



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 26, 2020

Lindsey Barrett and Laura Moy
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue NW, Room 312
Washington, D.C. 20001

Re: In re Retina-X Studios, LLC, Matter No. 172-3118

Dear Ms. Barrett and Ms. Moy:

Thank you for your comment on behalf of Campaign for a Commercial-Free Childhood and the Center for Digital Democracy regarding the Federal Trade Commission's ("Commission" or "FTC") consent agreement in the above-entitled matter. The Commission appreciates and carefully considers all public comments before finalizing any proposed settlements. *See* 16 C.F.R. § 2.34(c).

Retina-X Studios, LLC and its owner, James N. Johns, Jr., developed and sold three applications that allowed a user to surreptitiously monitor activities on another person's mobile device. The Complaint alleges that Retina-X and Johns violated Section 5 of the FTC Act by developing and selling monitoring applications that required circumvention of mobile device security protections without taking reasonable steps to ensure that these applications would be used for legitimate and lawful purposes. In addition, the Complaint alleges that Retina-X and Johns violated Section 5 of the FTC Act by misrepresenting that consumers' personal information would remain confidential, private, and safe. Finally, the Complaint alleges that Retina-X and Johns violated the Children's Online Privacy Protection Act ("COPPA Rule") by failing to take reasonable measures to secure personal information collected from children.

The Decision and Order contains injunctive provisions addressing the alleged unfair and deceptive conduct and violation of the COPPA Rule. The Order restrains Retina-X and Johns from selling monitoring products unless they meet conditions to ensure the products will be used for legitimate and lawful purposes. The Order also enjoins Retina-X and Johns from violating the COPPA rule, prohibits misrepresentations regarding the protection of personal information, requires the deletion of personal information that has been collected from monitoring products, and mandates the implementation of an information security program with assessments to be obtained from a third party.

In your comment, you object to the fact that the consent agreement does not include a civil penalty for the alleged COPPA violation.

The Commission agrees that the respondents' alleged COPPA violation was serious, and under different circumstances, the Commission would strongly consider seeking both injunctive and monetary relief. Here, however, the company used the guise of parents monitoring children as a pretext to sell monitoring products for illicit purposes, such as stalking of adult domestic partners. While the presence of some child users justified a COPPA count, the civil penalty factors, such as proposed respondents' ability to pay and stay in business, would have led to a civil penalty that was quite small, so the Commission focused on securing injunctive relief to prevent future violations. The Commission also observed that marketing and sales of the applications at issue ceased in 2018.

COPPA is not a one-size-fits-all statute, and the Commission has tailored its use to specific facts and circumstances, as in this case.¹ In addition, the Commission is fully utilizing another tool Congress has given it: APA rulemaking authority. The Commission is currently engaged in a review of the COPPA Rule to assess whether any amendments would make COPPA more effective in light of the rapid technological changes impacting the online children's marketplace.

The Commission has determined that the public interest would best be served by issuing the Complaint and the Decision and Order in the above-entitled proceeding in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. The Commission thanks you again for your comment.

By direction of the Commission.

April J. Tabor
Acting Secretary

¹ As shown by the YouTube and TikTok cases, the Commission does not hesitate to seek significant civil penalties for COPPA violations. However, in cases involving smaller actors with lesser ability to pay, the statutory factors counsel toward imposing smaller civil penalties or no penalty at all. This matter falls on the latter end of that spectrum. As another example, in the recent i-Dressup.com case the Commission weighed the statutory factors and ultimately obtained a relatively modest civil penalty of \$35,000.