



ADVERTISING SELF-REGULATORY COUNCIL

Childrens Advertising Review Unit

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., NW
Washington, DC 20580

RE: CARU'S Request for Commission Approval of Continuance of Safe Harbor Status

Dear Secretary Clark:

The Children's Advertising Review Unit (CARU®)¹ is pleased to submit this request for Federal Trade Commission ("FTC" or "Commission") approval for continuance of its Safe Harbor signatory status pursuant to Section 312.11 of the FTC's rules implementing the Children's Online Privacy Protection Act ("COPPA"). CARU is an investigative arm of the Advertising Industry Self Regulation Council (ASRC) and is administered by the Council of Better Business Bureaus (CBBB). We have reviewed the modifications to the COPPA Rule effective July 1, 2013, updated CARU's *Self-Regulatory Program for Children's Advertising* ("Guidelines") and Safe Harbor requirements to reflect those changes and believe that continuance of our status of a Safe Harbor signatory is in order.

CARU will work with its sister ASRC program, the Online Internet-Based Advertising Accountability Program ("Accountability Program"), to provide monitoring and oversight with respect to changes to the regulations governing the collection of online and mobile data by third parties for advertising and other purposes, as well as the collection of newly defined forms of personal information that are within the scope of the Accountability Program's expertise. CARU will require its Safe Harbor participants to adhere to the pertinent provisions of the Accountability Program's Procedures.

Background

CARU was founded in 1974 to promote responsible children's advertising as part of a strategic alliance with the major advertising trade associations (the AAAA, the AAF and the ANA) and the CBBB. CARU is the children's arm of the advertising industry's self-regulation program and evaluates child-directed advertising and promotional material in all media to advance truthfulness, accuracy and consistency with its *Guidelines*. As an

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extension of its mission, to help advertisers deal with the child audience in a responsible manner, CARU applied for and was granted Safe Harbor status under COPPA in 2000.

CARU'S CURRENT SAFE HARBOR PROGRAM REQUIREMENTS

CARU's current Safe Harbor Program includes the following components:

Completion of CARU's Self-Assessment Form and Attestation by the Safe Harbor participant, which must be completed and signed by a responsible corporate officer, and the subsequent submission to CARU of an updated Self-Assessment Form and Attestation on each anniversary of the date of acceptance in the CARU Safe Harbor Program.

Participant's full adherence to the requirements set forth in the CARU Safe Harbor Compliance Checklist;

Participant's compliance with CARU's *Self-Regulatory Program for Children's Advertising*, including the Guidelines for Online Privacy Protection;

Review by CARU staff of the participant website information practices, including completion by CARU staff of an Initial Website Review Form;

Ongoing monitoring and review by CARU staff of the participant's website to assess and ensure compliance with the Safe Harbor Program.

In addition, the participant agrees to be subject to the provisions of the *NAD/CARU/NARB Policies and Procedures*, including those concerning complaints, appeals and enforcement of compliance.

These Policies and Procedures provide for general monitoring of compliance with the CARU Guidelines, the initiation and handling of inquiries for non-compliance and publication of decisions. Since its inception as an approved Safe Harbor signatory, CARU has issued more than 200 public decisions on compliance with its Online Privacy Protection Guidelines.

CARU'S PROPOSED MODIFICATIONS

In accordance with Section 312.11 of the final COPPA Rule, CARU submits the following documents attached to this letter and marked as exhibits: A) CARU's Procedures; B) CARU's revised Guidelines; C) revised Safe Harbor Compliance Checklist; D) revised Safe Harbor Self-Assessment form; E) revised Website Review form (F) Online Internet-Based Advertising Accountability Program's Procedures.

REQUEST FOR CONFIDENTIALITY

CARU would like to request that the Commission keep the following documents confidential for proprietary reasons: Confidential Self-Assessment Form (Ex. D), and Website Review Form (Ex. E).

We believe this renewal application demonstrates CARU's ability to ensure the full compliance of its members with the amended COPPA Rule.

Sincerely,
Wayne J. Keeley
Director, Children's Advertising Review Unit
Vice President, Council of Better Business Bureaus

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THE ADVERTISING INDUSTRY'S PROCESS OF VOLUNTARY SELF-REGULATION

Policies and Procedures by the Advertising Self-Regulatory Council

As amended 9.24.12



A service of the advertising industry and Council of Better Business Bureaus

Administered by the Council of Better Business Bureaus

Procedures for the:

- The National Advertising Division (NAD)
- The Children's Advertising Review Unit (CARU)
- The National Advertising Review Board (NARB)

Partners in Advertising Industry Self-Regulation



1.1 Definitions

A. The term “national advertising” shall include any paid commercial message, in any medium (including labeling), if it has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service; if it is disseminated nationally or to a substantial portion of the United States, or is test market advertising prepared for national campaigns; and if the content is controlled by the advertiser.

B. The term “advertiser” shall mean any person or other legal entity that engages in “national advertising.”

C. The term “advertising agency” shall mean any organization engaged in the creation and/or placement of “national advertising.”

D. The term “public or non-industry member” shall mean any person who has a reputation for achievements in the public interest.

2.1 NAD/CARU

A. Function and Policies

The National Advertising Division of the Council of Better Business Bureaus (hereinafter NAD), and the Children’s Advertising Review Unit (CARU), shall be responsible for receiving or initiating, evaluating, investigating, analyzing (in conjunction with outside experts, if warranted, and upon notice to the parties), and holding negotiations with an advertiser, and resolving complaints or questions from any source involving the truth or accuracy of national advertising, or consistency with CARU’s Self-Regulatory Program for Children’s Advertising.

NAD, CARU and NARB are investigative or appellate units of the advertising industry’s system of voluntary self-regulation. Policies and procedures are established by ASRC and the system is administered by the Council of Better Business Bureaus. A decision by NAD/CARU/NARB does not constitute a finding that the law has been violated. An advertiser’s voluntary participation in the self-regulatory process is not an admission and shall not be interpreted to constitute an admission by the advertiser or a finding that the law has been violated.

B. Advertising Monitoring

NAD and CARU are charged with independent responsibility for monitoring and reviewing national advertising for truthfulness, accuracy and, in the case of CARU, consistency with CARU’s Self-Regulatory Program for Children’s Advertising.

C. Case Reports

The Council of Better Business Bureaus shall publish at least ten times each year the Case Reports, which will include the final case decisions of NAD, CARU and NARB, and summaries of any other matters concluded since the previous issue. Each final NAD, CARU and NARB case decision shall identify the advertiser, challenger, advertising agency, product or service, and subject matter reviewed. It shall also include a summary of each party’s position, NAD, CARU or the NARB’s decision and its rationale, and a concise Advertiser’s Statement, if any (See Section 2.9). CARU shall publish in the Case Reports a summary of CARU’s actions, other than formal cases, during the preceding month. Included in this Activity Report, shall be the following:

(i) Inquiries—summaries of informal inquiries under CARU’s Expedited Procedures (see Section 2.13 below);

(ii) Pre-Screening/Submissions—summaries of storyboards or videotapes of proposed advertising submitted to CARU for prescreening; and

D. Guidance to the Public

(i) From time to time, after consultation with the General Counsel, NAD/CARU may inform the public, through the Case Reports and other media, of trends, principles and interpretations derived from previously published case decisions.

(ii) After consulting with the General Counsel, CARU may also inform the public of new interpretations of its guidelines that it believes would provide appropriate advance notice of the application of CARU guidelines to existing industry practices maintained by multiple advertisers. Prior to publication of any such interpretation, CARU will prepare appropriate explanatory materials for the Advertising Self-Regulatory Council (ASRC),

and may publish the interpretation in the Case Reports and other media if, after 30 days, ASRC has not scheduled a meeting to consider the matter.

If such a meeting is scheduled, CARU may publish the interpretation after ASRC's consideration unless ASRC revises CARU's Self-Regulatory Program for Children's Advertising in a manner that moots the interpretation

E. Confidentiality of NAD/CARU/NARB Proceedings

(i) NAD/CARU/NARB proceedings are confidential except for (a) publication of final case decisions and summaries of other actions, as provided by these Procedures;

(b) NAD/CARU/NARB press releases announcing final case decisions and summaries; (c) referrals by NAD/CARU/NARB to government agencies as provided by these Procedures; and (d) actions taken by NAD/CARU under Section 2.1(F)(2) of these Procedures.

(ii) Published NAD/CARU/NARB decisions are the only permanent records required to be kept as to the basis of an inquiry, the issues defined, the facts and data presented, and the conclusions reached by NAD/CARU/NARB.

(iii) By participating in a NAD/CARU/ NARB proceeding, parties agree:

(a) To keep the proceedings confidential throughout the review process;

(b) Not to subpoena any witnesses or documents regarding the review proceeding from NAD, CARU, NARB, ASRC or the Council of Better Business Bureaus in any future court or other proceeding (except for the purposes of authentication of a final, published case decision); and

(c) To pay attorneys fees and costs if a subpoena is attempted in violation of Section (b) above.

F. Parties' Agreement/Referrals to Law Enforcement Agencies

(i) It is the policy of the NAD, CARU, NARB, ASRC and the Council of Better Business Bureaus not to endorse any company, product, or service. Any decision finding that advertising has been substantiated should not be construed as an endorsement. Correspondingly,

an advertiser's voluntary modification of advertising, in cooperation with NAD/CARU/ NARB self-regulatory efforts, is not to be construed as an admission of any impropriety.

(ii) By participating in a NAD/CARU/NARB proceeding, parties agree (a) not to issue a press release regarding any decisions issued, and/or (b) not to mischaracterize any decision issued or use and/or disseminate such decision for advertising and/or promotional purposes. NAD/CARU/NARB may take whatever action it deems appropriate if a party violates this provision, including the issuance of a public statement for clarification purposes.

(iii) When NAD/CARU commences a review pursuant to Section 2.2 of these Procedures, and the advertiser elects not to participate in the self-regulatory process, NAD/CARU shall prepare a review of the facts with relevant exhibits and forward them to the appropriate federal or state law enforcement agency. Reports of such referrals shall be included in the Case Reports.

G. Academic and Other Expert Advisors

CARU may establish a panel of academic and other experts as needed from which CARU may obtain advice pertinent to advertising, cognitive ability, nutrition and other matters, and on the application of CARU's Self-Regulatory Program for Children's Advertising.

2.2 Filing a Complaint

A. Any person or legal entity, including NAD/CARU as part of their monitoring responsibility pursuant to Section 2.1 (B) of these Procedures, may submit to NAD/CARU any complaint regarding national advertising, regardless of whether it is addressed to consumers, to professionals or to business entities. All complaints (except those submitted by consumers), including any supporting documentation, must be submitted in duplicate hard copy and in an electronic format (including evidentiary exhibits when possible.) To help ensure a timely review, challengers should strive to limit the length of their submissions to 8 double-spaced typewritten pages (excluding evidentiary exhibits) and limit the number of issues raised in a challenge to those that are the most significant. A challenger may further expedite the review of the contested advertising by waiving its right to reply (see Section 2.6 B) or by requesting an "Expedited Review" pursuant to Section 2.11 of these Proceedings.

(i) CBBB Corporate Partner Filing Fees

Competitive challenges before NAD by CBBB Corporate Partners shall be filed together with a check, made payable to the Council of Better Business Bureaus, Inc., in the amount of \$5,000.

(ii) Non-Corporate Partner Filing Fees

Competitive challenges before NAD by companies that are not Corporate Partners of the CBBB shall be filed together with a check, made payable to the Council of Better Business Bureaus, Inc., for:

- (a) \$6,000, if the challenger's gross annual revenue is less than \$400 million;
- (b) \$10,000, if the challenger's gross annual revenue is more than \$400 million and less than \$1 billion;
- (c) \$20,000, if the challenger's gross annual revenue is \$1 billion or more.

The filing fee shall be accompanied by a statement indicating the category into which the challenger's revenues fall. In the case of a challenge filed by a subsidiary, the filing fee is determined by the gross annual revenue of the parent company.

(iii) CARU Filing Fees – Competitive challenges before CARU shall be filed together with a check made payable to the Council of Better Business Bureaus, Inc., in the amount of \$2,500 (for CBBB Corporate Partners) or \$6,000 (for non-Corporate Partners or CARU Supporters).

(iv) The President of the Advertising Self-Regulatory Council (ASRC) shall have the discretion to waive or reduce the fee for any challenger who can demonstrate economic hardship. If a CARU or NAD case is administratively closed, the filing fee will be \$1,500 for CBBB Corporate Partners or CARU Supporters and \$2,500 for non-partners. The difference between these administrative closing fees and the initial filing fee will be refunded to the challenger.

B. Upon receipt of any complaint, NAD/CARU shall promptly acknowledge receipt of the complaint and, in addition, shall take the following actions:

(i) If, at the commencement or during the course of an advertising review proceeding, NAD/CARU concludes

that the advertising claims complained of are: (a) not national in character; (b) the subject of pending litigation or an order by a court; (c) the subject of a federal government agency consent decree or order; (d) permanently withdrawn from use prior to the date of the complaint and NAD/CARU receives the advertiser's assurance, in writing, that the representation(s) at issue will not be used by the advertiser in any future advertising for the product or service; (e) of such technical character that NAD/CARU could not conduct a meaningful analysis of the issues; or (f) without sufficient merit to warrant the expenditure of NAD/CARU's resources, NAD/CARU shall advise the challenger that the complaint is not, or is no longer, appropriate for formal investigation in this forum. Upon making such a determination, NAD/CARU shall advise the challenger that a case will not be opened, or in the event that an advertising review proceeding has already been commenced, shall administratively close the case file and report this action in the next issue of the Case Reports. When it can, NAD/CARU shall provide the challenger with the name and address of any agency or group with jurisdiction over the complaint.

(ii) If the complaint relates to matters other than the truth or accuracy of the advertising, or consistency with CARU's

Self-Regulatory Program for Children's Advertising, NAD/CARU shall so advise the challenger, as provided above, and where a significant national advertising issue is raised, shall forward a copy of the complaint to the ASRC President who, in consultation with the NARB Chair, shall consider whether the complaint is appropriate for a consultative panel.

(iii) If, in its discretion, NAD/CARU determines that a complaint is too broad or includes too many issues or claims to make resolution within the time constraints proscribed by these Procedures feasible, NAD/CARU may request that the challenger limit the issues or claims to be considered in the review proceeding, or, in the alternative, advise the challenger that the matter will require an extended schedule for review.

(iv) If a complaint challenges advertising for more than one product (or product line) NAD/CARU may return the complaint to the challenger and request that separate complaints be submitted for each of the advertised products.

(v) If the complaint relates to the truth or accuracy of a national advertisement, or consistency with CARU's Self-Regulatory Program for Children's Advertising, NAD/CARU shall promptly forward the complaint by

facsimile, overnight, or electronic mail to the advertiser for its response.

(vi) Complaints regarding, specific language in an advertisement, or on product packaging or labels, when that language is mandated or expressly approved by federal law or regulation; political and issue advertising, and questions of taste and morality (unless raising questions under CARU's Self-Regulatory Program for Children's Advertising), are not within NAD/CARU's mandate. If the complaint, in part, relates to matters other than the truth and accuracy of the advertising, or consistency with CARU's Self-Regulatory Program for Children's Advertising, NAD/ CARU shall so advise the challenger.

(vii) NAD/CARU reserves the right to refuse to open or to continue to handle a case where a party to an NAD/ CARU proceeding publicizes, or otherwise announces, to third parties not directly related to the case the fact that specific advertising will be, is being, or has been, referred to NAD/CARU for resolution. The purpose of this right of refusal is to maintain a professional, unbiased atmosphere in which NAD/CARU can affect a timely and lasting resolution to a case in the spirit of furthering voluntary self-regulation of advertising and the voluntary cooperation of the parties involved.

C. Complaints originating with NAD shall be considered only after the General Counsel of the NARB has reviewed the proposed complaint and has determined that there is a sufficient basis to proceed. Complaints originating with CARU that would apply a new interpretation or application of CARU's Self-Regulatory Program for Children's Advertising shall be considered only after the General Counsel of NARB has reviewed the proposed interpretation or application and has determined that there is a sufficient basis to proceed.

D. In all cases, the identity of the challenger must be disclosed to NAD/CARU who shall advise the advertiser of the identity of the challenger.

2.3 Parties to NAD/CARU/NARB Proceedings

The parties to the proceeding are (i) NAD/CARU acting in the public interest, (ii) the advertiser acting in its own interest, and (iii) the challenger(s), whose respective rights and obligations in an NAD/CARU/NARB proceeding are defined in sections 2.2, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 3.1, 3.2, 3.3, 3.5, and 4.1 of these Procedures.

2.4 Information in NAD/CARU Proceedings

A. All information submitted to NAD/CARU by the challenger and the advertiser, pursuant to Sections 2.4 through 2.11 of these Procedures, shall be submitted in duplicate hard copy and in an electronic format (including evidentiary exhibits when possible). Upon receipt of a filing by any party, NAD/CARU shall forward a copy to the other party by messenger, facsimile, electronic or overnight mail. All transmittals by NAD/CARU during the course of an advertising review proceeding shall be paid for by the challenger, unless the challenger is a consumer or otherwise demonstrates economic hardship, in which case all transmittals shall be paid for by NAD/CARU.

B. Time periods for all submissions to NAD, CARU and NARB shall commence on and include the first day of business following the date of delivery of the triggering document and shall not include Saturdays, Sundays or Federal holidays.

C. NAD/CARU shall not consider any data submitted by a challenger that has not been made available to the advertiser, and any materials submitted by a challenger on condition that they not be shown to the advertiser shall promptly be returned. In the case of studies, tests, polls and other forms of research, the data provided should be sufficiently complete to permit expert evaluation of such study, poll, test or other research. NAD/CARU shall be the sole judge of whether the data are sufficiently complete to permit expert evaluation. If a party initially submits incomplete records of data that is then in its possession, and later seeks to supplement the record, NAD/CARU may decline to accept the additional data if it determines that the party's failure to submit complete information in the first instance was without reasonable justification.

D. An advertiser may submit trade secrets and/or proprietary information or data (excluding any consumer perception communications data regarding the advertising in question) to NAD/CARU with the request that such data not be made available to the challenger, provided it shall:

(i) clearly identify those portions of the submission that it is requesting be kept confidential in the copy submitted for NAD/CARU's review; and (ii) redact any confidential portions from the duplicate copy submitted to NAD/CARU for NAD/CARU to forward to the challenger; (iii) provide a written statement setting forth the basis for the request for confidentiality; (iv) affirm that the information for which confidentiality is claimed is not publicly available and consists of trade secrets

and/or proprietary information or data; and (v) attach as an exhibit to NAD/CARU's and the complainant's copy of the submission a comprehensive summary of the proprietary information and data (including as much non-confidential information as possible about the methodology employed and the results obtained) and the principal arguments submitted by the advertiser in its rebuttal of the challenge. Failure of the advertiser to provide this information will be considered significant grounds for appeal of a decision by a challenger. (See Section 3.1)

E. Prior to the transfer of data to the advertiser or challenger, NAD/CARU shall obtain assurances that the recipients agree that the materials are provided exclusively for the purpose of furthering NAD/CARU's inquiry; circulation should be restricted to persons directly involved in the inquiry, and recipients are required to honor a request at the completion of the inquiry that all copies be returned.

F. Whenever CARU has consulted an expert from the panel established under 2.1 G, or otherwise, in connection with the filing of a complaint, consideration of a complaint, or pre-screening, the expert's opinion shall be in writing, or summarized in writing by CARU. The expert's opinion and a brief description of the expert's qualifications shall be made available to the parties promptly. The advertiser or challenger may respond to the expert's opinion in any submission under 2.5, 2.6, 2.7, or 2.8. When furnished to the advertiser or challenger, CARU shall inform the parties that there has been no final determination by CARU on any matter contained in the expert's opinion.

2.5 The Advertiser's Substantive Written Response

The advertiser may, within 15 business days after receipt of the complaint, submit to NAD/CARU, in duplicate hard copy and an electronic format (including exhibits when possible), a written response that provides substantiation for any advertising claims or representations challenged, any objections it may have to the proceedings on jurisdictional grounds, as defined in Sections 2.2(B)(i)-(v), together with copies of all advertising, in any medium, that is related to the campaign that includes the challenged advertising. The advertiser may not include a counter challenge (i.e., a request that NAD/CARU review advertising claims made by the challenger) in its response. Such a request must be filed as a separate complaint as described in Section 2.2 of these Procedures. To help ensure a timely review, advertisers should strive to limit the length of their submissions to 8 double-spaced typewritten pages (excluding evidentiary exhibits). Advertiser responses

addressed to the issue of NAD/CARU jurisdiction should be submitted as soon as possible after receipt of the complaint, but in any event, must be submitted no later than 15 business days after the advertiser receives the initial complaint. (See also Section 2.10 Failure to Respond.)

2.6 The Challenger's Reply

A. If the advertiser submits a written response, NAD/CARU shall promptly forward the copy of that response prepared by the advertiser for the challenger, that shall have any material designated as confidential redacted, and shall include, as an exhibit, a comprehensive summary of the redacted information in the manner set forth in Section 2.4 above. Within ten business days of receipt of the advertiser's response, the challenger shall submit in duplicate hard copy and an electronic format (including exhibits when possible) its reply, if any, to NAD/CARU. To help ensure a timely review, challengers should strive to limit the length of their reply to 8 double-spaced typewritten pages (excluding evidentiary exhibits). This reply should include a short Executive Summary summarizing the key points in the challenger's position on the case and cite to the supporting evidence in the record. If the challenger does not submit a reply, NAD/CARU shall proceed to decide the challenge upon the expiration of the complainant's time to reply, subject to a request by NAD/CARU for additional comments or data under Section 2.8 (A).

B. Expediting Review by Waiving the Reply – After the challenger has reviewed the Advertiser's first substantive written response, the challenger may notify NAD/CARU in writing that it elects to waive its right to add to the record thereby expediting the proceeding. In the event that a challenger waives its right to reply, additional information from either party may be submitted only upon request from NAD/CARU and shall be treated in the same manner as requests for additional comments or data under Section 2.8(A) of these procedures and any meetings with the parties will be held at the discretion of the NAD/CARU.

2.7 Advertiser's Final Response

If the challenger submits a reply, NAD/CARU shall promptly forward a copy of that reply to the advertiser. Within ten business days after receipt of the complainant's reply, the advertiser shall submit a response, if any, in duplicate hard copy and an electronic format (including exhibits when possible). To help ensure a timely review, advertisers should strive to limit

the length of their response to 8 double-spaced typewritten pages (excluding evidentiary exhibits). This response should include a short Executive Summary summarizing the key points in the advertiser's position on the case and cite to the supporting evidence in the record.

2.8 Additional Information and Meetings with the Parties

A. In the event that NAD/CARU deems it necessary and request further comments or data from an advertiser or challenger, the written response must be submitted within six business days of the request. NAD/CARU will immediately forward the additional response to the advertiser or challenger, who will be afforded six business days to submit its own response to the submission. Unless NAD/CARU requests further comments or data under this paragraph, no additional submissions will be accepted as part of the case record, and any unsolicited submissions received by NAD/CARU will be returned.

B. NAD/CARU, in its discretion, may, in addition to accepting written responses, participate in a meeting, either in person or via teleconference, with either or both parties. In the event that NAD/CARU participates in a meeting in which only one party participates, NAD/CARU shall notify the other party that a teleconference or meeting has been scheduled to take place and after the meeting shall summarize the substance of the information exchanged for the other party (or have such a summary provided by the attending party). Where feasible, upon request, an advertiser shall be afforded the opportunity to schedule its meeting with NAD/CARU after the date of challenger's meeting. All meetings with the parties shall be held within 15 business days of NAD's receipt of the Advertiser's Final Response (Section 2.7).

C. Except upon request by NAD, as provided in Section 2.8(A) of these procedures, no new evidence may be submitted for inclusion in the record at these meetings. Any non-requested information provided during a meeting that is not already in the submissions of the party (including visual demonstrations, summaries and other documentary evidence) will not be included in the record and will not be considered by NAD/CARU in making its decision or by an NARB Panel in reviewing NAD's decision on appeal.

D. The period of time available for all communications, including meetings and written submissions, shall not exceed the time limits set forth in Sections 2.4 through 2.8 above except upon agreement of NAD/CARU and the parties.

2.9 Decision

A. The Final Case Decision

Within 15 business days of its receipt of the last document authorized by Sections 2.5 to 2.8, above, NAD/CARU will formulate its decision on the truth and accuracy of the claims at issue, or consistency with CARU's Self-Regulatory Program for Children's Advertising; prepare the "final case decision"; provide a copy to the advertiser and; invite the advertiser to add an Advertiser's Statement within five business days of receipt.

B. Advertiser's Statement

In the event that NAD/CARU decides some or all of the advertising claims at issue are not substantiated, the advertiser shall, within five business days of receipt of the decision, submit an Advertiser's Statement stating whether the advertiser agrees to modify or discontinue the advertising or chooses to take the issues to appeal, as specified in Section 3.1. The Advertiser's Statement should be concise and may not exceed one double spaced page in length. Whether an advertiser intends to comply or appeal, an advertiser may include in this statement an explanation of why it disagrees with NAD/CARU. However, this is not the venue to reargue the merits of the case, bring in new facts, or restate or summarize NAD/CARU's conclusions. NAD/CARU reserves the right, following consultation with the advertiser, to edit for length or inappropriate material. In the event that the advertiser fails to submit an Advertiser's Statement as required by this Section, NAD/CARU may refer the matter to an appropriate government agency for review and possible law enforcement action.

C. Publication of the Decision

Upon receipt of the final version of the Advertiser's Statement, NAD/CARU shall provide copies of the "final case decision" to the advertiser and the challenger, by facsimile, electronic or overnight mail or messenger, and make the decision available to the public through press announcements and publication of the decision in the next Case Reports.

D. Case Report Headings

- NAD/CARU's decisions in the Case Reports shall be published under the headings:
- Advertising Substantiated
- Advertising Referred to NARB
- Advertising Modified or Discontinued
- Advertising Substantiated/Modified or Discontinued
- Administrative Closing
- Advertising Referred to Government Agency
- No Substantiation Received
- Compliance

E. Annual Summary

The first issue of the Case Reports each calendar year shall include a summary, prepared by NAD/CARU, which includes the number, source and disposition of all complaints received and cases published by NAD/CARU during the prior year.

2.10 Failure to Respond

A. If an advertiser fails to file a substantive written response within the period provided in Section 2.5 above, NAD/ CARU shall release to the press and the public a "notice" summarizing the advertising claims challenged in the complaint, and noting the advertiser's failure to substantively respond.

B. If the advertiser fails to file a substantive written response within an additional 15 business days, NAD/CARU may refer the file to the appropriate government agency and release information regarding the referral to the press, the public, and the media in which the advertising at issue has appeared, and shall report the referral in the next issue of the Case Reports.

C. If a challenger fails to file a reply within the time provided by Section 2.6, or an advertiser fails to file a response within the time provided in Section 2.7, the untimely document shall not be considered by NAD/CARU, or by any panel of the NARB.

2.11 Expedited Proceeding

A challenger may, with the consent of the advertiser, request that the NAD/CARU engage in an expedited review of the contested advertising. This request must be made in the challenger's initial challenge letter to NAD/CARU, which shall not exceed four double-spaced typewritten pages. Based on the complexity of the

challenge, NAD/CARU shall determine whether the matter is appropriate for an expedited review. If a challenger's request for an expedited proceeding is accepted, the challenger automatically waives its right to reply to the Advertiser's substantive written response. The advertiser will have 15 business days in which to respond to NAD/CARU's inquiry. NAD/CARU will forward the advertiser's response to the challenger. Thereafter, NAD/CARU may, in its discretion, request additional information from either party. NAD/CARU will issue a summary decision within 15 business days after the close of the evidentiary record. If NAD/CARU determines that the advertising should be modified or discontinued, the advertiser may then request a full review (with any additional submissions permitted by these Procedures) and a detailed decision. In such a case, the advertiser will be required to discontinue the challenged advertising until the final decision is issued. In an expedited proceeding, the parties' rights to appeal (as described in Sections 3.1A and 3.1B of these Procedures) attach only in the event that the advertiser requests a full review and after a detailed decision is issued on the merits.

2.12 Request for Product

When CARU's monitoring identifies an advertisement which may raise concerns under the Guidelines, but only physical inspection of the product or packaging can determine whether such concerns exist, CARU will request a sample of the product from the advertiser. If the advertiser complies with CARU's request within five business days, and inspection of the product reveals no questions of non-compliance with the Guidelines, no inquiry will be opened.

2.13 CARU Expedited Procedure

Notwithstanding 2.2 through 2.11 above, in instances of incorrect commercial placement or technical error, if the advertiser responds within five business days of receipt of an inquiry regarding non-compliance with CARU's Guidelines and the advertising is substantiated, or if within an additional five business days any violation of the Guidelines is remedied, no formal case will be opened, and the results will be published in the CARU Activity Report.

3.1 Appeal

A. When an advertiser does not agree to comply with NAD/CARU's decision on one or more issues involved in a case, the advertiser shall be entitled to

panel review by the NARB. To appeal an NAD/CARU decision, an advertiser shall make a request for a referral to the NARB and specify any and all issues for its appeal in the Advertiser's Statement it prepares in response to NAD/CARU's decision pursuant to Section 2.8(A). All advertiser requests for an appeal to NARB shall be submitted together with a check made payable to the Council of Better Business Bureaus, Inc. in the amount of \$12,000. In such cases, NAD/CARU shall publish its decision and the Advertiser's Statement in the next Case Reports under the heading "Advertising Referred to NARB". The President of the Advertising Self-Regulatory Council (ASRC) shall have the discretion to waive or reduce the this fee for any appellant who can demonstrate economic hardship.

B. Within ten business days after the date of receipt of a copy of NAD/CARU's final case decision, the challenger may request review by the NARB by filing a letter, not to exceed 20 double spaced pages plus any relevant attachments from the NAD/CARU case record, explaining its reasons for seeking review. The letter should be addressed to the Chair, NARB, Attention: NARB Director, 112 Madison Avenue, New York, NY, 10016. The challenger shall send a copy of this letter to the advertiser and to NAD/CARU. Within ten business days after receipt of the copy of the request for review, the advertiser may and NAD/CARU shall submit a response to the NARB Chair, not to exceed 20 double spaced pages plus any relevant attachments from the NAD/CARU case record. A copy of the advertiser's and NAD/CARU's responses shall be sent by the advertiser and NAD/CARU, respectively, to the other parties, except that portions of the case record that were submitted to NAD/CARU on a confidential basis shall not be sent to the challenger unless the advertiser consents. No other submissions shall be made to the NARB Chair. These letters, together with the relevant sections of the case record provided by the parties, will be reviewed by the NARB Chair, who within ten business days after the time for the last submission under this rule has expired shall (1) determine if there is no substantial likelihood that a panel would reach a decision different from NAD/ CARU's decision; or (2) proceed to appoint a review panel as outlined in Section 3.2. The NARB Chair shall return the record to NAD/CARU after (s)he makes his or her determination. With the exception of the time period within which a challenger must file a request for NARB review of an NAD/CARU decision, the NARB Chair reserves the right to extend the time intervals provided in this Section for good cause, notifying all interested parties of such extension.

C. When an advertiser appeals to the NARB pursuant to Section 3.1(A), or if the NARB Chair grants a complainant's request for NARB review pursuant to Section 3.1(B), the appellant shall pay a filing fee by check made payable to the Council of Better Business Bureaus, Inc. in the amount of \$12,000. The President of the Advertising Self-Regulatory Council (ASRC) shall have the discretion to waive or reduce the fee for any appellant who can demonstrate economic hardship. NAD/CARU shall prepare the relevant portions of the case record and forward them to the NARB within five business days of the issuance of the press release. The NARB shall thereafter make copies of and mail the case record to the parties, except that portions of the case record that were submitted to NAD/CARU on a confidential basis shall not be sent to the challenger unless the advertiser consents. The appellant shall pay for all NARB copying and transmittal costs incurred as a result of an appeal or request for appeal pursuant to Sections 3.1 through 3.6 of these Procedures. Where the advertiser and the challenger both appeal, these costs shall be divided equally between them. In any event, NARB shall pay these costs for any party that can demonstrate economic hardship. The party appealing shall, within ten business days of receipt of the case record prepared by NAD/CARU, submit to the NARB Chair, addressed as indicated in Section 3.1(B), a letter not to exceed 30 double spaced pages explaining its position. The appellant shall send a copy of the letter to the opposing party and NAD/CARU who shall each have ten business days of receipt of which to submit a response, not to exceed 30 double spaced pages, to the NARB Chair, with copies to the other parties. No other submissions shall be made.

D. In the event that the advertiser shall exercise its right to an appeal under Section 3.1(A), the challenger shall have the right to appeal any additional issues considered by the NAD/CARU that have not been appealed by the advertiser. In the event that a challenger's request to appeal is granted by the NARB Chair under Section 3.1(B), the advertiser may appeal any additional issues considered by the NAD/CARU that have not been appealed by the challenger, notwithstanding that its time to file an appeal as of right has expired. The challenger or advertiser may exercise the right to appeal under this paragraph by submitting a letter to the NARB at the address listed in Section 3.1(B), requesting the appeal and specifying the additional issues it wishes to appeal. The cross-appellant shall pay a filing fee by check made payable to the Council of Better Business Bureaus, Inc. in the amount of \$12,000.

The President of the Advertising Self-Regulatory Council (ASRC) shall have the discretion to waive or reduce the fee for any cross-appellant who can demonstrate economic hardship. In the case of the challenger, the letter shall be due within five business days of receipt of the final case decision with the advertiser's statement indicating the advertiser's election to appeal; in the case of the advertiser, the letter is due within five business days of the date of receipt of the NARB Chair's determination granting the challenger's request to appeal. Copies of these letters shall be sent by the issuing party to all of the other parties. The advertiser shall be deemed thereafter to be the appellant for purposes of the order of submissions.

3.2 Content of Submissions to NARB

The written submissions to NARB may not contain any factual evidence, arguments or issues that are not in the case record forwarded to NARB pursuant to Section 3.1(C) of these Procedures. In the event that the NARB Chair, after consultation with the parties, determines that a party has included evidence, facts or arguments outside this record in its submission to NARB the NARB Chair, may in his/her discretion:

- (a) return the brief to the party with a request that it redact any information that NARB has identified as outside the record and resubmit its brief within 3 business days. If the party fails to submit a properly redacted brief within 3 business days it shall be deemed to have defaulted on its appeal; or
- (b) remand the matter to NAD/CARU for a determination on whether the additional information constitutes "newly discovered evidence" sufficient to warrant NAD's reopening of the case under the "extraordinary circumstances" provisions of Section 3.8 of these Procedures. If NAD/CARU determines that it is not appropriate to reopen the case, NAD/CARU shall return the brief to the NARB Chair who shall handle any information outside the record in the manner provided by Section 3.2 (a) above.

3.3 Appointment of Review Panel

The Chair, upon receipt of an appeal by an advertiser, or upon granting a request to appeal by a challenger, shall appoint a panel of qualified NARB members and designate the panel member who will serve as panel Chair.

3.4 Eligibility of Panelists

An "advertiser" NARB member will be considered as not qualified to sit on a particular panel if his/her employing company manufactures or sells a product or service which directly competes with a product or service sold by the advertiser involved in the proceeding. An "agency" NARB member will be considered as not qualified if his/her employing advertising agency represents a client which sells a product or service which directly competes with the product or service involved in the proceeding. A NARB member, including a non-industry member, shall disqualify himself/herself if for any reason arising out of past or present employment or affiliation (s)he believes that (s)he cannot reach a completely unbiased decision. In addition, the Executive Director shall inform the advertiser, challenger, and the Director of NAD/CARU of their right to object, for cause, to the inclusion of individual panel members, and to request that replacement members be appointed. Requests will be subject to approval by the NARB Chair. If the NARB Chair is unable to appoint a qualified panel, (s)he shall complete the panel by appointing one or more alternate NARB member(s).

3.5 Composition of Review Panel

Each panel shall be composed of one "public" member, one "advertising agency" member, and three "advertiser" members. Alternates may be used where required. The panel will meet at the call of its chair, who will preside over its meetings, hearings and deliberations. A majority of the panel will constitute a quorum, but the concurring vote of three members is required to decide any substantive question before the panel. Any panel member may write a separate concurring or dissenting opinion, which will be published with the majority opinion.

3.6 Procedure of Review Panel

A. As soon as the panel has been selected, the Executive Director will inform all parties as to the identity of the panel members. At the same time, (s)he will mail copies of all submissions under

Section 3.1(C) to each of the panel members, and will, in like manner, send them any response or request submitted by any other party or parties. Within ten days after receiving copies of the appeal, the panel members shall confer and fix the time schedule that they will follow in resolving the matter.

B. The panel, under the direction of its chair, should proceed with informality and speed. If any party to the dispute before NAD/CARU requests an opportunity to participate in the proceedings before the panel, (s)he shall be accommodated.

All parties to a matter before the panel shall be given ten days notice of any meeting at which the matter is to be presented to the panel. Such notice shall set out the date and place of the meeting, and the procedure to be followed.

C. The case record in NAD, CARU and/or NARB proceedings shall be considered closed upon the publication of the “final case decision” as described in Section 2.8. No factual evidence, arguments or issues will be considered within the case record if they are introduced after that date.

D. The decision of the panel will be based upon the portion of the record before NAD/CARU which it has forwarded to the panel, the submissions under Section 3.1 (C), and any summaries of the record facts and arguments based thereon which are presented to the panel during its meeting with the parties. A party may present representatives to summarize facts and arguments that were presented to NAD/CARU, and members of the panel may question these persons. If the advertiser has declined to share any of its substantiation with the challenger, the panel will honor its request for confidentiality, even though the challenger may have instituted the appeal. The challenger will therefore be excluded from the meeting during the time when such confidential substantiation is being discussed by the panel with NAD/CARU and the advertiser. The panel will consider no facts or arguments if they are outside the facts presented to, or inconsistent with the arguments made before, NAD/CARU.

3.7 Timing and Reporting of Panel Decisions

A. When the panel has reached a decision, it shall notify the NARB Chair of its decision and the rationale behind it in writing and shall endeavor to do so within 15 business days. The Chair, upon receipt of a panel’s decision, shall transmit such decision and rationale to NAD/CARU and then to the advertiser. The advertiser then has five business days to respond indicating its acceptance, rejection or any comments it may wish to make on the panel’s decision and shall state whether or not it will comply with the panel’s decision. Thereafter, the Chair shall notify other parties to the case of the panel’s decision, incorporating therein the response from the advertiser, and make such report public.

B. In the event that a panel has determined that an advertising claim has not been substantiated or is untruthful and/ or inaccurate, and the advertiser fails to indicate that the specific advertisement(s) will be either withdrawn or modified in accordance with the panel’s findings within a time period appropriate to the circumstances of the case, the Chair will issue a Notice of Intent to the advertiser that the full record on the case will be referred to the appropriate government agency. If the advertiser fails to respond or does not agree in writing to comply with the decision of the panel within ten days of the issuance of the Notice of Intent, the Chair shall so inform the appropriate government agency by letter, shall offer the complete NARB file upon request to such government agency, and shall publicly release his/her letter. The Chair and/or Executive Director of the NARB shall report to the NARB at its annual meeting on, among other things, the number, source and disposition of all appeals received by the NARB.

3.8 Closing a Case

When a case has been concluded with the publication of a NAD/CARU decision or, when a panel has turned over a decision to the Chair, and when the Chair has executed the procedures in Section 3.6 of these “Procedures,” the case will be closed and, absent extraordinary circumstances, no further materially similar complaints on the claim(s) in question shall be accepted by NAD/CARU, except as provided for in Section 4.1.

4.1 Compliance

A. After an NAD, CARU or NARB panel decision requesting that advertising be “Modified or Discontinued” is published, together with an Advertiser’s Statement indicating the advertiser’s willingness to comply with NAD, CARU or the NARB panel’s recommendations, or an advertiser agrees to modify or discontinue advertising pursuant to §2.12 CARU Expedited Procedure,

NAD/CARU, either on its own or at the behest of a challenger or a third party, may request that the advertiser report back, within five (5) business days, on the status of the advertising at issue and explain the steps it has taken to bring the advertising into compliance with the decision. Any evidence that NAD/CARU relies on as a basis for its request for a report on compliance shall be forwarded to the advertiser together with the request for a status report.

B. If, after reviewing the advertiser's response to a request for a status report on compliance, pursuant to Section 4.1, or, if the advertiser fails to respond, after NAD/CARU independently reviews the current advertising, NAD/CARU determines that the advertiser, after a reasonable amount of time, has not made a bona fide attempt to bring its advertising into compliance with NAD, CARU or the NARB panel's recommendations and/or the representations with respect to compliance made in its Advertiser's Statement, NAD/CARU may refer the file to the appropriate government agency and release information regarding the referral to the press, the public, and to the media in which the advertising at issue has appeared, and shall report the referral in the next issue of the Case Reports. The amount of time considered reasonable will vary depending on the advertising medium involved.

C. If NAD/CARU determines that the advertiser has made a reasonable attempt to comply with an NAD, CARU or NARB panel decision, but remains concerned about the truthfulness and accuracy of the advertising, as modified, NAD/CARU will notify the advertiser, in writing, detailing these concerns. The advertiser will have ten business days after receipt of NAD/CARU's notice to respond, unless NAD/CARU expressly agrees to extend the advertiser's time to answer. Within 15 days of receipt of the advertiser's response, NAD/CARU will make a determination regarding the advertiser's compliance, and:

(i) if NAD/CARU concludes that the advertising is in compliance with NAD, CARU or the NARB panel's decision, NAD/CARU will notify the advertiser and close the compliance inquiry;

(ii) if NAD/CARU recommends that further modifications be made, to bring the advertisement into compliance with NAD, CARU or the NARB panel's original decision, NAD/CARU will notify the advertiser of its findings and any further recommendations for compliance.

(a) If the advertiser accepts NAD/CARU's compliance findings, and agrees to discontinue the advertising at issue until it makes the further modifications recommended by NAD/CARU, NAD/CARU shall report this in the next issue of the Case Reports and shall continue to monitor for compliance.

(b) If the advertiser indicates that it disagrees with NAD/CARU's compliance findings and refuses to make the further modifications recommended by NAD/CARU, the advertiser may, within five business days of receiving NAD/CARU's letter, submit a statement documenting its disagreement. Upon receipt of such statement, or in the event an advertiser fails to respond within five days, NAD/CARU:

(1) shall, where compliance with an NARB panel decision is at issue, refer the matter to the NARB Chair for review under Section 3.7 above; and

(2) may, where compliance with an NAD/CARU decision is at issue, refer the matter to the appropriate government agency and report this action to the press, the public, and any medium in which the advertising at issue appeared; and shall report its findings in the next issue of NAD Case Report.

GENERAL PROVISIONS

5.1 Amendment of Standards

Any proposals to amend any advertising standards which may be adopted by NARB may be acted on by a majority vote of the entire membership of the NARB at any special or regular meeting, or by written ballot distributed through the United States mails, provided that the text of the proposed amendment shall have been given to the members 30 days in advance of the voting date. Once NARB voting is completed and tallied, the ASRC President shall take it to the ASRC Board of Directors for their approval.

5.2 Use of Consultive Panels for Matters Other Than Truth and Accuracy, or Consistency with CARU's Self-Regulatory Program for Children's Advertising

From time to time, NARB may be asked to consider the content of advertising messages in controversy for reasons other than truth and accuracy, or consistency with CARU's Self-Regulatory Program for Children's Advertising, or the ASRC or the NARB may conclude that a question as to social issues relative to advertising should be studied.

In such cases the following procedures shall be employed to deal with such issues:

5.3 Consultive Panels

The NARB Chair may consult regularly with the ASRC President, the ASRC Board of Directors or with the NARB to determine whether any complaints have been received, or any questions as to the social role and responsibility of advertising have been identified, which should be studied and possibly acted upon. If so, a consultive panel of five NARB members shall be appointed, in the same proportions as specified for adjudicatory panels in Section 3.4 above.

5.4 Panel Procedures

Consultive panels shall review all matters referred to them by the Chair and may consult other sources to develop data to assist in the evaluation of the broad questions under consideration. No formal inquiry should be directed at individual advertisers.

5.5 Confidentiality

All panel investigations, consultations and inquiries shall be conducted in complete confidence.

5.6 Position Paper

If a consultive panel concludes that a position paper should be prepared to summarize its findings and conclusions for presentation to the full NARB, the paper shall be written by one or more members of the panel, or by someone else under its direction. The contents of the paper should reflect the thinking of the entire panel, if possible, but any panel member may write a separate concurring or dissenting opinion, which will be published with the panel report, if it is published.

5.7 Voting on Publication

Any such report prepared by a consultive panel will be submitted to the NARB Chair, who will distribute copies to the full NARB for its consideration and possible action. The members of the NARB will be given three weeks from the date of such distribution within which to vote whether to publish the report or not. Their votes will be returned to the Executive Director of the NARB. If a majority of the NARB members vote for its publication the report will be distributed to ASRC for its review and will be published only if a majority of ASRC vote for its publication.

5.8 Publication

If a majority of the NARB and ASRC vote for publication, the paper will be published promptly with appropriate publicity.

Exhibit B
(Draft 6-27-13)

Self-Regulatory Program for Children's Advertising

Children's Advertising Review Unit
Administered by the Council of Better Business Bureaus
Policies and Procedures set by the Advertising Self-Regulatory Council (ASRC)
a service of the advertising industry and Council of Better Business Bureaus
112 Madison Avenue, New York, NY 10016

The Children's Advertising Review Unit
Self-Regulatory Program for Children's Advertising

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I. INTRODUCTION

A. Overview of the Self-Regulatory Program

In 1974, the National Advertising Review Council (NARC) established the Children's Advertising Review Unit (CARU) as a self-regulatory program to promote responsible children's advertising. CARU is administered by the Council of Better Business Bureaus (CBBB) and funded by members of the children's advertising industry.

CARU's self-regulatory program sets high standards for the industry to assure that advertising directed to children is not deceptive, unfair or inappropriate for its intended audience. The standards take into account the special vulnerabilities of children, e.g., their inexperience, immaturity, susceptibility to being misled or unduly influenced, and their lack of cognitive skills needed to evaluate the credibility of advertising.

CARU's standards are embodied in principles and guidelines that were first adopted by CARU in 1975 and have been periodically revised to address changes in the marketing and media landscapes. For example, in 1996, CARU added a new section of the guidelines to address concerns about online data collection practices.

B. CARU's Role

CARU monitors and reviews advertising directed to children, initiates and receives complaints about advertising practices, and determines whether such practices violate the program's standards. When it finds violations, it seeks changes through the voluntary cooperation of advertisers and Website operators. CARU also offers a general advisory service for advertisers and agencies, provides informational material for children, parents and educators, and encourages advertisers to develop and promote the dissemination of educational messages to children consistent with the Children's Television Act of 1990.

C. Boards and Advisory Bodies

Policy for CARU's self-regulatory program is set by the Board of Directors of ASRC, a strategic alliance of the advertising industry and the CBBB. The Board is composed of key executives from the CBBB, the American Association of Advertising Agencies, the American Advertising Federation, the Association of National Advertisers, the Direct Marketing Association, the Electronic Retailing Association and the Interactive Advertising Bureau.

CARU's Academic/Expert Advisory Board includes leading experts in education, communication, child development, child mental health, marketing and nutrition. These advisors provide CARU with guidance on child psychology and behavioral issues, market trends and research, and other issues as they relate to advertising and marketing to children. Members of the Advisory Board also consult with CARU on individual cases and participate in the review and revision of the principles and guidelines of the self-regulatory program.

The CARU Supporters' Council, composed of representatives of the companies that support the children's advertising industry's self-regulatory system, provides CARU with advice on trends and developments in children's advertising and media and participates in the review and revision of the principles and guidelines of the self-regulatory program.

D. Procedures and Review Process

The procedures governing the review and resolution of cases, including the opportunity for appellate review by the National Advertising Review Board, are set forth in The Advertising Industry's Process of Voluntary Self-Regulation, which can be found at <http://www.asrcreviews.org/asrc-procedures/>. Under the procedures, at least ten times a year, the CBBB publishes Case Reports that include CARU's final case decisions, an Activity Report summarizing actions other than formal case decisions, and guidance based on prior published decisions. CARU's Case Reports can be found at <http://www.asrcreviews.org/category/car/>.

II. THE SELF-REGULATORY PROGRAM FOR CHILDREN'S ADVERTISING

A. Scope

The principles and guidelines of the program apply to:

1. National advertising primarily directed to children under 12 years of age in any medium. Such advertising will be determined by an analysis of factors, no single one of which will necessarily be controlling, including: (a) whether the content of the media in which the advertisement appears is intended for children under 12, (considering the content's subject matter, format, projected audience demographics, and extent to which other advertising in that content is intended for children under 12); (b) whether the advertisement appears during, or just before or after, a television program aired during what is generally understood to be children's programming, considering the time of day during which the advertisement appears and the media outlet; (c) whether the advertisement appears during, or just before or after, a television program which is counted towards the broadcaster's or cablecaster's Children's Television Act obligations; and (d) whether, based on available information (including the subject matter and format of the advertisement), the advertiser intended to direct the advertisement primarily to children under 12.
2. Online data collection and other privacy-related practices by Website operators that target children under 13 years of age or that know or should know that a visitor is a child under 13 years of age.

B. Definitions

1. "National advertising" shall include any paid commercial message, in any medium (including labeling), if: (a) it has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service; (b) it is disseminated nationally or to a substantial portion of the United States, or is test market advertising

prepared for national campaigns; and (c) the content is controlled by the advertiser.

2. "Advertiser" shall mean any person or other legal entity that engages in "national advertising," and includes, under Part II of the Guidelines, those who operate a commercial Website or an online service.

C. Core Principles

The following Core Principles apply to all practices covered by the self-regulatory program.

1. Advertisers have special responsibilities when advertising to children or collecting data from children online. They should take into account the limited knowledge, experience, sophistication and maturity of the audience to which the message is directed. They should recognize that younger children have a limited capacity to evaluate the credibility of information, may not understand the persuasive intent of advertising, and may not even understand that they are being subject to advertising.
2. Advertising should be neither deceptive nor unfair, as these terms are applied under the Federal Trade Commission Act, to the children to whom it is directed.
3. Advertisers should have adequate substantiation for objective advertising claims, as those claims are reasonably interpreted by the children to whom they are directed.
4. Advertising should not stimulate children's unreasonable expectations about product quality or performance.
5. Products and content inappropriate for children should not be advertised directly to them.
6. Advertisers should avoid social stereotyping and appeals to prejudice, and are encouraged to incorporate minority and other groups in advertisements and to present positive role models whenever possible.
7. Advertisers are encouraged to capitalize on the potential of advertising to serve an educational role and influence positive personal qualities and behaviors in children, *e.g.*, being honest and respectful of others, taking safety precautions, engaging in physical activity.
8. Although there are many influences that affect a child's personal and social development, it remains the prime responsibility of the parents to provide guidance for children. Advertisers should contribute to this parent-child relationship in a constructive manner.

D. Guidelines

1. An Overview

The Core Principles are broad in scope and reflect the belief that responsible advertising comes in many forms and that diversity should be encouraged. They aim to cover the myriad advertising practices in today's marketplace, as well as those that may emerge as technologies and advertising practices evolve. The Guidelines below are designed to provide additional guidance to assist advertisers in applying these broad principles to their child-directed advertising and to help them deal sensitively and honestly with children.

The Guidelines are not intended to be exhaustive. With respect to advertising practices that are not specifically addressed, CARU will apply the above Core Principles in evaluating the practices.

Part I of the Guidelines offers general guidance on deception and other marketing practices that are inappropriate when directed to children, and encourages certain practices. Part II addresses online data collection and other privacy-related practices that pose special concerns for children and require more specific guidance.

2. Part I: General Guidelines

(a) Deception

To assure that advertising directed to children is not deceptive:

1. The "net impression" of the entire advertisement, considering, among other things, the express and implied claims, any material omissions, and the overall format, must not be misleading to the children to whom it is directed.
2. Whether an advertisement leaves a misleading impression should be determined by assessing how reasonable children in the intended audience would interpret the message, taking into account their level of experience, sophistication, and maturity; limits on their cognitive abilities; and their ability to evaluate the advertising claims.

(b) Product Presentations and Claims

To avoid deceptive and/or inappropriate advertising to children involving product presentations and claims:

1. Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to, speed, method of operation, color, sound, durability, nutritional benefits and similar characteristics.
2. The presentation should not mislead children about benefits from use of the product. Such benefits may include, but are not limited to, the acquisition of

strength, status, popularity, growth, proficiency and intelligence.

3. Claims should not unduly exploit a child's imagination. While fantasy, using techniques such as animation and computer-generated imagery, is appropriate for both younger and older children, it should not create unattainable performance expectations nor exploit the younger child's difficulty in distinguishing between the real and the fanciful.
4. Advertisements should demonstrate the performance and use of a product in away that can be duplicated by a child for whom the product is intended.
5. The advertisement should not mislead children about what is included in the initial purchase.
6. Advertising that compares the advertised product to another product should be based on real product attributes and be understandable to the child audience.
7. The amount of product featured should not be excessive or more than would be reasonable to acquire, use or consume by a person in the situation depicted. For example, if an advertisement depicts food being consumed by a person in the advertisement, or suggests that the food will be consumed, the quantity of food shown should not exceed the labeled serving size on the Nutrition Facts panel; where no such serving size is applicable, the quantity of food shown should not exceed a single serving size that would be appropriate for consumption by a person of the age depicted.
8. Advertising of food products should encourage responsible use of the product with a view toward healthy development of the child. For example, advertising of food products should not discourage or disparage healthy lifestyle choices or the consumption of fruits or vegetables, or other foods recommended for increased consumption by current USDA Dietary Guidelines for Americans and My Pyramid, as applicable to children under 12.
9. Advertisements for food products should clearly depict or describe the appropriate role of the product within the framework of the eating occasion depicted.
 - a. Advertisements representing a mealtime should depict the food product within the framework of a nutritionally balanced meal.¹

¹ While there may be a number of acceptable ways to depict a nutritionally balanced meal for children, each depiction should contain at least three of the five major food groups, preferably including those food groups recommended for increased consumption by current USDA Dietary Guidelines for Americans and My Pyramid (i.e., fruits, vegetables, fat-free or low-fat milk and milk products and whole grains). The food included in the meal should reflect reasonable portion sizes and types of foods appropriate for children in the meal setting depicted. For example, a reasonable depiction of carrots may contain an appropriate side-dish portion for a child, rather than one or two condiment-size sticks. If the meal includes a caloric beverage, the beverage should be one that is appropriate in a nutritionally balanced meal taking into account the beverage's nutritional attributes and its calories within the context of the meal depicted.

- b. Snack foods should be clearly depicted as such, and not as substitutes for meals.

(c) Material Disclosures and Disclaimers

1. All disclosures and disclaimers material to children should be understandable to the children in the intended audience, taking into account their limited vocabularies and level of language skills. For young audiences, simple words should be chosen, *e.g.*, "You have to put it together." Since children rely more on information presented in pictures than in words, demonstrative disclosures are encouraged.
2. These disclosures should be conspicuous in the advertising format and media used, *e.g.*, online, advertisers should make disclosures clear and proximate to, and in the same format (*i.e.*, audio or graphic) as, the claims to which they are related; in television, advertisers should use audio disclosures, unless disclosures in other formats are likely to be seen and understood by the intended audience.
3. Circumstances where material disclosures are needed include, but are not limited to, the following:
 - a. Advertising for unassembled products should clearly indicate they need to be put together to be used properly.
 - b. If any item essential to use of the product is not included, such as batteries, this fact should be disclosed clearly.
 - c. Advertisers should clearly disclose information about products purchased separately, such as accessories or individual items in a collection.
 - d. If television advertising to children involves the use of a toll-free telephone number, it must be clearly stated, in both audio and video disclosures, that the child must get an adult's permission to call. In print or online advertising, this disclosure must be clearly and prominently displayed.
4. Advertisers that create or sponsor an area in cyberspace, either through an online service or a Website, must prominently identify the name of the sponsoring company and/or brand in that area. This could be done by using wording such as "Sponsored by _____."
5. If videotapes, CD-ROMS, DVDs or software marketed to children contain advertising or promotions (*e.g.*, trailers) this fact should be clearly disclosed on the packaging.

(d) Endorsements

1. Advertisers should recognize that the mere appearance of a celebrity or authority figure with a product can significantly alter a child's perception of the product. Advertisers may use such personalities as product endorsers,

presenters, or testifiers, but they must take great care to avoid creating any false impression that the use of the product enhanced the celebrity's or authority figure's performance.

2. All personal endorsements should reflect the actual experiences and beliefs of the endorser.
3. An endorser who is represented, either directly or indirectly, as an expert must possess qualifications appropriate to the particular expertise depicted in the endorsement.

(e) Blurring of Advertising and Editorial/Program Content

1. Advertisers should recognize that children may have difficulty distinguishing between program/editorial content and advertising, *e.g.*, when program/editorial characters make advertising presentations or when an advertisement appears to be content to the intended audience.
2. Advertising should not be presented in a manner that blurs the distinction between advertising and program/editorial content in ways that would be misleading to children.²
3. Prohibited practices in television advertising
 - a. Program personalities, live or animated, should not be used to advertise products, premiums or services in or adjacent to a television program primarily directed to children under 12 years of age in which the same personality or character appears.
 - b. Products derived from or associated with a television program primarily directed to children under 12 years of age should not be advertised during or adjacent to that program.
4. In media other than television, a character or personality associated with the editorial/content of the media should not be used to sell products, premiums or services in close proximity to the program/editorial content, unless the advertiser makes it clear, in a manner that will be easily understood by the intended audience, that it is an advertisement.³
5. On Websites directed to children, if an advertiser integrates an advertisement into the content of a game or activity, then the advertiser should make clear, in a manner that will be easily understood by the intended audience, that it is an advertisement.
6. If videotapes, CD-ROMS, DVDs or software marketed to children contain advertising or promotions (*e.g.*, trailers), the advertising itself should be

² This provision does not apply to the mere presence of a product or character in program/editorial content.

³ This provision does not apply to the mere presence of a character or personality in program/editorial content.

separated from the program and clearly designated as advertising.

(f) Premiums, Kids' Clubs, Sweepstakes and Contests

1. Advertisers should recognize that their use of premiums, kids' clubs, contests and sweepstakes has the potential to enhance the appeal of their products to children.
2. Advertisers should take special care in using these kinds of promotions to guard against exploiting children's immaturity.

i. Premiums

- a. Since children have difficulty distinguishing product from premium, advertising that contains a premium message should focus the child's attention primarily on the product and make the premium message clearly secondary.
- b. Conditions of a premium offer should be stated simply and clearly.

ii. Kids' Clubs

- a. Advertising should not mislead children into thinking they are joining a club when they are merely making a purchase or receiving a premium.
- b. Before an advertiser uses the word "club," certain minimum requirements should be met. These are:
 1. Interactivity - The child should perform some act demonstrating an intent to join the club, and receive something in return. Merely watching a television program or eating in a particular restaurant, for example, does not constitute membership in a club.
 2. Continuity - There should be an ongoing relationship between the club and the child member, *e.g.*, a regular newsletter or activities scheduled over a period of time.
 3. Exclusivity - The activities or benefits derived from membership in the club should be exclusive to its members, and not merely the result of purchasing a particular product.
- c. Additional requirements applying to kids' clubs online are covered in Part II of the Guidelines.

iii. Sweepstakes and Contests

- a. Advertisers should recognize that children may have unrealistic expectations about the chances of winning a sweepstakes or

contest or inflated expectations of the prize(s) to be won.

- b. The prize(s) should be clearly depicted.
- c. The free means of entry should be clearly disclosed.
- d. The likelihood of winning should be clearly disclosed in language readily understandable to the child audience. Disclosures such as, "Many will enter, a few will win." should be used, where appropriate.
- e. All prizes should be appropriate to the child audience.
- f. Online contests or sweepstakes should not require the child to provide more information than is reasonably necessary. Any information collection must meet the requirements of the Data Collection section of the Guidelines and the federal Children's Online Privacy Protection Act (COPPA). For examples of compliant information collection practices for this purpose, please visit www.caru.org/news/commentary.asp.

(g) Online Sales

1. Advertisers who sell products and services to children online should clearly indicate to the children when they are being targeted for a sale.
2. If an advertiser offers the opportunity to purchase any product or service, either through the use of a "click here to order" button or other on-screen means, the ordering instructions must clearly and prominently state that a child must have a parent's permission to order.
3. Online advertisers must make reasonable efforts, in light of all available technologies, to provide the person responsible for paying for such products and services the means to exercise control over the transaction.⁴
4. If no reasonable means is provided to avoid unauthorized purchases by children online, the advertiser should enable the person responsible for payment to cancel the order and receive full credit without incurring any charges.

(h) Sales Pressure

1. Advertising should not urge children to ask parents or others to buy products. It should not suggest that a parent or adult who purchases a product or service for a child is better, more intelligent or more generous than one who does not.

⁴ Requiring the use of a credit card in connection with a transaction is a reasonable effort to provide the person responsible for payment with control over the transaction. This is consistent with COPPA regulations. See 16 CFR § 312.5.

2. Advertisers should avoid using sales pressure in advertising to children, *e.g.*, creating a sense of urgency by using words such as "buy it now."
3. Advertisements should not convey to children that possession of a product will result in greater acceptance by peers or that lack of a product will result in less acceptance by peers.
4. Advertisements should not imply that purchase or use of a product will confer upon the user the prestige, skills or other special qualities of characters appearing in advertising.
5. Advertisements should not minimize the price of goods and services with words such as, "only," "just," or "bargain price" that children do not understand to be exaggeration or "puffing."

(i) Unsafe and Inappropriate Advertising to Children

1. Safety

- a. Advertisers should take into account that children are prone to exploration, imitation, and experimentation and may imitate product demonstrations or other activities depicted in advertisements without regard to risk.
- b. Advertisers should not advertise products directly to children that pose safety risks to them, *i.e.*, drugs and dietary supplements, alcohol, products labeled, "Keep out of the reach of children;" nor should advertisers targeting children display or knowingly link to pages of Websites that advertise such products.
- c. Advertisements for children's products should show them being used by children in the appropriate age range. For instance, young children should not be shown playing with toys safe only for older children.
- d. Advertisements should not portray adults or children in unsafe situations or in acts harmful to themselves or others. For example, when activities (such as bicycle riding or skateboarding) are shown, proper precautions and safety equipment should be depicted; when an activity would be unsafe without adult supervision, supervision should be depicted.
- e. Advertisers should be aware that many childhood injuries occur from the misuse of common household products and should avoid demonstrations that may encourage inappropriate use of such products by children.

2. Inappropriate Advertising

- a. Advertisers should take care to assure that only age appropriate videos, films and interactive software are advertised to children, and if an industry rating system applies to the product, the rating label is

prominently displayed.⁵

- b. Advertising should not portray or encourage behavior inappropriate for children (e.g., violence or sexuality) or include material that could unduly frighten or provoke anxiety in children; nor should advertisers targeting children display or knowingly link to pages of a Website that portray such behaviors or materials.

3. Part II: Guidelines for Online Privacy Protection

This Part addresses concerns about the collection of personal data from children and other privacy-related practices on the Internet. Its provisions are consistent with the Children's Online Privacy Protection Act of 1998 (COPPA) and the FTC's implementing Rule, which protect children under the age of 13, and will be interpreted consistently with those rules.

Online data collection from children poses special concerns. The medium offers unique opportunities to interact with children and to gather information for marketing purposes. Young children however, may not understand the nature of the information being sought or its intended uses, and the medium makes it easy to collect such data directly and passively from children without the supervision or permission of their parents or guardians. The collection of personal information as defined in Data Collection, below, from children therefore triggers special privacy and security concerns.

The guidelines below address those concerns by providing guidance on specific issues involving online data collection and other privacy-related practices by operators of websites or other online services that: 1) target children under 13 years of age (based on the criteria set forth in the definition of Website or online services directed to children in Section 312.2 of the COPPA Rule); 2) knowingly collect personal information from users of websites or other online services that target children under 13 years of age (based on the criteria set forth in the definition of Website or online services directed to children in Section 312.2 of the COPPA Rule); 3) or that know or should know that a visitor is a child under 13 years of age.

(a) Data Collection

1. *Personal information* is defined as individually identifiable information collected online, including: first and last name; home or physical address; online contact information, such as email addresses, or other identifiers that allow direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier; a screen or user name where it functions in the same manner as online contact information; a phone number; a Social Security number; a persistent identifier that can be used to recognize a user over time and across different websites and online services, e.g., a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier; a photo, video or audio file where such files contain a child's image or voice; geolocation information

⁵ Violations of this guideline may be brought to the attention of the relevant rating entity.

sufficient to identify street name or name of a city or town; or information concerning the child or the parents of that child and combines with information contained in this definition.

2. In collecting⁶ information from children under 13 years of age, operators should adhere to the following guidelines: Operators must clearly disclose all information collection and tracking practices, all information uses, and the means for correcting or removing the information. These disclosures should be prominent and readily accessible before any information is collected. For instance, on a Website where there is passive tracking, the notice should be on the page where the child enters the site. A heading such as "Privacy," "Our Privacy Policy," or similar designation is acceptable if it allows an adult to click on the heading to obtain additional information on the site's practices concerning information collection, tracking and uses.
3. Operators should disclose, in language easily understood by a child, (a) why the information is being collected (e.g., "We'll use your name and email to enter you in this contest and also add it to our mailing list") and (b) whether the information is intended to be shared, sold or distributed outside of the collecting company.
4. Operators should disclose any passive means of collecting information from children (e.g., navigational tracking tools, browser files, persistent identifiers, etc.) and what information is being collected.
5. Operators must obtain "verifiable parental consent"⁷ before they collect personal information (such as email addresses, screen names associated with other personal information, phone numbers, addresses or photographs) that will be publicly posted, thereby enabling others to communicate directly with the child online or offline, or when the child will be otherwise able to communicate directly with others.
6. For activities that involve public posting, operators should encourage children not to use their full names or screen names that correspond with their email address, but choose an alias (e.g., "Bookworm," "Skater," etc.) or use first name, nickname, initials, etc.
7. Operators should not require a child to disclose more personal information than is reasonably necessary to participate in the online activity (e.g., play a game, enter a contest, etc.).
8. Operators must obtain "verifiable parental consent" before they collect, share and/or distribute personal information to third parties, except those who

⁶ *Collects or collection* means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting, prompting, or encouraging a child to submit personal information online; (b) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or (c) Passive tracking of a child online.

⁷ The definition of "verifiable parental consent" in the Children's Online Privacy Protection Rule applies. See 16 CFR § 312.5.

provide support for the internal operation of the Website or online service and who do not use or disclose such information for any other purpose.⁸

9. When an operator collects personal information only for its internal use and there is no disclosure of the information, the company must obtain parental consent, and may do so through the use of email, coupled with some additional steps to provide assurance that the person providing the consent is the parent.
10. **Exceptions to prior parental consent:** (1) Where the sole purpose of collecting the name or online contact information of the parent is to provide notice and obtain parental consent; (2) Where the purpose of collecting a parent's online contact information is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a website or online services that does not otherwise collect, use or disclose children's personal information; (3) Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child and the information is not used to re-contact the child or any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request; (4) Where an operator collects and retains online contact information to be able to respond directly more than once to a child's specific request (such as an email newsletter or contest) but will not use the information for any other purpose, the operator must directly notify the parent of the nature and intended uses of the information collected, and permit access to the information sufficient to allow a parent to remove or correct the information; (5) Where the purpose of collecting a child's and a parent's name and online contact information is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety; (6) Where the purpose of collecting a child's name and online contact information is to: (i) protect the security of integrity of its website or online service; (ii) take precautions against liability; (iii) respond to judicial process; (iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public

⁸ *Third party* means any person who is not:

- (a) An operator with respect to the collection or maintenance of personal information on the website or online service; or
- (b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Support for the internal operations of the website or online service means those activities necessary to:

- (a) maintain or analyze the functioning of the website or online service;
- (b) perform network communications;
- (c) authenticate users of, or personalize the content on, the website or online service;
- (d) serve contextual advertising on the website or online service or cap the frequency of advertising;
- (e) protect the security or integrity of the user, website, or online service;
- (f) ensure legal or regulatory compliance; or
- (g) fulfill a request of a child as permitted by these guidelines;

so long as the information collected for the activities listed in paragraphs (a)-(g) is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.

safety; where such information is not used for any other purpose; (7) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service; (8) Where an operator covered under paragraph (b) of the definition of website or online service directed to children collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child.

11. To respect the privacy of parents, operators should not maintain in retrievable form information collected and used for the sole purpose of obtaining verifiable parental consent or providing notice to parents, if consent is not obtained after a reasonable time.
12. If an operator communicates with a child by email, there should be an opportunity with each mailing for the child or parent to choose by return email or hyperlink to discontinue receiving mailings.

(b) Age-Screening/Hyperlinks

1. Websites or online services that are directed to children under the criteria set forth in the definition of Website or online services directed to children in Section 312.2 of the COPPA Rule, but that do not target children as the primary audience, shall not be deemed directed to children if such sites or services: i) do not collect personal information from any visitor prior to collecting age information; and (ii) prevent the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provision of the COPPA Rule.
2. Operators should ask screening questions in a neutral manner so as to discourage inaccurate answers from children trying to avoid parental permission requirements.
3. Age-screening mechanisms should be used in conjunction with technology, *e.g.*, a session cookie, to help prevent underage children from going back and changing their age to circumvent age-screening.
4. Since hyperlinks can allow a child to move seamlessly from one site to another, operators of Websites for children or children's portions of general audience sites should not knowingly link to pages of other sites that do not comply with CARU's Guidelines.

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EXHIBIT C

CARU Safe Harbor Program Requirements and Compliance Checklist

The Children's Advertising Review Unit (CARU) was founded in 1974 to promote responsible children's advertising as part of a strategic alliance with the major advertising trade associations through the National Advertising Review Council, now renamed the Advertising Self-Regulatory Council, (comprising the AAAA, the AAF, the ANA and the CBBB). CARU is the children's arm of the advertising industry's self-regulation program and evaluates child-directed advertising and promotional material in all media to advance truthfulness, accuracy and consistency with the Self-Regulatory Program for Children's Advertising (the "Guidelines") and relevant laws. As an extension of its mission, to help advertisers deal sensitively with the child audience in a responsible manner, CARU has established this Safe Harbor Program to aid our supporters in protecting the privacy of children online, and meeting the requirements of COPPA and our Guidelines. CARU's Safe Harbor Program includes the following components:

Participant's full adherence to the requirements set forth in the CARU Safe Harbor Compliance Checklist;

Participant's compliance with CARU's Self-Regulatory Guidelines for Children's Advertising, including the Guidelines on Online Privacy Protection;

Review by CARU staff of the participant Web site information practices, including completion by CARU staff of an Initial Website Review Form;

Ongoing monitoring by CARU staff of the participant's Web site to assess and ensure compliance with the Safe Harbor Program; and

Completion of CARU's Self-Assessment Form and Attestation by the Safe Harbor participant, which must be completed and signed by a responsible corporate officer, and the subsequent submission to CARU of an updated Self-Assessment Form and Attestation one month prior to each anniversary of the date of acceptance in the CARU Safe Harbor Program.

In addition, the participant agrees to adhere to the following: the provisions of the NAD/CARU/NARB Procedures, including those concerning complaints, appeals and enforcement of compliance; the provisions of the Online Interest-Based Advertising Accountability Program's Procedures; the COPPA Rule, 16 C.F.R. Part 312.

CARU Safe Harbor Compliance Checklist

PROVIDE NOTICE

All notices must be clearly written, understandable and contain no unrelated, confusing or contradictory materials.

I. Direct notice to the parent

An operator of a website or other online service that: 1) targets children under 13 (based on the criteria set forth in the definition of Website or online services directed to children in Section 312.2 of the COPPA Rule); 2) knowingly collects personal information from users of websites or other online services that target children under 13 years of age (based on the criteria set forth in the definition of Website or online services directed to children in Section 312.2 of the COPPA Rule); or that knows or should know that a visitor is a child under 13 years of age must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.

Personal information means individually identifiable information about an individual collected online, including:

- (a) A first and last name;
- (b) A home or other physical address including street name and name of a city or town;
- (c) Online contact information, i.e., an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier;
- (d) A screen or user name where it functions in the same manner as online contact information, as defined in this section;
- (e) A telephone number;
- (f) A Social Security number;
- (g) A persistent identifier that can be used to recognize a user over time and across different websites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;
- (h) A photograph, video, or audio file where such file contains a child's image or voice;
- (i) Geolocation information sufficient to identify street name and name of a city or town; or
- (j) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

This direct notice must state the following:

- That the operator has collected the parent's online contact information from the child, and, if such is the case, the name of the child or the parent, in order to obtain the parent's consent;

- That the parent's consent is required for the collection, use, or disclosure of such information, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;
- The additional items of personal information the operator intends to collect from the child, or the potential opportunities for the disclosure of personal information, should the parent provide consent;
- A hyperlink to the operator's online notice of its information Practices;
- The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and
- That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.

Voluntary Notice. Where an operator chooses to notify a parent of a child's participation in a website or online service, and where such site or service does not collect any personal information other than the parent's online contact information (voluntary notice), the direct notice shall set forth:

- That the operator has collected the parent's online contact information from the child in order to provide notice to, and subsequently update the parent about, a child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information;
- That the parent's online contact information will not be used or disclosed for any other purpose;
- That the parent may refuse to permit the child's participation in the website or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and,
- A hyperlink to the operator's online notice of its information practices.

Multiple Use Notice. Where an operator wishes to communicate with a child multiple times, the direct notice must state:

- That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;
- That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;
- That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;
- That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;
- That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and,
- A hyperlink to the operator's online notice of its information

practices.

II. Web Site Notice/Children's Privacy Policy

In addition to the direct notice to the parent, an operator must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its website or online service, *and*, at each area of the website or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each area and must be clearly labeled as a Privacy Policy, Notice of Information Practices, Privacy Notice, or other, similar descriptor. An operator of a general audience website or online service that has a separate children's area must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be complete, the online notice of the website or online service's information practices must state the following:

- The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service. *Provided that:* the operators of a website or online service may list the name, address, phone number, and e-mail address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;
- A description of what information the operator collects from children (e.g., name, address, phone number, IP address, UDID, etc.), and whether collected directly or passively, including whether the website or online service enables a child to make personal information publicly available, for example in a chat room or bulletin board; how the operator uses such information, for example, marketing to a child; and, the operator's disclosure practices for such information; and
- That the parent can review or have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

OBTAIN VERIFIABLE PARENTAL CONSENT

An operator must obtain verifiable parental consent before collecting, using or disclosing personal information from a child (except as specifically listed below under "Exceptions to Verifiable Parental Consent"), including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented. An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

Verifiable parental consent may be obtained as follows:

- a) Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;
- b) Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
- c) Having a parent call a toll-free telephone number staffed by trained personnel;
- d) Having a parent connect to trained personnel via video-conference;
- e) Verifying a parent's identity by checking a form of government issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete; or
- f) *Provided that*, an operator that does not disclose children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include:
 1. sending a confirmatory email to the parent following receipt of consent, or
 2. obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email.

Exceptions to Verifiable Parental Consent

Prior parental consent is not required under the following circumstances:

- When an operator collects a child's or parent's email address solely to provide notice and seek consent. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;
- Where the purpose of collecting a parent's online contact information is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice;
- Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or

for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;

- Where the purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives direct notice as described above. An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;
- Where the purpose of collecting a child's and a parent's name and online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with direct notice;
- Where the purpose of collecting a child's name and online contact information is to:
 - (i) protect the security or integrity of its website or online service;
 - (ii) take precautions against liability;
 - (iii) respond to judicial process; or
 - (iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on matter related to public safety; and where such information is not be used for any other purpose;
- Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service. In such case, there also shall be no obligation to provide direct notice to a parent; or
- Where an operator collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide direct notice to a parent.

Support for the internal operations of the website or online service means those activities necessary to:

- (a) maintain or analyze the functioning of the website or online service;
- (b) perform network communications;
- (c) authenticate users of, or personalize the content on, the website or online service;

- (d) serve contextual advertising on the website or online service or cap the frequency of advertising;
- (e) protect the security or integrity of the user, website, or online service;
- (f) ensure legal or regulatory compliance; or
- (g) fulfill a request of a child as permitted by §§ 312.5(c)(3) and (4) of the COPPA rule; so long as the information collected for the activities listed in paragraphs (a)-(g) is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.

LIMIT THE COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION COLLECTED FROM CHILDREN

Operators cannot condition a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

In addition, the operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to the disclosure of that information to third parties.

PROVIDE ACCESS UPON VERIFICATION OF PARENTAL IDENTITY

Operators of websites, when requested by parents, must disclose to parents the types of information they collect from children as well the specific information collected. In addition, operators must give parents the opportunity, at any time, to refuse to permit the operator's further use or future online collection of personal information from her/his child, and to direct the operator to delete the child's personal information. In order to ensure that operators do not disclose a child's specific personal information to someone who is not the child's parent, the operator must verify the parent's identity using one of the methods labeled a) through e) under "Verifiable Parental Consent," above.

MAINTAIN REASONABLE SECURITY

Operators of web sites or online services must establish procedures and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. Operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

Third party means any person who is not:

- (a) An operator with respect to the collection or maintenance of personal information on the website or online service; or

(b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

LIMIT DATA RETENTION

Operators of websites or online services must retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

Exhibit D

Confidential CARU Self-Assessment Form

This confidential self-assessment form will be reviewed for the sole purpose of assessing the listed Website(s), MobileApp(s) (“apps”) or Online Service(s) for CARU’s Safe Harbor Program.

Online service/App name(s), URL(s), covered by this request:

Company name: _____

Contact person: _____

Contact phone and email: _____

Please note: If you are seeking Safe Harbor status for multiple websites, apps or online services and information collection practices differ significantly at each service, it is preferable to submit separate forms to facilitate the review.

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I. GENERAL:

[REDACTED]

[REDACTED]

II. ONLINE SERVICE CONTENT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. PRIVACY POLICY

[REDACTED]

[REDACTED]

IV. INFORMATION COLLECTION PRACTICES:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. TRACKING PRACTICES & INFORMATION SHARING:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. NOTICE/VERIFIABLE PARENTAL CONSENT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VII. HYPERLINKS & CARU'S GUIDELINES:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VIII. SECURITY

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

48. [REDACTED]

PLEASE BE SURE TO ATTACH ANY FORMS NECESSARY TO SUPPORT YOUR APPLICATION.

ATTESTATION

In submitting this application on behalf of _____, I attest that the information provided is truthful and accurate.

I undertake that, if accepted into CARU's Safe Harbor program, the online service (s) identified in this application will:

Adhere to CARU's *Self-Regulatory Program for Children's Advertising*.

Adhere to the *Online Interest-Based Advertising Accountability Program's* Procedures

Adhere to the COPPA Rule, 16 C.F.R. Part 312.

Submit a signed CARU Safe Harbor Participation Agreement.

Notify CARU of any material change to the privacy practices on _____'s online service(s) and provide a full description of changes.

Submit a new Self-Assessment Form at least **one month prior to the anniversary** date of acceptance into the CARU Safe Harbor program, updating the privacy practices on _____'s online service(s).

Designated Safe Harbor Representative

Date

Print Name and Title: _____

EXHIBIT E

Website/App Review Form

Date of Review:

Reviewer Name:

Website/App Name/URL:

Company Name:

Is this a supporter site?

Violations noted:

Email sent to parents:

Website/App

- A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- B. [REDACTED]
[REDACTED]
[REDACTED]
- C. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[Redacted text block]

D. [Redacted text block]

Information Collection

[Redacted text block]

A. [Redacted text block]

B. [Redacted text block]

C. [REDACTED]

D. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. [REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

F. [Redacted text block]

G. [Redacted text block]

H. [Redacted text block]

Privacy Policy

A. [Redacted text block]

B. [Redacted text block]

C.

D.

Information Retention

General CARU Guidelines

[REDACTED]

ATTORNEY'S NOTES:

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

PROCEDURES

Policy Oversight By:

The Advertising Self-Regulatory Council (ASRC)

Administered By:

The Council of Better Business Bureaus, Inc. (CBBB)

Effective August 2011



A service of the advertising industry and Council of Better Business Bureaus

ASRC Partners:



1.0 MISSION

The mission of the Online Interest-Based Advertising Accountability Program (hereinafter "Accountability Program") is to build consumer trust in online behavioral advertising ("OBA") by ensuring that persons and entities engaged in OBA comply with the Self-Regulatory Principles for Online Behavioral Advertising ("Principles"). The Accountability Program will monitor covered entities' compliance; institute inquiries into cases of potential non-compliance; work with covered entities to expeditiously resolve instances of non-compliance; and publish cases of non-participation or uncorrected non-compliance and refer such cases to the appropriate government agency.

2.0 DEFINITION OF TERMS

2.1 Substantive Terms Defined by the Principles

Definitions of substantive terms relating to the Principles are found in the Principles, and the accompanying Commentary, as these may from time to time be amended. These documents are available at aboutads.info. The Accountability Program will rely on and follow these definitions in its decisions, providing clarification in instances of ambiguity.

2.2 Procedural Terms

A. Case

A completed review of an inquiry resulting in a decision.

B. Challenger

A person or entity that has initiated an inquiry and chooses to participate in the review.

C. Covered Entity

A person or entity (and its affiliates, if applicable) engaged in OBA whose activities are covered by the Principles. Generally, covered entities include third party ad networks, ad agencies, service providers, or web publishers, but may also include advertisers or others that are part of the OBA ecosystem.

D. Decision

The official document issued by the Accountability Program at the end of the review detailing the nature of the review and the conclusions thereto.

E. Inquiry

A question or complaint regarding a covered entity's compliance with the Principles.

F. Notice of Review

The documents sent to the covered entity stating that the Accountability Program has determined to open a review. The receipt of the notice of review triggers the start of the time period for the review.

G. OBA Practices

The Principles require that covered entities take certain steps and follow certain procedures to comply with the requirements of the Principles. These will be referred to as OBA practices.

H. Participants

Challengers and covered entities that are participating in a review and have signed the participation agreement required herein.

I. Review

The process the Accountability Program undertakes to reach a decision.

3.0. OVERVIEW

A. Organization and Management

The Accountability Program is managed under ASRC auspices and policy oversight, and is administered by the CBBB.

B. Scope and Exercise of Discretion

Determinations as to whether the Accountability Program will initiate an inquiry and/or open a review will be made at the sole discretion of the Accountability Program. It is anticipated that inquiries and reviews will focus primarily on

OBA issues directly related to the Transparency and Control Principles, but inquiries and reviews will not be limited to such issues.

C. Confidentiality of Proceedings

With the exception of the Accountability Program press release and the Accountability Program decision, all deliberations, meetings, proceedings and records of the Accountability Program process shall be confidential except when disclosure is specifically authorized by these rules or required by law. The Accountability Program's decision and press release are the only permanent records required to be kept for each case.

D. Decisions

Upon completion of a review, the Accountability Program will publish a decision as provided by Section 6.0.B.

E. Press Releases

Upon completion of a review and the issuance of a decision, the Accountability Program will issue a press release that will be disseminated to the press and interested members of the online behavioral advertising industry. The press release will include a brief summary of the decision.

F. Use of Decision and Press Release

It is the policy of the Accountability Program not to endorse any covered entity, product or service, and a favorable decision regarding the OBA practices of a covered entity should in no way be construed as an endorsement. Similarly, a covered entity's modification of its OBA practices, in cooperation with the Accountability Program's self-regulatory processes, should not be construed as an admission of any impropriety. The decision and/or press release may not be used by any participant or any agent of the participant as a form of promotion for any entity or any particular product or service.

A decision that does not recommend changes or modifications to the OBA practices of the covered entity shall not be construed as approval of the OBA practices, and covered entities may not use the decision in any way that states or implies that their OBA practices have been approved.

The Accountability Program may issue a public statement, for clarification purposes, if any person or entity mischaracterizes any decision or uses and/or disseminates any decision or press release for any advertising or promotional purposes.

G. Agreement of Participants

1. To ensure the integrity and cooperative nature of the Accountability Program review process, participants agree:

(i) to keep the proceedings confidential throughout the Accountability Program review process;

(ii) not to subpoena any witnesses or documents from the Accountability Program, its monitoring service, CBBB and/or ASRC regarding the Accountability Program review in any future court or other proceeding (except for the purpose of authentication of a final, published case decision by a staff member) and to pay attorneys fees and costs if such a subpoena is attempted and successfully resisted; and,

(iii) not to mischaracterize any Accountability Program case decision that is issued, not to issue a press release or to disseminate or otherwise use any Accountability Program case decision or press release for any advertising or promotional purpose; and,

(iv) to restrict circulation of any materials provided during the review process to persons directly involved in the review and to return all copies of such materials at the end of the review; and,

(vi) not to hold the Accountability Program, its staff and monitoring service, the CBBB and/or ASRC liable for any act or omission in connection with this proceeding,

2. CBBB's monitoring service is an intended third party beneficiary of this Agreement.

3. If any participant or prospective participant violates any of the requirements set forth in these *Procedures*, the Accountability Program will have the discretion to close a review, refer the matter to the appropriate government agency, and/or issue a press release setting forth the details of the violation.

H. Non-Participation Referrals to Government Agencies

If the subject of the inquiry elects not to participate in an Accountability Program review after receiving notice of the review pursuant to Section 5.0, the Accountability Program may compile a record of the facts obtained and the allegations made regarding the asserted non-compliance with the Principles, review and evaluate the record, and forward the record and the Accountability Program's conclusions to the appropriate government agency. The

Accountability Program shall publish reports of such referrals and may issue a press release with respect to the referral.

4.0. THE INQUIRY

A. Who may Initiate an Inquiry

Any person or entity (including the Accountability Program in the exercise of its monitoring and accountability responsibilities) may initiate an inquiry regarding whether a covered entity's OBA practices are in compliance with the Principles.

B. Content and Format of an Inquiry

All inquiries (except those submitted by consumers or initiated by the Accountability Program), should be submitted in both hard copy and in electronic format and should be no longer than eight (8) double-spaced typewritten pages. The Accountability Program encourages all persons or entities filing inquiries to include data supporting their inquiry including the following when applicable: representative screen shots documenting the alleged non-compliance at issue, evidence of communications between the web site and the computer or device, evidence of the data collected or used during the alleged non-compliant activity or practice at issue, the entities engaged in the alleged non-compliant activity or OBA practices at issue and their roles, and other data demonstrating potential non-compliance with the Principles. The Accountability Program encourages those persons or entities filing inquiries to limit their arguments to the primary compliance issues involved. Arguments and documents that are not germane to an alleged instance of non-compliance with the Principles will be determined to be out of scope and such arguments or documents will not be considered.

C. Accountability Program Discretion to Select Inquiries for Review

1. The Accountability Program shall have sole and exclusive authority and discretion to select, accept or reject matters with respect to which it will conduct reviews based upon criteria that include, but are not limited to, the following: the number of consumers potentially affected by the alleged violation of the Principles, the significance of the issues being raised, the availability of evidence, staff resources of the Accountability Program, and the need to resolve pending matters expeditiously.
2. Upon receipt of any inquiry, the Accountability Program will promptly acknowledge receipt and take such of the following actions as may be appropriate:

(a) forward the inquiry, along with a notice of review and a participation agreement, to the appropriate covered entity responsible for the practice at issue (see Section 5.0);

(b) advise the person or entity filing the inquiry that the matter is not appropriate for review by the Accountability Program if, at the time of the inquiry or during the course of a review, the Accountability Program determines that:

(i) the acts or omissions complained of are not directly related to compliance with the Principles by a covered entity;

(ii) the OBA practices at issue are the subject of pending litigation or an order by a court;

(iii) the OBA practices at issue are the subject of a federal government agency consent decree or order;

(iv) the OBA practices at issue have been permanently discontinued or corrected and the Accountability Program receives the covered entity's assurance, in writing, that the practices at issue will not be used by the covered entity in the future. The Accountability Program reserves the right in such instances to conduct a further review as set forth in Section 10.0.C; or

(v) Review is not appropriate due to limitations of time, staff resources, and/or the nature of the inquiry.

3. The Accountability Program will advise the person or entity filing the inquiry as to the action it has taken under Section. 4.0(C)(2).

4. The Accountability Program reserves the right to refuse to open or to continue to handle a review when a person or entity filing an inquiry publicizes the fact that an inquiry has been submitted and/or that a review has been commenced.

D. Any and all determinations that are rendered pursuant to these *Procedures* shall be at the sole discretion of the Accountability Program.

5.0 THE REVIEW

A. Notice of Review

When the Accountability Program initiates a review, it will notify the covered entity of the OBA practices at issue and ask for the covered entity's agreement to participate in the Accountability Program review and for its response to the

issues raised in the review. The covered entity and any challenger will have the opportunity to submit materials to the Accountability Program during the review process as set out in these *Procedures*.

B. Calculation of Time

Time periods specified in the *Procedures* shall commence on and include the first business day following the date of the triggering event.

C. Participation in the Review

The person or entity that files the inquiry will have the option of participating in the review as a challenger on the terms and conditions set forth below.

1. A person or entity that files an inquiry and wishes to participate in the Accountability Program review as a challenger shall so notify the Accountability Program in writing when filing the inquiry and shall sign the participation agreement provided by the Accountability Program. Subject to the receipt of this written notification and the signed participation agreement, the Accountability Program shall grant the filer challenger status and provide access to the covered entity's non-confidential submission(s) under these *Procedures*. The challenger may submit comments to the record pursuant to Section 5.3.
2. A person or entity that files an inquiry and does not wish to participate in the Accountability Program review as a challenger will so advise the Accountability Program in writing when filing the inquiry and will not receive any information provided by the covered entity during the review.

D. Confidentiality and Disclosure during the Review

1. The identity of the participants. The identity of a challenger will be disclosed to the covered entity in the notice of review and will be disclosed in the decision. The identity of a person or entity that elects not to participate in the review as a challenger will not be disclosed.
2. Disclosure of materials submitted by the challenger. All written materials submitted to the Accountability Program by a challenger will be made available by the Accountability Program to the covered entity; provided, however, that any materials submitted by a challenger on condition that these materials not be shown to the covered entity shall instead be returned to the challenger by the Accountability Program, and in such event the Accountability Program shall not consider any such materials in connection with its review.

3. Covered entity requests for confidentiality. Except as otherwise provided herein with respect to documents submitted as confidential and accepted as such by the Accountability Program, all written materials submitted to the Accountability Program by a covered entity will be made available to the challenger. A covered entity may submit trade secrets and/or proprietary information or data to the Accountability Program with the request that such confidential data not be made available to the challenger, provided it shall:

(a) clearly identify those portions of the submission that it is requesting be kept confidential in the copy submitted for the Accountability Program's review;

(b) redact any confidential portions from the duplicate copy submitted to the Accountability Program that will be forwarded to the challenger and label the redacted version accordingly;

(c) provide a written statement setting forth the basis for the request for confidentiality;

(d) affirm that the information for which confidentiality is claimed is not publicly available and consists of trade secrets and/or proprietary information or data; and

(e) attach, as an exhibit to its response, a comprehensive summary of the proprietary information and data (including as much non-confidential information as possible about the methodology employed and the results obtained).

4. Treatment of confidential material by the Accountability Program. If the Accountability Program accepts the claim of confidentiality, it will consider the submitted documents as part of the review and will provide the challenger with the redacted version of the data and the summary thereof provided by the covered entity. Upon request, confidential materials submitted to the Accountability Program during the pendency of a case shall be returned to the submitting party when the case is closed.

5.1 Written Response By The Covered Entity

A. Response to Notice of Review

The covered entity shall, within fifteen (15) business days after receipt of notice of the review, submit to the Accountability Program either:

1. A written statement that it will not participate in the review, or

2. A signed participation agreement and a response in accordance with Section 5.1.B.

B. Content of Response

The covered entity's response shall include the following:

1. A description of the OBA practices at issue and its position as to whether those practices comply with the Principles, and
2. Evidence demonstrating the covered entity's compliance with the Principles which shall include the following when applicable: copies of representative screen shots of the OBA practices at issue; a description of the methodology and technology used to conduct the OBA practices; a description and log of the data collected and/or used during the conduct of the OBA practices; a listing of all the entities engaged in the conduct of the OBA practices with a description of their role; and a copy of all applicable notices, enhanced notices and choice mechanisms along with a description and screen shot of their location on the web site(s).

C. Form of Response

The covered entity's response shall be submitted in hard copy and in electronic format (including exhibits when possible). Submissions by the covered entity should include only supporting evidence that is directly relevant to the OBA practices at issue in the review. To help ensure a timely review, covered entities should limit the length of their submissions to no more than eight (8) double-spaced typewritten pages (excluding evidentiary exhibits which should be submitted at the same time as the response). However, the Accountability Program will entertain a request, upon good cause shown, to grant an exception to this page limit.

D. Jurisdictional Issues

A covered entity's response that raises the issue of the Accountability Program's jurisdiction should be submitted as soon as possible after receipt of the notice of review, but in any event, must be submitted no later than fifteen (15) business days after the covered entity receives the notice of review. A response addressing jurisdiction does not waive the deadline for receipt of a substantive response as set forth herein.

5.2 Referrals Upon Failure To Respond Or Inability To Locate Covered Entity

A. Covered Entity's Failure to Participate in Review

The Accountability Program may refer the file to the appropriate government agency, and release information regarding the referral to the press and the public, if, within fifteen (15) business days after the covered entity's receipt of notice of review, either:

1. The covered entity submits a written statement indicating it will not participate in the review, or
2. The covered entity fails to submit a signed participation agreement and/or a response as required by Section 5.1.

B. Inability to Locate the Covered Entity

If, after exercising reasonable due diligence, the Accountability Program is unable to locate an email or mailing address for a covered entity whose OBA practices are under review, the Accountability Program may refer the file to the appropriate government agency and release information regarding the referral to the press and the public, and may report the referral on its web site. Accountability Program referrals pursuant to this section may be made either individually or collectively.

5.3 Reply of the Challenger

A. Submission of Covered Entity's Response to the Challenger

The Accountability Program shall promptly forward to the challenger a copy of the covered entity's written response, with the exception of confidential information, which shall be sent to the challenger in redacted form, along with the summary required in Section 5.0.D.3(e).

B. Challenger's Reply

Within fifteen (15) business days after receipt of the covered entity's written response, the challenger shall submit in duplicate hard copy and an electronic format (including exhibits when possible) its reply, if any, to the Accountability Program. To help ensure a timely review, challengers should limit the length of their reply to eight (8) double-spaced typewritten pages (excluding evidentiary exhibits). In exceptional circumstances, the challenger may file for leave to file a longer response.

C. Waiver of Right to Reply

1. After the challenger has reviewed the covered entity's first substantive written response, it may notify the Accountability Program in writing that it elects to waive its right to add to the record, thereby expediting the review.
2. In the event that a challenger waives its right to reply, additional information from either party may be submitted only upon request from the Accountability Program pursuant to Section 5.5.A or during a meeting pursuant to Section 5.5.B.
3. If the challenger does not submit a reply, the Accountability Program shall proceed to decide the review upon the expiration of the challenger's time to reply, subject to Section 5.5.

5.4 Final Response of the Covered Entity

If the challenger submits a reply pursuant to Section 5.3, the Accountability Program shall promptly forward a copy of that reply to the covered entity. Within fifteen (15) business days after receipt of this reply, the covered entity shall submit a response, if any, in duplicate hard copy and an electronic format (including exhibits when possible). To help ensure a timely review, the length of the response should be limited to 8 double-spaced typewritten pages (excluding evidentiary exhibits) unless a page limit extension has been granted for good cause shown. The Accountability Program shall forward a copy of the covered entity's response to the challenger's reply.

5.5 Additional Information and Meetings with the Participants

A. Accountability Program Request for Further Information

1. In the event that the Accountability Program deems it necessary, it may request further comments or data from the covered entity or the challenger.
2. If such comments or data are requested, the written response must be submitted within six (6) business days of the Accountability Program's request. The Accountability Program will immediately forward the additional response to the covered entity or challenger, who will be afforded six (6) business days to submit its own response to the submission.

B. Meetings

1. Meeting requests. The Accountability Program may, on its own initiative or at the request of one of the participants, request a teleconference or in-person meeting with either the challenger or the covered entity to discuss issues relating to the OBA practices at issue.

2. Timing and Summary of Meetings. The Accountability Program shall notify the other participant when a meeting is scheduled pursuant to Section 5.5.B.1 and, after the meeting, shall require the attending participant to draft a summary of the information exchanged. The Accountability Program will review and edit the summary as it deems appropriate and forward it to the other participant.

3. Meetings are not a substitute for a written submission. A meeting between the Accountability Program and a participant will not be conducted in lieu of any submission required under the *Procedures*. A meeting under this section does not increase the time in which a filing under the *Procedures* must be submitted.

5.6 Unsolicited Submissions

Submissions made in accordance with these *Procedures* will be accepted as part of the record. Any other submissions received by the Accountability Program will not be considered by the Accountability Program, and will be returned to the person or entity that submitted them.

5.7 Time Extensions

In order to facilitate an expeditious review and decision, extensions to the time requirements in these *Procedures* will only be granted for good cause shown. Requests for time extensions will not result in a tolling of the time for submissions unless the extension is granted. The request for a time extension shall be in duplicate hard copy and in electronic format and shall include a full explanation of the extraordinary circumstances for the requested time extension. The length of the request should be limited to four (4) double-spaced typewritten pages.

6.0 DECISION

A. Issuance of the Accountability Program Decision

1. After its receipt of the last document authorized by these *Procedures*, the Accountability Program will formulate its decision, provide a copy of the decision to the covered entity, and invite the covered entity to add a statement within five (5) business days after its receipt of the decision.

B. Content of the Decision

1. The decision will identify the covered entity; identify the OBA practices and Principles at issue; briefly summarize the position of the covered entity; state whether the OBA practices that were reviewed have been sufficiently demonstrated to be compliant with the Principles; and, when appropriate,

recommend that the covered entity discontinue or modify OBA practices that are not compliant with the Principles.

2. Where the Accountability Program review results in recommendations for discontinuance or modification of the covered entity's OBA practices, the Accountability Program retains oversight of the case and may request a status report from the covered entity, pursuant to Section 10.0, to determine whether the recommendations have been satisfactorily implemented.

C. Covered Entity's Statement

1. When Statement Is Required. In the event that the Accountability Program makes a recommendation to discontinue or modify OBA practices that are not compliant with the Principles, the covered entity shall, within five (5) business days of its receipt of the decision, submit a statement as to whether the covered entity agrees to comply with the recommendations. The covered entity's statement is not the venue to reargue the merits of the review, bring in new facts, or restate or summarize the Accountability Program's conclusions.

2. When Statement Is Optional. In the event that the Accountability Program decides that all of the OBA practices at issue have been compliant with the Principles, a covered entity may elect not to submit a statement to the Accountability Program.

3. Content and Length of Statement. The covered entity's statement should be concise and may not exceed one (1) double spaced page in length. The Accountability Program reserves the right to edit for length or inappropriate material.

D. Referral for Failure to File Statement When Required

In the event that the covered entity fails to submit a statement as required by Section 6.0.C.1 stating that it agrees to discontinue or modify the OBA practices as recommended, the Accountability Program may refer the matter to an appropriate government agency for review and possible enforcement action.

7.0 PUBLICATION OF THE DECISION

The Accountability Program shall include, as part of the published decision, a covered entity's statement submitted in accordance with Section 6.0.C, and shall (A) provide the decision to all parties, (B) make the decision available through press announcements in various industry and trade publications, and (C) post the decision on its web site.

8.0 CLOSING A REVIEW

When a review has been concluded with the publication of an Accountability Program decision, the review will be closed and, absent extraordinary circumstances, no further materially similar inquiries on the covered entity's OBA practices in question shall be accepted by the Accountability Program, except as provided for in Section 10.0 or if the covered entity resumes the OBA practices that were subject to review.

9.0 PRECEDENTIAL VALUE

1. Any changes to OBA practices that are recommended by the Accountability Program will serve as guidance to all other covered entities.
2. An Accountability Program decision is not binding on a court or regulatory agency.

10.0 COMPLIANCE PROCEEDINGS

A. Request for a Status Report from Covered Entity

1. If the covered entity indicates it will comply with a decision recommending that OBA practices be discontinued or modified, the Accountability Program may request from the covered entity a report on the status of the covered entity's progress in implementing the recommendations ("status report").
2. Time Period for Status Report. The covered entity shall provide a requested status report within fifteen (15) business days after it receives the request.
3. Contents of the status report. The status report shall include an explanation of the steps the covered entity has taken to bring its OBA practices into compliance with the Accountability Program's decision and whether it is now in compliance. If the covered entity has not yet fully complied with the Accountability Program's recommendations, it should detail the reasons for the delay and the steps and timeline to achieve full compliance. The status report should be no more than five (5) double spaced pages, excluding exhibits.
4. Failure to file a status report. Failure to file a status report within the time limit specified above may result in the issuance of a determination of non-compliance and referral to the appropriate government agency.

B. Accountability Program Determination Based on Status Report

After receipt of the covered entity's status report, the Accountability Program will take any of the following actions deemed appropriate by the Accountability Program:

1. Finding of compliance. If the Accountability Program concludes that the covered entity has complied with the Accountability Program's recommendations, the Accountability Program will notify the covered entity and close the case.
2. Finding of commercially reasonable effort to comply but further time or modifications needed. If the Accountability Program finds that despite the covered entity's commercially reasonable effort to comply, the covered entity has yet to fully implement the recommendations, or that further modifications are necessary to achieve compliance, the Accountability Program will set a deadline to achieve compliance, reserving the right to make subsequent compliance inquiries of the covered entity.
3. Finding of non-compliance. If the Accountability Program finds that the covered entity has not made a commercially reasonable effort to come into compliance, the Accountability Program may issue a finding of non-compliance, refer the case to the appropriate government agency, release information regarding the referral to the press and the public and report the referral on its web site.

C. Compliance Actions against Subsequent Owners

If a decision recommends discontinuance or modification to a covered entity's OBA practices, the Accountability Program may pursue compliance actions pursuant to Section 10.0 of these *Procedures* against any person or entity that subsequently acquires the ownership rights of the covered entity if that person/entity continues or resumes the same OBA practices that the Accountability Program had recommended be discontinued or modified to comply with the Principles.

11.0 CHANGES TO THE PROCEDURES

- A. The Accountability Program may adjust the times provided for by these *Procedures* to address the volume of cases or complexity of individual filings.
- B. These *Procedures* are subject to change at ASRC's discretion.

CARU Safe Harbor Participation Agreement

THIS AGREEMENT, between the Council of Better Business Bureaus, Inc., through its Children's Advertising Review Unit (CARU), 112 Madison Avenue, New York, NY, 10016, and _____ (Licensee), represents the agreement between the parties regarding participation in CARU's voluntary online privacy certification program ("Program") and use of the CARU privacy certification icon ("certification icon"), as set forth herein and as referenced in the accompanying attachments. In this agreement, reference to Website(s)/Apps/ Online Services ("online services") shall be to those online services identified by the Licensee in its Program application (collectively, the "Agreement").

The Program is designed to protect personally identifiable information in order to promote confidence in the safety of children who use the Internet, and has been approved by the Federal Trade Commission as a safe harbor program for purposes of the Children's Online Privacy Protection Rule.

1. PROGRAM REQUIREMENTS

A. Safe Harbor Program

- i. Licensee warrants truthful and accurate completion of the Program's application.
- ii. Licensee warrants that it will promptly notify CARU in writing if there is a substantive change in any of the information provided by Licensee, including new online service(s) and/or changes to Licensee's online privacy practices.
- iii. Licensee acknowledges receipt of the following, which are incorporated into this Agreement by reference and are appended to this Agreement:
 - Self-Regulatory Program For Children's Advertising (the "Guidelines");
 - The Advertising Industry's Process of Voluntary Self-Regulation: Procedures for The Children's Advertising Review Unit;
 - Confidential Self-Assessment Form (the "Program application").
- iv. CARU's Program applies only to Licensee's online service(s) privacy practices. However, Licensee agrees that it shall abide by all of CARU's Guidelines regarding advertising to children regardless of whether such advertising is web-based or not.
- v. Licensee warrants compliance with the Program requirements and agrees to continue to abide by the Program requirements, as they now exist or may be modified, throughout the term of this Agreement (including any renewals). At its sole discretion, CARU may revise Program requirements upon 30 days notice.

B. Verification

i. Licensee agrees to cooperate with CARU in verification of Licensee's compliance with the Program requirements and the Agreement. CARU may itself conduct random online compliance reviews of any Program requirement on CARU's own initiative or in response to complaints from individuals or other third parties (random review).

ii. In conducting random reviews or verifications, CARU respects the integrity of Licensee's technology resources and Licensee's right to confidentiality of this information in accordance with the Program's confidentiality policy (See Section 2.1(E) of *NAD/CARU/NARB Procedures* at <http://www.asrcreviews.org/wp-content/uploads/2012/10/NAD-CARU-NARB-Procedures-Updated-10-9-12.pdf>).

C. Violation of CARU Guidelines

i. CARU reserves the right to open a case against a Licensee in the event that Licensee violates CARU's Guidelines.

2. RIGHT TO DISPLAY CERTIFICATION ICON

A. Ownership

Licensee acknowledges CARU's sole ownership of the certification icon and agrees not to challenge or interfere, directly or indirectly, with CARU's ownership. Licensee will not assert or seek any rights in or protection of any kind, including registration of this icon, other than those granted under the Agreement.

B. Grant

i. CARU grants Licensee a nonexclusive and non-transferable license to display the certification icon only in connection with the online service(s). Licensee accepts the grant, subject to the terms and conditions set forth in this Agreement.

ii. Licensee agrees that this Grant does not constitute an endorsement of the Licensee or of Licensee's products or services. Licensee may not sublicense, transfer, or assign the right to display the certification icon, except that Licensee may provide the icon to Licensee's web hosting service, if any, to display it on the online service(s).

iii. Licensee understands that if it is merged, acquired by, or consolidated with another company, it must inform CARU. CARU will then review the circumstances of the merger, acquisition, or consolidation, to determine at its sole discretion whether Licensee must re-qualify to display the certification icon.

iv. CARU reserves the right to require removal of the certification icon from any of Licensee's online service(s).

C. Use

i. Display. Licensee should display the certification icon on the privacy policy page of its Website(s). Licensee may also display the certification icon in other places in its online service(s).

ii. Offline Use. Any offline use of the certification icon is subject to the prior, express written approval of CARU. CARU may, at its sole discretion, refuse or prohibit offline use of the certification icon for any reason. Licensee must obtain CARU's prior written approval to advertise participation in the Program in print or any other media.

D. Right of Publicity

Licensee grants CARU a non-exclusive, royalty-free license during the term of this agreement to use and distribute Licensee's name and approved Website(s) or Online Service(s) in CARU's current list of licensees located on www.asrc.org and in the Program brochure.

3. REPRESENTATIONS AND WARRANTIES

Licensee represents and warrants the following:

- (i) Licensee will remain in compliance with the Program requirements;
- (ii) All of the information on Licensee's Program application is accurate and truthful;
- (iii) As far as it is aware, Licensee is not currently under a formal investigation by any law enforcement entity or certification mechanism relating to the use of personally identifiable information, and Licensee will inform CARU if Licensee becomes the subject of an investigation within ten (10) days of learning of the investigation; and
- (iv) The individual signing on behalf of Licensee has the authority to bind Licensee to the terms of this Agreement.

4. TERM AND TERMINATION

A. Initial Term

The term of the Agreement is one (1) year beginning on the date it is signed by Licensee; provided, however, that the Agreement must also be accepted by CARU. This Agreement will not automatically renew, and may be renewed only as provided below.

B. Renewal Terms

The Agreement will be extended by CARU for additional one (1) year terms, provided Licensee:

- (i) continues to comply with all of the terms of this Agreement;
- (ii) maintains its status as a CARU supporter including payment of yearly dues;
- (ii) updates and submits to CARU, prior to the end of the initial term or the then-current renewal term, a new Program application, or alternatively, a certification that all of the Licensee's privacy program and practices are unchanged.

C. Termination

If CARU determines in its sole discretion at any time that Licensee is not in compliance with any term of this Agreement, CARU will notify Licensee of its non-compliance. Licensee will have ten (10) business days from notification to cure its non-compliance. If license fails to cure its non-compliance, CARU may terminate this Agreement. Upon receipt of a written notice of termination, Licensee must immediately remove the certification icon from all places it is displayed.

Upon termination (for any reason) or expiration of the Agreement, Licensee must immediately remove the certification icon from all places it is displayed.

5. WARRANTY DISCLAIMER/INDEMNIFICATION

All grants of the right to display CARU's certification icon are "AS IS" with no warranty of any kind. Licensee agrees to indemnify and hold CARU harmless against any third party claim, loss, lawsuit, damage, or expense incurred by CARU, including, but not limited to reasonable attorney's fees arising out of:

- (i) Any failure on the part of Licensee to comply with the terms of the Agreement;
- (ii) Any content on the Website(s) or Online Service(s) or any other site substantially owned or controlled by Licensee, including but not limited to, any claim related to infringement, misappropriation, or other violation of a right of another person (including, without limitation, a copyright, right of privacy or publicity or trade secret claim), or a claim for defamation or obscenity, or
- (iii) The sale of the product or service advertised or sold on the covered Website(s) or online service(s).

6. CONSEQUENTIAL DAMAGES WAIVER

Neither party will be liable to the other or any third party for any indirect, incidental, or consequential damages or damages from loss profits or lost use, or loss of reputation, even if the party has been advised of the possibility of such damages.

7. LIMITATION OF LIABILITY

The maximum aggregate liability of CARU for all claims arising out of or relating to this Agreement, regardless of the form or cause of action, will be CARU's net revenues from fees paid by Licensee under this Agreement.

8. MISCELLANEOUS

A. Renewals

Any renewal term will be subject to this Agreement as it may be modified by CARU.

B. Notice/Modification

All notices under this Agreement must be in writing and must be sent to the electronic and postal addresses indicated in this Agreement or at such other address a party may indicate in written notice to the other party to this Agreement. Licensee must notify CARU immediately of any changes to its postal or email address or to CARU's contact person. All modifications to this Agreement must be in writing and delivered by regular and electronic mail.

C. Entire Agreement

This Agreement embodies the whole agreement and supersedes any prior agreements, understandings, and obligations between the parties.

D. Waiver

The failure of either party to exercise any of its rights regarding a breach of this Agreement will not be deemed to be a waiver of such rights or any subsequent breach.

E. Surviving Paragraphs

Paragraphs 2(a), 5, 6, and 7 survive the expiration or termination of this Agreement.

F. Governing Law

This Agreement will be governed by and interpreted under the laws of the state of New York State.

Company (PARTICIPANT)		
Street Address		
City	State	Zip Code
Email address		
Telephone		
Name of Company Officer	Title	
Signature	Date	
Email address		

Telephone	
Name of 2 nd Contact	Title
Signature	Date