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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
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WASHINGTON, DC 20510-6125

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December 08, 2021

The Honorable Lina Khan
Chair
U.S. Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580

Dear Chair Khan:

I am writing regarding allegations that Meta (f/k/a Facebook, hereinafter “Facebook”) may have violated the Federal Trade Commission Act’s prohibition against unfair or deceptive acts or practices in commerce, and to urge the Federal Trade Commission (“FTC” or “Commission”) to commence an investigation into these matters. Recent revelations and public documentation suggest that Facebook may have misled its advertising customers and the public about its processes for ensuring brand safety and about the reach of its advertisements, both core aspects of Facebook’s business model.¹

Facebook’s representations to advertisers take on even greater importance given Facebook’s large share of the digital advertising space. As the Senate Commerce Committee detailed in a 2020 report, Facebook reportedly controlled approximately 74 percent of the social media market in July 2020 and now reportedly controls 24.1 percent of all of U.S. digital advertising spending; Facebook’s dominant position in the ad marketplace means that advertisers and publishers, including struggling local news outlets all over the country, may have faced unfair competition by Facebook, impacting their revenues and ability to compete online.²

¹ E.g., Whistleblower Aid, “Supplemental Disclosure of Securities Law Violations by Facebook, Inc.,” https://drive.google.com/file/d/1nHBBcSeINlvZzbRUhhUB2m_Ms6hBfnn/view.

² U.S. Senate Committee on Commerce, Science, and Transportation, “Local Journalism: America’s Most Trusted News Sources Threatened,” October 2021, https://www.cantwell.senate.gov/imo/media/doc/Local%20Journalism%20Report%2010.26.20_430pm.pdf; “Social Media Stats Worldwide — July 2019-July 2020,” StatCounter (July 2020), <https://gs.statcounter.com/social-media-stats>; Sara Lebow, “Google, Facebook, and Amazon to account for 64% of US digital ad spending this year,” eMarketer, November 3, 2021, <https://www.emarketer.com/content/google-facebook-amazon-account-over-70-of-us-digital-ad-spending>.

Facebook has long made claims about the safety of its product for brands, and even more importantly, about the safety of its product for Facebook users. For example, Facebook has stated that it “invest[s] in technology to ... help identify content that violates [its] policies—often before anyone sees it. And [it] routinely release[s] the Community Standards Enforcement Report to track [its] progress to make Facebook safe and inclusive.”³ Facebook’s Community Standards Enforcement Report states that its algorithms remove 97 percent of the content it eventually takes down for hate speech before the content is posted.⁴ But this metric could significantly misrepresent the effectiveness of Facebook’s algorithms, as whistleblower documents show that Facebook believes that its processes miss more than 90 percent of hate speech content despite being 97 percent effective at algorithmically detecting the hate speech Facebook eventually takes down.⁵ Facebook may thus have made material misrepresentations or omissions to advertisers regarding the effectiveness of its brand safety controls, including its ability to remove criminal content. A recent rollout of additional brand safety tools claims that brands that “[e]xcluded the Tragedy and Conflict categories” with the new tool “were able to avoid Tragedy and Conflict adjacency 99% of the time.”⁶ If experience is any guide, these newest claims to advertisers may similarly break down under a microscope.

Until quite recently, Facebook offered prospective advertisers two key measures of an ad’s potential success—(1) Potential Reach; and (2) Estimated Daily Reach.^{7,8} Potential Reach, which is an element of Estimated Daily Reach, approximates the number of people in a particular area who may view a business’ ad⁹ and, according to Facebook, is “arguably the single most important number in our ads creation interfaces.”¹⁰ Understandably then, advertisers of all sizes plan and budget for campaigns that maximize their ads’ Potential Reach, as estimated by Facebook. However, public reporting, as well as Facebook’s own statements and documents, seem to indicate that Facebook may have known that Potential Reach metrics may have been inaccurate.¹¹ Public analyses from as far back as 2017 show how Facebook claimed that its ads could have a Potential Reach that exceeded the population of 18- to 34-year-olds counted in each of the 50 states by the U.S. Census Bureau.¹²

³ Meta for Business, “About Brand Safety on Facebook, Instagram, WhatsApp and Audience Network,” <https://www.facebook.com/business/help/1559334364175848?id=1769156093197771>.

⁴ Meta, “Community Standards Enforcement Report, Second Quarter 2021,” August 18, 2021, <https://about.fb.com/news/2021/08/community-standards-enforcement-report-q2-2021/>.

⁵ Noah Giansiracusa, “Facebook Uses Deceptive Math to Hide Its Hate Speech Problem,” *Wired*, October 15, 2021, <https://www.wired.com/story/facebooks-deceptive-math-when-it-comes-to-hate-speech/>.

⁶ Meta for Business, “Introducing More Control for People and Brands in News Feed,” Press Release, November 18, 2021, <https://www.facebook.com/business/news/introducing-more-control-for-brands-and-people-in-feed>.

⁷ Facebook switched from “Potential Reach” (i.e., presenting a single data point about an ad’s reach) to “Estimated Audience Size” (i.e., presenting a range for an ad’s reach) in October 2021. Meta for Developers, “Updates To Potential Reach and Pre-Campaign Estimates,” Ashish Gupta, September 20, 2021, <https://developers.facebook.com/blog/post/2021/09/30/updates-potential-reach-pre-campaign-estimates>.

⁸ Class Action Complaint, p. 4, *DZ Reserve v. Facebook, Inc.*, No. 3:18-cv-04978 (N.D. Calif. Aug. 15, 2018), <https://storage.courtlistener.com/recap/gov.uscourts.cand.330648/gov.uscourts.cand.330648.1.0.pdf>.

⁹ *Id.* at 6.

¹⁰ Plaintiffs’ Notice of Motion for Class Certification and Memorandum of Points and Authorities, p. 4, *DZ Reserve v. Facebook, Inc.*, No. 3:18-cv-04978 (N.D. Calif. Apr. 23, 2021).

¹¹ *Id.* at 6.

¹² Video Advertising Bureau, “Facebook’s Reach (on Reach), Miscalculations in the Age of Precision,” p. 13, September 2017, <https://thevab.com/insight/facebooks-reach-reach>.

The Commission may allege deception under Section 5 of the FTC Act prohibiting unfair and deceptive practices in or affecting commerce, “if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”¹³ Thus, because evidence suggests that Facebook may have deceived its advertising customers about its brand safety and advertising metrics, Facebook may have engaged in deceptive practices in violation of the FTC Act.

In addition, public information suggests that Facebook’s potential misrepresentations about brand safety and advertising metrics may be unfair, as well as deceptive. In evaluating whether the conduct is unfair, the Commission may consider: (1) that the advertising purchased by brands due to Facebook’s brand safety and advertising representations is “significant;” (2) the absence of material countervailing benefits to competition and consumers from any misrepresentations of advertising metrics; and (3) that, given that Facebook employs a walled garden system, advertisers could not have independently verified Facebook’s reported brand safety activities, ad metrics, or reasonably avoided advertising on Facebook, much less given Facebook’s market dominance.¹⁴

A thorough investigation by the Commission and other enforcement agencies is paramount, not only because Facebook and its executives may have violated federal law, but because members of the public and businesses are entitled to know the facts regarding Facebook’s conduct as they make their decisions about using the platform.

I urge the FTC to immediately commence an investigation into Facebook’s representations with respect to brand safety, Potential Reach, and similar metrics with respect to its advertising business and, if that investigation reveals that the company has in fact violated the law, to pursue all available sanctions as appropriate. Such actions could include litigation under Section 19 of the FTC Act or partnering with state attorneys general in an appropriate court to pursue monetary relief for Facebook’s advertisers and disgorgement of Facebook’s ill-gotten gains, a strategy the Commission has pursued in other recent cases.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Maria Cantwell". The signature is written in a cursive, flowing style.

Maria Cantwell
Chair

CC: Commissioners Rebecca Kelly Slaughter, Noah Joshua Phillips, and Christine S. Wilson,
Federal Trade Commission

¹³ FTC Policy Statement on Deception, Federal Trade Commission, October 14, 1983, https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

¹⁴ FTC Policy Statement on Unfairness, Federal Trade Commission, December 17, 1980, <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.