

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VTECH ELECTRONICS LIMITED, a
corporation, and

VTECH ELECTRONICS NORTH
AMERICA, LLC, a limited liability
company,

Defendants.

Case No : 1:18-cv-114

COMPLAINT

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

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

JURISDICTION AND VENUE

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

3. Venue is proper in the Northern District of Illinois under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)–(d) and 1395(a).

SECTION FIVE OF THE FTC ACT

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

THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT RULE

5. 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 Web sites and online services. COPPA directed the Commission to promulgate a rule implementing COPPA. The Commission promulgated the COPPA Rule 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. The Commission promulgated revisions to the Rule that went into effect on July 1, 2013. 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).

DEFENDANTS

6. Defendant VTech Electronics Limited is a Hong Kong corporation with its principal place of business in Hong Kong. VTech Electronics Limited 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, VTech Electronics Limited purposefully directed its activities to the United States by advertising, marketing, distributing, or selling electronic

learning products via U.S.-based wholesalers, and related downloadable content in direct-to-consumer online sales, to consumers throughout the United States. VTech Electronics Limited also purposefully directed its activities to the United States by operating, developing, and maintaining the infrastructure and content of websites and services used by consumers throughout the United States.

7. Defendant VTech Electronics North America, LLC is a Delaware corporation with its principal place of business in Arlington Heights, Illinois. VTech Electronics North America, LLC 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, VTech Electronics North America, LLC has advertised, marketed, distributed, or sold electronic learning products to consumers throughout the United States.

8. The Commission's claims against VTech Electronics Limited and VTech Electronics North America, LLC arise from or relate to Defendants' acts or practices aimed at or taking place in the United States.

COMMERCE

9. At all times material to this Complaint, Defendants have 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.

DEFENDANTS' BUSINESS PRACTICES

10. Defendants develop a number of products and services for children. Among other things, they market, distribute, and sell portable devices known as "electronic learning products" or "ELPs" throughout the United States and the world. These ELPs are generally marketed as being appropriate for children ages 3 – 9. They also offer online games, available through these

ELPs or the web. Finally, they develop and operate the Learning Lodge Navigator online service (“Learning Lodge”) – a platform similar to an app store – that allows customers to download child-directed apps, games, e-books and other online content developed by Defendants. Consumers can access Learning Lodge through the home screen of Defendants’ ELPs or through the web. By November 2015, approximately 2,250,000 parents in the United States had registered and created accounts with Learning Lodge for almost 3,000,000 children.

KID CONNECT

11. One of the apps available to customers is Kid Connect, which is primarily intended to be used by children on Defendants’ ELPs. Through Kid Connect, children can communicate with other children who have the Kid Connect app, or with adults who download the adult version of the app, available through Apple’s App Store and Google’s Google Play Store. By November 2015, approximately 485,000 consumers in the United States had created Kid Connect accounts for almost 638,000 children.

12. From at least July 2013 and through November 2015, in order for a child to use Kid Connect, parents had to first register for Learning Lodge. To do so, they submitted their full name, physical address, e-mail address, password, secret question and answer for password retrieval, along with their children’s names, dates of birth (including birth year), and gender. None of the information provided was encrypted in transmission.

13. Parents could then set up a Kid Connect account by submitting an e-mail address, a parent username and password, parent profile picture, and a username and child profile photo for each child they planned to associate with their account. Defendants did not have a mechanism in place to verify that the person registering the account was a parent, and not a child.

14. Once registered for Kid Connect, children could only communicate with contacts authorized by the parent after the parent downloaded the Kid Connect smartphone app, through text messages (individual or group), audio messages, photos, or stickers. Alternatively, they could post messages to an electronic bulletin board accessible to people within their contact list. In addition to sending these communications to intended recipients, Defendants generally collected and stored audio messages and photos for one year and other communications for shorter periods.

PLANET V-TECH

15. Defendants also offered a web-based platform directed to children ages “5+” called Planet VTech, which permitted children to play online games and chat with other friends. By November 2015, approximately 134,000 parents in the United States had created Planet VTech accounts, for 130,000 children.

16. From at least June 2008 and through November 2015, parents created an account by submitting an email address, full name, password, secret question and answer, physical address, child first name, child login name, child login password, and child’s full date of birth. Defendants did not encrypt any of the registration information submitted, either in transmission or in storage.

DEFENDANTS ARE SUBJECT TO THE COPPA RULE

17. For purposes of Paragraphs 22 through 25, herein, the terms “child,” “collects,” “collection,” “disclosure,” “Internet,” “online contact information,” “operator,” “parent,” “personal information,” “obtaining verifiable consent,” and “Web site or online service directed to children,” are defined as those terms are defined in Section 312.2 of the COPPA Rule, 16 C.F.R. § 312.2.

18. The COPPA Rule applies to any operator of a commercial Web site or online service directed to children that collects, uses, and/or discloses personal information from children, or on whose behalf such information is collected or maintained, 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. Defendants operate Kid Connect which is an online service directed to children.

19. The COPPA Rule defines “personal information” to include, among other things, a first and last name; a home or other physical address including street name and name of a city or town; online contact information (i.e., an email address or other substantially similar identifier that permits direct contact with a person online, such as an instant messaging user identifiers, screen name, or user name); a persistent identifier such as an IP address that can be used to recognize a user over time and across different Web sites or online services; a photograph, video, or audio file where such file contains a child’s image or voice; or information concerning the child or parents of that child that the operator collects online from the child and combines with an identifier described in this definition. Through Kid Connect, Defendants collected personal information as defined in the Rule, including the content of text messages or messages to shared electronic bulletin boards, user names for a child that could be used to contact the child, and photographs and audio files containing a child’s image or voice. Defendants also collected information from the child concerning the child that was combined with other identifiers, such as the name or photograph of the child.

20. Because Defendants collect and maintain personal information from their users through Kid Connect, Defendants are operators as defined by the COPPA Rule, 16 C.F.R. § 312.2.

21. Among other things, the Rule requires that an operator of a child-directed website or online service 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 it collects from children, how it uses such information, and 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;
- c. obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children; and
- d. establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

DEFENDANTS' COPPA VIOLATIONS (KID CONNECT)

22. Defendants did not link to their Privacy Policy in each area of Kid Connect where personal information was collected from children. *See* Exhibit A. Defendants also did not link to their Privacy Policy in the landing screen of the Kid Connect parent app. *See* Exhibit B. Defendants linked to their Privacy Policy in small blue font in the bottom right hand corner of the Kid Connect registration pages. *See* Exhibit C. These links were not prominent and clearly labeled, as required by the COPPA Rule.

23. The Privacy Policy did not include information that the COPPA Rule requires operators of child-directed websites to disclose, such as:

- a. Defendants' address, and email address;
- b. a full description of the information the Defendants collect from children; and
- c. information about the parents' right to review or delete a child's personal information.

24. Defendants did not provide a direct notice of its information collection and use practices, as required by the COPPA Rule.

25. Defendants have engaged in a number of practices that, taken together, failed to provide reasonable and appropriate data security to protect the personal information collected from consumers, including children through Kid Connect. Among other things, Defendants failed to:

- a. develop, implement, or maintain a comprehensive information security program;
- b. implement adequate safeguards and security measures to segment and protect Defendants' live website environment from Defendants' test environment;
- c. implement an intrusion or prevention or detection system, or similar safeguards, to alert Defendants of potentially unauthorized access to their computer network;
- d. implement a tool to monitor for unauthorized attempts to exfiltrate consumers' personal information across Defendants' network boundaries;
- e. complete its vulnerability and penetration testing of environments that could be exploited to gain unauthorized access to consumers' personal information for well-known and reasonably foreseeable vulnerabilities, such as SQL Injection; and
- f. implement reasonable guidance or training for employees regarding data security and safeguarding consumers' personal information.

26. In November 2015, Defendants learned that a hacker had accessed their computer network, and exfiltrated the personal information of consumers, including personal information about the children who used Kid Connect. The hacker remotely accessed Defendants' test environment, and from there was able to traverse to the live environment, where Defendants stored in clear text, among other things, parents' full names, mailing addresses, e-mail addresses, secret questions, and children's usernames. And although Defendants stored passwords and children's photos and audio files in an encrypted format, a database accessed by the hacker included the decryption keys for the photos and audio files, which would have allowed the hacker to access this information in a readable format. In addition, the information was stored so

that the children's information was linked to their parents' information. Thus, for example, if a child had submitted a photo through Kid Connect, the hacker could have found that photo, along with their physical address.

27. The hacker gained remote unauthorized access to Defendants' computer network by exploiting commonly known and reasonably foreseeable vulnerabilities.

28. Defendants were unaware that the personal information of consumers had been copied from their computer network until a journalist contacted them.

**DEFENDANTS' MISREPRESENTATION (LEARNING LODGE,
KID CONNECT, AND PLANET VTECH)**

29. Between October 2012 and January 2016, Defendants disseminated or caused to be disseminated the following statement to consumers in their Privacy Policy, which applied to Learning Lodge, Kid Connect, and Planet VTech (*see* Exhibit D):

In most cases, if you submit your PII to VTech directly through the Web Services it will be transmitted encrypted to protect your privacy using HTTPS encryption technology. Any Registration Data submitted in conjunction with encrypted PII will also be transmitted encrypted.

30. This statement is false or misleading.

COUNT I (COPPA)

31. Defendants collected personal information from children under the age of 13 through the Kid Connect online service, which Defendants operate and is directed to children. Moreover, because Defendants collected children's birth date and year, Defendants had actual knowledge that children used these online services.

32. In numerous instances, in connection with the acts and practices described above, Defendants collected, used, and/or disclosed personal information from children in violation of the Rule, including by:

- a. Failing to provide sufficient notice on its website or online services of the information it collects, or is collected on their behalf, online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(d) of the Rule, 16 C.F.R. § 312.4(d);
- b. Failing to provide direct notice to parents of the information Defendants collect, or information that has been collected on Defendants' behalf, online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Sections 312.4(b) and (c) of the Rule, 16 C.F.R. § 312.4(b)-(c);
- c. Failing to obtain verifiable parental consent before any collection or use of personal information from children, in violation of Section 312.5 of the Rule, 16 C.F.R. § 312.5; and
- d. Failing to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children, in violation of Section 312.8 of the Rule, 16 C.F.R. § 312.8.

Therefore, Defendants have violated the Rule, 16 C.F.R. Part 312.

33. 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 II (FTC ACT)

34. Through the means described in Paragraph 29, Defendants have represented, directly or indirectly, expressly or by implication, that most personally identifying information submitted by consumers and all registration information transmitted with it would be transmitted in encrypted form.

35. In truth and in fact, as set forth in Paragraphs 10 to 16, Defendants did not encrypt any information transmitted through their Learning Lodge or Planet VTech online services, including registration information.

36. Therefore, Defendants' representation as described in Paragraph 34 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THIS COURT'S POWER TO GRANT RELIEF

37. 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).

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

39. 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, amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015), 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 \$40,654 for each such violation of the Rule assessed after January 24, 2017.

40. Section 13(b) of the FTC Act, 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.

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 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: January 8, 2018

Respectfully Submitted:

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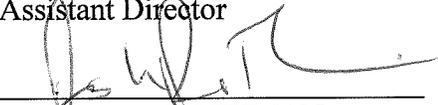
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