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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF IOWA**
8 **WESTERN DIVISION**

9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 AMERICAN POP CORN COMPANY,
a corporation,
13 Defendant.
14

Civil Action No. _____
COMPLAINT FOR CIVIL
PENALTIES, INJUNCTIVE, AND
OTHER RELIEF

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

18 1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children’s
19 Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6501-6506, 6502(c), and
20 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission
21 Act (“FTC Act”), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain
22 monetary civil penalties, a permanent injunction, and other equitable relief for defendant’s
23 violations of the Commission’s Children’s Online Privacy Protection Rule (the “Rule”), 16
24 C.F.R. Part 312, and of Section 5 of the FTC Act.

25 **JURISDICTION AND VENUE**

26 2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a),
27 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a). This action arises under
28 15 U.S.C. §§ 45(a)(1) and 6502(c).

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

3 d. Giving parents the option to consent to the collection and internal use of
4 their children's personal information without consenting to the disclosure of that
5 information to third parties;

6 e. Providing a reasonable means for parents to review the personal
7 information collected from their children and to refuse to permit its further use or
8 maintenance;

9 f. Not conditioning children's participation in an activity upon children
10 disclosing more personal information than is reasonably necessary to participate in that
11 activity; and

12 g. Establishing and maintaining reasonable procedures to protect the
13 confidentiality, security, and integrity of personal information collected from children.

14 8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
15 of the Rule constitutes an unfair or deceptive act or practice, in violation of Section 5(a)(1) of
16 the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15 U.S.C. § 6502(c).

17 **DEFENDANT**

18 9. Defendant American Pop Corn Company is an Iowa corporation with its
19 principal office or place of business located at One Fun Place, Sioux City, Iowa 51108.

20 10. Since at least April 21, 2000, defendant has been operator of
21 www.jollytime.com, a website on the Internet, a portion of which is directed to children.
22 Defendant uses the website to market its popcorn products. Defendant markets its products
23 throughout the United States, including through the Internet.

24 11. The acts and practices of defendant alleged in this complaint have been in or
25 affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

26 **DEFENDANT'S COURSE OF CONDUCT**

27 12. Defendant operates the www.jollytime.com website, which provides information
28 about popcorn and the Jolly Time brand. The site includes a portion directed to children

1 designated the “Kids Club.” The Kids Club features a cartoon character of a boy named “Bob,”
2 and child-oriented activities such as simple games and crafts projects. Defendant encouraged
3 children to join the Kids Club so that it could send them “cool, for-kids-only stuff,” and prizes
4 to the children who achieved the highest scores on the games offered on the site. These prizes
5 were incentives specifically directed to children, such as “cool” t-shirts featuring the Bob
6 cartoon figure blasting off on a rocket. (*See Exhibit 1.*)

7 13. Defendant collects or has collected personal information from children through
8 the operation of the Kids Club portion of its website and thus is an “operator” as defined in the
9 Rule.

10 **Defendant’s Information Collection Practices**

11 14. A child who registered to sign-up for the Kids Club was presented with an
12 online form to fill out with personal information. Although defendant’s website instructs
13 children to “check with your parents first,” the defendant did not notify and obtain verifiable
14 consent from their parents prior to collecting this personal information. (*See Exhibit 2.*)

15 15. During registration for the Kids Club, defendant collected personal information
16 from children including the child’s first and last name, physical address, email address, and day
17 and month of birth, excluding year of birth. Defendant intended to use the information
18 collected to send prizes to the children who had received the highest scores while playing the
19 games offered on the Kids Club. Up until approximately January 2001, defendant collected
20 information from approximately five hundred Kids Club registrants, and sent prize t-shirts and
21 coupons to twelve winners. The personal information required to join the club was more than
22 was reasonably necessary to allow children to participate in Kids Club activities.

23 **Defendant’s Privacy Policy**

24 16. Defendant posts a privacy policy, but the policy does not clearly,
25 understandably, or completely disclose all of its information collection, use, and disclosure
26 practices and other disclosures required by the Rule. (*See Exhibit 3.*)

27 17. Defendant’s privacy policy also makes the false or misleading statements that:
28 “When a guest under age 18 registers in the Kids Club area of our site, that guest will be asked

1 to provide the e-mail address of his/her parent or guardian. Parents/guardians will receive an e-
2 mail from us, informing them of the registration. At that time, parents/guardians may elect to
3 invalidate the registration according to the instructions provided.” (*Id.*)

4 **Other Relevant Conduct**

5 18. Defendant did not provide direct notice to parents of its practices regarding the
6 collection, use, and/or disclosure of children’s personal information and other disclosures
7 required by the Rule.

8 19. Defendant failed to obtain verifiable parental consent for collecting, using or
9 disclosing the personal information of the children.

10 20. Defendant provided no means for parents to review or delete the information
11 collected from their children.

12 **DEFENDANT’S VIOLATIONS OF THE CHILDREN’S ONLINE PRIVACY** 13 **PROTECTION RULE**

14 21. Since at least April 21, 2000, defendant has been an operator of a website, a
15 portion of which is directed to children, and has collected personal information from children.

16 22. In numerous instances, including the acts and practices described above,
17 defendant has collected personal information from children in violation of the Rule, 16 C.F.R.
18 Part 312, including:

- 19 a. Failing to provide sufficient notice on the website of what information it
20 collects online from children, and all other required content, in violation
21 of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
- 22 b. Failing to provide notice to parents of what information it collects online
23 from children, and all other required content, in violation of Section
24 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);
- 25 c. Failing to obtain verifiable parental consent before any collection or use
26 of personal information from children, in violation of Section 312.5 of
27 the Rule, 16 C.F.R. § 312.5;
- 28 d. Failing to provide a reasonable means for parents to review the personal

1 information collected from their children and to refuse to permit its
2 further use or maintenance, in violation of Section 312.6 of the Rule, 16
3 C.F.R. § 312.6; and

- 4 e. Conditioning children’s participation in an activity on their disclosing
5 more personal information than is reasonably necessary to participate in
6 such activity, in violation of Section 312.7 of the Rule, 16 C.F.R.
7 § 312.7.

8
9 **DEFENDANT’S UNFAIR OR DECEPTIVE ACTS OR PRACTICES
IN VIOLATION OF THE FTC ACT**

10 23. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or
11 deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

12 24. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
13 of the Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of
14 the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. § 6502(c).

15 25. By and through the acts and practices described in Paragraph 22 above,
16 defendant has violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

17 26. Defendant has represented in its privacy policy that: “When a guest under age 18
18 registers in the Kids Club area of our site, that guest will be asked to provide the e-mail address
19 of his/her parent or guardian. Parents/guardians will receive an e-mail from us, informing them
20 of the registration. At that time, parents/guardians may elect to invalidate the registration
21 according to the instructions provided.” (*See* Exhibit 3.)

22 27. In truth and in fact, defendant did not collect the e-mail addresses of
23 parents/guardians of Kids Club registrants under the age of 18, did not notify such
24 parents/guardians of the information collection, and did not provide such parents/guardians the
25 opportunity to invalidate their children’s registration. Therefore, the representations set forth in
26 Paragraph 26 are false and misleading.

27 28. Defendant’s false and misleading statements set forth in Paragraph 26 above
28 constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section
5(a) of the FTC Act.

1 **CIVIL PENALTIES, INJUNCTION AND OTHER RELIEF**

2 29. Defendant has violated the Rule as described above with knowledge as set forth
3 in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

4 30. Each collection, use, or disclosure of a child’s personal information from April
5 21, 2000 through the filing of this Complaint, in which defendant has violated the Rule in one
6 or more of the ways described above constitutes a separate violation for which plaintiff seeks
7 monetary civil penalties.

8 31. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by
9 Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461,
10 and Section 1.98(d) of the FTC’s Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court
11 to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule,
12 16 C.F.R. Part 312.

13 32. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized
14 to issue a permanent injunction against defendant’s violation of the FTC Act, as well as such
15 ancillary relief as may be just and proper.

16 **PRAYER**

17 WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A),
18 53(b) and 57b, and the Court’s own equitable powers to:

- 19 (1) Enter judgment against defendant and in favor of plaintiff for each violation
20 alleged in this Complaint;
- 21 (2) Award plaintiff monetary civil penalties from defendant for each violation of the
22 Rule, 16 C.F.R. Part 312;
- 23 (3) Permanently enjoin defendant from violating the Rule, 16 C.F.R. Part 312;
- 24 (4) Permanently enjoin defendant from violating the FTC Act, 15 U.S.C. §45, in
25 conjunction with the operation of any website or online service; and
- 26 (5) Award plaintiff such additional relief as the Court may deem just, proper, or
27 necessary to redress injury to consumers resulting from defendant’s violations of
28 the Rule, 16 C.F.R. Part 312.

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