
FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JULY 1, 2006, TO DECEMBER 31, 2006

IN THE MATTER OF

TAKE-TWO INTERACTIVE SOFTWARE, INC.
AND
ROCKSTAR GAMES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4162; File No. 052 3158
Complaint, July 17, 2006 – Decision, July 17, 2006

This consent order addresses allegations that Take-Two Interactive Software, Inc. and Rockstar Games, Inc. (“Respondents”) engaged in deceptive practices concerning the advertisement, sale, and distribution of its Grand Theft Auto: San Andreas video game. According to the complaint, Respondents failed to provide the Entertainment Software Rating Board (“ESRB”) with complete and accurate information about potentially viewable and explicit sexual content, specifically data files containing female nude skins and an embedded interactive sex mini-game. The complaint further alleges that this information was material to ESRB’s rating determination and Respondents’ failure to disclose this information constituted a deceptive practice. The consent order prohibits Respondents from misrepresenting the content or ratings of its video games and requires Respondents to establish a comprehensive system reasonably designed to ensure that all content in an electronic game is considered and reviewed by Respondents in preparing submissions to a rating authority.

Participants

For the *Commission*: Keith Fentonmiller and Richard Kelly.

For the *Respondent*: Robert J. Mittman, William H. Roberts, and Leonard D. Steinman, Blank Rome LLP; and Molly Boast, Gena Feist, and John Missing, Debevoise & Plimpton LLP.

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that Take-Two Interactive Software, Inc. and Rockstar Games, Inc., corporations (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Take-Two Interactive Software, Inc. (“Take-Two”) is a Delaware corporation with its principal office or place of business at 622 Broadway, New York, New York 10012.

2. Respondent Rockstar Games, Inc. (“Rockstar”) is a Delaware corporation with its principal office or place of business at 622 Broadway, New York, New York 10012. Rockstar is a wholly-owned subsidiary of Take-Two.

3. Respondents design, manufacture, advertise, offer to sell, sell, and distribute interactive entertainment software, commonly known as video games, to the public. Respondents’ software offerings include titles for the leading video gaming platforms – such as Sony PlayStation 2 and Microsoft Xbox systems, as well as for personal computers (“PCs”) – and include the video game *Grand Theft Auto: San Andreas*.⁴ The acts and practices of respondents in the advertising and selling of *Grand Theft Auto: San Andreas* to consumers as alleged in this complaint are acts or practices in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

5. Virtually all video games sold by retailers in the United States are rated by the Entertainment Software Rating Board (“ESRB”). The ESRB is an industry self-regulatory body established in 1994 by the Entertainment Software Association (“ESA”). Most major retailers in the United States will not sell video games unless they have been rated by the ESRB.

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6. An important purpose of the ESRB rating system is to provide information to consumers, including parents, about the content of a game to help consumers determine if the game is suitable for themselves, another person, or their family.

7. The ESRB ratings have two parts: 1) rating symbols that suggest age appropriateness; and 2) content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern. The ESRB system consists of the following rating symbols: **EC (Early Childhood)**, **E (Everyone)**, **E10+ (Everyone 10 and older)**, **T (Teen)**, **M (Mature 17+)**, and **AO (Adults Only 18+)**. There are over thirty different content descriptors for game elements, including Blood and Gore, Intense Violence, Lyrics, Mature Humor, Mild Violence, Nudity, Sexual Themes, Strong Language, Strong Sexual Content, Use of Drugs, and Violence.

8. Many consumers use and rely on the ESRB ratings when deciding whether to purchase a video game. In addition, many retailers use and rely on the system. Certain major retailers will not sell games that have been rated **AO (Adults Only 18+)** by the ESRB.

9. *Grand Theft Auto: San Andreas* is the fifth in a series of popular video games developed and marketed with the *Grand Theft Auto* name. Each of the previous four games in the *Grand Theft Auto* series, *Grand Theft Auto*, *Grand Theft Auto II*, *Grand Theft Auto III*, and *Grand Theft Auto: Vice City*, were rated **M (Mature 17+)** by the ESRB for one or more video game platforms. According to the ESRB rating system, games rated **M (Mature 17+)** have content that may be suitable for persons ages 17 and older. Games in this category may contain intense violence, blood and gore, sexual content, and/or strong language. Games rated **AO (Adults Only 18+)**, according to the ESRB rating system, have content that should only be played by persons 18 and older. Games in this category may include prolonged

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scenes of intense violence and/or graphic sexual content and nudity.

10. The ESRB rates games prior to release based on information supplied to it by game companies. The ESRB requires game companies to answer a questionnaire about the type and frequency of content relevant to the ESRB's rating criteria, such as violent action, sexual content, gambling, language, and the use of alcohol, tobacco, and drugs (hereafter, "relevant content"). The ESRB also requires game companies to submit video footage showing the most extreme relevant content in the game. Prior to July 2005, the ESRB's published requirements mandated that game companies disclose relevant content resulting from the use of "cheat codes" or the unlocking of virtual "Easter eggs" (i.e., messages, graphics, sound effects, features, or actions that are enabled when the user inputs a set of commands on a game console or keyboard). The ESRB's published requirements did not state that relevant content included unused textures ("skins") in the game software or content in the game code that was inaccessible and unplayable without modifying the code.

11. On or about September 12 or 13, 2004, respondents submitted materials to the ESRB for the purpose of obtaining a rating for the PlayStation 2 version of *Grand Theft Auto: San Andreas*. Respondents did not inform the ESRB about the existence of unused nude female skins on the game disc or an unfinished "sex mini-game" that had been edited out of game play but was embedded in wrapped form in the game's computer code. If the game code for the sex mini-game were to be unwrapped, the mini-game could be enabled, permitting the player to control the game's principal male character, who was clothed, during simulated sexual acts with different clothed female characters. As described in paragraph 10, the ESRB's published requirements 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.

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12. Based on respondents' submissions, on September 23, 2004, the ESRB issued a rating certificate for the PlayStation 2 version of *Grand Theft Auto: San Andreas*. The ESRB assigned the game the rating symbol **M (Mature 17+)** and the following content descriptors: Blood and Gore, Intense Violence, Strong Language, Strong Sexual Content, and Use of Drugs. Respondents formally accepted this rating on the same day.

13. In October 2004, respondents began selling the PlayStation 2 version of *Grand Theft Auto: San Andreas* to the public. The PlayStation 2 game discs offered for sale to the public contained the unused nude female skins and the wrapped code for the unfinished sex mini-game described in paragraph 11.

14. On or about January 7, 2005, respondents asked the ESRB to rate the PC and Xbox versions of *Grand Theft Auto: San Andreas* by requesting the ESRB to reissue the **M (Mature 17+)** rating symbol and associated content descriptors previously assigned to the PlayStation 2 version. On or about January 10, 2005, the ESRB reissued the **M (Mature 17+)** rating and content descriptors rating for the PC and Xbox versions of *Grand Theft Auto: San Andreas*.

15. In June 2005, respondents began selling the PC and Xbox versions of *Grand Theft Auto: San Andreas* to the public. The PC and Xbox game discs offered for sale to the public contained the unused nude female skins and the wrapped code for the unfinished sex mini-game described in paragraph 11.

16. From approximately October 2004 through July 2005, respondents disseminated or caused to be disseminated advertisements for *Grand Theft Auto: San Andreas*, including the attached **Exhibits A through D**. Respondents advertised the game through product packaging and through numerous magazine advertisements, including ads in *Electronic Gaming Monthly*,

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Entertainment Weekly, The Onion, Maxim, Spin, PlayStation Magazine, and PC Gamer. Respondents also advertised the game through thirty- and sixty-second television commercials run on numerous networks and cable television channels, including UPN, MTV, TNT, USA Network, Spike TV, BET, and MTV. They also advertised the game on billboards, posters, point-of-purchase materials, and video displays at major game retailers, through respondents' websites, online banner ads, and in game trailers available for download from www.rockstargames.com/sanandreas. These advertisements contained the following statements and depictions, among others:

- A. PlayStation 2, Xbox, and PC product packaging (Exhibit A):
 - i. Front: “grand theft auto San Andreas™... MATURE 17+... M... CONTENT RATED BY ESRB”
 - ii. Rear: “ROCKSTAR GAMES PRESENTS A ROCKSTAR NORTH GAME... grand theft auto San Andreas™ Mature 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... ESRB CONTENT RATING... www.esrb.org”
 - iii. Game Discs: “grand theft auto San Andreas™... MATURE 17+... M... CONTENT RATED BY ESRB”
- B. Print advertisements (Exhibit B): “ROCKSTAR GAMES PRESENTS... grand theft auto San Andreas™... A ROCKSTAR NORTH PRODUCTION... IN STORES NOW... WWW.ROCKSTARGAMES.COM/SANANDREAS... MATURE 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... CONTENT RATED BY ESRB”

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C. Retailer advertising (Exhibit C):

- i. Pre-sell gift card for Wal-Mart: “Reserve your copy today.... Playstation2... GIFT CARD... grand theft auto San Andreas™... MATURE 17+... M... CONTENT RATED BY ESRB... Available 10.19.04... PlayStation®2... WAL*MART®”
- ii. Window cling for Kmart: “grand theft auto San Andreas... NOW AVAILABLE ON XBOX®... MATURE 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... CONTENT RATED BY ESRB”

D. Online banner advertisement (Exhibit D): “grand theft auto San Andreas... IN STORES NOW... MATURE 17+... M... Blood and Gore... Intense Violence... Strong Language... Strong Sexual Content... Use of Drugs... CONTENT RATED BY ESRB”

17. Respondents did not disclose the existence of the unused nude female skins and the wrapped code for the unfinished sex mini-game described in paragraph 11 either in their advertising for *Grand Theft Auto: San Andreas*, or on the product packaging.

18. On or about June 9, 2005, two days after the release of the PC version of *Grand Theft Auto: San Andreas*, a third-party computer programmer posted a software program on the Internet entitled “Hot Coffee.” When downloaded and installed, the Hot Coffee program enables users of the originally released PC version of the game to access the unfinished sex mini-game described in paragraph 11. An updated version of the program was posted on the Internet on June 11, 2005 that further modifies the sex mini-game described in paragraph 11 by rendering the

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female characters unclothed through use of the nude skins on the game disc.

19. Within weeks of the release of the Hot Coffee program for the PC version of *Grand Theft Auto: San Andreas*, PlayStation 2 and Xbox users were able to access the same content by taking certain steps, such as modifying or adding a hardware accessory to their game console, installing special software, and inputting codes developed by third parties.

20. On July 20, 2005, 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 ESRB revoked the existing rating for the game. Respondents entered into an agreement with the ESRB that provided, among other things, 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.

21. Through the means described in paragraph 16, respondents 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. Respondents 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 failure to disclose these facts, in light of the representation made, was and is a deceptive practice.

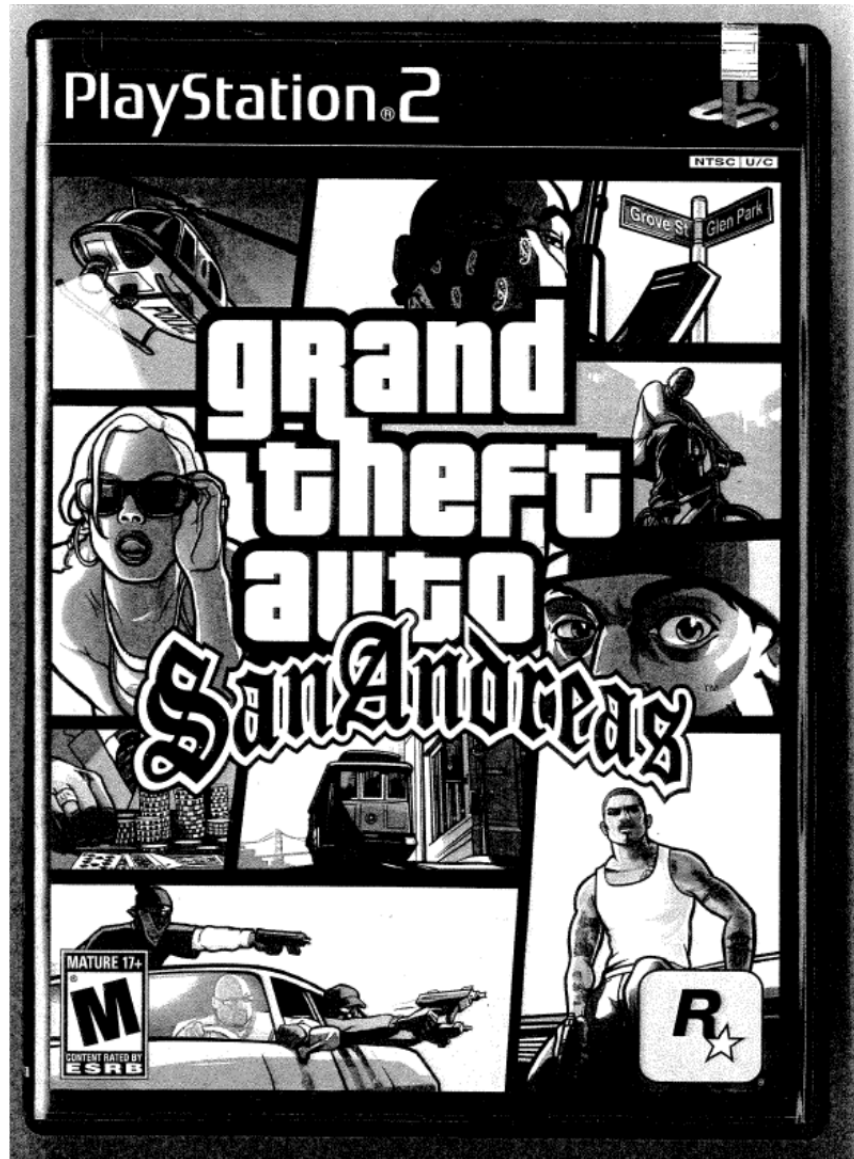
Complaint

22. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this seventeenth day of July, 2006, has issued this complaint against respondents.

By the Commission.

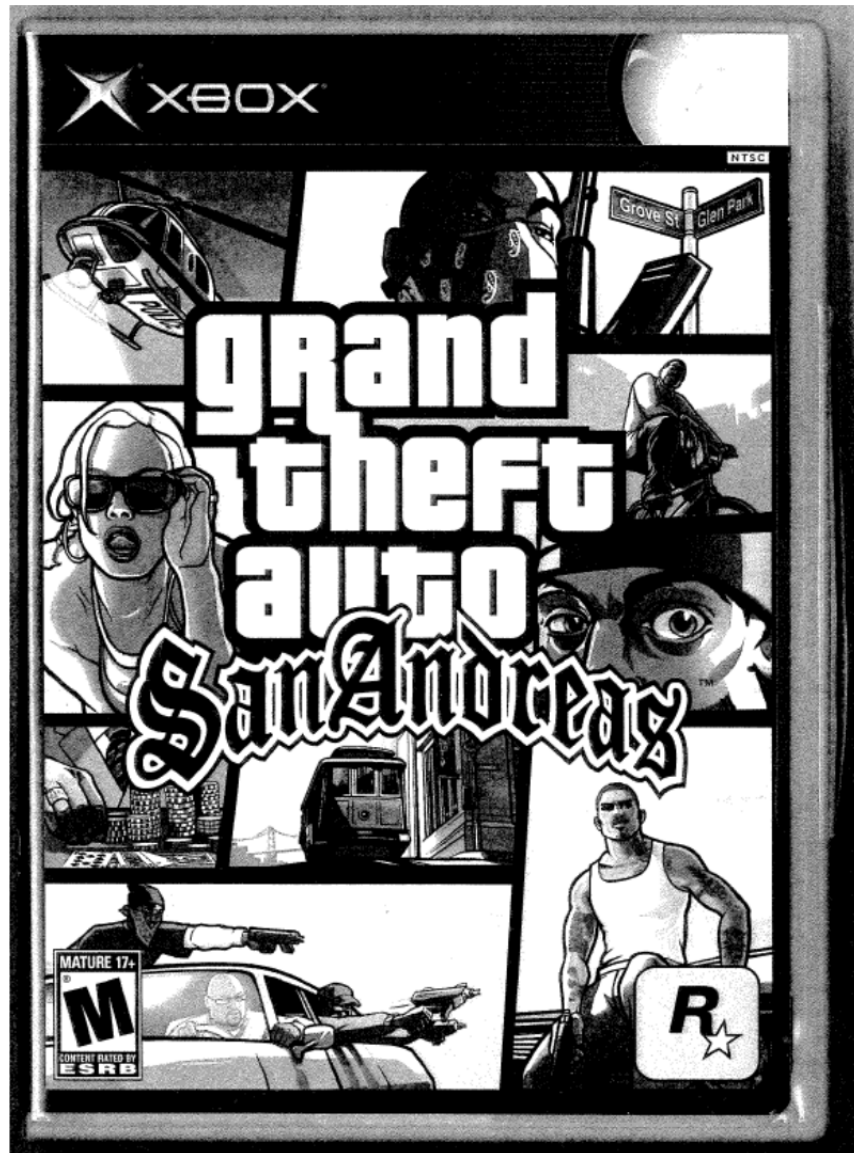
Complaint

EXHIBIT A

Complaint



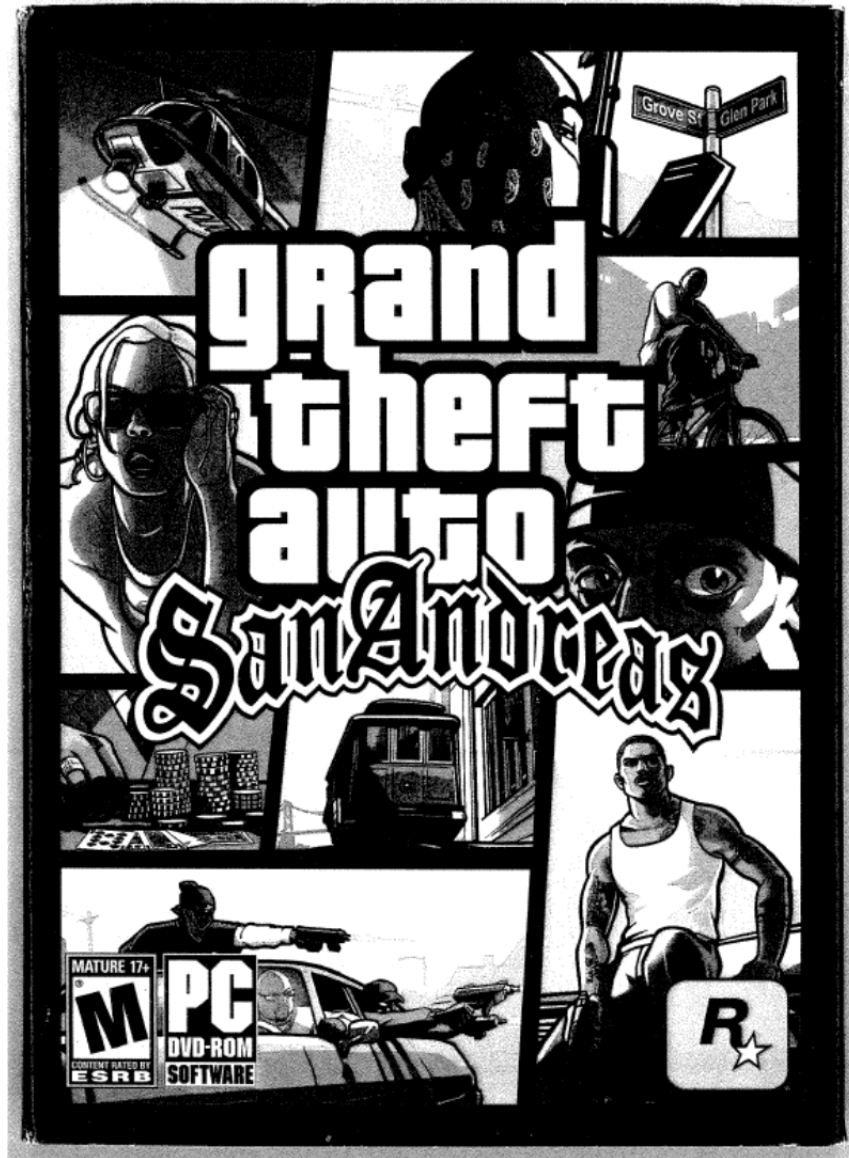
Complaint



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ROCKSTAR GAMES PRESENTS A ROCKSTAR NORTH GAME



FIVE YEARS AGO CARL JOHNSON ESCAPED FROM THE PRESSURES OF LIFE IN LOS SANTOS, SAN ANDREAS, A CITY TEARING ITSELF APART WITH GANG TROUBLE, DRUGS AND CORRUPTION. WHERE FILMSTARS AND MILLIONAIRES DO THEIR BEST TO AVOID THE DEALERS AND GANGBANGERS.

grand theft auto San Andreas



NOW, IT'S THE EARLY 90S. CARL'S GOT TO GO HOME. HIS MOTHER HAS BEEN MURDERED, HIS FAMILY HAS FALLEN APART AND HIS CHILDHOOD FRIENDS ARE ALL HEADING TOWARDS DISASTER. ON HIS RETURN TO THE NEIGHBORHOOD, A COUPLE OF CORRUPT COPS FRAME HIM FOR HOMICIDE. CJ IS FORCED ON A JOURNEY THAT TAKES HIM ACROSS THE ENTIRE STATE OF SAN ANDREAS, TO SAVE HIS FAMILY AND TO TAKE CONTROL OF THE STREETS.

WWW.ROCKSTARGAMES.COM/SANANDREAS

SOUNDTRACK AVAILABLE ON INTERSCOPE RECORDS 

MINIMUM HARDWARE REQUIREMENTS

1GHz Intel Pentium III or AMD Athlon Processor
256MB RAM
64 MB Video Card with DirectX compatible drivers
(GeForce or better)
16K speed DVD-ROM Drive
3.0 GB of free hard disk space for a minimal install
DirectX compatible Stereo Sound Card

SUPPORTED OPERATING SYSTEMS

Windows 2000 Professional (DirectX9) (for Service Pack 1 or higher) plus DirectX9, Windows XP (Home and Professional) plus Service Pack 1 or higher (plus DirectX9)

RECOMMENDED HARDWARE REQUIREMENTS

1GHz Pentium 4 or AMD Athlon XP processor (or better)
512K+ MB RAM
128K+ MB Video Card with DirectX compatible drivers
(GeForce 2 or better)
16K speed DVD-ROM drive
4.7 GB of free hard disk space for a full install
DirectX compatible Stereo Sound Card (Sound Blaster Audigy 2 Series recommended)
Compatible with touch pads (USB or Joystick Port)

GENERIC REQUIREMENTS

DirectX9
Keyboard and mouse



MATURE 17+

Blood and Gore
Intense Violence
Strong Language
Strong Sexual Content
Use of Drugs

ESRB CONTENT RATING www.esrb.org

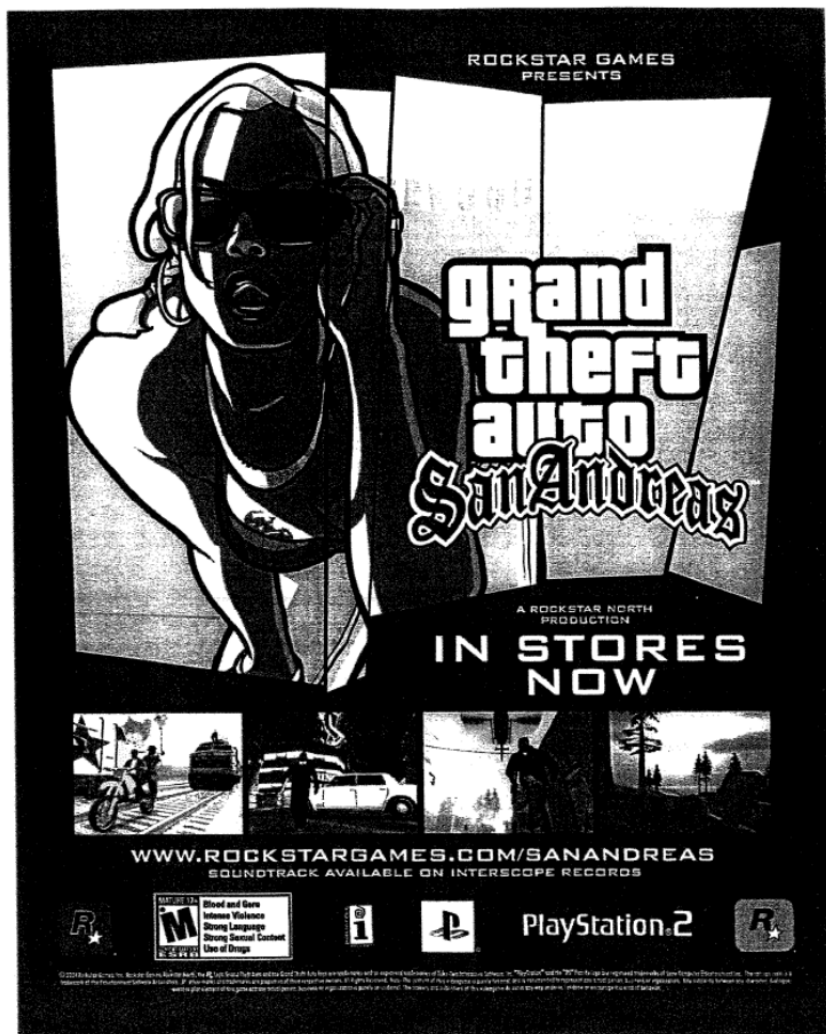


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Rockstar Games, 427 Broadway, New York, NY 10017 A Take2 Company
© 1995 Rockstar Games, Inc. Rockstar, Grand Theft Auto, the Rockstar logo and the Grand Theft Auto logo are trademarks or registered trademarks of Take Two Interactive Software, Inc. All other marks and trademarks are property of their respective owners. All Rights Reserved. The ratings are a trademark of the Entertainment Software Association.

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EXHIBIT B



ROCKSTAR GAMES
PRESENTS

grand theft auto San Andreas

A ROCKSTAR NORTH
PRODUCTION

IN STORES NOW

WWW.ROCKSTARGAMES.COM/SANANDREAS
SOUNDTRACK AVAILABLE ON INTERSCOPE RECORDS

PlayStation 2

© 2004 Rockstar Games. Rockstar Games, Rockstar North, the Rockstar logo and Grand Theft Auto are trademarks of Rockstar Games, Inc. "PlayStation 2" and "PlayStation" are trademarks of Sony Computer Entertainment Inc. "Grand Theft Auto" is a trademark of Rockstar Games, Inc. All other trademarks and registered trademarks are the property of their respective owners. The content of this advertisement is for informational purposes only. The content of this advertisement is not intended to be used for any other purpose. The content of this advertisement is not intended to be used for any other purpose. The content of this advertisement is not intended to be used for any other purpose.

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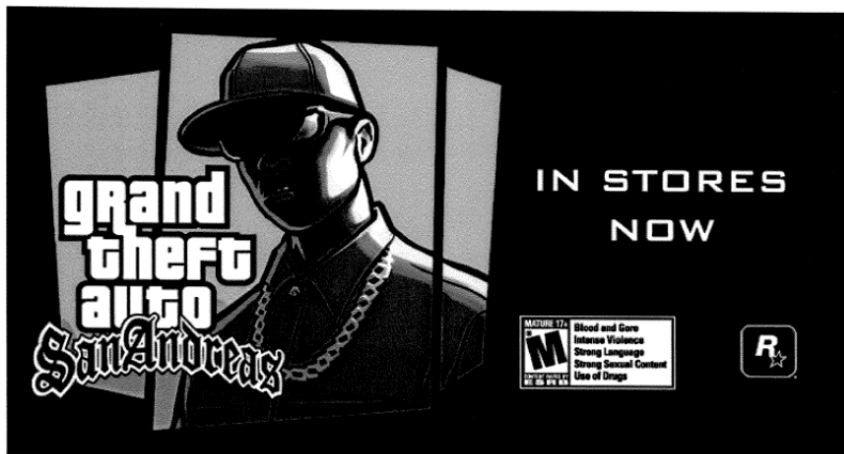
EXHIBIT C



Complaint



Decision and Order

EXHIBIT D**DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement

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purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Take-Two Interactive Software, Inc. is a Delaware corporation with its principal office or place of business at 622 Broadway, New York, New York 10012.
2. Respondent Rockstar Games, Inc. is a wholly owned subsidiary of Take-Two, with its principal office or place of business at 622 Broadway, New York, New York 10012.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

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1. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44;
2. “FTC” or “Commission” means the Federal Trade Commission.
3. “Respondents” means Take-Two Interactive Software, Inc., its successors and assigns, and its officers, agents, representatives, and employees, and Rockstar Games, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
4. The terms “Interactive electronic game,” “electronic game,” or “game” means any creative product consisting of data, programs, routines, instructions, applications, symbolic languages, or similar electronic information (collectively, “software”) that controls the operation of a computer and enables a user to interact with a computer-controlled virtual universe for entertainment purposes. The terms include electronic games distributed via a cartridge, disc, or other tangible information storage device, as well as such electronic games that are distributed electronically, such as through an online connection, electronic mail, or a wireless communication device. The terms do not include any electronic games whose software has been altered or modified by consumers or other third parties.
5. “Rating” or “rated” refers to a system, such as the system used by the Entertainment Software Rating Board, of classifying interactive electronic games based on criteria for age appropriateness, content, or both.
6. “Content descriptor” refers to a system used by the Entertainment Software Rating Board to designate words or short phrases that describe content (such as violence, blood and gore, strong sexual content) contained in an interactive electronic game.

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7. “Content” refers to any software that is both: a) contained in an electronic game; and b) capable of rendering, depicting, displaying, or activating scenes, images, words, or sounds. Any such software constitutes content under this definition regardless of whether respondents have disabled it for game play or intend it to be accessed during game play.
8. “Rating authority” means the Entertainment Software Rating Board or any other game rating organization to which respondents submit a game to be sold in the United States.
9. “Content relevant to the rating” means content that likely would affect or change the rating or content descriptors for a game if that content were reviewed by a rating authority.
10. “Clearly and prominently” shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable and shall be presented prior to the consumer installing or downloading any software

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code, program, or content and prior to the consumer incurring any financial obligation.

- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, promotion, offering for sale, sale, or distribution of *Grand Theft Auto: San Andreas* or any other interactive electronic game, in or affecting commerce, shall:

- A. 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;
- B. not misrepresent, expressly or by implication, the rating or content descriptors for an electronic game; and
- C. establish and implement, and thereafter maintain, a comprehensive system reasonably designed to ensure that all content in an electronic game is considered and

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reviewed by respondents in preparing submissions to a rating authority.

Provided, however, nothing herein shall constitute a waiver of respondents' 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 respondents nonetheless acknowledge their obligations to comply with this order.

II.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all advertisements and promotional materials for each interactive electronic game developed or produced by respondents, including videotape or DVD recordings of any broadcast advertisement and an audiotape or CD of any radio advertisement.

III.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall deliver a copy of this order to all current, and for ten (10) years to all future directors, officers who exercise policymaking functions, developmental studio heads, and to those personnel having supervisory responsibilities with respect to Parts I-V of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

IV.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in their respective corporate structures that likely will affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by the Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall within sixty (60) days from the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

This order will terminate on July 17, 2026, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

Analysis to Aid Public Comment

violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part. *Provided further*, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF 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

Analysis to Aid Public Comment

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.

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

(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.

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

**BOSTON SCIENTIFIC CORPORATION
AND
GUIDANT CORPORATION**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4164; File No. 061 0046
Complaint, July 21, 2006 – Decision, July 21, 2006*

This consent order addresses the acquisition of Guidant Corporation by Boston Scientific Corporation (“Respondents”), which was likely to substantially reduce or eliminate competition in the research, development, marketing, and sale of certain medical devices. The order addresses two areas: Guidant’s vascular business and Boston Scientific’s stake in Cameron Healthcare Inc. (“Cameron”), which is developing a novel implantable cardioverter defibrillator (ICD). The order requires Boston Scientific and Guidant to divest all assets (including intellectual property) related to Guidant’s vascular business to a third party, enabling that third party to make and sell drug eluting stents with the rapid exchange delivery system, percutaneous transluminal coronary angioplasty balloon catheters, and coronary guidewires. Respondents selected Abbott Laboratories (“Abbott”) as the buyer for the divestiture package. To assist the divestiture’s success, Abbott will obtain four existing manufacturing facilities and one currently under construction. Manufacturing in other facilities will be transferred to Abbott-owned facilities in a timely fashion. Additionally, Abbott and Boston Scientific will enter into interim transitional service and confidentiality agreements. The order also requires Respondents to limit Boston Scientific’s control over certain Cameron actions and the sharing of non-public information about Cameron’s ICD product. To ensure the Commission will have an opportunity to review any attempt by Boston Scientific to exercise its option to acquire Cameron, the order requires Boston Scientific to provide prior notice pursuant to a Hart-Scott-Rodino framework even if the transaction otherwise would be non-reportable. The Commission will appoint an interim monitor, who will file periodic reports with the Commission on the status of the divestitures. Finally, the Commission may appoint a divestiture trustee if any of the remedies are not accomplished within the time frames established by the order.