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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. TINYCO, INC., a corporation, Defendant.	**Case No. _____** **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission") for its Complaint alleges:

1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6502(c) and 6505(d), and Sections 5(a)(1), 5(m)(l)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a) to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendant's violations of the Commission's

Children's Online Privacy Protection Rule ("Rule" or "COPPA Rule"), 16 C.F.R. Part 312, and Section 5 of the FTC Act.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c), 1395(a), and 15 U.S.C. § 53(b).

INTRADISTRICT ASSIGNMENT

4. Defendant TinyCo, Inc. has its principal place of business in the County of San Francisco.

DEFENDANT

5. Defendant TinyCo, Inc. ("TinyCo") is a Delaware corporation with its principal place of business at 225 Bush Street, Suite 1900, San Francisco, CA 94104. TinyCo transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, TinyCo has advertised, marketed, distributed, or sold mobile applications ("apps") to consumers throughout the United States.

COMMERCE

6. At all times material to this Complaint, TinyCo has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

7. Congress enacted COPPA in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children's personal

information online by operators of Internet websites or online services. COPPA directed the Federal Trade Commission to promulgate a rule implementing COPPA. The Commission promulgated the COPPA Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect in April 2000. The Commission promulgated revisions to the Rule that went into effect on July 1, 2013 ("Revised Rule"). The conduct challenged herein violated the Rule as originally promulgated and also violates the Revised Rule currently in effect.

8. Among other things, the Rule and the Revised Rule apply to any operator of a commercial website or online service directed to children that collects, uses, and/or discloses personal information from children, and to any operator of a commercial website or online service that has actual knowledge that it collects, uses, and/or discloses personal information from children. The Rule and the Revised Rule require a website operator to meet specific requirements prior to collecting online, using, or disclosing personal information from children, including, but not limited to:

a. Posting a privacy policy on its website or online service providing clear, understandable, and complete notice of its information practices, including what information the website operator collects from children online, how it uses such information, its disclosure practices for such information, and other specific disclosures set forth in the Rule;

b. Providing clear, understandable, and complete notice of its information practices, including specific disclosures, directly to parents; and

c. Obtaining verifiable consent prior to collecting, using, and/or disclosing personal information from children.

DEFINITIONS

9. For purposes of this Complaint, the terms "child," "collects," "collection," "Commission," "delete," "disclosure," "Internet," "operator," "parent," "personal information," "obtaining verifiable consent," and "website or online service directed to children," are defined as those terms are defined in Section 312.2 of the Rule as originally promulgated, 16 C.F.R. § 312.2. To the extent any of these definitions, or any other provisions of the Rule referred to in this Complaint, were revised effective July 1, 2013, such revisions are not material to the allegations contained herein.

TINYCO'S BUSINESS PRACTICES

10. Since at least 2011, TinyCo has offered a number of mobile apps for download from Apple's App Store, Google Play, and the Amazon Appstore. TinyCo's apps are games that are free to download and play, but allow users to make in-app purchases of virtual items that enhance or speed up gameplay. TinyCo's apps include apps that are directed to children, such as Tiny Pets, Tiny Zoo, Tiny Village, Tiny Monsters, and Mermaid Resort ("kids' apps"). (*See* Exhibit A, copies of each app's initial screen.) These apps send and/or receive information over the Internet, and thus are online services directed to children pursuant to COPPA.

11. TinyCo is an "operator" as defined by the COPPA Rule, 16 C.F.R. § 312.2 (Section 312.2 of the Revised Rule).

12. Tiny Pets, which was available from August 2011 until October 2013, was a game in which users rescued animated animals, built them homes, and trained them to do tricks. The description of the app in Apple's App Store stated, "Help your best friend Sully the Dog save the

pets of TinyLand from the evil Duke Spendington! Hide them in your tree house by building homes for them." (*See* Exhibit B.) Tiny Pets was downloaded more than 2 million times.

13. Tiny Zoo, which has been available since April 2011, is a game in which users collect, feed, and breed animated animals to build a zoo. The description of the app in Apple's App Store states, "Build the BEST zoo and raise ADORABLE animals in Tiny Zoo Friends! Come back everyday to discover EXCITING new animal friends!" (*See* Exhibit C.) Tiny Zoo has been downloaded over 7 million times.

14. Tiny Village, which has been available since October 2011, is a game in which users build a prehistoric village and breed dinosaurs. The description of the app in Apple's App Store states, "Raise dinosaurs, build valuable shops and complete amazing quests in your own prehistoric village!" (*See* Exhibit D.) Tiny Village has been downloaded over 13 million times.

15. Tiny Monsters, which has been available since March 2012, is a game in which users buy and hatch eggs to breed monsters, and create habitats for the monsters. The description of the app in Apple's App Store states, "Hatch, raise, and breed mysterious elemental creatures in Tiny Monsters by TinyCo! Collect TONS of rare and adorable monsters! Feed and care for your monsters until they EVOLVE!" (*See* Exhibit E.) Tiny Monsters has been downloaded over 12 million times.

16. Mermaid Resort, which has been available since 2011, is a game in which users run a resort for mermaids and mermen. The description of the app in Apple's App Store states, "Create the resort of your dreams with attractions Inspired by Hans Christian Anderson's Little Mermaid fairy tale." (*See* Exhibit F.)

17. Pursuant to Section 312.2 of the Rule (Section 312.2 of the Revised Rule), the determination of whether an app is directed to children depends on factors such as the subject

matter, visual content, language, and use of animated characters or child-oriented activities and incentives. An assessment of these factors demonstrates that TinyCo's kids' apps are directed to children under the age of 13. For example, TinyCo's kids' apps appeal to children by containing brightly-colored, animated characters from little animals or zoo creatures to tiny monsters, and by involving subject matters such as a zoo, tree house, or resort inspired by a fairy tale. (*See* Exhibit G, examples from Tiny Pets; Exhibit H, examples from Tiny Zoo; Exhibit I, examples from Tiny Village; Exhibit J, examples from Tiny Monsters; Exhibit K examples from Mermaid Resort.) In addition, as described above in Paragraphs 12-16 and as shown in Exhibits G-K, the language used to describe the apps in the app stores and the gameplay language is simple and would be easy for a child under age 13 to understand.

18. Through its kids' apps, TinyCo invites users to provide their email address. TinyCo encouraged users of at least one of its kids' apps to provide their email addresses in exchange for free in-app currency. TinyCo collected tens of thousands of email addresses through these apps. (*See* Exhibit L, the email collection screens for Tiny Pets, Tiny Zoo, Tiny Village, and Tiny Monsters.)

19. TinyCo was aware that many children used the kids' apps. In fact, TinyCo has received complaints from many parents whose children under the age of 13 use the kids' apps. Upon receiving these complaints, TinyCo did not take steps to determine whether it had collected personal information from these children, or, if it had, to delete such information, provide the required notices, or obtain the required parental consent described in Paragraph 8.

VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Count I

20. TinyCo operates online services directed to children, including through its kids' apps, which collect personal information from children under age 13.

21. In numerous instances, in connection with the acts and practices described above, TinyCo collected and used personal information online from children younger than age 13 in violation of the Rule by:

a. Failing to provide notice on its website or online services of the information it collects online from children, how it uses such information, and its disclosure practices, among other required content, in violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b) (Section 312.4(d) of the Revised Rule);

b. Failing to provide direct notice to parents of the information it collects online from children, how it uses such information, and its disclosure practices for such information, among other required content, in violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c) (Section 312.4(b) of the Revised Rule); and

c. Failing to obtain verifiable parental consent before any collection or use of personal information from children, in violation of Section 312.5(a)(1) of the Rule, 16 C.F.R. § 312.5(a)(1) (Section 312.5(a)(1) of the Revised Rule).

Therefore, TinyCo has violated the COPPA Rule, 16 C.F.R. Part 312.

22. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act,

15 U.S.C. § 45(a).

THIS COURT'S POWER TO GRANT RELIEF

23. TinyCo violated the Rule as described above with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

24. Each collection, use, or disclosure of a child's personal information in which TinyCo violated the Rule in one or more of the ways described above constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

25. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than $16,000 for each violation of the Rule on or after February 10, 2009.

26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff United States of America, pursuant to 5(a)(1), 5(m)(1)(A), 13(b) and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 56(a) and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and the COPPA Rule by TinyCo;

B. Award Plaintiff monetary civil penalties from TinyCo for each violation of the Rule alleged in this Complaint; and

C. Award other and additional relief the Court may determine to be just and proper.

Respectfully submitted,

Dated: September 16, 2014

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