

Before the
Federal Trade Commission
Washington, DC 20580

In the Matter of

Complaint, Request for Investigation,
and Request for Policy Guidance on
the Deceptive Practice of Influencer
Marketing Directed to Children

COMPLAINT, REQUEST FOR INVESTIGATION,
AND REQUEST FOR POLICY GUIDANCE

Submitted by

Campaign for a Commercial-Free Childhood,

Center for Digital Democracy,

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The Campaign for a Commercial-Free Childhood (CCFC) and Center for Digital Democracy (CDD), by their attorneys, the Institute for Public Representation, joined by Public Citizen (collectively, “the public interest advocates” or “the advocates”), ask the Federal Trade Commission (“FTC” or “the Commission”) to investigate and take enforcement action against companies that create and distribute child-directed “influencer” marketing and to issue clear policy guidance explaining that such marketing is an unfair and deceptive marketing practice prohibited by Section 5 of the Federal Trade Commission Act.

Influencer marketing combines several traditional and digital marketing tactics,¹ including native advertising,² product placement,³ social media viral communications,⁴ vlogging,⁵ branded content,⁶ data driven programmatic

¹ *Influencer Marketing Guide*, RhythmOne (2016), <https://www.rhythmone.com/rhythmbuzz/insights/2016-influencer-marketing-guide>.

² *Native Advertising*, Sharethrough, <http://www.sharethrough.com/nativeadvertising/> (last visited Oct. 11, 2016).

³ *The 5 Types Of Influencer Marketing Campaigns Brands Can Launch*, Mediakix, http://scl.io/Ix_9TXvq#gs.NYmcZnc (last visited Oct. 5, 2016).

⁴ *How to Use Influencers in Viral Marketing*, TapInfluence (March 18, 2016), <https://www.tapinfluence.com/blog-how-to-use-influencers-in-viral-marketing/>.

⁵ Matt Donegan, *How to recruit vloggers/influencers on a budget*, Campaign US (July 5, 2016), <http://www.campaignlive.com/article/recruit-vloggers-influencers-budget/1401127>.

⁶ *6 Ways Facebook Branded Content Changes the Influencer Game*, Shift Communications (Apr. 11, 2016), <http://www.shiftcomm.com/blog/6-ways-facebook-branded-content-changes-the-influencer-game/>.

targeting,⁷ and bots.⁸ With influencer marketing, companies promote their brands and products through “influencers” – people whose implicit or tacit endorsement of a product is designed to influence viewers and followers to want that product.⁹ Influencer marketing often leverages an influencer’s social media relationships and followers on platforms such as YouTube, Instagram, and Snapchat.¹⁰ New and established marketing firms are leading a growing influencer-marketing infrastructure that is constantly targeting consumers.¹¹

⁷ See Dean Thomas, *How Programmatic is Changing the Game for Influencer Marketing*, Gnock (May 2, 2016), <http://blog.gnockapp.com/2016/05/02/how-programmatic-is-changing-the-game-for-influencer-marketing/>; See also Yuyu Chen, *Programmatic comes to Snapchat and Instagram influencer campaigns* (Mar. 16, 2016), <http://digiday.com/agencies/sxsw2016-startup-moves-programmatic-snapchat-instagram/>.

⁸ Vladimir Klimontovich, *Bot influencers are the programmatic future of conversational advertising*, Tech Crunch (July 21, 2016), <https://techcrunch.com/2016/07/21/bot-influencers-the-programmatic-future-of-conversational-advertising/>.

⁹ See *What Is Influencer Marketing?*, Huffington Post (July 5, 2016), http://www.huffingtonpost.com/global-yodel/what-is-influencer-marketing_b_10778128.html; Kyle Wong, *The Explosive Growth of Influencer Marketing and What It Means for You*, Forbes (Sept. 10, 2014), <http://www.forbes.com/sites/kylewong/2014/09/10/the-explosive-growth-of-influencer-marketing-and-what-it-means-for-you/>.

¹⁰ *10 Reasons Why Influencer Marketing is the Next Big Thing*, SocialTimes (Jul. 14, 2015), <http://www.adweek.com/socialtimes/10-reasons-why-influencer-marketing-is-the-next-big-thing/623407> (“As the world has shifted to social media, consumers look at fellow consumers to inform their purchasing decisions. Instead of looking at companies, as they did in the past, they now look at each other and at their favorite personalities, who are consolidating massive followings on YouTube, Instagram, Snapchat, Pinterest, and other platforms.”)

¹¹ See *What Is Influencer Marketing?*, *supra* note 9; Kyle Wong, *supra* note 9.

Many marketers use this technique to reach child audiences. Companies are directing billions of dollars to content-based marketing, including influencer advertisements targeted toward children.¹² Marketers are distributing influencer ads on YouTube, Twitter, Vine, and Instagram because “these are the platforms where you find young buyers waiting to be influenced.”¹³ According to a representative of the marketing agency that represents the toy company Hasbro, “The industry as a whole is looking to follow kids and where they are consuming media.”¹⁴ One marketing blog post urges brands to “partner up with tween YouTube stars” because child-oriented YouTube influencers can be thought of “as the Mickey Mouse Club of our generation, except with 10 times the reach.”¹⁵

But as a number of filings by the public interest advocates have described, and as this complaint elaborates on, influencer marketing directed to children violates federal law. On April 7, 2015, the advocates reported on and asked the FTC to take action to stop widespread deceptive child-directed endorsement

¹² Shannon Bond, *Lines blur between advertising and children's entertainment*, Financial Times (Sept. 13, 2015), <http://www.ft.com/cms/s/0/20eaa52c-5249-11e5-b029-b9d50a74fd14.html#axzz4KpswcILN>.

¹³ Adam Popescu, *The Fast-Growing, Profitable Market For Kid "Influencer" Endorsements On Twitter, Instagram, Vine, YouTube, And Pinterest*, Fast Company (Mar. 26, 2014), <https://www.fastcompany.com/3028278/the-fast-growing-profitable-market-for-teenage-influencer-endorsements-on-twitter-instagram->.

¹⁴ Mike Shields, *Kids Advertisers Slowly Embrace Web Video, Welcome YouTube*, Wall Street Journal (Feb. 24, 2015), <http://blogs.wsj.com/cmo/2015/02/24/kids-advertisers-slowly-embrace-web-video-welcome-youtube/>.

¹⁵ Brian Honigman, *Want to increase your brand's relevancy? Partner up with tween YouTube stars*, The Next Web (Dec. 18, 2013) <http://thenextweb.com/entrepreneur/2013/12/18/want-increase-brands-relevancy-partner-tween-youtube-stars/>.

videos on YouTube Kids.¹⁶ On November 24, 2015, the advocates filed a supplement to the April filing, “provid[ing] additional information regarding the children’s media marketplace and [YouTube Kids] that shows the urgent need for FTC action,” in particular noting that while Google made some changes to the YouTube Kids app, none of the changes altered advocates’ prior conclusions contained in the April request for investigation.¹⁷ At the same time, the advocates documented for the FTC that much of the child-directed influencer marketing available on YouTube Kids violates the featured brands’ own consumer-facing representations regarding their advertising practices.¹⁸ Finally, on September 7, 2016, the advocates filed a letter with the FTC documenting the

¹⁶ Campaign for a Commercial-Free Childhood & Center for Digital Democracy, *Request for Investigation into Google’s Unfair and Deceptive Practices in Connection with its YouTube Kids App 1-2* (April 7, 2015), <http://commercialfreechildhood.org/sites/default/files/youtubekidslettert.pdf> [hereinafter *Request for Investigation*] (“The videos provided to children on YouTube Kids intermix commercial and other content in ways that are deceptive and unfair to children”; “Many of the video segments endorsing toys, candy and other products . . . have undisclosed relationships with product manufacturers”; and “much of the content available on the [YouTube Kids] app violates its own policies.”).

¹⁷ Campaign for a Commercial-Free Childhood & Center for Digital Democracy, *Supplement to Request for Investigation into Google’s Unfair and Deceptive Practices in Connection with its YouTube Kids App 1* (Nov. 24, 2015), <http://www.commercialfreechildhood.org/sites/default/files/YTKsupplement.pdf> [hereinafter *Supplement*].

¹⁸ Campaign for a Commercial-Free Childhood & Center for Digital Democracy, *Violations by Members of the Children’s Food and Beverage Advertising Initiative of Pledges Not to Advertise Products to Children that Do Not Meet Uniform Nutrition Criteria* (Nov. 24, 2015), <http://www.commercialfreechildhood.org/sites/default/files/CFBAI.pdf> [hereinafter *CFBAI Complaint*].

extent of youth-oriented influencer advertising on Instagram and imploring the Commission to take action against the companies, agencies, and influencers that are failing to make required endorsement disclosures.¹⁹

Despite these complaints and the ongoing public discourse regarding this troubling practice – of which the FTC has been made aware, repeatedly – the Commission has failed to bring this practice to an end. Child-directed influencer marketing is an unfair and deceptive trade practice under the FTC Act.²⁰ Yet, as the advocates have documented previously and again in this filing, countless popular child-oriented videos contain or consist entirely of influencer marketing.²¹ Companies owned by major corporations broker the relationships between brands and content creators so that these videos can be made.²² Google actively participates in and even facilitates the proliferation of these unfair and deceptive advertisements on its YouTube platform.²³ Meanwhile, the FTC has not taken enforcement action against these companies, nor has it stopped the proliferation of child-directed influencer marketing by making clear that the creation and dissemination of such advertisements is an unfair and deceptive practice prohibited under the FTC Act.

¹⁹ Letter from Public Citizen, Commercial Alert, Campaign for a Commercial-Free Childhood, and Center for Digital Democracy to Federal Trade Commission Bureau of Consumer Protection 1, 4 (Sept. 7, 2016), <http://www.citizen.org/documents/Letter-to-FTC-Instagram-Endorsements.pdf>.

²⁰ See *infra* Section I. Influencer marketing is arguably unfair and deceptive even when it is directed to adults; it is clearly unfair and deceptive when directed to children.

²¹ Kyle Wong, *supra* note 9. See *infra* Section II.

²² See *infra* Section II.

²³ See *infra* Section III.

It is past time for the FTC to act. The Commission must take swift action to safeguard children from unfair and deceptive influencer marketing. The FTC must investigate and take enforcement action against Google and the Multi-Channel Networks that create influencer advertisements that are targeted to children. In addition, the FTC should issue clear policy guidance that child-directed influencer marketing is an unfair and deceptive practice under Section 5 of the FTC Act, and work to reverse the trend of materially harmful marketing toward children.

I. Child-Directed Influencer Marketing Is an Unfair and Deceptive Practice Prohibited Under the FTC Act

Online advertisements featuring influencers directed to children are unfair and deceptive under Section 5 of the FTC Act. Section 5 prohibits unfair and deceptive acts and practices in advertising.²⁴

There are three elements to a deception case. First, there must be a representation, omission, or practice likely to mislead the consumer.²⁵ Second, the act or practice must be evaluated from the perspective of a reasonable consumer.²⁶ Third, the representation, omission, or practice must be material.²⁷

A. Influencer Marketing Is Likely to Mislead Children

As discussed briefly above and in more depth below, a great deal of digital influencer marketing is child-directed. Therefore, when evaluating

²⁴ 15 U.S.C. § 45 (2012).

²⁵ *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 170-71 (1984).

²⁶ *Id.*

²⁷ *Id.*

whether or not such marketing is deceptive, the FTC must “consider consumer expectations from the standpoint of an ordinary child or teenager.”²⁸ The Commission has recognized that, in general, “children are more vulnerable to marketing messages than adults.”²⁹ The public interest advocates have previously directed the FTC to the rich body of research confirming this and elaborate on those findings below.³⁰ The research shows that, when evaluated from the perspective of a child, influencer marketing is indeed likely to mislead.

Owing to their immature cognitive development, children—especially younger children—have difficulty differentiating between content and advertising.³¹ As an initial matter, “younger children have very little knowledge about what a sponsorship is and how it works.”³² They are confused about who creates sponsorship messages, who pays for them, and who profits.³³ Indeed, research suggests that awareness of ads does not emerge until 4–5 years of age.³⁴ Even when children can differentiate between an ad and non-sponsored content, they still have considerable trouble understanding the intent of the ad. For example, according to some researchers, children ages 6–7 predominantly view advertisements as informational programs that are used as “a break for either the

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See Supplement, supra* note 17, at 1-2.

³¹ *Id.*

³² Reinhard Grohs, et al., *An Investigation of Children’s Ability to Identify Sponsors and Understand Sponsorship Intentions*, 29 *Psychology & Marketing* 907, 914.

³³ *Id.* at 910.

³⁴ *Id.*

people working on television or the viewers.”³⁵ One study published in 2011 found that it was not until children reached ages 7–8 that they began to understand that advertisers are motivated by a desire to sell products, in the context of television food advertisements.³⁶ By ages 9–10, children may be able to describe this “selling intent” and even profit motive while “remaining naïve about the advertiser’s intent to make viewers purchase something they otherwise might not.”³⁷ “Higher order understanding of the ‘persuasive intent’ of advertising . . . emerged much later and even by 11–12 years was still only described by 40% of [test subjects].”³⁸ Recent research indicates that even older children have difficulty distinguishing between content and advertising, especially when it involves the myriad of techniques used in digital marketing.³⁹

Influencer marketing and other digital marketing practices that blur advertising and content make it even more difficult for children to comprehend ads. Several studies have found that children have “lower awareness of advertising on websites compared with television, and greater difficulty

³⁵ Andreas I. Andronikidis & Maria Lambrianidou, *Children’s Understanding of Television Advertising: A Grounded Theory Approach*, 27 *Psychology & Marketing* 299, 316 (2010).

³⁶ Owen B.J. Carter, et al., *Children’s understanding of the selling versus persuasive intent of junk food advertising: Implications for regulation*, Science Direct, <http://www.sciencedirect.com/science/article/pii/S027795361100061X> (“Highlights” section on webpage) (last visited Sept. 29, 2016).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Agnes Nairn, *Changing the Rules of the Game: Implicit Persuasion and Interactive Children’s Marketing*, NPLAN/BMSG Meeting Memo 2 (2009), <http://www.digitalads.org/how-youre-targeted/publications/changing-rules-game-implicit-persuasion-and-interactive-children%E2%80%99s>.

recognising it.”⁴⁰ The meshing together of sponsored and non-sponsored content online can make “discriminating between an advertisement and entertainment . . . a much more difficult task for a child.”⁴¹ For example, it is difficult or impossible for children to distinguish between advertising and content in “advergames” such as “Lifesavers Boardwalk Bowling” and the “Oreo Dunking Game.”⁴² Digital ads that embed advertising in program or editorial content are “more difficult to identify as a persuasive message, especially for children.”⁴³ Brand placement is particularly problematic for children, because children focus their attention on the content and utilize “fewer cognitive resources . . . to consciously scrutinize and evaluate placed brands.”⁴⁴ The blending of ads and entertainment “may simply overwhelm the defenses children are still in the process of building.”⁴⁵

Existing FTC and industry regulations specify that advertising must be disclosed. For example, the Children’s Advertising Review Unit (CARU) guidelines require marketers to clearly disclose to children when an advertisement has been integrated into online content.⁴⁶ The self-regulatory

⁴⁰ *Id.*

⁴¹ Dr. Barbie Clarke & Siv Svanaes, *Digital marketing and advertising to children: a literature review*, Advertising Education Forum 45 (2012) (citing Mallinckrodt and Mizerski 2007; Ali, Blades et al. 2009).

⁴² *Id.*

⁴³ Laura Owen, et al., *Is Children's Understanding of Nontraditional Advertising Comparable to Their Understanding of Television Advertising?*, 32 *Journal of Public Policy & Marketing* 195, 197 (2013).

⁴⁴ *Id.* at 203.

⁴⁵ Kristin Voigt, et al., *Childhood Obesity: Ethical and Policy Issues* 159 (2014).

⁴⁶ Owen, et al., *supra* note 43, at 198.

group recently took one influencer to task for failing to make such disclosures.⁴⁷ In its decision, it stated, “where sponsored videos featuring a brand’s products have the look and feel of user-generated content but are advertising messages, they should be labeled as such.”⁴⁸ However, influencer marketing often fails to comply even with the low bar of disclosure requirements, particularly when using embedded advertising techniques, such as brand placement.⁴⁹ These failures to disclose are deceptive to parents who have no way of knowing whether the content their children are consuming is marketing or not.

But even if commercial intent and sponsorships were always disclosed, this would not negate the inherent deceptiveness of child-directed influencer marketing. As explained above, children cannot understand persuasive intent even when they correctly identify what they are viewing as advertising. This misunderstanding is not remedied by disclosure terminology commonly used by advertisers, such as “batteries not included,” according to one study.⁵⁰ Another study found that verbal disclosures cannot correct misleading visual impressions formed by children watching commercials because children have insufficient cognitive abilities to understand the idea the disclosure is trying to

⁴⁷ ‘EvanTube’ YouTube Channels to Disclose Sponsored Videos as Advertising Following CARU Inquiry, Better Business Bureau (Sept. 13, 2016), <http://www.bbb.org/council/news-events/news-releases/2016/09/evantube-youtube-channels-to-disclose-sponsored-videos-as-advertising-following-caru-inquiry/>.

⁴⁸ *Id.*

⁴⁹ Owen, et al., *supra* note 43, at 203.

⁵⁰ See generally, Diane Liebert, et al., *Effects of television commercial disclaimers on the product expectations of children*, 27 *Journal of Communication* 118 (1977).

communicate.⁵¹ One study went even further, concluding that disclosures may be altogether ineffective, at least for children ages 3–5.⁵² A more recent study found that even reasonable teenagers and adults “in a social media environment . . . can be misled by some of the recommended and commonly used material connection disclosures.”⁵³ In fact, a study by the United Kingdom’s telecommunications regulator, Ofcom, found that 51% of adults could not identify links at the top of Google search results that have the “ad” logo next to them as paid advertisements.⁵⁴ If adults can be misled when there is disclosure, children most certainly will be misled regardless of disclosure.

B. Deception Flowing from Child-Directed Influencer Marketing Is Material

The deception of children via child-directed influencer marketing is material because it clearly influences children’s preferences. According to the FTC, a “material” representation “is one which is likely to affect a consumer's choice of or conduct regarding a product. In other words, it is information that is important to consumers.”⁵⁵

⁵¹ See generally, Bruce L. Stern & Alan J. Resnik, *Children’s understanding of a televised commercial disclaimer*, in *Research frontiers in marketing: Dialogues and directions*, 332-36 (Subhash C. Jain, ed., 1978).

⁵² Mary Ann Stutts & Garland C. Hunnicutt, *Can young children understand disclaimers in television commercials?*, 16 *Journal of Advertising* 41, 46 (1987).

⁵³ Janée N. Burkhalter, et al., *Clear, conspicuous, and concise: Disclosures and Twitter word-of-mouth*, 57 *Business Law & Ethics Corner* 319, 325 (2014).

⁵⁴ Graham Charlton, *A majority of web users don’t recognise ads in search results: report*, ClickZ (Apr. 27, 2016), <https://www.clickz.com/a-majority-of-web-users-dont-recognise-ads-in-search-results-report/99031/>. Burkhalter, et al., *supra* note 53, at 325.

⁵⁵ *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 170–71 (1984).

Marketing that blends content with advertising teaches children to recognize featured brands and influences children's preferences. This is a form of "implicit persuasion," or marketing that changes a consumer's attitude toward and reaction to a product over time, unknowingly to the consumer.⁵⁶ For example, studies analyzing advergames have found that embedded ads "can raise children's awareness of the featured brands" compared with their awareness of the brands prior to playing the game.⁵⁷ The same studies show that embedded ads can influence children to choose the featured brand over other non-featured brands in the same product range."⁵⁸ One study noted that even adults have difficulty controlling for implicit persuasion – let alone children.⁵⁹

Children are particularly susceptible to influencer techniques because they are demonstrably predisposed to trust the recommendations of kid-friendly characters and celebrities that they recognize. In one experiment, when shown two characters, a majority of children tested had an initial reaction to trust the familiar character "over an unfamiliar character similar in appearance."⁶⁰ In another experiment, children were instructed to select their preferred toy among those representing particular characters. According to the researchers, "many children consistently preferred damaged and dysfunctional objects bearing their

⁵⁶ Nairn, *supra* note 39, at 2-3.

⁵⁷ Barrie Gunter, Kids and Branding in a Digital World 154 (2016).

⁵⁸ *Id.* (citing Mallinckrodt & Mizerski, 2007).

⁵⁹ Nairn, *supra* note 39, at 4 (2009).

⁶⁰ Judith H. Danovitch & Candice M. Mills, *How Familiar Characters Influence Children's Judgments About Information and Products*, 128 *Journal of Experimental Child Psychology* 1, 16 (2014).

favorite character's image over new items."⁶¹ The team concluded that test subjects' reactions to "a familiar character . . . suggest that young children apply similar heuristics to evaluating statements by familiar characters as they do to evaluating familiar people [such as their teachers]."⁶²

Influencer marketing may be even more effective at manipulating children's preferences than other forms of embedded marketing techniques. Influencer marketing is designed to exploit trust in recognizable social media personalities that are often in the same age range of the children they target, by first building a relationship between the audience and the influencer, then using that relationship to influence audience preferences.⁶³ In fact, Google brags that YouTube stars are even more influential than traditional celebrities.⁶⁴ According to Google's research, "YouTube subscribers would follow advice on what to buy from their favorite creator over their favorite TV or movie personality."⁶⁵

Child-directed influencer marketing is deceptive because, when evaluated from the perspective of children, it is misleading and has material consequences.

⁶¹ *Id.* at 17.

⁶² *Id.* at 16 (citing Corriveau & Harris, 2009 and Elashi & Mills, 2014).

⁶³ See *Highlights from tonight's YouTube Brandcast event: What's next for Google Preferred*, YouTube Official Blog (May 5, 2016), <https://youtube.googleblog.com/2016/05/highlights-from-tonights-youtube.html>; Jefferson Graham, *Advertisers court YouTube 'influencers' with money, taco selfies*, USA Today (June 24, 2016), <http://www.usatoday.com/story/tech/news/2016/06/24/advertisers-court-youtube-influencers-money-taco-selfies/86320030/>.

⁶⁴ Celie O'Neil-Hart & Howard Blumenstein, *Why YouTube Stars Are More Influential Than Traditional Celebrities*, Think With Google (July 2016), <https://www.thinkwithgoogle.com/infographics/youtube-stars-influence.html>.

⁶⁵ *Id.*

C. Influencer Marketing Is Also Unfair

Child-directed influencer marketing is not only deceptive under Section 5 of the FTC Act, but it is unfair as well. There are three factors to consider in an unfairness case. First, the act or practice must cause or be likely to cause substantial injury to consumers.⁶⁶ Second, consumers must not reasonably be able to avoid the injury.⁶⁷ Third, the injury must not be outweighed by countervailing benefits to consumers or to competition.⁶⁸

Child-directed influencer marketing substantially injures a large number of consumers by causing economic harm to children and their families and by threatening children's health. As discussed above and in great detail below, millions of children across the country view influencer advertisements. Because children do not have the cognitive abilities to identify advertisements and sponsorships, particularly those that are presented as content, they are influenced into desiring products they would not otherwise want. Children use allowances or pressure parents to buy these products,⁶⁹ resulting in economic injury. In addition, influencer advertisements featuring unhealthy snacks threaten children's health, as the public interest advocates discussed at length in a prior complaint.⁷⁰ Moreover, because the misrepresentation that influencer

⁶⁶ 15 U.S.C. § 45(n) (2012).

⁶⁷ 15 U.S.C. § 45(n).

⁶⁸ 15 U.S.C. § 45(n).

⁶⁹ John Consoli, *Nickelodeon Study Affirms Kids' Strong Influence on Family Purchasing Decisions*, *Broadcasting & Cable* (Aug. 22, 2012), <http://www.broadcastingcable.com/news/news-articles/nickelodeon-study-affirms-kids-strong-influence-family-purchasing-decisions/113500>.

⁷⁰ See generally *CFBAI Complaint*, *supra* note 18.

advertisements are content is deceptive, harm can be presumed to have followed from the resultant frustration of consumer choices.⁷¹

Children cannot reasonably avoid the injury caused by child-directed influencer advertisements – these ads are pervasive across platforms known to be used heavily by children. In addition, when an advertisement is deceptive, as is the case with child-directed influencer marketing, FTC staff have stated that “consumers cannot reasonably avoid the injury precisely because the seller misled them about the consequences of the choice.”⁷²

Nor is the injury to children caused by influencer marketing offset by any countervailing benefits. On the contrary, there is no evidence that any consumer benefits at all stem from child-directed influencer marketing. Child-directed influencer marketing does not create a competitive atmosphere that lowers prices for consumers, nor does it increase the availability of any particular products. Moreover, according to FTC staff, deception analysis “presumes that false or misleading statements either have no benefits, or that the injury they cause consumers can be avoided by the company at very low cost.” [W]hen a material falsehood exists,” as with child-directed influencer marketing, “the practice [does] not pass the full benefit/cost analysis of unfairness, because there are rarely, if ever, countervailing benefits to deception.”⁷³

⁷¹ See Remarks of J. Howard Beales, Former Director of the FTC’s Bureau of Consumer Protection, The Marketing and Public Policy Conference (May 30, 2003), <https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection> (stating that deception “cause[s] consumer injury because consumer choices are frustrated and their preferences are not satisfied.”).

⁷² *Id.*

⁷³ *Id.*

II. **Although it is Unfair and Deceptive, Child-Directed Influencer Marketing Has Become Widespread**

As explained in detail above and in multiple filings submitted by the public interest advocates to the FTC, child-directed influencer marketing constitutes an impermissible unfair and deceptive marketing practice in violation of Section 5 of the FTC Act. Nevertheless, this practice has become widespread. In a 2015 poll, marketers ranked influencer marketing as the fastest-growing trend in online customer acquisition.⁷⁴ That same poll found that nearly 60% of US marketers planned to increase their influencer marketing budgets over the next year.⁷⁵ Investments in influencer marketing are paying off. The technique has proven to be effective at influencing consumer purchasing habits,⁷⁶ which is resulting in a high returns on investments for companies.⁷⁷ Many of the consumers these companies target are children. That is because the buying power of children, including how much kids buy themselves and the degree to which they influence their parents' purchases, now exceeds \$1.2 trillion, according to marketing agency Digitas.⁷⁸

⁷⁴ *Influencer Marketing Study*, Tomoson, <http://blog.tomoson.com/influencer-marketing-study/> (last visited Mar. 31, 2016).

⁷⁵ *Id.*

⁷⁶ Katherine Karp, *New research: The value of influencers on Twitter*, Twitter (May 10, 2016), <https://blog.twitter.com/2016/new-research-the-value-of-influencers-on-twitter> ("Nearly 40% of Twitter users say they've made a purchase as a direct result of a Tweet from an influencer.").

⁷⁷ John Bohan, *How to navigate the complex influencer marketing landscape*, iMedia (Oct. 6, 2016), <http://www.imediaconnection.com/article/234129/161003-john-bohan-how-to-navigate-the-complex-influencer-marketing-landscape> (noting that the average return on investment for digital influencer marketing is \$6.85 for every \$1.00 spent).

⁷⁸ *The undeniable influence of kids*, Packaging Digest (October 13, 2013),

Increased demand and profitability of influencer marketing has attracted hundreds of “talent agencies, networks and matchmaking services”⁷⁹ that connect popular influencers with corporate brands seeking product promotion. Multi-channel networks (“MCNs”) specifically specialize in reaching audiences by producing and distributing YouTube videos that blur the line between content and advertising.⁸⁰ Moreover, MCNs aggregate thousands of influencer channels to create large networks across YouTube’s already existing user base.⁸¹ In fact, determining the full reach of MCNs is difficult because so few YouTube channels and videos indicate when the content includes a paid sponsorship.

The ever-expanding MCN industry now includes popular firms such as four discussed here: Collab Creators, Disney-owned Maker Studios, Wild Brain, and DreamWorks-owned AwesomenessTV, each of which creates child-directed influencer ads. The child-directed influencer marketing practices of each MCN are described below and screenshots of example videos for each MCN are in Appendices A–D.

<http://www.packagingdigest.com/packaging-design/undeniable-influence-kids>; Jodi Robinson, *The Next Generation of Consumers*, BostInno (Oct. 26, 2012), <http://bostinno.streetwise.co/channels/the-next-generation-of-consumers/>.

⁷⁹ *Influencer Marketing Is Rapidly Gaining Popularity Among Brand Marketers*, eMarketer (Feb. 9, 2016), <http://www.emarketer.com/Article/Influencer-Marketing-Rapidly-Gaining-Popularity-Among-Brand-Marketers/1013563>.

⁸⁰ *Multi-Channel Network (MCN) overview for YouTube Creators*, YouTube, <https://support.google.com/youtube/answer/2737059?hl=en> (last visited Sept. 13, 2016) (“Multi-Channel Networks (MCNs, or “networks”) are entities that affiliate with multiple YouTube channels, often to offer content creators assistance in areas including product, programming, funding, cross-promotion, partner management, digital rights management, monetization/sales, and/or audience development.”).

⁸¹ *Id.*

A. Collab Creators

Collab Creators clearly understands the potential of child-targeted influencer marketing. The Collab Creators webpage states, “savvy advertisers realize that one of the best ways to reach young audiences is with their favorite video creators.”⁸² The company helps YouTube personalities identify brands to partner with, such as Pepsi and Universal Studios, and “create seamless brand integrations that are lucrative for you and effective for advertisers.”⁸³ Like cutting edge advertising agencies operating in more traditional media, Collab Creators boasts advanced facilities for the production of polished marketing content, including a dedicated Los Angeles studio complete with a green screen, dressing room, and props. The Collab Creators homepage features several kid-friendly content creators, including Baby Ariel, Meghan McCarthy, and the Eh Bee Family.⁸⁴

Baby Ariel is a 15-year-old influencer who has amassed a large following on several social media platforms. In addition to 1.6 million subscribers on YouTube, she has over 4 million followers on Instagram.⁸⁵ In several videos, Baby Ariel unboxes and touts toys and games for children in a fun and entertaining manner.⁸⁶

⁸² Collab Creators, <http://www.collabcreators.com> (“Why Collab? Work with Great Brands” section) (last visited Sept. 21, 2016).

⁸³ *Id.*

⁸⁴ *Id.* (“Featured Talent” section).

⁸⁵ Baby Ariel, *Instagram*, <https://www.instagram.com/babyariel/?hl=en> (last visited Sept. 21, 2016).

⁸⁶ See Appendix A for examples.

Another featured Collab Creator is Meghan McCarthy. She has a distinctive, child-like voice that appeals to children, and she has over 1.5 million subscribers on YouTube.⁸⁷ In two separate videos, McCarthy is seen opening packages containing toy Minions – popular characters from the children’s movie Minions – and then prominently displaying these characters.⁸⁸ Collab Creators’ website states that it works with Universal Studios, which produced the movie.⁸⁹

The Eh Bee Family is a quirky family that creates family-friendly content, including influencer advertisements that target children. The family has accumulated 15 million followers across all social media platforms,⁹⁰ including approximately 2 million subscribers on YouTube.⁹¹ The family acknowledges that their content is skewed toward a younger demographic.⁹² In one video,⁹³ the family unboxes and plays with the Chrono Bomb Action Game – a game for ages 7 and older where players “pretend to be secret agent spies and maneuver

⁸⁷ Meghan McCarthy, *About, YouTube*, <https://www.youtube.com/user/hemeeyahello13/about> (last visited Sept. 21, 2016).

⁸⁸ Meghan McCarthy, *FAN MAIL MONDAY* (Feb. 22, 2016), https://www.youtube.com/watch?v=M-NG5_uBies; Meghan McCarthy, *POOP EMOJIS & \$2 BILLS!* (Mar. 15, 2016), <https://www.youtube.com/watch?v=t3YlpmkHfNg> (last visited Sept. 12, 2016).

⁸⁹ *Despicable Me*, *Internet Movie Database*, <http://www.imdb.com/title/tt1323594/> (last visited Sept. 28, 2016).

⁹⁰ Eh Bee Family, <http://www.ehbeefamily.com/> (last visited Sept. 28, 2016).

⁹¹ Eh Bee Family, *About, YouTube*, <https://www.youtube.com/user/ehbeefamily/about> (last visited Sept. 28, 2016).

⁹² *Demographics*, Eh Bee Family, <http://www.ehbeefamily.com/demographics.html> (last visited Sept. 28, 2016).

⁹³ Eh Bee Family, *CRAZY LASERS AND SCARY BOMBS - Chrono Bomb Challenge*, YouTube (Aug. 12, 2015), <https://www.youtube.com/watch?v=ZIQSr5xGKQQ>.

through a string ‘laser field’ to make it to the bomb in time to save the day.”⁹⁴ While not shying away from disclosing that they work with corporate brands to create content across all platforms,⁹⁵ such information is difficult to find and viewers who watch the family’s YouTube videos are unlikely to learn that the videos were paid promotions.

Baby Ariel, Meghan McCarthy, and the Eh Bee Family are just three prominent examples of child-oriented influencers in Collab Creators’ large stable. Considered in conjunction with statements made on Collab Creators’ own website, it is clear the company’s business model is using influencers to sell products to children.

B. Maker Studios

Disney-owned Maker Studios is one of the largest MCNs worldwide and another major source of child-oriented marketing in the influencer industry. Maker Studios offers development, production, promotion, distribution, sales, and marketing services to its content creators.⁹⁶ Maker Studios partners with over 55,000 content creators that make YouTube videos attracting more than 10 billion views each month, and its YouTube channels have over 950 million

⁹⁴ *Chrono Bomb Action Game*, Amazon, <https://www.amazon.com/Patch-7010-Chrono-Bomb-Action/dp/B00UPAYYCA> (“From the Manufacturer” section) (last visited Sept. 28, 2016).

⁹⁵ See *Branded Examples*, Eh Bee Family, <http://www.ehbeefamily.com/branded-examples.html> (last visited Sept. 28, 2016).

⁹⁶ *FAQS*, Maker Studios, <http://www.makerstudios.com/makers#/faqs> (last visited Sept. 28, 2016).

subscribers, many of whom are children.⁹⁷ According to the *New York Times*, most of Maker's YouTube channels "provide a pipeline to young consumers for Disney's characters and franchises."⁹⁸ Among Maker Studios' child-oriented properties are many toy review channels, including DisneyCarToys, which has over 5 billion views, and ToysReviewToys, which has nearly 1.5 billion views.⁹⁹ Maker Studios continues to acquire companies that will allow it to expand its influencer role across other social media platforms.¹⁰⁰

One of Maker Studios' most popular YouTube influencer shows is EvanTubeHD, featuring 8-year-old Evan and his 5 year-old sister Jillian "as they review and play with the most popular kids toys currently on shelves"¹⁰¹ and taste test and review snack foods.¹⁰² The public interest advocates have already

⁹⁷ *Spotlight*, Maker Studios, <http://www.makerstudios.com/makers> (last visited Sept. 28, 2016); *About*, Maker Studios, <http://www.makerstudios.com/about> (last visited Sept. 28, 2016).

⁹⁸ Brooks Barnes, *Disney Buys Maker Studios, Video Supplier for YouTube*, N.Y. Times (Mar. 24, 2014), <http://www.nytimes.com/2014/03/25/business/media/disney-buys-maker-studios-video-supplier-for-youtube.html>.

⁹⁹ Gina Hall, *Disney's Maker Studios Partners with Five Top Toy Review Channels*, The Wrap (Nov. 25, 2014), <http://www.thewrap.com/disneys-maker-studios-partners-with-five-top-toy-review-channels/>; *DisneyCarToys, About*, YouTube, <https://www.youtube.com/user/DisneyCarToys/about> (last visited Sept. 28, 2016); *ToysReviewToys, About*, YouTube, <https://www.youtube.com/user/toysreviewtoys/about> (last visited Sept. 28, 2016).

¹⁰⁰ Mike Shields, *Disney's Maker Studios Acquires Social Media Startup Instafluencer*, Wall Street Journal (July 9, 2015), <http://blogs.wsj.com/cmo/2015/07/09/disneys-maker-studios-acquires-social-media-startup-instafluencer/>.

¹⁰¹ *Spotlight*, *supra* note 97

¹⁰² *See CFBAI Complaint*, *supra* note 18, 9-10.

extensively highlighted the deceptive nature of EvanTubeHD videos.¹⁰³ Yet, EvanTubeHD continues to produce extremely popular videos that blur the line between commercial and non-commercial content, targeting young children. Only recently, under pressure from an industry association, did EvanTubeHD begin to indicate when the videos are sponsored.¹⁰⁴ However, the definition of what constitutes sponsored content is left up to the influencer, and older videos with sponsored content have not been updated to include the disclosure. With over 3.3 million YouTube subscribers¹⁰⁵ on just one of Evan’s three channels¹⁰⁶

¹⁰³ The advocates April 2015 Request for Investigation discusses EvanTube extensively, noting “With the invaluable help of Maker [Studios] . . . [t]here are unconfirmed estimates that the grade-schooler pulls in more than US\$1 million a year through his channel views, sponsorship deals and endorsements.” *Request for Investigation, supra* note 16, at 7. (quoting Gary Rusak, *How YouTube Kids is Changing the Face of Toy Marketing*, KidScreen (Feb. 9, 2015), <http://kidscreen.com/2015/02/09/how-youtube-is-changing-the-face-of-toy-marketing/>).

¹⁰⁴ Wendy Davis, *Native Ads On EvanTube Need Better Disclosures, Watchdog Says*, Daily Online Examiner (Sept. 12, 2016), <http://www.mediapost.com/publications/article/284523/native-ads-on-evantube-need-better-disclosures-wa.html>.

¹⁰⁵ EvanTubeHD, *About, YouTube*, <https://www.youtube.com/user/EvanTubeHD/about> (last visited Sept. 28, 2016).

¹⁰⁶ Evan’s original channel is EvanTubeHD, but he also has two other channels – EvanTubeRaw and EvanTubeGaming. EvanTubeRaw has just over 2 million subscribers, while EvanTubeGaming has around 775 thousand. EvanTubeRaw, *About, YouTube*, <https://www.youtube.com/user/EvanTubeRAW/about> (last visited Sept. 28, 2016); EvanTubeGaming, *About, YouTube*, <https://www.youtube.com/user/EvanTubeGaming/about> (last visited Sept. 28, 2016).

and some 2.3 billion views,¹⁰⁷ children across the country are saturated with EvanTubeHD's influencer marketing.

Maker Studios also features child-targeted influencer family Bratayley. The "About" section of Bratayley's YouTube channel reads, "Family friendly content EVERYDAY? Yep. That's right. Watch these crazy kids as they make everyday an adventure."¹⁰⁸ Centered around the daily lives of the Bratayley family's young children, the channel has over 3.3 million subscribers and 2 billion views.¹⁰⁹ Many of the family's videos show the children promoting toys, games, and snacks.¹¹⁰ Few of these videos indicate when they are sponsored and even when they do, the language does not clearly indicate the relationship between the family and the brand.¹¹¹

Perhaps unsurprisingly, Disney-owned Maker Studios is one of the MCNs at the cutting edge of developing and expanding child-directed influencer marketing.

C. Wild Brain

Wild Brain, another MCN, exclusively focuses on content for children. It describes itself as a "family of entertainment channels for kids; from

¹⁰⁷ EvanTubeHD, *supra* note 105.

¹⁰⁸ Bratayley, *About*, YouTube, <https://www.youtube.com/user/Bratayley/about> (last visited Sept. 28, 2016).

¹⁰⁹ *Id.*

¹¹⁰ For example, in one video the family visits a candy store. Bratayley, *Gas Station Musical.ly's (WK 299.5) | Bratayley*, YouTube (Sept. 27, 2016), <https://www.youtube.com/watch?v=1cavwx-igtg>.

¹¹¹ See Appendix A for details.

preschoolers, up to 12.”¹¹² Wild Brain creates original content, some of which is “designed for consumer brands [to appeal to] children and their parents. This includes toy manufacturers, toy retailers and children focused consumer products.”¹¹³ The Wild Brain YouTube network features more than 25 third-party family entertainment channels that collectively generate 800 million views per month.¹¹⁴ Two Wild Brain channels – Toyshop¹¹⁵ and The Disney Princess Show¹¹⁶ – provide particularly good examples of how the company creates YouTube videos targeted toward children.

Toyshop features videos designed to promote toys to children. It positions itself as a go-to channel for subscribers who “love toys from shows like Peppa Pig, Teletubbies, Caillou, Twirly Woo's, Yo Gabba Gabba, Slugterra, Paw Patrol and many more.”¹¹⁷ These shows are made for children starting as young as 2 years old.¹¹⁸ In one popular Toyshop video, a small child unboxes a Lego Star

¹¹² Wild Brain, www.wildbrain.com (click “Parents”) (last visited Sept. 28, 2016).

¹¹³ *Partners*, Wild Brain, <http://www.wildbrain.com/partners/> (last visited Sept. 28).

¹¹⁴ Creator Services Directory, *Wild Brain*, YouTube, <https://servicesdirectory.withyoutube.com/directory/wildbrain1> (last visited Sept. 28, 2016).

¹¹⁵ Toyshop – Toys for Kids, *Home*, YouTube, https://www.youtube.com/channel/UC9xfYf1HwJ_8hGD8Y3nESQQ (last visited Sept. 28, 2016).

¹¹⁶ The Disney Princess Show, *Home*, YouTube, <https://www.youtube.com/channel/UCyHVforXYgg3bZs8luMfDcg>, (last visited Sept. 28, 2016).

¹¹⁷ Toyshop – Toys for Kids, *About*, YouTube, https://www.youtube.com/channel/UC9xfYf1HwJ_8hGD8Y3nESQQ/about (last visited Sept. 28, 2016).

¹¹⁸ *See, e.g., Yo Gabba Gabba!*, Common Sense Media, <https://www.common sense media.org/tv-reviews/yo-gabba-gabba#> (last

Wars Rey's Speeder, which Lego describes as being for ages 7–12,¹¹⁹ while surrounded by other toys from popular brands like Nintendo and Hot Wheels.¹²⁰

The Disney Princess Show promotes products related to princesses and fairytales. The “About” section reads: “Our very own princesses, Phoebe and Amaya, will be presenting the loveliest clips of your favourite shows, unboxing the best fairytale toys and playing games that you can take part in at home!”¹²¹ In one video, a young girl is seen opening a Princess Musical Chest,¹²² described as being for children ages 3 and older.¹²³ In another, a young girl unboxes Lego Friends Pop Star Red Carpet,¹²⁴ which is designed for ages 5–10. In a third video,

visited Sept. 28, 2016); *Peppa Pig*, Common Sense Media, <https://www.common sense media.org/tv-reviews/peppa-pig> (last visited Sept. 28, 2016).

¹¹⁹ *Rey's Speeder*, Lego, <https://shop.lego.com/en-US/Rey-s-Speeder-75099> (last visited Sept. 28, 2016).

¹²⁰ Toyshop – Toys for Kids, *LEGO Star Wars Rey's Speeder Unboxing and Toyplay*, YouTube (Sept. 9, 2016) <https://www.youtube.com/watch?v=mEimOICEkNk>.

¹²¹ The Disney Princess Show, *About*, YouTube, <https://www.youtube.com/channel/UCyHVforXYgg3bZs8luMfDcg/about> (last visited Sept. 28, 2016). Unboxing is “[a]n act or instance of removing a newly purchased product from its packaging and examining its features, typically when filmed and shared on a social media site.” *Unboxing*, Oxford Dictionary, <https://en.oxforddictionaries.com/definition/unboxing>. (last visited Oct. 5, 2016).

¹²² The Disney Princess Show, *The Disney Princess Show Come and Play with the Princess Musical Jewellery Chest*, YouTube (Apr. 26, 2016), <https://www.youtube.com/watch?v=z9BRDNBvrXk>.

¹²³ *Musical Princess Jewellery Chest*, Luck Locket, <http://www.lucylocket.com/kids-bedrooms/music-boxes/Musical-Princess-Jewellery-Chest> (last visited Sept. 28, 2016).

¹²⁴ The Disney Princess Show, *The Disney Princess Show LEGO Friends | LEGO Friends Pop Star Red Carpet (Part 2)*, YouTube (June 9, 2016), <https://www.youtube.com/watch?v=6yC0az3Jc4w>.

a child influencer is shown unboxing and playing with a Frozen themed bead set, and the description of the video reads, “Can you turn yourself into a look-a-like Princess Elsa?”¹²⁵

With channels like Toyshop, Disney Princess Show, and others, it is clear that Wild Brain is yet another MCN in the business of producing unfair and deceptive influencer marketing directed to children.

D. AwesomenessTV

DreamWorks-owned AwesomenessTV is also in the business of creating child-targeted influencer content. AwesomenessTV calls itself a “multi-platform media company” and “influencer talent management company” that “connect[s] brands with our audience . . . all with the goal of making Gen Z’s world more awesome.”¹²⁶ DreamWorks Animation acquired AwesomenessTV in 2013 to promote its popular animated characters like Shrek, Puss in Boots, and Kung Fu Panda on YouTube.¹²⁷ YouTube has partnered with AwesomenessTV to create

¹²⁵ The Disney Princess Show, *The Disney Princess Show, The Disney Frozen Create Your Own Bracelets & Bead Playset*, YouTube (Aug. 18, 2016), <https://www.youtube.com/watch?v=tpuP-kmmjh4>.

¹²⁶ *AwesomenessTV*, LinkedIn, <https://www.linkedin.com/company/awesomenesstv> (last visited Sept. 28, 2016); *Corporate*, AwesomenessTV, https://awesomenesstv.com/corporate/?utm_term=.Nyq7Bbemn#.E5DB9Khz3 (last visited Sept. 28, 2016). Gen Z is considered to be kids ages 5–19 years old. Alex Williams, *Move Over, Millennials, Here Comes Generation Z*, N.Y. Times (Sept. 18, 2015), http://www.nytimes.com/2015/09/20/fashion/move-over-millennials-here-comes-generation-z.html?_r=0.

¹²⁷ Todd Spangler, *DreamWorks Animation Launches YouTube Channel with Shrek, Original Series and More*, Variety (June 16, 2014), <http://variety.com/2014/digital/news/dreamworks-animation-launches-youtube-channel-1201220786/>.

feature films on YouTube.¹²⁸ The company has plans to expand beyond YouTube – in 2013 the company’s founder told the *Guardian*, “YouTube is just the beginning. AwesomenessTV will have a mobile app, we’ll be on Xbox and PlayStation and every other device you can think of that kids are using.”¹²⁹

Much of the child-oriented influencer marketing produced by AwesomenessTV appears on its DreamWorksTV YouTube channel. One show on this channel, Swamp Talk, has video shorts featuring the DreamWorks animated character, Shrek.¹³⁰ Another show, Life Hacks for Kids, features children showing “life hacks”¹³¹ designed for kids, many of which have product placements, such as for Lego¹³² and Pokémon Go.¹³³ Other videos are more

¹²⁸ Cecelia Kang, *YouTube Jumps Into Original Movies for Youths with Awesomeness Partnership*, Washington Post (Sep. 9, 2015), <https://www.washingtonpost.com/news/the-switch/wp/2015/09/09/youtube-jumps-into-original-movies-for-youth-with-awesomeness-partnership/>.

¹²⁹ Stuart Dredge, *AwesomenessTV Boss Talks YouTube Networks for Kids: 'I Don't Think We're Replacing Television'*, The Guardian (Oct. 6, 2013), <https://www.theguardian.com/technology/2013/oct/06/awesomeness-tv-children-online-video>.

¹³⁰ DreamWorksTV, *The Fastest 20 Questions Ever | SWAMP TALK WITH SHREK AND DONKEY*, YouTube (Jan. 21, 2015), <https://www.youtube.com/watch?v=9hIkeq5ahGg>.

¹³¹ A life hack is “a usually simple and clever tip or technique for accomplishing some familiar task more easily and efficiently.” *Life hack*, Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/life%20hack> (last visited Oct. 5, 2016).

¹³² DreamWorksTV, *Awesome Lego Hacks | LIFE HACKS FOR KIDS*, YouTube (Aug. 30, 2015), <https://www.youtube.com/watch?v=byZ5Dm-Ef8w&list=PLMdKMaqxA07-azMWtLxmXPHz44ORIZ-IO&index=22>.

¹³³ DreamWorksTV, *Pokémon Go Hacks | LIFE HACKS FOR KIDS*, YouTube (Aug. 18, 2016), <https://www.youtube.com/watch?v=4mIbLL8ah-k>.

typical influencer advertisements, including an unboxing video for a toy truck shaped like a dinosaur¹³⁴ and a child testing a new videogame app.¹³⁵

It is clear that MCNs recognize the profitability of child-targeted influencer marketing. These large networks facilitate relationships between recognizable and kid-friendly content creators and corporate brands. In short, a primary function of MCNs is to create and promote influencer advertising. Determining the full scope of their involvement is difficult due to a lack of transparency about sponsorships. Along with these sponsorships, this practice has proven to be so lucrative because Google actively facilitates bringing these videos to its YouTube platform.

III. Google (a subsidiary of Alphabet, Inc.) Actively Encourages, Solicits, and Promotes Child-Directed Influencers on its YouTube Platform

Google, and its YouTube platform, are at the core of the deceptive influencer marketing economy. Google plays a central role helping marketers unfairly target children and youth, and it recently acquired a digital marketing company so that it can produce its own influencer advertisements.¹³⁶ Moreover,

¹³⁴ DreamWorksTV, *DinoTrux Mega Chompin' Ty Rux & Revvit with RadioJH Auto | UNBOX IT*, YouTube (Sep. 28, 2015), https://www.youtube.com/watch?v=EwJ_cmUlnzo.

¹³⁵ DreamWorksTV, *Wrestle Jump with EthanGamerTV | LEAGUE OF LET'S PLAY*, YouTube (Apr. 22, 2015), <https://www.youtube.com/watch?v=4Rx30ZuV3LI&list=PLMdKMaqxA07-azMWtLxmXPHz44ORlz-IO&index=16>.

¹³⁶ Ariel Bardin, *Helping creators connect with brands*, YouTube Official Blog (Oct. 11, 2016), <https://youtube.googleblog.com/2016/10/helping-creators-connect-with-brands.html>.

Google is well aware that YouTube has become the leading source for much child-directed influencer content.¹³⁷ Google benefits from the explosion of child-directed influencer marketing on YouTube, just as it benefits from the expansion of all video on the platform.¹³⁸ When influencers, MCNs, and others in the business of generating child-directed influencer content profit from the growth of this industry, so does Google.

Google is actively cultivating the growth of YouTube's youth audience. In February 2015 Google launched YouTube Kids – a development heralded by one children's entertainment executive as “the most significant event in the last 12 months of the entire children's entertainment business.”¹³⁹ As of September 2016, YouTube Kids had been downloaded more than ten million times on the Google Play Store alone.¹⁴⁰ YouTube Kids attempts to prevent influencer advertisements from ending up on the platform. An influencer that uploads a video to YouTube

¹³⁷ Stuart Dredge, *Four of the top five YouTube channels are for kids (and the fifth is Taylor Swift)*, *The Guardian* (May 1, 2015), <https://www.theguardian.com/technology/2015/may/01/youtube-biggest-channels-kids-funtoys-collector-little-baby-bum>.

¹³⁸ *Id.* Todd Spangler, *YouTube Standardizes Ad-Revenue Split for All Partners, But Offers Upside Potential*, *Variety* (Nov. 1, 2013), <http://variety.com/2013/digital/news/youtube-standardizes-ad-revenue-split-for-all-partners-but-offers-upside-potential-1200786223/> (noting that Google receives a 45% share of all advertising revenue generated by user content).

¹³⁹ Brendan Christie, *YouTube U: Lessons in the World of Kids Content*, *Kidscreen* 86 (Oct. 2015) (quoting Richard Goldsmith, EVP of Global Distribution and International Consumer Products at The Jim Henson Company), <http://kidscreen.com/content/pdf/51695.pdf>.

¹⁴⁰ *YouTube Kids*, Google Play, <https://play.google.com/store/apps/details?id=com.google.android.apps.youtube.kids&hl=en> (last visited Sept. 28, 2016).

must disclose advertising payments and promotional agreements.¹⁴¹ If disclosed, Google says these videos will not be shown on YouTube Kids.¹⁴² However, 15 of the 20 videos described above and in the appendices can be found on the YouTube Kids application, along with an abundance of other influencer marketing videos.¹⁴³ This indicates either that Google’s self-regulation scheme is not working or that Google is not preventing these videos from showing up on the application as claimed. In any case, the fact that Google has developed a system to prevent influencer videos from being posted on YouTube Kids – even though it does not work – indicates Google recognizes child-directed influencer marketing is deceptive and inappropriate for children.

YouTube is a natural choice for marketers looking to target children, because the platform is immensely popular among young users.¹⁴⁴ Online video is “watched by 96% of youth at an average of 11 hours weekly.”¹⁴⁵ Among on-demand video platforms, YouTube is a clear favorite of children,¹⁴⁶ and that fact is not specific to YouTube Kids. YouTube Kids was created to attract more child

¹⁴¹ *Paid product placements and endorsements*, YouTube, <https://support.google.com/youtube/answer/154235?hl=en> (last visited Sept. 28, 2016).

¹⁴² *Id.*

¹⁴³ This search was conducted on September 27, 2016.

¹⁴⁴ See *Supplement*, *supra* note 17, at 3; see Jeremy Dickson, *Windows of Opportunity in an SVOD World?*, *Kidscreen* 75 (Oct. 2015), <http://kidscreen.com/content/pdf/51695.pdf>.

¹⁴⁵ *Acumen Report: Constant Content*, DEFY Media 6 (Dec. 2015), <http://cdn.defymedia.com/wp-content/uploads/2015/10/Acumen-Report-Constant-Content.pdf>.

¹⁴⁶ Marc Chacksfield, *Online kids prefer YouTube to sex*, *Tech Radar* (Aug. 12, 2009), <http://www.techradar.com/news/internet/online-kids-prefer-youtube-to-sex-624911>.

viewers and reassure parents that their children could watch videos without being exposed adult content on YouTube.¹⁴⁷ However, many children still access the vast array of children’s programming on the original platform. Even if influencer advertisements were not on YouTube Kids, children would still be exposed to these unfair and deceptive, child-targeted advertisements when parents sign on to YouTube accounts for their children.¹⁴⁸

Through YouTube’s partnerships with MCNs, it promotes many brand-sponsored influencers on its paid subscription service, YouTube Red. YouTube Red’s programming almost exclusively targets young audiences and includes movies such as *Dance Camp*, featuring AwesomenessTV star Meg DeAngelis, and shows such as *ScarePewDiePie*, featuring Maker Studios star and YouTube’s most subscribed influencer, PewDiePie, who has over 48 million subscribers.¹⁴⁹ YouTube Red is a prominent example of how Google promotes MCNs who connect influencers with brand sponsors. In return, Google profits from the success of MCN influencers who attract massive child audiences. Therefore,

¹⁴⁷ Sarah Perez, *Hands On With “YouTube Kids,” Google’s Newly Launched, Child-Friendly YouTube App*, TechCrunch (Feb. 23, 2015), <https://techcrunch.com/2015/02/23/hands-on-with-youtube-kids-googles-newly-launched-child-friendly-youtube-app/>.

¹⁴⁸ See Janelle Nanos, *For tweens, a social media network all their own*, Boston Globe (Sept. 28, 2016), <https://www.bostonglobe.com/business/2016/09/28/for-tweens-social-media-network-all-their-own/VgRpmElQvDbWgfu8XQLmDM/story.html> (noting how children use apps that they are legally not supposed to have access to and that parents sometimes ignore that their children may lie about their age to login to these apps).

¹⁴⁹ *Top 100 YouTubers by Subscribed*, Social Blade, <http://socialblade.com/youtube/top/100/mostsubscribed> (last visited Sept. 28, 2016).

Google does not passively host branded content uploaded to YouTube by popular users; it is clearly a key player in the influencer marketing industry.

Google also encourages marketers to partner with unboxing influencers and has even issued a guide called *The Magic Behind Unboxing on YouTube*. The guide urges brands to use unboxing videos to promote food, electronics, toys and beauty/fashion products, especially during the holiday season.¹⁵⁰ Toy companies have caught on and now heavily rely on influencer unboxing videos to sell toys to kids as a replacement for traditional television advertisements.¹⁵¹ With YouTube's support, unboxing videos have surged in popularity. Currently, 20 of the 100 most popular channels on YouTube feature unboxing influencers.¹⁵²

Beyond these partnership agreements, Google has an incentive to support influencer content on YouTube because popular influencer channels serve to increase its advertising revenue through its Google Preferred advertising program. Google Preferred allows brands to advertise on YouTube's most popular influencer channels in order to reach their ideal demographics and ensure that their ads have the most impact.¹⁵³ Google packages these channels,

¹⁵⁰ See *Supplement, supra* note 17, at 15 (citing *The Magic Behind Unboxing on YouTube*).

¹⁵¹ Shan Li, *Watch how these YouTube stars make money unboxing toys*, L.A. Times (Dec. 24, 2015), <http://www.latimes.com/business/la-fi-toy-unboxing-boom-20151224-story.html>.

¹⁵² Stuart Dredge, *How Toy Unboxing Channels Became YouTube's Real Stars*, The Guardian (Apr. 28, 2016), <https://www.theguardian.com/technology/2016/apr/28/children-toys-unboxing-channels-youtube-real-stars>.

¹⁵³ Google, *Google Preferred*, Think with Google (Aug. 2016), <https://www.thinkwithgoogle.com/products/google-preferred.html>. (last visited Sept. 28, 2016) (“Brands using Preferred choose from 12 lineups – or

which can have “unskippable” ads, and sells these packages directly to advertisers.¹⁵⁴ In this way, advertising with Google Preferred is akin to airing commercials during “primetime” on television. Google Preferred provides brands with a choice between various channel “lineups” such as “Beauty & Fashion,” “Video Gaming,” “Comedy,” and “Parenting & Family.”¹⁵⁵ Although Google touts the “Parenting & Family” program as offering “access to the YouTube channels most popular with the US 18-34 audience,”¹⁵⁶ its lineup contains many of the most popular children’s influencer channels, including EvanTubeHD, Bratayley, DreamWorksTV, and DisneyCarToys.¹⁵⁷

IV. The FTC Must Address Violations of the FTC Act by Companies That Create and Distribute Child-Directed Influencer Marketing

It is clearly time for the FTC to address the growing practice of child-directed influencer marketing. This practice constitutes unfair and deceptive marketing, which is a violation of the FTC Act, yet many companies are taking

packages of channels – across categories such as Beauty & Fashion, Entertainment & Pop Culture, or Foods & Recipes and share their messages alongside some of the most engaging and brand safe content on YouTube. By taking advantage of Google Preferred, brands get access to the top 5% of content on YouTube . . . and receive the measurement results they need to maximize the impact of their campaigns.”).

¹⁵⁴ *Id.*; Lauren Johnson, *Magna Global Pours \$250 Million Into YouTube Ads as TV Audiences Drop*, Adweek (May 4, 2016), <http://www.adweek.com/news/technology/magna-global-pours-250-million-youtube-ads-tv-audiences-drop-171242>.

¹⁵⁵ *Google Preferred Lineups*, YouTube, <http://youtube.com/yt/lineups/united-states.html> (last visited Sept. 28, 2016).

¹⁵⁶ *Id.*

¹⁵⁷ *Parenting & Family Lineup*, YouTube, <http://youtube.com/yt/lineups/us-family.html> (last visited Sept. 28, 2016).

advantage of the practice and therefore taking advantage of children. The FTC must investigate the companies identified in this complaint and take necessary enforcement action to ensure they stop creating and distributing child-directed influencer advertising. Moreover, since the breadth of this practice is unclear, the Commission must issue policy guidance to make clear to all other companies that child-directed influencer marketing is prohibited under the FTC Act.

A. The FTC Must Investigate and Take Enforcement Action Against Companies Distributing Child-Directed Influencer Advertising

The FTC must investigate and take enforcement action against the companies identified in this complaint as creating and distributing unfair and deceptive child-directed influencer advertising. Influencer marketing is an unfair and deceptive practice under the FTC Act. Many MCNs are bridging the gap between brands and influencers to create influencer advertisements targeted to children. Google is supporting, and even promoting, the proliferation of these advertisements on its YouTube platform.

This complaint has established that child-directed influencer marketing is an unfair and deceptive practice under Section 5 of the FTC Act by showing that the practice meets the three elements in the FTC guidelines. This type of marketing misrepresents itself as content when it is actually advertising. This misrepresentation is magnified when analyzed from the perspective of children, whose cognitive abilities make it impossible to identify influencer content as advertising. Because of children's susceptibility to this type of marketing, which clearly influences their preferences, it is also material.

The FTC must investigate and take enforcement action against MCNs that create and distribute unfair and deceptive, child-directed influencer marketing.

Collab Creators, Maker Studios, Wild Brain, and AwesomenessTV tout influencer marketing on their websites in an effort to solicit major brands and new influencers. The videos they create blur the line between content and advertising, relying on a misrepresentation that is not discernable to children. These videos primarily show children unboxing toys, tasting snacks, and incorporating branded items into their activities. The MCNs create and distribute these videos despite the clear violation of the FTC Act and at the expense of children, so the Commission must further investigate and take enforcement action against them.

With its YouTube platform, Google facilitates, supports, and relies on the unfair and deceptive influencer marketing created by MCNs. It does so by helping build relationships between MCNs, brands, and influencers. It also continues to grow its youth audience and drive advertising to children on its YouTube Kids application because it fails to ensure influencer content does not appear on the application as promised. Google knows its YouTube platform is popular with children and it profits from influencer advertisements whether they are on YouTube Kids or the original YouTube platform with child subscribers using their parent's permission. Google supports this type of marketing by promoting MCN content on its paid YouTube service, by issuing guidance on effective unboxing videos, and by further profiting off the advertisements through its YouTube Preferred advertising service.

The child-directed influencer marketing created and distributed by the MCNs and Google is an unfair and deceptive practice, and the FTC has an obligation to further investigate and bring complaints against these companies,

to seek redress for the violations that have occurred, and to take all necessary enforcement action to enjoin future conduct in violation of the FTC Act.

B. The FTC Must Issue Clear Policy Guidance Informing Companies that the FTC Act Prohibits Child-Directed Influencer Marketing

The FTC must make clear that the growing practice of deceptive child-directed influencer marketing is *per se* unfair and deceptive, and it should do so without delay by issuing policy guidance on the matter. As of the filing of this Complaint, there is no guidance whatsoever on the FTC’s “Business Center” for companies looking to determine what types of child-directed advertising practices are permissible within the bounds of the FTC Act’s prohibition on unfair and deceptive advertising.¹⁵⁸ At a minimum, the Commission must update existing policy guidance to make clear that many types of advertising that may be permissible when directed to adults are unacceptable when directed to children. In addition, the FTC should issue new guidance that specifically addresses the impermissibility of child-oriented influencer marketing. Such guidance is necessary to fulfill the Commission’s responsibility to protect consumers—including children—from unfair and deceptive practices prohibited under the FTC Act.

¹⁵⁸ Although the drop-down menu on the Business Center website allows a visitor to search for all guidance on the topic of Advertising and Marketing: Children, there are no available results that match the search. *See Guidance*, Federal Trade Commission, https://www.ftc.gov/tips-advice/business-center/guidance?field_consumer_protection_topics_tid=230&field_industry_tid=All (last visited Sept. 28, 2016).

To make clear to marketers the specific concerns of influencer marketing related to children discussed herein, the FTC must update its broad-in-scope advertising-related policy guidance. For example, the Commission has broad guidelines to help businesses ensure they are disclosing material information to consumers,¹⁵⁹ and its *.com Disclosures* document reaffirms requirements that disclosures be clear and conspicuous in the online environment.¹⁶⁰ The Commission also has available policy guidance on native advertising.¹⁶¹ These documents can and should be updated to incorporate considerations related to children’s perceptions of digital influencer advertisements. *.com Disclosures* should clearly explain that online disclosures are not sufficient to bring child-

¹⁵⁹ The FTC Endorsement Guidelines say, “if there’s a connection between an endorser and the marketer that consumers would not expect and it would affect how consumers evaluate the endorsement, that connection should be disclosed.” *The FTC’s Endorsement Guides: What People Are Asking*, Federal Trade Commission, <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking> (last visited Sept. 28, 2016). The FTC Telemarketing Sales Rule requires telemarketers to disclose material information and governs the nature of their calls. *Telemarketing Sales Rule*, Federal Trade Commission, <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/telemarketing-sales-rule> (last visited Sept. 28, 2016). Regulations under the Fair Packaging and Labeling Act ensure that the packaging and labeling of consumer products is not deceptive. *Fair Packaging and Labeling Act*, Federal Trade Commission, <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-packaging-labeling-act> (last visited Sept. 28, 2016).

¹⁶⁰ *How to Make Effective Disclosures in Digital Advertising*, Federal Trade Commission (March 2013), <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

¹⁶¹ *Native Advertising: A Guide for Businesses*, Federal Trade Commission, <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses> (last visited Sept. 28, 2016).

directed influencer advertising in compliance with Section 5, because children cannot comprehend disclosures. The guidance on native advertising should explain that such advertisements are much more deceptive to children.

The FTC should also address child-oriented influencer marketing by issuing narrowly-focused policy guidance specific to that topic, which it has done to address other important consumer issues, demographics, and types of products. For example, the FTC green guides ensure that environmental marketing claims are truthful and substantiated.¹⁶² The narrowly-focused “Amplifier Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of amplifier equipment performance attributes.”¹⁶³ The Commission has recognized the elderly as a specific segment of the population that is vulnerable to deceptive advertising and taken steps to address those harms.¹⁶⁴ Recognizing children as vulnerable and issuing specific guidance on child-oriented influencer marketing would help marketers and parents understand why and how children’s perception of

¹⁶² *Green Guides*, Federal Trade Commission, <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/green-guides> (last visited Sept. 28, 2016).

¹⁶³ *Amplifier Rule*, Federal Trade Commission, <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/amplifier-rule> (last visited Sept. 28, 2016).

¹⁶⁴ The FTC “has taken a multi-faceted approach that encompasses robust law enforcement, strategic policy initiatives, and vigorous consumer education and outreach” in order to protect the elderly from deceptive advertising. *Prepared Statement of the Federal Trade Commission Before the Senate Judiciary Committee on Protecting Older Americans from Financial Exploitation*, Federal Trade Commission (June 29, 2016), https://www.ftc.gov/system/files/documents/public_statements/967033/160629olderamericanstest.pdf.

advertising differs from that of adults. It should clearly state that children's cognitive abilities are an important factor when conducting a deception and unfairness analysis and caution companies against using influencers to reach child audiences.

The FTC's policy guidance documents are of unquestionably high value to businesses attempting to comply with the FTC Act, but to date those documents have left businesses in the dark with respect to the impermissibility of child-oriented influencer marketing. The Commission should update existing guidance documents and create new guidance to make clear that Section 5 of the FTC Act prohibits child-oriented influencer marketing.

V. Conclusion

Child-directed influencer marketing is an unfair and deceptive practice under Section 5 of the FTC Act. Although it is unfair and deceptive, multi-channel networks have business models geared toward the creation and distribution of child-directed influencer advertisements. The proliferation of these advertisements is facilitated and promoted by Google on its YouTube and YouTube Kids platforms.

The FTC must take action to protect children from child-directed influencer marketing. The Commission has a statutory mandate under the FTC Act to protect consumers against unfair and deceptive practices like child-directed influencer marketing. To fulfill its obligations under the law, the FTC should investigate and take enforcement action against companies that are violating the FTC Act by creating and distributing influencer advertisements. Moreover, the Commission must act without delay to officially conclude and

announce that child-oriented influencer marketing is not permitted, and to update existing policy guidance accordingly.

Respectfully submitted,

/s/

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October 21, 2016

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Appendix A: Collab Creators

Figure 1: Baby Ariel



In this video, Baby Ariel unboxes My Password Hidden Safe and It's My Party Power Balls,¹⁶⁵ both designed for children ages 6 and above,¹⁶⁶ along with her younger brother.

¹⁶⁵ Baby Ariel, *UNBOXING KID'S TOYS*, YouTube, <https://www.youtube.com/watch?v=n77woct5ud4> (last visited Sept. 29, 2016).

¹⁶⁶ *MY PASSWORD™ Hidden Safe*, Mattel Shop, <http://shop.mattel.com/product/index.jsp?productId=49835466> (last visited Sept. 29, 2016); *Create Your Own Power Balls Party Pack Kit*, Amazon.com, <https://www.amazon.com/Create-Your-Power-Balls-Party/dp/B003CU36RO> (last visited Sept. 29, 2016).

Figure 2: Baby Ariel

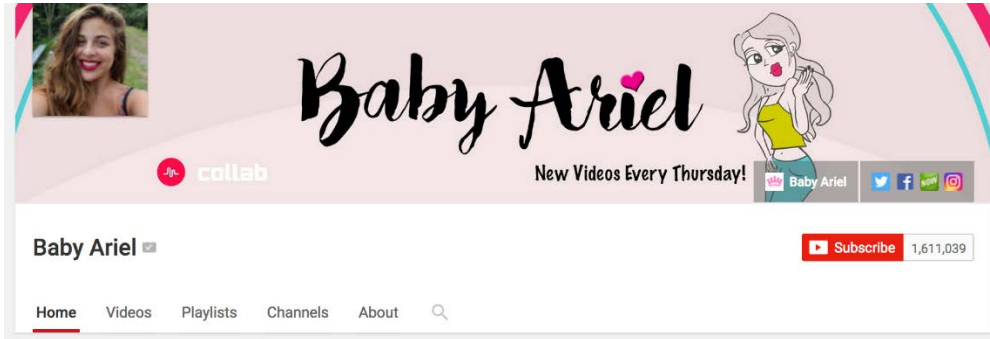


In this video, Baby Ariel and her family play BeanBoozled – a game where players spin the wheel and pick a Jelly Belly brand jelly bean the color the spinner lands on, then find out whether they picked a normal flavor or gross tasting jelly bean.¹⁶⁷ The Jelly Belly website states that this game is not for children under 3 years of age.¹⁶⁸

¹⁶⁷ Baby Ariel, *BEAN BOOZLED CHALLENGE*, YouTube, https://www.youtube.com/watch?v=ZW94fq_metU (last visited Sept. 29, 2016).

¹⁶⁸ BeanBoozled Jumbo Spinner Jelly Bean Gift Box - 12.6 oz Box (4th edition), <https://www.jellybelly.com/beanboozled-jumbo-spinner-jelly-bean-gift-box-12.6-oz-box-4th-edition-/p/92205>.

Figures 3: Baby Ariel



Baby Ariel places the Collab Creator logo on her YouTube channel cover photo.

Figures 4 and 5: Meghan McCarthy



FAN MAIL MONDAY | Meghan McCarthy



171,552 views



POOP EMOJIS & \$2 BILLS! | Meghan McCarthy



129,061 views



In these two videos, McCarthy is seen opening packages containing toy Minions from the children's movie Minions and then displaying them.¹⁶⁹

¹⁶⁹ FAN MAIL MONDAY, *supra* note 88; POOP EMOJIS & \$2 BILLS!, *supra* note 88.

Figure 6: Meghan McCarthy



Unlike fellow Collab Creator Influencer Baby Ariel, McCarthy does not place any identifying Collab Creators logos on her YouTube page. Viewers would only know that McCarthy is associated with Collab Creators by visiting the company's webpage, where she is a featured creator.

Figure 7: The Eh Bee Family



In this video, the Eh Bee Family unboxes and plays with the Chrono Bomb Action Game¹⁷⁰—a game for ages 7 and older where players “pretend to be secret agent spies and maneuver through a string 'laser field' to make it to the bomb in time to save the day.”¹⁷¹ On their website, the family says that the video is branded content and that they worked with Patch Games in creating the video.¹⁷² However, no information is provided on the YouTube video that the content was created in response to an association with a corporate brand. Viewers would only know such information if they accessed the family’s personal website.

¹⁷⁰ *CRAZY LASERS AND SCARY BOMBS - Chrono Bomb Challenge*, *supra* note 93.

¹⁷¹ *Chrono Bomb Action Game*, *supra* note 94.

¹⁷² *Branded Examples*, *supra* note 95.

Appendix B: Maker Studios

Figure 8: EvanTubeHD



In this video, Evan and his sister are viewed taste testing several different Goldfish snack food flavors.¹⁷³ Without explanation, when the viewer clicks on an information icon in the upper right corner of the video, a FTC banner is revealed and when users click on the banner, they are directed to the FTC's YouTube channel. This icon does not always appear, nor does it consistently show the FTC banner.

¹⁷³ EvanTubeHD, *GOLDFISH CHALLENGE!!! Blind Taste Test Face Off!*, YouTube, <https://www.youtube.com/watch?v=uJCCzSALwMg> (last visited Sept. 29, 2016)

Figure 9: EvanTubeHD



In this video, Evan conducts a Pringles snack food challenge.¹⁷⁴ Unlike the Goldfish challenge video, the information icon that appears directs viewers to his other snack food challenge videos. This can confuse viewers into thinking that the Goldfish video is a paid advertisement, but that this video is not.

¹⁷⁴ EvanTubeHD, *PRINGLES CHALLENGE! 20 Flavors! Extreme Potato Tasting Contest!*, YouTube, <https://www.youtube.com/watch?v=KVDHl26K7yQ> (last visited Sept. 29, 2016).

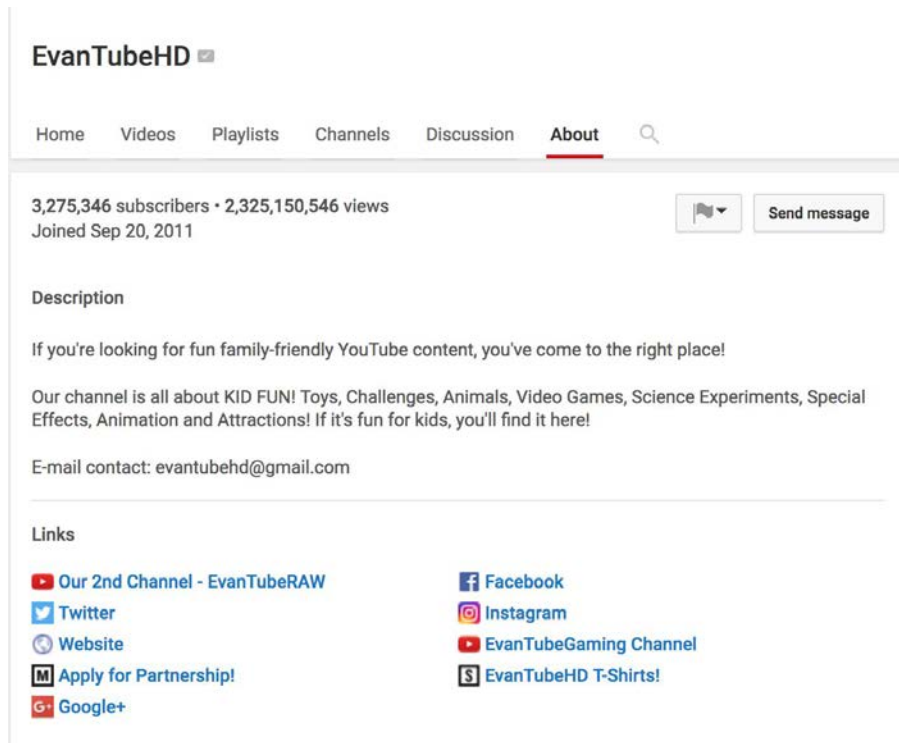
Figure 10: EvanTubeHD



In this video, Evan unboxes and plays with Lego Police Boat Patrol, a toy for children between ages of 5–12.¹⁷⁵ The video does not indicate whether or not it is an advertisement.

¹⁷⁵ EvanTubeHD, *POLICE PATROL BOAT - LEGO City Set 60129 UNDERWATER GoPro ACTION! Time-lapse, Unboxing, & Review*, YouTube, <https://www.youtube.com/watch?v=LgMYj7ji1cs> (last visited Sept. 29, 2016).

Figure 11: EvanTubeHD



The only indication that EvanTubeHD is affiliated with Maker Studios is a link, hidden among many other links, in the channel's "About" section that has an "M" icon with text that reads "Apply for Partnership!" and leads to Maker Studios' creator application page.¹⁷⁶

¹⁷⁶ EvanTubeHD, *supra* note 105.

Figures 12 and 13: Bratayley

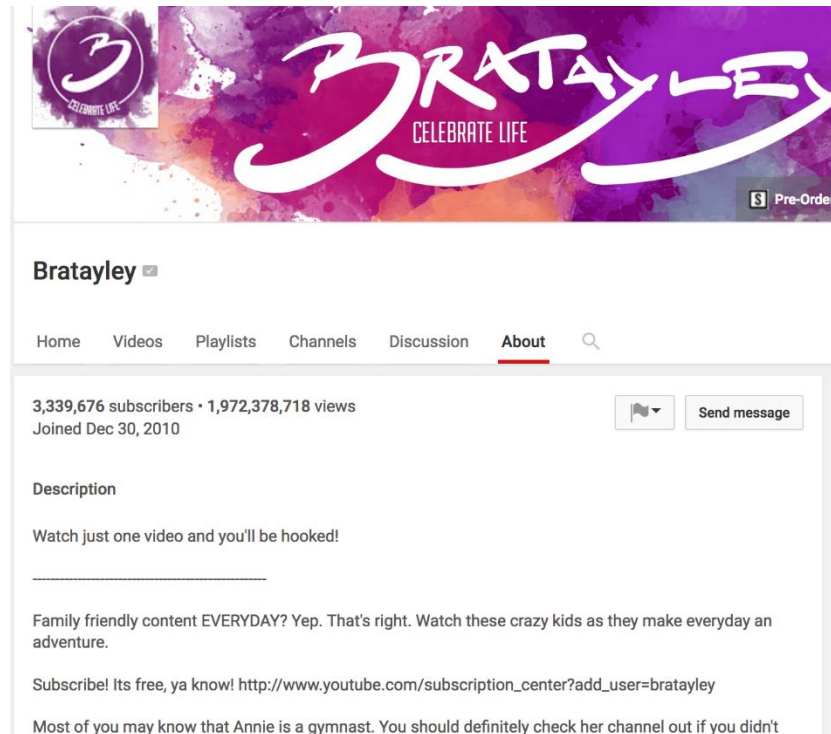


These two recent Bratayley videos indicate that they are paid advertisements. The first video more obviously states, “this is an ad for Nintendo,”¹⁷⁷ while the second video states, “promotional and other consideration provided by Best Fiends.”¹⁷⁸ The second example does not use language clear enough to convey to the viewer the true nature of the relationship between the Bratayley family and Best Fiends.

¹⁷⁷ Bratayley, *Disney Art Academy*, YouTube, <https://www.youtube.com/watch?v=BqLbihEIhgA> (last visited Sept. 29, 2016).

¹⁷⁸ Bratayley, *Trying to Make Her Taller (WK 296.2)*, YouTube, <https://www.youtube.com/watch?v=AHgVBef89uk> (last visited Sept. 29, 2016).

Figures 14 and 15: Bratayley



About BMH
One year ago, we set off on an epic family road trip travelling back in time to the American Revolution. The idea was to have a great time learning about how our nation got started – because it's an election year, and it seemed like as good a time as any to learn about the founding of this crazy, beautiful democracy of ours!

Produced by Maker Studios & Lincoln Square Productions

Category [People & Blogs](#)
License Standard YouTube License

Unlike fellow Maker Studio influencer, Evan, Bratayley gives no indication on the “About” page that the family is associated with Maker Studios. The only mention of Maker Studios is in the information section of a few individual videos where they credit Maker Studios for producing the video.¹⁷⁹ However, these disclosures are not included in all of her videos, and only seem to follow a specific series of videos called “Bratayley Makes History.”

¹⁷⁹ Bratayley, *delawHO? delawHAT? delawHY? delawHERE! (YR 1776.5) | Bratayley Makes History (Delaware)*, YouTube, <https://www.youtube.com/watch?v=HmMVbu2QofA> (Last visited Sept. 29, 2016).

Appendix C: Wild Brain

Figure 16: Toyshop



In this video on the Wild Brain Toyshop channel, a small child unboxes a Lego Star Wars Rey's Speeder, which Lego describes as being for ages 7–12,¹⁸⁰ while surrounded by other toys from popular brands like Nintendo and Hot Wheels.¹⁸¹

¹⁸⁰ *Rey's Speeder, supra note 119.*

¹⁸¹ *LEGO Star Wars Rey's Speeder Unboxing and Toyplay, supra note 120.*

Figures 17, 18, and 19: The Disney Princess Show



These three videos are on The Disney Princess Show. In the first, a young girl is seen opening a Princess Musical Chest,¹⁸² which is described as being for children ages three and older.¹⁸³ In the second, a young girl unboxes Lego Friends Pop Star Red Carpet,¹⁸⁴ which is designed for ages 5–10. In the third video, a child influencer is shown unboxing and playing with a Frozen themed bead set.¹⁸⁵

¹⁸² *The Disney Princess Show, Come and Play with the Princess Musical Jewellery Chest, supra note 122.*

¹⁸³ *Musical Princess Jewellery Chest, supra note 123.*

¹⁸⁴ *The Disney Princess Show, LEGO Friends | LEGO Friends Pop Star Red Carpet (Part 2), supra note 124.*

¹⁸⁵ *The Disney Princess Show, The Disney Frozen Create Your Own Bracelets & Bead Playset, supra note 125.*

Figure 20: Wild Brain Logo



Wild Brain-produced influencer advertisements identify that they were produced by Wild Brain because the Wild Brain logo appears in the opening few seconds of the videos. This is different from many other multi-channel networks.

Appendix D: AwesomenessTV

Figure 21: Shrek Swamp Talk



The DreamWorksTV “Swamp Talk” series of shorts (under the AwesomenessTV umbrella) features DreamWorks animated character, Shrek.¹⁸⁶

¹⁸⁶ *The Fastest 20 Questions Ever | SWAMP TALK WITH SHREK AND DONKEY*, supra note 130.

Figures 22 and 23: Life Hacks for Kids



This DreamWorksTV series features children showing “life hacks” designed for kids, many of which have product placements such as for Lego¹⁸⁷ and Pokémon Go.¹⁸⁸

¹⁸⁷ *Awesome Lego Hacks | LIFE HACKS FOR KIDS*, *supra* note 132.

¹⁸⁸ *Pokémon Go Hacks | LIFE HACKS FOR KIDS*, *supra* note 133.

Figures 24 and 25: Unboxing and Game Testing



DinoTrux Mega Chompin' Ty Rux & Revvit with RadioJH Auto | UNBOX IT

DreamWorksTV [Subscribe](#) 1,978,256

1,752,244 views

+ Add to Share More

2,056 945



Wrestle Jump with EthanGamerTV | LEAGUE OF LET'S PLAY

DreamWorksTV [Subscribe](#) 1,978,256

2,864,304 views

+ Add to Share More

4,578 712

Two other AwesomenessTV videos are an unboxing video for a toy truck shaped like a dinosaur¹⁸⁹ and a child testing a new videogame application.¹⁹⁰ The former video does indicate that it is sponsored content.

¹⁸⁹ *DinoTrux Mega Chompin' Ty Rux & Revvit with RadioJH Auto | UNBOX IT*, *supra* note 134.

¹⁹⁰ *Wrestle Jump with EthanGamerTV | LEAGUE OF LET'S PLAY*, *supra* note 135.