



**Written Testimony of
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**Before the
United States Senate
Committee on Commerce, Science, and Transportation
Subcommittee on Consumer Protection, Product Safety, and Data Security**

**Regarding
“Toxic Marketing Claims and Their Dangers”**

August 3, 2021

Good afternoon Chair Blumenthal, Ranking Member Blackburn, and members of the Subcommittee. Thank you for the opportunity to appear before you and for your interest in deceptive marketing practices and how they can cause real harm to kids, including by pushing toxic and unsafe products.

My name is Ariel Fox Johnson, Senior Counsel for Global Policy at Common Sense Media. Common Sense, founded in 2003 by CEO James P. Steyer, is the nation's leading organization dedicated to helping kids and families thrive in a rapidly changing digital world. We give parents, teachers, and policymakers unbiased information, trusted advice, and innovative tools to help them harness the power of media and technology as a positive force in all kids' lives. Common Sense has provided millions of families and kids the resources to think critically and make responsible choices about the media they create and consume.

Digital marketing to young people has grown increasingly insidious in its methods, causing real harm -- particularly when these methods are used to push unsafe products, but also because these methods simply take advantage of kids' naivete. Kids are defenseless against data-driven, highly personalized advertising techniques that merge content with commercials, are woven into video games, and make heavy use of peer and celebrity influencers and trusted characters. These tactics exacerbate harms when ads are used to push unhealthy food and drink, tobacco products, diet pills, weapons, alcohol, gambling, and other "adult" products and activities. Such marketing can lead kids to unknowingly spend thousands of dollars on virtual products in video games. And these practices feed into a culture of surveillance and compulsive usage.

Your hearing today is extremely important to the health and well being of children. And there are a number of concrete steps Congress and the Administration can and should take to better protect children and families online that I will discuss below. They include stronger enforcement powers and increased resources for the Federal Trade Commission, as well as the adoption of key legislation to prohibit targeted advertising and tracking of children and teens, require ad transparency, prevent manipulative commercial practices, and fund more independent research into online marketing and the overall impact of digital media use on children's health.

A. Common Sense's history of helping families navigate the digital world

Common Sense reaches 125 million households with its age-appropriate media ratings and reviews, and our award winning Digital Citizenship Curriculum is the most comprehensive K-12 offering of its kind in the education field; we have over 1 million registered educators using our resources in more than half of U.S. schools. Our Research Program, including our Common Sense Census, provides independent data on children's use of media and technology and the impact it has on their physical, emotional, social, and intellectual development. Our Privacy program evaluates popular ed-tech and other products used at home and in the classroom, and we

actively support the unique needs of low-income families and families of color, empowering them to navigate the digital world with confidence.

Common Sense has long advocated for better online protections for children and teens from unfair and deceptive marketing. We have researched advertising practices online, how the digital world affects body image and self esteem, and the power of influencers.ⁱ We have highlighted how online ad techniques can push unhealthy food, products and unwanted spending, and advocated for more regulatory safeguards.ⁱⁱ We have supported bans on junk food advertising and encouraged media outlets to refuse to accept advertising from e-cigarette makers.ⁱⁱⁱ And we have supported additional steps to limit youth access to vaping and other flavored tobacco products. Our digital citizenship curriculum teaches kids how to assess online materials and content, including advertising. For example, our lesson on anti-vaping media literacy helps students think critically about Juul’s marketing messages and the manipulative tactics used to addict them to nicotine.^{iv}

B. Companies’ digital marketing practices are particularly problematic for kids

1. Kids have trouble identifying and understanding ads - especially online

Both child development experts and advertising professionals recognize that children’s cognitive abilities are not sufficient to understand advertising the way adults do and that young people are a vulnerable target group.^v This is especially true online. There are two cognitive processes needed to fully understand advertising: the ability to distinguish between commercial and non commercial content, and the ability to recognize the persuasive intent of an ad while understanding the information in the ad is biased.

Research suggests children are not aware of advertisements until 4–5 years of age.^{vi} And over 75% of kids between 8-11 years old cannot distinguish advertising from other content.^{vii} Older children very often confuse Google search ads with organic search results. When surveying kids 5 - 15 years of age, the UK Office of Communications found that only 45% of 12 - 15 year olds understood that the top search results in a google search had paid to appear as such, despite being labeled with an orange box reading “ad”.^{viii}

Further, even when children can differentiate between sponsored and non-sponsored content, they still have considerable trouble understanding the “selling intent” of the ad. Children under 8 years old lack the cognitive ability to understand the persuasive intent of advertisements. Children ages 6–7 predominantly view advertisements as informational programs that are used as “a break for either the people working on television or the viewers.”^{ix} Many older children up to age 12 have trouble identifying and/or understanding the commercial intent of an advertisement.^x

Online, children have even less understanding of advertising than on television because the tactics used by companies are more implicit. Several studies have found that children have “lower awareness of advertising on websites compared with television, and greater difficulty recognizing it.”^{xi} As the American Academy of Pediatrics has noted, even for those older children and teens who may be able to recognize an advertisement, they “often are not able to resist it when it is embedded within trusted social networks, encouraged by celebrity influencers, or delivered next to personalized content.”^{xii}

2. Marketing online implicitly and personally targets young people, taking advantage of their credulity and lack of experience

Ads are pervasive in children’s digital content. For example, Common Sense research found advertising occurred in 95% of early childhood videos on YouTube. Over one-third of videos in the early childhood category contained three or more ads.^{xiii} Another study found that 96% of the most-downloaded free apps for children under five on Google Play contained commercial content, including hidden ads and automatically appearing pop up ads.^{xiv}

Contemporary advertising does not explicitly persuade children, but rather targets them implicitly, using enjoyable content to reach them unconsciously. Online advertisements include precise behavioral and location targeting, “native ads” where the content is the ad, viral and social media marketing, advergames, host selling and product placement, and more. Further, children are often watching on their own, so parents have no idea what products are being pushed on their children, and children have even less hope of identifying advertisements.

- **Highly personalized (and therefore persuasive).** With behavioral advertising, marketers and data brokers can create dossiers of a young person's interests, fine-tuning sales pitches to impressionable audiences. Most children do not realize that ads can be customized to them or based on their tracked activity, or that they see different ads than their friends in the same game.^{xv} As explained by the American Academy of Pediatrics “[p]revious online behaviors shape what is delivered to users via news, notifications, and social media feeds, creating a filter bubble in which all input, unbeknownst to users, is tailored to their interests and creates false norms that can undermine healthy behaviors.”^{xvi}
- **Indistinguishable from content.** Native ads are advertisements posing as articles, videos, or search results that feature or highlight a brand, which has paid for the production of the material as part of a marketing partnership with the host website. In many cases, the content is the ad: one study found that one third of posts on Instagram were ads, while others have found undisclosed sponsored posts are ubiquitous on the platform.^{xvii} Common Sense research has found that a third of children under age eight

report sometimes or regularly watching unboxing videos -- essentially program-length advertisements -- on YouTube.^{xviii} The nine-year old multi-million dollar star of many popular unboxing videos has faced consumer complaints over failures to disclose paid product placement.^{xix} The lack of separation between sponsored and non-sponsored content online can make it harder for a child to distinguish an advertisement from entertainment.^{xx}

- **Promoted by people kids trust -- peers, celebrities, and beloved characters.**

Marketers are quite effective at turning kids themselves into spokespeople: teens may be unknowingly conscripted into being product ambassadors, encouraged to submit photos and share products and content with friends, while young children are regularly prompted to share their game progress on social media and to rate apps, which is effective at commercializing friends.^{xxi} Platforms use “social proofing” to show users that their friends are doing or buying something, as this is effective at getting the user to follow suit. Additionally, “peers” and celebrities intentionally push products via unboxing videos and influencer campaigns, host-selling in ways that would be prohibited on television because they take advantage of a kid’s special relationship with a host or a character. Both children and teens are not as critical as adults when seeing influencer marketing, they have developed parasocial relationships and view influencers and characters as credible, likeable, or even inspirational.^{xxii}

- **Made into games.** Advergames are used to entertain kids, while slipping commercial content into their view and pairing brands with the emotional experience of playing a game or winning rewards. One study found only a quarter of children were able to recognize an advergame.^{xxiii} Children under nine have shown lower conceptual and attitudinal advertising literacy for advergames than traditional television ads.^{xxiv} And online games of all types push virtual in-app purchases on players.

C. Online marketing causes real world harm for young people

Online promotions cause real world harm -- in pushing unhealthy and toxic products and behaviors and in supporting a culture of surveillance and compulsive use. Studies demonstrate that ads quickly affect kids’ desires and purchase requests, leading to unhealthy purchases and actions. According to the American Academy of Pediatrics, ad exposure is associated with “unhealthy behaviors, such as intake of high-calorie, low-nutrient food and beverages; use of tobacco products and electronic cigarettes; use of alcohol and marijuana...”^{xxv} (It is worth noting that even if parents or caregivers deny requests, a harm still occurs: intra-family conflict when requests precipitated by advertising are denied--older kids recognize the injustice of this, reporting “it’s unfair to target kids with ads to buy things. Kids/families might not be able to afford them.”^{xxvi})

The highly personalized nature of today’s advertising exacerbates these harms. Facebook -- which recently announced new ad restrictions toward teenagers -- has gotten into hot water in the past when it was revealed that employees had told advertisers they could identify when teens and other young people were feeling “stressed,” “defeated,” “overwhelmed,” “anxious,” “nervous,” “stupid,” “silly,” “useless,” and “a failure”.^{xxvii} Kids who are anxious or have low self-esteem do not need to be shown more dieting tips, offered an energy drink pick-me-up, or be otherwise commercially manipulated.

- **Unhealthy food and obesity.** The relationship between food advertisements and childhood obesity is well-documented. It has been widely studied how promoting unhealthy food to children directly impacts their dietary habits, and more recent research has started to examine unhealthy food purveyors’ use of digital marketing.^{xxviii} Food companies know how successful targeting children is, and they pay big money to do it. Pepsi-Co, CocaCola, and KFC have worked with Facebook to create influencer campaigns to target youth.^{xxix} They have tapped popular multicultural influencers, compounding risks for youth of color who have traditionally been more targeted with unhealthy food and drink.^{xxx} Research has found that children viewing influencers pushing unhealthy snacks consumed significantly more calories and unhealthy snacks than children who watched influencers push non-food items.^{xxxi} Food marketers have also worked to incorporate their products into videogames. Coca-Cola has created teen-directed mobile games, enticing teens to participate with time based challenges and rewards.^{xxxii} Research shows increased caloric intake in children playing advergames.^{xxxiii} More recently, food companies have woven their products into game storylines, and even made products available for order and delivery “in the heat of the experience, promising instant gratification and short circuiting conscious decision-making” -- simultaneously, marketers are adapting their products to support digital gaming, pushing energy drinks as “fuel” and designing containers that can be opened without interrupting the game.^{xxxiv}
- **Diet and self esteem.** Digital advertising also pushes unhealthy body images and diet products. According to Common Sense research, teens who are active online worry a lot about how they’re perceived, and another study has found increased time on Instagram is associated with an increase in eating disorders.^{xxxv} Social media can be especially detrimental if teens are prone to comparing themselves to images.^{xxxvi} Diet products like detox teas claiming to help users lose weight are being sold by major celebrities, some of whom have been fined by the Federal Trade Commission for making false or misleading claims about these products.
- **Vaping.** Sales in e-cigarettes amongst middle school and high school students increased dramatically when U.S. tobacco companies began exploiting their online ads to

children.^{xxxvii} Children who saw the ads were significantly more likely to use the products. Internal company documents from Juul revealed a targeted marketing strategy toward kids, using “copycat advertising” to target young customers and banner ads on child-oriented websites.^{xxxviii} Bright, flashy, and colorful, Juul ads convinced young people that vaping was a trend with all the “cool”-factor of cigarettes minus the health risks. Further, Juul circumvented social media bans on paid tobacco advertising by enlisting their own unpaid influencers to spread the product across various platforms, influencing young teens with celebrity endorsements. According to Common Sense research, advertisements of vaping-related content are common (61% of teens report seeing them), as are content shared by friends (40% of teens) and celebrities, personalities, and influencers (25% of teens). Over half of teens say they’re likely to see a social post that mentions or shows vaping, and roughly three-quarters of Snapchat and Instagram users report such posts.^{xxxix}

- **Alcohol, Drugs, and Adult Activities.** Research demonstrates a connection between exposure to alcohol and marijuana ads and consumption of these products by young people. Such products are advertised via social media and video, and ads appear disproportionately in communities of color.^{xi} In addition, rules meant to limit what products young people can purchase are less effective than in physical retailers. Ineffective purchasing gates, such as simply stating in a Terms of Use that a user must be 18, have, for example, allowed children to purchase weapons from Amazon.^{xli} And social media companies provide markets for teenagers to find illegal goods, like drugs.^{xlii} What’s more, kids may be profiled with interests in gambling or drinking -- Facebook, for example, had categorized hundreds of thousands of kids as “interested in” gambling and/or alcohol, and at one point was allowing researchers to target such teens with ads featuring poker chips or drinks.^{xliii}
- **Virtual products and confusing currency.** Marketing of virtual in-game items and lootboxes is also a big problem. Young and pre-literate children are directly encouraged to spend money within apps and games, and teen apps in particular are highly monetized--one study found teen apps are over three times more likely to support in-app purchases than general audience apps.^{xliv} Often, the fact that a purchase involves actual money is not made clear to kids, who believe their activities have no “real world” consequences and do not realize they are spending their parents’ money. And kids have spent hundreds and thousands of dollars, collectively totalling millions. Lootboxes contribute to this problem by game-ifying the purchase and randomizing the product received. Almost all the biggest tech companies have settled with the Federal Trade Commission over unfairly permitting minors to make in-app purchases when it was not clear a purchase was being made and when parents were not given a choice whether to allow the purchases.

- **Surveillance.** Children themselves do not appreciate the surveillance that accompanies highly personalized ads -- when they understand how targeted ads work, teens and older kids repeatedly describe them as “creepy,” “distracting and irritating”, saying “[i]t feels like they’re stalking you.”^{xlv} The constant profiling that accompanies behavioral ad targeting, and targeted ads themselves, do a disservice to kids by potentially labeling and limiting them. Young people’s choices and their autonomy may be constrained and shaped by coercive techniques that only show them certain opportunities but not others—as with, for example, women being shown fewer prestigious job offers in search results^{xlvi}—and by algorithmic profiling that builds in bias when determining whether to, say, admit students into educational programs.^{xlvii} This can cause young people to limit themselves too. When kids know all their activities are being monitored by surveillance technologies, research shows they are less likely to engage in critical thinking, political activity, or questioning of authority.^{xlviii}
- **Compulsive Usage.** Compulsive online use is also a problem many families struggle to address. Design techniques including ads that push more digital content, such as by offering rewards in exchange for ad viewing, are a culprit. And such ads appear for even the youngest users--in popular Google Play apps for children under five, children were offered ads to view in exchange for game tokens or making advancement in a game easier.^{xlix} This type of manipulative marketing can keep kids stuck in a never ending loop.

D. Kids and families deserve better

Our legislative and regulatory landscape has not kept pace with marketing techniques. Practices that would be prohibited on television and traditional media run rampant online. Updated and effective safeguards are desperately needed.

First and foremost, Congress and the Administration should ensure that the Federal Trade Commission is equipped with adequate resources and enforcement authority to police unfair and deceptive marketing -- including practices that violate current FTC Endorsement guidelines. But the Commission also needs greater resources and support to strengthen the endorsement guidelines, and outline what practices are specifically not allow for children and teens (such as endorsements for unhealthy food and drink).¹ Common Sense and other groups recently urged Congress to significantly increase appropriations and staffing for the FTC.

Congress should also pass a Children’s Television Act for the internet age, and a model exists: the Kids Internet Design and Safety or KIDS Act.^{li} Among other things, it would limit kids’ exposure to marketing and commercialization by creating rules that would prevent sites from recommending content that includes host-selling or influencer marketing, or that involves nicotine, tobacco, or alcohol.

And Congress cannot continue to delay in enacting meaningful privacy protections, especially for children and teens. In the marketing context, behavioral advertising to children and teens should be prohibited. The recently introduced bi-partisan COPPA update, the Children and Teens Online Privacy Protection Act, would ban behavioral ad targeting to children and enact a Digital Marketing Bill of Rights for Teens.^{lii} The PRIVCY Act,^{liii} introduced just last week in the House, would ban behavioral ad targeting to all children and teens. These two privacy bills are excellent models that would start to curb commercial surveillance business practices and also beef up Federal Trade Commission enforcement and powers.

And, while the current research already shows much to be concerned about, as marketing techniques advance ever more, independently-funded research struggles to keep up. So as to stop playing catch up with the industry, we must better understand the relationships between digital media use and early and adolescent development. Congress could advance this by passing and funding the bi-partisan and bi-cameral Children and Media Research Advancement Act (CAMRA).^{liv}

The challenges posed by online marketing to children is not unique to the United States, of course. Congress can find international examples of best practices with respect to children and advertising. Many countries in Europe prohibit advertising and other practices that take advantage of a child's age or credulity. And the UK recently proposed major restrictions regarding online advertising of junk food. The U.S. would do well to follow suit.^{lv}

Conclusion

Thank you again for your commitment to understanding how deceptive digital marketing practices can cause real harm to kids. Your attention to these issues is critical for the health and well-being of all children, and your support for new legislative and regulatory tools will be particularly important to make a real difference for the way our children grow up in on online world.

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