used in presenting information
5 on the Internet. *Provided*, however, that Defendants shall not
6 be required to retain any document for longer than two (2)
7 years after the document was created, or to retain a print or
8 electronic copy of any amended web page or screen to the
9 extent that the amendment does not affect Defendants'
10 compliance obligations under this Order.

11 **DISTRIBUTION OF ORDER**

12 28. **IT IS FURTHER ORDERED** that, for a period of four (4) years from the
13 date of entry of this Order, Defendants shall deliver copies of the Order,
14 including Appendix A, as directed below:

15 A. Corporate Defendant: The Corporate Defendant must deliver a copy
16 of this Order to: (1) all of its principals, officers, directors, and
17 managers of any business engaged in conduct related to the subject
18 matter of the Order; (2) all employees, agents, and representatives
19 who have responsibilities related to the operation of any website or
20 online service subject to this Order; and (3) any business entity
21 resulting from any change in structure set forth in Subsection A.2. of
22 the Section titled "Compliance Reporting." For current personnel,
23 delivery shall be within five (5) days of service of this Order upon the
24 Corporate Defendant. For new personnel, delivery shall occur prior
25 to their assuming their responsibilities. For any business entity
26 resulting from any change in structure set forth in Subsection A.2. of
27 the Section titled "Compliance Reporting," delivery shall be at least
28 ten (10) days prior to the change in structure.

1 B. Individual Defendant as a control person: For any business engaged
2 in conduct related to the subject matter of the Order that the
3 Individual Defendant controls, directly or indirectly, or in which the
4 Individual Defendant has a majority ownership interest, the
5 Individual Defendant must deliver a copy of this Order to: (1) all
6 principals, officers, directors, and managers; and (2) all employees,
7 agents, and representatives who have responsibilities related to the
8 operation of any website or online service subject to this Order. For
9 current personnel, delivery shall be within five (5) days of service of
10 this Order upon the Individual Defendant. For new personnel,
11 delivery shall occur prior to their assuming their responsibilities.

12 C. Individual Defendant as employee or non-control person: For any
13 business where the Individual Defendant is not a controlling person
14 of a business but otherwise engages in conduct related to the subject
15 matter of this Order, the Individual Defendant must deliver a copy of
16 this Order to all principals and managers of such business before
17 engaging in such conduct.

18 D. Defendants must secure a signed and dated statement acknowledging
19 receipt of the Order, within thirty (30) days of delivery, from all
20 persons receiving a copy of the Order pursuant to this Section.
21 Defendants shall maintain copies of the signed statements, as well as
22 other information regarding the fact and manner of its compliance,
23 including the name and title of each person to whom a copy of the
24 Order has been provided and, upon request, shall make the statements
25 and other information available to the Commission.

26 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

27 29. **IT IS FURTHER ORDERED** that each Defendant, within five (5)
28 business days of receipt of this Order as entered by the Court, must submit

1 to the Commission a truthful sworn statement acknowledging receipt of this
2 Order.

3 **PROVISION OF TAXPAYER IDENTIFYING NUMBERS**

4 30. **IT IS FURTHER ORDERED** that the Corporate Defendant is hereby
5 required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal
6 Trade Commission its taxpayer identifying number (employer identification
7 number), which shall be used for purposes of collecting and reporting any
8 delinquent amount arising out of its relationship with the government.

9 **RETENTION OF JURISDICTION**

10 31. This Court shall retain jurisdiction of this matter for the purposes of
11 construction, modification, and enforcement of this Order.

12
13 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and
14 against Defendants, pursuant to all the terms and conditions recited above.

15 Dated this _____ day of _____, 2011.

16
17
18 _____
19 UNITED STATES DISTRICT JUDGE
20
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1 The parties, by their counsel, hereby consent to the terms and conditions of
2 the Order as set forth above and consent to the entry thereof.

3
4 FOR PLAINTIFF
5 THE UNITED STATES OF AMERICA:

6 TONY WEST
7 Assistant Attorney General,
8 Civil Division
9 U.S. DEPARTMENT OF JUSTICE


10 ANDRÉ BIROTTE JR.
11 United States Attorney
12 Central District of California
13 LEE WEIDMAN, AUSA
14 Chief, Civil Division

15 

16 GARY PLESSMAN, AUSA
17 Chief, Civil Frauds Section
18 Central District of California
19 California State Bar No. 101233
20 Room 7516, Federal Building
21 300 North Los Angeles Street
22 Los Angeles, CA 90012
23 Telephone: 213-894-2474
24 gary.plessman@usdoj.gov

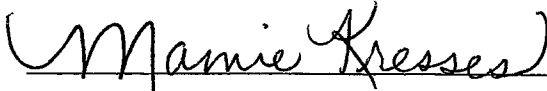
25 MAAME EWUSI-MENSAH FRIMPONG
26 Acting Deputy Assistant Attorney General

27 KENNETH L. JOST
28 Acting Director
Office of Consumer Protection Litigation

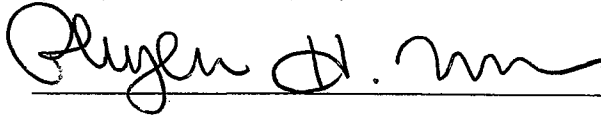
29 
30 ALAN PHELPS
31 Trial Attorney
32 Office of Consumer Protection Litigation
33 U.S. Department of Justice
34 PO Box 386
35 Washington, DC 20044-0386
36 Telephone: 202-307-6154
37 alan.phelps@usdoj.gov

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FOR THE FEDERAL TRADE COMMISSION:



MAMIE KRESSES
Attorney
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-2070 (voice)
(202) 326-3259 (fax)



PHYLLIS HURWITZ MARCUS
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-2854 (voice)
(202) 326-3259 (fax)

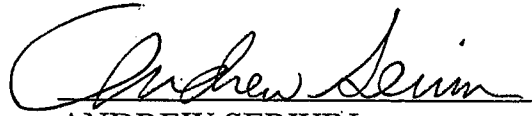
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FOR DEFENDANT
PLAYDOM, INC.:



BRAD SERWIN
Chief Operating Officer
Playdom, Inc.

APPROVED AS TO CONTENT
AND FORM:



ANDREW SERWIN
Foley & Lardner LLP
Attorney for Playdom, Inc.,
a subsidiary of Disney Enterprises, Inc.
aserwin@foley.com



MOZELLE W. THOMPSON
Attorney for Playdom, Inc.,
a subsidiary of Disney Enterprises, Inc.
mozellethompson@aol.com

22

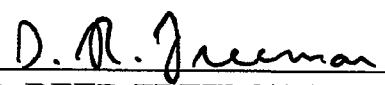
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FOR DEFENDANT
HOWARD MARKS:



HOWARD MARKS

APPROVED AS TO CONTENT
AND FORM:



D. REED FREEMAN
Morrison & Foerster LLP
Attorney for Defendant
Howard Marks
rfreeman@mofocom

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EXHIBIT 1

APPENDIX A

§ 311.5 Labeling.

A manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined that the oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under § 311.4 of this part, and has based the representation on that determination.

§ 311.6 Prohibited acts.

It is unlawful for any manufacturer or other seller to represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil unless the manufacturer or other seller has based such representation on the manufacturer's determination that the processed used oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under § 311.4 of this part. Violations will be subject to enforcement through civil penalties (as adjusted for inflation pursuant to § 1.98 of this chapter), imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

[60 FR 55421, Oct. 31, 1995, as amended at 65 FR 69666, Nov. 20, 2000]

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Sec.

- 312.1 Scope of regulations in this part.
- 312.2 Definitions.
- 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.
- 312.4 Notice.
- 312.5 Parental consent.
- 312.6 Right of parent to review personal information provided by a child.
- 312.7 Prohibition against conditioning a child's participation on collection of personal information.
- 312.8 Confidentiality, security, and integrity of personal information collected from children.
- 312.9 Enforcement.
- 312.10 Safe harbors.

- 312.11 Rulemaking review.
- 312.12 Severability.

AUTHORITY: 15 U.S.C. 6501-6506.

SOURCE: 64 FR 59911, Nov. 3, 1999, unless otherwise noted.

§ 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, et seq.) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet. The effective date of this part is April 21, 2000.

§ 312.2 Definitions.

Child means an individual under the age of 13.

Collects or collection means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting that children submit personal information online;

(b) Enabling children to make personal information publicly available through a chat room, message board, or other means, *except where* the operator deletes all individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records; or

(c) The passive tracking or use of any identifying code linked to an individual, such as a cookie.

Commission means the Federal Trade Commission.

Delete means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclosure means, with respect to personal information:

(a) The release of personal information collected from a child in identifiable form by an operator for any purpose, *except where* an operator provides such information to a person who provides support for the internal operations of the website or online service and who does not disclose or use that information for any other purpose. For purposes of this definition:

(1) *Release of personal information* means the sharing, selling, renting, or any other means of providing personal information to any third party, and

(2) *Support for the internal operations of the website or online service* means those activities necessary to maintain the technical functioning of the website or online service, or to fulfill a request of a child as permitted by § 312.5(c)(2) and (3); or

(b) Making personal information collected from a child by an operator publicly available in identifiable form, by any means, including by a public posting through the Internet, or through a personal home page posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet means collectively the myriad of computer and telecommunication facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Online contact information means an e-mail address or any other substantially similar identifier that permits direct contact with a person online.

Operator means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce:

(a) Among the several States or with 1 or more foreign nations;

(b) In any territory of the United States or in the District of Columbia, or between any such territory and

(1) Another such territory, or

(2) Any State or foreign nation; or

(c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Parent includes a legal guardian.

Person means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information means individually identifiable information about an individual collected online, including:

(a) A first and last name;

(b) A home or other physical address including street name and name of a city or town;

(c) An e-mail address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address;

(d) A telephone number;

(e) A Social Security number;

(f) A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; or a combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting; or

(g) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Third party means any person who is not:

(a) An operator with respect to the collection or maintenance of personal information on the website or online service; or

(b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Obtaining *verifiable consent* means making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

(a) Receives notice of the operator's personal information collection, use, and disclosure practices; and

(b) Authorizes any collection, use, and/or disclosure of the personal information.

Website or online service directed to children means a commercial website or online service, or portion thereof, that is targeted to children. *Provided, however*, that a commercial website or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial website or online service, or a portion thereof, is targeted to children, the Commission will consider its subject matter, visual or audio content, age of models, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition; evidence regarding the intended audience; and whether a site uses animated characters and/or child-oriented activities and incentives.

§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

(a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));

(b) Obtain verifiable parental consent prior to any collection, use, and/or dis-

closure of personal information from children (§ 312.5);

(c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§ 312.6);

(d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§ 312.7); and

(e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§ 312.8).

§ 312.4 Notice.

(a) *General principles of notice.* All notices under §§ 312.3(a) and 312.5 must be clearly and understandably written, be complete, and must contain no unrelated, confusing, or contradictory materials.

(b) *Notice on the website or online service.* Under § 312.3(a), an operator of a website or online service directed to children must post a link to a notice of its information practices with regard to children on the home page of its website or online service and at each area on the website or online service where personal information is collected from children. An operator of a general audience website or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children on the home page of the children's area.

(i) *Placement of the notice.* (i) The link to the notice must be clearly labeled as a notice of the website or online service's information practices with regard to children;

(ii) The link to the notice must be placed in a clear and prominent place and manner on the home page of the website or online service; and

(iii) The link to the notice must be placed in a clear and prominent place and manner at each area on the website or online service where children directly provide, or are asked to provide, personal information, and in close proximity to the requests for information in each such area.

(2) *Content of the notice.* To be complete, the notice of the website or online service's information practices must state the following:

(i) The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service. *Provided that* the operators of a website or online service may list the name, address, phone number, and e-mail address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;

(ii) The types of personal information collected from children and whether the personal information is collected directly or passively;

(iii) How such personal information is or may be used by the operator(s), including but not limited to fulfillment of a requested transaction, record-keeping, marketing back to the child, or making it publicly available through a chat room or by other means;

(iv) Whether personal information is disclosed to third parties, and if so, the types of business in which such third parties are engaged, and the general purposes for which such information is used; whether those third parties have agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator; and that the parent has the option to consent to the collection and use of their child's personal information without consenting to the disclosure of that information to third parties;

(v) That the operator is prohibited from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity; and

(vi) That the parent can review and have deleted the child's personal information, and refuse to permit further collection or use of the child's informa-

tion, and state the procedures for doing so.

(c) *Notice to a parent.* Under § 312.5, an operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives notice of the operator's practices with regard to the collection, use, and/or disclosure of the child's personal information, including notice of any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(1) *Content of the notice to the parent.* (i) All notices must state the following:

(A) That the operator wishes to collect personal information from the child;

(B) The information set forth in paragraph (b) of this section.

(ii) In the case of a notice to obtain verifiable parental consent under § 312.5(a), the notice must also state that the parent's consent is required for the collection, use, and/or disclosure of such information, and state the means by which the parent can provide verifiable consent to the collection of information;

(iii) In the case of a notice under the exception in § 312.5(c)(3), the notice must also state the following:

(A) That the operator has collected the child's e-mail address or other online contact information to respond to the child's request for information and that the requested information will require more than one contact with the child;

(B) That the parent may refuse to permit further contact with the child and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice.

(iv) In the case of a notice under the exception in § 312.5(c)(4), the notice must also state the following:

(A) That the operator has collected the child's name and e-mail address or other online contact information to protect the safety of the child participating on the website or online service;

(B) That the parent may refuse to permit the use of the information and

require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose stated in the notice.

§312.5 Parental consent.

(a) *General requirements.* (1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

(b) *Mechanisms for verifiable parental consent.* (1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

(2) Methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: providing a consent form to be signed by the parent and returned to the operator by postal mail or facsimile; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph. *Provided that:* Until the Commission otherwise determines, methods to obtain verifiable parental consent for uses of information other than the "disclosures" defined by §312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: sending a confirmatory e-mail to the parent following receipt of consent; or

obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. Operators who use such methods must provide notice that the parent can revoke any consent given in response to the earlier e-mail.

(c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use and/or disclosure of personal information from a child except as set forth in this paragraph. The exceptions to prior parental consent are as follows:

(1) Where the operator collects the name or online contact information of a parent or child to be used for the sole purpose of obtaining parental consent or providing notice under §312.4. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the operator collects online contact information from a child for the sole purpose of responding directly on a one-time basis to a specific request from the child, and where such information is not used to recontact the child and is deleted by the operator from its records;

(3) Where the operator collects online contact information from a child to be used to respond directly more than once to a specific request from the child, and where such information is not used for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that a parent receives notice and has the opportunity to request that the operator make no further use of the information, as described in §312.4(c), immediately after the initial response and before making any additional response to the child. Mechanisms to provide such notice include, but are not limited to, sending the notice by postal mail or sending the notice to the parent's e-mail address, but do not include asking a child to print a notice form or sending an e-mail to the child;

(4) Where the operator collects a child's name and online contact information to the extent reasonably necessary to protect the safety of a child participant on the website or online

service, and the operator uses reasonable efforts to provide a parent notice as described in § 312.4(c), where such information is:

(i) Used for the sole purpose of protecting the child's safety;

(ii) Not used to recontact the child or for any other purpose;

(iii) Not disclosed on the website or online service; and

(5) Where the operator collects a child's name and online contact information and such information is not used for any other purpose, to the extent reasonably necessary:

(i) To protect the security or integrity of its website or online service;

(ii) To take precautions against liability;

(iii) To respond to judicial process; or

(iv) To the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

[64 FR 59911, Nov. 3, 1999, as amended at 67 FR 18821, Apr. 17, 2002; 70 FR 21106, Apr. 22, 2005]

§ 312.6 Right of parent to review personal information provided by a child.

(a) Upon request of a parent whose child has provided personal information to a website or online service, the operator of that website or online service is required to provide to that parent the following:

(1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, e-mail address, hobbies, and extracurricular activities;

(2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and

(3) Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:

(i) Ensure that the requestor is a parent of that child, taking into account available technology; and

(ii) Not be unduly burdensome to the parent.

(b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

(c) Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

§ 312.7 Prohibition against conditioning a child's participation on collection of personal information.

An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

§ 312.9 Enforcement.

Subject to sections 6503 and 6505 of the Children's Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

§ 312.10 Safe harbors.

(a) *In general.* An operator will be deemed to be in compliance with the requirements of this part if that operator complies with self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, that, after notice and

comment, are approved by the Commission.

(b) *Criteria for approval of self-regulatory guidelines.* To be approved by the Commission, guidelines must include the following:

(1) A requirement that operators subject to the guidelines ("subject operators") implement substantially similar requirements that provide the same or greater protections for children as those contained in §§312.2 through 312.9;

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the guidelines. This performance standard may be satisfied by:

(i) Periodic reviews of subject operators' information practices conducted on a random basis either by the industry group promulgating the guidelines or by an independent entity;

(ii) Periodic reviews of all subject operators' information practices, conducted either by the industry group promulgating the guidelines or by an independent entity;

(iii) Seeding of subject operators' databases, if accompanied by either paragraphs (b)(2)(i) or (b)(2)(ii) of this section; or

(iv) Any other equally effective independent assessment mechanism; and

(3) Effective incentives for subject operators' compliance with the guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of disciplinary action taken against subject operators by the industry group promulgating the guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the guidelines; or

(v) Any other equally effective incentive.

(4) The assessment mechanism required under paragraph (b)(2) of this section can be provided by an independent enforcement program, such as a seal program. In considering whether to initiate an investigation or to bring an enforcement action for violations of

this part, and in considering appropriate remedies for such violations, the Commission will take into account whether an operator has been subject to self-regulatory guidelines approved under this section and whether the operator has taken remedial action pursuant to such guidelines, including but not limited to actions set forth in paragraphs (b)(3)(i) through (iii) of this section.

(c) *Request for Commission approval of self-regulatory guidelines.* (1) To obtain Commission approval of self-regulatory guidelines, industry groups or other persons must file a request for such approval. A request shall be accompanied by the following:

(i) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

(ii) A comparison of each provision of §§312.3 through 312.8 with the corresponding provisions of the guidelines; and

(iii) A statement explaining:

(A) How the guidelines, including the applicable assessment mechanism, meet the requirements of this part; and

(B) How the assessment mechanism and compliance incentives required under paragraphs (b)(2) and (3) of this section provide effective enforcement of the requirements of this part.

(2) The Commission shall act upon a request under this section within 180 days of the filing of such request and shall set forth its conclusions in writing.

(3) Industry groups or other persons whose guidelines have been approved by the Commission must submit proposed changes in those guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(1). The statement required under paragraph (c)(i)(iii) must describe how the proposed changes affect existing provisions of the guidelines.

(d) *Records.* Industry groups or other persons who seek safe harbor treatment by compliance with guidelines that have been approved under this part shall maintain for a period not less than three years and upon request make available to the Commission for inspection and copying:

(1) Consumer complaints alleging violations of the guidelines by subject operators;

(2) Records of disciplinary actions taken against subject operators; and

(3) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) of this section.

(c) *Revocation of approval.* The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory guidelines and their implementation do not, in fact, meet the requirements of this part.

§ 312.11 Rulemaking review.

No later than April 21, 2005, the Commission shall initiate a rulemaking review proceeding to evaluate the implementation of this part, including the effect of the implementation of this part on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and report to Congress on the results of this review.

§ 312.12 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

- 313.1 Purpose and scope.
- 313.2 Model privacy form and examples.
- 313.3 Definitions.

Subpart A—Privacy and Opt Out Notices

- 313.4 Initial privacy notice to consumers required.
- 313.5 Annual privacy notice to customers required.
- 313.6 Information to be included in privacy notices.
- 313.7 Form of opt out notice to consumers; opt out methods.
- 313.8 Revised privacy notices.

313.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

- 313.10 Limitation on disclosure of nonpublic personal information to nonaffiliated third parties.
- 313.11 Limits on redisclosure and reuse of information.
- 313.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

- 313.13 Exception to opt out requirements for service providers and joint marketing.
- 313.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
- 313.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

- 313.16 Protection of Fair Credit Reporting Act.
- 313.17 Relation to State laws.
- 313.18 Effective date; transition rule.

APPENDIX A TO PART 313—MODEL PRIVACY FORM

APPENDIX B TO PART 313—SAMPLE CLAUSES

AUTHORITY: 15 U.S.C. 6801 et seq.

SOURCE: 65 FR 33677, May 24, 2000, unless otherwise noted.

§ 313.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

- (1) Requires a financial institution in specified circumstances to provide notice to customers about its privacy policies and practices;
- (2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and
- (3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 313.13, 313.14, and 313.15.

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family or household purposes from the

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