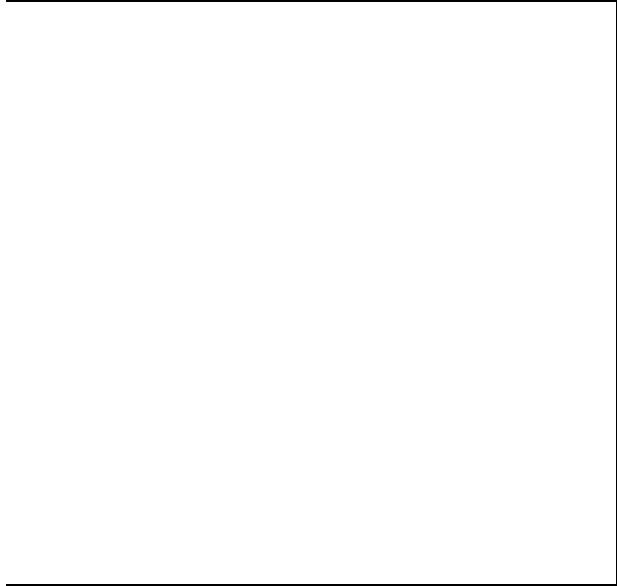


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BRIAN M. BOYNTON, Principal Deputy Assistant Attorney General
GUSTAV W. EYLER, Director
LISA K. HSIAO, Assistant Director
RACHAEL L. DOUD, Trial Attorney (NYRN 5117049)
ZACHARY L. COWAN, Trial Attorney (NCBN 53432)
U.S. Department of Justice
Consumer Protection Branch



1 Plaintiff, the United States of America, acting upon notification and authorization to the Attorney
2 General by the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

3 1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a)(1), and 19, of
4 the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a)(1),
5 57b, and Sections 1303(c) and 1306(d) of the Children’s Online Privacy Protection Act of 1998
6 (“COPPA”), 15 U.S.C. §§ 6502(c) and 6505(d), to obtain monetary civil penalties, a permanent
7 injunction, and other relief for violations of Section 5 of the FTC Act and the Commission’s Children’s
8 Online Privacy Protection Rule (“Rule” or “COPPA Rule”), 16 C.F.R. Part 312, committed by
9 Defendants Kurbo, Inc. (“Kurbo”) and WW International, Inc. (“WW”) (collectively, “Defendants”).

10 2. Since at least 2014, Defendants have offered weight management services to children
11 online, and collected and kept those children’s personal information, without providing notice to, or
12 obtaining consent from, their parents as required by the COPPA Rule. The Rule is intended to protect
13 the safety and privacy of children online, and Defendants’ failure to comply with its requirements is
14 particularly problematic in light of the sensitive nature of the service Defendants offer. Plaintiff seeks
15 civil penalties for each of Defendants’ violations of the COPPA Rule and a permanent injunction to
16 ensure Defendants comply with the Rule in the future.

17 **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

18 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
19 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A) and 56(a), because it involves claims arising
20 under federal laws regulating commerce and is commenced by the United States.

21 4. Venue in the Northern District of California is proper under 15 U.S.C. § 53(b) and 28
22 U.S.C. §§ 1391(b)(2) and (c)(2) and 1395(a) because Kurbo has its principal place of business in this
23 district, because Defendants transact business in this District, and because a substantial part of the events
24 or omissions giving rise to the claims occurred in this District.

25 5. Divisional assignment to the Eastern District of California, U.S.C. § 610.0418 IDEDCBD1 (1003551024)

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEFENDANTS

1
2 13. Defendant Kurbo, also doing business as Kurbo by WW, and formerly Kurbo Health,
3 Inc., is a Delaware corporation with its principal place of business at 301 Howard Street, 15th Floor, San
4 Francisco, California 94105. Kurbo is a wholly-owned subsidiary of Defendant WW that transacts or
5 has transacted business in this Dist

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 and adults love [them] too.” Foods are categorized by color based on a simple traffic light system (red,
2 yellow, and green), rather than the more complex numerical system based on points or calories that is
3 used in the traditional Weight Watchers service. Users select a fruit or vegetable avatar for their account.
4 Defendants market the App in Apple’s App Store as offering “fun games, videos and weekly challenges
5 [that] make it more fun to learn about nutrition and exercise,” and explained in 2020 and 2021 that they
6 “redesigned the app to make it even simpler for kids, teens, and families to reach a healthier weight!”
7 According to internal documents, Defendants “worked with educational consultants to design impactful
8 game and lesson delivery for children of all ages,” and the service includes “child-focused lessons and
9 content.”

10 22. In the Apple App Store, Defendants feature consumer reviews from children as young as
11 eight to market the App. Defendants label these child reviewers “Kurbo Kids.” One such review
12 promoted by Defendants in Apple’s App Store is from an 11-year-old girl who provided a positive
13 review of the service and explained that it helped her lose “10 pounds in 3 months.” Emphasizing the
14 App’s child-friendly user interface, Apple’s App Store highlights a review by a 12-year-old girl who
15 says, “I was excited because it seemed like something I could do all by myself.”

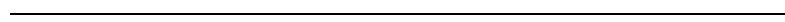
16 23. From its launch in 2014 through February 2020, over 279,500 people used the Kurbo
17 service. Age information entered for at least 18,600 of those users indicated they were children under the
18 age of 13.

19 **III. REGISTRATION OPTIONS**

20 **A. The Kurbo by WW App**

21 24. The vast majority of users enroll in Kurbo by WW through the App. Until at least
22 September 2019, users had a choice to sign up on their own behalf by indicating that they were at least
23 13 years of age, or as a parent signing up to support a child, using the following interface:
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 under 13 years old. These users nonetheless continued to have access to the App. This feature persisted

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16



17

18

19

20

21

22

23

24

25

26

27

28

1 corresponding to specific accounts. The App also uses age information to calculate children's body mass
2 index (BMI).

3 32. Until November 2019, the App did not provide any form of notice to parents that
4 Defendants were collecting personal information from children, or seek to obtain parents' consent for
5 that collection.

6 33. Starting in November 2019, the App provided a notice to parents upon registering that it
7 collected personal information from children. That notice was located in a series of hyperlinks, which
8 parents were not required to click on. Further, the notice did not specify all of the categories of
9 information it collected from children, as opposed to parents. Despite adding a notice to the App,
10 Defendants did not at that time implement any mechanism for seeking parental consent.

11 34. Between December 2019 and January 2020, Defendants implemented a revised notice
12 and altered the mechanism of providing that notice, such that the user had to click a box at the bottom to
13 agree in order to proceed. Even then, the notice was incomplete because, *inter alia*, it did not inform
14 parents that persistent identifiers were collected through the Kurbo by WW website in addition to the
15 Kurbo by WW App. Moreover, at that time, Defendants did not take any measures to ensure that the
16 individual clicking the box was in fact a parent. Defendants did not attempt to institute any such
17 measures until August 2021.

18 **B. Accounts Initiated Through the Website**

19 35. Parents can also create Kurbo by WW acc
20
21
22
23
24
25
26
27
28

1 37. Between December 2019 and January 2020, and again in August 2021, Defendants
2 revised the notice available on the website in the same manner discussed above in paragraph 34.
3 Accordingly, that notice was incomplete in the same ways described in paragraph 34.

4 **IV. DEFENDANTS' DATA RETENTION AND DELETION PRACTICES**

5 38. Until August 2021, Defendants retained personal information collected online from
6 children indefinitely, only deleting the information when specifically requested by a parent—even if the
7 user's account had been dormant for multiple years.

8 39. Starting in August 2021, Defendants began limiting their retention of children's personal
9 information to three years, regardless of whether the account is active, unless a parent requests deletion.

10 **DEFENDANTS ARE SUBJECT TO THE COPPA RULE**

11 40. Defendants are subject to the COPPA Rule, both because Kurbo by WW is directed to
12 children and because Defendants had actual knowledge that they were collecting children's personal
13 information through the Kurbo by WW service.

14 41. First, as discussed above, Kurbo by WW is specifically designed and marketed for use by
15 children as young as 8 years old. While children under 13 are instructed to register with the help of a
16 parent, the design, content, and features of the App and website clearly envision that the child will then
17 be able to track his or her own food intake and activity.

18 42. Second, Defendants have actual knowledge that they collect personal information from
19 children under 13. Defendants are aware of users' ages because they request users' age information and
20 use that information to provide their weight-management service. For example, age is a factor in
21 calculating a child's body mass index.

22 43. Defendants also know that they collect extensive personal information from children who
23 sign up for the Kurbo by WW service. In the case of the hundreds of users who initially stated that they
24 were 13 or over but subsequently indicated they were not, Defendants collected personal information
25 including names, email addresses, and persistent identifiers, as well as other information like height,
26 weight, food intake, and activity that, when combined with the identifying information, also constituted
27

1 48. The sensitive nature of the Kurbo by WW service makes it particularly important for
2 parents to be able to make informed decisions about the collection of personal information from their
3 children, as required by the COPPA Rule.

4 **DEFENDANTS HAVE FAILED TO PROVIDE NOTICE AND OBTAIN**
5 **PARENTAL CONSENT AS REQUIRED BY THE COPPA RULE**

6 49. Kurbo by WW is directed to children, and Defendants have actual knowledge that they
7 are collecting personal information from children. Defendants are required to comply with the COPPA
8 Rule by, among other things, providing direct notice to parents of Defendants’ information collection
9 practices; obtaining parents’ verifiable parental consent; and retaining children’s personal information
10 for only as long as is reasonably necessary to fulfill the purpose for which it was collected. Defendants
11 have not complied with these requirements.

12 50. The App did not provide any notice to parents until November 2019, and even then did
13 not solicit parental consent. The notice that Defendants provided on the website and started providing on
14 the App in November 2019 was also deficient, including because it did not clearly and completely
15 specify the categories of information collected from children. This notice also failed to qualify as “direct
16 notice” to parents, as required by the COPPA Rule, because Defendants did not “make reasonable
17 efforts, taking into account available technology, to ensure that” parents actually received it, 16 C.F.R. §
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
