

Alan White, Supervising Attorney,
Community Legal Services, Philadelphia,
Pennsylvania

Marva E. Williams, Senior Vice President,
Woodstock Institute, Chicago, Illinois

Board of Governors of the Federal Reserve
System, June 12, 2006.

Jennifer J. Johnson,

Secretary of the Board.

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FEDERAL TRADE COMMISSION

[File No. 052 3158]

Take-Two Interactive Software, Inc. and Rockstar Games, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 10, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Take-Two Interactive Software, Inc., *et al.*, File No. 052 3158,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c) (2005).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: <https://secure.commentworks.com/ftc-taketwo/>.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Richard F. Kelly (202/326-3304) or Keith R. Fentonmiller (202/326-2775), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 8, 2006), on the World Wide Web, at <http://www.ftc.gov/os/2006/0/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be

received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Take-Two Interactive Software, Inc. and Rockstar Games, Inc. (“the companies”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations in advertising and on product packaging concerning the content in the video game *Grand Theft Auto: San Andreas* (“*San Andreas*”). In September 2004, the companies submitted materials to the Entertainment Software Rating Board (“ESRB”) for the purpose of obtaining a rating for the PlayStation 2 version of *San Andreas*. The companies did not inform the ESRB about the existence of an interactive sex mini-game that was embedded in the game's computer code, but was inaccessible during normal game play. Nor did the companies tell the ESRB that the game disc contained data files (unused in game play) for female skins, which, if accessed, render the female characters partially or completely nude. However, the ESRB's published requirements in effect at that time did not state that game companies were required to disclose unused skins in the game software or content in the game code that was inaccessible and unplayable without modifying the code. Based on the companies' submission, the ESRB assigned *San Andreas* a M (Mature 17+) rating and content descriptors for Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs. The companies released the Playstation 2 version of *San Andreas* in October 2004.

On June 7, 2005, the companies released versions of *San Andreas* playable on PCs and the Xbox console. The PC and Xbox game discs also contained the same code for the sex mini-game and the nude skins. As with the PlayStation 2 version, the companies did not disclose the existence of the disabled sex mini-game or the nude skins on the PC and Xbox game discs. The ESRB rated the PC and Xbox versions of the game M (Mature

17+) and assigned the same content descriptors previously assigned to the PlayStation 2 version.

The ESRB rating information appeared in print, television, and retailer advertisements for *Grand Theft Auto: San Andreas*, and on game packaging, for all three versions of the game. Among other things, the companies made the following claims about the game: "MATURE 17+ * * * M * * * *" and "CONTENT RATED BY ESRB." None of the advertising mentioned that the game contained nudity.

On June 9, 2005—two days after the release of the PC version of the game—game enthusiasts posted a program on the Internet, which, when downloaded and installed on a user's PC, enables the sex mini-game code. This program was dubbed "Hot Coffee." A subsequent version of the program imported nude skins resident on the game disc onto several of the female characters. PlayStation 2 and Xbox players eventually were able to access the mini-game by physically modifying or adding a hardware accessory to their game console, installing special software, and inputting cheat codes developed by third parties.

On July 20, 2005, the ESRB revoked the existing rating for the game as a result of, among other things, viewing *Grand Theft Auto: San Andreas* as modified by the Hot Coffee program and the widespread availability of that program. The companies entered into an agreement with the ESRB that provided that they would not contest a change in rating for the game from M (Mature 17+) to AO (Adults Only 18+) with an additional content descriptor for nudity. The companies also agreed to re-label or recall all existing inventory, and to make available to consumers a downloadable patch rendering the Hot Coffee content inoperable. In response, most retailers decided not to sell the re-labeled AO version of the game. In September 2005, the companies released a second M-rated version of *San Andreas* without the Hot Coffee content.

According to the FTC complaint, the companies represented, expressly or by implication, that the ESRB had rated the content of the original versions of *Grand Theft Auto: San Andreas* M (Mature 17+) and that the ESRB had assigned the following content descriptors as part of the ESRB rating: Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs. The complaint alleges that the companies did not disclose to consumers that the game discs contained unused, but potentially viewable, nude female skins and

disabled, but potentially playable, software code for a sexually explicit mini-game that the ESRB had not rated. The presence on the game discs of this unrated content that might change, and, in fact, did change, the rating of the game to AO (Adults Only 18+) with an additional content descriptor for nudity, would have been material to many consumers, particularly parents, in their purchase, rental, or use of the product. The complaint alleges that the companies' failure to disclose these facts, in light of the representation made, was and is a deceptive practice.

The proposed consent order contains provisions designed to prevent the companies from engaging in similar acts and practices in the future. Part I of the consent order requires the companies, in connection with the advertising, sale, or distribution of any electronic game, to disclose, clearly and prominently, on product packaging and in any promotion or advertisement for an electronic game, content relevant to the rating, unless that content has been disclosed sufficiently in prior submissions to the rating authority. Part I also prohibits the companies from misrepresenting the rating or content descriptors for an electronic game, and requires the companies to establish and implement, and thereafter maintain, a comprehensive system reasonably designed to ensure that all content in an electronic game is considered and reviewed by the companies in preparing submissions to a rating authority. Finally, Part I of the order states that nothing in the order shall constitute a waiver of the companies' right to assert that any of their conduct is or was protected by the First Amendment to the United States Constitution or any analogous provision of a State constitution, except that the companies nonetheless acknowledge their obligations to comply with the order.

Parts II through V of the consent order require the companies to keep copies of relevant advertisements and promotional materials, to provide copies of the order to certain of their personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06-0601]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Tobacco Control Program (NTCP) Chronicle Progress Reporting System—Revision—(OMB No. 0920-0601) National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use is the single most preventable cause of death and disease in the United States and most people begin using tobacco in early adolescence. Annually, tobacco use