

COMPLIANCE WARNING REGARDING ADVERTISING PRACTICES DIRECTED TO CHILDREN IN THE METAVERSE

August 23, 2022

SUMMARY

The Children's Advertising Review Unit of BBB National Programs ("CARU") issues this Compliance Warning regarding the application of CARU's Self-Regulatory Guidelines for Children's Advertising ("Advertising Guidelines"), as revised effective January 1, 2022, to advertising practices directed to children in the metaverse. Specifically, CARU puts advertisers, brands, endorsers, developers, and others on notice that CARU's Advertising Guidelines apply to metaverse advertising to children and that CARU will strictly enforce its Guidelines against metaverse advertising. Advertisers should be particularly cautious to avoid advertising that blurs the distinction between advertising and non-advertising content, that uses manipulative tactics, including but not limited to social pressure or validation, deceptive door openers, or misleading design techniques, or that fails to make clear and conspicuous disclosures to children where needed to distinguish advertising from non-advertising content.

CARU'S ADVERTISING GUIDELINES

CARU monitors and reviews advertising directed to children for compliance with its Advertising Guidelines.² CARU seeks change through the voluntary cooperation of companies and, where warranted, enforcement action.

CARU's Advertising Guidelines apply to all advertising, in any medium, directed to children under age 13.³ The Foundation of the Guidelines sets forth CARU's overarching principles that advertisers should recognize that they have special responsibilities to children, and that children are more vulnerable to advertising messages, due to their limited knowledge, experience, sophistication, and maturity, and thus require extra protections.⁴ The Scope of the Guidelines makes clear that advertising should be neither deceptive nor unfair to the children to whom it is directed, as these terms are applied under the Federal Trade Commission Act.⁵

The recent revisions to the Guidelines, effective January 1, 2022, address advertising practices in the evolving and expanding digital worlds in which children socialize, play, and learn. Today's compliance warning makes clear that these digital worlds include metaverse spaces.

¹ Advertising Guidelines

² CARU, the nation's first FTC-authorized safe harbor program under the Children's Online Privacy Protection Act ("COPPA"), also monitors privacy practices directed at children for compliance with its Privacy Guidelines and COPPA. Although not addressed in this Compliance Warning, CARU will also enforce its Privacy Guidelines in the Metaverse as warranted.

³ Id. at 3, Definitions.

⁴ Id. at 1, Foundation of the Guidelines.

⁵ Id. at 2, Scope.



CARU's Advertising Guidelines Prohibit Advertisers from Blurring Advertising and Non-Advertising Content Directed to Children in the Metaverse

The blurring of advertising and non-advertising content directed to children is not new, but the sophisticated and varied ways in which blurring can occur in metaverse spaces are a special concern and focus for CARU. Today, advertising can be seamlessly woven into interactive gaming, entertainment, and educational content, along with the blending of influencer marketing and user-generated content, across increasingly connected spaces.

The Guidelines spell out the overarching principle that:

Advertisements must be easily identifiable as Advertising. Therefore, Advertising should not be presented in a manner that blurs the distinction between Advertising and non-Advertising content.⁶

They also specifically address practices that are likely to obscure the lines between advertising and non-advertising content and call on advertisers to take extra care to be transparent in digital environments, with an eye to the special vulnerabilities of children, to prevent misleading, deceptive, or inappropriate advertising to them. The revised Guidelines expressly articulate that:

Given the increasing difficulty of distinguishing between Advertising and non-Advertising content, especially in the online context, Advertisers should take extra care to be transparent when Advertising to Children.⁷

and

In online services directed to Children, Advertisements integrated into the content of a game or activity should be easily identifiable as Advertising.⁸

Additionally, the Guidelines detail the types of techniques that may be necessary to prevent blurring:

Some Advertising will require disclosures or contextual cues to help Children recognize it as Advertising. Attention to the wording used in Ads and commonsense design techniques, including text size and color, positioning, and other visual or contextual cues, such as the borders around or background shadings of Ads, can substantially increase the likelihood that Children will recognize an Ad as an Ad and reduce the potential for Children to be misled.⁹

CARU's past determinations regarding practices that are deceptive or unfair, in violation of its Advertising Guidelines, are equally instructive in the metaverse context. CARU has issued several decisions addressing blurring in digital spaces such as mobile apps¹⁰ and online videos.¹¹ In each of these cases, CARU recommended the advertiser take

⁶ $\emph{Id.}$ at 4.e.1, Blurring of Advertising and Content.

⁷ *Id.* at 4.e.2.

⁸ *Id.* at 4.e.5.

⁹ *Id.* at 4.e.3.

¹⁰ See, e.g., Firefly Games (LOL Surprise Room Makeover App), Case #6442, NAD/CARU Case Reports (July 2022); Outright Games Ltd. (Bratz Total Fashion Makeover App), Case #6440, NAD/CARU Case Reports (June 2022); OutFit 7 (My Talking Tom), Case #6255, NAD/CARU Case Reports (Feb. 2019).

¹¹ See, e.g., Ryan Toys Review (Ryan Toys Review), Case #6121, NAD/CARU Case Reports (Oct. 2017); Evantube HD (Evantube YouTube Channels), Case #5988, NAD/CARU Case Reports (Aug. 2016).



appropriate action, including the use of child-friendly design techniques and clear and conspicuous disclosures, to prevent blurring the distinction between advertising and non-advertising content. CARU's decisions, where necessary, also call out advertisers for practices that rise to the level of dark patterns – manipulative tactics – for the purpose of tricking children into viewing ads or making purchases.

In metaverse spaces, the risk of blurring between advertising and content is intensified. As brands increasingly create sponsored worlds in the metaverse, it is imperative that these spaces, often designed as advergames, conspicuously disclose to children in language they can understand that these are advertising. In addition, many metaverse worlds, whether brand-sponsored or independently operated, feature advertising that is woven into the theme and content of the game and is not likely to be easily identifiable to children as advertising.

Without clear and conspicuous advertising disclosures, appropriately tailored to the media sources where they appear, the blurring of advertising and non-advertising will undermine children's ability to discern or assess the multiple advertising messages targeted to them.

In determining whether an entity has complied with the Advertising Guidelines, CARU will look at whether the advertising is disclosed effectively in a manner that children will see and understand within the context of the relevant metaverse space.

CARU's Advertising Guidelines Require Influencers and Endorsers in the Metaverse to Disclose Their Material Connections

The metaverse also has opened a new frontier for influencer marketing where sponsored avatar influencers, as well as computer-generated influencers, can interact directly with children to promote brands, branded games, and other goods and services. Paid influencers can also cross-promote products and games across multiple platforms, creating further potential for confusion as to when influencers are advertising or simply expressing their own preferences.

The 2022 revisions to the Advertising Guidelines make clear that influencers are endorsers, and that both advertisers and influencers are responsible for claims made and for clearly and conspicuously disclosing an influencer's relationship to the advertisers.

The Guidelines' Endorser and Influencer provision states, among other requirements, that:

Advertisers should recognize that the mere appearance of a celebrity, influencer, or authority figure with a product or service can significantly alter a Child's perception of the product or service. Advertising that uses such figures should not falsely imply that the use of the product or service enhanced the celebrity's, influencer's, or authority figure's performance.

Advertisers should ensure that their Endorsers Clearly and Conspicuously disclose that they have a material connection to the Advertiser (i.e., a connection that is not expected by ordinary Children).¹²

¹² Advertising Guidelines, at Endorsers and Influencers, 4.d.



In metaverse spaces, where influencers in effect can be right by a child's side encouraging them to try out new games and content and even to make in-game purchases - advertisers, including influencers, must take extra care to ensure that disclosures to children are both clear and conspicuous. In the context of metaverse influencers, this means making sure that influencers make clear disclosures in all locations where they promote, including potentially on multiple platforms, and with sufficient frequency that children are likely to see/hear and understand them. These considerations are especially important given the momentum towards increasing interoperability between platforms and technologies.

CARU's Advertising Guidelines Prohibit Use of Manipulative Tactics in Advertising **Directed to Children in the Metaverse**

CARU's Advertising Guidelines make clear that Advertisers' special responsibilities to children prohibit their use of manipulative tactics to induce children to view or interact with advertising or make in-game purchases:

Advertisements, apps, or games should not use unfair, deceptive, or other manipulative tactics, including but not limited to deceptive door openers or social pressure or validation, to encourage ad viewing or in-app or in-game purchases, or to cause Children to inadvertently or unknowingly engage with an ad.¹³

In addition, the Guidelines explicitly identify other advertising practices that can put undue social or emotional pressure on children:

Advertisements should not convey to Children that possession of a product will result in greater acceptance by peers or that lack of a product will result in less acceptance by peers. 14

Advertisements should not imply that purchase or use of a product will confer upon the user the prestige, skills, or other special qualities of characters appearing in Advertising.¹⁵

Presentations should not mislead Children about benefits from use of the product. Such benefits may include, but are not limited to, the acquisition of strength, status, popularity, growth, proficiency, or intelligence. 16

Deceptive advertising to children by manipulative means, whether through use of misleading design techniques or social or emotional engineering, is not new, CARU has addressed deceptive door openers and other practices in the realm of dark patterns in several of its mobile app decisions.¹⁷ CARU also has taken action against advertisers unfairly playing on children's emotions to effect in-game sales.¹⁸

The risk of manipulating children into unwittingly viewing ads or making purchases is heightened where advertising is interwoven into children's content. In metaverse and augmented reality ("AR") and virtual reality ("VR") worlds, the potential to manipulate

16 Id. at 4.b.2.

¹³ Id. at In-App or In-Game Advertising and Purchases, at 4.i.1.

¹⁴ Id. at Sales Pressure, 4.h.3.

¹⁵ *Id.* at 4.h.4.

¹⁷ See, e.g., decisions cited in footnote 8 above.

¹⁸ See, e.g., Toy Box Apps (Mall Girl App), Case #5594, NAD/CARU Case Reports (May 2013) ("Your pet is going to be taken away by the SPCA for animal neglect! Pay a fine of 6 Cash to keep your pet.")



children through similar problematic advertising practices is escalated by the fact that children can directly engage in activities and interactions with character avatars and influencers, potentially creating a sense of personal connection to and trust in the messages.

CARU warns advertisers, brands, influencers, developers, and others in metaverse and AR and VR spaces directed to children to take extra care to ensure that advertising does not violate the Guidelines through manipulation of any sort.

CARU's Advertising Guidelines Require Material Disclosures to Be Made Clearly and Conspicuously in the Metaverse

The problems of blurring and certain manipulative design techniques in advertising in children's digital media are interwoven in part with the need for clear and conspicuous disclosures to distinguish advertising from non-advertising content. To prevent advertisements from conveying a misleading impression, the Material Disclosures provision of CARU's Guidelines requires that all disclosures material to children should be clear, i.e., understandable to the children in the intended audience, taking into account their limited vocabularies and level of language skills. Moreover, the Guidelines require that material disclosures must be presented so they are conspicuous, i.e., easily noticeable and prominent, so children are likely to see and hear them.

CARU's mobile apps decisions have held that the advertisers violated the Guidelines by failing to clearly and conspicuously disclose advertising in their games. CARU recommended using clear, easy-to-understand language, including disclosures such as "Advertising" or "This is an Ad," and conspicuous design techniques to identify in-app ads. Some also directed the advertiser to clearly and conspicuously disclose when products featured in the game are paid ads.

CARU's video influencer decisions recommended that the influencers make clear and conspicuous audio disclosures at the videos' start. CARU updated its guidance in the 2022 revised Guidelines to make clear that in ads with both audio and visual elements, and in ads lasting several minutes or more, a single audio disclosure often will not be adequate to ensure children notice and understand it:

[I]n Advertisements with audio and video components, disclosures made in both audio and video are more likely to be noticed by Children and therefore most likely to be effective. When a claim requiring a disclosure, in an audio-video Advertisement, is made solely in audio or solely in video, a disclosure made only in the same format as the claim may be sufficient. In Advertisements longer than a few minutes, disclosures should be repeated periodically to increase the likelihood that Children will see/hear the disclosure.²⁰

¹⁹ Advertising Guidelines, Material Disclosures, section 4.C.1.

²⁰ *Id.* at 4.c.2. In fact, the CARU Guidelines' requirements closely align with the Federal Trade Commission's proposed revised definition of "Clear and Conspicuous" in its proposed updates to the Guides Concerning the Use of Endorsements and Testimonials in Advertising ("Endorsement Guides"), which are currently under notice and comment regulatory review (public comment period ending Sept. 22, 2022). The FTC's proposed definition contains several key elements, including that: disclosures must be difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers; disclosures should be unavoidable in the context of social media or the Internet; when the triggering claim is both visual and audible, the disclosure should be both, and a simultaneous audible and visual disclosure is more likely to be clear and conspicuous; and when an endorsement targets a specific audience, its effectiveness will be evaluated from the perspective of that group. *See* Endorsement Guides at Section 255.0(f).



Applying the Guidelines' disclosure requirements to the metaverse and AR and VR spaces to ensure disclosures are clear and conspicuous means that advertisers must take special care to ensure that disclosures are unambiguous, easily noticeable, and appear in appropriate locations, with sufficient frequency, and on multiple platforms so that children are likely to see, hear, and understand them.

CARU WILL STRICTLY ENFORCE ITS GUIDELINES IN THE METAVERSE

CARU will strictly enforce its Advertising Guidelines in the metaverse. This Compliance Warning focuses most closely on the Advertising Guidelines addressing blurring, manipulative practices, influencer marketing, and material disclosures because these are areas of particular concern in the context of metaverse and AR and VR spaces. The Warning thus puts industry on notice of several of CARU's enforcement priorities regarding advertising in such media. In addition, the Advertising Guidelines as a whole are instructive for advertisers, brands, endorsers and influencers, developers, and others on advertising truthfully, transparently, and appropriately to children in these and other media. Advertising in metaverse, AR, or VR spaces that violates CARU's Advertising Guidelines is subject to enforcement action.