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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

|                           |                            |
|---------------------------|----------------------------|
| UNITED STATES OF AMERICA, | Civil Action No. _____     |
| Plaintiff,                | COMPLAINT FOR CIVIL        |
| v.                        | PENALTIES, INJUNCTIVE, AND |
| LISA FRANK, INC.,         | OTHER RELIEF               |
| a corporation,            |                            |
| Defendant.                |                            |

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

1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6501-6506, §§ 6502(c), 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58, §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), to obtain monetary

civil penalties, a permanent injunction, and other equitable relief for defendant's violations of the Commission's Children's Online Privacy Protection Rule (the "Rule"), 16 C.F.R. Part 312.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a). This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).

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

### **DEFINITIONS**

4. For purposes of this Complaint, the terms "child," "collects," "collection," "Commission," "delete," "disclosure," "Internet," "operator," "parent," "person," "personal information," "verifiable consent," and "website or online service directed to children," are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

### **THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE**

5. Congress enacted the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501-6506, in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children's personal information by Internet website operators. The Act directed the FTC to promulgate a rule implementing COPPA. The Commission promulgated the Children's Online Privacy Protection Rule ("Rule"), 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on

April 21, 2000.

6. The Rule applies to any operator of a commercial website or online service directed to children that collects online, uses, and/or discloses personal information from children, or any operator that has actual knowledge that it is collecting or maintaining a child's personal information.

7. The Rule requires a subject website operator to meet specific requirements prior to collecting online, using, or disclosing personal information from children, including but not limited to:

- a. Posting a privacy policy on its website providing clear, understandable, and complete notice of its information practices, including what information the website operator collects from children online, how it uses such information, its disclosure practices for such information, and other specifically required disclosures;
- b. Providing clear, understandable, and complete notice of its information practices directly to parents when required by the Rule;
- c. Obtaining verifiable parental consent prior to collecting online, using, and/or disclosing personal information from children;
- d. Giving parents the option to consent to the collection and internal use of their children's personal information without consenting to the disclosure of that information to third parties;
- e. Providing a reasonable means for parents to review the personal

information collected from their children and to refuse to permit its further use or maintenance;

- f. Not conditioning children's participation in an activity upon children disclosing more personal information than is reasonably necessary to participate in that activity; and
- g. Establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15 U.S.C. § 6502(c).

#### **DEFENDANT**

9. Defendant Lisa Frank, Inc. is an Arizona corporation with its principal office or place of business located at 6760 S. Lisa Frank Ave., Tucson, Arizona 85706.

10. Since at least April 21, 2000, defendant has been the operator of [www.lisafrank.com](http://www.lisafrank.com), a website on the Internet ("the website"). Via this website, defendant advertises and sells products to girls, including girls' toys, school supplies, and similar items, throughout the United States. The shopping area within this website has a separate web address, [shop.lisafrank.com](http://shop.lisafrank.com).

11. The acts and practices of defendant alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## **DEFENDANT'S COURSE OF CONDUCT**

12. Defendant has collected and/or maintained personal information from children through its operation of the website and thus is an "operator" as defined in the Rule. This website is directed to children, as that term is defined in the Rule.

### **Defendant's Information Collection, Use, and Disclosure Practices**

13. During the period April 21, 2000 through January, 2001, the home page of defendant's website, [www.lisafrank.com](http://www.lisafrank.com), featured links to web site areas entitled "shop," "share," "the.club," and others. Exhibit A. A visitor who clicked on "the.club" hyperlink was presented with a "join today" button. If she clicked on this button, she was invited to click on the hyperlink entitled "Add this item to shopping cart." If she clicked on this button, she was presented with a page stating that before she could add items to a shopping cart, she needed to register for shopping, and she was presented with a hyperlink to a registration form located in the shopping area of the site, [shop.lisafrank.com](http://shop.lisafrank.com). Exhibit B 1 - 3.

14. Similarly, a visitor to the [lisafrank.com](http://lisafrank.com) home page who searched for an item sold by Lisa Frank was presented with pictures of items available for purchase. If she clicked on the "Add this item to shopping cart" hyperlink, she was told that she needed to first register for shopping, and was presented with a hyperlink to the registration form. Exhibit C 1- 2.

15. A child who clicked on a hyperlink to the registration form was taken to the shopping area of the site, [shop.lisafrank.com](http://shop.lisafrank.com), and presented with a registration page seeking personal identifying information. Exhibit C 1 - 2. This registration form depicted a young girl.

It stated “Welcome to the Lisa Frank on-line shopping center! To shop our site all you need to do is complete the information below.” The form that followed collected the visitor’s first and last name, complete street address, email address, phone number, specification of the visitor’s favorite color, season and Lisa Frank characters, and birth date. The birth date selection was made by entering the day and month of birth, and selecting a year from a pull-down chart. The pull-down chart required the visitor to select the year 1986 or earlier. Exhibit C 1 - 2.

16. A child who visited the lisafrank.com home page and clicked the “shop” hyperlink was taken to the homepage of the shopping area of the site with the URL shop.lisafrank.com. This page had a menu on the left hand column. The first item on the menu was a “register” button. Exhibit D. A child who clicked the “register” hyperlink was taken to the registration form described above and asked to provide her personal identifying information. Exhibit C 1 - 2.

17. Thus, despite the fact that its website is directed to children, defendant collected information from children without first obtaining consent from their parents, as required by the Rule. Rule, Sections 312.3 and 312.5.

#### **Notice to Parents**

18. During the period April 21, 2000 through January, 2001, defendant did not provide direct notice to parents, stating that it wished to collect information from their children, that parental consent was needed for that collection, and making disclosures related to those practices, as required by the Rule. Rule, Section 312.4(c).

#### **Defendant’s Privacy Policy**

19. During the period April 21, 2000 through January, 2001, defendant posted a

privacy policy on its website, but the policy did not clearly, understandably, or completely disclose its information collection, use, and disclosure practices, and it did not make disclosures about those practices as required by the Rule. Exhibit E. Rule, Sections 312.4(a) and (b)(2)(i)-(vi).

20. During the period April 21, 2000 through January, 2001, defendant's privacy policy also made the following false or misleading statements:

- a. "In order to participate in certain areas of our Web site, such as . . . e-commerce, users are required to register and obtain a screen name ("User-ID"). Children 13 years or younger will require parental consent before being able to register and participate . . ."
- b. "In the areas that require registration, all registrants receive e-mail confirming their registration. In addition, when a guest 13 years or younger registers, his/her parent or guardian will be required to fill out and sign a registration form. . ."

Exhibit E. As set forth above, the Lisa Frank site did not require parental consent before allowing children 13 or under to complete the registration page.

#### **DEFENDANT'S VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE**

21. Defendant is an operator of a website directed to children and/or has had actual knowledge that it is collecting or maintaining personal information from children.

22. In numerous instances, including the acts and practices described above, defendant collected or used personal information from children in violation of the Rule, 16

C.F.R. Part 312, including:

- a. Failing to obtain verifiable parental consent before any collection or use of personal information from children, in violation of Rule, Sections 312.3 and 312.5, 16 C.F.R. §§ 312.3, 312.5;
- b. Failing to provide direct notice to parents about its desire to collect personal information from children, that parental consent is required for the collection, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and
- c. Failing to make required disclosures on the website about the fact that an operator is prohibited from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity, in violation of Rule Section 312.4(b)(2)(v), 16 C.F.R. § 312.4(b)(2)(v), and about the right of a parent to review and have deleted their child's personal information, in violation of Section 312.4(b)(2)(vi) of the Rule, 16 C.F.R. § 312.4(b)(2)(vi).

**DEFENDANT'S UNFAIR OR DECEPTIVE ACTS OR PRACTICES  
IN VIOLATION OF THE FTC ACT**

23. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

24. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of



the Rule constitutes an unfair or deceptive act or practice violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. § 6502(c).

25. By and through the acts and practices described in paragraph 22, defendant has violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

26. During the period April 21, 2000 through January, 2001, defendant represented in its privacy policy that it would obtain parental consent before permitting visitors under the age of 13 to complete the registration form.

27. In truth and in fact, defendant did not obtain parental consent before permitting visitors under the age of 13 to complete the registration form. Therefore, the representation set forth in paragraph 26 was false and misleading.

28. Defendant's false and misleading statement constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act.

#### **CIVIL PENALTIES, INJUNCTION AND OTHER RELIEF**

29. Defendant has violated the Rule as described above with knowledge as set forth in Section 5(m)(a)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

30. Each collection or use of a child's personal information from April 21, 2000 through the filing of this Complaint, in which defendant has violated the Rule in one or more of the ways described above, constitutes a separate violation for which plaintiff seeks monetary civil penalties.

31. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and

Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule, 16 C.F.R. Part 312.

32. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against defendant's violations of the FTC Act, as well as such ancillary relief as may be just and proper.

### **PRAYER**

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 57b, and the Court's own equitable powers to:

- (1) Enter judgment against defendant and in favor of plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from defendant for each violation of the Rule, 16 C.F.R. Part 312;
- (3) Permanently enjoin defendant from violating the Rule, 16 C.F.R. Part 312;
- (4) Permanently enjoin defendant from violating Section 5 of the FTC Act in connection with representations about its online information collection and privacy practices; and
- (5) Award plaintiff such additional relief as the Court may deem just, proper, or necessary to redress injury to consumers resulting from defendant's violations of the Rule, 16 C.F.R. Part 312.

DATED:

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