

PREET BHARARA
United States Attorney for the
Southern District of New York
By: NATALIE N. KUEHLER
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel.: (212) 637-2741
Fax: (212) 637-2750
Email: natalie.kuehler@usdoj.gov

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	ECF Case
	:	
v.	:	09 Civ. _____
	:	
ICONIX BRAND GROUP, INC.,	:	COMPLAINT FOR CIVIL PENALTIES,
	:	INJUNCTION, AND OTHER RELIEF
Defendant.	:	
	:	

Plaintiff, the United States of America, by its attorney Preet Bharara, the United States Attorney for the Southern District of New York, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), alleges for its Complaint that:

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. §§ 6501-6506, 6502(c) and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), 56(a) and 57(b), 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 (the “Rule”), 16 C.F.R. Part 312, and Section 5 of the FTC Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).

3. Venue is proper in the Southern District of New York pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

DEFINITIONS

4. For purposes of this Complaint, the terms “child,” “collects,” “collection,” “Commission,” “delete,” “disclosure,” “Internet,” “online contact information,” “operator,” “parent,” “person,” “personal information,” “third party,” “verifiable consent,” and “website or online service directed to children,” are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE

5. Congress enacted the 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 Children’s Online Privacy Protection 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 on April 21, 2000.

6. The Rule applies to any operator of a commercial website or online service, or portion thereof, 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.

7. Among other things, the Rule requires a subject 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 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 when required by the Rule;
- c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children;
- d. Giving parents the option to consent to the collection and internal use of their children's personal information without consenting to the disclosure of that information to third parties;
- e. Providing a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
- f. Not conditioning children's participation in an activity upon the children disclosing more personal information than is reasonably necessary to participate in that activity; and,
- g. Establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

8. Pursuant to 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 violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15 U.S.C. § 6502(c).

THE PARTIES

9. The Federal Trade Commission is an agency of the United States created pursuant to 15 U.S.C. § 41, et seq., and is authorized to administer and enforce a wide variety of consumer protection laws. The United States is a sovereign and body politic.

10. Defendant Iconix Brand Group, Inc. (“Iconix” or “Defendant”) is a Delaware corporation with its principal office or place of business located at 1450 Broadway, 4th Floor, New York, NY 10018. Iconix operates a series of websites in connection with various consumer brands that it owns, licenses, and markets. Iconix is located and/or transacts business in the Southern District of New York.

11. At all times material to this Complaint, Defendant 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.

DEFENDANT’S COURSE OF CONDUCT

12. Defendant Iconix is a brand management and licensing company that owns numerous retail apparel brands, as well as several bath and bedding brands. Certain Iconix apparel brands, including Mudd, Candie’s, Bongo, and OP, hold popular appeal with children and teens.

13. Since at least 2006, Defendant has operated individual, brand-specific websites that advertise and promote each of its apparel brands. Numerous Iconix websites permit users to register for website activities, such as receiving periodic electronic brand updates, participating in sweepstakes contests, and engaging in interactive brand awareness campaigns. On certain

websites, including MyMuddWorld.com, users may publicly post pictures and personal stories.

14. To enroll users to receive electronic brand updates, Defendant generally collects a user's full name, email address, zip code, and date of birth; additionally, for some brand-related communications, Defendant collects a user's gender, full mailing address, and the answers to certain brand-preference questions (*e.g.*, favorite season, favorite look, and "#1 reason you buy an item"). *See* Exhibit A (electronic newsletter registration forms for www.candies.com (Candie's Clique), www.candiesfoundation.com (The Candie's Foundation), www.mymuddworld.com (Mudd Inside Scoop), and www.op.com (Join Team OP)).

15. The sweepstakes areas on Defendant's websites generally collect a user's full name, mailing address, email address, and date of birth in connection with registration. In certain instances, Defendant also collects a user's phone number. *See* Exhibit B (sweepstakes registration forms for www.bongo.com (Bongo "Be a Scentsation!") and www.candies.com (Candie's "Enter to Win")).

16. In addition, Defendant's www.mymuddworld.com website enables users to publicly share personal stories online. The website features a "Share Your Story" page aimed at highlighting how "Mudd Girls Move the World!" Defendant encourages girls to "Tell Us How You Move the World" by uploading a digital photo along with a story of personal philanthropy. Girls who choose to share their stories also are required to submit a date of birth, name, email address, and home state. *See* Exhibit C ("Tell us how you move the world!" sign up page). Defendant does not edit these stories and posts them as written on the Mudd website.

17. Since 2006, approximately 1,000 children under age 13 have registered on Iconix's websites. Through its online registration processes, Defendant has had actual knowledge that it has collected, maintained, and/or disclosed personal information from underage children. Defendant Iconix is an "operator" as defined in the Rule.

DEFENDANT'S INFORMATION COLLECTION, USE, AND DISCLOSURE PRACTICES

18. Iconix's online privacy policy, applicable to each website at issue in this complaint, states that:

IV. INFORMATION FROM PERSONS UNDER THE AGE OF 13

We do not seek to collect personally identifiable information from persons under the age of 13 without prior verifiable parental consent. If we become aware that we have inadvertently received such information online from a child under the age of 13, we will delete it from our records. If you are under the age of 13, please do not submit any personally identifiable information to us. If you are the parent or guardian of a person under the age of 13 who has provided personally identifiable information to us, please inform us by contacting us at info@iconixbrand.com and we will remove such information from our database. If you are concerned about your children's use of the Site, you may use web filtering technology to supervise or limit access to the Site.

Exhibit D (Iconix privacy policy). Users who register on any one of the relevant Iconix websites enter a date of birth as a part of the registration process. Despite Defendant's representation that it will delete all personally identifiable information from children about which it has knowledge, Defendant takes no such steps. Indeed, children who enter dates of birth indicating that they are under 13 years old are able to register on Defendant's websites, and their personal information is collected and used by Defendant.

18. After collecting dates of birth from children indicating that they are under 13, Defendant engages children in brand-related marketing campaigns by sending them periodic newsletters and brand updates, sent directly to their email addresses, and enrolling them in sweepstakes contests. After collecting birth date information from children on the MyMuddWorld.com website, Defendant permits them to upload and publicly post images of themselves and unedited personal stories on the website. In connection with the posting of children's images and/or stories, Defendant also publicly posts certain items of their information, including the child's name, age, and state.

19. As stated in Paragraph 17 above, Defendant posts a notice of its information practices online. See Exhibit D. This notice does not clearly, completely, or accurately disclose all of Defendant's information collection, use, and disclosure practices for children, as required

by the Rule, nor does it make other Rule-required disclosures, including listing the name, address, and telephone number of all operators collecting or maintaining personal information from children.

20. Defendant does not take the steps required by the Rule to provide parents with a direct notice of its information practices prior to collecting, using, or disclosing their children's personal information.

21. Defendant does not take the steps required by the Rule to obtain verifiable consent from parents prior to collecting, using, or disclosing their children's personal information.

22. In approximately 1,000 instances, Defendant collected, used, and/or disclosed personal information from children without first providing their parents with notice of its information practices, either on Defendant's websites or directly; and without obtaining verifiable consent from the parents prior to the collection, use, or disclosure.

**COUNT I
DEFENDANT VIOLATED THE CHILDREN'S
ONLINE PRIVACY PROTECTION RULE**

23. Since at least 2006, Defendant has operated its brand-related websites, through which it collected, with actual knowledge, personal information from children.

24. In connection with the acts and practices described above, Defendant collected, used, and/or disclosed personal information from children in violation of the Rule, including:

- a. Failing to provide sufficient notice on the Defendant's websites of what information it collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
- b. Failing to provide direct notice to parents of what information Defendant collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(c) of

the Rule, 16 C.F.R. § 312.4(c); and,

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

25. Pursuant to 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)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. § 6503(c).

**COUNT II
DEFENDANT ENGAGED IN UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN VIOLATION OF THE FTC ACT**

26. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.” Misrepresentations constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

27. Through the statements in the Iconix privacy policy referenced in Paragraph 17 above, Defendant has represented, expressly or by implication, that it would not seek to collect personal information from children without obtaining prior verifiable parental consent, and would delete any and all personal information collected from children about which Defendant became aware.

28. In truth and in fact, Defendant has knowingly collected personal information from children without obtaining prior verifiable parental consent, and has not deleted such personal information collected from children about which Defendant became aware. Therefore, the representation set forth in Paragraph 27 was false and misleading.

29. Defendant’s false and misleading representation, as set forth in Paragraph 27 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE COURT'S POWER TO GRANT RELIEF

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

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

32. 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 \$11,000 for each such violation of the Rule.

33. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against Defendant's violation of the FTC Act, as well as such ancillary relief as may be just and proper.

34. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendant's violations of the Rule.

35. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendant's violations of the Rule and the Act.

PRAYER

WHEREFORE, plaintiff United States of America, pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 57(b), and the Court's own equitable powers, demands judgment against the Defendant as follows:

- (1) Judgment against Defendant and in favor of Plaintiff for each violation of the Rule alleged in this Complaint;
- (2) An award to Plaintiff of monetary civil penalties from Defendant for each

violation of the Rule alleged in this Complaint;

- (3) Permanent enjoinder of Defendant from violating the Rule and Act; and
- (4) Such other and further relief as the Court may deem just, proper, or necessary to redress injury to consumers resulting from Defendant's violations of the Rule and Act.

DATED: _____, 2009

OF COUNSEL:

PHYLLIS HURWITZ MARCUS
MAMIE KRESSES
Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mail Drop NJ-3212
Washington, D.C. 20580
(202) 326-2054;2870 (voice)
(202) 326-3259 (fax)

FOR THE UNITED STATES OF AMERICA:

TONY WEST
Assistant Attorney General
Civil Division
U.S. Department of Justice

PREET BHARARA
United States Attorney

By: _____
NATALIE N. KUEHLER
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
(212) 637-2741 (voice)
(212) 637-2750 (facsimile)
natalie.kuehler@usdoj.gov

EUGENE M. THIROLF
Director
Office of Consumer Litigation

KENNETH L. JOST
Deputy Director
Office of Consumer Litigation

ALAN J. PHELPS
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
202-307-6154 (voice)
202-514-8742 (facsimile)
alan.phelps@usdoj.gov