

LAW OFFICES

KELLER AND HECKMAN LLP

1001 G STREET, N.W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TELEPHONE (202) 434-4100
FACSIMILE (202) 434-4646

25 RUE BLANCHE
B-1060 BRUSSELS
TELEPHONE 32(2) 541 05 70
FACSIMILE 32(2) 541 05 80

WWW.KHLAW.COM

JOSEPH E. KELLER (1907-1994)
JEROME H. HECKMAN
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CHRISTIAN C. SEMONSEN*

*NOT ADMITTED IN D.C.
◊RESIDENT BRUSSELS

SCIENTIFIC STAFF
DANIEL S. DIXLER, PH. D.
CHARLES V. BREDER, PH. D.
ROBERT A. MATHEWS, PH. D., D.A.B.T.
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RACHEL F. JOYNER
ELIZABETH A. HEGER
TELECOMMUNICATIONS
ENGINEER
RANDALL D. YOUNG
WRITER'S DIRECT ACCESS

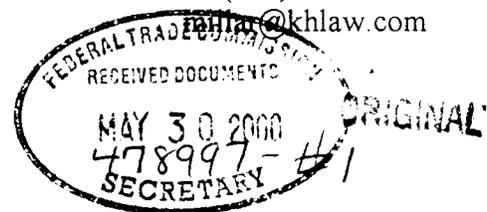
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(202) 434-4143

mailto:info@khlaw.com

VIA HAND DELIVERY

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



Re: CARU Safe Harbor Proposal – Comment, P004504

Dear Mr. Clark:

On behalf of Mars Incorporated (“Mars”), we are pleased to submit an original and five copies of comments in support of the proposed “Safe Harbor” Guidelines submitted by the Children’s Advertising Review Unit (“CARU”) in response to the Notice of the Federal Trade Commission (“FTC” or “Commission”) at 65 *Fed. Reg.* 24960 (April 28, 2000). We also enclose a 3½-inch diskette in MS Word 97 format. CARU’s proposal fully accords with the provisions of the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501, *et seq.*, and implementing rules, 16 C.F.R. § 312 *et seq.* and we urge its approval.

As a member of the CARU Advisory Board, Mars strongly endorses the safe harbor proposal submitted by CARU. Founded in 1972, CARU is not only the preeminent self-regulatory body promoting responsible children’s advertising in the U.S., it is the only national organization focused exclusively on self-regulation of advertising and marketing to children. In that capacity, CARU was the first organization, in 1996, to recognize the challenges of the new interactive media and to establish self-regulatory guidelines governing online information collection from children. Many provisions of COPPA reflect the principles and recommendations of the CARU Guidelines as a result.

CARU has enjoyed a 96% success rate in resolving complaints about advertising to children over its 28-year history. (A certain number of complaints which are not

resolved cannot be referred to a government agency because the legal authority is either unclear or does not exist. Where, however, as here, a legislative framework backs the self-regulatory program, the success rate is actually even higher.) CARU's safe harbor proposal meets or exceeds the requirements of COPPA, and Mars urges the Commission to formally approve it.

We comment on the specific questions posed by the Commission below. In so doing, we do not take up the Commission's invitation to address alternatives to the CARU proposal, and the associated costs and benefits of alternatives, for several reasons. First, the proposal, as submitted, fully meets the requirements of the Act and Rule. Second, CARU's successful history of resolving disputes demonstrates its effectiveness to businesses and consumers alike without regard to hypothetical alternatives that might be adopted. In this regard, we expect that other self-regulatory programs will be submitted for approval under the provisions of the Rule for the Commission's consideration that rely on different procedures and processes than the CARU program. It is for the FTC to decide whether each program submitted provides the same or greater protections for children as the Rule, that mechanisms to assess compliance and incentives for compliance are effective, and that they provide an adequate means for resolving consumer complaints. Other alternatives should be considered only if the program, as submitted, fails to meet the requirements of the Rule.

THE PROPOSED GUIDELINES MUST BE READ IN THEIR ENTIRETY

Question 1 posed by the Commission asks for comments on "any or all of the provisions in the proposed Guidelines." The CARU proposal outlines the major provisions of the CARU Guidelines and sets forth in detail how they meet or exceed the requirements of the Rule, so we will simply emphasize a few points.

The CARU Guidelines "implement substantially similar requirements that provide the same or greater protections for children" as those of the Rule. From that standpoint, the most important aspect of the CARU Guidelines relevant to CARU's request is the provision that states:

CARU's aim is that the Guidelines will always support "notice," "choice," and "consent" as defined by the Federal Trade Commission, and reflect the latest developments in technology and its application to children's advertising.

The reason this language was adopted is simple: to require that "operators subject to the Guidelines implement substantially similar requirements that provide the same or greater protection as § 312.2 through 312.9" of the Rule, as specified in § 312.10(b)(1), without requiring that CARU rewrite its Guidelines to mirror each and every detail of the Rule.

CARU's proposed safe harbor program thus also includes a self-assessment form associated with a statement of agreement to participate in the CARU dispute resolution process by the submitter. CARU has been successful because industry members voluntarily agree to participate in the CARU process. Signing a statement of compliance reflects current practice while meeting the Rule's strictures that to be accepted as a "safe harbor," a self-regulatory program must provide a "mandatory" mechanism for the independent assessment of compliance. The self-assessment form, developed with input from an array of CARU Advisory Council members, again puts down on paper questions the CARU staff would normally ask about a site's information collection practices in reviewing its compliance status. It is designed in a format that is easy for companies, large and small, to complete, while addressing the key questions which the CARU staff must consider to assess compliance. In addition, the self-assessment form must be resubmitted annually to maintain participation.

The features above are adjuncts to CARU's ongoing program of periodic review and seeding, approaches recognized as effective mechanisms for compliance under § 312.10 (b)(2). CARU's proposal will allow CARU to offer "safe harbor" status to certain sites, while still maintaining its leadership role as the national self-regulatory body for children's advertising both online and offline even in instances where websites have not sought safe harbor status. Thus, consumers who have a complaint about sites that have elected not to participate formally in the CARU safe harbor program may nevertheless find that they can benefit from the CARU dispute resolution process just as they can now. It is worth noting that CARU does not charge consumers for its services, and will work with sites in an effort to resolve complaint even if they are not CARU supporters.

CARU'S SAFE HARBOR PROGRAM PROVIDES "THE SAME OR GREATER PROTECTIONS FOR CHILDREN" AS SPECIFIED UNDER THE RULE

The second question posed by the FTC is whether the provisions of the proposed guidelines provide the same or greater protections for children as those outlined in §§ 312.2 to 312.8 of the Rule. CARU's submission contains an excellent summary of the specific manner in which the proposed safe harbor program meets or exceeds the Rule's requirements. Again, it is important to remember that 1) the CARU proposal, including the Guidelines and the self-assessment form, must be read in its entirety, and 2) the underlying philosophy of CARU emphasizes mechanisms to foster the parent's role in monitoring their children's online experiences. The latter element was an important point leading to enactment of COPPA. It is in this area in particular where the Guidelines offer greater protection than the Rule.

For example, while § 312.4 of the Rule outlines detailed elements of notices under the Rule, the CARU Guidelines state explicitly:

In keeping with CARU's Principle regarding respecting and fostering the parent's role in providing guidance for their children, advertisers who communicate with children through e-mail should remind and encourage parents to check and monitor their children's use of e-mail and other online activities regularly.

CARU supporters routinely urge parents to supervise their children's web activities, both in notices posted at their site and in e-mail notices to parents.

Another example involves the provisions of the CARU Guidelines which state:

Even when advertiser communicates with the child by e-mail, there should be an opportunity with each mailing for the child or parent to choose by return e-mail to discontinue receiving mailings.

The Rule does not contain a specific requirement that each e-mail message to a parent or child include opt-out mechanisms.

The parental consent mechanisms outlined in § 312.5 closely parallel the CARU Guidelines. Notice and consent obligations triggered by the Rule occur if a site is either child-directed, or, if a site is a general-interest site, if the web site operator "knows" if a visitor is under 13. Age-screening thus becomes an important aspect of certain sites' operations. The Rule does not address age-screening specifically. The CARU Guidelines, however, establish that where age-screening is used, "care should be taken so that screening questions do not encourage children to provide inaccurate information to avoid obtaining parental permission." This guidance on age-screening is an excellent example of how CARU attempts to provide practical assistance to advertisers on a very subjective issue important to those who wish to responsibly limit their offerings to those over age 13.

Similarly, the CARU Guidelines reflect the essence of the requirements of § 312.5. CARU requires verifiable parental consent to be obtained using reasonable and appropriate methods where personal information is collected from a child. CARU has always recognized common sense exceptions, like allowing sites to respond to a one-time only request from a child or to contact the child for the purpose of requesting contact information from the parent. CARU, like the Rule, also permits online interaction between a child and a site with notice to a parent. The Rule, like the CARU Guidelines, recognizes that situations where a child's personal information is shared with third-parties or made available to the public online present greater risks, requiring a higher level of involvement by and approval by a parent. As noted previously, while the CARU Guidelines do not exactly parrot each provision of this section, this is immaterial because of the over-arching provision of the Guidelines which establishes that they are to be read in the context of applying notice, choice and consent, as defined by the FTC.

As to § 312.6, encompassing the right of a parent to review personal information provided by a child, the CARU proposal outlines the relevant provisions of the Guidelines, and CARU's approach to determining the identity of a parent sufficient to satisfy the requirements of § 312.6(a)(3). Like the Rule itself, the CARU Guidelines establish that the web site operator must use reasonable efforts to assure that the individual requesting the opportunity to access and correct a child's information indeed is that child's parent in a flexible way that is suited to fast developing technological changes.

The CARU Guidelines early on included language found in § 312.7 of the Rule. That section prohibits conditioning a child's participation on the collection of more personal information than was reasonably necessary to allow the child to participate in the online activity. This is an example of how CARU's early leadership on this issue was duplicated in language in the Act itself.

Finally, the Guidelines recognize the importance that maintaining confidentiality, security and integrity of personal information has, just as § 312.8 of the Rule does. The self-assessment process outlined by CARU will allow web site operators and the CARU staff to consider these issues in a practical, site-specific manner. The confidential nature of the self-assessments will help assure that the security, integrity and confidentiality of consumer information is not inadvertently compromised by publicizing specific security mechanisms.

CARU OFFERS PROVEN AND EFFECTIVE MECHANISMS TO ASSESS OPERATORS' COMPLIANCE WITH THE GUIDELINES

Question 3 relates to the effectiveness of mechanisms used to assess compliance. Section 312.10(b)(1) of the Rule requires that groups offering safe harbor programs must provide "an effective mandatory mechanism for the independent assessment of subject operators' compliance with the Guidelines." CARU's combination of routine monitoring, site seeding, and dispute resolution historically has offered a robust independent mechanism to assess compliance that is specifically recognized in this section of the Rule. The Rule's requirement that this mechanism be "mandatory" has lead CARU to adopt the signed self-assessment approach outlined above. Thus, the CARU proposal meets the requirements of the Rule.

CARU's 28-YEAR TRACK RECORD OF SUCCESS DEMONSTRATES THAT ITS INCENTIVES FOR COMPLIANCE WITH ITS SELF-REGULATORY GUIDELINES ARE EFFECTIVE

Question 4 relates to whether incentives for compliance offered by the safe harbor program are effective. It is hard to imagine that any self-regulatory program anywhere

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has a better success record than CARU does in resolving complaints. The techniques utilized by CARU are explicitly recognized under § 312.10(b)(3).

The first compliance incentive CARU offers is the existence of the Guidelines. They reflect broad input from CARU's academic advisors and industry on appropriate ethical standards. Guidelines for corporate behavior are highly influential to companies seeking to benchmark their actions. The major national advertisers who were instrumental in founding CARU wish to maintain consumer trust, and thus use their best efforts to comply with the legal and ethical norms reflected throughout the Guidelines. This is one reason why CARU's enforcement initiatives involving online information collection from children have largely focused on smaller, newer players that have not had the benefit of longstanding involvement with CARU.

The second incentive the CARU program provides is its process of publicizing the resolution of complaints. This allows the public to know both when a complaint has been shown to be unfounded, as well as when an advertiser decides to modify an ad or action in response to a concern raised via the CARU process.

The third incentive is the threat of referral to bodies like the FTC if the advertiser does not agree to modify behavior. As noted above, in its history, only 4% of CARU's cases have been unresolved and required referral.

CARU's success rate demonstrates conclusively that the process that it follows offers a combination of extraordinarily effective mechanisms to promote compliance. Moreover, CARU's decision that, at least initially, its safe harbor program will be open only to CARU supporters, will assure that the participants in the safe harbor program include primarily those companies who have, through their past voluntary cooperation with CARU, helped make this success rate so high.

THE CARU GUIDELINES PROVIDE AN ADEQUATE MEANS FOR RESOLVING CONSUMER COMPLAINTS

Question 5 asks whether the guidelines provide an adequate means for resolving consumer complaints. The value of the CARU self-regulatory program historically has been in its unparalleled ability to quickly resolve complaints. Most often, lapses occur based on lack of attention to detail or a failure to think through a particular ad or activity. The CARU process allows the CARU staff to quickly sensitize an advertiser or web site operator to an issue of concern. Again, most complaints are resolved informally with advertisers taking quick action. Where an advertiser is hesitant to act, referral through the normal procedures outlined by CARU in its safe harbor proposal occurs. In those very few instances where, despite a ruling requesting a change in behavior, a company refuses, the matter may be referred to an applicable legal authority. This not only

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adequately resolves complaints, but assists the FTC and the public by allowing scarce enforcement resources to be focused elsewhere.

CONCLUSION

Mars Incorporated enthusiastically endorses acceptance of the CARU program under the safe harbor provisions of COPPA. CARU's proposed program meets or exceeds the requirements of the Rule in every respect. Indeed, CARU's successful 28-year history of dispute resolution and 96% success rate set the gold standard that other safe harbor candidates will be hard pressed to match.

Respectfully submitted,



Sheila A. Millar
Counsel for Mars Incorporated