

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
HYPERBEARD, INC., a corporation, and  
  
ALEXANDER KOZACHENKO and ANTONIO  
URIBE,  
individually and as officers of  
HyperBeard, Inc.,  
  
Defendants.

Case No. 3:20-cv-3683

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

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 5(a)(1), 5(m)(1)(A), 13(b), 16(a)(1), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a)(1) and 57(b), 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 and the Commission’s Children’s Online Privacy Protection Rule (“Rule” or “COPPA Rule”), 16 C.F.R. Part 312.

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),  
3 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

4 3. Venue in the Northern District of California is proper under 15 U.S.C. § 53(b) and  
5 28 U.S.C. §§ 1391(b)(1) and 1395(a).

6 **SECTION FIVE OF THE FTC ACT**

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

9 **THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT RULE**

10 5. Congress enacted COPPA in 1998 to protect the safety and privacy of children  
11 online by prohibiting the unauthorized or unnecessary collection of children’s personal  
12 information online by operators of Internet Web sites and online services. COPPA directed the  
13 Commission to promulgate a rule implementing COPPA. The Commission promulgated the  
14 COPPA Rule on November 3, 1999, under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and  
15 Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on  
16 April 21, 2000. The Commission promulgated revisions to the Rule that went into effect on July  
17 1, 2013. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and Section 18(d)(3) of  
18 the FTC Act, 15 U.S.C. § 57(a)(d)(3), a violation of the Rule constitutes an unfair or deceptive  
19 act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. §  
20 45(a).

21 6. Among other things, the COPPA Rule applies to any operator of a commercial  
22 website or online service 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

1 actual knowledge that it collects, uses, and/or discloses personal information from children. The  
2 Rule requires an operator to meet specific requirements prior to collecting online, using, or  
3 disclosing personal information from children, including but not limited to:

- 4 a. Posting a privacy policy on its website or online service providing clear,  
5 understandable, and complete notice of its information practices, including what  
6 information the website operator collects from children online, how it uses such  
7 information, its disclosure practices for such information, and other specific  
8 disclosures set forth in the Rule;
- 9 b. Providing clear, understandable, and complete notice of its information practices,  
10 including specific disclosures, directly to parents;
- 11 c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing  
12 personal information from children;
- 13 d. Deleting personal information collected from children online, at a parent's  
14 request; and
- 15 e. Retaining personal information collected from children online only as long as is  
16 reasonably necessary to fulfill the purpose for which the information was  
17 collected.

#### 17 **DEFINITIONS**

18 7. For purposes of this Complaint, the terms “child,” “collects,” “collection,”  
19 “disclosure,” “Internet,” “obtaining verifiable parental consent,” “online contact information,”  
20 “operator,” “parent,” “personal information,” and “Web site or online service directed to  
21 children,” are defined as those terms are defined in Section 312.2 of the COPPA Rule, 16 C.F.R.  
22 § 312.2.

**DEFENDANTS**

1  
2 8. Defendant HyperBeard, Inc. (“HyperBeard”), is a California corporation with its  
3 principal place of business at 5026 Brophy Drive, Fremont, California 94536. HyperBeard  
4 transacts or has transacted business in this District and throughout the United States. At all times  
5 material to this Complaint, acting alone or in concert with others, HyperBeard has advertised,  
6 marketed, and distributed mobile applications (“apps”) to consumers throughout the United  
7 States.

8 9. Defendant Alexander Kozachenko is the Chief Executive Officer (“CEO”) of  
9 HyperBeard. At all times material to this Complaint, acting alone or in concert with others, he  
10 has formulated, directed, controlled, had the authority to control, or participated in the acts or  
11 practices of HyperBeard, including the acts or practices set forth in this Complaint. Defendant  
12 Kozachenko, in connection with the matters alleged herein, transacts or has transacted business  
13 in this District and throughout the United States.

14 10. Defendant Antonio Uribe is the Co-Founder and Managing Director of  
15 HyperBeard. At all times material to this Complaint, acting alone or in concert with others, he  
16 has formulated, directed, controlled, had the authority to control, or participated in the acts or  
17 practices of HyperBeard, including the acts or practices set forth in this Complaint. Defendant  
18 Uribe, in connection with the matters alleged herein, transacts or has transacted business in this  
19 District and throughout the United States.

**COMMERCE**

20 11. At all times material to this Complaint, Defendants have maintained a substantial  
21 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,  
22 15 U.S.C. § 44.

**DEFENDANTS' BUSINESS PRACTICES**

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2           12.     Since at least 2016, Defendants have offered a number of mobile apps for  
3 download from the Apple App Store and the Google Play Store (collectively the “App Stores”).  
4 At least some of these apps are directed to children, including Axolochi, BunnyBuns, Chichens,  
5 Clawbert, Clawberta, KleptoCats, KleptoCats 2, KleptoDogs, MonkeyNauts, and NomNoms  
6 (collectively “Kids Apps”). (*See* Exhibit A, copies of Kids Apps’ initial screens.) The apps send  
7 and/or receive information over the Internet, and thus are online services pursuant to COPPA.  
8 All Kids Apps are free to download and play, but generate revenues through in-app advertising  
9 and in-app purchases.

10           13.     Defendants are “operators” as defined by the Rule, 16 C.F.R. § 312.2.

11           14.     Axolochi, which has been available since 2018, is an app in which users take care  
12 of and play with Axolochis, brightly colored animated axolotls, exotic amphibian animals  
13 popular with children. Once a user’s Axolochi grows up and is released into the world, the user  
14 receives a new axolotl egg, which hatches and the activity starts again. The description of the  
15 app on the Defendants’ website and the App Stores states: “Axolochis are axolotls, SUPER cute  
16 aquatic creatures from the mystical country of Mexico that you can help grow into hundreds of  
17 amazing shapes and colors! The babies are absolutely ADORABLE but they grow old so  
18 FAST!” (*See* Exhibit B).

19           15.     BunnyBuns, which has been available since early 2019, is an app in which users  
20 bake pastries and play games with smiling animated bunnies. The description of the app on the  
21 Defendants’ website and the App Stores states: “Welcome to BunnyBuns! A magical pastry  
22 shop where I use my MYSTICAL BUNNY BAKING POWERS to mix feelings with fillings to  
create the most delicious pastries EVER!” (*See* Exhibit C).

1           16.     Chichens, which has been available since 2017, is an app in which users tap on  
2 colorful animated creatures called chichens, which mimic the appearance of baby chicks. Users  
3 can hatch chichen eggs by tapping them, and then wait for a surprise chichen variation to appear  
4 (*e.g.*, a pizza chichen, a double-headed chichen). The description of the app on the Defendants’  
5 website and the App Stores states: “Chichens are cute, silly little critters that go insane when  
6 you tap them and drop all sorts of fun things. Fill each world with chichens and unlock the next  
7 one. You never know what these silly chichens are going to do!” (*See Exhibit D*).

8           17.     Clawbert, which has been available since in or around 2016, is an app similar to  
9 an arcade claw game in which users use a crane claw to catch surprise eggs, which later hatch  
10 into kid-friendly prizes such as baby animals and toys. Both the Clawbert character, which  
11 operates the crane, and the surprise eggs it catches are cartoon characters with smiley faces. The  
12 description of the app on the Defendants’ website and the App Stores states: “Clawbert is a  
13 lonely claw. He only has two fingers. But he has a full heart! Help Clawbert find friends.  
14 Make Clawbert happy again! The Clawbert UFO catcher machine is great for children and  
15 adults alike. Collect the cutest, most adorable toy creatures from surprise eggs as you try to fill  
16 your collection.” (*See Exhibit E*).

17           18.     Clawberta, which has been available since early 2019, is a female variation of  
18 Clawbert, described above. Similar to Clawbert, Clawberta allows users to catch toy capsules  
19 with its claws, which later open to reveal surprise prizes. Users can also change Clawberta’s  
20 hairstyles and customize the character’s appearance. The description of the app on the  
21 Defendants’ website states: “Discover amazing toy surprises with the raddest claw machine to  
22 ever enter the arcade . . . Clawberta! Unlock hundreds of the cutest toys from exciting places all  
around the world! Dress up Clawberta with trendy hairstyles and interesting puzzles . . .” The

1 App Stores' description is similarly kid-friendly: "Oh. My. Claw. Did someone say  
2 MAKEOVER?!" and "Prepare yourself for cuteness OVERLOAD!" (*See* Exhibit F).

3 19. KleptoCats, which has been available since 2016, is an app in which users send a  
4 cartoon cat out on a mission, and the cat returns with surprises that users collect in a virtual  
5 room. Users can pat, groom, dress, accessorize, and feed their cats, which makes the cats go on  
6 more frequent missions and return with additional collectibles. The in-game currencies are coins  
7 and gems, which users must earn or purchase in order to obtain additional cats. Users can earn  
8 coins by playing simple in-app mini games or by watching advertisement videos. The  
9 description of the app on the Defendants' website and the App Stores states: "KleptoCats are  
10 cute. But they have a dark side. They can't stop stealing! But then again . . . your room is kinda  
11 empty. What a CAT-astrophe. I guess your furry friend's frisky paws may be a perfect match to  
12 fill your room. Send your cat away to gather items to fill your room with amazing treasures.  
13 PAW-some!!! You never know what KleptoCats will bring back next." (*See* Exhibit G).

14 20. KleptoCats 2, which is a sequel to KleptoCats and has been available since 2018,  
15 similarly involves sending a cartoon cat on a mission, and then collecting the surprises the cat  
16 retrieves. The description of the app on the Defendants' website and the App Stores states:  
17 "KleptoCats 2, the sequel to the viral phenomenon, KleptoCats, brings back all your favorite  
18 feline friends along with some fresh new kitties. It's 2x more cute, 2x more fun, 2x more  
19 mysterious . . . and, yep you guessed it, 1337x pure PAW-someness!" The website adds that  
20 "This game is PURRR-fect for kids, moms, mom's moms, senioritas [*sic*] and cool dudes alike."  
21 (*See* Exhibit H).

22 21. KleptoDogs, which has been available since around 2018, is an app similar to  
KleptoCats but with canine characters instead of feline. KleptoDogs allows users to send

1 animated dogs on adventures, and to collect objects the dogs retrieve. The description of the app  
2 on the Defendants’ website and the App Stores states: “GemDog returns home from his  
3 adventures with the KleptoCats in order to lead other outrageously cute pups in their quest to fill  
4 rooms with the strangest things . . . Feed them, play with them and even dress them in the cutest  
5 clothes. You’ll have a blast hanging with these puppy pals!!!” (*See Exhibit I*).

6 22. MonkeyNauts, which has been available since 2018, is an app in which users  
7 explore the galaxy and perform kid-friendly science experiments with animated monkey  
8 scientists, such as determining whether there are bananas in space. Users can earn in-game  
9 currency, coins, and gems by playing games or watching advertising videos. Users can use coins  
10 or gems to obtain additional monkeys. The description of the app on the Defendants’ website  
11 and the App Stores states: “Historians agree that MONKEYS, not humans, single-handedly  
12 pioneered the global space program. And now these adorable “Monkeynauts” are ready to blast  
13 off to NEW worlds to meet their extra-terrestrial, banana-eating brethren . . . Travel to new  
14 planets, get rewards, eat bananas and unlock strangely adorable new monkeys.” (*See Exhibit J*).

15 23. NomNoms, which has been available since early 2019, is an app in which users  
16 use a slingshot to launch cartoon characters across the screen to collect surprise eggs, which  
17 provide them with food or coins. Once the player obtains an egg, the player must wait for it to  
18 hatch to reveal the surprise inside. The description of the app in the App Stores and on the  
19 Defendants’ website states: “NomNoms are cute little monsters that just want to munch, or  
20 NOM, on yummy foods, called “NOMS”...which are stored in surprise eggs, a.k.a. ‘NOM-  
21 tainers’ . . . Confused by our misNOMers?! LOL, great!” (*See Exhibit K*).

1           24.     Based on the facts and violations of law alleged in this Complaint, the FTC has  
2 reason to believe that Defendants have violated, are violating, or are about to violate laws  
3 enforced by the Commission.

4                           **DEFENDANTS’ KIDS APPS ARE DIRECTED TO CHILDREN**

5           25.     Pursuant to Section 312.2 of the Rule, the determination of whether an app is  
6 directed to children depends on factors such as the subject matter, visual content, language, and  
7 use of animated characters or child-oriented activities and incentives. An assessment of these  
8 factors demonstrates that the Defendants’ Kids Apps are directed to children under the age of 13.

9           26.     Defendants’ Kids Apps contain brightly colored, animated characters including  
10 cats, dogs, bunnies, chicks, monkeys and other cartoon characters, which Defendants themselves  
11 have consistently described as “SUPER cute,” “adorable,” “silly,” and with similar kid-friendly  
12 adjectives. (*See, e.g.*, Exhibits B - K).

13           27.     The subject matters of the Defendants’ Kids Apps are highly appealing to  
14 children. The apps’ subject matters include collecting smiley cats, dogs, chicks, eggs, coins and  
15 gems, as well as baking with animated bunnies, catching smiley surprise eggs, shopping from a  
16 toy machine, caring for an animated baby axolotl, and conducting simple science experiments  
17 with baby monkey scientists. (*See, e.g.*, Exhibits J, G, I, B).

18           28.     The language used to describe the Kids Apps in the App Stores and on the  
19 Defendants’ website is simple, kid-friendly and would be highly appealing to a child under age  
20 13. For example, “Chichens are cute, silly little critters that go insane when you tap them . . .,”  
21 “KleptoCats are cute. But they have a dark side. They can’t stop stealing! . . . What a CAT-  
22 astrophe!” (*See, e.g.*, Paragraph 16 and Paragraph 19).

1           29. Defendants’ Kids Apps are very simple and easy to play—most involve simply  
2 tapping on a character and playing very easy in-app games.

3           30. HyperBeard itself notes on at least two occasions that its apps are recommended  
4 for children as well as adults. (*See* Paragraph 17 and Paragraph 20 (Clawbert and Klepto Cats 2  
5 HyperBeard website descriptions)).

6           31. Defendants were aware that children were using the Kids Apps, and promoted the  
7 apps to a child audience. For example, from early 2017 through 2019, Defendants promoted  
8 apps on a kids entertainment website, *YayOMG!*. (*See* Exhibit L). Specifically, Defendants  
9 provided complimentary codes and in-game currency to *YayOMG!* in exchange for a series of  
10 Kids Apps reviews including for Axolochi, BunnyBuns, Chichens, Clawbert, Clawberta,  
11 KleptoCats 2, KleptoDogs, MonkeyNauts, and NomNoms. (*See* Exhibit M). The reviews focus  
12 on how “adorable,” “fun,” and “cute” the games are, and highly recommend the apps to the  
13 website’s readers. HyperBeard then promoted the reviews through “retweets” and “likes” on the  
14 Company’s Twitter page. (*See* Exhibit N). Several reviews include quotes from HyperBeard’s  
15 developers related to character design and other kid-friendly topics. Additionally, *YayOMG!*  
16 interviewed Defendant Uribe, and published the interview on its site on April 25, 2017. In the  
17 interview, the interviewer mentions how “super adorable” the HyperBeard games are, and notes  
18 that *YayOMG!*’s readers are “mainly young girls.” (*See* Exhibit L).

19           32. Defendants also promoted the KleptoCats app to a child audience through the  
20 2018 publication of the book “*KleptoCats: It’s Their World Now!*” with the children’s publisher,  
21 Scholastic, Inc., which offers its books for sale in elementary schools, among other places. The  
22 book was written by a children’s author, Daphne Pendergrass. On Amazon.com, for example,  
the book is categorized under “Children’s Books.” The book’s suggested age range on the

1 Amazon.com listing is 7-10 years, while the recommended grade level is 2-5. Several reviews  
2 mention that the books were purchased for children (*e.g.*, “my grandkid loves these cats,” “my  
3 kid likes the KleptoCat game,” and “my 8 year old loves the book.”). (*See Exhibit O*).

4 33. Defendants recently published a similar book related to the KleptoDogs app. The  
5 book is titled “*KleptoDogs: It’s Their Turn Now!*,” was published by Scholastic, Inc., and is  
6 written by the same children’s author who wrote the KleptoCats book, Daphne Pendergrass. The  
7 book is similarly categorized under “Children’s Books” on Amazon.com, and it is intended for  
8 ages 7-10 and grade levels 2-5. The book has been available for pre-order since at least March  
9 2019, and was published in September 2019. (*See Exhibit P*).

10 34. Defendants also promoted the KleptoCats app to a child audience through the  
11 merchandizing and sale of plush stuffed animals in the shape of KleptoCats. Several reviews on  
12 an online retail site, for example, mention that the toys were purchased for children (*e.g.*, “My  
13 daughter collects these . . .,” and “My daughter was so excited she got the one she wanted!”).  
(*See Exhibit Q*).

14 35. HyperBeard also licensed the KleptoCats characters to several companies to  
15 create other KleptoCats-themed child-directed products including a *K’Nex* block construction  
16 set, calendars, posters, stickers, and bookmarks. The products are available on various online  
17 retailers including Amazon.com, eBay, and HyperBeard’s KleptoCats-specific website,  
18 KleptoCats.com. (*See Exhibit R*). The products feature bright colors, designs and decorations  
19 that appeal to children. The reviews on an online retail site indicate that the items were  
20 purchased for children (*e.g.*, “My granddaughter loved it,” “My 8 year old daughter got super  
21 excited because of the decal,” and “Surprised my daughter with this. She loves the KleptoCats  
22

1 and loved this calendar.”). The products display HyperBeard’s logo, and several item  
2 descriptions note that the products are “officially licensed” KleptoCat merchandise.

3 36. Through the Kids Apps, Defendants allowed third-party advertising networks  
4 AdColony, AdMob, AppLovin, Facebook Audience Network, Fyber, IronSource, Kiip, TapCore,  
5 TapJoy, Vungle and UnityAds to collect personal information, in the form of persistent  
6 identifiers, in order to serve behavioral advertising (*i.e.*, targeted advertising on the apps based  
7 on users’ activity over time and across sites). Until August 2019, after being contacted by FTC  
8 staff in this matter, Defendants did not inform these third-party advertising networks that any of  
9 the Kids Apps are directed to children, and did not instruct or contractually require the  
10 advertising networks to refrain from behavioral advertising. Defendants also failed to provide  
11 the required notices or obtain the required parental consent described in Paragraph 6.

12 **VIOLATION OF THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE**

13 **Count I**

14 37. Defendants operate online services directed to children, including through the  
15 Kids Apps, which collect personal information from children under age 13.

16 38. As described in Paragraphs 25 through 36 above, Defendants collected (or caused  
17 to be collected on their behalf) personal information from children younger than age 13 in  
18 violation of the Rule. Defendants thus violated the Rule by:

- 19 a. Failing to provide notice on Defendants’ online services of the information they  
20 collect, or that is collected on their behalf, online from children, how such  
21 information is used, and their disclosure practices, among other required content,  
22 in violation of Section 312.4(d) of the Rule, 16 C.F.R. § 312.4(d);



1 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$41,484 for  
2 each violation of the Rule after January 22, 2018.

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

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff United States of America, pursuant to 5(a)(1), 5(m)(1)(A), 13(b),  
10 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a)(1) and 57(b) and  
11 the Court's own equitable powers, requests that the Court:

12 A. Enter a permanent injunction to prevent future violations of the FTC Act and the  
13 Rule by Defendants;

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

16 C. Award other and additional relief the Court may determine to be just and proper.  
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Respectfully submitted,

Dated: June 3, 2020

**FOR THE FEDERAL TRADE COMMISSION:**

**FOR PLAINTIFF THE UNITED STATES OF AMERICA:**

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