

Before the
Federal Trade Commission
Washington, DC 20580

In the Matter of

Protecting Kids from Stealth
Advertising in Digital Media

Request for Comments and Research Papers

Comments of:

Fairplay
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American Academy of Pediatrics
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Better Screen Time
Center for Digital Democracy
Children and Screens: Institute of Digital Media and Child Development
Consumer Action
Consumer Federation of America
Digital Media Treatment and Education Center
Digital Wellness Institute
Eating Disorders Coalition for Research, Policy & Action
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Everyschool Inc.
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The Center for Online Safety
The FoolProof Foundation
LookUp.live
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Talk More. Tech Less.
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We are pleased that the Federal Trade Commission is examining stealth advertising to kids in digital media and planning to host an event in October to explore this issue further. Stealth marketing to children is a critical issue that Fairplay and many others have raised in filings with the Commission since at least 2014.¹ Stealth advertising can take many forms and is called different things such as influencer marketing, covert advertising, embedded content, advergames, embedded advertising, native advertising, sponsored content, and product placement. Other trends that fall under the stealth marketing umbrella include advertising techniques that manipulate a child’s developmental vulnerabilities to encourage purchases or engagement with digital products, as well as techniques that blur the lines between marketing and children’s pleasurable experiences with online games or videos.

The online advertising ecosystem utilizes sophisticated, data-driven techniques to exploit developmental vulnerabilities and overcome internet users’ cognitive defenses to ads. For example, influencers and trusted fictional characters are commonly used to market to young people because they are viewed as providing “authentic” communications from a trusted friend, rather than an advertisement. Other approaches that subvert cognitive defenses include subtle constraints in user interface navigability, in-game rewards and currencies tied to advertising engagement or purchases, or manipulative features such as fabricated time pressure that undermine decision-making processes.² Because influencer marketing is the most prominent and well-researched type of stealth marketing to young people (people under the age of 18), these comments focus on evidence related to influencer marketing, but also aim to discuss nascent marketing techniques that similarly exploit developmental vulnerabilities.

¹ Comments of Campaign for a Commercial Free-Childhood (now Fairplay) and Center for Digital Democracy in the Matter of Guides Concerning the Use of Endorsements and Testimonials in Advertising, Project No. P204500 (filed June 22, 2020), https://fairplayforkids.org/wp-content/uploads/2020/06/ftc_influencer_comments.pdf [hereinafter “2020 Endorsement Guides Comments”]; Campaign for a Commercial-Free Childhood, Center for Digital Democracy & Public Citizen, Complaint, Request for Investigation, and Request for Policy Guidance on the Deceptive Practice of Influencer Marketing Directed to Children (submitted October 21, 2016), <https://fairplayforkids.org/wp-content/uploads/archive/FTCInfluencerComplaint.pdf> [hereinafter “Influencer Marketing Complaint October 2016”]; Campaign for a Commercial-Free Childhood & Center for Digital Democracy, Request for Investigation in the Matter of Violations by Members of the Children’s Food and Beverage Advertising Initiative of Pledges Not to Advertise Products to Children that Do Not Meet Uniform Nutrition Criteria (submitted Nov. 24, 2015), <https://fairplayforkids.org/wp-content/uploads/archive/CFBAI.pdf>; Campaign for a Commercial-Free Childhood & Center for Digital Democracy, Supplement to Request for Investigation into Google’s Unfair and Deceptive Practices in Connection with its YouTube Kids App (submitted Nov. 24, 2015), <https://fairplayforkids.org/wp-content/uploads/archive/YTKsupplement.pdf> [hereinafter “Supplement to YouTube Kids Request for Investigation November 2015”]; Center for Digital Democracy, Campaign for a Commercial Free Childhood & American Academy of Child and Adolescent Psychiatry, et al., Request for Investigation re: Google’s Unfair and Deceptive Practices in Connection with its YouTube Kids App, (submitted April 7, 2015), <https://fairplayforkids.org/wp-content/uploads/archive/youtubekidslettert.pdf> [hereinafter “YouTube Kids Request for Investigation April 2015”]; Center for Digital Democracy, American Academy of Child and Adolescent Psychiatry & Campaign for a Commercial-Free Childhood, et al., Request for Investigation of the Topps Company, Inc., Operator of Candymania.com for Violation of COPPA (filed Dec. 9, 2014), <https://www.democraticmedia.org/sites/default/files/Topps%20Request%20for%20Investigation%20Final%20w%20Appx%2012.9.pdf> [hereinafter “Request for Investigation of the Topps Company, Inc.”].

² Jenny Radesky, Alexis Hiniker & Caroline McLaren, et al., *Prevalence and Characteristics of Manipulative Design in Mobile Applications Used by Children*, 5 JAMA NETWORK OPEN (2022) at 6, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2793493>.

When experienced by young people, stealth advertising is both deceptive and unfair as defined by Section 5 of the FTC Act. It is deceptive when it is not clearly understood to be advertising. Its impacts are material because it directly and indirectly influences purchasing decisions. Stealth marketing to young people also meets all three prongs of the FTC's Policy Statement on Unfairness. Specifically, stealth marketing is a wide-spread practice that young people cannot reasonably avoid. It offers no countervailing benefits to young people, and it is substantially harmful, exposing young people to economic injury, increased family conflict, and mental and physical health harms.

Disclosures are not effective against stealth marketing because by design, stealth marketing subverts cognitive defenses. Instead of focusing on how to make disclosures more effective for young people, The Commission should issue guidance (1) to advertisers that they should not direct stealth marketing to young people; and (2) to platforms that they should not deliver or amplify stealth marketing to young people. The FTC must also be prepared to follow up this clear guidance with enforcement actions when marketers or platforms direct stealth marketing to young people.

Importantly, the FTC can and should take enforcement actions against unfair or deceptive marketing to children now and not wait until the conclusion of the workshop. As documented in previous filings and requests for investigation, the FTC's current enforcement tools, while clearly in need of improvement, are sufficient to stop many of the most abusive advertising practices today.

I. Influencer marketing is a huge and growing sector.

Fairplay described the influencer marketplace in its comments filed regarding the Endorsement Guides two years ago,³ as well as in several prior filings with the FTC.⁴ We urge the Commission to review these previous filings. The present comments update and expand upon those earlier submissions.

Influencer marketing is a booming industry powered not only by influencers, online platforms, and brands, but also by a large and growing sector of third-party services whose goal is to connect marketers to young people via "authentic" influencers. These marketing practices range from content creators encouraging purchase of their own merchandise or use of video game codes (from which they receive a commission) to product placement within family vlogs to sponsored use or reviews of products by influencers.⁵

In previous comments, Fairplay cited statistics from the 2020 State of Influencer Marketing Report demonstrating the explosive growth of influencer marketing.⁶ In the past two years, that

³ 2020 Endorsement Guides Comments, *supra* note 1, at 3-15.

⁴ Influencer Marketing Complaint October 2016, *supra* note 1 at 2-6; Supplement to YouTube Kids Request for Investigation November 2015, *supra* note 1, at 15-18.

⁵ Jenny S. Radesky, Alexandria Schaller & Samantha L. Yeo, et al., *Young Kids and YouTube: How Ads, Toys, and Games Dominate Viewing*, COMMON SENSE MEDIA (Nov. 17, 2020), at 22, https://www.common sense media.org/sites/default/files/research/report/2020_youngkidsyoutube-report_final-release_forweb_1.pdf.

⁶ 2020 Endorsement Guides Comments, *supra* note 1, at 3-4.

market has grown even more, from a global market value of \$9.7 billion in 2020 to \$16.4 billion in 2022.⁷ Another report found that influencer marketing investments are expected to grow to \$5 billion next year in the U.S. alone.⁸ Large online platforms continue to be the most popular places to engage in stealth advertising via influencers. Respondents to the 2022 State of Influencer Marketing report said they use Instagram the most for influencer marketing (79% of the time), followed by Facebook, TikTok, and YouTube.⁹

The market for “kidfluencers” – influencers who are children themselves – continues to grow rapidly, especially on YouTube. “From unboxing videos to family vlogs to nursery rhymes, content created by and for children has emerged as a multi-billion dollar business.”¹⁰ One study found that influencer marketing and other forms of stealth advertising have increased significantly since the FTC’s 2019 settlement with Google that ended behavioral advertising on child-directed videos on YouTube.¹¹ In other words, content creators and companies may have adapted to restrictions on “traditional” advertising approaches – such as pre-roll and interstitial ads on YouTube – by embedding more marketing content within videos themselves.

Influencer marketing is driven in part by a massive network of third-party services and companies that help produce influencer content and connect brands with influencers. These third parties, which include video streaming multi-channel networks (MCNs),¹² are growing rapidly, too. The 2022 State of Influencer Marketing Report found that the number of such services grew 26% world-wide in 2021 to 18,900, and the U.S. experienced the highest rate of growth at 30%.¹³

Partnerships with MCNs and other third parties help influencers turn themselves into highly lucrative franchises. For example, some of the most popular kidfluencers, including Ryan Kaji of Ryan’s World¹⁴ (formerly Ryan ToysReview) and Diana of Kids Diana Show, have partnered with Pocket Watch. Pocket Watch boasts on its website about its ability to turn “YouTube stars into Superstar Franchises” and “Forg[e] billion-dollar franchises with kids’ favorite stars!”¹⁵ Since Ryan partnered with Pocket Watch in September 2019, he has become a global “lifestyle brand in the form of an exclusive clothing line, toy line, Nickelodeon show... smartphone app... video game (“Race with Ryan”), and the creation of several Ryan-related

⁷ *State of Influencer Marketing 2022*, INFLUENCER MARKETING HUB (2022), at 10, https://influencermarketinghub.com/ebooks/Influencer_Marketing_Benchmark_Report_2022.pdf [hereinafter *State of Influencer Marketing 2022*].

⁸ Traackr, *2022 Influencer Marketing Impact Report* (2022), at 2, <https://www.traackr.com/content/influencer-marketing-impact-report-2022>.

⁹ *State of Influencer Marketing 2022*, *supra* note 7, at 55.

¹⁰ Gavin Feller & Benjamin Burroughs, *Branding Kidfluencers: Regulating Content and Advertising on YouTube*, TELEVISION & NEW MEDIA (October 2021), at 3, <https://journals.sagepub.com/doi/full/10.1177/15274764211052882>.

¹¹ *Id.* at 11.

¹² Angela J. Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 LOYOLA CONSUMER L. REV. 1, 8-9 (2016), <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1972&context=lcrlr>.

¹³ *State of Influencer Marketing 2022*, *supra* note 7, at 12.

¹⁴ Ryan is one of the top-ten highest paid YouTube influencers. Abram Brown & Abigail Freeman, *The Highest-Paid YouTube Stars: MrBeast, Jake Paul And Markiplier Score Massive Paydays*, FORBES (Jan. 14, 2022), <https://www.forbes.com/sites/abrambrown/2022/01/14/the-highest-paid-youtube-stars-mrbeast-jake-paul-and-markiplier-score-massive-paydays/?sh=653588981aa7> (last visited July 15, 2022).

¹⁵ See generally <https://pocket.watch/> (last visited July 15, 2022); Appendix Ex. G.

YouTube channels[.]”¹⁶ Similarly, “Diana’s parents partnered with Pocket Watch in 2020 in an effort to create what the company’s Chief Revenue Officer, Stone Newman, called ‘the next big global franchise for girls.’”¹⁷ Like Ryan, Diana has multiple channels and sells branded products in national retail stores.¹⁸

Brands and third party services make clear that influencer marketing is effective precisely because consumers form connections with influencers such as Ryan and Diana. According to Nielsen:

With a focus on brand building, marketers are continually looking for ways to stay top-of-mind with potential buyers. To do this, many are turning to social media—and influencers—to make more personal (and profitable) connections with consumers.... And when it comes to being relatable, influencers can forge more relevant connections with consumers than many other sources.¹⁹

SuperAwesome, which has a service to connect brands with its “SuperAwesome Creators team” of influencers who appeal to people under 16, tells advertisers that young people “seek out authenticity and relevance when engaging with brands on the internet.”²⁰ Another article on SuperAwesome’s website says, “Brands need social media influencers to generate trust and foster real connections with youth audiences.”²¹

The result of a large and complex influencer marketing ecosystem is that noncommercial content is deeply entwined with commercial content across the internet.²² This environment, which capitalizes on young people’s connections with influencers to sell them things, allows marketers to deceptively deliver stealth advertising content as if it is non-commercial and authentic, often in formats much longer than traditional television ads.

¹⁶ Feller & Burroughs, *supra* note 10, at 10; *See also* Lucas Shaw & Mark Bergen, The Preteen’s Guide to Getting Rich Off YouTube, BLOOMBERG (March 22, 2021), <https://www.bloomberg.com/news/articles/2021-03-22/how-youtube-channel-ryan-s-world-makes-most-of-its-revenue-merchandise-not-ads> (last visited July 15, 2022).

¹⁷ Feller & Burroughs, *supra* note 10, at 10.

¹⁸ Maressa Brown, *Meet the Family With Billions of Views a Month on YouTube*, PARENTS (Oct. 7, 2020), <https://www.parents.com/fun/entertainment/meet-the-family-with-billions-of-views-a-month-on-youtube/#:~:text=According%20to%20Business%20Insider%2C%20Kids,to%20%2444.7%20million%20a%20year> (last visited July 15, 2022).

¹⁹ *Getting closer: Influencers help brands build more personal consumer connections*, NIELSEN (May 17, 2022), <https://www.nielsen.com/us/en/insights/article/2022/getting-closer-influencers-help-brands-build-more-personal-consumer-connections/#:~:text=And%20when%20it%20comes%20to,and%20product%20placements%20from%20influencers> (last visited July 15, 2022) [hereinafter *Getting closer*].

²⁰ Sabrina Gela, *What You Need to Know About Safely Reaching Young Teens on YouTube in 2022*, SUPERAWEsome (June 2, 2022), <https://www.superawesome.com/blog/what-you-need-to-know-about-safely-reaching-young-teens-on-youtube-in-2022/> (last visited July 15, 2022); SuperAwesome, *SuperAwesome Creators*, <https://www.superawesome.com/superawesome-creators/> (last visited July 15, 2022).

²¹ Tess Hanna, *5 Stats That Show Brands Need Influencers to Effectively Reach Young Audiences*, SUPERAWEsome (Feb. 7, 2022), <https://www.superawesome.com/blog/5-stats-that-show-brands-need-influencers-to-effectively-reach-young-audiences/> (last visited July 15, 2022).

²² Appendix Ex. A-F.

II. Young people cannot defend themselves against stealth advertising.

Researchers have traditionally used age stage models to evaluate young people's understanding of television advertising.²³ But more recent research into children and teens has shown that broad age-based categories do not easily apply to their understanding of stealth advertising.²⁴ As one researcher notes, "Contemporary [advertising] formats deliver subtle affective associations rather than a rational or factual message, and are therefore perfectly placed to bypass children's explicit persuasion knowledge and instead persuade implicitly."²⁵

Researchers frame digital advertising literacy around three main ideas or principles: identifying advertising, evaluating advertising, and defending against it.²⁶ One of the most prevalent models used to evaluate these ideas and the way young people understand and defend against advertising is the Persuasion Knowledge Model.

Persuasion knowledge "is defined as general knowledge and beliefs about persuasion that individuals develop when exposed to persuasive messages."²⁷ In the context of stealth advertising, the Persuasion Knowledge Model helps researchers identify whether and when a person ascertains the persuasive intent of marketing.²⁸ As Van Dam and Van Reijmersdal explain, the idea behind the model is that, "when people are exposed to a persuasive message, they tend to activate knowledge about tactics used in persuasive attempts."²⁹ This personal knowledge about marketers' motives and techniques helps people "cognitively defend" themselves against an advertisement's influence.³⁰

Persuasion knowledge has two dimensions: conceptual knowledge of persuasion, and attitudinal knowledge of persuasion.³¹ To activate conceptual knowledge, an individual must first recognize that something is an advertisement:

²³ Agnes Nairn & Cordelia Fine, *Who's messing with my mind? The implications of dual-process models for the ethics of advertising to children*, 27 INT'L J. OF ADVERTISING 447, 449 (2015), <https://www.tandfonline.com/doi/abs/10.2501/S0265048708080062>; Jenny Radesky, Yolanda (Linda) Reid Chassiakos & Nusheen Ameenuddin, et al., *American Academy of Pediatrics Policy Statement: Digital Advertising to Children*, 146 PEDIATRICS 1, 2 (2020), <https://doi.org/10.1542/peds.2020-1681>.

²⁴ *Id.*

²⁵ Nairn & Fine, *supra* note 23, at 448.

²⁶ Delia Cristina Balaban, Meda Mucundorfeanu, and Larisa Ioana Mureșan, *Adolescents' Understanding of the Model of Sponsored Content of Social Media Influencer Instagram Stories*, 10 MEDIA AND COMMUNICATION 305, 307 (2022), <https://www.cogitatiopress.com/mediaandcommunication/article/view/4652>.

²⁷ *Id.*

²⁸ Eva A. van Reijmersdal & Sophia van Dam, *How Age and Disclosures of Sponsored Influencer Videos Affect Adolescents' Knowledge of Persuasion and Persuasion*, 49 J. OF YOUTH AND ADOLESCENCE 1531, 1532 (2020), <https://pubmed.ncbi.nlm.nih.gov/31955365/> [hereinafter Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*].

²⁹ Sophia van Dam & Eva A. van Reijmersdal, *Insights in adolescents' advertising literacy, perceptions and responses regarding sponsored influencer videos and disclosures* 13 J. OF PSYCHOSOCIAL RESEARCH ON CYBERSPACE (2019), <https://doi.org/10.5817/CP2019-2-2>.

³⁰ Katarina Panic, Verolien Cauberghe & Patrick De Pelsmacker, *Comparing TV Ads and Advergaming Targeting Children: The Impact of Persuasion Knowledge on Behavioral Responses*, 42 J. OF ADVERTISING 264, 264-65 (2013).

³¹ Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1532.

Conceptual knowledge of persuasion consists of several elements of which recognition of sponsored content as being advertising and understanding advertising's intentions are seen as the basics. Recognition of sponsored content as being advertising refers to the ability to recognize certain content as being advertising and the fact that the advertiser is the source of the message.³²

The individual must also recognize the persuasive intent of advertising to activate their conceptual knowledge:

The second aspect of conceptual knowledge of persuasion is the understanding that advertising has the intent to persuade and to sell. This is more complex than solely recognizing a commercial message and might require more cognitive capacity.³³

Conceptual knowledge can then activate attitudinal persuasion knowledge. "That is, when people realize that content is advertising, they become more critical toward that content because a change of meaning is evoked by the disclosure."³⁴

Conceptual persuasion knowledge alone is insufficient to protect young people from the influence of stealth advertising. Rather, young people must activate their attitudinal persuasion knowledge to effectively respond and avoid being manipulated.³⁵ Theoretically, the activation of persuasion knowledge should result in more negative evaluations of brands and/or influencers and decreased purchase intentions.³⁶ As Nairn explains:

[T]he young person must be able not only to understand implicit persuasion but also to be able to control its effects on their consumer preferences and behaviour – in other words, 'correct' or overcome implicit consumer attitudes in choice situations. Thus by 'resist' we mean that the child's self-reported explicit attitudes are not substantially mediated by their *manipulated implicit attitudes* and that, when they diverge, they are able to make consumer choices in

³² Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1532.

³³ Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1532.

³⁴ Eva A. van Reijmersdal, Suzanna J. Oprea & Robert F. Cartwright, *Brand in focus: Activating adolescents' persuasion knowledge using disclosures for embedded advertising in music videos*, 47 COMMUNICATIONS 93, 98 (2022), <https://doi.org/10.1515/commun-2019-0168> (citing Marian Friestad & Peter Wright, *The Persuasion Knowledge Model: How People Cope with Persuasion Attempts*, 21 J. OF CONSUMER RESEARCH (1994), <https://www.jstor.org/stable/2489738>).

³⁵ Nairn & Fine, *supra* note 23, at 420.

³⁶ Van Reijmersdal, Oprea & Cartwright (2022), *supra* note 34, at 99; Steffi De Jans, Veroline Cauberghe & Liselot Hudders, *How an Advertising Disclosure Alerts Young Adolescents to Sponsored Vlogs: The Moderating Role of a Peer-Based Advertising Literacy Intervention through an Informational Vlog*, 48 J. OF ADVERTISING 309, 310 (2018), <https://doi.org/10.1080/00913367.2018.1539363> ("Furthermore, it was expected that young adolescents' increased advertising literacy, due to an advertising disclosure, would trigger reactance and result in more negative influencer and advertising effects, as previous studies (among adults) have shown.").

line with their explicit attitudes, rather than their manipulated implicit attitudes, in reasonably naturalistic choice situations.³⁷

Such analysis does not fit into an age stage model because young people have significant inter-individual variability in acquiring critical thinking skills for evaluating stealth advertising, skills that will vary depending on the type and degree of manipulation present in a given marketing exposure.³⁸ As discussed in Section III.B, *infra*, studies show that even young people who have acquired advertising literacy skills do not deploy their attitudinal persuasion knowledge to defend themselves against stealth advertising.

There are several mechanisms by which children and adolescents would be likely to follow their manipulated implicit attitudes when encountering a stealth marketing message:

A. Wishful identification and parasocial relationships

One of the reasons that young people do not defend themselves against stealth advertising from influencers is because they form parasocial relationships or experience wishful identification with influencers. Tolbert and Drogos define wishful identification:

Wishful identification (WI) is the psychological desire to be like a media personality. This desire can lead to sharing a similar perspective with the character. WI moves beyond merely liking a character — it is the psychological attachment between a viewer and a character that leads to imagining the self as being the character.³⁹

Young people who perceive a sense of similarity between themselves and a media personality or character tend to have higher rates of wishful identification with the personality or character.⁴⁰ YouTubers with which children have formed WI commonly use marketing tactics that leverage a sense of belonging with their “group,” such as the sale of merchandise identifying the child as a “follower” of the influencer or inclusion in exclusive virtual events that make money for the influencer.⁴¹

A parasocial relationship (PSR) “is a one-sided symbolic relationship between the viewer and a media character. That is to say, a PSR refers to the feeling of friendship that a viewer develops toward a media character.”⁴² It is normal for both adults and young people to experience parasocial relationships with media characters or personalities.⁴³ Other researchers refer to this phenomenon in terms of parasocial interactions (PSI). Naderer, Matthes, and Schäfer define a

³⁷ Nairn & Fine, *supra* note 23, at 459 (emphasis added).

³⁸ Children 7 years old and younger do not understand persuasive intent. Radesky, Chassiakos & Ameenuddin et al., *supra* note 23, at 2.

³⁹ Amanda N. Tolbert & Kristin L. Drogos, *Tweens’ Wishful Identification and Parasocial Relationships With YouTubers*, 10 FRONTIERS IN PSYCHOLOGY 1, 3 (2019), <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.02781/full> (internal citations omitted).

⁴⁰ *Id.* at 3 (internal citations omitted).

⁴¹ Radesky, Schaller & Yeo, et al., *supra* note 5, at 35.

⁴² Tolbert & Drogos, *supra* note 39, at 4.

⁴³ Tolbert & Drogos, *supra* note 39, at 4.

parasocial interaction as a spontaneous response toward or assessment of a media figure, such as an influencer, and they emphasize the role perceived similarities can play in the interaction: “This perceived similarity can be built on factors such as gender, origin, shared interests or mutual values.”⁴⁴

Children and teenagers form parasocial relationships with fictional characters, influencers, and other media figures.⁴⁵ Studies show that adolescents form a parasocial bond with their favorite video bloggers (“vloggers”), and that the strength of that bond correlates with the amount of time a tween or teen spends watching the vlogger.⁴⁶ Evidence shows that young children are more likely to follow the instructions of media characters they have formed a relationship with, compared to unknown but similarly entertaining characters.⁴⁷ As discussed in Section III.B, *infra*, research demonstrates that tweens and teens who have a strong parasocial relationship or wishful identification bond with an influencer are less likely to activate their advertising defenses when that influencer engages in stealth marketing.

Moreover, platforms reinforce a sense of identity or group belonging with influencers through recommendations feeds. As noted in Common Sense Media’s recent analysis of racial/ethnic representation on YouTube, child and adolescent viewers may perceive that videos or content creators recommended to them based on their prior viewing behavior have been implicitly endorsed by the platform.⁴⁸ The act of recommending content or influencers “for you” - without regard for the marketing messages contained in the recommended videos - may represent social validation or group identification with that message in a manner that subverts children’s and adolescents’ cognitive defenses.

B. Rewards and behavioral reinforcement

Another reason that children are more susceptible to stealth advertising is because children in early and middle years of childhood are highly responsive to tangible rewards such as tokens, stickers, pleasurable food/activities, or praise from trusted caregivers. Contingent rewards are a cornerstone of behavioral modification approaches such as classroom management,⁴⁹ toilet

⁴⁴ Brigitte Naderer, Jörg Matthes & Stephanie Schäfer, *Effects of disclosing ads on Instagram: the moderating impact of similarity to the influencer*, 40 INTERNATIONAL JOURNAL OF ADVERTISING 686, 687-88 (2021).

⁴⁵ Tolbert & Drogos, *supra* note 39, at 4.

⁴⁶ Tolbert & Drogos, *supra* note 39, at 10; Frans Folkvord, K.E. Bevelander & Esther Rozendaal, et al., *Children’s bonding with popular YouTube vloggers and their attitudes toward brand and product endorsements in vlogs: an explorative study*, 20 YOUNG CONSUMERS INSIGHT AND IDEAS FOR RESPONSIBLE MARKETERS (2019), <https://doi.org/10.1108/YC-12-2018-0896>.

⁴⁷ Alexis R. Lauricella, Alice Ann Howard Gola & Sandra L. Calvert, *Toddlers’ learning from socially meaningful video characters*, 14 MEDIA PSYCHOLOGY 216, 226-227 (2011), <https://doi.org/10.1080/15213269.2011.573465>.

⁴⁸ Déjà Rollins, Enrica Bridgewater & Tiffany Munzer, et al., *Who Is the “You” in YouTube? Missed Opportunities in Race and Representation in Children’s YouTube Videos*, COMMON SENSE MEDIA (2022) <https://www.commonsensemedia.org/sites/default/files/research/report/2022-youtube-report-final-web.pdf>, at 2.

⁴⁹ See generally, Edward A. Workman & Robert L. Williams, Effects of extrinsic rewards on intrinsic motivation in the classroom, 18 J. OF SCHOOL PSYCHOLOGY 141-47 (1980).

training,⁵⁰ or reduction of aggression⁵¹ because of their effectiveness in increasing the frequency of a desired child behavior.

Reward systems (e.g., coins, gems, virtual currency) are a common aspect of gamification, used to reinforce gameplay and increase user motivation. Gamified rewards are not manipulative *per se* when used to promote a pleasurable play activity. However, when rewards and behavioral reinforcement are used to increase a child behavior that benefits the marketer (e.g., increase ad views by providing rewards in the forms of virtual tokens, extra lives, or gameplay items),⁵² this represents manipulation of child implicit attitudes through coupling the child's hedonic response to a reward with the experience of viewing an ad. Kidfluencer content often includes high-pleasure experiences (e.g., unwrapping and eating candy, playing with various expensive toys, slapstick violence or humiliation of grown-ups) that similarly influence child hedonic, and thereby attitudinal responses to marketing content.⁵³

III. Disclosures are an inadequate protection against stealth marketing for young people.

The topics identified in the Public Notice for the October 2022 hearing focus in large part on the efficacy of online advertising disclosures in helping young people to recognize stealth ads and thereby activate their explicit attitudes and conscious reasoning. Increased or improved disclosures, however, will not adequately protect young people from stealth advertising.

Despite FTC guidance on the use and placement of disclosures, disclosures are significantly underutilized and misused.⁵⁴ Further, as Fairplay and other advocates have demonstrated in previous filings with the Commission, disclosures are an ineffective remedy to stealth advertising in part because internet users do not see or remember them.⁵⁵ Most importantly, research shows that disclosures – even when young people do see and remember them – do not protect young people from stealth advertising because the disclosures do not activate their advertising literacy.

A. Young people do not notice or remember advertising disclosures.

A disclosure must be seen by a digital media user to have a chance of being effective. But research shows that even adults often do not notice advertising disclosures.⁵⁶ Young people face

⁵⁰ See generally, Mark Wolraich, *American Academy of Pediatrics: Guide to Toilet Training*, Bantam (2015).

⁵¹ See generally, David Brown, Daniel Reschly & Darrell Sabers, *Positive Reinforcement to Modify Aggressive Behaviors in a Head Start Classroom*, 24 THE PSYCHOLOGICAL RECORD 491-96 (1974).

⁵² Marisa Meyer, Victoria Adkins & Nalingna Yuan, et al., *Advertising in Young Children's Apps: A Content Analysis*, 40 J. OF DEVELOPMENTAL & BEHAVIORAL PEDIATRICS 32, 34-36 (2019).

⁵³ Radesky, Schaller & Yeo, et al., *supra* note 5, at 10.

⁵⁴ 2020 Endorsement Guides Comments, *supra* note 1, at 20.

⁵⁵ 2020 Endorsement Guides Comments, *supra* note 1, at 16-24.

⁵⁶ Matthew T. Binford, Bartosz W. Wojdyski & Yen-I Lee, et al., *Invisible transparency: Visual attention to disclosures and source recognition in Facebook political advertising*, 18 J. OF INFORMATION TECH. & POLITICS 70, 80 (2020), <https://doi.org/10.1080/19331681.2020.1805388>; Sophie C. Boerman, Lotte M. Willemsen & Eva P. Van Der Aa, "This Post Is Sponsored" Effects of Sponsorship Disclosure on Persuasion Knowledge and Electronic Word of Mouth in the Context of Facebook, 38 J. of Interactive Marketing 82, 90 (2017), <https://doi.org/10.1016/j.intmar.2016.12.002> ("An important unanticipated finding of this study is the fact that 56% of all participants exposed to a disclosure did not recognize this disclosure."). Nathaniel J. Evans, Joe Phua & Jay

much greater challenges to seeing and remembering disclosures than adults. Young children cannot read written disclosures or may be distracted by other salient or pleasurable features of the content. Further, children in early adolescence “have limited information processing skill and are easily distracted by visuals and moving images,” which reduces their chance of seeing and remembering a disclosure.⁵⁷

Studies have repeatedly found that preteens and teenagers do not notice or remember disclosures.⁵⁸ An interview study testing the effectiveness of text and spoken sponsorship disclosures on children ages 10 to 16 years old found “most children did not notice the disclosure spontaneously” and when asked if they ever noticed these kinds of disclosures in YouTube videos, they said they rarely saw them.⁵⁹ Even advertising self-regulatory organizations have acknowledged that written disclosures are an ineffective way of conveying “material facts” to young people.⁶⁰

It is possible that altering the format, timing, placement, wording, and frequency of disclosures will result in greater recall by children and teens. Such alterations, however, will not ameliorate the unfairness and deception of stealth marketing. For the reasons outlined below, stealth advertising, even when recognized by young people as marketing, does not activate children and teens’ cognitive defenses.

B. Disclosures are ineffective because they do not activate young people’s advertising literacy.

Standard advertising disclosures do not activate preteens’ and teenagers’ attitudinal persuasive knowledge. For younger children who have a less developed understanding of advertising and less developed reading skills, such disclosures cannot be reasonably expected to provide any protection against stealth advertising. Accordingly, this section will focus on preteens and teenagers.

The language used in advertising disclosures is inconsistent, and it is rarely phrased in a way that communicates clearly to young people what the disclosure means. For example, young

Lim, et al., *Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent* 17 J. OF INTERACTIVE ADVERTISING 138, 144 (2017), <https://doi.org/10.1080/15252019.2017.1366885>.

⁵⁷ Eva A. van Reijmersdal, Esther Rozendaal, Liselot Hudders, et al., *Effects of Disclosing Influencer Marketing in Videos: An EyeTracking Study Among Children in Early Adolescence*, 49 J. OF INTERACTIVE MARKETING 94, 103 (2020), <https://doi.org/10.1016/j.intmar.2019.09.001>.

⁵⁸ Esther Rozendaal, Eva A. van Reijmersdal, and Margot J. van der Goot, *Children’s Perceptions of Sponsorship Disclosures in Online Influencer Videos*, 11 ADVANCES IN ADVERTISING RESEARCH 273, 280 (2021) (“Interestingly, most children did not notice the disclosure spontaneously, which means that they did not talk about it unless the interviewer directly asked questions about it[.]”); Sophie C. Boerman & Eva A. van Reijmersdal, *Disclosing Influencer Marketing on YouTube to Children: The Moderating Role of Para-Social Relationship*, 10 FRONTIERS IN PSYCHOLOGY 1, 8 (2020) (Thirty of 58 children ages 8-12 shown a video with a ten second disclosure in large white letters on a black background did not recall seeing the disclosure).

⁵⁹ Rozendaal, Van Reijmersdal & Van der Goot (2021), *supra* note 58, at 280.

⁶⁰ Jeffrey A. Greenbaum, *CARU Calls Out National Fluid Milk Processor Promotion Board for Depicting Unsafe Behavior on Television*, Mondaq (August 20, 2020), <https://www.mondaq.com/unitedstates/broadcasting-film-tv-radio/977610/caru-calls-out-national-fluid-milk-processor-promotion-board-for-depicting-unsafe-behavior-on-television?type=related> (last visited July 15, 2022).

people do not all understand the significance of the phrase “sponsored by.” Rozendaal et al. found that while some children understand the concept of sponsored influencer content; others do not: “On the other end of the spectrum there are children who have difficulty understanding the purpose of disclosures, and who do not understand that brands are featured in influencer videos for commercial reasons and that often (financial) compensation is part of the deal.”⁶¹ This problem cannot be solved solely through parental education, parent-child discussions, and co-viewing because many younger children and even more teenagers watch digital media regularly without their parents.⁶² Further, even parents have difficulty recognizing and defending against stealth advertising.⁶³

Ultimately, disclosures do not protect young people from stealth advertising because they fail to activate young people’s advertising literacy skills. The disclosures are typically not phrased in a way that allows preteens and early teenagers to understand the persuasive intent of the advertisement. Older teenagers recognize persuasive intent more frequently with a “standard” disclosure identifying sponsorship, but even when they do, they do not apply their persuasion knowledge to defend against the ad.⁶⁴ As discussed in detail in Section II, *supra*, young people must activate both conceptual and attitudinal persuasion knowledge in order to defend themselves against the influence of stealth advertising. Hoek et al. explain:

In order for children to critically process advertising messages and, thus, use their advertising literacy as a defense mechanism, they first have to activate it when they are exposed to these advertising messages. Without this activation, advertising literacy cannot work as a defense mechanism.⁶⁵

Studies demonstrate that basic disclosures do not help preteens and early teenagers activate their advertising literacy.

⁶¹ Rozendaal, Van Reijmersdal & Van der Goot (2021), *supra* note 58, at 281.

⁶² Victoria Rideout & Michael B. Robb, *The Common Sense Census: Media Use by Kids Age Zero to Eight*, COMMON SENSE MEDIA (2020) at 7, https://www.common sense media.org/sites/default/files/research/report/2020_zero_to_eight_census_final_web.pdf (finding that co-viewing decreases dramatically as children get older); Victoria Rideout, Alanna Peebles, Supreet Mann, et al., *The Common Sense Census: Media Use by Tweens and Teens*, COMMON SENSE MEDIA (2022) at 22, https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf (finding that the majority of pre-teens and a high percentage of teens personally own a tablet, smartphone, or computer).

⁶³ Nathaniel J. Evans et al. (2018), *Parenting “YouTube Natives”: The Impact of Pre-Roll Advertising and Text Disclosures on Parental Responses to Sponsored Child Influencer Videos*, 47 J. OF ADVERTISING 326, 341 (2018), <https://doi.org/10.1080/00913367.2018.1544952>; Nathaniel J. Evans & Mariea Grubbs Hoy, *Parents’ Presumed Persuasion Knowledge of Children’s Advergaming: The Influence of Advertising Disclosure Modality and Cognitive Load*, 37 J. OF CURRENT ISSUES & RESEARCH IN ADVERTISING 146, 159 (2016), <https://doi.org/10.1080/10641734.2016.1171181>.

⁶⁴ Panic, Cauberghe & De Pelsmacker, *supra* note 30, at 265 (“[T]he fact that children possess a certain amount of persuasion knowledge does not necessarily imply that they will spontaneously retrieve and apply it every time they are confronted with advertising.”).

⁶⁵ Rhianne W. Hoek, Esther Rozendaala, Hein T. van Schien, and Moniek Buijzen, *Inhibitory control moderates the relation between advertising literacy activation and advertising susceptibility*, 25 MEDIA PSYCHOLOGY 51, 52 (2020), <https://doi.org/10.1080/15213269.2020.1856685>.

For example, one study tested two types of sponsorship disclosures on young people 12- to 14-years-old and 15- to 16-years-old. The study participants watched a video sponsored by Fanta, and two types of advertising disclosure were tested. One was a standard disclosure that said, “[The influencer] is paid to promote Fanta during this video.” The second went a step further and identified not only that the video was sponsored, but also the persuasive intent of the video: “[The influencer] is paid to promote Fanta during this video, to make you like Fanta.”⁶⁶

The study found that the younger participants (12-14 years old) needed to see the disclosure that explicitly explained the video’s persuasive intent in order to activate both their conceptual and attitudinal persuasive knowledge.⁶⁷ Older teenagers (15-16 years old) generally recognized the advertising and understood its persuasive intent as a result of the standard disclosure.⁶⁸ However, even when participants’ attitudinal knowledge of persuasion was triggered their purchase intentions *did not change*, regardless of their age.⁶⁹

Similarly, a study tested the effect of advertising disclosures on sponsored Instagram story content on high school girls. Study participants saw Instagram stories from a social media influencer with no disclosure, a basic disclosure that said “Advertising” and tagged the sponsoring brand, and a longer disclosure that said “Paid partnership with [brand].”⁷⁰ Disclosures helped the study participants to recognize the advertising in the Instagram stories, but it did not trigger their cognitive defenses: “Neither tested ad disclosure type triggered skepticism toward sponsored content in Instagram stories.”⁷¹

Studies further demonstrate that when people have a parasocial relationship or identify with an influencer, they are less likely to defend themselves against stealth marketing from that influencer. This effect can leave consumers of all ages more vulnerable to advertising and even make disclosures counter-productive. A study of adult women found that when participants considered themselves similar to an influencer, they also considered the influencer more trustworthy:

In fact, our results suggest that a disclosure of a brand occurrence can have a positive impact, both for the advertised brand as well as the influencer who posts the brands. More specifically, we showed that disclosures can increase influencer trustworthiness in case the influencers are similar to the followers. Such increased trustworthiness, then, shapes purchase intentions toward the brand and future following intentions with respect to the influencer.⁷²

⁶⁶ Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1536.

⁶⁷ Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1540.

⁶⁸ Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1540-41.

⁶⁹ Van Reijmersdal & Van Dam, *How Age and Disclosures of Sponsored Influencer Videos*, *supra* note 28, at 1541-42.

⁷⁰ Balaban, Mucundorfeanu & Mureşan, *supra* note 26, at 312.

⁷¹ Balaban, Mucundorfeanu & Mureşan, *supra* note 26, at 312.

⁷² Naderer, Matthes & Schäfer, *supra* note 44, at 702.

This effect has a significant impact on young people. As one study concluded: “Our results point to the potential for young adults to become emotionally attached to social influencers, leading to advertisement clicking and buying behavior.”⁷³

Overall, studies indicate that in situations where parasocial relationships may be a factor, disclosures counterintuitively make young people more likely to have a more *positive* brand attitude and increased purchasing intention than if there was no disclosure. In one study, high school students were shown an Ariana Grande music video that contained product placement for Samsung. Study participants saw one of four disclosures before the music video: (1) “You are now about to watch a music video;” (2) “This clip contains product placement;” (3) “This clip contains product placement. The goal is to make you want to buy the product;” or (4) “This clip contains product placement, which can help artists pay for music video costs.”⁷⁴ The researchers found that the disclosures did not increase participants’ conceptual persuasion knowledge. Further, the disclosures that indicated sponsorship helped pay for video costs “resulted in *more* favorable attitudes towards the music video and artist.”⁷⁵

Similarly, in a study of young people ages 11 to 14, study participants who watched a 5-minute video of an influencer explaining advertising informatively before watching a sponsored vlog experienced “increased PSI with the influencer and subsequently enhanced purchase intention.”⁷⁶ Their attitudinal persuasion knowledge was not activated.

In sum, research repeatedly demonstrates that even when disclosures are made, they are rarely noticed and are not effective at activating skepticism towards the sponsored product. Young people need detailed disclosures that explicitly identify the intent of the advertisement – which go far beyond the standard disclosure a marketer would use – in order to recognize the persuasive intent of a stealth advertisement. But even when they do, they frequently do not cognitively defend themselves. In fact, young people who have developed a parasocial relationship with an influencer may have a more positive attitude and higher purchase intention after seeing a disclosure from that influencer.

For these reasons, the FTC should shift its focus from ascertaining age-appropriate disclosures to prohibiting unfair and deceptive stealth marketing to children and teens.

IV. Stealth advertising is unfair to young people in violation of Section 5 of the FTC Act.

Directing stealth marketing to young people is an unfair practice in violation of Section 5. Under the FTC’s Policy Statement on Unfairness, a marketing practice is *unfair* if (1) the practice results in substantial consumer injury; (2) the injury is not outweighed by countervailing benefits

⁷³ Emmelyn Croes & Jos Bartels, *Young adults’ motivations for following social influencers and their relationship to identification and buying behavior*, 125 COMPUTERS IN HUMAN BEHAVIOR at 7 (2021), <https://doi.org/10.1016/j.chb.2021.106910>.

⁷⁴ Van Reijmersdal, Oprea & Cartwright (2022), *supra* note 34, at 107.

⁷⁵ Van Reijmersdal, Oprea & Cartwright (2022), *supra* note 34, at 107 (emphasis in original).

⁷⁶ Steffi De Jans, Veroline Cauberghe & Liselot Hudders, *supra* note 36, at 321.

to consumers or competition, and (3) the injury cannot be reasonably avoided by consumers.⁷⁷ The practice of directing influencer advertising to young people meets all three criteria.

A. Stealth advertising is harmful to young people.

Substantial consumer injury typically involves either monetary harm or health or safety risks.⁷⁸ Substantial injury can be found in cases where there is a small amount of harm to a large number of consumers or significant harm to a small number of consumers.⁷⁹ Here there is both significant harm to some young consumers and some harm to substantial numbers of young consumers. Those harms include, but are not necessarily limited to, monetary harms, increased family conflict, and mental and physical health harms.

1. Young people experience monetary harms from stealth marketing.

Both the increasing use of influencer marketing as well as numerous studies attest to the fact that influencer marketing effectively increases brand awareness and drives sales among consumers of all ages. For example, the 2022 State of Influencer Marketing Report found that 90% of the advertisers in its survey believe influencer marketing is effective, 77% plan to have a dedicated budget to influencer marketing in 2022 (up from 37% in 2017), and 68% plan to increase influencer marketing spending in 2022.⁸⁰ Moreover, 70% of consumers say that influencers factor into their purchase decisions and 59% look to influencers for product recommendations.⁸¹

Young consumers are even more susceptible to influencer marketing than adults. According to Nielsen data, more than three-quarters of kids trust YouTubers' recommendations on what to buy over commercials.⁸² Another survey found that influencers and bloggers on YouTube, Instagram and Snapchat influence purchases by children and teens in the US and UK more than celebrities and athletes.⁸³ SuperAwesome found that more than one-third of influencer-led purchases in the youth and family category are same-day purchases and another 25% occur within a few days.⁸⁴ It also found that "kid-directed influencer content drives more sales than parent-directed influencer content because influencers build positive perceptions with kids and drive purchase intent for 80% of kids and tweens, compared to 60% of parents."⁸⁵

A 2020 eMarketer report explains how YouTube influences kids on their path to purchase:

YouTube is a mainstay for today's kids. While entertainment preoccupies much of their time on the platform, it's also evolved to

⁷⁷ Federal Trade Commission, *Policy Statement on Unfairness* (1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *State of Influencer Marketing 2022*, *supra* note 7, at 33-35.

⁸¹ Traackr, *supra* note 8, at 14.

⁸² *Getting closer*, *supra* note 19.

⁸³ Generation Alpha: Preparing for the Future Consumer, Wunderman Thompson (2019) at 11, <https://www.wundermanthompson.com/news/generation-alpha-2019>.

⁸⁴ Tiffany Tasker, *Use Kid-Directed Content to Create More Effective Campaigns*, TOYBOOK (2022), <https://toybook.com/marketing-memo-kid-directed-content/>.

⁸⁵ *Id.*

a place of search and product discovery, ultimately influencing some on their path to purchase.

“On YouTube, there’s a lot more content by kids for kids that is deeply appealing to them,” said Michael Preston, executive director of the Joan Ganz Cooney Center at Sesame Workshop. “Having search and discovery tools embedded in the platform makes it a different kind of experience.”⁸⁶

Not only does influencer advertising affect children’s desire, but it also drives sales. As eMarketer explains, “most kids depend on their parents for financial support [but]... that doesn’t mean they don’t have any spending power. On the contrary, [influencer marketing is] changing the way that families shop.”⁸⁷ As discussed in more detail below, young people have “pester power” that can influence family purchasing decisions but also create conflict.

In addition to product placement and endorsement content that influences later purchase decisions, some stealth marketing designs encourage immediate purchase - for example, of gameplay items in apps encouraged by favorite characters like *Strawberry Shortcake*⁸⁸ or *Kick the Buddy*.⁸⁹ Influencers regularly provide direct links to online stores and communicate urgency about time-limited offers that exploit children’s weaker delay of gratification or understanding of time sequences,⁹⁰ which could increase the intensity of child demands for purchases.

Ultimately, stealth marketing causes economic harm when young people directly – or indirectly by pressuring parents or family members – purchase items they would not have purchased otherwise based on emotional appeals and information that is often outright deceptive.

2. *Stealth marketing to young people engenders family conflict.*

When parents are unable or unwilling to accede to their children’s demands – their pester power – it often leads to emotional outbursts and family conflict. A study of children ages 4 through 10 and their families found that children who watch unboxing videos are more likely to ask their parents to buy the products they see in the videos, and also more likely to throw a tantrum when their parents refuse to buy the product.⁹¹ This is a widespread family issue, as this study found 78% percent of families surveyed said their children watch unboxing videos regularly, and 60% for more than an hour per week.⁹² Research consistently shows that family conflict is a driver

⁸⁶ Lucy Koch, *Is YouTube Turning Kids Into Budding Shoppers?*, INSIDER INTELLIGENCE (2020), <https://www.insiderintelligence.com/content/is-youtube-turning-kids-into-budding-shoppers>

⁸⁷ *Id.*

⁸⁸ Meyer, Adkins & Yuan, et al., *supra* note 54, at 35.

⁸⁹ Radesky, Hiniker & McLaren, et al., *supra* note 2, at 6.

⁹⁰ Radesky, Schaller & Yeo, et al., *supra* note 5, at 35.

⁹¹ Harsha Gangadharbatla & Deepti Khedekar, *The Role of Parental Mediation and Persuasion Knowledge in Children’s Consumption of Unboxing Videos*, 22 ADVERTISING & SOCIETY QUARTERLY (2021), <https://muse.jhu.edu/article/813891>.

⁹² *Id.*

of negative child emotional and behavioral outcomes.⁹³ Given current unprecedented levels of child mental health problems,⁹⁴ the role of stealth and manipulative marketing on family dynamics and child wellbeing needs to be considered.

3. *Young people experience physical health harms from stealth marketing.*

Stealth marketing is also harmful because it increases young peoples' exposure to products that threaten their physical health.

There is a large body of research demonstrating that unhealthy foods and beverages are heavily marketed to young people via stealth marketing tactics, including through influencers.⁹⁵ Childhood obesity is a huge public health problem in the United States, and the marketing of unhealthy foods and beverages to children is a major contributor to this problem.⁹⁶

Stealth marketing has proven to be a particularly effective way to market food and beverages high in fat, sugar and/or salt (HFSS) to young people. As one study explains, food and beverage marketing shared by peers on social media is considered to have a stronger impact on young people than direct marketing by brands.⁹⁷ This article notes that food and beverage brands have capitalized on the trust children have in their peers to by "seeding" messages in social networks which are then disseminated amongst peers. "Capitalizing on social media networks in this way enables brands to gain seemingly authentic recommendations from consumers, and a wider reach of the original marketing message with relatively less financial investment compared to TV advertising."⁹⁸ Research demonstrates that influencer marketing of unhealthy snacks is related to an increase in caloric intake.⁹⁹

Fairplay and others have filed numerous complaints with the FTC about deceptive and unfair marketing of unhealthy foods and beverages since as early as 2011. In that year, Center for Digital Democracy (CDD) asked the FTC to investigate Pepsico for creating two online video

⁹³ See generally Mona El-Sheikh & Stephen A Erath, *Family conflict, autonomic nervous system functioning, and child adaptation: State of the science and future directions*, 23 DEVELOPMENT AND PSYCHOPATHOLOGY, 703 (2011), <https://pubmed.ncbi.nlm.nih.gov/23786705/>.

⁹⁴ See generally Nicole Racine, Brae Anne McArthur & Jessica E. Cooke, et al, *Global Prevalence of Depressive and Anxiety Symptoms in Children and Adolescents During COVID-19: A Meta-analysis*, 175 JAMA PEDIATRICS 1142 (2021), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2782796>.

⁹⁵ Radesky, Chassiakos & Ameenuddin et al., *supra* note 23, at 3-4; see generally Jeff Chester, Kathryn C. Montgomery, and Katharina Kopp, *Big Food, Big Tech, and the Global Childhood Obesity Pandemic*, CENTER FOR DIGITAL DEMOCRACY (May 2021), https://www.democraticmedia.org/sites/default/files/field/public-files/2021/full_report.pdf.

⁹⁶ Chan L. Thai, Katrina J. Serrano & Amy L. Yaroch, et al., *Perceptions of Food Advertising and Association With Consumption of Energy-Dense Nutrient-Poor Foods Among Adolescents in the United States: Results From a National Survey*, 22 J. OF HEALTH COMMUNICATION 638, 638 (2017).

⁹⁷ Limin Buchanan, Bridget Kelly & Heather Yeatman, *Exposure to digital marketing enhances young adults' interest in energy drinks: An exploratory investigation* 12 PLoS ONE at 6-7 (2017), <https://doi.org/10.1371/journal.pone.0171226>.

⁹⁸ *Id.*

⁹⁹ Anna E. Coates, Charlotte A. Hardman & Jason C. G. Halford, et al., *Social Media Influencer Marketing and Children's Food Intake: A Randomized Trial*, 143 PEDIATRICS (2019), at. 4-5.

games – Hotel 626 and Asylum 626 – to “scare the crap out of teenagers” in order to sell Doritos.¹⁰⁰ CDD and Fairplay argued in a 2014 complaint that Topps was marketing candy by soliciting children to enter a contest by uploading a picture of themselves with the candy and the hashtag “#RockThatRock” to social media platforms Facebook, Twitter and Instagram.¹⁰¹ CDD and Fairplay also filed a series of complaints involving influencers promoting unhealthy food and beverages on YouTube Kids. The first complaint, filed on April 7, 2015, described how “The videos provided to children on YouTube Kids intermix commercial and other content in ways that are deceptive and unfair to children and would not be permitted to be shown on broadcast or cable television.”¹⁰² Examples of covert marketing to children described in that complaint included unboxing videos that promoted McDonald’s products.¹⁰³

The FTC’s inaction on these requests for investigation has allowed food marketers to continue covert advertising to young children via social media. A recent study of 380 videos created by influencers popular with children 5-15 found that food and beverage cues were featured at an average rate of 29.9 per hour.¹⁰⁴ Another study found that kidfluencers’ videos heavily feature unhealthy food and drink: Their review of the the 5 most-watched kid influencers (ages 3 to 14) on YouTube in 2019 found that of the 418 YouTube videos meeting their search criteria, 179 featured food and/or drinks and that these videos had been viewed a billion times. Over ninety percent of the food and beverages featured in these videos were branded unhealthy products.¹⁰⁵

Unhealthy food and beverages are not the only harmful products that young people are exposed to through stealth advertising. Young people are also heavily exposed to tobacco product advertising (most recently, in the form of e-cigarettes) via stealth advertising.¹⁰⁶ Studies have found that influencers across the world continue to market e-cigarette products to their followers, including followers under 18, despite regulatory actions against such advertisements in countries including the U.S.¹⁰⁷ Similarly, young people are exposed to alcohol advertising via stealth

¹⁰⁰ Center for Digital Democracy, Complaint and Request for Investigation of PepsiCo’s and Frito-Lay’s Deceptive Practices in Marketing Doritos to Adolescents, filed Oct 19, 2011,

<https://www.democraticmedia.org/sites/default/files/Final%20CDD%20Complaint-1.pdf>. The complaint argued that the games and other marketing efforts by Frito-Lay were deceptive because they appeared to be a contest, video game or concert performance rather than an advertisement for Doritos, and they violated the FTC’s Guides Concerning the Use of Endorsements and Testimonials in Advertising.

¹⁰¹ Request for Investigation of the Topps Company, Inc., *supra* note 1.

¹⁰² YouTube Kids Request for Investigation April 2015, *supra* note 1, at 1.

¹⁰³ YouTube Kids Request for Investigation April 2015, *supra* note 1, at 6. (“This 7:41 minute video showed a woman opening a giant egg decorated with the McDonald’s double arches to reveal Happy Meal toys inside. The video featured children’s background music and includes dolls from Disney’s Frozen movie enjoying an ice cream sundae and a Sprite in a McDonald’s cup. Throughout the clip, the narrator assembled, described, and played with Happy Meal toys. The video is in effect a seven-minute commercial for McDonald’s — and, to a more limited degree, Sprite and Frozen.”)

¹⁰⁴ Coates et al., *Food and Beverage Cues*, *supra* note 97, at 7.

¹⁰⁵ Amall Alruwaily, Chelsea Mangold & Tenay Greene, et al., Child Social Media Influencers and Unhealthy Food Product Placement, 146 PEDIATRICS at 6-8 (2020), <https://pubmed.ncbi.nlm.nih.gov/33106342/>.

¹⁰⁶ Radesky, Chassiakos & Ameenuddin et al., *supra* note 23, at 4.

¹⁰⁷ Julia Vassey, Tom Valente & Joshua Barker, et al., *E-cigarette brands and social media influencers on Instagram: a social network analysis*, TOBACCO CONTROL 6 (2022), <https://tobaccocontrol.bmj.com/content/early/2022/02/06/tobaccocontrol-2021-057053>.

marketing.¹⁰⁸ Exposure to these products – which are illegal for young people to consume because of the risks they pose to their health – is harmful.

4. *Young people experience mental health harms from stealth marketing.*

Stealth marketing also has a negative impact on young people’s mental health. Teenagers say that the unreasonable standards social media creates for physical appearance negatively impact their self-image.¹⁰⁹ In the internal Meta research leaked by Frances Haugen, teens specified that influencers and their materialistic, over-the-top “money for nothing” – or effortlessly rich – lifestyles triggered social comparisons and contributed to young people feeling bad about themselves.¹¹⁰ Meta’s research also illustrated how it is not necessarily individual instances of influencer marketing that undermine teens’ wellbeing, but rather an ecosystem that consistently elevates and reinforces certain beauty standards:

Each individual post or story from a celebrity or influencer has a small impact on users. However, users report seeing multiple pieces of content from celebrities and influencers in each app session, multiplying their effect. In addition, their friends mimic celebrities’ beauty and fashion standards, further compounding the effects of one piece of content.¹¹¹

The cumulative effect of this culture is deeply harmful to young people.

There are other reasons to be concerned about the collective impact of the influencer marketing ecosystem. A study of the videos young people watch on YouTube reveals that generally, the content young people are seeing is not racially representative and perpetuates stereotypes. Common Sense Media studied YouTube videos watched by children ages 0 to 9 and preteens and teenagers ages 9 to 18, a high percentage of which were user-generated content such as vlogs, toy videos, and video game streaming content.¹¹² The study found that 62% of videos watched by children ages 0 to 8 did not contain any BIPOC individuals, and 10% of the videos contained ethnic-racial stereotypes or narrow portrayals of BIPOC.¹¹³ Similarly, BIPOC individuals were underrepresented in the videos watched by young people ages 9 to 18, and the videos in their sample depicted ethnic and racial stereotypes (9 percent of the time), and gender stereotypes (20 percent of the time).¹¹⁴

¹⁰⁸ Radesky, Chassiakos & Ameenuddin et al., *supra* note 23, at 4; Truth In Advertising, Letter Re: DJ Khaled’s Continuing Deceptive Marketing for Diageo’s Ciroc brand (Submitted June 27, 2022), https://truthinadvertising.org/wp-content/uploads/2021/12/6_27_22-ltr-from-TINA-re-Khaled-Ciroc-ads.pdf.

¹⁰⁹ Alex Hawgood, *What Is ‘Bigorexia’?*, NYT (2022), <https://www.nytimes.com/2022/03/05/style/teen-bodybuilding-bigorexia-tiktok.html?msclkid=b8732961af4e11ec8fbaafd3d1ddf22c> (last visited July 18, 2022); NEW YORK TIMES, *What Students Are Saying About How Social Media Affects Their Body Image* (2022), <https://www.nytimes.com/2022/03/31/learning/what-students-are-saying-about-how-social-media-affects-their-body-image.html> (last visited July 18, 2022).

¹¹⁰ Available at <https://s.wsj.net/public/resources/documents/teen-girls-body-image-and-social-comparison-on-instagram.pdf>.

¹¹¹ *Id.*

¹¹² Rollins, Bridgewater & Munzer, et al., *supra* note 48, at 11, 39.

¹¹³ Rollins, Bridgewater & Munzer, et al., *supra* note 48, at 12, 15.

¹¹⁴ Rollins, Bridgewater & Munzer, et al., *supra* note 48, at 25, 36.

Stealth marketing through influencers also fosters materialism in young people. “Materialism is the degree to which a person equates possessions and their acquisition with success and happiness.”¹¹⁵ Much of the influencer content that young people are exposed to – from product placements and product reviews to unboxing videos – emphasizes material objects. Research demonstrates that approximately half of all YouTube videos watched by young people display consumerism.¹¹⁶ A study of young people ages 10 to 13 found that exposure to kidfluencer marketing is correlated with materialism and purchasing products promoted by kidfluencers.¹¹⁷ A different study of young people ages 10 to 19 found that young people’s parasocial relationships with influencers are positively related to materialistic views, which in turn are correlated with purchase intentions.¹¹⁸ Developing these materialistic values is associated with a number of negative impacts on children and teens, lower wellbeing,¹¹⁹ lower academic performance,¹²⁰ less generosity,¹²¹ and less care for the environment.¹²²

B. The harm of stealth marketing is not outweighed by countervailing benefits to consumers or competition.

The FTC weighs the risk of injury to consumers against the benefits of the practice to determine whether the net effect is injurious to consumers.¹²³ While marketers and social media platforms certainly make money from influencer marketing, that does not translate into benefits for consumers. The information that young people get from influencers about new products could easily be obtained from unbiased sources that do not have a vested interest in convincing children and teens that a product is a must-have.

¹¹⁵ Eric E Rasmussen, Rachel E. Riggs & Willow S. Sauermilch, *Kidfluencer exposure, materialism, and U.S. tweens’ purchase of sponsored products*, 16 JOURNAL OF CHILDREN AND MEDIA 68, 73 (2022), <https://doi.org/10.1080/17482798.2021.1910053>.

¹¹⁶ Radesky, Schaller & Yeo, et al., *supra* note 5, at 15 (on rate of consumerism in videos watched by young people 0 to 8 years old); Rollins, Bridgewater & Munzer, et al., *supra* note 48, at 36 (on rate of consumerism in videos watched by young people 9 to 18 years old).

¹¹⁷ Eric E Rasmussen, Rachel E. Riggs & Willow S. Sauermilch, *Kidfluencer exposure, materialism, and U.S. tweens’ purchase of sponsored products*, 16 J. OF CHILDREN AND MEDIA 68, 73 (2022), <https://doi.org/10.1080/17482798.2021.1910053>.

¹¹⁸ Chen Lou & Hye Kyung Kim, *Fancying the New Rich and Famous? Explicating the Roles of Influencer Content, Credibility, and Parental Mediation in Adolescents’ Parasocial Relationship, Materialism, and Purchase Intentions*, FRONTIERS IN PSYCHOLOGY (2019), <https://doi.org/10.3389/fpsyg.2019.02567>.

¹¹⁹ See generally Matthew J. Easterbrook, Mark L. Wright & Helga Dittmar, et al., *Consumer culture ideals, extrinsic motivations, and well-being in children*, 44 EUROPEAN J. OF SOCIAL PSYCHOLOGY (2014), <https://doi.org/10.1002/ejsp.2020>.

¹²⁰ See generally Lisbeth Ku, Helga Dittmar & Robin Banerjee, *To Have or to Learn? The Effects of Materialism on British and Chinese Children’s Learning*, 106 J. OF PERSONALITY AND SOCIAL PSYCHOLOGY 803 (2014), <https://doi.org/10.1037/a0036038>.

¹²¹ See generally Lisa Kiang, Sara Mendonça & Yue Liang, et al., *If children won lotteries: materialism, gratitude and imaginary windfall spending*, 17 Young Consumers Insight and Ideas for Responsible Marketers 404 (2016), <https://doi.org/10.1108/YC-07-2016-00614>.

¹²² See generally Tim Kasser, *Frugality, Generosity, and Materialism in Children and Adolescents*, in 3 CONCEPTUALIZING AND MEASURING INDICATORS OF POSITIVE DEVELOPMENT 357-373 (Kristin Anderson Moore & Laura H. Lippman, eds., 2005).

¹²³ Federal Trade Commission, *Policy Statement on Unfairness* (1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>

In addition to protecting against advertising harms, guidelines against influencer marketing will also benefit young people by incentivizing platforms to promote the creation of higher quality content to children and teens. As described in Common Sense Media’s report on YouTube and young kids, platforms surface highly commercial, cheaply-made content over content that is more educational and has pro-social values: “In addition to the commercially driven content, YouTube content differs significantly from traditional platforms... in that it requires no production or script-writing experience. This can lead to poorly produced content, or ‘filler’ in which the YouTuber simply talks or seems to make the video longer.”¹²⁴

Ultimately, the serious risk of harm that influencer marketing poses to young people is not outweighed by any potential benefit.

C. Young people cannot reasonably avoid this harm.

For the reasons outlined in Section III, *supra*, young people cannot cognitively defend themselves against stealth advertising. Moreover, stealth advertising is deeply entwined with non-commercial content in digital media.¹²⁵ As a result, young people and families who wanted to avoid it could not do so without extreme difficulty.

V. Stealth advertising is deceptive to young people in violation of Section 5 of the FTC Act.

The FTC’s Policy Statement on Deception sets out a three-part test for deception. First, the FTC assesses whether there has been a representation, omission or practice that is likely to mislead the consumer. Second, where the representation is directed to a particular group, the FTC examines reasonableness from the perspective of that group. Third, the FTC determines whether the representation, omission, or practice is material, i.e., whether it is likely to affect the consumer’s conduct or decision with regard to a product or service.¹²⁶

The practice of stealth advertising is inherently deceptive; by nature, it hides its purpose in order to have additional power over the consumer. Stealth advertising is clearly and consistently directed at young people. For the reasons outlined in Section III, *supra*, stealth advertising is also likely to mislead young people. Stealth advertising does not activate young people’s cognitive defenses, so they do not treat it as advertising, and their behavior is influenced. Influencer marketing in particular deceives children by constructing parasocial interactions with them and robbing them of their ability to defend themselves against advertising. Finally, for the reasons outlined in Section IV.A, *supra*, stealth advertising is clearly likely to affect young people’s conduct or decisions with regard to products or services. Stealth advertising has a clear effect on families’ purchases, and young people show higher levels of purchase intention with influencer marketing.

¹²⁴ Radesky, Schaller & Yeo, et al., *supra* note 5, at 35.

¹²⁵ Appendix Ex. A-F.

¹²⁶ Federal Trade Commission, *Policy Statement on Deception* (1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

While it may be assumed that disclosures can solve this deception by taking the “stealth” out of “stealth marketing,” countless studies, as described in Section III.B, *supra*, outline how ineffective disclosures are at activating consumers’ ability to defend themselves against ads. Depending on disclosures only without banning influencer marketing and other stealth practices puts children at risk.

VI. Conclusion

Stealth marketing is pervasive in digital media and entwined with non-commercial content.¹²⁷ Before the rise of digital media, researchers largely understood young people’s perceptions of advertising by age group, but stealth advertising is more complex and is therefore best understood by additionally assessing multiple levels of advertising recognition and defense. The Commission’s proposed areas of focus for its October conference emphasize disclosure, but studies show that disclosures are ineffective in activating young people’s cognitive defenses to advertisements.

Ultimately, young people are harmed physically and mentally every day by stealth advertising. We urge the Commission to find these practices unfair and deceptive to minors as in violation of Section 5 of the FTC Act, and to make clear to all parties – platforms, brands, third party companies, and influencers – that it is impermissible to target young people with influencer marketing.

Respectfully Submitted,

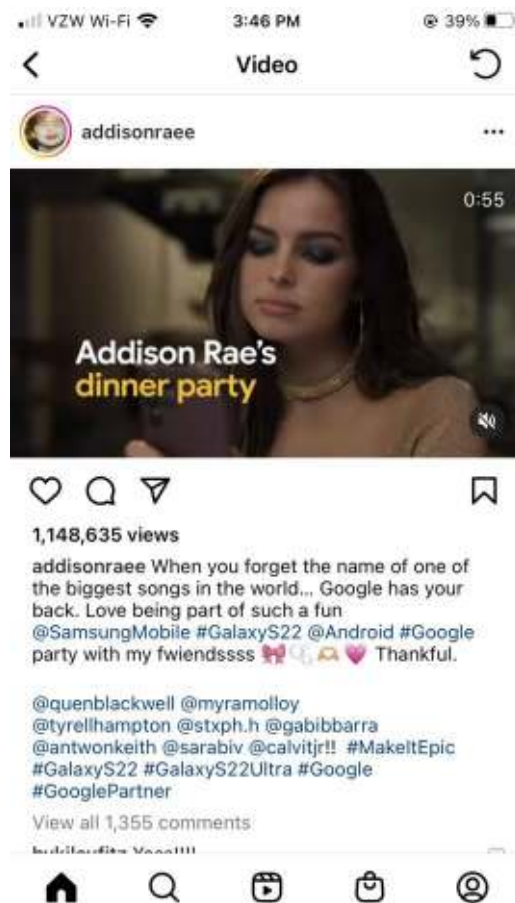
July 18, 2022

/s/ Haley Hinkle
Counsel for Fairplay
89 South St.
Boston, MA 02111
haley@fairplayforkids.org

¹²⁷ We encourage the Commission to see the comments of the Center for Digital Democracy for further examination of the pervasiveness of stealth marketing in digital media.

Exhibit A: Addison Rae on Instagram

Addison Rae Easterling is an influencer who appeals to preteens and teens: she starred in “He’s All That,” a remake of the teen movie “She’s All That,” and she has announced a line of dolls and plush toys.ⁱ She had 40.3 million Instagram followers as of July 15, 2022.ⁱⁱ Easterling frequently posts sponsored content that have no disclosures or make her brand partnerships very unclear:



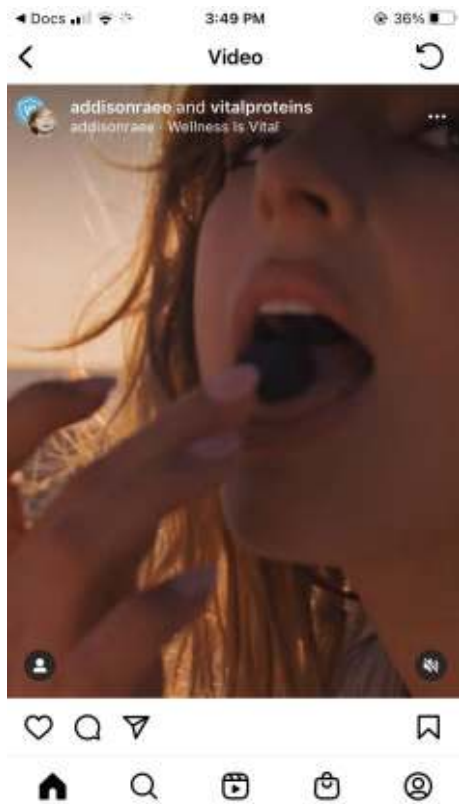
The inclusion of “#GooglePartner” at the end of a long list of tags is not likely to alert young people that this is an ad for Samsung.

ⁱ Jennifer A. Kingson, *Addison Rae, of TikTok fame, launches a toy and doll line at Walmart*, AXIOS (2022) (last visited July 18, 2022), <https://www.axios.com/2022/07/13/addison-rae-doll-toy-walmart-amazon>.

ⁱⁱ <https://www.instagram.com/addisonraee/>

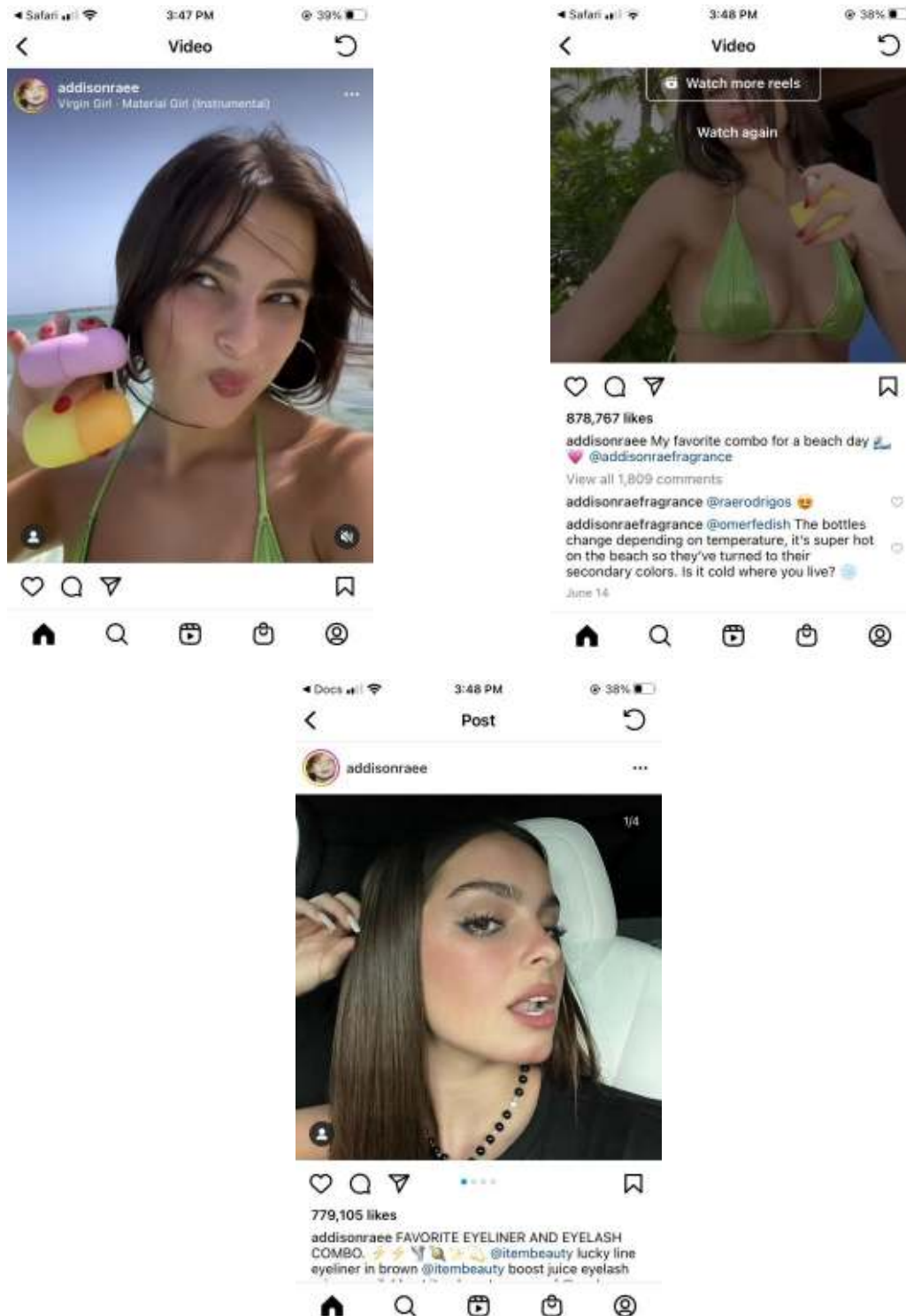


An undisclosed ad for Alani Nutrition.



The inclusion of “#vitalpartner” at the end of this post is not likely to alert young people that this is an ad for Vital Proteins.

Easterling also uses her Instagram account to promote her own products and brands, including her perfume brand, Addison Rae Fragrance, and her makeup brand, Item Beauty:



Easterling promotes her perfume brand (above) and makeup brand (below) on her profile without disclosing the posts as ads.

These frequent, unmarked ads make it difficult to discern whether posts are part of a sponsorship or paid partnership, or just happen to feature a brand:



Because Easterling posts paid partnerships without disclosures, it is unclear whether this post featuring a can of Coca-Cola is an ad.

Exhibit B: Charli D’Amelio on Instagram

Charli D’Amelio had 48.9 million Instagram followers as of July 15, 2022.ⁱⁱⁱ

D’Amelio has a brand partnership with Dunkin’.^{iv} She posts photos and videos featuring Dunkin’ products without disclosing her partnership or that the posts are ads:



In this post, D’Amelio holds a Dunkin’ cup and wears a Dunkin’ necklace, but the post is not disclosed as an ad. The only description is an emoji.

ⁱⁱⁱ <https://www.instagram.com/charlidamelio/?hl=en>

^{iv} Geoff Weiss, *Charli D’Amelio Builds On Dunkin’ Donuts Alliance With Second Signature Coffee Drink*, TUBEFILTER (2021) (last visited July 18, 2022), <https://www.tubefilter.com/2021/02/17/charli-damelio-tiktok-dunkin-donuts-second-signature-drink/>.

D'Amelio also uses her Instagram account to promote her brand, with Social Tourist:



D'Amelio is wearing clothing promoting her brand Social Tourist but does not disclose the post as an ad. The only description is an emoji.



D’Amelio identifies herself as a “cofounder” of her clothing brand in a hashtag on this post but does not disclose that it is an ad for the brand.

Like Easterling's posts, these frequent, unmarked ads make it difficult to discern whether posts are part of a sponsorship or paid partnership, or just happen to feature a branded product:



Because D'Amelio posts paid partnerships without disclosures, it is unclear whether this post featuring an iPhone and Apple watch is an ad.

Exhibit C: Gabe and Garrett on Instagram

Gabe and Garrett (last name unknown) are brothers with a shared account on Instagram. They had over 4,300 followers as of July 18, 2022.^v Their page reflects the combination of sponsored content and high-pleasure experiences described in Section II.B.



Gabe and Garrett promote a water gun brand. The hashtag “ad” is not likely to alert young people that this post is sponsored.

^v https://www.instagram.com/gabe_and_garrett/.



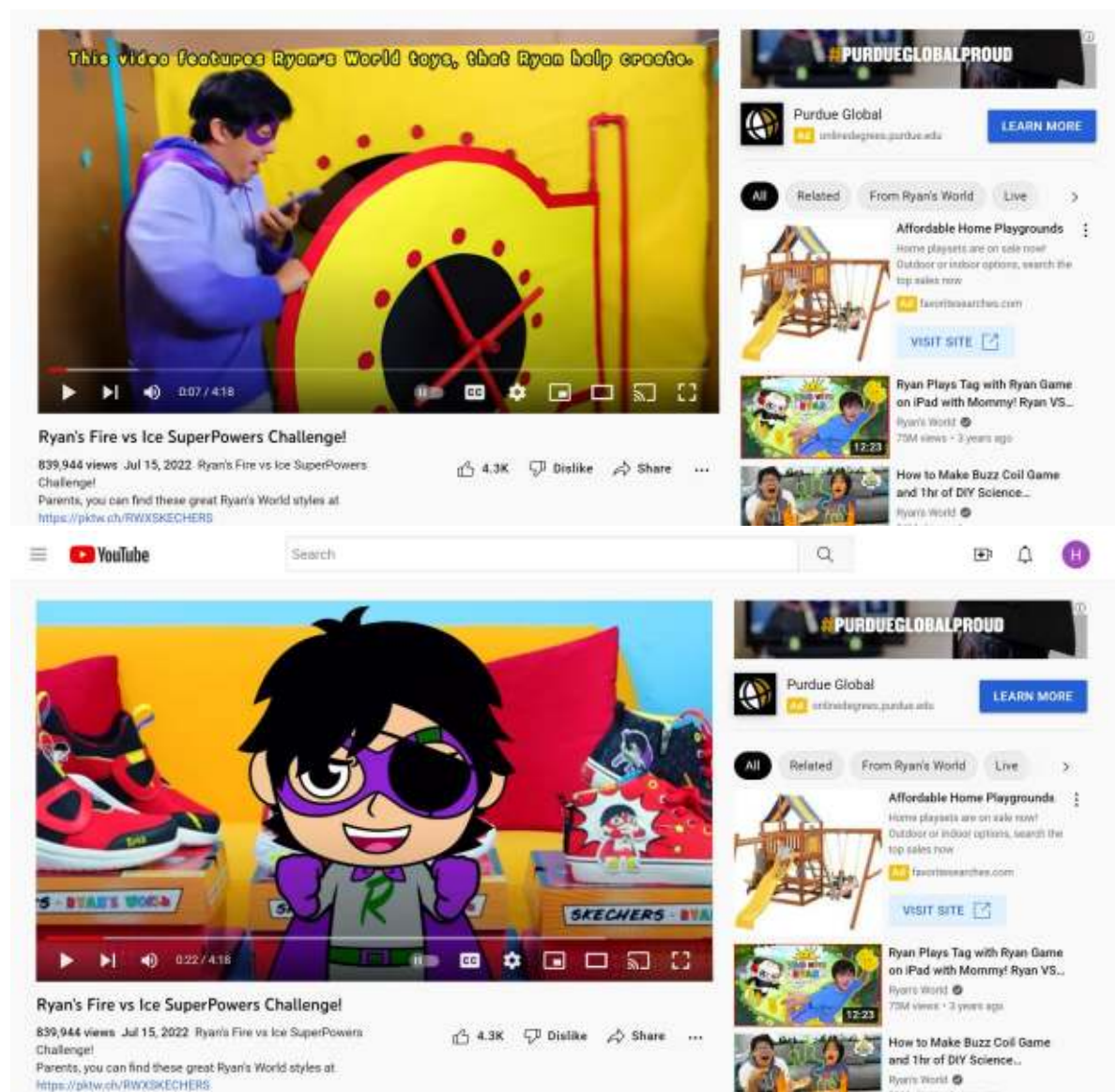
Gabe and Garrett promote a movie on Netflix. The hashtag “ad” is not likely to alert young people that this post is sponsored.



This Christmas morning post does not appear to contain sponsored products, but the scene and caption capture a “high-pleasure experience” like that described in Section II.B.

Exhibit D: Ryan Kaji on YouTube

Ryan Kaji had 32.8 million subscribers on his Ryan's World YouTube channel as of July 18, 2022.^{vi} Kaji's page heavily mixes marketing with non-commercial content and masks ads as non-commercial entertainment. For example, a video from earlier this month is a four-minute advertisement for Ryan's World-branded Skechers sneakers:

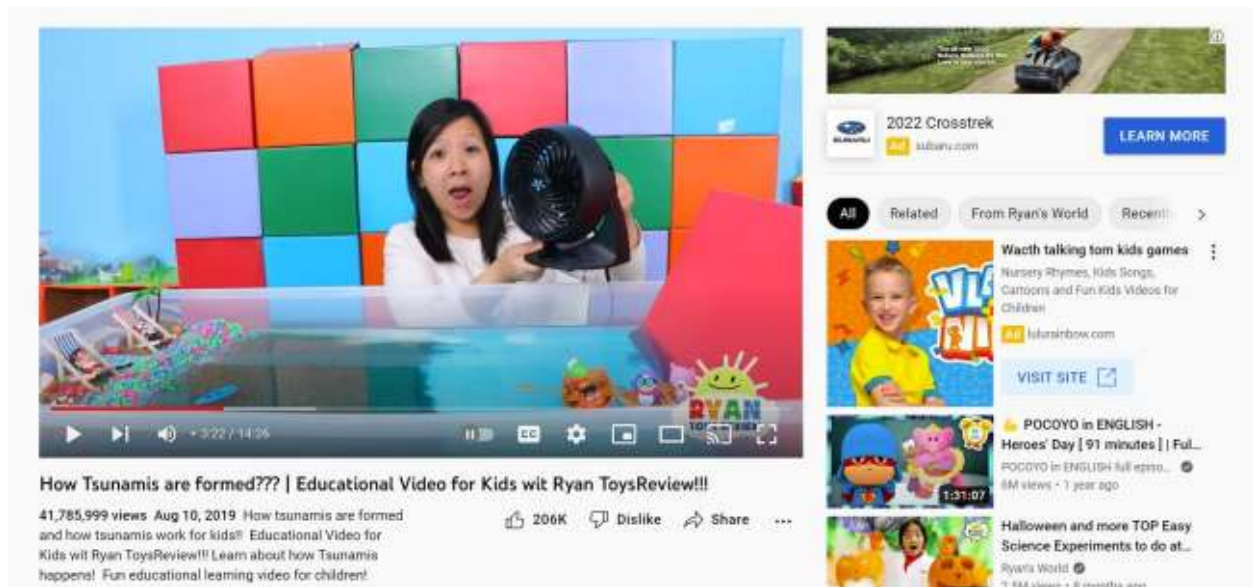


Ryan's *The short disclosure that says this video features products created by Kaji is unlikely to alert young people to the fact that the video is an ad.* World

products also appear in videos that are not outwardly presented as related to toys. In this video

^{vi} https://www.youtube.com/channel/UChGJGhZ9SOOHvBB0Y4DOO_w

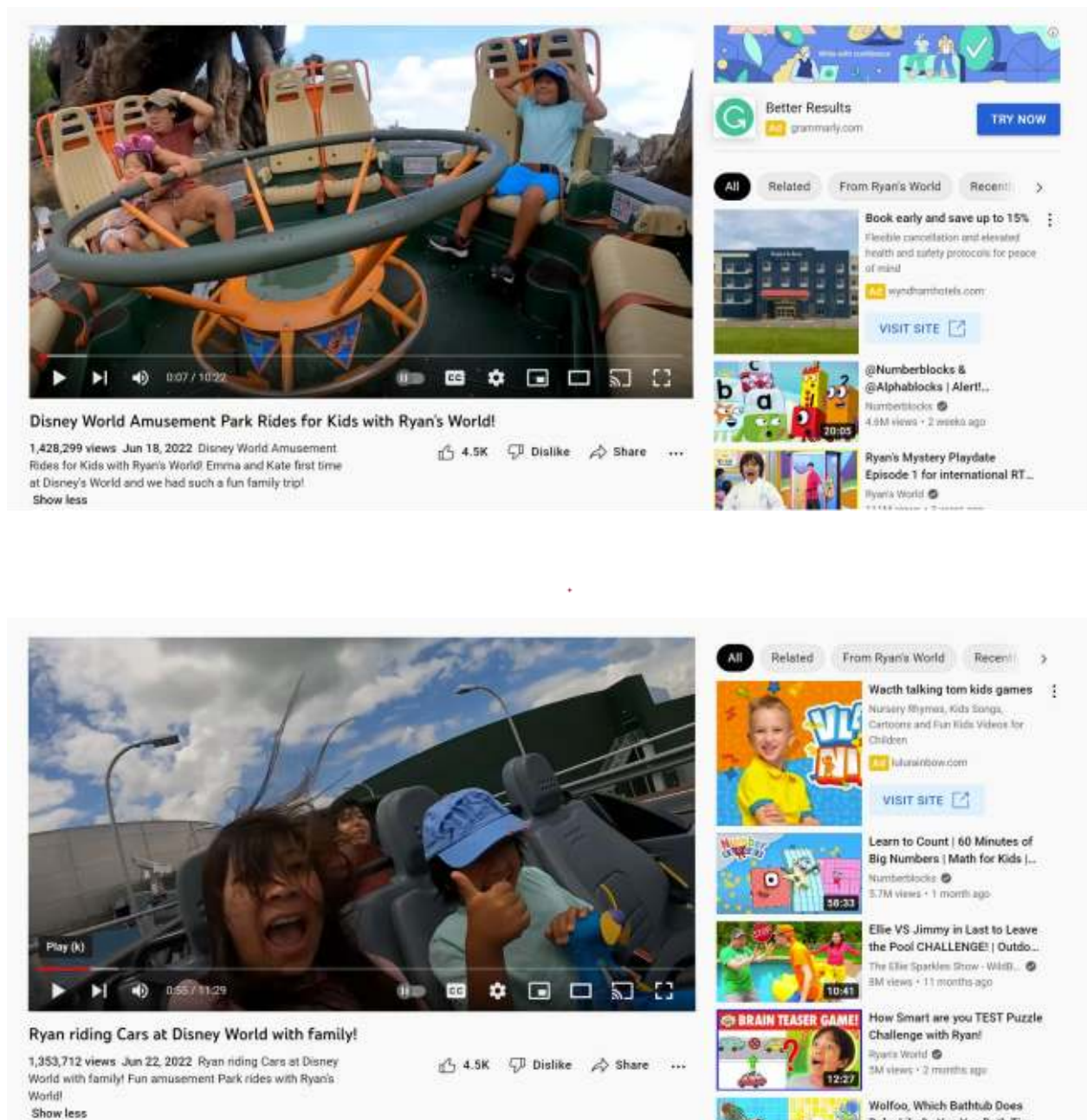
where Kaji's mom explains tsunamis, Ryan's World toys like those available at WalMart^{vii} appear in the foreground and background.



This video is labeled as educational, but features plush toys and figurines in the shape of Ryan's World characters.

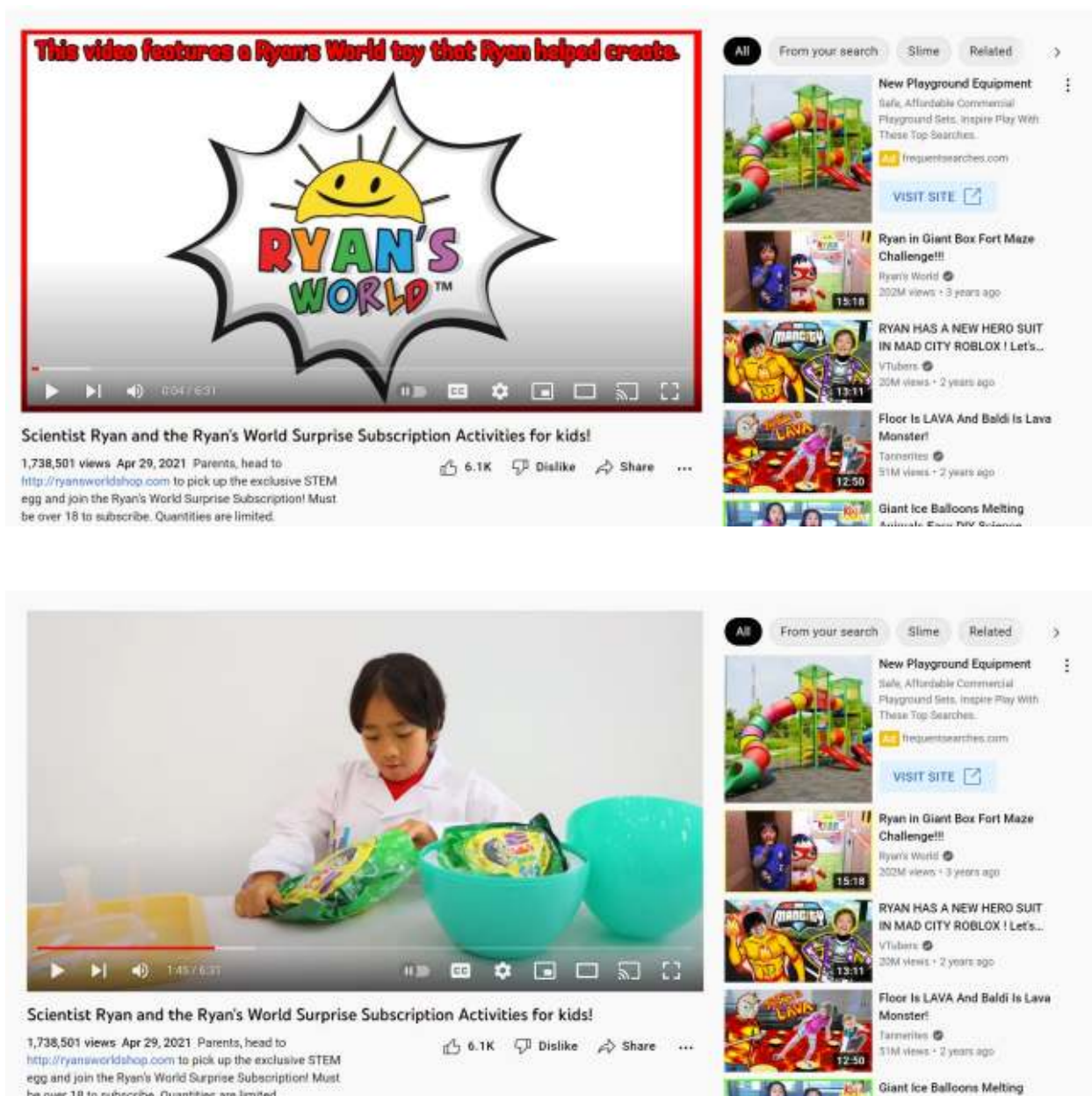
^{vii} See, e.g., <https://www.walmart.com/ip/Ryan-s-World-Mystery-Blind-Bag-Figures-Preschool-Surprise-1-Pack-Collect-Ryan-and-his-Friends/408216323>

In another example, the Kaji family posted videos from their trip to Disney World:

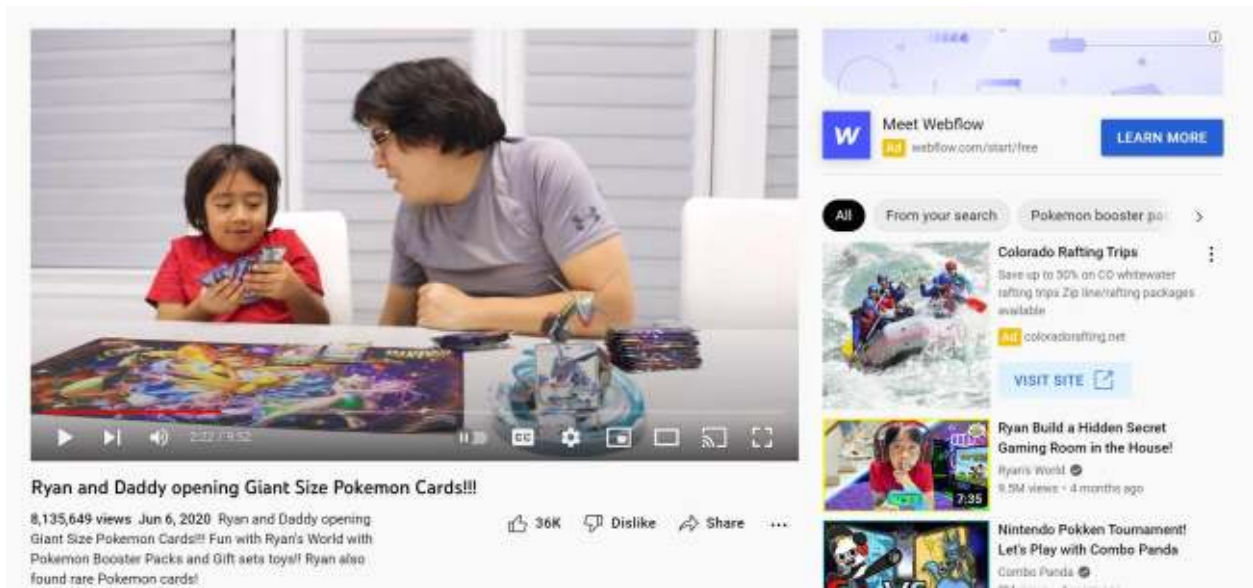


Because Kaji's channels mix commercial and promoted content, it is unclear whether his Disney World videos were created and posted as part of an advertisement.

The Ryan's World channel also posts toy unboxing, both for branded Ryan's World toys and other toys:



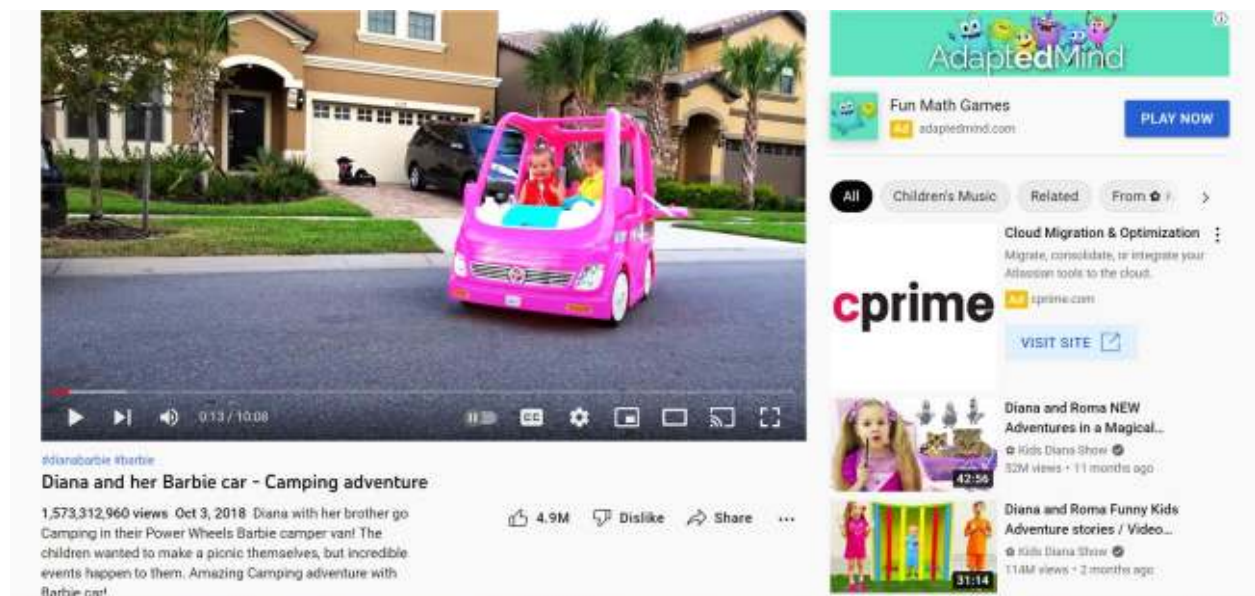
This video advertises an egg toy available on the Ryan's World website. The short disclosure is unlikely to alert young people that the video is an ad.



This video features Kaji and his dad opening Pokémon products, but there is no indication that the video is an ad.

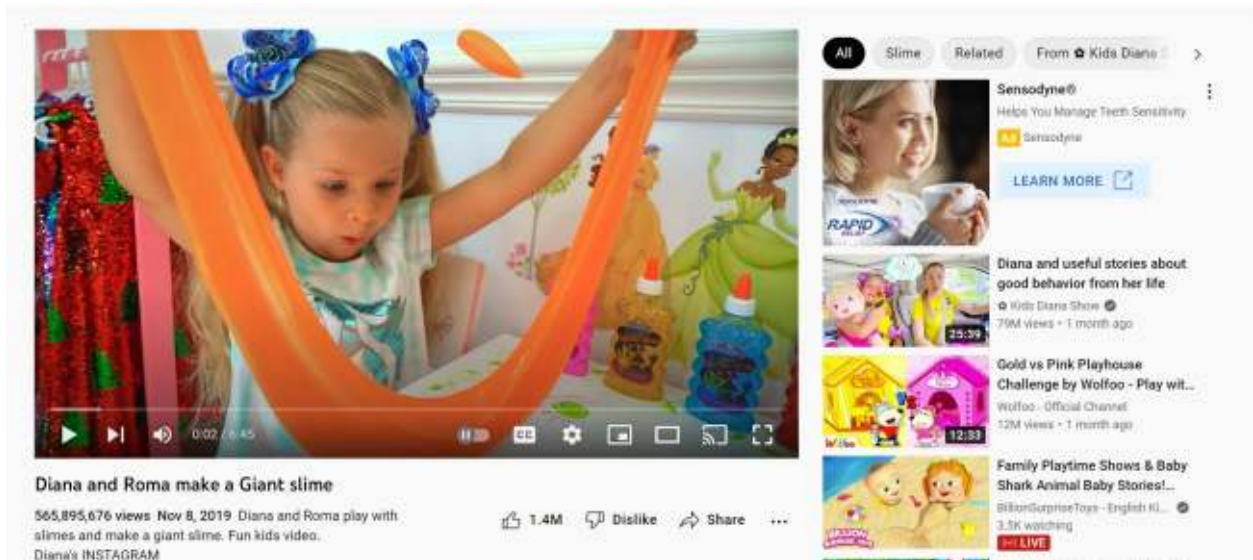
Exhibit E: Kids Diana Show on YouTube

Eva Diana Kidisyuk is another mega-influencer on YouTube. She had over 98.2 million subscribers on her Kids Diana Show channel as of July 18, 2022.^{viii} Kidisyuk's videos frequently feature a product from a specific brand and sometimes name the brand in the description box, but it is never clear whether the videos are sponsored:



The description of this video specifies the full toy brand and name, but does not include any type of disclosure, making it unclear whether the video is sponsored.

^{viii} <https://www.youtube.com/c/KidsDianaShow>



Kidisyuk and her brother play with slime throughout this video, and there are branded products throughout, including the glue set up on the table. However, there is no advertising disclosure, so it is unclear whether the glue and slime kits are sponsored product placement.

Diana and Funny Cat eats Breakfast and Plays

497,807,240 views · Jul 25, 2018 · Diana plays the game Talking Ginger. Funny cat eats breakfast and plays with Diana during a morning routine. Cat - a favorite animal for Diana and she loves this game. Funny videos for children

1.3M Dislike Share ...

2022 Crosstrek
suzuki.com
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18M views · 4 months ago
36:00

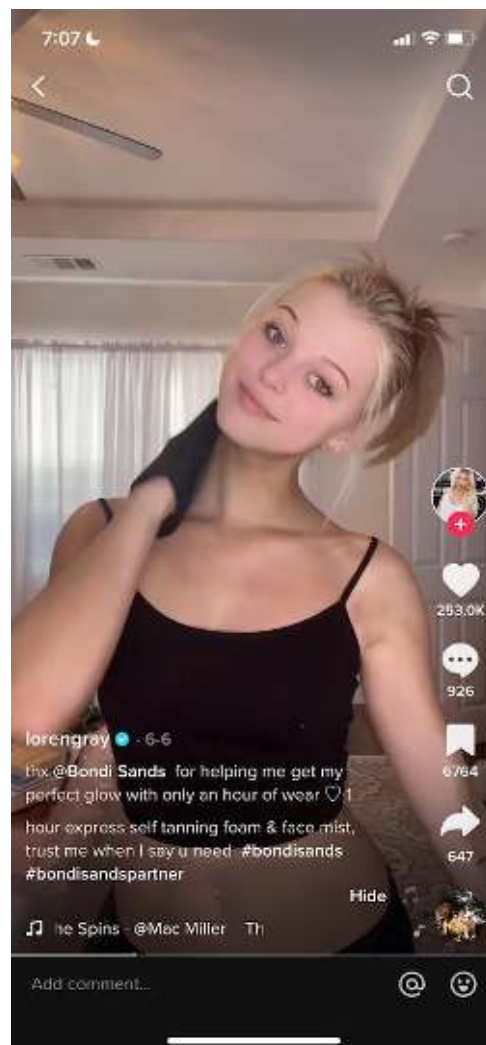
Wooloo Makes a Colorful Lego Vending Machine - Play Vendi...
Wooloo - Official Channel

Kidisyuk eats breakfast and does other activities alongside a specific app. The video seems like an advertisement for the app, but any paid partnership is not disclosed.

Exhibit F: Loren Gray on TikTok

Loren Gray, who says she began posting on Musical.ly at the age of 13,^{ix} has over 54 million followers on TikTok as of July 18, 2022.^x

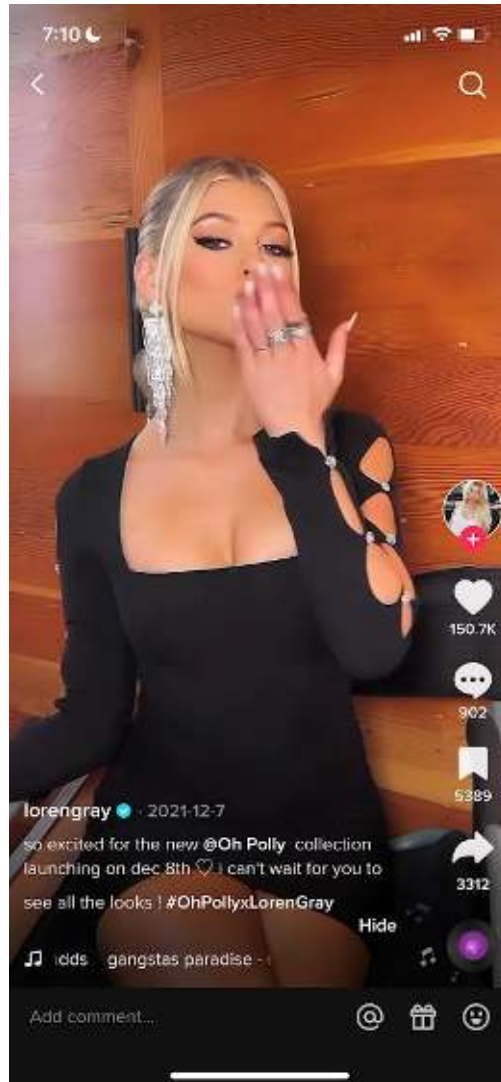
Gray posts sponsored content with ineffective disclosures:



Gray includes the hashtag “bondisandspartner” on this ad, but it is ineffective to alert young people to the fact that the post is sponsored.

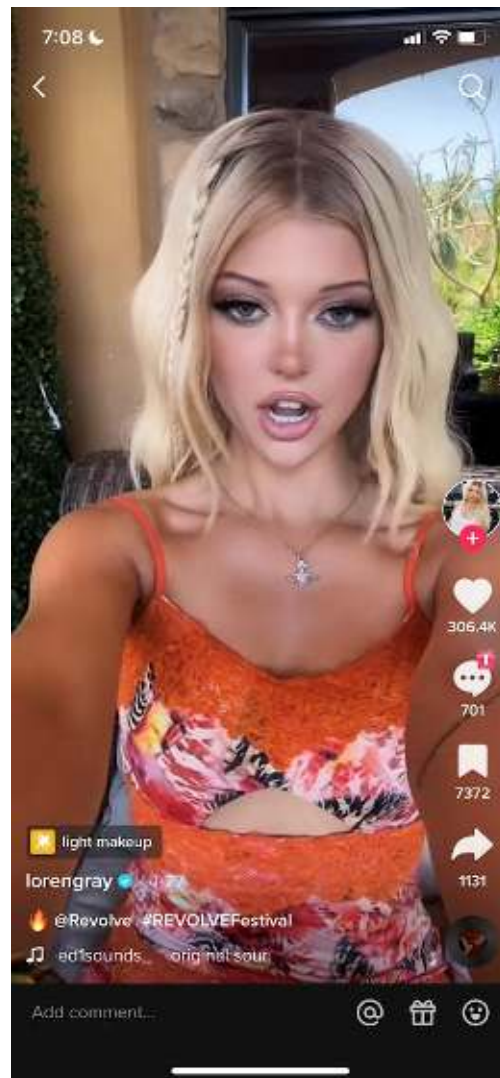
^{ix} MTV News Staff, *Loren Gray Built A Career From TikTok, But She Didn't Do It 'Alone'*, MTV (2020) (last visited July 18, 2022), <https://www.mtv.com/news/xelkoh/loren-gray-tiktok-alone-video>.

^x <https://www.tiktok.com/@lorengray?lang=en>



The hashtag “OhPollyxLorenGray” indicates that this post is a paid partnership, but Gray does not disclose that the video is an advertisement.

Other posts contain no disclosure at all:



Gray tags a clothing brand and the brand's event, but does not disclose that her post from the event is an advertisement.



Gray tells followers where to buy her plush doll toy, but does not disclose that the video is an advertisement.

Exhibit G: Pocket Watch Website



Pocket Watch touts its ability to turn kidfluencers like Ryan Kaji into lucrative franchises.