

Congress of the United States
Washington, DC 20515

May 23, 2019

The Honorable Joseph J. Simons,
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Rebecca Kelly Slaughter,
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Noah Joshua Phillips,
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Christine S. Wilson,
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Rohit Chopra,
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson,

We write to request that the Federal Trade Commission (FTC) investigate predatory online marketing that targets children and that the Commission issue guidance for online creators that clarifies what marketing practices are appropriate within the confines of the law. Protecting our nation's children from unfair and deceptive practices should always be a top priority for the FTC.

American children spend significant time each day engaging with online content. In 2015, teens spent an average of 5 hours per day using internet-connected devices; children 8 to 12 years old spent an average of over two hours doing the same activities.¹ In 2017, even children 2 to 4 years old spent an average of one hour per day using mobile devices and computers.²

Children deserve special protection because they are not able to discern the intent or impact of marketing, leading to larger negative consequences as many peer-reviewed studies, reviews of scientific literature, and meta-studies have documented.³ Developmentally, younger children lack any ability to detect the persuasive intent of advertisers,⁴ and protracted development of executive cognitive functions does not reach adult levels until middle or late adolescence.⁵ One research review finds that children's exposure to advertising has a consistent relationship with materialism and parent-child

conflict.⁶ These issues are exacerbated by the fact that children demonstrate significantly less sophistication understanding advertising on the internet than television.⁷

A variety of engaging and enriching content is available to children and teens online. Some traditional sources of educational media have successfully distributed programming online. For example, Sesame Street's YouTube videos have been watched 6.5 billion times;⁸ NASA has 41 million followers on Instagram;⁹ and National Geographic has seven million followers on SnapChat.¹⁰ Additionally, some online content creators have developed successful educational programming. For example, vloggers John and Hank Green launched and manage CrashCourse, an educational YouTube channel for teens that has over nine million subscribers.¹¹

However, not all online content is as enriching as these examples.

Some online celebrities, commonly referred to as "influencers," use marketing practices that are unfair and deceptive. Influencers are often paid by brands to promote their products because online celebrities can influence cultural trends and consumer purchasing power. Influencing commerce is not problematic on its own. However, many influencers that create content for children monetize their popularity by using predatory marketing techniques to convince their audience to purchase branded merchandise ("merch") and tickets to live events, watch other advertising-enabled videos, or take other actions that benefit the influencer or the influencer's sponsoring company.

In an especially egregious example of such predatory marketing, one video by the popular YouTube vlogger Jake Paul that is less than 14 minutes long includes seven minutes devoted to advertising products.¹² Mr. Paul says the words "merch" and "tour" over 20 times each during this video, an illustration of the highly commercial nature of this content.¹³ These practices are especially offensive because Mr. Paul creates his videos for children "8 years old to 18 years old" and explicitly uses marketing strategies that target children, as Mr. Paul himself has stated.¹⁴ Mr. Paul's YouTube channel has 775 videos that have been viewed a cumulative 5.7 billion times, and the channel has 18.7 million subscribers.¹⁵ A YouTube commenter has called the "merch machine" operated by Mr. Paul and his brother Logan, a system that is nefarious, dark, aggressive, manipulative, and predatory.¹⁶

Unfortunately, these practices are not unique to Mr. Paul. Toy unboxing videos, which are fundamentally advertisements for children, make up a large share of online video content.¹⁷ One of the largest toy unboxers is Ryan, the 8-year-old from Ryan ToysReview who made over \$22 million from endorsement deals last year¹⁸ on content that is self-described as "Toys Review for kids by a kid!"¹⁹ Ryan's YouTube channel has nearly 20 million subscribers, and its videos have been viewed a cumulative 30 billion times.²⁰ While any individual toy unboxer's reach on other platforms may be more limited, there are over 64,000 posts on Instagram under #toyreview, making the cumulative reach of such posts significant.²¹ Video blogging ("vlogging") and toy unboxing are some of the many types of online videos that target children with manipulative commercial content.

While many online platforms, such as YouTube and Instagram, state that they are designed for adults and teens over 13 years old, evidence suggests that these companies know, or should know, that many children circumvent age-verification schemes and widely view these websites.²²

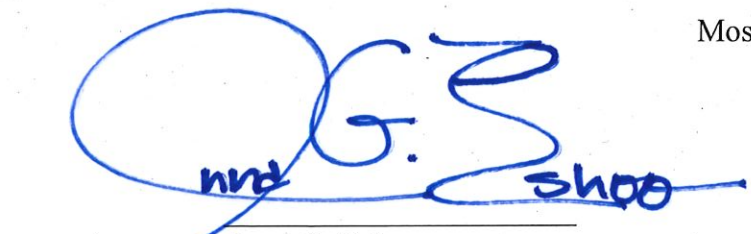
We ask the FTC to investigate unfair and deceptive marketing practices associated with online content targeted to children as potential violations of Section 5 of the FTC Act. Our request adds to a chorus of legal scholars,²³ public interest groups,²⁴ and lawmakers²⁵ asking the FTC to take action on online advertising to children.

Beyond investigating possible violations of Section 5 of the FTC Act described above, we ask that the FTC issue guidance to help online creators whose content is made for children understand what kind of advertising is permissible and what is impermissible. This will help content creators acting in good faith comply with the law. Here, the FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising (Endorsement Guides) serves as a useful template. Updated in September 2017, the online Endorsement Guides discuss relevant examples and FAQs, including that disclosures in Instagram post descriptions should be before having to click 'more;' disclosures may be superimposed on Snapchat or Instagram Stories; and "#ad" can be on Twitter.²⁶ In April 2017, the FTC wrote to 90 influencers and brands reminding them of disclosure requirements.²⁷

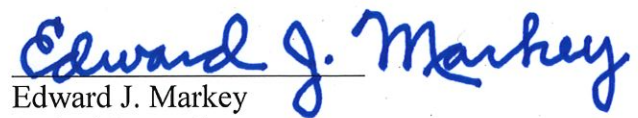
Currently, the Endorsement Guides do not include information specific to children's advertising. Other FTC guidance and documents about online advertising and products similarly lack substantive discussion about marketing to children online,²⁸ with the exception of FTC guidance related to the Children's Online Privacy Protection Act.²⁹

We thank you in advance for your attention to this highly important issue, and we respectfully request a written response by June 12, 2019.

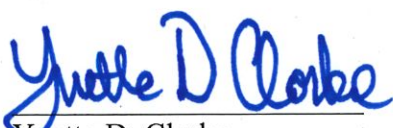
Most gratefully,



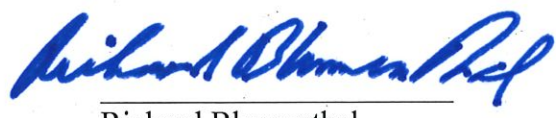
Anna G. Eshoo
Member of Congress



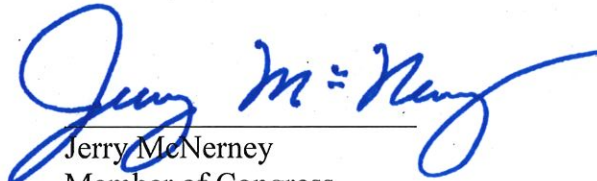
Edward J. Markey
United States Senator




Yvette D. Clarke
Member of Congress

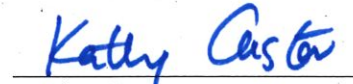


Richard Blumenthal
United States Senator


Jerry McNerney
Member of Congress


Richard J. Durbin
United States Senator


Eleanor Holmes Norton
Member of Congress


Kathy Castor
Member of Congress

¹ “The Common Sense Census: Media Use by Tweens and Teens” (Common Sense Media, 2015), https://www.common sense media.org/sites/default/files/uploads/research/census_researchreport.pdf.

² “The Common Sense Census: Media Use by Kids Age Zero to Eight” (Common Sense Media, 2017), https://www.common sense media.org/sites/default/files/uploads/research/csm_zerotoeight_fullreport_release_2.pdf.

³ Matthew A. Lapierre et al., “The Effect of Advertising on Children and Adolescents,” *Pediatrics* 140, no. Supplement 2 (November 2017), <https://doi.org/10.1542/peds.2016-1758V>.

⁴ Deborah John, “Consumer Socialization of Children: A Retrospective Look At Twenty-Five Years of Research,” *Journal of Consumer Research* 26 (February 1, 1999): 183–213, <https://doi.org/10.1086/209559>.

⁵ Esther Rozendaal et al., “Reconsidering Advertising Literacy as a Defense Against Advertising Effects,” *Media Psychology* 14, no. 4 (November 30, 2011): 333–54, <https://doi.org/10.1080/15213269.2011.620540>.

⁶ Moniek Buijzen and Patti M. Valkenburg, “The Effects of Television Advertising on Materialism, Parent-Child Conflict, and Unhappiness: A Review of Research,” *Journal of Applied Developmental Psychology* 24, no. 4 (2003): 437–56, [https://doi.org/10.1016/S0193-3973\(03\)00072-8](https://doi.org/10.1016/S0193-3973(03)00072-8).

⁷ Laura Owen et al., “Is Children’s Understanding of Nontraditional Advertising Comparable to Their Understanding of Television Advertising?,” *Journal of Public Policy & Marketing* 32, no. 2 (September 1, 2013): 195–206, <https://doi.org/10.1509/jppm.09.003>.

⁸ “Sesame Street,” YouTube, accessed April 18, 2019, <https://www.youtube.com/channel/UCoookXUzPciGrEZEXmh4Jjg>.

⁹ “NASA (@nasa),” Instagram, accessed April 18, 2019, <https://www.instagram.com/nasa/>.

¹⁰ Ilyse Liffreing, “National Geographic Is Using Virtual Reality and Social Platforms to Appeal to Gen Z,” *Digiday*, October 30, 2018, <https://digiday.com/marketing/national-geographic-virtual-reality-social-gen-z/>.

¹¹ “CrashCourse,” YouTube, accessed April 18, 2019, <https://www.youtube.com/channel/UCX6b17PVsYBQ0ip5gyeme-Q>.

¹² Nerd City, *PARENTS’ WORST NIGHTMARE: Jake Paul*, accessed April 26, 2019, <https://www.youtube.com/watch?v=ywcY8TvES6c>.

¹³ Jake Paul, *THE BEST SONG WE’VE MADE YET...*, accessed April 26, 2019, https://www.youtube.com/watch?v=Y0_k5lc4DoE.

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- ¹⁴ VICE News, *Jake Paul Plans To Be Youtube's First Billionaire (HBO)*, accessed April 26, 2019, <https://www.youtube.com/watch?v=5ZV2x2fpdpg>.
- ¹⁵ "Jake Paul," YouTube, accessed May 3, 2019, <https://www.youtube.com/user/JakePaulProductions/about>.
- ¹⁶ H3 Podcast, *H3 Podcast #45 - Jake & Logan Paul's Predatory Merch Machine*, accessed April 26, 2019, <https://www.youtube.com/watch?v=hOLCEvGO-SU>.
- ¹⁷ See e.g., Lieber, Chavie. "Kids Love Toy Unboxing Videos. Some Experts Say They're Just Big Ads." Vox, March 22, 2019. <https://www.vox.com/the-goods/2019/3/22/18275767/toy-unboxing-videos-youtube-advertising-ethics>.
- ¹⁸ Robehmed, Natalie. "Highest-Paid YouTube Stars 2018: Markiplier, Jake Paul, PewDiePie And More." Forbes, December 3, 2018. <https://www.forbes.com/sites/natalierobehmed/2018/12/03/highest-paid-youtube-stars-2018-markiplier-jake-paul-pewdiepie-and-more/>.
- ¹⁹ "Ryan ToysReview." YouTube. Accessed May 14, 2019. https://www.youtube.com/channel/UChGJGhZ9SOOHvBB0Y4DOO_w.
- ²⁰ *Id.*
- ²¹ "#toyreview." Instagram. Accessed May 14, 2019. <https://www.instagram.com/explore/tags/toyreview/>.
- ²² Elgersma, Christine. "Parents' Ultimate Guide to Instagram." Common Sense Media, March 28, 2019. <https://www.common Sense Media.org/blog/parents-ultimate-guide-to-instagram>; Knorr, Caroline. "Parents' Ultimate Guide to YouTube," March 4, 2019. <https://www.common Sense Media.org/blog/parents-ultimate-guide-to-youtube>.
- ²³ See, e.g., Rita-Marie Cain Reid, "Embedded Advertising to Children: A Tactic That Requires a New Regulatory Approach," *American Business Law Journal* 51, no. 4 (2014): 721–77, <https://doi.org/10.1111/ablj.12038>; Angela J Campbell, "Rethinking Children's Advertising Policies for the Digital Age," *Loyola Consumer Law Review* 29, no. 1 (2017), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2969&context=facpub>.
- ²⁴ See, e.g., Georgetown University Law Center Institute for Public Representation et al., "Re: Request for Investigation into Google's Unfair and Deceptive Practices in Connection with Its YouTube Kids App," April 7, 2015, <http://www.centerfordigitaldemocracy.org/sites/default/files/4-7-15%20YouTube%20Kids%20Request%20for%20Investigation%20FINAL.pdf>; Campaign for a Commercial-Free Childhood, Center for Digital Democracy, and Public Citizen, "In the Matter of: Complaint, Request for Investigation, and Request for Policy Guidance on the Deceptive Practice of Influencer Marketing Directed to Children," October 21, 2016, <http://www.commercialfreechildhood.org/sites/default/files/FTCInfluencerComplaint.pdf>; Center for Digital Democracy et al., "In the Matter of: Request to Investigate Google's YouTube Online Service and Advertising Practices for Violating the Children's Online Privacy Protection Act," April 9, 2018, <http://www.commercialfreechildhood.org/sites/default/files/devel-generate/tiw/youtubecoppa.pdf>; Campaign for a Commercial-Free Childhood et al., "In the Matter of: Request to Investigate Google's Unfair and Deceptive Practices in Marketing Apps for Children," December 19, 2018, https://www.commercialfreechildhood.org/sites/default/files/devel-generate/vad/google_ftc_complaint.pdf.
- ²⁵ See, e.g., Edward J. Markey, Tom Udall, and Richard Blumenthal, "Letter to FTC Commissioners," November 13, 2018, <https://www.markey.senate.gov/imo/media/doc/Letter%20to%20FTC%20re%20kids%20advertising.pdf>.
- ²⁶ "The FTC's Endorsement Guides: What People Are Asking," Federal Trade Commission, September 7, 2017, <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>.
- ²⁷ "FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship" (Federal Trade Commission, April 18, 2017), <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose>.
- ²⁸ See, e.g., "Native Advertising: A Guide for Businesses," Federal Trade Commission, December 22, 2015, <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>; "Mobile Health App Developers: FTC Best Practices" (Federal Trade Commission, April 4, 2016), <https://www.ftc.gov/tips-advice/business-center/guidance/mobile-health-app-developers-ftc-best-practices>.
- ²⁹ See, e.g., "Children's Online Privacy Protection Rule: Not Just for Kids' Sites" (Federal Trade Commission, April 2, 2013), <https://www.ftc.gov/tips-advice/business-center/guidance/childrens-online-privacy-protection-rule-not-just-kids-sites>.