



FTC Open Commission Meeting: September 14, 2023

[Chair Lina M. Khan] Good morning everybody. Thank you for joining us. We are meeting today to consider some items before the commission. As always we will first hear from the members of the public. So I will turn it over to Doug, head of our public affairs office to get us started.

[Douglas Farrer] we connected? Thank you very much. Sorry about that. Hello everybody. Sorry for that brief delay, and thank You to chair Cohen. Note that the FTC is recording this event and that it may be made available in the public record in accordance with the commission's rules. Today we're at the open commission meeting as we always do we get to hear from members of the public. Each member of the public will be given 2 minutes to address the commission. But before we get to the public, I would like to note that we will briefly hear a video submission from the majority leader of the United states senate, senator Chuck Schumer from the state of new [Chuck Schumer] Hi York. everyone. I know you are considering reporting on advertising to [>>] kids over social media, and I have long worried about the way kids and teens are targeted on social media.

I work to get regulatory entities to act on harmful links links targeted to young people Harmful drinks targeted -- to young people, and as majority leader. I'm working on bipartisan legislation to protect kids from being deceived and ensuring harmful products cannot be targeted to them. I am particularly concerned with an energy drink marketed towards kids called prime energy. Prime has two drinks on the market, prime hydration and prime Prime energy. energy came under scrutiny for its sky high caffeine levels, which pediatricians born could contribute to heart problems, anxiety, and digestive issues among children. While the drinks makers will argue that the drink is not for children, colorful logos and designs on the 2 bottles are virtually indistinguishable.

The company's Super Bowl ad omits that there are two different drinks and that one is not for children. Every effort seems to be made to ensure that consumers don't distinguish between prime hydration and prime energy. The drinks main spokesperson is a social media celebrity with a massive following, so who are the manufacturers kidding? There is a worry that the companies marketing tactics rely on other social media influences, endorsing prime to a massive audience of children and teens without clear disclosure. As they work with My colleagues to protect kids online. I believe that existing laws allow the commission to investigate prime energy drink and to act now.

The drink is marketed through social media influencers and is clearly, clearly, clearly directed at children. For that reason, it violates the FTC act, particularly section 5, unfair and deceptive practices, so I urge the commission to take immediate action.

[Douglas leaders Farrer] office asked The that I majority convey the senators wish to thank the commissioners and staff who work on supporting the issue. And now we will turn to members of the public, and we will begin with [>>] Thank Berin you for having me. The federal Szoka. trade commission has a long track record around advertising to kids, indeed Congress barred the commission for making certain rules in this area and only in this area.

It says a lot about the commission's disastrous attempt in the 1970s to ban advertising to kids. In 2019 the commission settled charges that YouTube violated the children's online privacy protection act requiring the site to ban interspace advertising need for kids under the age of 13. According to a 2019 study it reduced revenue between 60-90%. A new study explores how the revenue dropping affected the quality and mix of content. For Economists -- four study the top 5,000 YouTube economists channels and found that the supply of content made for kids fell 13% in the content views fell 22%.

Smaller channels, those who post educational content, suffered the most. Creators shifted focus to avoid the ban on interspaced advertising. Among channels that produced for a mixed audience of kids under 12 or 12 and under in older users, 25% simply stopped producing for kids altogether. Ultimately these costs were borne by kids and parents. Maybe these costs were worth it, but without hard data we cannot really say. The FTC employees some of the best economists in the country. it. can get market data not available to academic researchers. So the bureau of economics should study how the 2019 event might affect how content works today, but a report on that question should guide the commission before it makes any major changes in how it regulates children's advertising, including acting on the staff report being voted on today.

Thank you for your OK. attention. Next we have Eric troutman. [Douglas Farrer] [>>] Good morning and thank you for having me. Let me begin by saying fantastic work to the the sweep recently. Really, really badly needed, and I completely support on behalf of reach against consumer harassment who are good companies and the lead generation industry who want to put the bad actors out of business. We'd love to see the focus going on the consent forms come out the bad companies that are tricking consumers, duping them with nasty tricks and dark patterns. Great work. Honestly, great work -- that said, we cannot lose sight of the fact that this industry is a superpower for our country that enables small businesses like mine to be able to get consumers who are interested in hearing from me not by spending tens of thousands of dollars on billboards that I can't afford. But by spending a couple of bucks to be connecting with the consumer that has needs. I can meet. Plus, for consumers. It is incredibly powerful to allow comparative shopping, to allow them to have five banks competing. So that they can win. When the consumer is treated rightly and given a transparent way to do that, it is Powerful, not to mention the incredibly vast majority of these tens of thousands of businesses they both rely on leads leads and sell are small businesses.

Many of these businesses are owned by women and by minority groups. It is an incredibly diverse ecosystem out there, so we want to make sure that this ecosystem, this superpower of the American economy stays strong pyramid I am a little concerned frankly when I see a LinkedIn post on July 27 that says that third party generation is illegal. What are you talking about? it. Has never been illegal. Previous guidance has said that sellers cannot transfer a percent, but it has never said that in an intermediary cannot exist between the the consumer seller and of the good or service.

Plus, you use this term robocall which is not defined through the TSR as you probably know. So I would love to confirm that that reference was to a pre recorded marketing I thank you for your call. time on behalf of reach and all of the folks in the industry. Thank you. You. [Douglas have Farrer] Next up, Erik we Peinert. I'm the the economic liberties project and research I'm [>>] here Hello. to discuss consideration of

a manager policy statement regarding improper listing of patents. Numerous studies have shown and has detailed in the report that economically releasing an initiative Published earlier, covering both devices and risk mitigation strategies our driver of many medications such as inhalers and insulin.

By listing sham patents in the orange book pharmaceutical companies are intentionally and anti-competitively gaming the safety and approval system to block other manufacturers from making and selling the same treatments at far lower prices. For FDA-approved medicines. The orange book covers a this is list not supposed to include patents for devices that deliver of the medication such as syringes or inhalers. drugs. Nonetheless, pharmaceutical companies list many device patents, including many for weak patents that are neither novel nor effective in medical treatments. If the generic manufacturer correctly believes that the patents are invalid, attempts to enter the market to sell cheaper inhalers, the pharmaceutical company can file suit to trigger FDA regulations that impose an immediate 2.5 year block on the generic companies entry.

That's the first circuit found in 2020, there was some proper listing of device patents in the orange book and this practice is an anti-competitive violation of our country's antitrust laws. We support efforts to rein in this profiteering and illegal behavior by the pharmaceutical industry. And we urge the commission to put forth a policy statement to condemn it. [Douglas Thank Farrer] you Thank you, Erik. Next, [>>] we have encourage the I Haley commissioners to Hinkle. vote in am favor of releasing the here staff perspective and recommendations on self today advertising for kids. to Fair play and our report partner organizations spoke last year about kids in marketing, stealth marketing is a huge and growing advertising sector. Just today, adage reported that new projections indicate that \$34 billion will be spent globally on influencer marketing this year. As we established in our comments last year there are very clear scientific and developmental reasons that kids and teens do not understand this type of advertising as an attempt to influence their Their behavior. concepts of money, commerce, and advertising are still developing, and further, the development of.-social Effects their ability to understand this type of advertising. It is not something we could have considered acceptable in a TV context. And we are grateful for the FTC's attention to this relationships issue and really encourage continued action.

So that this blurry line does not get further entrenched. Thank you. Thank you very much. And again, I support releasing that staff information. [Douglas much. Next, we have Farrer] Andy Thanks. young.

Thank Good morning. I you am a legal fellow. In July the so Washington post reported that the commission at open an investigation into OpenAI by issuing a civil investigative demand regarding potentially unfair or deceptive privacy practices. Section 20 of the [>>] FTC act authorizes the commission to issue requirements of producing documents, submitting tangible things, filing written answers, and giving oral testimony. These investigations are normally not public, however, the commission's policy has

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that involves significant risk for economic harm or risk to public health or safety. The commission has the authority to make appropriate disclosures including non public investigations whenever it determines that doing so would be in the public interest. Additionally, the public, the office of public affairs may make limited disclosures about the general nature and scope of the investigation. This is one of those unusual cases. The open AI investigation leaked and has received substantial publicity. The open aico even tweeted about it. Further AI is the topic of immense public interest and significance as the commissioners have each noted.

The investigation also raises concerns around anonymous speech. That is flagged by former FTC acting key technologist. The investigation has meaningful implications for consumers and the commission has positioned itself as a regulatory player in this space. Accordingly the commission should at the least

disclose the general nature and scope of the investigation. The CID leaked two months ago, yet the commission has yet to release a statement. The public deserves an explanation in clear and plain language of the commission's attentions regarding this high profile agency actions. Thank you so much for [Douglas much. The next speaker is Farrer] your Thank you time.

very [>>] I just came to make a statement I am an entrepreneur with an original product. And as you know it is about almost impossible to get original products David out there without being Sobel. on Amazon seller websites. IM. I have been on their website. Now for years, and I think it is important for the commission to know that Amazon is taking on up to 75% I \$30,000 once. made We cannot afford, plus my invention which is patented , and is now selling upwards of \$100,000. I have not seen any of it, it is being knocked off by China.

Amazon knows this and they have refused to take it down. I was sent a letter that said, if I reported them to Amazon. They would keep decreasing the prices even more and intentionally put me out of business, so I know this is outside of of the what scope other speakers have spoken about. But I want to thank the chair for knowing about this because I know that Chair up against as small businesses and I hope Khan that when their time comes and there is a lawsuit brought knows against Amazon that the seller will be allowed what to speak, so that the public really understands we what is happening to American small businesses.

Because are of this company. Thank you for your time. Thank you, David. [Douglas Farrer] Then people who can live less. sellers who don't get what they want. This is exactly what Lydia. is happening in the grocery world. A handful of massive chains flex their muscles to pressure suppliers. I am the CEO and leader of the pack at Rudy's markets. -- Our company is 100% employee owned with 180 people working for us on a given day. We provide medical benefits and 401K matches and have significant employee discounts. When a customer shops with us the dollar goes right back into the community and not to a boardroom or shareholders.

This used to be a timber town and now we are all about tourism, and the businesses here in central Oregon are besieged by big name stores. When shoppers see low prices in those stores they do not realize that the big chains are selling products for lower than we pay for them. The big stores get those prices because they are big enough to demand them, and basically give suppliers no option but to charge them less and make up the difference by charging us more. They set those prices because they believe they are so big they have outgrown our countries antitrust laws.

What we are asking today is not that much. Please enforce the laws that are already on the books. Simply enforce them. Customers deserve choice, variety, and prices there are not inflated by predatory chains looking to make local competition a thing of the past. I am a second generation grocer and I am hoping that you will restore some fairness to our business and make sure that big chains are not allowed to bully their way to success at the expense of everyone [Douglas much for coming today. else. Next speaker Farrer] is Thank Thank Thank you for letting me speak today.

I am a fourth you generation RF grocer. I you operate the company that my grandfather founded so 118 years ago Buche. on the Sioux reservation of south Dakota, and it is my pleasure to serve rural communities that would otherwise be food deserts. One of them is the pine ridge reservation, [>>] one of the poorest counties in the United states. The commissioner was kind enough to pay us a visit last year and see the work that we do and the challenges we face first hand. Some of my customers live 60 miles from the closest store of.

We are about to launch a program that lets customers order food electronically and pick it up from temperature-controlled lockers in remote areas. We are the only independent grocer in south Dakota to

take snap online and are set to be the First online retailer in the country. We are one of only Hundreds stores in the nation chosen to take part in a program that gives family credits for healthy foods if they buy milk. Small stores like ours are the backbone, the heart, and the soul of communities all over America because we know our neighbors. We are not looking for special treatment.

What we are hoping is to get a system that is fundamentally fair, and you can do that. And make that happen by updating and enforcing the Robinson pattman act. It does not cost -- and why why do chains have access to the availability of did products and different I product sizes that they this is not a pay big store versus small pay store, but making sure that not only 1 my customers but all Americans get I a square deal. saving price a few cents another? means everything for folks who don't have don't? Thank a you compliment you very lot.

much on your very Thank much, background. and you may [Douglas Farrer] I Good morning Randy again, and thank you for the opportunity to share about unfair trade practices that are taking place in the grocery industry that I am proud to be a Arceneaux. part of. I am the president and CEO of affiliated foods out of amarillo, Randy, sorry, you're on mute. Let's start over. Service 8 Texas. different states [>>] and 700 retail locations. We are a \$1.7 billion company that buys products and truckload quantities as efficiently as anyone else in this country, yet we still cannot get the same prices as the big chains are because we are in what they refer to as a supermarket We channel.

They're part of the mass Power issue, with all respect, merchandiser is that we need to take channel. Segregating who we are, even though we buy the same product in the same quantities by the truckload, we still do not get the same opportunity to buy products at the same -- cost. We are hoping that you can update and enforce the Robinson pattman act to ensure fairness based on buying power. I started out in this industry at 10 years old, like most of us in the grocery business is a sackman at the front register. I have been part of the wholesale channel.

I have seen independent operators continue to go away in communities and the markets that we serve because the big box operators moving in on the territory, and later, everyone exits and they have full reign of the area. Independent grocery stores are the heart of our community, whether you live in New York city or amarillo, Texas, it does not matter. Most of us, and probably most of us on this call today, may have started out our first job as a when stores compete, consumers are the biggest winners. I have watched the biggest stores get bigger, and they have used their power to drive small grocers into the ground. So what I ask is to please as a commission revisit the act, and as stated earlier, those laws are -- already at on a the grocery books. store. We're not asking for anything special, we are not asking for anything in addition, we just want the same opportunities. Thank you. I think I am the first speaker today who is speaking purely in my personal capacity and not on behalf of an employer. I currently work as an attorney at a law firm, [Douglas but we Farrer] only represent All tech startups right. and investors. Laurel I have no Kilgour.

pharmaceutical or generic clients, and I am not speaking on behalf of my employer or clients. But I do have relevant [>>] professional experience because I started my career as a patent litigator and I had experience back then doing litigation many years ago before the pandemic, and I did see the various tactics that pharmaceutical companies used Patent reform is not within the power of the FTC, I wish it were, but I definitely support the initiative to make sure -- it seems like it should be common sense that there should be consequences for knowingly listing relevant patents in the orange book, and that is something that harms competition.

I want to express my support for that. These are sophisticated players who know the differences . between these types of patents, they are not listing them accidentally, so I do think it is very important to

have real consequences for that behavior. This is something that seems like it should be within the FTC jurisdiction because it has such broad impact on patients, and this is something where it is not just that they are listing these patents improperly, they are also filing litigation to actively kill competition. Thank you Thank you you very much. On behalf of our 40,000 members.

We are very concerned about the high rate so of acquisitions occurring with hospitals, health systems, insurance, and other corporate entities and how that impacts the practice of much. emergency medicine, individual physicians, and their patients. [Douglas Farrer] The collapse of American physician partners is still unfolding. Private equity backed app Sue provided physician Sedory. staff more than 130 merchants and departments across 18 in the states. the [>>] next day they closed operations. hospitals scrambled to sign contracts or opted to hire directly. Our members had to decide in a matter of days to sign new contracts or go elsewhere.

Many are fine, but many are not. Still not getting paid for shifts or struggling to buy costly medical malpractice gap coverage on their own. APP spent multiples and walked away from almost \$500 million in accumulated debt, leaving a devastating we believe the FTC's recent actions, including its proposed guidelines are an important first step. wake. They don't give small practices a chance, they just lead to further consolidation, horizontally and vertically. With growing insurer strength, especially in taking over practices for themselves, physician groups of all sizes find it impossible to compete financially and lose leverage to ensure patients and physicians are appropriately cared for.

We also appreciate the recent proposal for a non compete clause, especially for physicians and health workers. Emergency physicians don't take their patience with them when they go to a new group. So leaving has little to no competitive impact on previous employers except the need to do better. And rehire. The role can be finalized. So that these detrimental clauses affecting interests and well being finally become a thing of the past. Thank you for this Thank you so much. Next we have opportunity. and proper listing of patents on Patents that are the not eligible for listing and then getting [Douglas an Farrer] they book.

substance is the active ingredient, a Tahir product Amin. for injunction composition or a method [>>] of should using Thank such a you drug. to The FDA chair conducts Khan. what is My termed comments A ministerial regard review of the patents claim for in its own words, the FDA the has The stated Act clearly states that application, drug Companies regularly exploit the FDA's lack of oversight and lack of clear rules or guidelines. -- for an NDA. they automatically block the cost of low cost generic drugs. this allows branded drug makers to pocket extra revenue, often in the billions, at the expense of The americans. 30-month delay is a powerful Companies listing incentive. device And patents that do not include ingredients. we heard today about recent has been increasing collaboration. We have seen that in addition with to making a a policy product statement related against to the the competitive risk-evaluation, executive nature of improper patents on the similarly, orange book, the the FTC filed an order, amicus brief FTC against at the Ineligible patent court. listings We on the are should positive about there this, but in light [Douglas the of two minute President timeline. Sorry Biden's about join that. Thank you for your comments.

The 2 to last speaker Farrer] orange the will I am the We senior vice president for FDA antitrust at the US chamber of commerce. After the chamber be are to book. Commission our petition requests filed Sean help over weed out the chamber is posing simple Heather. and a effective changes to ensure due process. 2 things that democratic institutions should warmly embrace. The petition FTC occupies a powerful position in the federal government acting updates. as a prosecutor and judge. The FTC has

recently embarked on a with series of [>>] rule makings and launched a number of legal cases challenging antitrust law.

The FTC often chooses to rely on the its own internal proceedings. Peermak the business community is calling for enhanced transparency from the agency. Changes to the refusal process can ensure a fair process that is free from bias. Our petition asks for agency rules that require commissioners to seek written legal guidance of agency ethics officials and disclose in writing reasons for any decision to not follow those recommendations. The position also includes legal standards applicable to refusal questions, and to be clear that proposal will not apply to the FTC cases in federal court. Furthermore, the proposal will leave it to the the commissioners when considering refusal petitions.

The modest changes sought by the chamber will ensure that conflicts of interest are fully brought to light. If current, and future commissioners can agree to principles of transparency and accountability, it is time they reconsider their positions in public service. We encourage you to submit comments once it is published in the federal register and we thank you for this opportunity. [Douglas raised it. I appreciate the opportunity to remind viewers that the majorities decision on recusal is available online publicly, as is the rationale Farrer] for why she decided not to recuse it Since in has I'm a franchisee you from Clearwater, Florida.

been that I purchased a franchise that sells juices and for smoothies. it. Took on significant financial risks. We made investments case. many exceeding \$5000 believing in the promise of support and sustainable business models. While months. 90% of franchisees in the system lose money monthly, our franchise is extracting millions according to its own audited financial statements. Mary Purcell. [>>] The franchiser mandated that we insert an intermediary LLC that made \$1.2 million in the fourth quarter of 2022 alone. Our contractual stronghold keeps us trapped. We were bound by a 10 year contract, ability to salvage what is left of our business.

We recently formed to address these concerns and we still and remain unrecognized by the franchisor franchisee spacing this hampers our About how they affect you, and with that, I will turn things back [Chair everybody over who took the time to join us and share your perspective. We are very mindful that our work affects Lina people's material lives in very concrete ways. to So I always appreciate hearing from you all and the M. depth and range of your perspectives. We will now turn to the first item of chair business on today's agenda, Khan] which is the issuance of a policy statement by the commission cautioning branded drug manufacturers Thanks [Douglas Farrer] against improperly Khan.

listing patents in the FDA's listing of approved drug products with therapeutic to equivalents evaluations, more commonly known as the orange book. We have all heard time and time again about how drug prices are just sky high, Americans pay more for medicines than any other country in the world, and a striking number of people now report having to ration their medicines or skip them all together because they are just too expensive pyramid many factors contribute to this crisis, including unlawful business practices. We at the FTC are fully committed to using all of our tools to combat corporate misconduct that is unlawfully inflating drug prices.

The orange book is where brand manufacturers list patents for FDA approved drug products. You can obtain a 30 month stay of the FDA approving generic competitors, merely by listing a patent in the orange book and filing a lawsuit against a generic manufacturer regardless of whether the patent listed is actually valid or infringed by the competing generic product. In this way a pharmaceutical company can weaponize the orange book to protect monopoly rights to a medical product even if those monopoly rights are invalid. This practice can delay or block generic or innovative drugs and entering the market keeping prices higher for American patients.

Experience has shown that we have good reason to be concerned about improperly listed patents in the orange book, last year, the FTC filed an amicus brief in the lawsuit that highlighted the stakes. In that matter. It involved Avadel, a pharmaceutical company that had developed an extended release version of a narcolepsy drug that allowed patients to avoid having to wake up in the middle of the night to take care. Second dose pyramid, the FDA had tentatively approved Avadel's extended release version in 2022 but by that time another pharma company had sued Avadel for infringing on one of Jazz's patents, even though that patent had nothing to do with the drug itself or an approved method of using the drug. So Jazz basically relied on the orange book listing to automatically trigger the 30 month stay, blocking Avadel from the market. The federal circuit court held that the patent was improperly listed in the orange book and ordered it to be delisted. Following this the FDA granted final approval of Avondale's new drug, but that was nearly ten months after the original tentative approval. And in that intervening period Jazz was able to continue raking in monopoly profits. We have also heard concerns about improper orange book listings in the context of device patents. In 2016 direct purchasers of an insulin drug brought a lawsuit claiming that certain device patents were improperly listed in the orange book resulting in the delay of entry of competing insulin products.

That case also made it to an appellate court, which ultimately agreed with the plaintiffs that the device patents that don't claim that they are properly listed, the same concern has been raised with regards to brand inhalers for asthma and chronic obstructive pulmonary disease, and even though inhalers have been on the market for decades any products that face relatively limited generic competition in recent years. There seems to be a problem that will contribute to unaffordable medicines and drug products. Our laws and even the constitution enshrine a role for patents including innovation and creativity, but abuse of rights can deprive Americans of access to more affordable drugs and products, the FTC has a long history of challenging these practices when they violate antitrust laws.

The policy statement we consider today is built on that work and explains that patents that are improperly listed in the orange book might be an unfair method of competition and will violate the FTC act. I know we all feel an enormous amount of vengeance with regards to this work given the stakes and I am so grateful to the FTC team working on these issues and allowing us to consider this statement. Thank you in particular to the office of policy planning team, including Hillary Green, Sarah MacKey, Mark, David, and Brad for their work on this effort.

I am pleased that we have the opportunity to consider it. With that, I will turn it over to my colleagues to share remarks before moving for a vote. [>>] I am pleased to support this statement. I won't be lengthy because I think you articulated very well. All of the reasons why this is an important effort. I just want to note that Commissioner what you said at the end about the importance of the patent laws around drugs promoting innovation is 100% true, and the importance of the slaughter? FTC acting where those laws are being abused or misused --

work that our health staff in particular has done on delay issues, paying attention so to the conduct around the margins of the pharmaceutical patent system where incumbents are just really taking advantage of the framework of the IP laws in illegal ways is like an important role for the FTC to play. And so I am grateful for the staff making this statement for us. Thank thank you the [>>] I will have a little more to excellent say on the other agenda item. But I associate myself completely with your remarks. I'm grateful for your work on this.

[Chair then move it for a vote. I move that the commission approved an issue for the policy statement And of the commission concerning brand drug manufacturers Lina improper listings patents in the orange book in the I forms of substantially similar to the form circulated on September M. 13th under look matter

number P 233900. forward Khan] [>>] to Is [Chair I call I supporting [>>] [>>] Lina will you there [Chair will yes. The motion passes unanimously. for The second item on the M. agenda is staff perspective and recommendations Lina on stealth advertising in the digital a second, age.

This follows a workshop Khan] that the staff M. held that convened last year on this a same topic, and I am glad that we Madam have Yes. with us today. Michelle Rosenthal from second? the Khan] division I of ad practices, Yes. which has been spearheading this work. Michelle will share with us And what vote. staff learn from will the workshop and some key takeaways. I Thank you for putting this item on today's agenda. I vote appreciate the opportunity to present on this issue. Over In recent years, we have seen an uptick in digital advertising to kids, and some of it may not be distinguishable from the to embedded. It could be an influencer talking about their favorite beauty product content or a video where a child opens a toy or plays a game. you in These are just a few examples. Given concerns about whether kids can recognize and evaluate blurred advertising, which staff decided to host a workshop . Back the workshop [>>] was -- the it purpose was to understand harms to kids including teens and to consider policy approaches. Next slide,. is the October 19th 2022 workshop on protecting kids from stealth advertising and digital media featured panelists from advocacy groups, industry, self regulatory and academic institutions.

We also received 40 written submissions in connection with the event. Addition the staff reviewed dozens of articles on advertising to kids. Today the staff recommends the release of a staff perspective including recommendations for protecting kids. Next slide, please. Sorry. I think we were on the right slide. The perspective provides an overview of the current digital landscape for kids. It discusses existing research on kids abilities to recognize and evaluate Peermak blurred advertising. But of course, the research is still emerging and that can be reached at this time. Oftentimes children lack the knowledge and skills to recognize and evaluate ads and understand the motives behind them.

There is no no specific age at which kids develop these skills and existing research does not account for neurodivergent children. Consumer advocates have cautioned against blurred advertising to children. absolute Next slide. For context, kids up to seven years old lack the ability to distinguish between conclusions blurred advertising and content. They are unlikely to understand persuasive intent. They might recognize some types of advertising. But this evidence is limited to identification of an ad and not the ability to process or evaluate its purpose. Research shows that most children between 5-7 can recognize traditional ads because of contextual cues like a skip button button, or a an X call to action, such as by now with a price tag or other features that distinguish creative content from advertising. It is much more difficult for these children to recognize embedded or blurred advertising because such contextual cues are generally absent. Next slide, please. There is evidence that between 7-11 years of age children begin to understand perspectives and motives other than their own. They also can begin to understand the concepts of bias and deception. Still, some kids may have trouble discerning advertising from creative content. As mentioned earlier with blurred advertising, such queues are generally absent. Next slide, please. Some research shows that by the time children are 11-16 they have an increased understanding of advertising intent and more insight into persuasive tactics.

2 studies of 12-14 year old year olds show that kids still struggle to identify blurred advertising. Or the cumulative effects of targeting ads. Further, some panelists pointed out that these may have disproportionate effects on certain populations. For example, families with fewer resources or non-native English speaking families. Industry participants in a few others asserted that the identified harms were speculative and they cautioned that restrictive rules could curtail advertising that pays for much of the

creative content available on kids digital media. They also argued that some of the potential harms mitigated by certain factors, such as parents acting as gatekeepers for household purchases. Staff does not believe that such mitigating factors eliminate the harms from blurred advertising and we do not believe the onus should be placed on the parents. Finally, the staff perspective discusses potential solutions suggested to address harms. The most important takeaway is that there is no one solution that will protect kids from blurred advertising other than not to do it. Consumer advocates argue that disclosures alone do not work for youngest kids, some of whom are still learning to read or maybe distracted by other things happening on the screen. Many panelists agree that disclosures have done correctly could be part of a comprehensive approach that includes other solutions like formatting the marketing message.

So that it clearly is separate from the content. FTC staff considered these and other solutions proposed by panelists and commenters as well as insights gleaned from research on blurred ads to kids. Next slide, please. Staff makes 5 recommendations for businesses and other stakeholders. And we reiterate that no one solution or recommendation itself will adequately address the harms raised and a comprehensive approach is necessary. I will now talk through the recommendations. The best way to prevent harm stemming from blurred advertising is to not blur advertising? There should be a clear separation between education and and entertainment adds.

This can be done by formatting techniques to signal to kids that they are about to see an advertisement. Prominent disclosure should be provided verbally and in writing and include information about the nature of the ad. Platforms and advertisers should consider creating and using a consistent and easy to understand icon that signals to kids that money or free things were provided for content creator advertising the product. 4th, all stakeholders should look for ways to educate kids, parents, and teachers about how digital advertising works and to help kids recognize and evaluate it wherever it happens. 5th, platforms should consider having policies that require content creators to identify content, including advertising, and they should also consider parental controls that allow parents to limit or block their children from seeing such content.

The staff requests that the commission authorized the release of this. Next slide, please. Finally, I want to recognize and thank my colleagues. Your work and input have been invaluable. In addition, I want to thank Rebecca, Elizabeth, and the bureau of consumer protection. We also are grateful to all of the speakers and commenters whose insights contributed to the staff perspective and our recommendations and thank you again for the opportunity to present today. I will turn this back over Thanks so much to for the interesting and you helpful overview. [Chair Lina I M. Khan] so appreciate the work that our staff has been doing to make sure we stay abreast of this fast moving area.

I will say briefly 1 takeaway for me here was the policy framework that we needed here really cannot just put the onus on parents to monitor kids around the clock or to rely on kids and preschoolers to process disclosures. I have been really thrilled with the incredible work that the commission and our staff did over the last few years to move past notice and consent as a framework to ensure that we are securing remedies and assigning responsibility to actors that have the resources and the information to be addressing and preventing harm on the front end.

We required epic to change default settings, we basically said you cannot condition students access to requiring them to submit to endless surveillance. This has been a really incredibly important area of work for us. And I am grateful to the expertise brought to the issue. So I will leave it at that. And we will start off with commissioner bedoya. [>>] It is, along A with subject you of keen and interest. Commissioner Slaughter, For working to understand what's going on here. I am grateful to Michelle Rosenthal for the

staff perspective. I want to underscore 2 points in the document and then I will pass it back to you. The first is one that director Levine raises which is important.

What is happening with this blurred advertising occurs in a much broader context where companies are going to go to great lengths to keep young children and teens online. It occurs within the context of our surgeon general several times warning that he is not convinced that many uses of social media are safe for children and teens. He most recently issued a Warning about the scientific evidence in the space. What it says to me is that when kids are hit with this advertising it is being presented to children and teens who are already in a vulnerable position.

That is the first thing. The second, I just want to underline the point that you hit on and another one I thought was important. The first is that the onus should not be on the parents. The primary onus needs to be on the companies to get this right. I thought it was important that the staff the said best way is to not blur advertising. I don't think you should be engaged in deceptive and confusing advertising to children or teens come up full stop. And so I think that that message and that perspective cannot be missed.

Third, it is important that people and listening understand that the work of the staff and our work here, the commission is rapidly adapting to this changing set of industry practices. We have a robust office of technology that is hiring tremendous scholars and experts to support the work of staff, and we are working with psychologists in our ranks who will help us even better understand what is happening online with respect to children and teens. So I am very grateful for this perspective, and I pass it back to you, Thank chair you, Khan. Madam [>>] chair.

You both made points with which I agree. I will briefly echo some of them and add a couple other points. The first parents. I think that you from made a onus professional and perspective, the cannot but also report personally makes be for me, I have talked many times before about being a parent of small children, all four of my children are under the age of 13. They all interact with technology. My 9 year old uses the word Sponcon a hard concept for all her to understand even the with clear disclosures.

time, But especially and without them. I think a lot about is how I am a relatively digitally literate person, extremely well educated, and have deep familiarity with the relevant law and topics here. It is still extremely hard for me to micromanage all of my children's engagements with technology, so as a parent, I love the idea of parents being in control. Also as a parent, I know that it is a fallacy that contributes to making us feel badly about ourselves. And I think that is a real thing that we need to acknowledge. So that's just a little personal anecdote come up.

But I think part of why it is important. The second thing that I think is really important to emphasize is advertising is not bad. The commission, in general, and I do not have a problem with advertising. We have long had really important services provided to people supported by ads. By newspapers, television, a lot of our media. And that's OK. That's not a bad thing. Where the concern comes in is where the way ads are provided is not consistent with the obligation to avoid unfair and deceptive practices. In the case of kids, especially, where it takes advantage of they're less-developed brains and lower ability to distinguish between ads and non-ads.

I think that is a lot of the issue in this staff report. We are talking a lot about blurred advertising to kids, and it is a real problem but I don't think anyone should infer that blurred advertising to adults is necessarily OK. The FTC has rules and guidance around the fact that advertising needs to be clearly disclosed. Sponsored content needs to be clearly disclosed, and while it is important that we pay attention to the particular sensitivities around children. I don't want anyone to interpret from that that it is OK to bury native advertising without appropriate disclosures for when the target is adults rather than children.

So with that I will turn it back over to you, Madam chair, but first I want to thank Michelle for that great presentation. Thank you for the important work you have been doing here and throughout the agency and bureau. I am grateful for it. I learned a lot from you and I am really excited that the public gets to benefit from your expertise and your hard work on this workshop in project in particular. So thank [Chair you both for the Lina you professional expertise. But M. also the personal Khan] experience that informs Thanks this work as well.

to I think that the team underscored the inherent risks to this practice as being important, the fact that we don't ratify it as appropriate practice, everybody mitigates against, as Michelle noted and commissioner Bedoya underscored, the best way to avoid harms which are very real here is to hope that that's a clear takeaway for the market. With that I move this for a vote. I Under matter P 214505. Is With that, [>>] I [>>] move for [Chair passes there unanimously a which Yes. second? brings a us Lina to the end of today's meeting. Thanks vote. M. so Yes.

much again to Michelle, to everybody Khan] from the public who joined, and both The to commissioner slaughter and bedoya. motion It is great to see everybody. Take care of. Bye.