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

UNITED STATES OF AMERICA, _____ :
: :

JURISDICTION AND VENUE

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

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

DEFINITIONS

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

THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE

5. Congress enacted the COPPA in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children’s personal

8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of

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

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

15. The sweepstakes areas on Defendant's websites generally collect a user's full name, mailing address, email address, and date of birth in connection with registration. In certain instances, Defendant also collects a user's phone number. See *a*

**DEFENDANT'S INFORMATION COLLECTION, USE,
AND DISCLOSURE PRACTICES**

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

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

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

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

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

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

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

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

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

the Rule, 16 C.F.R. § 312.4(c); and,

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

25. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. § 6503(c).

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

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

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

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

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

THE COURT'S POWER TO GRANT RELIEF

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

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

32. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule.

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

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

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

PRAYER

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

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

violation of the Rule alleged in this Complaint;

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

DATED: _____, 2009

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