



September 26, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Comment on FTC Endorsement Guides, P204500

Common Sense Media (Common Sense) appreciates the opportunity to comment on the Federal Trade Commission's (Commission) proposed changes to its *Guides Concerning the Use of Endorsements and Testimonials in Advertising (Advertising Guides)*. Common Sense is the nation's leading independent nonprofit organization dedicated to helping kids and families thrive in an increasingly digital world. We provide unbiased information, sound advice, and innovative tools to help keep kids safe online. As a trusted resource, we empower parents, teachers, and policymakers to ensure that the power of media and technology is a positive force in children's lives.

I. Recommendations

Though we applaud the Commission for amending the *Advertising Guides*—last substantively updated in 2009¹—we recommend more aggressive measures to protect kids and teens. Specifically, we urge the Commission to ban targeted advertising and influencer marketing for kids and teens.

Stronger protections, such as these, are critical to addressing recent innovations. Now that many in-person activities have moved online, there is a growing interest in and trend toward transforming online activities into fully immersive experiences. Firms such as Sony, Samsung, Google, Microsoft, and Apple are deploying emerging technologies (e.g., augmented reality and virtual reality) to create these immersive experiences in the “metaverse.”² According to Facebook, “The Metaverse is the next evolution of social connection and the successor to the

¹ Proposed Rule, “Guides Concerning the Use of Endorsements and Testimonials in Advertising,” available at <https://www.regulations.gov/document/FTC-2022-0047-0001>.

² Ben Gilbert, *Zuckerberg is Most Worried About Apple, Google, Microsoft, Sony and Others as the Main Competition for the 'metaverse,'* Business Insider (Nov. 12, 2021), <https://www.businessinsider.in/tech/news/zuckerberg-is-most-worried-about-apple-google-microsoft-sony-and-others-as-the-main-competition-for-the-metaverse/articleshow/87673212.cms>.

mobile internet” that “will allow [individuals] to explore virtual 3D spaces where [they] can socialize, learn, collaborate and play.”³

In addition to tech developments, there have been other dramatic changes since the *Advertising Guides* were last updated:

- **There are more online platforms, and platforms have expanded their product and service offerings.** Instagram and Pinterest came online in 2010, followed by Snapchat and Twitch in 2011. In 2012, Snapchat added a video sharing feature and Instagram did the same in 2013. Musical.ly came online in 2014, merged into TikTok in 2018, and has now reached 1 billion in monthly users;⁴
- **More children are exposed to media and tech at a young age.** In 2011, less than 10 percent of families with children under 8 years old owned a tablet device.⁵ By 2017, this figure skyrocketed to 78 percent.⁶ In fact, today’s kids are much more likely to have their own tablet (roughly 40 percent in 2017, compared to less than 1 percent in 2011)⁷ and their own a cell phone (about 50 percent of kids ages 10 to 11 years in 2019,⁸ compared to 35 percent in 2010).⁹
- **More kids and teens use social media.** In 2009, about 55 percent of 8th graders and 65% of 12th graders connected online almost every day.¹⁰ By 2016, these figures jumped to 75% and 85%, respectively.¹¹

The pandemic only accelerated this digital transformation. In the spring of 2020, over 80 percent of U.S. public school teachers reported that all or some of the classes they normally taught in person were moved online to distance learning formats.¹² While students have largely returned to in-person learning, many schools have opted to continue offering distance learning options,

³ *What is the Metaverse?*, Meta, https://about.meta.com/what-is-the-metaverse/?utm_source=about.facebook.com&utm_medium=redirect.

⁴ Marisa Dellatto, *TikTok Hits 1 Billion Monthly Active Users*, Forbes (Sept. 27, 2021), <https://www.forbes.com/sites/marisadellatto/2021/09/27/tiktok-hits-1-billion-monthly-active-users/?sh=531cc69e44b6>.

⁵ Victoria Rideout, *The Common Sense Census: Media Use by Kids Age Zero to Eight*. San Francisco, CA: Common Sense Media (2015), 3, 23.

⁶ *Id.*

⁷ *Id.*

⁸ Victoria Rideout and Michael Robb, *The Common Sense Census: Media Use by Kids Age Zero to Eight*. San Francisco, CA: Common Sense Media (2019), 7.

⁹ Dan Frommer, *Chart of the Day: One Third of U.S. 11-Year-Olds Have Cell Phones*, Business Insider (Jan. 19, 2010), <https://www.businessinsider.com/chart-of-the-day-us-children-who-own-mobile-phones-2010-1>.

¹⁰ Jenna M. Twenge, Gabrielle N. Martin, and Brian H. Spitzberg, *Trends in U.S. Adolescents’ Media Use, 1976 –2016: The Rise of Digital Media, the Decline of TV, and the (Near) Demise of Print*, 8 *Psych. of Popular Media Culture* 4, 334 (2019).

¹¹ *Ibid.*

¹² Press Release, National Center for Education Statistics, *Schools Took Immediate Steps at Beginning of COVID-19 Pandemic to Connect Students to Online Learning*, NCEs Report Shows (Feb. 22, 2022).

suggesting that remote learning may be here to stay.¹³ At least several hundred of the nation's 13,000 school districts established virtual schools in the 2020-2021 academic year as students started returning to the classroom.¹⁴ In other words, kids and teens are often a captured audience, making developments in advertising technology particularly problematic.

II. Children need protections from unfair and deceptive marketing practices.

It is well established that an individual's brain is not fully developed until the age of twenty-five,¹⁵ and individuals do not develop key critical thinking skills and impulse inhibition until closer to adulthood. Without these cognitive abilities, individuals lack the advertising literacy needed to critically process advertising. This is precisely why children—and not adults—are particularly susceptible to unfair and deceptive advertising practices.

Studies make clear that kids and teens cannot distinguish between an ad and content:

- **Children younger than 4 to 5 years old** are incapable of distinguishing ad content, even when marketers use separation devices such as "We will be right back."¹⁶
- **Children approaching 4 to 5 years old** begin perceiving a categorical distinction between commercials and programming, but this depends on the basis of affective or perceptual cues.¹⁷
- **Children up to 8 years old** generally cannot identify ads and do not recognize the persuasive intent behind them.¹⁸
- **Children and teens, ages 12 to 15** still have trouble identifying ads and recognizing the persuasive intent,¹⁹ indicating that older children are also susceptible to unfair or deceptive marketing practices.

¹³ Natasha Singer, Online Schools Are Here to Stay, Even After the Pandemic, N.Y. Times (Apr. 11, 2021), <https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html>.

¹⁴ *Id.*

¹⁵ Brain Maturity Extends Well Beyond Teen Years, NPR (Oct. 10, 2011), <https://www.npr.org/templates/story/story.php?storyId=141164708>.

¹⁶ *Id.* at 5.

¹⁷ *Id.* Affective cues include observations like "commercials are funnier," and perceptual cues include "commercials are shorter."

¹⁸ *Id.*

¹⁹ Ofcom. (Nov. 2016). Children and parents: Media use and attitudes report, 86 (stating only 38 percent of 12 to 15-year-olds correctly identified sponsored links on Google as advertising despite their being distinguished by an orange box with the word "ad" on it. See also Samantha Graff, Dale Kunkel, and Seth E. Mermin, Government Can Regulate Food Advertising to Children Because Cognitive Research Shows That It Is Inherently Misleading, 31 Health Affairs 2, 392–98 (2012); Owen B.J. Carter et al., Children's Understanding of the Selling Versus Persuasive Intent of Junk Food Advertising: Implications for Regulation, 72 Social Sci. & Med. 6, 962–68 (2011).

Put simply, adults and children view ads differently.²⁰ Children’s lack of cognitive abilities means they cannot understand an ad’s message in the same way adults can.²¹ Unlike adults, children cannot distinguish between commercial and noncommercial content or understand the persuasive intent behind an ad. Therefore, kids—by their very nature—need protections against advertising, even more so when firms use digital marketing.

III. In today’s digital world, protections must address the use of advanced marketing tools and the ubiquitous nature of advertising that is targeted at kids and teens.

There are generally two types of advertising, traditional and digital. Traditional marketing refers to commercial messages distributed to a broad audience where businesses push a specific product or service to a large audience.²² Such ads do not try to hide their commercial intent and tend to interrupt regular content, like commercials on television and radio. In contrast, digital advertising blurs the line between ad and content, making it even more difficult for children to distinguish between the two. In fact, the new and heavily integrated advertising formats are difficult even for many adult consumers to recognize and understand.²³

A. Digital marketing is on the rise.

In the last ten years (2012 to 2021), the total worldwide advertising spend on children increased from \$3.5 billion to \$4.6 billion. Notably, traditional advertising decreased during the same time period.²⁴ Thus, the entire growth in advertising is attributable to digital advertising, which skyrocketed to \$1.7 billion from \$300 million.²⁵ As digital advertising presents even more difficulty for kids and teens, this trend is particularly problematic.

There are generally three categories of digital advertising: (1) behavioral profiling and targeted advertising; (2) content advertising; and (3) influencer marketing. Each is addressed in turn.

1. Behavioral Profiling and Targeted Marketing

When kids and teens are online, they involuntarily produce continuous data about themselves. With advancements in computing power and artificial intelligence (namely, machine learning),

²⁰ We have made this point before. See generally [Common Sense Comments Before the Federal Trade Commission on Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) (June 22, 2020).

²¹ Joanne Cantor et. al, Report of the APA Task Force on Advertising and Children (Feb. 20, 2004), <https://www.apa.org/pubs/reports/advertising-children>.

²² Uros Stanimirovic, *Is Traditional Advertising a Thing of the Past?*, *Brid.tv* (Nov. 17, 2020), <https://www.brid.tv/traditional-advertising-vs-modern-advertising/#:~:text=Traditional%20advertising%20is%20a%20term,interested%20in%20them%20or%20not>.

²³ Lara Spiteri Cornish, ‘Mum, Can I Play on the Internet?’ Parents’ Understanding, Perception, and Responses to Online Advertising Designed for Children, 33 *Int’l J. of Advertising* 3, 437–73 (2014).

²⁴ See *Spending on Advertising to Children Worldwide from 2012 to 2021, By Format*, Statista, <https://www.statista.com/statistics/750865/kids-advertising-spending-worldwide/>.

²⁵ *Id.*

firms track children's activities online, collecting millions of data points to make inferences about them. They use these inferences to create a behavioral profile for each child. Then, based on these profiles, marketers create any number of ads, with each customized to appeal to a group of kids with similar profiles. Most children are not aware that ads may be tailored to them, and researchers have concluded that they are even less equipped to identify targeted ads compared to traditional ads.²⁶

2. Content Marketing

With advancements in technology, marketers now have the ability to embed ads into content. Industry even has a new name for it: content marketing. Here, advertising disguises its commercial nature by creating content such as inspirational stories, helpful articles, or funny memes that attract consumers' attention.²⁷ Though the connection to the advertised product or service may not be obvious (there is no express directive to the consumer to make a purchase), the intent is to drive consumer action.

For example, the supermarket Aldi creates and posts a meme referencing a popular TV show on social media. When platform users find the meme entertaining, they "like" it and share it with their social media connections and may now have a good impression of Aldi, leading them to shop there. Moreover, when the users' connections see that someone they know has "liked" the meme, odds are they will "like" the meme too and have a good impression of Aldi as well. A 30-second commercial on television or radio simply does not have the potential reach that content marketing offers.²⁸

A form of content marketing is "advergames." Here, a firm partners with video game developers to design a game that seamlessly incorporates elements of the firm's product service into gameplay.²⁹ While firms have been using advergames since the early 1990s to raise brand awareness and increase engagement with consumers, social media has made these games more effective.³⁰ For example, in 2013, Chipotle released a short film and a mobile advergame called "The Scarecrow."

²⁶ Kaiwen Sun, Carlo Sugatan, Tanisha Afnan, Hayley Simon, Susan A. Gelman, Jenny Radesky, and Florian Schaub. 2021. "They See You're a Girl if You Pick a Pink Robot with a Skirt": A Qualitative Study of How Children Conceptualize Data Processing and Digital Privacy Risks. In Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems (CHI '21). Association for Computing Machinery, New York, NY, USA, Article 687, 1-34. DOI:<https://doi.org/10.1145/3411764.3445333>.

²⁷ Raffaello Rossi and Agnes Nairn, How Children Are Being Targeted With Hidden Ads on Social Media, *The Conversation* (Nov. 3, 2021), <https://theconversation.com/how-children-are-being-targeted-with-hidden-ads-on-social-media-170502>.

²⁸ *Id.* (describing an meme Aldi Stores UK's Twitter account tweeted that referenced the popular Netflix show "Squid Game").

²⁹ See e.g. Mitch Swanson, Adver gaming: How Video Game Advertising Helps With Consumer Engagement, *Gamify*, <https://www.gamify.com/gamification-blog/adver-gaming-how-game-advertising-is-built-for-consumer-engagement> (listing examples of popular advergames).

³⁰ All About Advergames, Concordia University St. Paul, <https://online.csp.edu/resources/article/all-about-advergames/>.

The restaurant chain incentivized players to explore four worlds and twenty levels with a buy-one-get-one-free offer. Tech outlets recognized the ad campaign as the “future of advergaming.”³¹

3. Influencer Marketing

In addition to relying on traditional celebrities (e.g., actors and singers) to endorse a product, marketers deploy “influencers.” These individuals are popular online content creators who have developed a large social media following. Influencers post videos of themselves unboxing a new product, or “vlog” about their daily lives where they can be seen using the product. Viewers often consider influencers' videos and social media posts to be regular electronic word of mouth (rather than ads), and find their recommendations to be highly trustworthy. According to the 2017 report from the United Kingdom communications regulator Ofcom, 38 percent of 12 to 15-year-olds are not aware that influencers may be paid to include a product or brand in their vlog.³² Thus, it may be even more difficult for teenagers to identify this type of advertising in practice.³³

Generally, influencers are viewed as peers, and therefore, must be honest and sincere.³⁴ Numerous studies have shown that consumers generally perceive content produced by laypersons as more trustworthy than content produced by experts or traditional celebrities. Thus, using influencer marketing is more effective and likely to lead to attitude changes.³⁵

Kids and teens are particularly susceptible to influencer marketing because they are often seen as more personable and relatable than traditional celebrities. Children tend to build a special type of relationship with their favorite influencers: they admire them, consider them to be their friends, imagine being part of their social world, and value their advice.³⁶ This can make children

³¹ See e.g., George Deglin, *Chipotle Scarecrow is the Future of Advergaming on Mobile*, Venture Beat (Sept. 30, 2013), <https://venturebeat.com/business/chipotle-scarecrow-is-the-future-of-advergaming-on-mobile/>.

³² Ofcom (2017), “Children and Parents: Media Use and Attitudes Report 2017,” <https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-parents-2017>.

³³ *Id.*

³⁴ Liselot Hudders, Veroline Cauberghe, and Katarina Panic, How Advertising Literacy Training Affect Children's Responses to Television Commercials versus Advergaming, 35 *Int'l. J. of Advertising* 6, 909–31 (2016); Elmira Djafarova and Chloe Rushworth, Exploring the Credibility of Online Celebrities' Instagram Profiles in Influencing the Purchase Decisions of Young Female Users, 68 *Computers in Human Behavior*, 1–7 (2017).

³⁵ See e.g. Hye-Jin Paek, Thomas Hove, Hyun Ju Jeong, and Mikyoung Kim, Peer or Expert? The Persuasive Impact of YouTube Public Service Announcement Producers, 30 *Int'l. J. of Advertising* 1, 161–88 (2011); Azka Faranisa Ananda and Harimukti Wandebori (2016), “The Impact of Drugstore Makeup Product Reviews by Beauty Vlogger on YouTube towards Purchase Intention by Undergraduate Students in Indonesia,” presented at the International Conference on Ethics of Business, Economics, and Social Science, Yogyakarta, Indonesia, September, <http://eprints.uny.ac.id/41794/>.

³⁶ These are known as parasocial interactions or PSIs. Donald Horton and Richard Wohl, Mass Communication and Para-Social Interaction: Observations on Intimacy at a Distance, 19 *Psychiatry* 3, 215–29 (1956).

more subconsciously persuaded by this advertising, and then adopt the attitudes and behaviors of the influencers.³⁷ One survey found that influencers on YouTube, Instagram, and Snapchat impact children and teens' purchases more than celebrities and athletes.³⁸ Their sway works quickly as well: More than one-third of influencer-led purchases in the youth and family category are same-day purchases, while another quarter of purchases occur within a few days.³⁹ Nielsen data shows that more than three-quarters of kids trust YouTubers' recommendations on what to buy over commercials.⁴⁰

B. Marketing that blurs the line between ad and content harms children and families.

Kids and teens should be protected from exposure to digital advertising for unhealthy foods and other products. One well-documented harm is the relationship between food ads and unhealthy eating habits. For example, a U.S. study found that playing food-branded advergames increased children's consumption of unhealthy snack foods, compared to playing non-food advergames and advergames featuring healthy foods.⁴¹ A study of Australian children ages 10 to 16 found that when kids watched food-branded YouTube video content and saw their favorite food brands advertised, they consumed more unhealthy food and drinks.⁴² In a 2019 survey, one in four teens first learned about vaping, predominantly through targeted ads and sponsored content while on social media.⁴³ In a 2016 report, middle school students were shown to be three times more likely and high schoolers two times more likely to use e-cigarettes than their peers when they routinely saw ads for the product online.⁴⁴

Advertising may also harm children's mental health by affecting their body image and self esteem. Marketing firms and influencers often push popular diet products like detox teas, some

³⁷ *Id.*

³⁸ Generation Alpha: Preparing for the Future Consumer, Wunderman Thompson 11 (2019), <https://www.wundermanthompson.com/news/generation-alpha-2019>.

³⁹ Tiffany Tasker, Use Kid-Directed Content to Create More Effective Campaigns, Toybook (2022), <https://toybook.com/marketing-memo-kid-directed-content/>.

⁴⁰ Getting closer: Influencers help brands build more personal consumer connections, Nielsen (May 17, 2022), <https://www.nielsen.com/insights/2022/getting-closer-influencers-help-brands-build-more-personal-consumer-connections/>.

⁴¹ Jennifer L. Harris et. al, *US Food Company Branded Advergimes on the Internet: Children's Exposure and Effects on Snack Consumption*, 6 J. of Children & Media 1 (2012). See also *Impact of Unhealthy Food Marketing on Children*, Obesity Evidence Hub, <https://www.obesityevidencehub.org.au/collections/prevention/the-impact-of-food-marketing-on-children> (summarizing the research on the effect of unhealthy food marketing on children through various types of advertising including digital media content).

⁴² Heather J. Baldwin, Becky Freeman, & Bridget Kelly, *Like and Share: Associations Between Social Media Engagement and Dietary Choices in Children*, 21 Public Health Nutrition 17 (2018).

⁴³ Common Sense Media, *Vaping and Teens: Key Findings and Toplines*, 2019. More than half of teens on TikTok saw vaping-related posts.

⁴⁴ Lisa Rapaport, Reuters Health Report, *Teens Most Drawn to E Cigarettes by Online Ads*, Reuters (Apr. 2016), <http://www.reuters.com/article/us-health-ecigarettes-internet-advertisi-idUSKCNOXM08T>.

of which the Commission has fined for making deceptive weight loss and health claims.⁴⁵ Such advertising, often promoted by influencers like the Kardashians with a specific desired body type, prey on the vulnerabilities of young people, particularly young girls.⁴⁶

Families suffer as well. Kids often pressure their parents or other family members to purchase an advertised product, which can lead to family conflict. One study examining children ages 4 to 10 and their families found that children who watch unboxing videos are more likely to ask their parents to buy the products they see in the videos, and are more likely to throw a tantrum when parents refuse.⁴⁷

C. Disclosures are generally inadequate protections for children, and even more so with digital advertising.⁴⁸

Common Sense believes that the FTC's proposed mandated disclosures in section 255.5, if finalized, may be inadequate. According to the Persuasion Knowledge Model, which explains how individual's persuasion knowledge influences their responses to persuasion attempts,⁴⁹ advertising literacy is not triggered until consumers first recognize that the image is an advertisement.⁵⁰ Thus, advertising disclosures are ineffective if individuals cannot recognize that an image is an ad. Put another way, for a disclosure to be effective, the consumer must first see and take notice of it.

Research shows, however, that adults often do not notice advertising disclosures,⁵¹ and it is even more difficult for young people to see and remember disclosures than adults. Moreover, many

⁴⁵ Colleen Tressler, *FTC: Detox Tea Claims Are Hard to Swallow*, Federal Trade Commission (Mar. 6, 2020), <https://consumer.ftc.gov/consumer-alerts/2020/03/ftc-detox-tea-claims-are-hard-swallow>.

⁴⁶ Hannah Preston, *Detox Tea Company Uses Photo of Eating Disorder Survivor Without Consent: 'I Am Fundamentally Against Things Such As Weight Loss Teas'*, Newsweek (Mar. 20, 2019), <https://www.newsweek.com/detox-tea-company-uses-photo-eating-disorder-survivor-advertisement-without-1370406>; Ashleigh Carter, *A Detox Tea Brand Pushed by Celebs Has to Pay \$1 Million for False Advertising*, Now This News (Mar. 13, 2020), <https://nowthisnews.com/news/detox-tea-brand-pushed-by-celebs-has-to-pay-1-mill-for-false-claims>.

⁴⁷ Unboxing videos are popular; a study found that 78 percent of families surveyed said their children regularly watch unboxing videos. Harsha Gangadharbatla & Deepti Khedekar, *The Role of Parental Mediation and Persuasion Knowledge in Children's Consumption of Unboxing Videos*, 22 *ADVERTISING & SOCIETY QUARTERLY* (2021), <https://muse.jhu.edu/article/813891>.

⁴⁸ See [Fairplay Comments Before the Federal Trade Commission on Protecting Kids From Stealth Advertising in Digital Media](#) (July 18, 2022) (summarizing studies that show disclosures are inadequate to protect children).

⁴⁹ Marian Friedstad and Peter Wright, *The Persuasion Knowledge Model: How People Cope With Persuasion Attempts*, 21 *J. of Consumer Research* 1 (1994).

⁵⁰ Boush, David M., Marian Friestad, and Gregory M. Rose, *Adolescent Skepticism toward TV Advertising and Knowledge of Advertiser Tactics*, 21 *J. of Consumer Research* 1, 165-75 (1994).

⁵¹ Matthew T. Binford, Bartosz W. Wojdyski & Yen-I Lee, et al., *Invisible transparency: Visual attention to disclosures and source recognition in Facebook political advertising*, 18 *J. OF INFORMATION TECH. & POLITICS* 70, 80 (2020), <https://doi.org/10.1080/19331681.2020.1805388>; Sophie C. Boerman, Lotte M. Willemsen & Eva P. Van Der Aa, *"This Post Is Sponsored" Effects of Sponsorship Disclosure on Persuasion Knowledge and Electronic Word of Mouth in the Context of Facebook*, 38 *J. of Interactive Marketing* 82,

children are too young to read or have limited reading abilities, and are more easily distracted, especially when they find the content appealing.

Studies also show that preteens and teens do not notice or remember disclosures. For example, one study looking at the effectiveness of sponsorship disclosures on children, ages 10 to 16, found that most did not notice the disclosure or mention it in interviews with researchers until they were asked questions about it.⁵² In another study, the majority of participant children, ages 8 to 12, stated they did not recall seeing a disclosure in the video despite having been shown one that lasted ten seconds in large white letters on a black background.⁵³

Even if preteens and early teenagers notice and remember a disclosure, many studies show that disclosures do not help them activate their advertising literacy, and thus, are unable to critically think about the ad or the persuasive intent behind it. One study examining how age and disclosures of sponsored influencer videos affect adolescents' knowledge of persuasion found that only older teenagers ages 15 to 16 years old may become more critical after seeing a disclosure.⁵⁴ This is likely because early adolescence is characterized by "concrete thinking and a lack of linking present actions to future results," while older teens have a better understanding of their actions and are more experienced in engaging in more complex thinking processes.⁵⁵ This enables older teens to better link advertising to bias and misleading information, and see negative consequences for the brand and influencers as causers of this bias.⁵⁶ Younger teens are also peaking in their sensitivity toward affective stimuli, such as influencer content,⁵⁷ which limits their stop and think response, a necessary mechanism to trigger critical attitudes towards advertising.⁵⁸ Notably though, regardless of the participant's age, even when participants recognized the persuasive intent through the disclosure, their purchase intentions of the product

90 (2017), <https://doi.org/10.1016/j.intmar.2016.12.002>; Nathaniel J. Evans, Joe Phua & Jay Lim, et al., Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent, 17 J. OF INTERACTIVE ADVERTISING 138, 144 (2017), <https://doi.org/10.1080/15252019.2017.1366885>.

⁵² Esther Rozendaal, Eva A. van Reijmersdal, and Margot J. van der Goot, Children's Perceptions of Sponsorship Disclosures in Online Influencer Videos, 11 ADVANCES IN ADVERTISING RESEARCH 273, 280 (2021).

⁵³ Sophie C. Boerman & Eva A. van Reijmersdal, Disclosing Influencer Marketing on YouTube to Children: The Moderating Role of Para-Social Relationship, 10 FRONTIERS IN PSYCHOLOGY 1, 8 (2020).

⁵⁴ Eva A. van Reijmersdal & Sophia van Dam, How Age and Disclosures of Sponsored Influencer Videos Affect Adolescents' Knowledge of Persuasion and Persuasion, 49 J. OF YOUTH AND ADOLESCENCE 1531, 1532 (2020), <https://pubmed.ncbi.nlm.nih.gov/31955365/>.

⁵⁵ *Id.*

⁵⁶ Lynne Eagle, Commercial media literacy: what does it do, to whom—and does it matter?, 36 J. of Advertising 2 101–110 (2007).

⁵⁷ Dustin Albert, Justin Chein, and Laurence Steinberg, The Teenage Brain: Peer Influences on Adolescent Decision Making, 22 Current Directions in Psychological Sci. 2, 114–120 (2013).

⁵⁸ Esther Rozendaal, Matthew Lapierre, Eva Van Reijmersdal, and Moniek Buijzen, Reconsidering Advertising Literacy as a Defense Against Advertising Effects, 14 Media Psychology 3, 333–354 (2011).

advertised did not change – meaning they were not any more or less likely to buy the product.⁵⁹ This suggests that the disclosure did not make the viewers any more skeptical about the content.

Another study that tested the effect of advertising disclosures on sponsored Instagram story content on high school girls found that while disclosures helped the participants to recognize the advertising in the Instagram stories, neither of the tested ad disclosure types triggered the girls' skepticism toward the sponsored content.⁶⁰

Disclosures can even be counterproductive. Studies also demonstrate that when people have a parasocial relationship or identify with an influencer, they are less likely to defend themselves against stealth marketing from that influencer.⁶¹ Many young people find influencers trustworthy, and disclosures can make them appear even more trustworthy to them.⁶² This can make them even more vulnerable to advertising by increasing advertisement clicking and buying behavior.⁶³

IV. The Commission must take more aggressive measures to protect kids and teens.

Common Sense urges the Commission to:

- **Ban targeted advertising.** Tailoring ads to children—potentially based on incorrect inferences—decreases their autonomy by shaping interests and encouraging them to engage in more of the same behaviors instead of exploring a range of interests.⁶⁴
- **Ban influencer marketing.** Product endorsements by content creators should be prohibited, regardless of whether the creator issues a disclosure. Children should not be bombarded by content like *Ryan's World's* YouTube channel where now 10-year-old Ryan has for years reviewed popular toys for his 33.4 million subscribers.⁶⁵ Nearly 90 percent of his videos have included at least one paid product recommendation aimed at preschoolers.⁶⁶

⁵⁹ Van Reijmersdal & Van Dam, How Age and Disclosures of Sponsored Influencer Videos, *supra* note 55, at 1541- 42.

⁶⁰ Delia Cristina Balaban, Meda Mucundorfeanu, and Larisa Ioana Mureşan, Adolescents' Understanding of the Model of Sponsored Content of Social Media Influencer Instagram Stories, 10 *Media & Comm'n* 305, 307 (2022), <https://www.cogitatiopress.com/mediaandcommunication/article/view/4652>.

⁶¹ See e.g. Brigitte Naderer, Jörg Matthes & Stephanie Schäfer, Effects of Disclosing Ads on Instagram: The Moderating Impact of Similarity to the Influencer, 40 *INT'L J. OF ADVERTISING* 686, 702 (2021). See also *supra* at note 49. Fairplay's comments provide an in-depth overview of studies examining the impact of parasocial relationships on young users' susceptibility to influencer marketing.

⁶² *Id.*

⁶³ Emmelyn Croes & Jos Bartels, Young Adults' Motivations for Following Social Influencers and Their Relationship to Identification and Buying Behavior, 125 *COMPUTERS IN HUMAN BEHAVIOR* at 7 (2021), <https://doi.org/10.1016/j.chb.2021.106910>.

⁶⁴ Common Sense Media, *AdTech and Kids: Behavioral Ads Need a Time Out* (May 13, 2021).

⁶⁵ Tiffany Hsu, Popular YouTube Toy Review Channel Accused of Blurring Lines for Ads, *N.Y. Times* (Sept. 4, 2019), <https://www.nytimes.com/2019/09/04/business/media/ryan-toysreview-youtube-ad-income.html>.

⁶⁶ *Id.*

We also recommend that the Commission provide detail explaining how children are vulnerable by adding the following bolded sentences to section 255.6.

Endorsements in advertisements addressed to children may be of special concern because of the character of the audience. **Children are more susceptible to endorsements in advertising because their ability to identify an advertisement and recognize the persuasive intent of advertising gradually develops as they grow older. This can prevent them from thinking more critically about the advertisement than an adult would.** Practices which would not ordinarily be questioned in advertisements addressed to adults might be questioned in such cases.

We urge the Commission to include in section 255.6 the following examples as advertising practices that raise special concern to children:⁶⁷

- **Sponsored videos**, where the influencer is paid to promote a specific product or service. This example can elaborate on how children are especially more vulnerable to this type of advertising because they see influencers as trustworthy and often have parasocial interactions with them;
- **Unboxing videos**, where the influencer may not necessarily be paid to create, but are still overly commercial in nature and can sway kids to want the product being unboxed; and
- **Advergames used to entertain kids**, where the commercial content is paired with the emotional experience of playing a game or winning a reward.⁶⁸

Additionally, we would like to reiterate the following policy recommendations from our 2020 comments:⁶⁹

- **Ban endorsements for unhealthy food and drinks to children and teens.** The literature linking advertising with obesity is strong, and children are more likely to be swayed to want a particular food or drink when their favorite influencers feature them.
- **Prohibit companies, content creators, and hosts from rewarding children and teens for ad viewing.** In-app advertising has become a form of content consumption in itself, with apps offering in-app rewards in exchange for viewing ads.⁷⁰ While advertising can help app developers provide games to children for free, we should be pushing for children to view less ads, not more. Viewing ads should not be linked to rewards such as gameplay items or game advancement, which can encourage children to spend more time playing the game and further blur the line between what is part of the game and what is advertising.

⁶⁷ The Commission should lay out examples of embedded advertising practices harmful to children in Section 255.6 similar to how section 255.5 lays out examples of material connections that should be disclosed.

⁶⁸ Common Sense Comments *supra* note 20, at 3, 6.

⁶⁹ Common Sense Media Comments *supra* note 20.

⁷⁰ Victoria Adkins, Marisa Meyer, Yuan Nalingna, Heidi M. Weeks, Yung-Ju Chang, Jenny Radesky, Advertising in Young Children's Apps: A Content Analysis, 40 *J. of Developmental & Behavioral Pediatrics* 1, 32-39 (2019).

- **Look to state and international best practices to model advertising and platform design regulations.** Other countries such as Norway and the United Kingdom and the state of Quebec are more proactive and stringent in regulating advertising practices directed at children.⁷¹ Since we submitted our 2020 comments, the United Kingdom passed the Age Appropriate Design Code, which went into effect in September 2021 and requires companies to design platforms likely to be accessed by children with their best interests in mind. Additionally, California, which has been a leader in technology policy since it passed the nation's first comprehensive state privacy law, just passed its Age-Appropriate Design Code Act. Both laws prohibit a company from profiling a child by default, and only allow profiling if the platform has appropriate measures in place to protect children from harm. Such requirements would help minimize the amount of targeted ads children see online.

V. Conclusion

Advertising has become ubiquitous and digital advertising in particular makes it more difficult for children to identify and critically assess ads. Protecting kids and teens from such unfair and deceptive marketing practices requires the Commission to take more aggressive measures.

We look forward to working with you to protect kids and teens in a digital world.

Respectfully submitted,

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⁷¹ Common Sense Media comments *supra* note 20.