



Office of Commissioner  
Andrew N. Ferguson

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Statement of Commissioner Andrew N. Ferguson  
Concurring in Part and Dissenting in Part  
In the Matter of Cognosphere, LLC  
Matter Number 2223152**

January 17, 2025

Today the Commission approves a complaint and settlement with Cognosphere, LLC, the developer and operator of the popular “Genshin Impact” video game. The complaint accuses Cognosphere of violating the Children’s Online Privacy Protection Act (COPPA) Rule,<sup>1</sup> deceiving consumers as to the odds and pricing of Genshin Impact’s loot box system, and unfair conduct regarding the marketing of in-game virtual currency and loot boxes to children and teenagers. I concur in the allegations that Cognosphere violated the COPPA Rule and deceived customers as to the odds of winning prizes in loot boxes, but I dissent as to the rest of the complaint.

Count I of the complaint accuses Cognosphere of violating the Commission’s rule implementing COPPA. The COPPA Rule requires that the operators of online services directed to children give parental notice of their data practices and receive parental consent before collecting, using, and disclosing the data of children under the age of thirteen. The complaint alleges that despite Genshin Impact meeting the criteria for being directed to children, Cognosphere failed to give parents notice and receive parental consent before collecting the personal information of children, and in fact did not attempt to differentiate between adult and child players of Genshin Impact at all. Further, the complaint alleges that Cognosphere failed to take corrective action even when it became aware that specific users were children. For these numerous failures to obey the requirements of COPPA, I support this count in full. These alleged violations of COPPA are severe enough to justify my voting to file the complaint and settlement even though I dissent from three of the remaining four counts.

Count II of the complaint accuses Cognosphere of misrepresenting players’ odds of receiving prizes from in-game “loot boxes.” Although Genshin Impact is free to play, players can use real money to buy virtual currency, and spend that virtual currency to buy loot boxes—randomized packs of in-game prizes that have a low probability of including high-value prizes and a much higher probability of including low-value prizes. Think of a loot box as the digital cousin of a pack of baseball cards. Each pack of baseball cards bears the same price, and each pack is unlikely to contain any cards of great value. But every once in a while, a fortunate purchaser might buy a pack that happens to contain an incredibly valuable card. Kids will thus buy lots of packs of baseball cards to improve their low odds of stumbling upon that Mike Trout rookie card. Loot boxes operate similarly. Loot-box prizes include in-game weapons and playable characters (“heroes”), with the most desirable of each being described as “5-star,” although the relative desirability of 5-star items varies as well.

---

<sup>1</sup> 16 C.F.R. § 312.

To market the loot boxes, Cognosphere ran time-limited promotions called “Event Banners,” each featuring an especially desirable 5-star hero. In a typical Event Banner, each loot box gave players a 0.3% chance of receiving the featured hero, as well as a 0.3% chance of winning a different 5-star hero instead. Featured heroes were only ever available through the Event Banners in which they featured, never as the part of the basket of other 5-star heroes in another Event Banner.

The complaint accuses Cognosphere of misrepresenting the odds that a player can win the featured hero through various confusing and contradictory claims. The complaint alleges that even though featured heroes were only ever available at 0.3% odds under their respective Event Banners, and otherwise not at all, Cognosphere prominently advertised that players’ odds of winning the featured hero were “UP!” and subject to “Increased Drop Rates!” and a “massive drop-rate boost.” Upon hitting a “Details” button under the advertisement, players were then shown a picture of the featured character along with the text “Percentage of 5-Star Item Drops: 50%,” presumably referring to the fact that the chance of winning the featured hero was equal to the chance of winning a different 5-star hero. But a reasonable consumer could easily interpret that text to mean that each loot box gave the user a 50% chance of winning the featured hero, especially because the actual odds were not disclosed unless players hit a second “Details” button. At that point, Cognosphere disclosed that “[b]ase probability of winning 5-star character = 0.6%.” Even this text is ambiguous as to whether players have a 0.6% chance of winning *the* 5-star character that was the subject of the advertisement, or merely *a* 5-star character—one of the other 5-star characters that players can win. To resolve this ambiguity, players would have to look at the next paragraph, not visible without scrolling down in some cases, where Cognosphere finally disclosed the odds of winning the featured character: “[t]he first time you win a 5-star item in this event wish, there is a 50.000% chance it will be the promotional character...” Taken as a whole, these claims served to mislead and confuse consumers as to their odds of winning the featured character in a loot box. I therefore concur in Count II.

Count III accuses Cognosphere of misrepresenting the real-money cost of loot box prizes through its virtual currency system. Players could buy one loot box for one Wish Token. A Token Wish costs 160 Primogems. One Primogem costs one Genesis Crystal. And 160 Genesis Crystals costs between \$2.42 and \$2.67 (depending on the quantities of Genesis Crystals purchased at a time, as shown in Figure 2).



Fig. 2. Pricing for Genesis Crystals

The complaint describes this system as a “complex and confusing multi-tier virtual currency exchange system,” but only two of the “tiers” had exchange rates other than 1-to-1. More importantly, this system required no more of consumers than the simple math operations they perform on a regular basis when they compare prices for different sized jars of peanut butter, when they determine the true price of a buy-one-get-one-half-off deal, and so forth. The law protects more than just the savvy and strong-willed consumer. But Count III infantilizes the American consumer beyond recognition. I therefore dissent from it.

Count IV alleges that offering such a multi-tier virtual currency system to children and teenagers is an unfair act or practice in violation of Section 5. Section 5(n) says that an act or practice is not unfair unless (1) it “causes or is likely to cause substantial injury to consumers” (2) “which is not reasonably avoidable by consumers themselves” and (3) “not outweighed by countervailing benefits to consumers or to competition.”<sup>2</sup>

The complaint alleges that the substantial injury is the amount of money that children and teenagers sometimes spend in the game, with examples of parents being shocked at charges for thousands of dollars. It then says that consumers cannot reasonably avoid that injury because teenagers and children have no choice but to use the game’s multi-tiered currency system. Even assuming for purposes of argument that American children and teenagers playing Genshin Impact cannot perform the math required to determine the price of a loot box—an assumption I do not share—the only way to rack up a large bill is to make repeated purchases with prominently displayed prices, as shown in Figure 2. Assuming again for the sake of argument that this racking-up of charges constitutes a substantial injury, parents could easily avoid the injury by simply declining to give children access to a credit card, or by using the parental control systems widely available on mobile platforms like iOS and Android. Indeed, the Commission’s own COPPA Rule treats the ability to charge a credit card, or to use a payment system like Apple Pay or Google Pay, as evidence that the user is an adult.<sup>3</sup> The COPPA Rule reflects the entirely reasonable judgment of the Commission that children are not expected to be able to make payments without the kind of parental supervision that would prevent them from spending too much money on loot boxes. Because the alleged injury is reasonably avoidable and therefore does not satisfy the requirements of Section 5(n), I dissent from Count IV.

Finally, Count V accuses Cognosphere of further unfairness for marketing a loot box system to children and teenagers. I cannot tell whether the Commission here rests its theory on the overly enticing nature of loot boxes as a marketing scheme for children and teenagers, or merely the further unfairness of targeting children and teenagers with the sort of deception alleged in Counts II and III. Either way, I dissent. If this count simply mirrors the allegations of deceptive conduct in Counts II and III, then it adds nothing. And none of our precedents hold that marketing violates the FTC Act when it is too enticing. As I said in November, I will not support novel theories of liability advanced in the final hours of the Biden-Harris Administration.<sup>4</sup> That principle applies to Count V.

---

<sup>2</sup> 15 U.S.C. § 45(n).

<sup>3</sup> 16 C.F.R. § 312.5(b)(2)(ii).

<sup>4</sup> Dissenting Statement of Comm’r Andrew N. Ferguson, Regarding the Telemarketing Sales Rule, Matter No. R411001 (Nov. 27, 2024), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-tsr-dissent\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-tsr-dissent_0.pdf).

None of this should be taken to mean I favor the loot-box scheme. I do not. But the FTC Act does not authorize us to prohibit unsavory or unseemly business practices. It forbids only unfair or deceptive acts and practices. I do not foreclose the possibility that targeting certain kinds of addictive activities to children and teenagers—such as virtual slot machines in the form of loot boxes—could violate Section 5’s prohibition of unfair acts and practices. But demonstrating such a violation would require us to assemble strong evidence of substantial injury, unavailability, and the absence of countervailing benefits to consumers or competition.<sup>5</sup> We have not done that here. I therefore dissent from Count V both because the Biden-Harris FTC should not be advancing wholly novel theories as the sun sets on this Administration, and because we do not have the evidence required to demonstrate that marketing loot boxes to children and teenagers categorically violates Section 5.

---

<sup>5</sup> 15 U.S.C. § 45(n).