

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

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In the Matter of)	
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TAKE-TWO INTERACTIVE SOFTWARE, INC.,)	Docket No. C-4162
and)	
ROCKSTAR GAMES, INC., corporations.)	
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COMPLAINT

The Federal Trade Commission, having reason to believe that Take-Two Interactive Software, Inc. and Rockstar Games, Inc., corporations (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Take-Two Interactive Software, Inc. (“Take-Two”) is a Delaware corporation with its principal office or place of business at 622 Broadway, New York, New York 10012.
2. Respondent Rockstar Games, Inc. (“Rockstar”) is a Delaware corporation with its principal office or place of business at 622 Broadway, New York, New York 10012. Rockstar is a wholly-owned subsidiary of Take-Two.
3. Respondents design, manufacture, advertise, offer to sell, sell, and distribute interactive entertainment software, commonly known as video games, to the public. Respondents’ software offerings include titles for the leading video gaming platforms – such as Sony PlayStation 2 and Microsoft Xbox systems, as well as for personal computers (“PCs”) – and include the video game *Grand Theft Auto: San Andreas*.

4. The acts and practices of respondents in the advertising and selling of *Grand Theft Auto: San Andreas* to consumers as alleged in this complaint are acts or practices in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

5. Virtually all video games sold by retailers in the United States are rated by the Entertainment Software Rating Board (“ESRB”). The ESRB is an industry self-regulatory body established in 1994 by the Entertainment Software Association (“ESA”). Most major retailers in the United States will not sell video games unless they have been rated by the ESRB.

6. An important purpose of the ESRB rating system is to provide information to consumers, including parents, about the content of a game to help consumers determine if the game is suitable for themselves, another person, or their family.

7. The ESRB ratings have two parts: 1) rating symbols that suggest age appropriateness; and 2) content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern. The ESRB system consists of the following rating symbols: **EC (Early Childhood)**, **E (Everyone)**, **E10+ (Everyone 10 and older)**, **T (Teen)**, **M (Mature 17+)**, and **AO (Adults Only 18+)**. There are over thirty different content descriptors for game elements, including Blood and Gore, Intense Violence, Lyrics, Mature Humor, Mild Violence, Nudity, Sexual Themes, Strong Language, Strong Sexual Content, Use of Drugs, and Violence.

8. Many consumers use and rely on the ESRB ratings when deciding whether to purchase a video game. In addition, many retailers use and rely on the system. Certain major retailers will not sell games that have been rated **AO (Adults Only 18+)** by the ESRB.

9. *Grand Theft Auto: San Andreas* is the fifth in a series of popular video games developed and marketed with the *Grand Theft Auto* name. Each of the previous four games in the *Grand Theft Auto* series, *Grand Theft Auto*, *Grand Theft Auto II*, *Grand Theft Auto III*, and *Grand Theft Auto: Vice City*, were rated **M (Mature 17+)** by the ESRB for one or more video game platforms. According to the ESRB rating system, games rated **M (Mature 17+)** have content that may be suitable for persons ages 17 and older. Games in this category may contain intense violence, blood and gore, sexual content, and/or strong language. Games rated **AO (Adults Only 18+)**, according to the ESRB rating system, have content that should only be played by persons 18 and older. Games in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.

10. The ESRB rates games prior to release based on information supplied to it by game companies. The ESRB requires game companies to answer a questionnaire about the type and frequency of content relevant to the ESRB’s rating criteria, such as violent action, sexual content, gambling, language, and the use of alcohol, tobacco, and drugs (hereafter, “relevant content”). The ESRB also requires game companies to submit video footage showing the most extreme relevant content in the game. Prior to July 2005, the ESRB’s published requirements mandated that game companies disclose relevant content resulting from the use of “cheat codes” or the

unlocking of virtual “Easter eggs” (*i.e.*, messages, graphics, sound effects, features, or actions that are enabled when the user inputs a set of commands on a game console or keyboard). The ESRB’s published requirements did not state that relevant content included unused textures (“skins”) in the game software or content in the game code that was inaccessible and unplayable without modifying the code.

11. On or about September 12 or 13, 2004, respondents submitted materials to the ESRB for the purpose of obtaining a rating for the PlayStation 2 version of *Grand Theft Auto: San Andreas*. Respondents did not inform the ESRB about the existence of unused nude female skins on the game disc or an unfinished “sex mini-game” that had been edited out of game play but was embedded in wrapped form in the game’s computer code. If the game code for the sex mini-game were to be unwrapped, the mini-game could be enabled, permitting the player to control the game’s principal male character, who was clothed, during simulated sexual acts with different clothed female characters. As described in paragraph 10, the ESRB’s published requirements at that time did not state that game companies were required to disclose unused skins in the game software or content in the game code that was inaccessible and unplayable without modifying the code.

12. Based on respondents’ submissions, on September 23, 2004, the ESRB issued a rating certificate for the PlayStation 2 version of *Grand Theft Auto: San Andreas*. The ESRB assigned the game the rating symbol **M (Mature 17+)** and the following content descriptors: Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs. Respondents formally accepted this rating on the same day.

13. In October 2004, respondents began selling the PlayStation 2 version of *Grand Theft Auto: San Andreas* to the public. The PlayStation 2 game discs offered for sale to the public contained the unused nude female skins and the wrapped code for the unfinished sex mini-game described in paragraph 11.

14. On or about January 7, 2005, respondents asked the ESRB to rate the PC and Xbox versions of *Grand Theft Auto: San Andreas* by requesting the ESRB to reissue the **M (Mature 17+)** rating symbol and associated content descriptors previously assigned to the PlayStation 2 version. On or about January 10, 2005, the ESRB reissued the **M (Mature 17+)** rating and content descriptors rating for the PC and Xbox versions of *Grand Theft Auto: San Andreas*.

15. In June 2005, respondents began selling the PC and Xbox versions of *Grand Theft Auto: San Andreas* to the public. The PC and Xbox game discs offered for sale to the public contained the unused nude female skins and the wrapped code for the unfinished sex mini-game described in paragraph 11.

16. From approximately October 2004 through July 2005, respondents disseminated or caused to be disseminated advertisements for *Grand Theft Auto: San Andreas*, including the attached **Exhibits A through D**. Respondents advertised the game through product packaging

and through numerous magazine advertisements, including ads in Electronic Gaming Monthly, Entertainment Weekly, The Onion, Maxim, Spin, PlayStation Magazine, and PC Gamer. Respondents also advertised the game through thirty- and sixty-second television commercials run on numerous networks and cable television channels, including UPN, MTV, TNT, USA Network, Spike TV, BET, and MTV. They also advertised the game on billboards, posters, point-of-purchase materials, and video displays at major game retailers, through respondents' websites, online banner ads, and in game trailers available for download from www.rockstargames.com/sanandreas. These advertisements contained the following statements and depictions, among others:

- A. PlayStation 2, Xbox, and PC product packaging (Exhibit A):
 - i. Front: “grand theft auto San Andreas™... MATURE 17+... M... CONTENT RATED BY ESRB”
 - ii. Rear: “ROCKSTAR GAMES PRESENTS A ROCKSTAR NORTH GAME... grand theft auto San Andreas™ Mature 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... ESRB CONTENT RATING... www.esrb.org”
 - iii. Game Discs: “grand theft auto San Andreas™... MATURE 17+... M... CONTENT RATED BY ESRB”
- B. Print advertisements (Exhibit B): “ROCKSTAR GAMES PRESENTS... grand theft auto San Andreas™... A ROCKSTAR NORTH PRODUCTION... IN STORES NOW... WWW.ROCKSTARGAMES.COM/SANANDREAS... MATURE 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... CONTENT RATED BY ESRB”
- C. Retailer advertising (Exhibit C):
 - i. Pre-sell gift card for Wal-Mart: “Reserve your copy today... Playstation2... GIFT CARD... grand theft auto San Andreas™... MATURE 17+... M... CONTENT RATED BY ESRB... Available 10.19.04... PlayStation®2... WAL*MART®”
 - ii. Window cling for Kmart: “grand theft auto San Andreas... NOW AVAILABLE ON XBOX®... MATURE 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... CONTENT RATED BY ESRB”
- D. Online banner advertisement (Exhibit D): “grand theft auto San Andreas... IN STORES NOW... MATURE 17+... M... Blood and Gore... Intense Violence...

Strong Language... Strong Sexual Content... Use of Drugs... CONTENT
RATED BY ESRB”

17. Respondents did not disclose the existence of the unused nude female skins and the wrapped code for the unfinished sex mini-game described in paragraph 11 either in their advertising for *Grand Theft Auto: San Andreas*, or on the product packaging.

18. On or about June 9, 2005, two days after the release of the PC version of *Grand Theft Auto: San Andreas*, a third-party computer programmer posted a software program on the Internet entitled “Hot Coffee.” When downloaded and installed, the Hot Coffee program enables users of the originally released PC version of the game to access the unfinished sex mini-game described in paragraph 11. An updated version of the program was posted on the Internet on June 11, 2005 that further modifies the sex mini-game described in paragraph 11 by rendering the female characters unclothed through use of the nude skins on the game disc.

19. Within weeks of the release of the Hot Coffee program for the PC version of *Grand Theft Auto: San Andreas*, PlayStation 2 and Xbox users were able to access the same content by taking certain steps, such as modifying or adding a hardware accessory to their game console, installing special software, and inputting codes developed by third parties.

20. On July 20, 2005, as a result of, among other things, viewing *Grand Theft Auto: San Andreas* as modified by the Hot Coffee program and the widespread availability of that program, the ESRB revoked the existing rating for the game. Respondents entered into an agreement with the ESRB that provided, among other things, that they would not contest a change in rating for the game from **M (Mature 17+)** to **AO (Adults Only 18+)** with an additional content descriptor for nudity.

21. Through the means described in paragraph 16, respondents represented, expressly or by implication, that the ESRB had rated the content of the original versions of *Grand Theft Auto: San Andreas* **M (Mature 17+)** and that the ESRB had assigned the following content descriptors as part of the ESRB rating: Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs. Respondents did not disclose to consumers that the game discs contained unused, but potentially viewable, nude female skins and disabled, but potentially playable, software code for a sexually explicit mini-game that the ESRB had not rated. The presence on the game discs of this unrated content that might change, and, in fact, did change, the rating of the game to **AO (Adults Only 18+)** with an additional content descriptor for nudity, would have been material to many consumers, particularly parents, in their purchase, rental, or use of the product. The failure to disclose these facts, in light of the representation made, was and is a deceptive practice.

22. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this seventeenth day of July, 2006, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: