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7 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8
9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 TINYCO, INC., a corporation,
13 Defendant.

Case No. _____

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

14
15 Plaintiff, the United States of America, acting upon notification and authorization to the
16 Attorney General by the Federal Trade Commission (“FTC” or “Commission”) for its Complaint
17 alleges:

18 1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children’s
19 Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6502(c) and 6505(d), and
20 Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC
21 Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a) to obtain monetary civil penalties, a
22 permanent injunction, and other equitable relief for Defendant’s violations of the Commission’s

1 Children’s Online Privacy Protection Rule (“Rule” or “COPPA Rule”), 16 C.F.R. Part 312, and
2 Section 5 of the FTC Act.

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
5 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

6 3. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c), 1395(a), and 15
7 U.S.C. § 53(b).

8 **INTRADISTRICT ASSIGNMENT**

9 4. Defendant TinyCo, Inc. has its principal place of business in the County of San
10 Francisco.

11 **DEFENDANT**

12 5. Defendant TinyCo, Inc. (“TinyCo”) is a Delaware corporation with its principal
13 place of business at 225 Bush Street, Suite 1900, San Francisco, CA 94104. TinyCo transacts or
14 has transacted business in this district and throughout the United States. At all times material to
15 this Complaint, acting alone or in concert with others, TinyCo has advertised, marketed,
16 distributed, or sold mobile applications (“apps”) to consumers throughout the United States.

17 **COMMERCE**

18 6. At all times material to this Complaint, TinyCo has maintained a substantial
19 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
20 15 U.S.C. § 44.

21 **THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE**

22 7. Congress enacted COPPA in 1998 to protect the safety and privacy of children
online by prohibiting the unauthorized or unnecessary collection of children’s personal

1 information online by operators of Internet websites or online services. COPPA directed the
2 Federal Trade Commission to promulgate a rule implementing COPPA. The Commission
3 promulgated the COPPA Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b)
4 of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedure Act, 5 U.S.C.
5 § 553. The Rule went into effect in April 2000. The Commission promulgated revisions to the
6 Rule that went into effect on July 1, 2013 (“Revised Rule”). The conduct challenged herein
7 violated the Rule as originally promulgated and also violates the Revised Rule currently in
8 effect.

8 8. Among other things, the Rule and the Revised Rule apply to any operator of a
9 commercial website or online service directed to children that collects, uses, and/or discloses
10 personal information from children, and to any operator of a commercial website or online
11 service that has actual knowledge that it collects, uses, and/or discloses personal information
12 from children. The Rule and the Revised Rule require a website operator to meet specific
13 requirements prior to collecting online, using, or disclosing personal information from children,
14 including, but not limited to:

15 a. Posting a privacy policy on its website or online service providing clear,
16 understandable, and complete notice of its information practices, including what
17 information the website operator collects from children online, how it uses such
18 information, its disclosure practices for such information, and other specific disclosures
19 set forth in the Rule;

20 b. Providing clear, understandable, and complete notice of its information practices,
21 including specific disclosures, directly to parents; and
22

1 c. Obtaining verifiable consent prior to collecting, using, and/or disclosing personal
2 information from children.

3 **DEFINITIONS**

4 9. For purposes of this Complaint, the terms “child,” “collects,” “collection,”
5 “Commission,” “delete,” “disclosure,” “Internet,” “operator,” “parent,” “personal information,”
6 “obtaining verifiable consent,” and “website or online service directed to children,” are defined
7 as those terms are defined in Section 312.2 of the Rule as originally promulgated, 16 C.F.R. §
8 312.2. To the extent any of these definitions, or any other provisions of the Rule referred to in
9 this Complaint, were revised effective July 1, 2013, such revisions are not material to the
10 allegations contained herein.

11 **TINYCO’S BUSINESS PRACTICES**

12 10. Since at least 2011, TinyCo has offered a number of mobile apps for download
13 from Apple’s App Store, Google Play, and the Amazon Appstore. TinyCo’s apps are games that
14 are free to download and play, but allow users to make in-app purchases of virtual items that
15 enhance or speed up gameplay. TinyCo’s apps include apps that are directed to children, such as
16 Tiny Pets, Tiny Zoo, Tiny Village, Tiny Monsters, and Mermaid Resort (“kids’ apps”). (*See*
17 Exhibit A, copies of each app’s initial screen.) These apps send and/or receive information over
18 the Internet, and thus are online services directed to children pursuant to COPPA.

19 11. TinyCo is an “operator” as defined by the COPPA Rule, 16 C.F.R. § 312.2
20 (Section 312.2 of the Revised Rule).

21 12. Tiny Pets, which was available from August 2011 until October 2013, was a game
22 in which users rescued animated animals, built them homes, and trained them to do tricks. The
description of the app in Apple’s App Store stated, “Help your best friend Sully the Dog save the

1 pets of TinyLand from the evil Duke Spendington! Hide them in your tree house by building
2 homes for them.” (See Exhibit B.) Tiny Pets was downloaded more than 2 million times.

3 13. Tiny Zoo, which has been available since April 2011, is a game in which users
4 collect, feed, and breed animated animals to build a zoo. The description of the app in Apple’s
5 App Store states, “Build the BEST zoo and raise ADORABLE animals in Tiny Zoo Friends!
6 Come back everyday to discover EXCITING new animal friends!” (See Exhibit C.) Tiny Zoo
7 has been downloaded over 7 million times.

8 14. Tiny Village, which has been available since October 2011, is a game in which
9 users build a prehistoric village and breed dinosaurs. The description of the app in Apple’s App
10 Store states, “Raise dinosaurs, build valuable shops and complete amazing quests in your own
11 prehistoric village!” (See Exhibit D.) Tiny Village has been downloaded over 13 million times.

12 15. Tiny Monsters, which has been available since March 2012, is a game in which
13 users buy and hatch eggs to breed monsters, and create habitats for the monsters. The
14 description of the app in Apple’s App Store states, “Hatch, raise, and breed mysterious elemental
15 creatures in Tiny Monsters by TinyCo! Collect TONS of rare and adorable monsters! Feed and
16 care for your monsters until they EVOLVE!” (See Exhibit E.) Tiny Monsters has been
17 downloaded over 12 million times.

18 16. Mermaid Resort, which has been available since 2011, is a game in which users
19 run a resort for mermaids and mermen. The description of the app in Apple’s App Store states,
20 “Create the resort of your dreams with attractions Inspired by Hans Christian Anderson’s Little
21 Mermaid fairy tale.” (See Exhibit F.)

22 17. Pursuant to Section 312.2 of the Rule (Section 312.2 of the Revised Rule), the
determination of whether an app is directed to children depends on factors such as the subject

1 matter, visual content, language, and use of animated characters or child-oriented activities and
2 incentives. An assessment of these factors demonstrates that TinyCo's kids' apps are directed to
3 children under the age of 13. For example, TinyCo's kids' apps appeal to children by containing
4 brightly-colored, animated characters from little animals or zoo creatures to tiny monsters, and
5 by involving subject matters such as a zoo, tree house, or resort inspired by a fairy tale. (*See*
6 Exhibit G, examples from Tiny Pets; Exhibit H, examples from Tiny Zoo; Exhibit I, examples
7 from Tiny Village; Exhibit J, examples from Tiny Monsters; Exhibit K examples from Mermaid
8 Resort.) In addition, as described above in Paragraphs 12-16 and as shown in Exhibits G-K, the
9 language used to describe the apps in the app stores and the gameplay language is simple and
10 would be easy for a child under age 13 to understand.

11 18. Through its kids' apps, TinyCo invites users to provide their email address.
12 TinyCo encouraged users of at least one of its kids' apps to provide their email addresses in
13 exchange for free in-app currency. TinyCo collected tens of thousands of email addresses
14 through these apps. (*See* Exhibit L, the email collection screens for Tiny Pets, Tiny Zoo, Tiny
15 Village, and Tiny Monsters.)

16 19. TinyCo was aware that many children used the kids' apps. In fact, TinyCo has
17 received complaints from many parents whose children under the age of 13 use the kids' apps.
18 Upon receiving these complaints, TinyCo did not take steps to determine whether it had
19 collected personal information from these children, or, if it had, to delete such information,
20 provide the required notices, or obtain the required parental consent described in Paragraph 8.

VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Count I

1 20. TinyCo operates online services directed to children, including through its kids'
2 apps, which collect personal information from children under age 13.

3 21. In numerous instances, in connection with the acts and practices described above,
4 TinyCo collected and used personal information online from children younger than age 13 in
5 violation of the Rule by:

- 6 a. Failing to provide notice on its website or online services of the
7 information it collects online from children, how it uses such information,
8 and its disclosure practices, among other required content, in violation of
9 Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b) (Section 312.4(d) of the
10 Revised Rule);
- 11 b. Failing to provide direct notice to parents of the information it collects
12 online from children, how it uses such information, and its disclosure
13 practices for such information, among other required content, in violation
14 of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c) (Section 312.4(b) of
15 the Revised Rule); and
- 16 c. Failing to obtain verifiable parental consent before any collection or use of
17 personal information from children, in violation of Section 312.5(a)(1) of
18 the Rule, 16 C.F.R. § 312.5(a)(1) (Section 312.5(a)(1) of the Revised
19 Rule).

20 Therefore, TinyCo has violated the COPPA Rule, 16 C.F.R. Part 312.

21 22. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and Section
22 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or
deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act,

1 15 U.S.C. § 45(a).

2 **THIS COURT'S POWER TO GRANT RELIEF**

3 23. TinyCo violated the Rule as described above with the knowledge required by
4 Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

5 24. Each collection, use, or disclosure of a child's personal information in which
6 TinyCo violated the Rule in one or more of the ways described above constitutes a separate
7 violation for which Plaintiff seeks monetary civil penalties.

8 25. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by
9 Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 and
10 Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to
11 award monetary civil penalties of not more than \$16,000 for each violation of the Rule on or
12 after February 10, 2009.

13 26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
14 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
15 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
16 jurisdiction, may award ancillary relief to prevent and remedy any violation of any provision of
17 law enforced by the FTC.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff United States of America, pursuant to 5(a)(1), 5(m)(1)(A), 13(b) and
20 16(a) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 56(a) and the Court's own
21 equitable powers, requests that the Court:

22 A. Enter a permanent injunction to prevent future violations of the FTC Act and the
COPPA Rule by TinyCo;

1 B. Award Plaintiff monetary civil penalties from TinyCo for each violation of the
2 Rule alleged in this Complaint; and

3 C. Award other and additional relief the Court may determine to be just and proper.

4 Respectfully submitted,

5
6 Dated: September 16, 2014

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