

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 

STATE OF TEXAS,

Plaintiff

vs.

FUTURE US, INC.

a/k/a "GAMESRADAR.COM,"

Defendant.

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Civil Action No. A07CA 987LY

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff, the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, files this Original Complaint against Defendant, Future US, Inc., and for causes of action would respectfully show the Court as follows:

JURISDICTION AND VENUE

1. This action is brought by Attorney General Greg Abbott, through his Consumer Protection & Public Health Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506, and the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312 ("the Rule").
2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a). This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).

3. Venue of this suit lies in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred within the Western District of Texas, as more specifically described below.

PUBLIC INTEREST

4. Courts have long recognized that consumers have a right to privacy. Specifically, this right provides consumers the option to keep their personal information private, because allowing the unauthorized collection and distribution of personal information not only intrudes on a person's desire to be left alone, but also subjects the person to increased security risks and a greater risk of identity theft, one of the fastest growing crimes in the United States. Because of technological advancements that allow web site operators and others to secretly collect almost unlimited information about visitors, online privacy protections are particularly important. Moreover, because children rarely comprehend the importance of privacy and the risks that disclosure of their personal information may expose them to (e.g. sexual predators, targeted behavioral advertising), it is essential that parents be involved in their children's decision about what information is appropriate to share.¹
5. In 1998, in order to help protect the safety and privacy interests of children, Congress enacted COPPA, which generally prohibits the unauthorized or unnecessary collection of children's personal information by Internet Web site operators.
6. In this cause, Plaintiff alleges that Defendant is causing harm to the safety and privacy of children online, and as such Plaintiff has reason to believe that an interest of the residents of

¹See, e.g., Protection of Children's Privacy on the World Wide Web, 1998: Hearings on S. 2326 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science & Transportation, 105th Cong., 2nd Reg. Sess. (1998) (statement of Robert Pitofsky, Chairman of the Federal Trade Commission).

Texas has been or is threatened or adversely affected by Defendant's practices as alleged herein. Plaintiff further has reason to believe that Defendant has engaged in and will continue to engage in a pattern or practice of unlawful practices as set forth below. Therefore, this action is in the public interest.

ACTS OF AGENTS

7. Whenever it is alleged in this petition that the Defendant did any act, it is meant that Defendant performed or participated in the act, or that Defendant's officers, agents, representatives, or employees performed or participated in the act on behalf of and under the authority of Defendant.

DEFENDANT

8. Defendant, Future US, Inc., is a California corporation headquartered at 4000 Shoreline Court, Ste. 400, San Francisco, CA, 94080, which is engaged in trade and commerce in Texas. Defendant may be served by serving its agent for service of process, Charles Schug, at 4000 Shoreline Ct., Suite 400, San Francisco, CA 94080.

STATEMENT OF FACTS

9. Defendant owns and operates a commercial Web site, www.gamesradar.com, for people with an interest in video games on almost any platform or game system (e.g. Personal Computers, xBox, Sony Playstation, Nintendo Wii, etc.). Defendant's Web site is accessible to anyone in the State of Texas who has a computer and Internet access, and Defendant has registered users from Texas, including users in Austin, Texas. While the Web site includes content or allows access to content that is inappropriate for children (e.g. violent content and downloads that modify games to make characters appear nude), the Web site also includes information

about games that are clearly targeted to young children, including Disney's Chicken Little, Ice Age 2, and Cars.²

10. At gamesradar.com, users can review popular video games, find game "cheats" (unrevealed codes that give the player an advantage during game play), enter contests, download video game demonstrations and "modifications," and meet other people interested in video games.³ For instance, a person interested in the popular video game "Madden NFL 2008" may become a member of Defendant's Web site in order to communicate with other members interested in the same game or to find game cheats.
11. In order to access certain features of Defendant's Web site, users must complete a free registration process which requires a user to enter his or her personal information including: first and last name, electronic mail ("e-mail") address, physical address, including city, state, country and zip code, gender, and date of birth.
12. Defendant represents that it does not "request or knowingly collect personally identifiable online or offline contact information from users under 13 years of age." Defendant also represents that if users under thirteen try to register, they are "screened via a [sic] online age check that uses cookies." So, although Defendant knows that the content of its Web site attracts children under the age of thirteen, (in fact, as noted above, some is directly targeted to children under age 13), in a blatant attempt to avoid having to comply with COPPA,

²Each of these games are based on the popular children's movies of the same name.

³See, e.g., the home page of gamesradar.com, attached as Exhibit A.

Defendant claims to exclude children under thirteen from registering on its Web site.⁴

13. Contrary to Defendant's representations, it does not provide any kind of screening process to exclude children under the age of thirteen. Instead, Defendant encourages children under thirteen to lie about their age by requiring them to choose their birth year from a drop down menu. The menu, however, only gives the user the option to select a year that would generally make the user thirteen or older (e.g. currently the drop down menu only includes the years 1994 and before). Thus, if a ten-year old child, whose birth date is January 1, 1997, attempts to register, the earliest birth year he could select would be 1994 indicating that he was age thirteen. *See Exhibit B.*
14. Given the fact that Defendant knows that the content of its Web site attracts children under the age of thirteen, and in fact some content is directly targeted to children under age 13, Defendant is well aware that children under the age of thirteen routinely register on its Web site. Moreover, despite its attempt to preclude children from honestly registering, Defendant's age verification system allows a twelve year old child to register with his or her true birth date, if the child will turn thirteen by year's end. For example, a twelve year old child with a birth date of December 31, 1994, is able to register with gamesradar.com before his or her thirteenth birthday. Thus, despite its effort to stick its head in the sand in order to avoid complying with COPPA, Defendant knowingly collects personal information from children under the age of thirteen.
15. Despite the fact that Defendant has knowledge that children under the age of thirteen are

⁴Defendant does represent that users under thirteen who want to register can submit a signed parental consent form, but they do not provide any such form on their Web site or otherwise provide any information about how to submit such parental consent form.

registering on its Web site and it is therefore collecting personal information from such children, Defendant fails to obtain any form of parental consent. Furthermore, Defendant fails to comply with other requirements of COPPA. For example, although the home page of the Web site contains a link to the Defendant's privacy policy, the link, is neither clearly labeled nor placed in a clear and prominent location. *See* Exhibit A. Moreover, the privacy policy fails to properly disclose Defendant's information practices as required by COPPA, including what specific information has already been collected from the child, what information will be collected from the child, and the intended uses of such information. Defendant's privacy policy also fails to disclose that Defendant may not collect more personal information than is reasonably necessary as a condition to a child's participation in any of the online activities (e.g. contests, games, etc.), fails to give the parents the option to consent to the collection and use of their child's personal information without consenting to the disclosure of such information, and fails to publish the Web site operator's contact information, including a name and phone number.

VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT

16. Plaintiff realleges paragraphs one through fifteen in this Complaint and incorporates them here as if set forth in full.
17. Defendant has violated COPPA by :
 - a. Failing to provide sufficient notice on its Web site of what information it collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Sections 312.3 and 312.4 of the Rule, 16 C.F.R. §§ 312.3 and 312.4;

- c. Failing to provide notice to parents 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(c) of the Rule, 16 C.F.R. § 312.4(c);
- d. Failing to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, in violation of Sections 312.3 and 312.5 of the Rule, 16 C.F.R. §§ 312.3 and 312.5; and,
- e. Conditioning a child's participation in an activity on their disclosing more personal information than is reasonably necessary to participate in such activity, in violation of Sections 312.3 and 312.7 of the Rule, 16 C.F.R. §§ 312.3 and 312.7.

PRAYER

- 18. Because the Defendant has engaged in the acts and practices described above, Defendant has violated the law as alleged in this Complaint and, unless restrained by this Honorable Court, Defendant will continue to violate the laws of the UNITED STATES OF AMERICA and will cause injury, loss, and damage to the STATE OF TEXAS and to the general public.
- 19. WHEREFORE, Plaintiff requests that, pursuant to COPPA and the Court's own equitable powers, this Court:
 - a. Award Plaintiff such preliminary and ancillary relief as may be necessary to prevent the likelihood of consumer injury during the pendency of this action, and
 - b. Permanently enjoin the Defendant from continuing to violate the Rule, including by:
 - i. Failing to comply with proper collection, use, or disclosure practices as related to children;
 - ii. Failing to post a clear and prominent link to Defendant's notice of its

information practices with regard to children on the home page of its Web site and at each area on the Web site where personal information is collected from children;

- iii. Failing to make all disclosures required by the Rule in its notice of its information practices;
- iv. Failing to obtain verifiable parental consent before the collection of personal information from children;
- v. Failing to properly notify parents of its collection practices as related to children;
- vi. Failing to provide a means for parents to review the personal information collected from their children and the ability to refuse to permit its further use or maintenance;
- vii. Conditioning a child's participation in an activity upon the child disclosing more personal information than is reasonably necessary to participate in that activity; and
- viii. Failing to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

20. In addition, Plaintiff, STATE OF TEXAS, further prays that this Court award damage, restitution, or other compensation on behalf of residents of the State, pursuant to 15 USC § 6504.

21. The Plaintiff further prays that the Court grant all other relief to which the Plaintiff may show itself entitled.

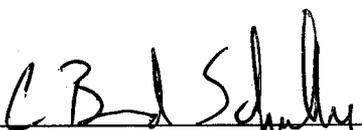
Respectfully submitted,

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