

IN THE SUPERIOR COURT OF ALLEN COUNTY

STATE OF INDIANA, <i>Plaintiff,</i> v. TIKTOK INC., and, BYTEDANCE LTD., <i>Defendants.</i>

Case No. _____

PUBLIC REDACTED**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

TikTok Inc. and ByteDance Ltd. (together, “TikTok”) falsely report to Indiana consumers that the TikTok application (hereafter, “app”) is appropriate for users 12 and older and that “Alcohol, Tobacco, and Drug References,” “Sexual Content or Nudity,” “Mature/Suggestive Themes,” and “Profanity or Crude Humor” are “infrequent/mild” on TikTok. TikTok makes these misrepresentations to Indiana consumers through the App Store, a digital platform operated by Apple, Inc. (hereafter, “Apple”), where users can go to download apps like TikTok onto their smartphones and tablets. Any consumer can visit TikTok’s page in the App Store *today* and see that TikTok claims a “12+” rating for its app, including these false “infrequent/mild” descriptions, which are displayed in the “Age Rating” section at the bottom of TikTok’s page. Ex. 1. *See* TikTok, APP STORE, <https://apple.co/3VCI9Q8> (last accessed Dec. 5, 2022). App developers acquire their App Store age ratings by self-reporting answers about the content available on their app in response to a questionnaire posed by Apple.¹

¹ Apple, App Store Connect Help, *Set app age rating*, available at <https://apple.co/3UnUaaL> (last accessed Dec. 5, 2022).

In reality, drug-related content, sexual and suggestive content, and profanity are rampant on TikTok. TikTok’s algorithm serves up a steady stream of this inappropriate content to users as young as 13. These children can search for and find thousands upon thousands of videos in those content categories, many of which have millions of views. TikTok even *helps users locate this content* by suggesting search terms using its Autocomplete function. Children can find hashtags and search terms that return videos about alcohol use, tobacco use, cannabis use (both smoking and edibles), and hard drugs like cocaine and molly. Children can scroll endless streams of videos depicting the lifestyles of strippers, near-naked pole dancing routines from both men and women, explanatory videos about sexual kinks and fetishes including rape fantasies, pornographic written material, and suggestive dances to music with explicit lyrics. Profanity is rife on TikTok, including hundreds of thousands of videos set to music that includes the most explicit words in the English language—words like “fuck,” “bitch,” “clit,” and “cock.”

Yet at this very moment, an Indiana parent could locate TikTok in the App Store and read that it is rated “12+” (for users 12 years old and older) with “infrequent/mild” “Alcohol, Tobacco, or Drug References,” “Sexual Content and Nudity,” “Mature/Suggestive Themes,” and “Profanity or Crude Humor.” Ex. 1. On the basis of these misrepresentations, that Indiana parent could allow a 13-year-old child to download and register for the TikTok app, joining the millions of other American young people who spend an average of *99 minutes per day* using TikTok. These young users cannot “unsee” or “unhear” the content TikTok makes available to them. And some of this content carries the real-world likelihood that its viewers will be *more* apt to try out illegal substances or engage in risky sexual behavior, including posting sexual content online. At a minimum, these children are subjected to material that is entirely age-inappropriate.

Indiana law prohibits misrepresentations like TikTok's, which are "an unfair, abusive, or deceptive act, omission or practice" committed in "connection with a consumer transaction." Ind. Code § 24-5-0.5-3(a). Indiana law also empowers the Attorney General to seek and obtain a preliminary injunction to prevent the continuance of such unlawful acts. *Id.* § 24-5-0.5-4(c).

Accordingly, pursuant to IND. CODE § 24-5-0.5-4(c) and Indiana Trial Rule 65, Indiana seeks and this Court should grant a preliminary injunction prohibiting TikTok from continuing to misrepresent its app with a "12+" rating in the App Store or with the content descriptions that "Alcohol, Tobacco, or Drug references," "Sexual Content and Nudity," "Mature/Suggestive Themes," and "Profanity or Crude Humor" are "mild/infrequent" on the TikTok app.

FACTUAL BACKGROUND

A. TikTok Is a Social Media Platform Centered on Short Video Content and Available to Users as an Application for Smartphones and Tablets.

TikTok is a social media platform that centers on short videos created and uploaded by users and often set to music or spoken audio tracks.² TikTok is available as an "application" to download on smartphones and tablets, which is how most TikTok users interact with the TikTok platform. Users can download the TikTok application from the Apple App Store, the Google Play Store, or the Microsoft Store.

TikTok users register and create a profile in order to access the platform. In doing so, TikTok users answer a few questions about themselves and provide their birthdays. Only those users who provide a birthday indicating that they are at least 13 years old are granted access to the regular TikTok platform.³

² See TikTok New User Guide, available at <https://bit.ly/3FltvXY> (last accessed Dec. 5, 2022).

³ *Id.*

TikTok offers a music library and video-editing features that make it easy for users to create and upload their own videos, which will then be featured on that user’s individual user page.⁴ Users have the option to search for and “follow” other users. TikTok users regularly follow their real-life friends on TikTok as well as virtual acquaintances, total strangers, and celebrities.

TikTok is known for the success of its “For You” feed, which is a never-ending, algorithmically-personalized stream of videos provided to an individual TikTok user upon logging into the TikTok application. TikTok describes the For You feed like this:

When you open TikTok and land in your For You feed, you’re presented with a stream of videos curated to your interests, making it easy to find content and creators you love. This feed is powered by a recommendation system that delivers content to each user that is likely to be of interest to that particular user. Part of the magic of TikTok is that there’s no one For You feed – while different people may come upon some of the same standout videos, each person’s feed is unique and tailored to that specific individual.⁵

The TikTok application tracks each user’s interaction with other users’ content, and this information feeds the TikTok algorithm, which in turn powers the For You feed. In this way, the videos that a user has watched in the past help determine what videos the user’s For You feed will display in the future.⁶

TikTok users can also search for other users or particular content on the TikTok platform. Other users “tag” their videos with “hashtags,” which users can use to search for content.⁷ Users can also perform keyword searches or search for the profile names of other users. When a user begins typing in TikTok’s internal search bar, TikTok’s “Autocomplete” feature will typically recommend search terms, for example, offering to complete the letters that a user has typed with

⁴ See TikTok, Elements of a TikTok Video, *available at* <https://bit.ly/3iGX6C9> (last accessed Dec. 5, 2022).

⁵ How TikTok Recommends Videos #ForYou, *available at* <https://bit.ly/3uhhZXP> (last accessed Dec. 5, 2022).

⁶ *Id.*

⁷ TikTok, Finding Your Community, *available at* <https://bit.ly/3gSuci9> (last accessed Nov. 21, 2022) (“If you want to find creators that post similar videos, consider using relevant hashtags and engaging with videos in your favorite categories to see more of it.”).

the rest of a word or a phrase that is searchable on TikTok. For example, if a user types “c” into the search bar, TikTok’s Autocomplete feature may offer “cat” and “car” as possible search terms the user could be looking for.

B. TikTok Offers Its Application With a “12+” Rating in the App Store and Self-Reports That “Alcohol, Tobacco, or Drug Use and References,” “Sexual Content and Nudity,” “Mature/Suggestive Themes,” and “Profanity or Crude Humor on TikTok Are “Infrequent/Mild”

TikTok makes its application available to Indiana consumers to download in the App Store, a digital distribution platform developed and maintained by Apple.

When TikTok submits its application to the App Store for distribution, Apple requires TikTok to select an age rating that will be displayed to consumers. To obtain an age rating, Apple poses a series of questions to TikTok and requires TikTok, like all app developers, to self-report answers to those questions. As part of this process, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As a result of TikTok’s answers to these age-rating questions, TikTok is currently able to choose and does choose a “12+” rating for its application in the App Store. Applications with a “12+” rating are supposed to be appropriate for consumers ages twelve and older. Apple defines its “12+” rating by saying that applications with that rating may contain “infrequent mild language” or “mild or infrequent mature or suggestive themes.” App Store Preview, *Get Started: Age Ratings*, available at <https://apple.co/3ydIBeh> (last accessed Dec. 5, 2022). Additionally, TikTok’s download page in the App Store contains the following explanations and descriptions that relate to its age rating: “Infrequent/Mild Sexual Content and Nudity,” “Infrequent/Mild

Mature/Suggestive Themes,” “Infrequent/Mild Alcohol, Tobacco, or Drug Use or References,” and “Infrequent/Mild Profanity or Crude Humour.”⁸ [REDACTED]

[REDACTED]

If TikTok self-reported to the App Store that “Alcohol, Tobacco, or Drug Use or References,” “Sexual Content and Nudity,” “Mature/Suggestive Themes,” or “Profanity or Crude Humor” are “frequent/intense” on the TikTok application, then TikTok would qualify *only* for a “17+” age rating in the App Store, meaning that the application would be advertised as appropriate only for users seventeen years old and older. TikTok’s App Store page would also display “frequent/intense” in the age-rating description box for each of the categories listed above. [REDACTED]

[REDACTED]

C. “Alcohol, Tobacco, and Drug References,” “Sexual Content or Nudity,” “Mature/Suggestive Themes,” and “Profanity or Crude Humor” Are Not “Mild/Infrequent” on the TikTok App.

Despite TikTok’s statements to the contrary, “Alcohol, Tobacco, and Drug References,” “Sexual Content or Nudity,” “Mature/Suggestive Themes,” and “Profanity or Crude Humor” are not infrequent/mild on the TikTok App.

1. “Alcohol, Tobacco, and Drug References” Are Not Infrequent/Mild on the TikTok App.

Alcohol, tobacco, and drug content is prevalent on the TikTok app. The State of Indiana will present the testimony, written and oral, of Dr. Jon-Patrick Allem, an Assistant Professor of Research in Population and Public Health Sciences at the Keck School of Medicine of the University of Southern California. Dr. Allem has identified ten drug-related topics for which he examined the availability of content on TikTok: vaping, little cigars, hookah, cannabis use

⁸ App Store, TikTok, available at <https://apple.co/3SQAI6f>; also Ex. 1.

(smoking), cannabis use (edibles), alcohol use (general use), binge drinking (excessive use), cocaine, molly (MDMA), and mushrooms. *See* J. Allem, SUBSTANCE USE-RELATED CONTENT ON TIK TOK at Table 1 (attached hereto as Ex. 5) (“Allem Report”). For each drug-related topic, Dr. Allem searched for the most commonly used hashtags on TikTok and from those hashtags, Dr. Allem pulled the top twenty TikTok videos based on the number of times those videos had been viewed. *Id.* at ¶ 2.1.4. Dr. Allem then undertook a coding process to evaluate these top videos to determine whether they contained substance abuse and whether they portrayed substance abuse in a positive, negative, or neutral light (among other things). In total, Dr. Allem coded 194 top TikTok videos related to the ten drug-related topics.

Dr. Allem’s research revealed the incredible extent and accessibility of alcohol, tobacco, and drug content on TikTok. Of the 194 total videos Dr. Allem evaluated for the ten identified topics, about 38.1% of the videos contained substance use. These TikTok videos received 586,281,936 plays, 52,939,234 likes, 344,797 comments, and were shared 901,418 times. Of the 194 videos Dr. Allem examined, 26.8% were *instructional* videos related to substance use, and these videos received a staggering 1,454,100,000 plays, 99,710,584 likes, and 562,720 comments, and they were shared 1,553,594 times. Also, 24.7% of the videos studied portrayed substance use in a positive (as opposed to neutral or negative) way. These positive videos received 662,119,201 plays, 55,874,304 likes, and 409,390 comments, and they were shared 1,385,701 times. Allem Report Table 2.

These results maintained their force even when divided among alcohol, tobacco, and hard drug themes—in other words, content in *each* of those categories is prevalent on TikTok. For example, among the tobacco-related hashtags that Dr. Allem researched, 53.4% of the top videos (31 out of 58 videos) were instructional, and these instructional videos represented 621,200,000

plays, 26,289,484 likes, and 172,755 comments. They were shared 420,833 times. Among the same 58 top tobacco-related videos, *none* concerned addiction or cessation and only 5 portrayed tobacco use in a negative light. Allem Report Table 3.

Among the cannabis-related hashtags that Dr. Allem researched, 42.1% (16 out of 38 videos) portrayed cannabis use. These videos received 13,150,136 plays, 1,752,476 likes, 11,422 comments, and they were shared 52,877 times. Allem Report Table 4.

Fully 55% of the top videos returned by the hard-drug-related hashtags that Dr. Allem studied also portrayed the use of hard drugs (32 out of 58 videos). These top hard-drug videos received 20,231,800 plays, 2,541,058 likes, and 25,233 comments, and they were shared 50,899 times. Allem Report Table 5.

Among the alcohol-related hashtags studied, 52.5% of top videos (21 of 40 videos) were instructional in nature, and these instructional videos resulted in 832,900,000 plays, 73,421,100 likes, and 389,965 comments. They were shared 1,132,761 times. Allem Report Table 6.

Dr. Allem's research described here is consistent with other public health research demonstrating that videos related to substance use are prevalent on TikTok. Allem Report at ¶¶ 4.1.2–4.1.4. Prior research has shown common substance-use themes on TikTok are positive in nature and portray users as unconcerned about the health consequences of substance use. *Id.* Prior research has also shown that individual posts related to substance use on TikTok have received view totals in the millions and that groups of these posts (for example, a sample of 808 videos related to vaping) have received collective views in the *billions*. *Id.* The results of Dr. Allem's research and the related public health research described here are even more alarming in light of existing studies showing that people who have viewed, for example, tobacco content on social media are more than *twice as likely* as non-viewers to report using tobacco and, among those who

have never used tobacco, more likely to be susceptible to use tobacco in the future. Allem Report at ¶ 1.1.2.

Dr. Allem's research also confirmed that many of the identified posts that encouraged substance use were visible even after logging into TikTok using account credentials of a 13-year-old user. Allem Report at ¶ 3.1.1. Dr. Allem was able to find 18 out of 33 such posts when logged on as a 13-year-old user, and while searching for the 15 unfound posts, Dr. Allem discovered *other* videos promoting substance use in 9 instances. *Id.*

Dr. Allem also noted that TikTok *itself* helped him to locate substance use hashtags by offering relevant hashtags through the “autocomplete” function. Allem Report at ¶ 2.1.11. This is consistent with the experience that any TikTok user would have on the app—including a 13-year-old user. While TikTok disables most hashtags that correspond to the correctly-spelled names of common drugs, TikTok allows so-called “algospeak” hashtags that are merely alternative, coded ways of referring to the same illicit substances.

For example, TikTok returns no search results when a user searches for “shrooms,” which is the correctly spelled name for hallucinogenic mushrooms. But when a user types “shr” in the search bar in the TikTok application, TikTok's Autocomplete function suggests “shroomz” as a possible search term. *See* Ex. 6. If the user then searches for “shroomz,” the TikTok application returns thousands upon thousands of videos, many of which are about hallucinogenic mushrooms. For example, the “shroomz” search will return videos of people describing or depicting what a “trip” on “shrooms” feels like, describing the amount of “shrooms” they took, and comparing the similarities and differences between trips on “shrooms” as opposed to LSD. When a user types “shr” into the TikTok search bar, TikTok also offers “shr0omies trip” as a search term, and if a

user selects that search term, TikTok returns thousands of videos related to “shrooms,” including videos of people using shrooms. *See* Ex. 7.

Similarly, “shroomtok” returns no search results. But the misspelling “shroomtok” returns many relevant results, including individuals consuming shrooms while placing a mushroom emoji over the drug to disguise it (while clearly stating that they are consuming hallucinogenic mushrooms). *See* Ex. 8.

A user need not be *seeking* alcohol, tobacco, or drug content in order for TikTok’s Autocomplete feature to recommend suggested searches about that content. For example, merely typing “alc” into TikTok’s search bar generates “alc for teens” as a possible search, which returns thousands of videos about teens obtaining and drinking alcohol, including videos about buying alcohol underage, stealing alcohol from parents, or types of alcohol “that every teen has tried at least once.” *See* Ex. 9. Merely typing “alc” into TikTok’s search bar also generates “alcohol beverages recipe” as a possible search, which returns thousands of videos offering recipes for alcoholic beverages. Some of these videos include recipes and how-to instructions for drinks that don’t taste like alcohol or drinks that taste like candy. *See* Ex. 10.

Other searches are simply available on TikTok without misspellings, even though they clearly return alcohol, tobacco, or drug content. For example, “#drinkinggame” is an operative hashtag on TikTok with 1.6 billion views. *See* Ex. 11. Most of the top videos returned when searching for that hashtag are actual drinking games. One such video shows a drinking game in which shot glasses are attached to pull-and-go toy cars, which are then released alongside a row of liquor bottles; the player is required to take a shot from whatever bottle of liquor the toy car lands near. In another video, a user explains the rules of a drinking game called “circle of death”

in response to a question from another user asking for the instructions “cause I got alcohol poisoning playing that in high school.” *See* Ex. 12.

Cannabis content is also abundant on the TikTok platform. For example, the search term “canna recipes” provides thousands of videos depicting how to infuse cannabis into butter or other edibles to then cook with or consume. *See* Ex. 13. Typing “edib” into the TikTok search bar offers the Autocomplete suggestion “ediblestiktok,” which returns thousands of videos about cannabis-laced gummies and other foods. Many of those videos are attractive to young users, such as videos showing sweet gummy candies made from melted gummy bears laced with cannabis. *See* Ex. 14. Searching for “canna gummies” returns thousands of videos of users making and/or consuming cannabis-laced gummies. *See* Ex. 15. Searching for “ediblestiktok gummies” returns videos advertising cannabis-laced gummies for sale and videos showing users getting high by eating cannabis gummies. *See* Ex. 16. One video shows a young man consuming cannabis edibles repeatedly throughout the course of an entire day, and that video has 13.2 million views. *See* Ex. 16, 17.

Furthermore, TikTok *itself* is aware that illicit content is rampant on its platform.

[REDACTED]

This evidence makes perfectly clear that “Alcohol, Tobacco, and Drug References” on TikTok are neither “infrequent” nor “mild,” despite TikTok’s contrary statements to consumers visiting TikTok’s download page in the App Store.

2. “Sexual Content or Nudity” and “Mature/Suggestive Themes” Are Not Infrequent/Mild on the TikTok App.

Simple searches on TikTok—even when conducted by a 13-year-old user—demonstrate as well that “Sexual Content or Nudity” and “Mature/Suggestive Themes” on TikTok are neither infrequent nor mild. In fact, such content is not only plentiful on TikTok, but TikTok also *assists* users in locating it through its Autocomplete feature.

If a user types “spi” into the TikTok search bar, the user will be suggested “spiceytok,” which returns thousands of videos about sex, including videos about “horny” talk during sex and a description of a sexual fantasy in which “[s]he is b3nt ov3r his desk after class.” Ex. 19. If a user types “ki” into the TikTok search bar, the autocomplete function will suggest “kintiktok,” which returns thousands of videos related to sexual kinks, including videos about dominant and subordinate sexual partners and kinks like choking and “CNC,” which stands for “consensual non-consent.” Ex. 20.

If a user types “stri” into the TikTok search bar, TikTok recommends “skripper tiktok” as a search result. This search returns thousands of videos about strippers, including descriptions of typical workdays for strippers and videos of strippers in thong underwear and other lingerie. Ex. 21. Many stripper-related videos also have millions of views on TikTok. For example, a woman’s

description of working a dayshift as a stripper, including how much money she made, has 13.7 million views. Ex. 22. A video containing tips for working as a stripper and pole dancer from a self-professed 18-year-old “baby stripper” has 2.2 million views.⁹ Ex. 23.

Searching for “seggs” with the “egg” emoji in place of the letters “e-g-g” offers abundant sexual content, including a young woman describing things she has said while having sex, a young couple depicting “what should happen after seggs,” videos about women who “squirt” during sex, and a young woman listing “movies I’ve had seggs to.” Ex. 24.

Pole dancing videos are commonplace on TikTok, including videos of a man and woman pole dancing together or two men pole dancing together, and these videos often have millions of views. *See, e.g.*, Ex. 25 (2.8 million views); Ex. 26 (1.5 million views); Ex. 27 (2.1 million views); Ex. 28 (1.1 million views); Ex. 29 (3.4 million views); Ex. 30 (5.3 million views).¹⁰ The phrases “exoticpole,” “exoticpoledancer,” and “poledancer” are all searchable on TikTok and return pole dancing videos with millions of views. *See Ex.* 31. These searches lead to individual users with numerous videos of sexualized dance routines, typically performed with thong underwear. *See Ex.* 32.

Pegging is a term used to refer to sexual intercourse in which a woman wears a dildo and penetrates a man’s anus. While TikTok does not allow searches for the word “pegging” on its platform, TikTok allows searches for many other terms that lead to the same content, including “p3gging,” “pegtok,” and “peging.” Results returned by these hashtags include: a video of a professional mistress discussing her experiences with pegging and “anal play” (3.6 million views), Ex. 33¹¹; a video about pegging that includes a sex toy (2.8 million views), Ex. 34; and a video

⁹ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

¹⁰ This video, Ex. 30, is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

¹¹ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

that includes the text “he finally let me peg him” (3.8 million views), Ex. 35. The search “he finally let me peg him” returns numerous videos in which women say that their male partners have “finally let me peg him.” Ex. 36; *see also* Ex. 37 (showing search results for “p3gging tutorial” with Restricted Mode turned on).

Domination and submission are sexual kinks that refer to one partner dominating and another partner submitting during sex. Numerous videos on TikTok describe and glorify these activities, including: a video of a dominant and submissive partner with a belt (35 million views), Ex. 38; a submissive partner describing the control a dominant partner exercises over him, including control over what he wears and the color of his hair (2.6 million views), Ex. 39; a video in which a dominant partner describes physical abuse during sex (547,000 views), Ex. 40; and a video depicting bondage costumes and themes in a performance (65,000 views), Ex. 41.

“CNC” stands for “consensual non-consent,” a form of sexual behavior in which the participants agree to engage in sexual behavior that would otherwise appear to be rape. Both “CNC” and “consensual non-consent” are searchable terms on TikTok. Videos available on TikTok about these terms include a video describing CNC as the evolution of a choking fetish (1.4 million views), Ex. 42; a video posting an excerpt of explicit text that includes descriptions of a CNC sex scene (2.1 million views), Ex. 43; and a user describing CNC and telling viewers to go “have fun” (753,200 views), Ex. 44¹². In another video, a user jokes about describing her CNC kink to “vanilla friends” (2.4 million views), Ex. 45. TikTok’s Autocomplete function will also point users toward CNC content. If a user types “cnc” into the TikTok search bar, TikTok recommends the search “cnc knik,” which returns videos about CNC. Ex. 46.

¹² This video is not available in Restricted Mode but is visible when Restricted Mode is turned off.

“Fingering” is a slang term for penetrating a woman’s vagina with fingers. On TikTok, even a 13-year-old user can search for “f1ngering” (a misspelling in which the number “1” replaces the first “i” in “fingering”) and view hundreds of videos about fingering, including how-to instructional guides with as many as 13 million views. Ex. 47 (showing search results for “f1ngering,” which include two instructional videos with 7 million and 13 million views, respectively).

“Twerking” is a sexually provocative dance move that involves squatting and hip thrusting. The TikTok platform allows twerking videos, including twerking while wearing thong underwear, leaving all or nearly all of the buttocks exposed. One twerking video has 5.1 million views, Ex. 48. The “baddiesonly” hashtag returns numerous twerking videos with millions of views and/or likes. Ex. 49.

Twerking videos are sometimes an invitation to viewers to find the posting user on other pornographic platforms. “Only Fans” is a pornographic social media platform where users can pay a fee to subscribe to accounts that post pornographic material. While TikTok bans direct links to Only Fans, many TikTok users circumvent this ban by providing their Instagram username instead. Instagram allows direct Only Fans links in user profiles, so a TikTok user can use the Instagram username to find a direct Only Fans link. One TikTok video has over 15 million views and includes the user’s Instagram name; the same user’s Instagram page provides a link to the user’s Only Fans page. Ex. 50. Another TikTok video has 1 million views, and in the user’s TikTok profile, the user provides his OnlyFans account name. Ex. 51. In the video, the user also provides his Instagram username, and his Instagram profile contains a direct link to his OnlyFans account. *Id.*¹³

¹³ See also Sarah Ellis, *19 Hours With StripTok’s Kayla Ann*, Bustle (April 11, 2022), available at <https://bit.ly/3h0h2jc> (“She uses TikTok for visibility, hoping to direct people to subscribe to her OnlyFans, where she makes an average of \$7,000 per week, depending on how well her daily pay-per-view videos sell.”).

Other readily accessible videos glorify sexual bondage imagery, Ex. 52 (1.5 million views); glorify sexual kinks that include “forced submission” and “pain (biting, scratching, etc.)”, Ex. 53 (2.2 million views); and provide instructions for tying a pentagram-shaped harness for sexual rope play, Ex. 54 (979,900 views). A video with 25.4 million views purports to show wet stains across a bed and curtains after the TikTok user “squirt[ed]” using a “v!brab0r” (meaning “vibrator”). Ex. 55.

A video with 1.7 million views advocates using butt plugs to prevent a man from “star[ing]” at a woman’s “a55” (meaning “ass”) during “doggy” (meaning doggy-style sex). Ex. 56. Butt plugs are a sex toy designed to be inserted into the rectum.

A video with 2.7 million views shows 58 seconds of close-up open-mouth kissing between two people, including biting and tongue-sucking. Ex. 57.¹⁴

Some TikTok videos appear to feature minors engaged in sexually suggestive dances. One video with 159,800 views shows apparent minors twerking, Sealed Ex. 58; another with 16,900 views purports to show a 16-year-old twerking on a bed, Sealed Ex. 59¹⁵; and another video with 32,000 views shows an entire dance sequence from the Netflix film, *Cuties*, which is about underage girls learning to dance provocatively and performing a sexually suggestive dance on stage, Sealed Ex. 60¹⁶.

Wattpad is a separate platform on which users post their literary works, many of which are sexual in nature. Many excerpts from Wattpad are published on TikTok as TikTok videos showing just text set to music. Searching for “Wattpad” on TikTok returns thousands of these videos which contain explicit sexual writing. Ex. 61.

¹⁴ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

¹⁵ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

¹⁶ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

One viral TikTok dance challenge featured users mimicking the rap artist, Cardi B, and her music video dance to her song “WAP,” which stands for “wet ass pussy.” Addison Rae’s WAP dance challenge video has 312.6 million views. Ex. 62. Another user’s WAP dance has 3.7 million views and features the user wearing fishnet stockings and short shorts. Ex. 63. The WAP dance includes floor-humping and all-fours twerking.

As the above examples and their associated exhibits amply demonstrate, “Sexual Content or Nudity” and “Mature/Suggestive Themes” are neither “infrequent” nor “mild” on TikTok.

3. “Profanity or Crude Humor” Is Not Infrequent/Mild on the TikTok App.

“Profanity or Crude Humor” is also prevalent on the TikTok app, particularly because TikTok facilitates users’ creation of videos using explicit musical tracks.

One of the top 5 most-followed TikTok users, Addison Rae, has posted a video of herself dancing to a song called “We Not Humping” with the following lyrics: “Ooh, he coming off way to pushy/I hope he don’t think he was getting this pussy/Aw, he like his bitches psychotic/Sit on his face and explain why I’m toxic, uh/How you talk shit but ain’t backing it up/Your pussy wack, send it back to the club.” The video has 15.2 million views. Ex. 64. Over 500,000 other TikTok videos have been made by users and set to the same music. Ex. 65. Top user Charli D’Amelio’s dance set to the same music has 37.3 million views. Ex. 66¹⁷. Another user, Camila Mendes, has danced to the same lyrics, and her video has 36.3 million views. Ex. 67. Loren Grey performs the dance in a thong bikini in a video with 5.6 million views. Ex. 68¹⁸.

Top TikTok user Charli D’Amelio has a video with 40.3 million views in which she dances to a song titled “Super Freaky Girl.” Ex. 69. The lyrics include: “F-R-E-A-K/I’m a movie, I should be on replay/I’m tryna F-U-C-K/He got pictures of my titties in his briefcase/I like D-I-C-K/I like

¹⁷ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

¹⁸ This video is not visible in Restricted Mode but is visible when Restricted Mode is turned off.

bad bitches too, she could be bae/Ass fat to the max like TJ/BJ while he speedin' on the freeway.”
Id.

In a video with 4.2 million views, a user molds clay on a pottery wheel in the shape of a penis while the song “Fucked by a Country Boy” is playing. Ex. 70. The lyrics are: “Have you ever been fucked, fucked, fucked by a country boy/Rammed, rammed, rammed by a redneck/Spread, spread, spread by an inbred/Who’s kind of got your daddy’s voice/If you’ve never been licked by a hick with a hillbilly dick/Or got a rash on your stash from some trailer trash/Then girl you need to get fucked by a country boy.” *Id.*

Another song, “She’s So Nice” by Pink Guy, contains the following lyrics: “She’s so nice/She’s so nice/She’s so nice/Yeah, treat her like a bitch/I fuck her in the ass and I fuck her in the tits/If she can handle that then I’ll let her suck my dick/And her man is coming back so I better make it quick/Yeah, you know who you are you piece of shit/Your girlfriend’s always sucking on my dick like a Slim Jim stick/So next time you go down on her clit/Tell me how my dick tastes/Tell me how my motherfucking dick tastes!/But she’s so nice/But she’s so nice.” Ex. 71. This song has been the center of viral dance trends in the past, and some recent TikTok videos reenact the old dance trend. Ex. 72.

Another song featured in many TikTok videos contains the lyrics: “I fucked her so good, she turned around/And she thought I had two cocks/clicc claccc ratatat/.223s through your back.” Searching for “clicc claccc” returns many videos set to these lyrics. Ex. 73.

TikTok makes vulgar and explicit songs including (but not limited to) We Not Humping, WAP, Fucked by a County Boy, and She’s So Nice available to users to use when creating and posting their own videos. TikTok has the ability to exclude vulgar and explicit songs or lyrics from

its music library but chooses not to. These songs and many others available to TikTok users carry explicit lyric warning labels in Apple Music and other online music retailers.

The videos set to music with explicit lyrics as described above are readily accessible to all users on TikTok.

For example, when logged in as a 13-year-old user in Restricted Mode, TikTok’s algorithm offered a video set to the music “Fuck Off” in the For You page. Ex. 74. The video has 3.5 million views. Ex. 75. The lyrics to “Fuck Off” include: “This is for anybody who needs tell somebody to fuck off/Go fuck yourself/Suck a bag of dicks/Eat a big ole pile of shit/wash it down with camel piss/You stupid bitch/Lick my tits/Polish all my naughty bits/Kiss my fanny/Tell your granny she got shitty grandkids/Pull my finger/Smell my butt/Sit and spin buttercup/Tell your momma and your daddy they can lick my fucking nuts/Cuddle up to my balls/Then wash my dirty draws/I have fucking had enough so I’m telling you to go fuck off!/Fuck off!” *Id.* The song “Fuck Off” has been used to create over 19,000 videos on TikTok. Ex. 76.

All of these examples demonstrate that “Profanity or Crude Humor” on TikTok is neither “infrequent” nor “mild.” Because many of these songs are also sexually explicit, they further demonstrate that “Sexual Content or Nudity” and “Mature/Suggestive Themes” are not “infrequent” or “mild” on TikTok either.

LEGAL STANDARD

In Indiana, a movant must generally demonstrate four factors to obtain a preliminary injunction: “(1) there exists a reasonable likelihood of success at trial; (2) the remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (3) the threatened injury to the movant outweighs the potential harm to the nonmovant from the granting of an injunction; and (4) the public interest would not be disserved by granting the requested

injunction.” *State v. Econ. Freedom Fund*, 959 N.E.2d 794, 803 (Ind. 2011). The moving party has the burden to show “by a preponderance of the evidence, that the facts and circumstances entitle him to injunctive relief.” *Holcomb v. T.L.*, 175 N.E.3d 1177, 1181 (Ind. Ct. App. 2021).

Alternatively, where the action to be enjoined “clearly violates a statute, the public interest is so great that the injunction should issue regardless of whether a party establishes ‘irreparable harm’ or ‘greater injury.’” *Econ. Freedom Fund*, 959 N.E.2d at 804.

ARGUMENT

The State of Indiana, acting through its Attorney General, is entitled to a preliminary injunction prohibiting TikTok from continuing to deceive Indiana consumers by offering its app with a “12+” rating in the App Store and with the descriptions that “Alcohol, Tobacco, and Drug References,” “Sexual Content or Nudity,” “Mature/Suggestive Themes,” and “Profanity or Crude Humor” on the app are “infrequent/mild.” These misrepresentations constitute an “unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction,” IND. CODE § 24-5-0.5-3(a), for which Indiana law further empowers the Attorney General to “bring an action to enjoin a deceptive act,” and for which a court may “issue an injunction,” *Id.* at § 24-5-0.5-4(c).

A. Indiana Has Demonstrated That It Is Likely To Succeed On the Merits of Its Claim.

Indiana has demonstrated that it is likely to succeed on the merits of its claims that TikTok is engaged in ongoing violations of Indiana’s Deceptive Consumer Sales Act by misrepresenting to Indiana consumers the content available on its app in the App Store.

Indiana’s Deceptive Consumer Sales Act (hereafter, the “Act”) provides that “[a] supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction.” IND. CODE § 24-5-0.5-3(a). Although the particular act in question need not be enumerated, Indiana’s law specifically provides that a deceptive act includes

“representations ... made ... by electronic communication ... [t]hat [the] subject of a consumer transaction has ... characteristics ... it does not have which the supplier knows or should reasonably know it does not have.” *Id.* at § 24-5-0.5-3(b). TikTok’s misrepresentations clearly satisfy both the general and more specific provisions of Indiana’s Deceptive Consumer Sales Act.

TikTok’s misrepresentations to consumers are “unfair, abusive, or deceptive act(s), omission(s), or practice(s) in connection with [the] consumer transaction” of downloading and using the TikTok app. *See id.* at § 24-5-0.5-3(a). And they also qualify as electronic communications representing that the TikTok app has attributes that TikTok knows it does not have (namely, that certain categories of sensitive content are “infrequent/mild” on the TikTok app when they neither “infrequent” nor “mild”). Specifically:

- “Alcohol, Tobacco, and Drug References” on TikTok are not “infrequent” or “mild.” TikTok makes thousands of drug-related hashtags and terms searchable on its platform, including by 13-year-old users. The top-viewed videos related to these hashtags accumulate *millions* of views and frequently portray substance use or provide instructions for how to use substances and depict substance use in a positive light. TikTok not only makes these videos available on its platform, but it actually *helps users locate them* by allowing its Autocomplete feature to prompt users with “algospeak” hashtags and search terms that lead to drug-related content through the use of slang terminology, misspellings, and other coded language. *See supra* Factual Background, Section C.1.
- “Sexual Content or Nudity” and “Mature/Suggestive Themes” are not “infrequent” or “mild” on TikTok. Even a 13-year-old user can search for and find abundant sexual content and nudity on the platform, including videos about stripping, pole

dancing videos featuring men and women in thong underwear, advice on sexual kinks and fetishes including extreme and dangerous fetishes like “consensual nonconsent,” and pornographic written material, like Wattpad posts. Here again, TikTok not only allows such content on its platform, but *helps users find it* by recommending sexual and suggestive search terms using its Autocomplete feature. *See supra* Factual Background, Section C.2.

- “Profanity or Crude Humor” is not “infrequent” or “mild” on TikTok. TikTok allows users to create videos set to explicit music, including music that includes repeated use of the most profane words in the English language, like “fuck,” “clit,” “dick,” “pussy,” “shit,” and “bitch.” TikTok makes these music tracks available to users when users are creating videos in the TikTok app, and it facilitates users finding videos from other users set to the same music. Some of these explicit lyrics are used in hundreds of thousands of videos on TikTok with millions or even billions of total views. *See supra* Factual Background, Section C.3.

Accordingly, Indiana has *at least* a reasonable likelihood of success at trial in proving that TikTok is engaged in ongoing acts deceiving Indiana consumers and therefore satisfies the first preliminary injunction factor. *See Econ. Freedom Fund*, 959 N.E.2d at 803 (first preliminary injunction factor is “reasonable likelihood of success at trial”).

In fact, the evidence provided here and in the attached exhibits is *so* overwhelming that it clearly shows that TikTok is presently violating Indiana’s Deceptive Consumer Sales Act. As such, this Court need go no further: Indiana is entitled to a preliminary injunction to remedy TikTok’s clear statutory violation, standing alone. That is because under Indiana’s “‘per se’ injunction standard: if the action to be enjoined clearly violates a statute, the public interest is so great that

the injunction should issue regardless of whether a party establishes ‘irreparable harm’ or ‘greater injury.’” *Id.* at 804 (quoting *Ind. Family & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161–62 (Ind. 2002)). This “‘ per se’ rule has been used to enjoin activity that is clearly unlawful and against the public interest.” *Ind. Family & Soc. Servs. Admin.*, 769 N.E. 2d at 162. Just so here. TikTok’s ongoing misrepresentations in the App Store are clearly unlawful and against the public interest, and they should be enjoined on this basis alone.

B. Indiana Satisfies the Remaining Preliminary Injunction Factors.

If the Court chooses to consider the remaining preliminary injunction factors, it will find that Indiana satisfies them, too. Without an injunction, Indiana consumers will suffer irreparable harm; the injury to Indiana consumers greatly outweighs any harm to TikTok in being enjoined from making further misrepresentations; and the public interest would not be disserved by granting a preliminary injunction.

Irreparable harm. The ongoing harm that TikTok is causing to Indiana consumers cannot be adequately resolved by remedies at law alone. Indiana consumers are downloading and using the TikTok app on a daily basis, and when they do so, they are deceived by TikTok’s false representations about the content available on its app. This includes individuals who are making decisions for themselves about the kind of content they want to connect with online (for example, recovering addicts who do not want to be connected with substance-use material) and parents who are making decisions about whether to allow their 13-year-old children to download and use (or continue using) the TikTok app. When these users see and rely on TikTok’s content misrepresentations, they are deceived into entering a transaction with TikTok (downloading the TikTok app) under false pretenses. Specifically, parents may use parental control settings that restrict the apps their kids may download based solely on an app’s age-rating. For example, parents

can set restrictions in Apple’s App Store that prevent their kids from downloading apps with particular age ratings.¹⁹ These parents may allow their 13-year-old child to download apps with a rating of “12+” or below, but not apps with a rating of “17+.” For these parents, TikTok’s misrepresentations in the App Store cause TikTok to be accessible to their kids when, if TikTok truthfully reported the content its app contains, the same kids would not be able to download TikTok based on the enabled parental controls.

When deceived consumers go on to view and consume content on TikTok, they are also irreparably harmed. 13-year-old TikTok users cannot “unsee” or “unhear” the drug-related content, sexual and suggestive content, or profanity that is widely available on TikTok. Viewing this type of content can also lead users to create similar content of their own, sometimes to gain followers, get attention, or become “TikTok famous.” Numerous public reports describe young TikTok users who have been exploited online as a result of viewing and replicating inappropriate content on TikTok.²⁰ Public health research shows that consuming substance-use content on social media platforms, like TikTok, increases the likelihood that viewers use substances in real life. Allem Report at ¶ 1.1.2.

No amount of *post hoc* compensation can rectify these injuries. They are irreparable and ongoing so long as TikTok is permitted to continue misrepresenting to consumers in the App Store the content available on its app.

¹⁹ *Use parental controls on your child’s iPhone, iPad, and iPod touch*, APPLE, bit.ly/3XSAAtL9 (last visited Dec. 2, 2022) (“Prevent explicit content and content ratings,” “Apps also have ratings that can be configured using content restrictions. ... Here are the types of content that you can restrict: ... Apps: Prevent apps with specific ratings”).

²⁰ Alexandra S. Levine, *How TikTok Live Became ‘A Strip Club Filled With 15-Year Olds,’* Forbes, April 27, 2022, <https://trib.al/gHdz8Mp>; Fox29, *New Jersey Man Solicited Child Sex Abuse Material From Young Sisters on TikTok*, June 21, 2022, <https://bit.ly/3UqnKMY>; Olivia Carville, *TikTok’s Viral Challenges Keep Luring Young Kids to Their Deaths*, Bloomberg (Nov. 29, 2022), <https://bloom.bg/3UyM5QN>.

Injury to Indiana consumers outweighs potential harm to TikTok. The irreparable injuries that Indiana’s consumers face are serious in nature—even life-altering for young people who are exposed to dangerous and illicit concepts on TikTok, like substance abuse and risky sexual behaviors. By contrast, TikTok faces *no* harm by merely being required to comply with Indiana law. TikTok is obligated to convey truthful information to consumers, not lies about the content its app contains, and so TikTok is not injured by merely being required to *tell the truth* about its app. To be clear, Indiana’s legal claims under the Deceptive Consumer Sales Act do not demand that TikTok moderate the content on its app in any particular way. Indiana merely requires that TikTok *tell the truth* about the content-moderation decisions it makes. If drug-related content, sexual content, suggestive themes, and profanity are prevalent on TikTok (and they are), then *TikTok cannot tell consumers otherwise.*

The public’s interest. The public interest would be served by granting the injunction that Indiana seeks. There are likely hundreds of thousands of kids under the age of 18 using the TikTok app in Indiana.²¹ TikTok’s ongoing misrepresentations in the App Store are harming these kids and depriving them and their parents of informed consumer choices about the content TikTok makes available on its app.

Indiana parents have an interest in exercising oversight and control over their children’s online activities. Social media apps present many risks to kids, including the risk of exposure to inappropriate content like alcohol, tobacco, and drug content, and sexual or suggestive content. Parents can only exercise meaningful oversight of their children’s online behavior if they have

²¹ See *Child population by age group in Indiana*, THE ANNIE E. CASEY FOUND.: U.S. CENSUS BUREAU DATA, bit.ly/3UwsCjE (last visited Dec. 2, 2022) (showing that approximately 470,000 individuals in Indiana are between the ages of 13 and 17); Emily A. Vogels, Risa Gelles-Watnick & Navid Massarat, *Report: Teens, Social Media and Technology 2022*, PEW RESEARCH CENTER (August 10, 2022), <https://bit.ly/3OWVOiv> (explaining that 67% of U.S. teens ages 13 to 17 use TikTok). Sixty-seven percent of 470,000 Indiana youth is approximately 314,000 Indiana individuals between 13 and 17 using TikTok.

access to accurate information about what their children are accessing online. When TikTok misrepresents the content available on its app, it prevents parents from exercising that meaningful oversight. Indiana parents' best interest would be served by a preliminary injunction prohibiting TikTok from continuing to misrepresent the content available on its app.

Indiana itself also has an interest in discouraging young people from experimenting with substances like alcohol, tobacco, cannabis, or hard drugs (all of which are illegal for youth under 18 in Indiana to use) and from engaging in risky sexual behavior online. TikTok interferes with these interests when it misrepresents the content available on the TikTok app. TikTok portrays itself to the public as safe for kids ages 12 and over, when in fact, even kids who are registered as 13-year-old users on TikTok can access abundant content that promotes or encourages alcohol, tobacco, cannabis, and drug use and that instructs and portrays sexual and suggestive themes, including dangerous themes (like "consensual nonconsent."). The public interest, as reflected in the laws of the State of Indiana, would be best served by enjoining TikTok from continuing to misrepresent its content online to Indiana users.

The public is actually *disserved* by the status quo, in which TikTok deceives Indiana consumers every day about the nature of the content available on the TikTok app and its appropriateness for users, particularly young users. The public is entitled to truthful statements from suppliers like TikTok who push their products to consumers while omitting or misrepresenting the true attributes of those products. Thus, the public interest is no obstacle to the preliminary injunction that Indiana seeks.

CONCLUSION

For the foregoing reasons, the State of Indiana through its Attorney General seeks a preliminary injunction enjoining Defendants from continuing to make any of the following

representations about the TikTok application: (1) representing to consumers through their representations to the Apple App Store that the TikTok application contains “none” or only “infrequent/mild” “alcohol, tobacco, or drug references,” “sexual content or nudity,” “mature/suggestive themes,” or “profanity or crude humor” and (2) representing to consumers through their representations to the Apple App Store that the TikTok application qualifies for a “12+” age rating.

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Respectfully submitted,

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*Applications for admission *pro hac vice* forthcoming