

JUDGE KOELT

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CV 7386

PREET BHARARA

United States Attorney for the
Southern District of New York

By: LOUIS A. PELLEGRINO

Assistant United States Attorney

86 Chambers Street, 3rd Floor

New York, New York 10007

Telephone: (212) 637-2689

Facsimile: (212) 637-2686

Email: louis.pellegrino@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTIST ARENA LLC,

Defendant.
-----X

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

12 Civ. _____

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

1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506, 6502(c) and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendant's violations of the Commission's Children's Online Privacy Protection Rule ("Rule" or "COPPA Rule"), 16 C.F.R. Part 312, and Section 5 of the FTC Act.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

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

DEFINITIONS

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

THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE

5. The Rule applies to any operator of a commercial website or online service, or portion thereof, directed to children that collects, uses, and/or discloses personal information from children, and to any operator of a commercial website or online service that has actual knowledge that it collects, uses, and/or discloses personal information from children. Among other things, the Rule requires a website operator to meet specific requirements prior to collecting online, using, or disclosing personal information from children, including, but not limited to:

- a. Posting a privacy policy on its website or online service providing clear, understandable, and complete notice of its information practices, including what information the website operator collects from children online, how it uses such

information, its disclosure practices for such information, and other specific disclosures set forth in the Rule;

- b. Providing clear, understandable, and complete notice of its information practices, including specific disclosures, directly to parents when required by the Rule;
- c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children;
- d. Giving parents the option to consent to the collection and internal use of their children's personal information without consenting to the disclosure of that information to third parties;
- e. Providing a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
- f. Not conditioning children's participation in an activity upon the children disclosing more personal information than is reasonably necessary to participate in that activity; and,
- g. Establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

DEFENDANT

6. Defendant Artist Arena LLC ("Artist Arena") is a New York limited liability company with its principal place of business at 853 Broadway, 3rd Floor, New York, NY 10003. Artist Arena transacts or has transacted business in this district and throughout the United States.

At all times material to this Complaint, acting alone or in concert with others, Artist Arena operated recording artists' fan club and newsletter subscription websites on the Internet.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS ACTIVITIES

8. Since at least 2009, Defendant has operated various recording artist websites through which users are able to register for paid fan clubs and subscribe to free online newsletters after submitting certain items of personal information online. Registered fan club members can create online profiles, and are able to interact publicly online by, for example, posting comments to members' walls and sending and accepting friend requests. Newsletter subscribers receive an electronic newsletter about a particular recording artist.

9. Defendant's websites, www.RihannaNow.com, www.DemiLovatoFanClub.net, www.BieberFever.com, and www.SelenaGomez.com, have attracted a significant number of children under age 13. Defendant offered a newsletter subscription on RihannaNow.com, fan clubs on DemiLovatoFanClub.net and BieberFever.com, and both fan club and newsletter services on SelenaGomez.com. Paragraphs 10-33 below describe registration for each of these services.

RihannaNow.com Online Newsletter

10. Defendant automatically registered a user for Rihanna's online newsletter when he or she entered a first and last name, email address, cell phone number, country of residence, and birth date. *See* Exhibit 1.

11. Between November 18, 2010 and August 17, 2011, Defendant knowingly registered 8,940 newsletter subscribers who indicated they were under the age of 13.

12. Defendant failed to meet the Rule's direct notice and parental consent requirements. Defendant did not: (1) provide parents with a direct notice of its information practices; and (2) obtain verifiable parental consent prior to collecting, using, or disclosing children's personal information in connection with RihannaNow.com.

DemiLovatoFanClub.net Fan Club

13. Prior to the launch of DemiLovatoFanClub.net, Defendant maintained a webpage on Demi Lovato's official website, DemiLovato.com, to solicit registrations for its future fan club. Defendant required a user who expressed interest in the fan club to provide an email address, first name, and birth date. Regardless of the birth date entered, Defendant provided a check box for the user to certify he or she had read and agreed to the terms of the user agreement, and was over age 13. The web page also stated "[i]f you are under 13 and live in the US . . . your parent or legal guardian may complete this registration on your behalf." *See* Exhibit 2. Defendant did not collect a parent's email address.

14. Once DemiLovatoFanClub.net launched, Defendant required a user to enter a birth date to register for the online fan club. If the birth date indicated the user was under age 13, Defendant requested the child's email address, street address including city and state, first name, gender, t-shirt size, parent's first and last name, parent's email address, credit card information, and billing address. (After 14 months of operation, Artist Arena stopped requiring a child to enter his or her email address and first name.) The registration page told the child to "be sure to get your parent's OK and enter [your parent's] First and Last name" and "be sure to get your

parent's OK – as the confirmation email will be sent [to you] at [your parent's] address.” *See* Exhibit 3.

15. After collecting from the child the personal information described in Paragraph 14 above, Defendant sent to the child, at the parent's email address, a confirmation message containing fan club log-in instructions. *See* Exhibit 4. This confirmation email did not provide parents with proper notice of Defendant's information, collection, and use practices, or seek their consent to such practices.

16. Through DemiLovatoFanClub.net, Defendant knowingly registered 634 children between April 15, 2009 and August 2, 2011. Defendant collected and maintained personal information from an additional 4,586 children who started, but did not complete, their fan club registrations.

17. Defendant failed to meet the Rule's direct notice and parental consent requirements. Defendant did not: (1) provide parents with a direct notice of its information practices; and (2) obtain verifiable parental consent prior to collecting, using, or disclosing children's personal information in connection with DemiLovatoFanClub.net.

BieberFever.com Fan Club

18. Defendant required a user seeking to join Justin Bieber's online fan club to add a membership to his or her shopping cart on BieberFever.com, and to enter an email address, user name, password, country, and birth date. If the birth date indicated the user was under age 13, Defendant required the child to enter a parent's name and email address. Upon entry of this information, the child immediately received an on-screen notice that the registration was “successful” and that he or she was “logged in.” The notice also directed the child to ask the

child's parent "to check his or her email and click on the link provided" to become a fan club member. *See* Exhibit 5.

19. At the same time the child received the on-screen notice that his or her registration was successful, Defendant sent an email to the parent's email address. The email stated that: (1) Artist Arena needed the parent's consent to "complete" the child's registration; (2) the parent could provide consent by clicking on a link in the email message; and (3) the parent did not need to take any action if he or she did not consent to the child's fan club registration. If the parent clicked the link contained in the email, Defendant led the parent to a BieberFever.com webpage that stated, "Thank you for validating this child. The child you are validating can now log in to the fan club site. You may also continue any order that may be in progress." *See* Exhibit 6.

20. At this point, the child could return to his or her shopping cart to "Checkout." The child next received a pop-up box that told the child to "Grab a parent with a credit card," and then click "CONTINUE." Clicking "CONTINUE" took the child or parent to another pop-up box that explained why Defendant collected credit card information: "to verify parental consent for your child to join BieberFever.com and have access to all its features" and "to process your membership fee." The child or parent then arrived at the Checkout page, where he or she would enter delivery, billing, and credit card information to complete the child's registration. *See* Exhibit 7.

21. One month after the website launched, Defendant ceased emailing the parent after collecting the information described in Paragraph 18 above. Instead, once the child completed the registration fields, he or she immediately returned to the shopping cart to input the

information as described in Paragraph 20 above. Defendant then sent the child a confirmation email. *See* Exhibit 8.

22. Through BieberFever.com, Defendant registered 4,943 children between June 2010 and August 2, 2011. In addition, Defendant collected and maintained personal information from 21,507 children who started but did not complete their fan club registrations.

23. Defendant failed to meet the Rule's direct notice and parental consent requirements. Defendant did not: (1) provide parents with a direct notice of its information practices; and (2) obtain verifiable parental consent prior to collecting, using, or disclosing children's personal information. Defendant's emails to parents and pop-up boxes failed to: (1) clearly and completely disclose that it had *already* collected personal information from their children; and (2) state that Defendant retained children's personal information even when parents did not respond to Defendant's email notification or complete the registration process. Finally, Defendant's pop-up boxes failed to inform parents of their rights to have their children's personal information deleted and to refuse to permit further collection or use of their children's information.

SelenaGomez.com Online Newsletter

24. Defendant required a user to enter an email address, user name, password, birth date, country, parent's name, and parent's email address to subscribe to the Selena Gomez online newsletter. Defendant in some instances also required a child to provide his or her first name, last name, city, state, and postal code information. The child then received an on-screen notice that stated, "Registration successful. You are now logged in." *See* Exhibit 9.

25. Upon receiving this on-screen notice that his or her registration was successful, the child was able to edit his or her online profile, and add any text to a large signature block at

the bottom of the profile page. (The website indicated that the text the child entered to the signature block would be “publicly displayed at the end of [his or her] comments.”) In addition, a child who had not already been required to provide his or her full name, city, state, and zip code could add it to his or her account. *See* Exhibit 10.

26. At the same time that a child could access his or her Selena Gomez account, Defendant sent an email to the parent’s email address stating that it needed the parent’s consent to “complete” the child’s newsletter registration. The email directed the parent to provide consent by clicking on a link in the email message, and falsely stated that if “you DO NOT want to approve your child’s signup, you do not need to do anything else: simply do not click on the above link.” *See* Exhibit 11. Despite this assertion, as described in Paragraphs 24 and 25 above, Defendant had already registered the child and allowed the child to complete his or her profile without any action by the parent.

SelenaGomez.com Fan Club

27. Defendant required a user seeking to become a member of Selena Gomez’s fan club to select a t-shirt size and add it to an online shopping cart on SelenaGomez.com, and then enter an email address, user name, password, country, and birth date. Defendant also provided a check box to enable the child to subscribe to the Selena Gomez online newsletter. If the birth date indicated that the user was under age 13, Defendant required a parent’s name and email address. The child then received an on-screen notice that stated, “Registration successful. You are now logged in.” Defendant also indicated via an on-screen notice that the child’s registration awaited parental approval. *See* Exhibit 12.

28. Defendant sent an email to the parent’s email address that stated the child’s registration for the Selena Gomez newsletter was pending parental approval (it did not mention

the fan club). It also stated that the parent did not need to take any action if he or she did not consent to the registration. Simultaneously, Defendant sent the child a confirmation email. *See* Exhibit 13.

29. If the parent clicked the link in the email, a SelenaGomez.com webpage appeared that read, "Thank you for validating this child. The child you are validating can now log in to the fan club site. You may also continue any order that may be in progress." *See* Exhibit 14.

30. The child could log into the website using the user name and password created on the initial registration page to return to his or her shopping cart to "Checkout." At this point, the website provided a pop-up box that stated the child needed to "Find a Parent" and click "Continue." Clicking "Continue" led the child or parent to another pop-up box stating that Defendant collected credit card information to process payment for the fan-club membership, and to provide parental consent for the child "to join SelenaGomez.com and have access to all its features." Clicking anywhere on the screen led the child or parent to the checkout page where he or she could enter credit card, shipping, and billing information. *See* Exhibit 15.

31. Alternatively, a child who had registered previously for the Selena Gomez online newsletter could opt to "upgrade" to a fan club membership. The registration process began similar to the process outlined Paragraph 27 above. However, in this instance, Defendant did not send an email to a parent. Instead, after adding a t-shirt to a shopping cart, the website immediately presented the child with the "Find a Parent" pop-up box, then the "Parental Consent" pop-up box, and then the checkout page, as described in Paragraph 30 above. *See* Exhibit 16.

32. Defendant registered 10,026 children to the Selena Gomez online newsletter and 2,196 children to the fan club between April 25, 2010 and August 2, 2011. In addition,

Defendant collected and maintained personal information from 48,531 children who started but did not complete their newsletter or fan club registrations.

33. Defendant failed to meet the Rule's direct notice and parental consent requirements. Defendant did not: (1) provide parents with a direct notice of its information practices; and (2) obtain verifiable parental consent prior to collecting, using, or disclosing children's personal information. Defendant's emails to parents and pop-up boxes failed to: (1) clearly and completely disclose that it *already* had collected personal information from children; and (2) state that Defendant retained children's personal information even when parents did not respond to Defendant's email notification or complete the registration process. Moreover, Defendant's emails failed to state how Defendant would use or disclose this information. Finally, Defendant's pop-up boxes failed to inform parents of their rights to have their children's personal information deleted and to refuse to permit further collection or use of their children's information.

34. In connection with its operation of RihannaNow.com, DemiLovatoFanClub.net, BieberFever.com, and SelenaGomez.com, Defendant collected, used, and/or disclosed personal information from approximately 101,363 children in violation of the Children's Online Privacy Protection Rule.

VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

35. Congress enacted COPPA in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children's personal information online by operators of Internet websites or online services. COPPA directed the Federal Trade Commission to promulgate a rule implementing COPPA. The Commission promulgated the COPPA Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b)

of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on April 21, 2000.

36. Defendant is an “operator” as defined by the Rule, 16 C.F.R. § 312.2.

37. Defendant violated:

a. Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c), which requires an operator to provide direct notice to parents of what information it collects from children, how it uses such information, and its disclosure practices for such information, among other required content; and,

b. Section 312.5(a)(1) of the Rule, 16 C.F.R. § 312.5(a)(1), which requires an operator to obtain verifiable parental consent prior to its collection, use, and/or disclosure of personal information from children;

38. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count I

39. In numerous instances, in connection with operating fan club and/or newsletter subscription registrations on RihannaNow.com, DemiLovatoFanClub.net, BieberFever.com, and SelenaGomez.com, Defendant collected, used, and/or disclosed, with actual knowledge, personal information online from children younger than age 13. Defendant failed to: (1) provide direct notice to parents of what information it collects from children, how it uses such information, and its disclosure practices for such information; and (2) obtain verifiable parental consent prior to its collection, use, and/or disclosure of personal information from children.

40. Defendant's acts or practices, as described in Paragraph 39 above, violate the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312.

VIOLATIONS OF THE FTC ACT

41. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

42. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count II

43. Through statements made in emails sent to parents from SelenaGomez.com and BieberFever.com, as referenced in Paragraphs 19, 26, and 28 above, Defendant has represented, directly or indirectly, expressly or by implication, that: (1) it would not collect personal information online from children without prior parental consent; and (2) as to the Selena Gomez online newsletter, it would not activate a child's registration for the newsletter absent a parent's express consent.

44. In truth and in fact: (1) on SelenaGomez.com and BieberFever.com, Defendant collected personal information online from children without prior parental consent; and (2) on SelenaGomez.com, Defendant activated a child's registration for the newsletter absent a parent's express consent.

45. Therefore, Defendant's representations as set forth in Paragraph 43 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE COURT'S POWER TO GRANT RELIEF

46. Defendant violated the Rule as described above with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

47. Each collection, use, or disclosure of a child's personal information in which Defendant violated the Rule in one or more of the ways described above, constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

48. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$16,000 for each violation of the Rule on or after February 10, 2009.

49. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in exercise of its equitable jurisdiction, may award ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff United States of America, pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b) and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 56(a), and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and the COPPA Rule by Defendant;

B. Award Plaintiff monetary civil penalties from Defendant for each violation of the Rule alleged in this Complaint; and

C. Award other and additional relief the Court may determine to be just and proper.

Dated: October 2, 2012
New York, New York

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

STUART F. DELERY
Acting Assistant Attorney General
Civil Division
United States Department of Justice

MICHAEL S. BLUME
Director
Consumer Protection Branch

RICHARD GOLDBERG
Assistant Director
Consumer Protection Branch


ALAN PHELPS
Trial Attorney
Consumer Protection Branch
Department of Justice
450 5th Street, N.W.
Washington, D.C. 20549
Tel.: (202) 307-6154
Email: alan.phelps@usdoj.gov

PREET BHARARA
United States Attorney
Southern District of New York


LOUIS A. PELLEGRINO
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2689
Facsimile: (212) 637-2686
Email: louis.pellegrino@usdoj.gov

OF COUNSEL:

KATHERINE A. CAMPBELL
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Tel.: (202) 326-2924
Fax.: (202) 326-3259

PHYLLIS H. MARCUS
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Tel.: (202) 326-2854
Fax.: (202) 326-3259