



UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

Office of Commissioner  
Andrew N. Ferguson

**Statement of Commissioner Andrew N Ferguson  
Concurring in Part and Dissenting in Part  
In the Matter of Cognosphere, LLC  
Matter Number 2223152**

January 1 , 2025

Today the Commission approves a complaint and settlement with Cognosphere, LLC, the developer and operator of the popular “Genshin Impact” video game. The complaint accuses Cognosphere of violating the Children’s Online Privacy Protection Act

box system, and unfair conduct to children and teenagers. It requires companies to obtain parental consent before collecting personal information from children. The complaint alleges that Cognosphere failed to obtain parental consent before collecting personal information of child players of Genshin

loot items, including a Mike Trout rookie card. Loot items, including in-game weapons and playable characters, are being described as “rare” although their relative

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<sup>1</sup> 16 C.F.R. § 312

To market the loot boxes, Cognosphere ran time-limited promotions called “Event Banners,” each featuring an especially desirable 5-star hero. In a typical Event Banner, each loot box gave players a 0.3% chance of receiving the featured hero, as well as a 0.3% chance of winning a different 5-star hero instead. Featured heroes were only ever available through the Event Banners in which they featured, never as the part of the basket of other 5-star heroes in another Event Banner.

The complaint accuses Cognosphere of misrepresenting the odds that a player can win the featured hero through various confusing and contradictory claims. The complaint alleges that even though featured heroes were only ever available at 0.3% odds under their respective Event Banners, and otherwise not at all, Cognosphere prominently advertised that players’ odds of

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The complaint describes this system as a “complex and confusing multi-tier virtual currency exchange system,” but only two of the “tiers” had exchange rates other than 1-to-1. More importantly, this system required no more of consumers than the simple math operations they perform on a regular basis when they compare prices for different sized jars of peanut butter, when they determine the true price of a buy-one-get-one-half-off deal, and so forth. The law protects more than just the savvy and strong-willed consumer. But Count III infantilizes the American consumer beyond recognition. I therefore dissent from it.

Count IV alleges that offering such a multi-tier virtual currency system to children and teenagers is an unfair act or practice in violation of Section 5. Section 5(n) says that an act or practice is not unfair unless (1) it “causes or is likely to cause substantial injury to consumers” (2) “which is not reasonably avoidable by consumers themselves” and (3) “not outweighed by countervailing benefits to consumers or to competition.”<sup>2</sup>

The complaint alleges that the substantial injury is the amount of money that children and teenagers sometimes spend in the game, with examples of parents being shocked at charges for thousands of dollars. It then says that consumers cannot reasonably avoid that injury because teenagers and children have no choice but to use the game’s multi-tiered currency system. Even assuming for purposes of argument that American children and teenagers playing Genshin Impact cannot perform the math required to determine the price of a loot box—an assumption I do not share—the only way to rack

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None of this should be taken to mean I favor the loot-box scheme. I do not. But the FTC Act does not authorize us to prohibit unsavory or unseemly business practices. It forbids only unfair or deceptive acts and practices. I do not foreclose the possibility that targeting certain kinds of addictive activities to children and teenagers—such as virtual slot machines in the form of loot boxes—could violate Section 5’s prohibition of unfair acts and practices. But demonstrating such a violation would require us to assemble strong evidence of substantial injury, unavailability, and the absence of countervailing benefits to consumers or competition.<sup>5</sup> We have not done that here. I therefore dissent from Count V both because the Biden-Harris FTC should not be advancing wholly novel theories as the sun sets on this Administration, and because we do not have the evidence required to demonstrate that marketing loot boxes to children and teenagers categorically violates Section 5.

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<sup>5</sup> 15 U.S.C. § 45(n).