



**The Delusion of Collusion:  
The Republican Effort to Weaponize Antitrust  
and Undermine Free Speech**



Democratic Staff Report  
Committee on the Judiciary  
U.S. House of Representatives

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## FOREWORD BY THE RANKING MEMBER

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In October 2022, Elon Musk completed his \$44 billion takeover of Twitter. He immediately fired its top executives, including Parag Agrawal, Twitter’s then chief executive; Ned Segal, the platform’s then-chief financial officer; and Vijaya Gadde, Twitter’s then-head of legal policy, trust and safety.<sup>1</sup> At the time, Sarah Personette, Twitter’s chief customer service officer said that she had had a “great discussion” with Musk, reporting that “Our continued commitment to brand safety for advertisers remains unchanged. Looking forward to the future!”<sup>2</sup> Hours later, however, Personette also resigned.<sup>3</sup>

Within days of the takeover, Musk gutted the platform’s Trust and Safety team, reducing the number of safety engineers by 80 percent and cutting its content moderation team by 50 percent.<sup>4</sup> Hate speech exploded across the platform, with slurs against Black Americans more than tripling, slurs against gay men increasing by 50 percent, and antisemitic posts jumping more than 60 percent.<sup>5</sup> Musk also reinstated the accounts of numerous far-right extremists and controversial influencers, including Andrew Tate, who was banned in 2017 after posting that women bear some responsibility for being sexually assaulted and has since been arrested on charges of rape and human trafficking<sup>6</sup>; Kanye West, who was banned in October 2022 after posting about plans to go “def con 3 on Jewish people,” was reinstated by Musk, re-banned after he posted a picture of a swastika and the Star of David in December 2022, and then reinstated again in July 2023<sup>7</sup>; and the account of a far-right poster known as “Dom Lucre,” who had posted child sexual abuse material showing a one-year-old child on the platform.<sup>8</sup>

Unsurprisingly, advertisers, concerned about having their products appear next to posts pushing hate speech, fled the platform.<sup>9</sup> By February 2023, more than half of Twitter’s top 1,000

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<sup>1</sup> Kari Paul & Dan Milmo, *Elon Musk completes Twitter takeover and ‘fires top executives,’* THE GUARDIAN (UK) (Oct. 28, 2022), <https://www.theguardian.com/technology/2022/oct/27/elon-musk-completes-twitter-takeover>.

<sup>2</sup> *Id.*

<sup>3</sup> Grace Dean, *One of Twitter’s top execs quit the day after tweeting that she had a ‘great discussion’ with Elon Musk about the company’s future,* BUSINESS INSIDER (Nov. 1, 2022), <https://www.businessinsider.com/elon-musk-twitter-takeover-sarah-personette-quit-resign-cco-job-2022-11>.

<sup>4</sup> Australian eSafety Commissioner, *Basic Online Safety Expectations: Summary of response from X Corp. (Twitter) to eSafety’s transparency notice on online hate*, (Jan. 2024), <https://www.esafety.gov.au/sites/default/files/2024-01/Full-Report-Basic-Online-Safety-Expectations-Summary-of-response-from-X-Corp-Twitter-to-eSafetys-transparency-notice-on-online%20hate.pdf>.

<sup>5</sup> Sheera Frenkel & Kate Conger, *Hate Speech’s Rise on Twitter is Unprecedented, Researchers Find*, N.Y. TIMES (Dec. 2, 2022), <https://www.nytimes.com/2022/12/02/technology/twitter-hate-speech.html>.

<sup>6</sup> Irina Ivanova, *These formerly banned Twitter accounts have been reinstated since Elon Musk took over*, CBS NEWS (Nov. 21, 2022), <https://www.cbsnews.com/news/twitter-accounts-reinstated-elon-musk-donald-trump-kanye-ye-jordan-peterson-kathy-griffin-andrew-tate/>; Isabella Kwai, *What to Know About the Accusations Against Andrew Tate*, N.Y. TIMES (Dec. 20, 2024), <https://www.nytimes.com/article/andrew-tate-arrests-explained.html>.

<sup>7</sup> Marita Moloney, *Twitter restores Kanye West’s account after ban*, BBC.COM (Jul. 29, 2023), <https://www.bbc.com/news/entertainment-arts-66351871>.

<sup>8</sup> David Gilbert, *Elon Musk Welcomes Child Sex Abuse Imagery Poster Back to Twitter*, VICE (Jul. 27, 2023), <https://www.vice.com/en/article/twitter-elon-musk-dom-lucre-child-sexual-abuse/>.

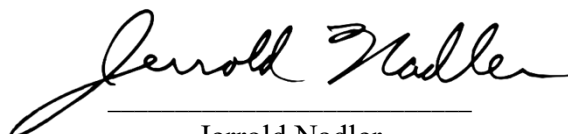
<sup>9</sup> Shirin Ghaffary, *Why advertisers aren’t coming back to Twitter*, VOX (Mar. 24, 2023), <https://www.vox.com/technology/2023/3/23/23651151/twitter-advertisers-elon-musk-brands-revenue-fleeing>.

advertisers had paused their advertising spending on the platform, and the platform’s ad revenue had shrunk by 65 percent.<sup>10</sup>

By March 2023, Twitter’s value had fallen from \$44 billion to \$20 billion.<sup>11</sup> The reason for this decline in value is no mystery, given the facts outlined above. Nevertheless, the Majority launched an investigation into the advertisers which have declined to spend money on the platform, accusing them of “colluding” to hurt the company’s profits. Since then, the Majority has spent countless dollars and hours of staff time trying to figure out why advertisers might be hesitant to risk their brands’ reputations on a platform whose owner told them, in November 2023, to “Go fuck yourself.”<sup>12</sup>

Chairman Jordan’s so-called investigation culminated in a July 2024 “interim report” which used cherry picked documents and misleading transcript excerpts to suggest that the committee had uncovered evidence of “collusion” when in fact the very opposite is true. In fact, the complete and contextualized documents and testimony show that the Global Alliance for Responsible Media and its member companies were engaged in a pro-competitive effort to address the substantial brand risk that harmful online content poses to advertisers and to consumers.

Chairman Jordan’s report had an audience of one: Elon Musk. In fact, the entire report seems like pretext for a lawsuit Musk filed against various advertising entities and ultimately to silence the advertisers who expressed concern about content on his platform. The resources of this Committee should not be directed to further pad a billionaire’s bottom line. In contrast, this minority report is intended for the American public, who are entitled to the truth about this investigation and about Chairman Jordan’s true aims and abuse of congressional oversight power.



Jerrold Nadler  
Ranking Member  
House Committee on the Judiciary

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<sup>10</sup> Clare Duffy, *More than half of Twitter’s top 1,000 advertisers stopped spending on platform, data show*, CNN (Feb. 13, 2023), <https://www.cnn.com/2023/02/10/tech/twitter-top-advertiser-decline/index.html>.

<sup>11</sup> Kate Conger & Ryan Mac, *Elon Musk Values Twitter at \$20 Billion*, N.Y. TIMES (Mar. 26, 2023), <https://www.nytimes.com/2023/03/26/technology/elon-musk-twitter-value.html>.

<sup>12</sup> Lauren Goode, *Elon Musk Just Told Advertisers, ‘Go Fuck Yourself’*, WIRED (Nov. 29, 2023), <https://www.wired.com/story/elon-musk-x-advertisers-interview/>.

## Executive Summary

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For the past 20 months, the Chairman of the House Judiciary Committee has abused his oversight power and the rule of law to push an agenda that would pervert the free market and undermine individual companies' independent decisions as to where to place advertisements online. The spread of illegal, harmful, abusive, and false and misleading content online results in actual harm, both online and offline. We are left to conclude that the Majority's ultimate goal was not to conduct antitrust oversight as they claim, but rather to silence criticism of harmful online content and those who promote it, deter content moderation, and protect the ability to use mis- and disinformation campaigns to achieve political ends.

Specifically, the Majority focused its investigation into the now-defunct Global Alliance for Responsible Media (GARM) and its member companies. GARM was established in 2019 by the World Federation of Advertisers (WFA) to "address the challenge of harmful content on digital media platforms and its monetization via advertising."<sup>13</sup> The Committee's so-called investigation amounts to a failed fishing expedition designed to support their predetermined conclusion that conservative media is the "victim" of advertisers who choose not to advertise on their websites or platforms. In reality, the complete body of documents gathered in this investigation—including over 185,000 pages from eight different entities—and the complete transcript of the sole transcribed interview taken in this investigation guts the Chairman's theory of harm.

Over the past two decades, platforms have increasingly relied on often-opaque algorithms and programmatic auctions to place advertisements online. As a result, advertisers lost control over and visibility as to where their online ads were placed. Ads from established brands have been placed in close proximity to toxic content such as child-sexual abuse material, hate speech, or disinformation, putting brands and businesses' reputations at risk.

In response, advertisers have adopted a range of strategies to regain control and transparency to protect their brand's reputation and avoid monetizing toxic content. Platforms, meanwhile, struggled with their content moderation policies, in part, because of a proliferation of different frameworks that the advertisers were using to assess brand placement suitability and safety.

In 2019, the World Federation of Advertisers founded GARM to respond to the needs of all those participating in the digital advertising ecosystem, including advertisers, media companies, ad tech firms, and social media platforms themselves, among others. GARM and its members developed the *Brand Safety Floor + Suitability Framework* as a resource to protect brand safety and consumers alike. The framework provides common definitions of harmful and sensitive content such as "hate speech," "misinformation," "explicit sexual content," "piracy," and "terrorism." The framework is organized around risks and does not

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<sup>13</sup> *About*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA, <https://web.archive.org/web/20240806170924/https://wfanet.org/leadership/garm/about-garm> (last visited Dec. 23, 2024).

name any individual platforms or publishers or dictate advertising choices. Furthermore, participation in GARM and the adoption of GARM framework categories is voluntary. GARM’s efforts and achievements have been praised by entities such as Twitter opined, “We are proud to be working with the GARM community... This latest step to combat the monetization of misinformation and create common standards and definitions related to brand suitability will be critical in creating a safe environment for everyone.”<sup>14,15</sup>

The Majority argues that GARM and its members have conspired to suppress conservative viewpoints by withholding advertising from conservative-voiced websites and, in so doing, suggest a violation of Section 1 of the Sherman Act. This theory is fundamentally flawed. Its many individual shortcomings—lack of agreement, presence of procompetitive justifications, and absence of competitive harm—severely undermines the claimed basis for antitrust concern against GARM. Collectively, they so thoroughly demolish it that the Majority’s basic credibility in leveling the accusations in the first place must be called into question.

The investigation has shown that GARM responded to a genuine need from advertisers for greater transparency and accountability from platforms regarding where ads are placed and what kinds of content the ads are monetizing. Advertisers do not want their brands’ advertising content to be placed next to toxic content. Yet, under the Republicans’ theory, advertisers would seemingly be *forced* to run ads on platforms even if the platform disseminates such content.

The Majority is engaging in a transparently political effort to use the antitrust laws to benefit their allies by conferring upon them outcomes that they could not otherwise achieve in the marketplace. This is not just a misuse of the antitrust laws, but fundamentally subverts the goals of those laws. The irony could not be greater. While spending most of this Congress attacking the Biden administration’s so-called weaponization of government, the Majority here is trying to weaponize the antitrust laws under a highly dubious theory to override legitimate market outcomes.

Finally, the Majority bandies about words like censorship, in a misguided effort to evoke the First Amendment. But as the Majority well knows, the First Amendment only applies to government action. And in this case, the only governmental burdening of speech is the Majority’s onslaught against GARM and its members. It is an effort to bully the advertisers into subsidizing firms whose content moderation policies put brands and businesses at risk. It is an attempt to hijack free speech, as well as antitrust, for political purposes.

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<sup>14</sup> Robin Langford, *10 industry leaders discuss GARM three years on: Unilever, Meta and Google outline brand safety challenges ahead*, PMW (June 23, 2022), <https://www.performancemarketingworld.com/article/1790868/10-industry-leaders-discuss-garm-three-years-on-unilever-meta-google-outline-brand-safety-challenges-ahead>. Meta and YouTube commented similarly. *Id.* Each of these platforms had experienced episodes during which advertising was “paused” by major advertisers because of brand safety fears. *See, e.g., infra* notes 61 & 80.

<sup>15</sup> Global Alliance for Responsible Media, *Brand Safety Floor + Suitability Framework*, HJC-WFA-GARM-000001895, [https://wfanet.org/l/library/download/urn:uuid:6a6092d3-f859-4117-81b4-4d46226e5de2/garm+brand+safety+floor+%2B+suitability+framework\\_june+2022.pdf](https://wfanet.org/l/library/download/urn:uuid:6a6092d3-f859-4117-81b4-4d46226e5de2/garm+brand+safety+floor+%2B+suitability+framework_june+2022.pdf) (last visited Dec. 21, 2024). *See* Appendix, Exhibit 1.

## Key Findings

### **Finding 1: GARM was a procompetitive response to the substantial brand risk that harmful online content poses to advertisers and to consumers.**

The basic facts are not subject to dispute. Advertisers spend billions of dollars a year to communicate to potential buyers or users of their products or services. Online harmful content poses a substantial brand risk to advertisers and reduces consumer welfare.

The effectiveness of an advertisement depends on the suitability of placement. In the online era, placement has become particularly difficult because of a combination of the opacity of advertising placement algorithms and the unpredictability of the content with which the advertisement would appear. As a result, advertisements, for example, have appeared in direct proximity to child-sexual abuse material, hate speech, disinformation, and content advocating terrorism. For example, Dove, which built a brand around “real beauty” was advertised on Facebook adjacent to content that glorified domestic violence and rape.<sup>16</sup> When advertising appears next to toxic content, research suggests that sales are lost. Advertisers particularly fear the possibility that a brand developed over many years can be severely damaged by inappropriate placement. To mitigate these problems advertisers engaged in individual brand safety strategies with a combination of strategies including block lists and adjustment of their digital advertising portfolios to deemphasize outlets that more regularly generate controversy such as news sites, in favor of safer and more predictable sites.

Most online outlets depend heavily on advertising revenue for financial support. Websites and platforms that disseminate user content face especially difficult challenges with toxic content because of the difficulties associated with monitoring and moderating user content. They had difficulties working with the proliferation of approaches requested by the numerous advertisers to ensure brand safety. A cooperative effort, GARM, was undertaken to make progress on these vexing issues.

GARM was formed to provide language and tools to increase transparency and accountability in the online advertising space. It was composed of advertisers, media companies, ad tech firms, platforms, and industry organizations. GARM grew to have over 110 members and saw itself as a “first-of-its kind industry-wide, but advertiser centric community....”<sup>17</sup> The centerpiece of GARM’s efforts was the Brand Safety Floor + Suitability Framework which advanced “the adoption of an industry wide common definition of categories of harmful, non-brand safe and suitable content to improve the effectiveness of consumer and brand safety across platforms, geographies, and formats.”<sup>18</sup> These frameworks and GARM’s activities did not determine advertiser placement decisions.

### **Finding 2: The Majority’s interim report, GARM’s Harm, fails to present any plausible theory of antitrust harm.**

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<sup>16</sup> See *infra* note 57.

<sup>17</sup> *Charter*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA (Jan. 17, 2020), HJC-WFA-000001912 at 1.

<sup>18</sup> *Id.*

GARM and its members established a commonsense framework to help prevent advertisements from being placed by, and thereby supporting, toxic content that harms advertisers interests as well as those of the public. The Majority argues that these actions seek to suppress conservative viewpoints and further suggest they violate Section 1 of the Sherman Act. Based on the information produced during this investigation we find that this theory is fundamentally flawed.

**First**, the parties to the investigation have not entered into agreements that could be subject to antitrust liability. An agreement is an essential element of any Section 1 violation; without it, there is no violation. The information produced in this investigation, including testimony by GARM members, shows that GARM's frameworks are entirely nonbinding. Participants decide whether or to what extent they use them. Neither GARM nor GARM's frameworks determine advertiser placement decisions. Evidence of parallel conduct in an effort to protect one's brand from toxic content is insufficient to show the concerted action prohibited by the antitrust laws.

**Second**, even if the evidence in this investigation were sufficient to show an agreement, which it decidedly was not, that agreement would be subject to a rule of reason analysis, which would seek to balance any pro and anticompetitive effects, rather than per se condemnation. Under current antitrust law, per se rules are generally reserved for horizontal agreements between competitors to set price or divide territories. There are no such agreements at issue here.

**Third**, a rule-of-reason analysis strongly favors GARM. The Majority offers no direct or indirect evidence or even credible theory of any anticompetitive effects relying, instead, on only vague assertions. Furthermore, it is clear that GARM's conduct has the procompetitive benefit of advancing transparency for online content monetization policies which benefit advertisers, outlets, and consumers alike.

**Fourth**, the Majority's desperate attempt to introduce the First Amendment by invoking notions of censorship fails. The First Amendment only applies to government action. And, in this setting, the only government burdening of speech is the Majority's onslaught against GARM and its members, seemingly hoping to compel them to increase advertising in venues not of their own choice.

Individually, each of these flaws—lack of agreement, presence of procompetitive justifications, and absence of competitive harm—severely undermines the claimed basis for antitrust concern against GARM. Collectively, they so thoroughly demolish it that they call into question the Majority's basic credibility in leveling the accusations in the first place.

### **Finding 3: The Majority's investigation is an abuse of Congress's oversight power.**

The Majority is weaponizing antitrust law and the Committee's oversight power to confer on select competitors, Republican allies, outcomes that they cannot achieve in the marketplace. This antitrust investigation of GARM is not only a misuse of the antitrust laws but it is also a fundamental subversion of their purpose. Under the guise of attacking the Biden administration for weaponizing government, the Majority is invoking the antitrust laws to override legitimate

market outcomes. Antitrust is not about picking winners and losers, it is about ensuring a fair fight.

The Majority focused on alleged harm caused by the demonetization of its favored conservative-voices. They assert that this loss of revenue is caused by an imagined conspiracy involving GARM and its 100 plus members to suppress conservative-voiced online platforms and outlets by stopping advertising support. But the most compelling explanation for this loss of revenue is not only apolitical, it is completely benign. Advertisers want to attract and retain customers. When their advertising is placed next to toxic content the advertisement instead repels customers. Not surprisingly, advertisers gravitate to outlets that pose less risk to their brands. These market outcomes, against which the Republicans are railing, do not suggest an antitrust problem. Rather, they reveal a transparent, functioning competitive market which is responding to the perceptions and desires of consumers—undermining the Majority’s story of a welfare-reducing conspiracy.

Finally, the Majority bandies about words like censorship, in a misguided effort to evoke First Amendment concerns. But, as the Majority well knows, the First Amendment only applies to government action. And in this case, the only governmental burdening of speech is the Majority’s onslaught against GARM and its members. It is an effort to bully the advertisers into subsidizing firms whose content or content moderation policies put advertiser brands at risk. It is an attempt to hijack free speech, as well as antitrust, for political purposes.



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## I. Status of the Investigation

A 15-month investigation preceded the July 10, 2024, House Judiciary Committee hearing, “Collusion in the Global Alliance for Responsible Media.” The Global Alliance for Responsible Media (GARM) was an initiative of the World Federation of Advertisers (WFA). During their investigation, the Majority issued sweeping demands for documents to nine entities involved in GARM, five of which were members of the GARM Steer Team. Every recipient has made substantial productions of responsive material. Witnesses from two of those entities (Unilever USA and GroupM) subsequently testified at the hearing. Additionally, one transcribed interview was undertaken with Robert Rakowitz who is employed by the WFA and was co-founder and initiative lead of GARM.<sup>19</sup> As of the date of the hearing, the Committee had received over 37 productions comprised of more than 175 thousand pages.

The hearing itself was comprised of four witnesses. Two, as just mentioned, were members of GARM: Unilever USA, a prominent advertiser, and GroupM, a media-investment company that buys the space where ads are placed. Both strenuously denied any wrongdoing. A third witness, Ben Shapiro, represented the Daily Wire, an enormously successful media outlet, whose vague claims of targeting by GARM were untethered to antitrust law. What was entirely lacking from the Majority’s witnesses was anyone who laid out conduct allegedly violating the antitrust laws. This approach bears the hallmark of a hearing conducted for theatre rather than earnest inquiry. Finally, at the Minority’s invitation, Professor Spencer Weber Waller—the only witness with antitrust expertise—offered testimony which systematically undermined the Majority’s inchoate claims of violations of the antitrust laws.

### A. Parties to the investigation included for-profit and not-for-profit organizations.

From March 2023-July 2024, the Majority used a range of legal theories to obtain documents from nine entities, all but one of which are for-profit companies. Following the July 2024 hearing described above, the Majority sent questions and document preservation requests to another 45 entities. The Majority also sought documents from one additional group in October 2024, and two merging parties in December 2024.

1. Document demands were made to seven for-profit organizations and two non-profit organizations between March 2023 and July 2024.

The nine entities subject to document demands were:

**The Coca-Cola Company.** The Coca-Cola Company is a beverage company with over 200 brands sold in over 200 countries and territories. Top brands include Coca-Cola soft drinks, Dasani water, and Minute Maid juice products. About 2.2 billion servings of Coca-Cola Company trademarked products are consumed every day.<sup>20</sup> Coca-Cola Companies and

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<sup>19</sup> Interview with Robert Rakowitz at 6:25 and 7:1-5 (June 4, 2024) [hereinafter “Rakowitz Interview”].

<sup>20</sup> *Brands*, The Coca-Cola Company, <https://www.coca-colacompany.com/about-us> (last visited Oct. 23, 2024).

subsidiaries had combined net operating revenues of nearly \$46 billion and the Coca-Cola brand was ranked as the sixth most valuable brand in the Forbes 2020 world brand ranking.<sup>21</sup>

**Diageo.** Since 1997,<sup>22</sup> Diageo has been a global leader in premium alcoholic drinks, with over 200 brands and sales in nearly 180 countries. 2023 net revenues exceeding \$20 billion.<sup>23</sup> Diageo’s category-leading brands include Johnnie Walker, Guinness, Tanqueray, Baileys, and Smirnoff.

**GroupM.** GroupM is a WPP media investment group, and is the leading partner to the world’s largest media platforms, specializing in connecting brands with their audiences and growing their businesses through client services, activation services, media investment, data science, and technology development.<sup>24</sup> GroupM places over \$60 billion of media spending overall for companies including Amazon, Coca-Cola, Colgate-Palmolive, Doordash, Ford, Google, LVMH, Mars, and Unilever. GroupM “manage[s] contextual brand safety through a combination of trading, contractual protection, defined operational procedures that includes monitoring and verification of media via third parties, and industry accreditation and co-operation.”<sup>25</sup>

**Mars.** Mars is a family-owned business which specializes in pet care, food, and nutrition products.<sup>26</sup> Its pet care brands include Pedigree, Whiskas, and Royal Canin, its snack brands include M&Ms, Snickers, Orbit, and Skittles, and its food and nutrition brands include Abu Siouf and Ben’s Original.<sup>27</sup> 2023 annual sales were more than \$50 billion.<sup>28</sup>

**Ørsted.** Ørsted is a clean energy company headquartered in Denmark. It develops, constructs, and operates renewable energy facilities with worldwide revenues of over \$11 billion.<sup>29</sup>

**Procter & Gamble.** Procter & Gamble is a consumer goods company that had 2023 worldwide sales of \$82 billion about half of which took place in North America. It is organized into five groups: fabric & home care, baby, feminine & family care, beauty, health care, and grooming.<sup>30</sup> Top P&G brands include Tide, Pampers, Olay, Crest, and Gillette.<sup>31</sup>

**Unilever.** Unilever is one of the world’s largest consumer goods companies with

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<sup>21</sup> Marty Swant, *The World’s Most Valuable Brands*, FORBES MAGAZINE (2020), <https://www.forbes.com/powerful-brands/list/> (last visited Dec. 29, 2024).

<sup>22</sup> *Our History*, DIAGEO, <https://www.diageo.com/en/our-business/our-history> (last visited Oct. 23, 2024).

<sup>23</sup> Diageo 2023 annual report. *Our Business*, DIAGEO, <https://www.diageo.com/en/our-business> (last visited Oct. 23, 2024).

<sup>24</sup> *About*, GROUP M, <https://www.groupm.com/about/> (last visited Oct. 23, 2024).

<sup>25</sup> *Our Services*, GROUPM, <https://www.groupm.com/our-services/> (last visited Dec. 29, 2024).

<sup>26</sup> *Our Brands*, GROUP M, <https://www.mars.com/our-brands> (last visited Oct. 23, 2024).

<sup>27</sup> *Our Brands*, MARS, <https://www.mars.com/our-brands/mars-food-nutrition> (last visited Dec. 29, 2024).

<sup>28</sup> Chloe Sorvino, *Exclusive: Mars Unveils Strategy to Double Snacking Revenue to \$36 Billion*, FORBES (Dec. 18, 2023), <https://www.forbes.com/sites/chloesorvino/2023/12/12/exclusive-mars-strategy>.

<sup>29</sup> *About Us*, ØRSTED, <https://us.orsted.com/about-us> (last visited Oct. 23, 2024).

<sup>30</sup> *2024 Annual Report*, PROCTER & GAMBLE, <https://us.pg.com/annualreport2024/financial-highlights/> (last visited Dec. 29, 2024).

<sup>31</sup> *Brands*, PROCTER & GAMBLE, <https://us.pg.com/brands/> (last visited Dec. 29, 2024).

products in beauty, personal care, home care, nutrition, and ice cream segments.<sup>32</sup> In 2023 Unilever had over \$64 billion in worldwide sales. Top Unilever brands include Dove, Rexona, OMO, Hellmann's, and Wall's.

**The World Federation of Advertisers (WFA).** WFA is a not-for-profit global peer-to-peer network for senior marketing leaders who represent over 150 of the world's largest brands and 60 national advertiser associations. WFA members are responsible for 90 percent of marketing communication spending worldwide. The association aims to improve marketing by supporting more effective and sustainable marketing communications by bringing together the collective wisdom of its members.<sup>33</sup> The **Global Alliance for Responsible Media (GARM)** was an initiative of the WFA which existed to "create a more sustainable and responsible digital environment that protects consumers, the media, industry and society as a result."<sup>34</sup> GARM was a small non-profit composed of two full-time staff members.<sup>35</sup> It disbanded itself two days after being sued by X in August 2024.<sup>36</sup>

The one individual subjected to a transcribed interview was **Robert Rakowitz** who was employed by the WFA and was co-founder and initiative lead of GARM.

2. Activity Subsequent to the July 10, 2024, House Judiciary Committee hearing.

In August 2024, **forty-three entities**, identified by the Majority as former GARM members, received letters requiring written responses to a series of questions as well as imposing a wide-ranging demand to preserve evidence:

Adidas Group, American Express, Bayer AG, Beiersdorf AG, BP, Carhartt, Centene Corporation, Chanel, Colgate-Palmolive, CVS Health, Dell Technologies, Electronic Arts, FrieslandCampina, General Mills, General Motors, Goldman Sachs, Haleon, HP Incorporated, Ingka Group (IKEA), Johnson & Johnson, Kellanova, Kenvue Incorporated, Kimberly-Clark Corporation, L'Oréal, Louis Vuitton Moët Hennessy, Mastercard, McDonalds Corporation, Merck & Co. Incorporated, Microsoft Corporation, Mondelez International, NIKE Incorporated, PepsiCo, Perfetti Van Melle, Pernod Ricard, Red Bull GmbH, Roblox, Sanofi, Scotiabank, Shell, Sony Group, Suntory Holdings, Verizon, Volvo Cars.

**Dentsu Americas' Research Project.** Dentsu Americas is a worldwide advertising agency with more than 1,000 clients that span more than 145 markets. In October 2024, the Majority issued a wide-ranging document demand to Dentsu Americas in light of its research

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<sup>32</sup> *Unilever at a Glance*, UNILEVER, <https://www.unilever.com/our-company/at-a-glance/> (last visited Oct. 23, 2024).

<sup>33</sup> *Who We Are*, WFA, <https://www.wfanet.org/about-wfa/who-we-are> (last visited Oct. 23, 2024).

<sup>34</sup> *Charter*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA, *supra* note 18 at 1.

<sup>35</sup> *Statement on the Global Alliance for Responsible Media*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA (Aug. 9, 2024) <https://wfanet.org/leadership/garm/about-garm>.

<sup>36</sup> "[R]ecent allegations [the lawsuit by X] that unfortunately misconstrue its purpose and activities have caused a distraction and significantly drained its resources and finances. WFA therefore is making the difficult decision to discontinue GARM activities." *Id.*

initiative with The 614 Group.<sup>37</sup> The Majority was concerned that this initiative to “research and study news advertising” was a “*de facto* reorganization of GARM,”<sup>38</sup> a characterization that Dentsu rejected.<sup>39</sup> Dentsu noted the “devastating effects on news organizations” as ad dollars migrated to social media.<sup>40</sup> The initiative in question was meant to “better understand” that spending, the returns associated with that spending and how to increase that spending.<sup>41</sup> Nonetheless, Dentsu immediately abandoned not only the initiative in question but also indicated that it would not pursue any efforts with similar objectives.<sup>42</sup>

**Omnicom Group and Interpublic Group Merger.** Omnicom Group and Interpublic Group are two advertising agencies that have recently announced an intent to merge. Per Chairman Jordan letters to these two companies, as former members of GARM they were asked to respond to a series of questions and were subjected to a wide-ranging demand to preserve evidence.<sup>43</sup>

**B. The Majority used threats and bluster to bully parties into producing as many documents as possible based on far-fetched antitrust theories.**

From the outset, the Majority’s demands for documents in this investigation have had the appearance of a fishing expedition. The purpose seems to have been to drag in as much of the parties’ confidential business material as possible regardless of its relevance to any legitimate subject of inquiry.

1. Vaguely articulated antitrust concerns

The Majority has described its investigation into GARM as “conducting oversight of the adequacy and enforcement of U.S. antitrust laws.”<sup>44</sup> It focused on the WFA which, through the GARM initiative, the Majority posited “may be acting inconsistent with U.S. antitrust laws and congressional intent by coordinating GARM members’ efforts to eliminate content online.”<sup>45</sup> The nature of the Majority’s alleged antitrust violation has been hard to nail down. But it appears to amount to that GARM members coordinate to exclude platforms and content from receiving advertising money from GARM’s members.<sup>46</sup> The Majority further argues that the “ability to threaten a platform or content creator with a potential withdrawal of advertising spending by GARM members can have the effect of influencing platform decision making or silencing certain viewpoints.”<sup>47</sup> Section 1 is the sole theory of antitrust liability for GARM and its members cited

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<sup>37</sup> Letter from Chairman Jim Jordan to Dentsu Americas (Oct. 3, 2024).

<sup>38</sup> *Id.* at 2.

<sup>39</sup> Letter from Counsel to Dentsu to Chairman Jim Jordan at 3-4 (Oct. 17, 2024) (On file with Committee).

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> *Id.* at 1.

<sup>43</sup> Letter from Chairman Jim Jordan to Omnicom Group (Dec. 18, 2024); Letter from Chairman Jim Jordan to Interpublic Group (Dec. 18, 2024) (both on file with Committee). Responses are due not later than Jan. 7, 2025, which is after completion of this report.

<sup>44</sup> *See, e.g.*, Letter from Chairman Jim Jordan to Coca-Cola at 1 (Apr. 23, 2024).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

in the Majority’s demand letters, other than a passing reference to the statute of limitations for federal crimes<sup>48</sup> which is, no doubt, meant to interject the specter of criminal enforcement.

1. Open-ended specifications

The Majority had issued broad demands for documents to approximately fifty members in GARM and the WFA. The specifications in the Majority’s letters were comprehensive, seeking “[a]ll documents and communications” referring or relating to its subject matter. These burdensome demands also covered long timeframes looking back as far as 2019.

2. Parties have complied

As of the date of this report’s issuance, parties have produced more than 185,000 pages of documents across 49 different productions.

## II. Brand Safety and the Online Advertising Industry

Advertising is how brands communicate with the public with the hope of turning them into, or retaining them, as customers. To do this, advertisers spend billions of dollars every year on advertising. Advertising is a complicated business involving generation of the message the brand wants to transmit, the creation of the advertisement itself, and then the placement of the ad. That last mile, the placement, is particularly tricky. Depending upon its placement, not only may an ad not be productive, but also it may be downright counterproductive. It is the latter possibility that motivated GARM’s creation.

The role of ad placement has always been important. However, it has taken on a particular urgency in the online era. Over the past two decades, online platforms increasingly have used often-opaque algorithms and programmatic auctions to place advertisements online. As a result, advertisers lost control over and visibility as to where their online ads are placed. Ads from brands that depend on building trust with consumers were placed alongside, and thus monetizing, content showcasing terrorism, and child sexual abuse material (CSAM), as well as videos depicting crimes or highly adult themes. Ads from major brands have also been placed on websites that spread conspiracy theories, hate speech, and disinformation. Before addressing how the brands and related industries sought to avoid such placements, it is important to understand the contours of online advertising and the nature of the brand safety problem.

Consider the example of Unilever, which spends about \$850 million in the U.S. on brand and marketing investment.<sup>49</sup> Herrish Patel, President of Unilever USA, explained:

Currently, about 80% of our U.S. advertising spending is directed at some form of digital media. Within that category, we spend more on advertising on digital commerce platforms...than anywhere else because that is where consumers are most frequently when they are making their buying decisions. Only 20% of our

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<sup>48</sup> *Id.* (citing 18 U.S.C. § 3282).

<sup>49</sup> Collusion in the Global Alliance for Responsible Media, Hearing before the Committee on the Judiciary, 118th Cong. (2024) (statement of Herrish Patel, President, Unilever USA) [hereinafter “Patel Statement”] at 4.

U.S. advertising spending goes to social media platforms, and less than 1% goes to digital news... We want to reach all of the consumers who use our brands, on platforms that support and align with the brands. Conversely, being associated with content or a platform that detracts from our brands, harms our brands, or is inconsistent with our brands' identities is decidedly not in our economic interest.<sup>50</sup>

Christian Juhl, Global CEO of GroupM, reinforced this message. Advertisers worry about having “too much or too little advertising bought in the wrong place for a campaign to be effective” and “advertising the wrong message to the wrong person or appearing out-of-step or insensitive to an important audience.”<sup>51</sup> He further elaborated upon advertisers' “biggest fears.”

[Y]ears, sometimes even generations, of reputation could evaporate overnight as a consequence of bad ad placement. Such scenarios can erase both brand and business value in hours. Companies spending many millions of dollars on their advertising do not want to risk their brand...<sup>52</sup>

The risk to brands is an especially vexing problem in the online space. There, algorithms for ad placement combined with unpredictable user-generated content, sometimes lead to placements of ads alongside content that advertisers find to be harmful or even toxic to their brands. The next section provides some examples of such placements and addresses their harm to the brands.

**A. Online harmful content poses substantial brand risk to advertisers and reduces consumer welfare.**

1. Examples of brand safety problems

Examples of inappropriate content that could undermine a brand and its value abound. One example of harmful ad placement was provided by Unilever for one of its most popular brands, Dove soap, a brand which was built in part by a twenty-year marketing campaign for “real beauty.”<sup>53</sup> An advertisement on Facebook for Dove appeared adjacent to content “glorifying domestic violence and rape, significantly harming the brand and alienating customers.”<sup>54</sup> (See Figure 1.) The damage was amplified on social media where posts of the screenshots of the Dove ad next to the toxic content were posted by thousands of consumers. This series of events led Dove to adjust its advertising targeting and Facebook its hate-speech policies.<sup>55</sup>

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<sup>50</sup> *Id.* at 1.

<sup>51</sup> Collusion in the Global Alliance for Responsible Media, Hearing before the Committee on the Judiciary, 118th Cong. (2024) (statement of Christian Juhl, Global Chief Executive Officer, GroupM) [hereinafter “Juhl Statement”] at 1-2.

<sup>52</sup> *Id.* at 2

<sup>53</sup> Patel Statement at 1-2.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 4-5.

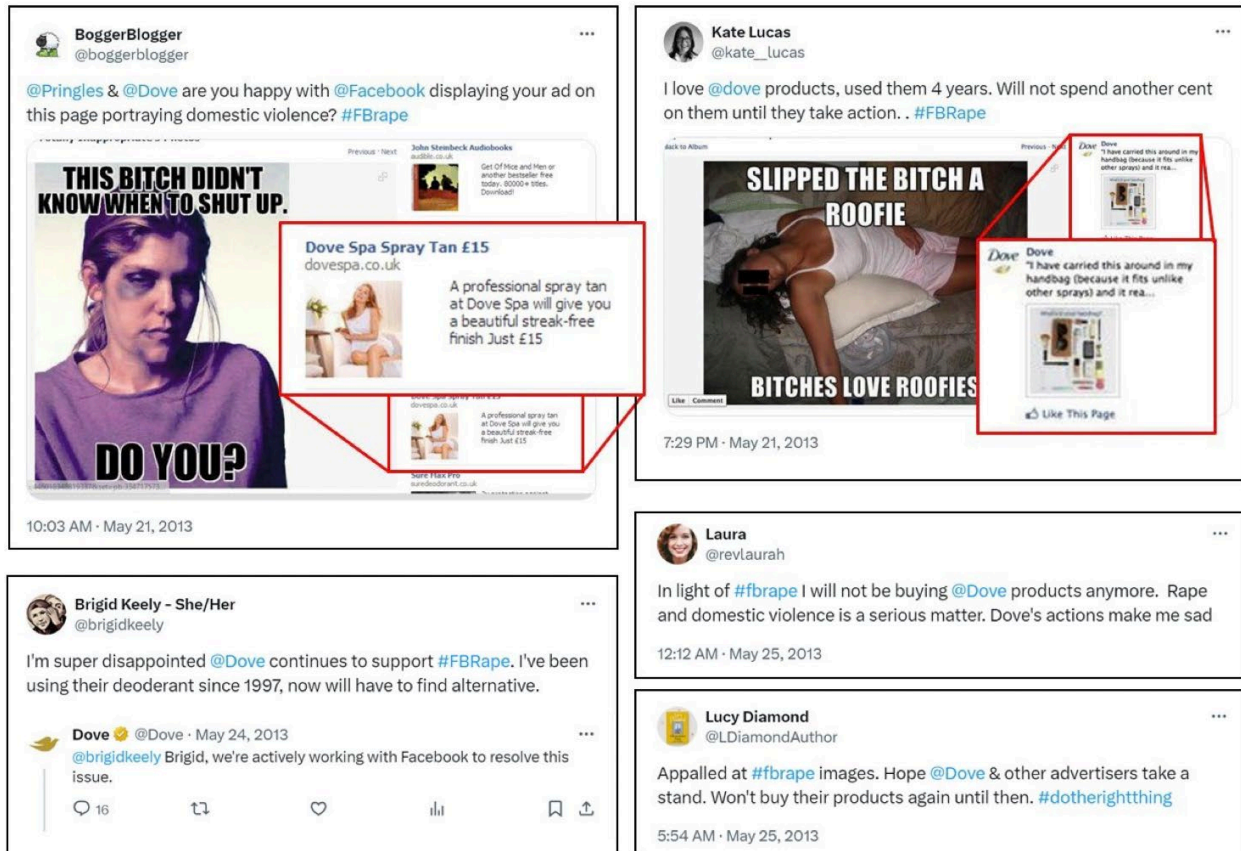


Figure 1: 2013 Dove Advertisement Shown Adjacent to Toxic Content<sup>56</sup>

The problem of advertising appearing next to harmful content has affected a broad spectrum of advertisers from online furniture manufacturers to entertainment content providers to consumer electronics firms to automobile manufacturers to nonprofit organizations. This problem has not yet been solved. Some other examples of advertisements appearing alongside toxic content are given in Figures 2–5. Figure 2 shows a 2023 Wayfair advertisement on YouTube next to a white supremacy video. Figures 3 and 4 show 2023 Apple and Xfinity ads and a 2024 Hyundai ad on X next to pro-Nazi content and Figure 5 is a World Bank ad about their new poverty scorecard adjacent to racist content. Advertising has also been co-located with content involving dog abuse videos, ISIS videos, child porn, pro-terrorist content, and gory war footage.<sup>57</sup>

<sup>56</sup> *Id.* at 5.

<sup>57</sup> Rakowitz Interview at 47:13-16. In addition to consumer concerns regarding brand safety, firms have also come under fire from activist and shareholder groups for advertising policies that arguably support online hate speech and disinformation. Tiffany Hsu & Marc Tracy, *Investors Push Home Depot and Omnicom to Steer Ads From Misinformation*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/01/18/business/media/investors-push-home-depot-and-omnicom-to-steer-ads-from-misinformation.html>.



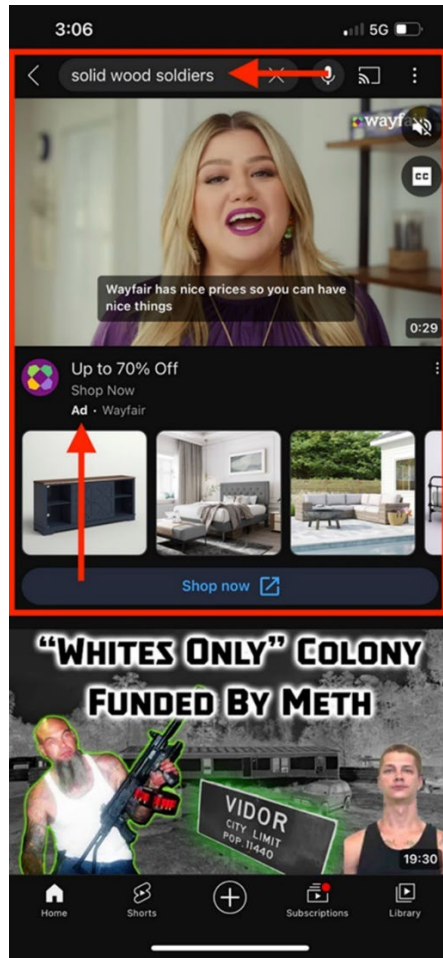


Figure 2: 2023 Wayfair Advertisement Adjacent to White Supremacy Video<sup>58</sup>

<sup>58</sup> ADL Tech Transparency Project, *Profiting from Hate: Platforms' Ad Placement Problem* (Sept. 27, 2023), <https://www.adl.org/resources/article/profitting-hate-platforms-ad-placement-problem>.

**\_TheNationalist\_reposted**  
**Nick** @CaratacusNick · 8h  
 This is sadly true, something that most will never be able to see

**\_TheNationalist\_** · @The\_National1 · Nov 14  
 Real talk

What people think a spiritual awakening is like vs what it's actually like



8 replies, 30 likes, 465 retweets

**Karl Radl** @KarlRadl · 2h  
 Let's do some more ignored facts about the Third Reich:

- 1) After the Weimar Republic moved towards decriminalizing abortion, The Reich formally outlawed it in 1934 and increased the punishment in 1943.
- 2) In 1934 the punishment for abortion was five years in prison.

8 replies, 23 retweets, 172 likes, 5.3K retweets

**Karl Radl** @KarlRadl · 1h

- 6) Mothers with three or more children were given 'Honour Cards' which allowed them to jump queues in shops and got rebates from rent and public utilities.
- 7) Mother's Day was made a national public holiday in 1934.

1 reply, 2 retweets, 59 likes, 625 retweets

**Karl Radl** @KarlRadl · 1h


- 8) Exercise and healthy eating was heavily promoted to all citizens especially women.
- 9) Women were actively removed from the labour pool and instead heavily encouraged to be mothers.

1 reply, 48 likes, 566 retweets

**Apple** @Apple  
 Dance created an innovative e-bike subscription service to help people get around while keeping the planet in mind. Great work happens #onMac.

**Reinventing the e-bike business on Mac**


Explore Mac



Dance E-bikes

52 replies, 102 retweets, 467 likes, 2.3M retweets

**Xfinity** @Xfinity  
 The best way to stream is with the Xfinity 10G Network. Power all your favorite sports, shows and movies.



Get the network made for streaming

75 replies, 674 likes, 6M retweets

Figure 3: 2024 Apple and Xfinity Advertisements Adjacent to Pro-Nazi Memes<sup>59</sup>

<sup>59</sup> Eric Hananoki, *As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, oracle, and Xfinity next to pro-Nazi content*, MEDIA MATTERS (Nov. 17, 2023), <https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle>.

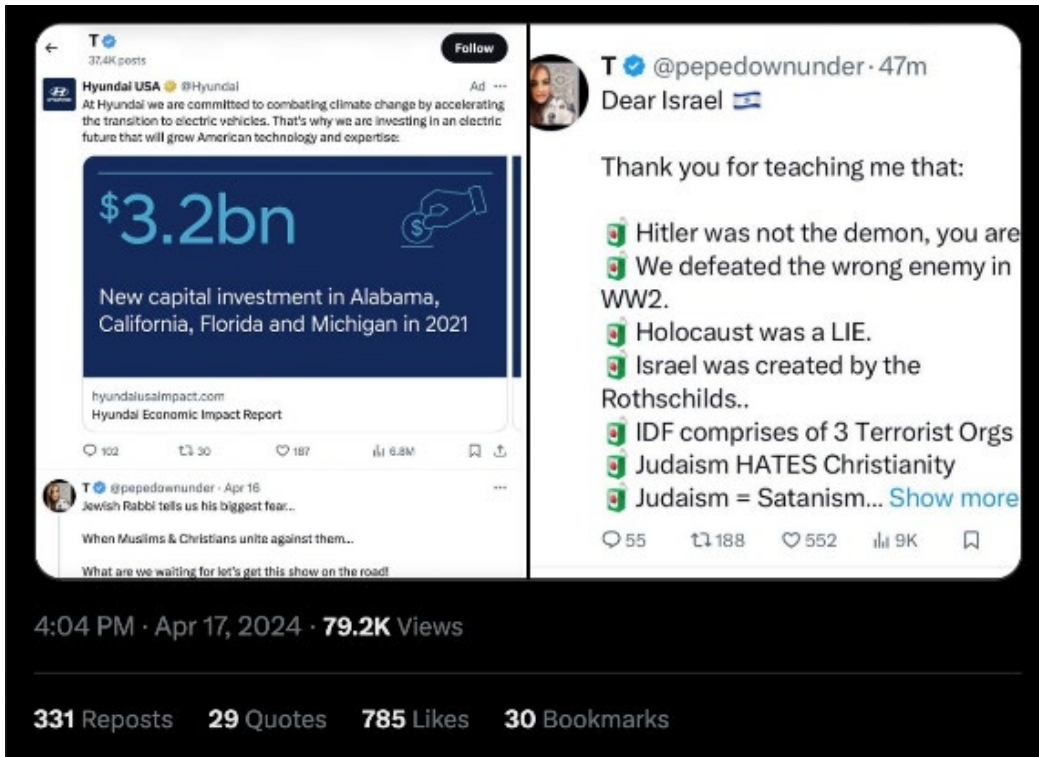


Figure 4: 2024 Hyundai advertisement running adjacent to pro-Nazi content on X<sup>60</sup>

<sup>60</sup> David Ingram, *Hyundai pauses X ads over pro-Nazi content on the platform*, NBC NEWS (Apr. 18, 2024), <https://www.nbcnews.com/tech/tech-news/hyundai-pauses-x-ads-nazi-content-platform-rcna148414>.



Two screengrabs from X show, at left, a post containing racist messaging and, at right, a promoted advertisement for the World Bank that had appeared under the post. The World Bank told CBS News on Aug. 23, 2024 that it was pulling all paid advertising off the X platform over its ad appearing underneath the racist post.

Figure 5: World Bank Advertisement on Poverty Scorecard Adjacent to Racist Messaging<sup>61</sup>

Offensive content not only undermines the brand by placing the brand messaging in a toxic context, it also undermines the brand because viewers often believe that the advertiser has chosen to financially support the adjacent content.

Monetization of user-provided content in social media presents a particular challenge because a platform needs to determine how to identify and handle various types of offensive content. Consider the following example in which user-provided misinformation is allegedly monetized through advertising revenue. (See Figure 6.) In October 2023, Ben Shapiro, of the Daily Wire, posted on X a picture of burned Jewish babies killed during the October 7th attack in Israel. In response, Jackson Hinkle, a user of X with a substantial following, tweeted the *false*

<sup>61</sup> Emmet Lyons, *World Bank pulls paid ads from X over racist content on Musk's platform*, CBS NEWS (Aug. 23, 2024), <https://www.msn.com/en-us/money/companies/world-bank-pulls-paid-ads-from-x-over-racist-content-on-musks-platform/ar-AA1pjLTH>.

claim that Shapiro utilized artificial intelligence to generate that image. Appearing next to Hinkle’s tweet were ads by companies including Oracle, Pizza Hut, and Anker. Hinkle’s tweet received over 20 million views in just 40 days for which it appears Hinkle received ad sharing revenue.<sup>62</sup> A major concern of the advertisers was that they would be seen as supporting Hinkle’s misinformation.

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<sup>62</sup> Jack Brewster, Coalter Palmer & Nikita Vashisth, *Brand Danger: X and Misinformation Super-spreaders Share Ad Money from False or Egregiously Misleading Claims About the Israel-Hamas War*, NEWSGUARD (Nov. 22, 2023), <https://www.newsguardtech.com/misinformation-monitor/november-2023/>. NewsGuard believed that Hinkle was “likely eligible for ad sharing revenue” for views of his tweet because X did not post a Community Note during the 40 days the company analyzed. *Id.*



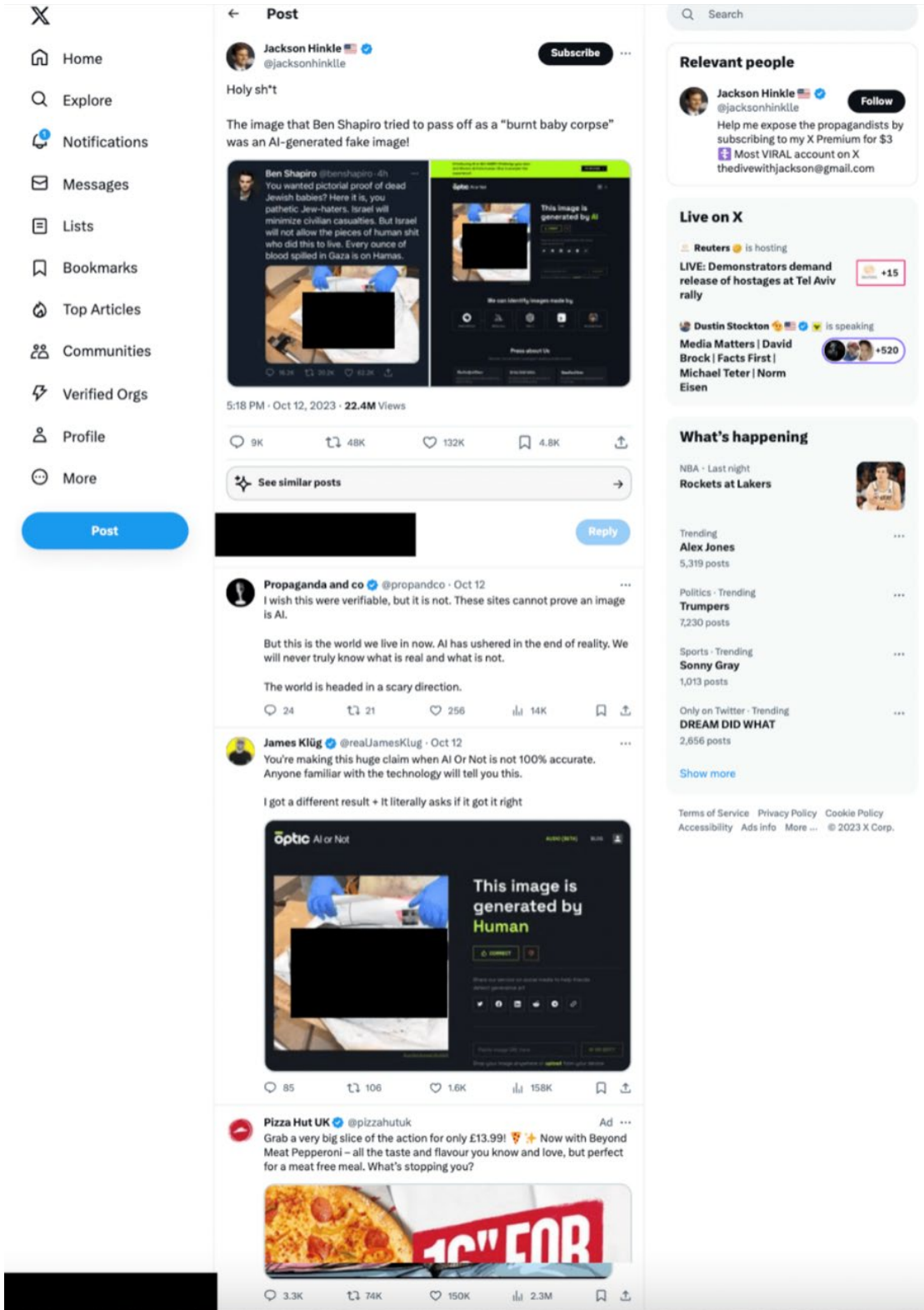


Figure 6: Pizza Hut Ad Alongside Discussion of Authenticity of Burnt Baby Corpses Image<sup>63</sup>

<sup>63</sup> *Id.*

A NewsGuard study that addressed the Hinkle example also “identified ads for 86 major advertisers—including top brands, educational institutions, governments, and nonprofits—on viral posts seen by a cumulative 92 million X [formerly Twitter] users” which were deemed to involve commentators who “advance[ed] false or egregiously misleading claims” pertaining to the Israel-Hamas War and for which X apparently permitted ad revenue sharing.<sup>64</sup>

Unfortunately, these examples are not unique. They are just some of the jarring mismatches between advertising content and user created content but demonstrate the problem faced by advertisers in the online advertising space. As detailed in the next section, potential and current consumers react strongly to seeing branded advertisements alongside hateful, graphic, or otherwise inappropriate content, thus underlying advertisers’ desire to better control ad placement online.

## 2. Consumers punish advertisers for ad placements next to harmful content.

In the wake of the examples such as those provided above, the affected advertisers generally paused or discontinued advertising on the offending platform or website. Such actions reflect how such placements put their brands in danger. This concern is supported by studies that show that the effects of placing ads next to toxic content are negative and large.

Morning Consult’s 2023 survey of U.S. adults found that a large proportion of respondents felt “unfavorably toward advertisers on a social media platform” that is known for “having a significant amount of bot accounts” (64 percent), “hosting hate speech”...or “violent acts” (63 percent each), “hosting misinformation” (60 percent) “hosting sexual content” (56 percent).<sup>65</sup> This survey also reported that 34 percent of daily X users reported “seeing hate speech every time or most times that they use their social media” and compared to a general daily social media rate of 25 percent.<sup>66</sup>

An Integral Ad Science (IAS) 2024 survey found similar results regarding both which content is seen as inappropriate and, significantly, consumer response to placement of ads near that questionable content. (See Figure 7.) Survey participants were asked, “What type(s) of content would you describe as inappropriate for a brand to advertise next to?”<sup>67</sup> The survey revealed that, “hate speech [68%], adult content [65%], and terrorism [64%] are the top content

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<sup>64</sup> *Id.*

<sup>65</sup> Joanna Piacenza, *Hate Speech is a Common Sight for Social Media Users. Here’s How They Want Advertisers to Respond*, MORNING CONSULT (Nov. 28, 2023) at 4, <https://pro.morningconsult.com/analysis/hate-speech-online-brands-social-platforms>. Similar results were found in a joint Harris Poll and DoubleVerify survey of 2010 U.S. consumers which found “consumers hold advertisers accountable for the credibility and accuracy of the content they advertise on.” *Study: Consumers Reject Brands that Advertise on ‘Fake News’ and Objectionable Content Online*, DOUBLEVERIFY (June 17, 2019), <https://doubleverify.com/newroom/study-consumers-reject-brands-that-advertise-on-fake-news-and-objectionable-content-online/>.

<sup>66</sup> Piacenza, *supra* note 66, at 3.

<sup>67</sup> *The State of Brand Safety: Exploring Consumer Perception of Appropriate Online Content and Misinformation*, IAS RESEARCH (Jan. 2024) at 5, <https://integralads.com/insider/state-of-brand-safety-research/>.

categories consumers consider inappropriate.”<sup>68</sup> Also ranked very highly, at 58 percent, was misinformation.<sup>69</sup>

### What type of content would you describe as inappropriate for a brand to advertise next to?

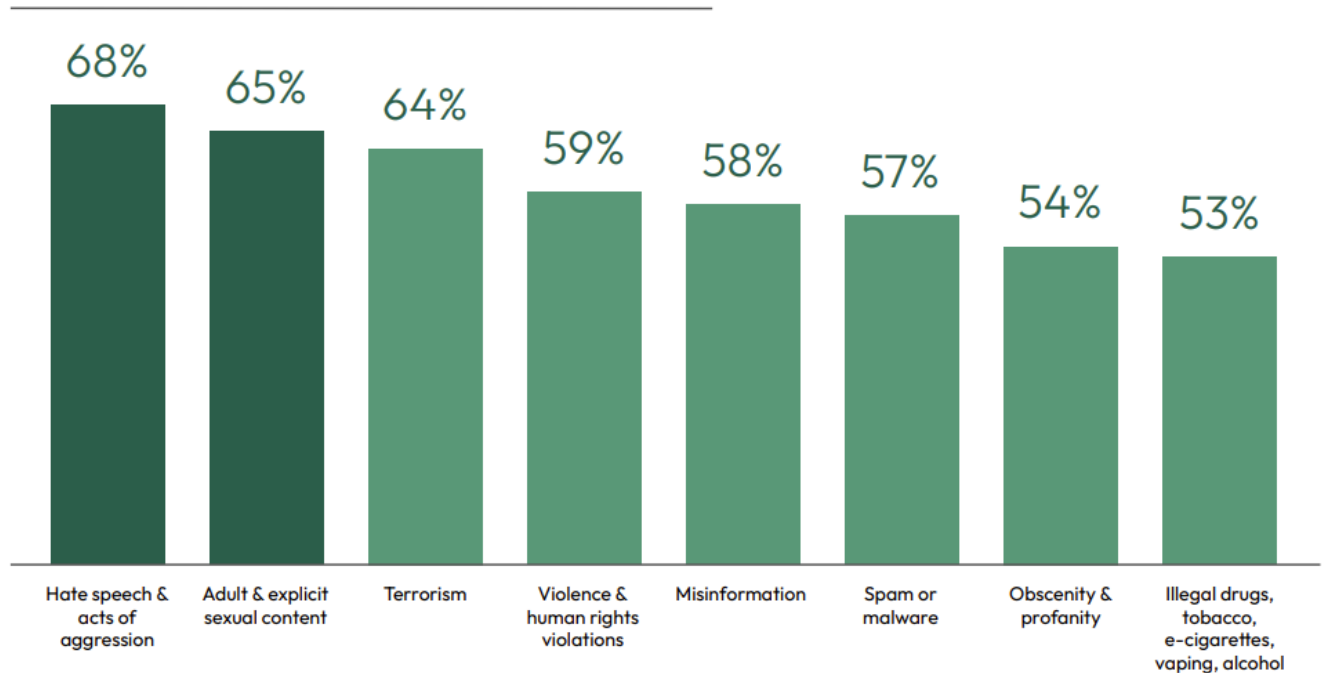


Figure 7: “What type(s) of content would you describe as inappropriate for a brand to advertise next to?”<sup>70</sup>

None of the categories of inappropriate content are surprising and each would be seen as unacceptable by politically conservative or liberal consumers alike. The results indicated that the placement problem is real and pervasive.

The IAS survey also suggested that consumer purchasing behavior and trust in brands was strongly negatively affected by inappropriate content appearing near an online brand advertisement. The survey probed mechanisms that might explain this behavior and found that consumers attributed responsibility to the brands for the adjacent content. That is, consciously or unconsciously, consumers associated the adjacent troubling image or message with the brand and, furthermore, consumers believed that the advertiser—the brand—was financially supporting the adjacent message.<sup>71</sup> (See Table 1.)

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*



	Agree and Strongly Agree (percentage)
<i>Likely to stop using a product or service of a brand whose ad appears near inappropriate content</i>	51
<i>Would trust a brand less if they advertise next to inappropriate content</i>	70
<i>Content surrounding a brand's ads is a reflection of the brand's values</i>	71
<i>Believe brands are responsible for the content surrounding their ads</i>	72

Table 1: Actions and beliefs regarding brands and nearby content<sup>72</sup>

Now consider the category of misinformation that the Majority alleges GARM's members misapply to the detriment of conservative-voiced content. The GARM framework defines misinformation as "the presence of verifiably false or willfully misleading content that is directly connected to user or societal harm."<sup>73</sup> Consumer surveys suggested that inappropriate content, including misinformation, negatively affects brand trust and purchase behavior. These results explained, in part, why advertisers are concerned about the nexus between brand safety and misinformation. Additional studies examined this nexus in more detail. A 2024 article in NATURE reported the results of an experiment which demonstrated that consumers are likely to reduce purchases from firms that advertise on websites that publish misinformation compared to firms that do not. Unlike the surveys which measured intention to change purchase behavior, subjects in this experiment made actual economic choices.<sup>74</sup> Additional research on consumer reaction to misinformation was provided by the IPG Mediabrands and Zefr MAGNA Media

<sup>72</sup> *Id.* at 7-9.

<sup>73</sup> Global Alliance for Responsible Media, *Brand Safety Floor + Suitability Framework*, HJC-WFA-GARM-000001895, [https://wfanet.org/l/library/download/urn:uuid:6a6092d3-f859-4117-81b4-4d46226e5de2/garm+brand+safety+floor+%2B+suitability+framework\\_june+2022.pdf](https://wfanet.org/l/library/download/urn:uuid:6a6092d3-f859-4117-81b4-4d46226e5de2/garm+brand+safety+floor+%2B+suitability+framework_june+2022.pdf) (last visited Dec. 21, 2024). See Appendix, Exhibit 1.

<sup>74</sup> Wajeeha Ahmad *et al.*, *Companies Inadvertently Fund Online Misinformation Despite Consumer Backlash*, NATURE (June 6, 2024) at 126-27, <https://www.nature.com/articles/s41586-024-07404-1>. In the experiment, subjects select a gift card allowing purchases from a particular company. The subjects are then given the opportunity to exchange that card for a different gift card after they receive (or do not receive) information that the company associated with their initial gift card selection advertises on websites that publish misinformation. About 13 percent of subjects who received the advertising information changed their card relative to those who did not receive the information. The authors estimate that the switch resulted in a 39.4 percent loss of value to the subject. *Id.* at 127. See also Chunsik Lee *et al.*, *Spillover Effects of Brand Safety Violations in Social Media*, 42:4 J. OF CURRENT ISSUES & RESEARCH IN ADVERTISING 354 (2021) (study of psychological mechanisms involved in spillover effects associated with brand safety violations).

Trials Study which found that “advertising next to misinformation led to wasted dollars for brands, eroded brand perception, and negatively impacted KPIs [key performance indicators].”<sup>75</sup>

The challenges of directing ad placement to trustworthy sites and away from misinformation sites continues to loom large. The 2024 NATURE study found that of the 100 most active advertisers, an astounding 79.8 percent that used digital advertising platforms had advertisements placed in online misinformation outlets in a given week. The authors attributed the problem to the use of such platform systems that allocate advertising to such websites.<sup>76</sup> Another study, by the Pew Research Center, suggested that “for every \$2.16 in digital ad revenue sent to legitimate newspapers, U.S. advertisers are sending \$1 to misinformation websites.”<sup>77</sup>

In sum, online advertising is very important for advertisers and for the websites that provide and host content, many of whose business models depend on it. But harmful content is challenging the business models of advertisers, content providers, and platforms alike. Consumers associate the online content with the brands that advertise there. When a brand is advertised near harmful content, its value is undermined because most consumers believe that the brand knowingly chose that content and site for its advertising.

Common sense, advertiser experience, consumer surveys and experimental research reach the same conclusions. First, brands are undermined by bad ad placement. Second, advertising support of harmful content is not desired by consumers. Furthermore, the weakening of the brands makes consumer choice more difficult. Weakening of brands from bad placement undercuts a key value of brands which is to provide information that allows consumers to better assess the quality of products they are considering for purchase. Thus, protecting brand safety not only helps advertisers sell products, but it also improves consumer decision-making.

## **B. Individual advertisers engaged in brand safety strategies but needed more.**

Without effective content moderation policies and enforcement, brand safety is at risk.<sup>78</sup> Concerns about brand safety have led advertisers to individually take various actions. These actions include “pausing” advertising on a range of social media platforms and websites and shifting the portfolio of advertising outlets used. Other actions included strategies designed to regain control and increase transparency to protect their brand’s reputation and to avoid monetizing content that spreads harm on- and offline. Some strategies included developing policies to avoid dangerous placements, adopting “allow” and “block” lists, employing sophisticated monitoring systems to track ad placement, and working with platforms, websites,

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<sup>75</sup> 4A’s Partnerships, *Ads in Misinformation: An Ad Effectiveness Experiment* (May 3, 2024), <https://www.aaaa.org/ads-in-misinformation-an-ad-effectiveness-experiment/?cn-reloaded=1>.

<sup>76</sup> Ahmad *et al.*, *supra* note 75, at 125.

<sup>77</sup> Matt Skibinski, *Special Report: Top brands are sending \$2.6 billion to misinformation websites each year*, NEWSGUARD, <https://www.newsguardtech.com/special-reports/brands-send-billions-to-misinformation-websites-newsguard-comscore-report/> (last visited Dec. 27, 2024).

<sup>78</sup> Rakowitz Interview at 58:15-16.

and ad tool developers to jointly improve ad placement outcomes.

Unilever’s experience with brand safety provides a good illustration of the challenges advertisers face on online platforms. After experiences such as the 2013 Dove incident discussed earlier,

Unilever formalized its approach to advertising on platforms by launching our Responsibility Framework in February 2018...our advertising will be directed at responsible platforms. We will not invest advertising spending in platforms or environments that fail to protect children or that promote anger or hate...[W]e will only advertise with responsible content...[and] we will only advertise with responsible partners...

In June 2020, Unilever...pause[d] advertisements on Facebook, Instagram, and Twitter in the United States...based on our review of the social media environment and our conclusion...that content on certain outlets had become significantly polarized...[W]e continued to assess the situation, and in January 2021, we renewed certain online advertising. A significant factor in our decision to resume...was the platforms’ commitments to concrete steps to manage harmful content and processes for monitoring progress.<sup>79</sup>

Platforms, too, were having a difficult time coping with moderating the content that appeared on their platform. Platforms “wanted to be helpful, but they could not keep up with thousands of companies each launching their own frameworks. There was a need for a common, voluntary vocabulary and framework.”<sup>80</sup>

Protecting brand value has also led advertisers to shift their advertising portfolios to safer advertising venues. J. Walker Smith, Knowledge Lead at Kantar, a top market research firm observed that, “Brands want safety—always...[and] controversy is bad for business. Period.”<sup>81</sup> The principle of avoiding controversy is reflected in advertiser aversion to news programs. Christian Juhl of GroupM explained:

This Committee has expressed an interest in advertising on certain news platforms. We appreciate the importance of funding news organizations through advertising and have taken steps to make advertising in news environments, including local news environments, more appealing to advertisers. Historically, press was the main advertising driver. Today, however, trust in news sites is at a low point, and brands now generally disfavor advertising on news and politics websites. Less than 5 percent of our overall client advertising investments are allocated to news—which is consistent across the industry. And only 1.28 percent of our clients’ ad spending is on online news sites. This is not only because brands prefer to avoid advertising alongside content related to war, scandal, and political division; it is also because they do not need to risk advertising in those

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<sup>79</sup> Patel Statement at 5-6.

<sup>80</sup> *Id.* at 7.

<sup>81</sup> Brad Adgate, *With Concerns About Brand Safety, More Advertisers Have Left X*, FORBES (Dec. 7, 2023), <https://www.forbes.com/sites/bradadgate/2023/12/07/with-concerns-about-brand-safety-more-advertisers-have-left-x/>.

environments to reach their total audience and because alternatives to news—such as sports and entertainment—generally provide better measurement, formats, and capabilities. That is not a left or right or GroupM preference, it’s an apolitical, industry-wide preference.<sup>82</sup>

Given the Majority’s claims, this last point from Juhl bears repeating. Advertisers are leaving news sites—no matter their perceived or actual bias—because they raise controversial topics. The Majority have presented no evidence that advertisers wish to demonetize only conservative-voiced news sites. This comports with Unilever’s statement that less than one percent of their digital spend goes towards news.<sup>83</sup> In fact, the overwhelming majority of sites blacklisted are so-designated for apolitical reasons. Over 94 percent of GroupM’s “most restrictive ad-placement category” are sites that promote or sell counterfeit or illegal knock-off items in violation of another product’s intellectual property rights.<sup>84</sup>

Advertisers seeking brand safety also shun uncertainty. Consider, for example, the reaction of many advertisers to Musk’s acquisition of Twitter in late October 2022. Musk’s prior and contemporaneous statements created considerable fear and uncertainty that Twitter’s prior policies regarding content moderation would weaken. Musk had called himself a “free speech absolutist” and had been critical of Twitter’s content moderation policies.<sup>85</sup> Uncertainty about brand safety on Twitter grew once Musk took over the reins of Twitter and promptly laid off half of its staff, including cuts in the trust and safety teams that spearheaded the companies content moderation efforts,<sup>86</sup> began to change Twitter’s business model away from its dominant reliance on advertising revenue, while he portrayed Twitter’s “economic picture [as] dire.”<sup>87</sup> Furthermore, post-acquisition, various social media watchdogs reported a spike in hate speech on the Twitter platform.<sup>88</sup> Many major advertisers such as Volkswagen Group, Carlsberg Group, REI, General Motors, and United Airlines worried about a potential decline in brand safety and paused their advertising spending on Twitter.<sup>89</sup> In the days following, Musk took both conciliatory (claiming that “nothing has changed with content moderation”<sup>90</sup>) and combative (threatening a

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<sup>82</sup> Juhl Statement at 4.

<sup>83</sup> Patel Statement at 1.

<sup>84</sup> Juhl Statement at 4.

<sup>85</sup> Michel Martin, *Elon Musk calls himself a free speech absolutist. What could Twitter look like under his leadership?*, NPR ALL THINGS CONSIDERED (Oct. 8, 2022), <https://www.npr.org/2022/10/08/1127689351/elon-musk-calls-himself-a-free-speech-absolutist-what-could-twitter-look-like-un>.

<sup>86</sup> Kate Conger *et al.*, *Confusion and Frustration Reign as Elon Musk Cuts Half of Twitter’s Staff*, N.Y. TIMES (Nov. 4, 2022), <https://www.nytimes.com/2022/11/04/technology/elon-musk-twitter-layoffs.html>.

<sup>87</sup> Kate Conger *et al.*, *“Economic Picture Ahead is Dire,” Elon Musk Tells Twitter Employees*, N.Y. TIMES (Nov. 10, 2022), <https://www.nytimes.com/2022/11/10/technology/elon-musk-twitter-employees.html>.

<sup>88</sup> *See, e.g.,* Bond Benton *et al.*, *Hate Speech Spikes on Twitter After Elon Musk Acquires the Platform*, MONTCLAIR STATE SCHOOL OF COMMS. & MEDIA (Nov. 1, 2022), <https://digitalcommons.montclair.edu/cgi/viewcontent.cgi?article=1030&context=scom-facpubs>.

<sup>89</sup> Tiffany Hsu, *Twitter’s Advertisers Pull Back as Layoffs Sweep Through Company*, N.Y. TIMES (Nov. 4, 2022) (“REI said it would pause posts in addition to advertising spending ‘given the uncertain future of Twitter’s ability to moderate harmful content and guarantee brand safety for advertisers.’”), <https://www.nytimes.com/2022/11/04/technology/twitter-advertisers.html>.

<sup>90</sup> Elon Musk @elonmusk, “Twitter has had a massive drop in revenue, due to activist groups pressuring advertisers, even though nothing has changed with content moderation and we did everything we could to appease these activists,” 10:28 AM Nov. 4 2022.

“thermonuclear name & shame” response<sup>91</sup>) stances. While Musk was clearly frustrated with the advertisers, the pausing of advertising spend was a predictable response to the increased uncertainty his acquisition created about future content and content moderation policies at Twitter. Other social media platforms also experienced pauses. YouTube experienced significant reductions in spending in 2017 and 2019 and 56 percent of Meta’s advertisers paused spending in July 2020.<sup>92</sup>

Rewarding content that consumers and advertisers would prefer not to reward undermines market forces. But to do so is really the point of the Majority’s GARM inquiry. The Majority wants to bully advertisers to support sites they otherwise would not to bolster the political views the Majority favors. Online brand safety is a general problem facing the online advertising ecosystem. Building a better advertising infrastructure requires conversations and cooperation among players in the ecosystem. GARM was helping to do this. The Majority frames GARM as having a mission to demonetize conservative sites, but it is clear that GARM is trying to deal with a first-order online advertising problem. Advertisers are first and foremost profit seeking companies and, as such, they target individuals that are potential customers. They pursue the green, not whether their customers are “blue” or “red” in political orientation. In the pursuit of sales, they seek to protect their brand value.<sup>93</sup>

### **C. GARM was formed to provide language and tools to increase transparency and accountability in the online advertising space.**

Given this parade of horrors and the multitude of approaches to dealing with these ad placement problems, industry responded with a cooperative effort to shore up brand reputation and safety throughout the ecosystem. In June 2019 a group of twelve large advertisers, media agencies, industry associations, and six platforms that included Facebook, Google/YouTube, and Twitter, formed the GARM.<sup>94</sup> GARM was operated under the auspices of the WFA. GARM’s charge was to “address the challenge of harmful content on digital media platforms and its monetization via advertising.”<sup>95</sup> The initiative was catalyzed by the Christchurch New Zealand Mosque massacre which was livestreamed on Facebook.<sup>96</sup>

GARM grew to have over 110 members, including advertisers, media companies, ad tech firms, platforms, and industry organizations.<sup>11</sup> It was led by a steering committee of five

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<sup>91</sup> Tiffany Hsu & Kate Conger, *On Twitter; Elon Musk Details His Plans for Twitter’s Business*, N.Y. TIMES (Nov. 9, 2022), <https://www.nytimes.com/2022/11/09/technology/twitter-payments-business.html>. See also, @elonmusk, TWITTER, “A thermonuclear name & shame is exactly what will happen if this continues,” 10:22AM Nov. 5, 2022.

<sup>92</sup> Jake Swearingen, *Elon Musk is threatening to ‘thermonuclear name and shame’ advertisers that press pause on Twitter. It’s a dumb thing to do to your biggest customers.*, BUSINESS INSIDER (Nov. 7, 2022), <https://www.businessinsider.com/elon-musk-name-shame-advertisers-who-pull-budget-2022-11>.

<sup>93</sup> Patel Statement at 1.

<sup>94</sup> *About*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA, <https://web.archive.org/web/20240806170924/https://wfanet.org/leadership/garm/about-garm> (last visited Dec. 23, 2024).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

companies, Diageo, GroupM, Mars Inc., The Procter & Gamble Co., and Unilever. GARM itself was run by two people.<sup>97</sup> In August 2024, GARM disbanded itself shortly after being sued by X.<sup>98</sup>

GARM and its members want first and foremost for customers to see their ads where and when the advertisers expect them, and to have customers make purchases based on those ads. Second, they do not want their expensive ad campaigns to fund people: (1) who pirate content; (2) who promote and execute terrorist acts; (3) who make and distribute harmful and exploitative images of children; and (4) others who use the internet to distribute and fund crime.

As GARM and its members clarified in the organization's charter, members of GARM worked together to address the lack of accountability and transparency in online advertising.

The Global Alliance for Responsible Media (GARM) exists to create a more sustainable and responsible digital environment that protects consumers, the media industry, and society as a result. The GARM is a first-of-its-kind industry-wide, but advertiser centric community of global brands, media agencies, media owners and platforms, and industry bodies....

We are committed to ...taking actions which will better protect everyone (children in particular) online; and ... working towards a media environment where hate speech, bullying and disinformation is challenged; and taking steps to ensure personal data is protected and used responsibly when given.<sup>99</sup>

Much of the work of GARM was carried out in small teams, composed of representatives from different parts of the digital advertising value chain. This work was then discussed in larger "community calls." For example, in November 2019 there were teams which covered five topics: advancing shared language + standards, educate operators + stakeholders, create accessible controls for monetization, clarify platform safe content policies, and communications & PR. Platforms were represented in all but the communications & PR team. For example, Twitter and Facebook were among the eight members of the clarify platform safe content policies team.<sup>100</sup>

The level of engagement with GARM differed substantially across members. Some members took more active leadership roles in the steering committee or, perhaps, as members of the working groups. Other members were occasional participants who saw membership as a way to access resources and information or engaged primarily on one or two activities of particular interest to them.<sup>101</sup>

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<sup>97</sup> Rakowitz Interview at 163:18-20.

<sup>98</sup> Statement on the Global Alliance for Responsible Media, *supra* note 37.

<sup>99</sup> *Charter*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA, *supra* note 18 at 1.

<sup>100</sup> "GARM November Community Call," Quick Wins: Team Structure slide (Nov. 27, 2019). Platforms were also involved in the development of GARM's charter. *See* emails between Rob Rakowitz of GARM and Meg Haley of Twitter in November 2019 (on file with Committee).

<sup>101</sup> *See, e.g.*, Letter from Counsel to Merck to Chairman Jim Jordan (Aug. 15, 2024) (Merck limited involvement); Letter from Counsel to Microsoft to Chairman Jim Jordan (Aug. 15, 2024) (Microsoft limited involvement); Letter

The within and across industry nature of GARM’s membership meant that GARM members must be careful to avoid information exchanges or conversations that raise potential antitrust concerns. GARM, like many other industry associations or industry standard setting organizations, followed a policy that spelled out the antitrust principles to which its members must abide.<sup>102</sup>

GARM’s stated operational goal was to “make it easier for all participants to uphold responsible media operations by creating norms that face into technology development, categorization and monetization of content, and incident measurement.... We believe this will ultimately improve the consumer and brand experience, and thereby reduce societal risk.”<sup>103</sup> GARM intended to accomplish this goal by: (1) establishing shared, universal safety standards for advertising and media; (2) improving and creating common brand safety tools across the industry; and (3) driving mutual accountability and independent verification and oversight. As the representative from GARM testified: “[B]rand safety is basically making sure that there is transparency on where ads are placed and making sure that they don’t inadvertently support illegal, illicit, or harmful content in digital social media.”<sup>104</sup>

GARM was responding to an environment that was varied as well as opaque. As GARM’s initiative lead Rakowitz noted: “Every platform has their own policies, how they define hate speech, how they define protected groups, hate speech terms. They vary.”<sup>105</sup> These varied policies, which he characterized as “wildly untransparent,” made it difficult to compare controls on the different platforms. And GARM was created, in part, to help fix this.<sup>106</sup>

Because the brand safety problem is endemic to the advertising ecosystem, it was critical to bring together the full range of market participants throughout advertising value chain for conversations to find better solutions. These conversations led GARM to address brand safety by defining “harmful online content...using consistent and understandable language.”<sup>107</sup>

Specifically, the centerpiece of GARM’s work is to “[a]dvance the adoption of an industry wide common definition of categories of harmful, non-brand safe and suitable content to improve the effectiveness of consumer and brand safety across platforms, geographies, and formats[.]”<sup>108</sup> This work culminated in the *Brand Safety Floor + Suitability Framework* as a resource for the advertising industry.<sup>109</sup> The framework, first published in 2020, provided common definitions of harmful and sensitive content in twelve categories: Adult & Explicit Sexual Content; Arms & Ammunition; Crime & Harmful Acts to Individuals and Society,

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from Counsel to Sanofi to Chairman Jim Jordan (Aug. 14, 2024) (Sanofi focus on sustainability) (all on file with Committee).

<sup>102</sup> See generally, WFA, Competition Guidance—General Competition Policy (on file with Committee); Rakowitz Interview at 85:13-25, 86:1-19; GARM, July 2021 Community Call (Aug. 5, 2021) reminds the group of the WFA Competition law compliance policy (on file with Committee).

<sup>103</sup> *Charter*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA, *supra* note 18 at 1.

<sup>104</sup> Rakowitz Interview at 10:4-6.

<sup>105</sup> *Id.* at 61:8-9.

<sup>106</sup> *Id.* at 45:19-25; 46:1-12.

<sup>107</sup> Global Alliance for Responsible Media, *Brand Safety Floor + Suitability Framework*, *supra* note 16.

<sup>108</sup> *Charter*, GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA, *supra* note 18 at 1.

<sup>109</sup> Global Alliance for Responsible Media, *Brand Safety Floor + Suitability Framework*, *supra* note 16.

Human Right Violations; Death, Injury or Military Conflict; Online Piracy; Hate Speech & Acts of Aggression; Obscenity and Profanity, including language, gestures, and explicitly gory, graphic or repulsive content intended to shock and disgust; Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol; Spam or Harmful Content; Terrorism; Debated Sensitive Social Issue; and Misinformation.<sup>110</sup> It does not name individual platforms or publishers but was instead organized around risks.

Content was classified as “not appropriate for any advertising support” (what GARM terms the “brand safety floor”) or as “high risk,” “medium risk”, or “low risk” for each potential harmful content category. As an example, consider the GARM framework definitions for the “Hate Speech & Acts of Aggression” category and for “Adult & Explicit Sexual Content. The Brand Safety Floor defined hate speech & acts of aggression as “[b]ehavior or content that incites hatred, promotes violence, vilifies, or dehumanizes groups or individuals” and lists groups identified by characteristics such as race, ethnicity, gender, sexual orientation, and religion.<sup>111</sup> Content that depicts or portrays “denigrating, or inciting content... in a non-educational, informational, or scientific context” was classified as high risk.<sup>112</sup> “Dramatic depiction of hate speech/acts presented in the context of entertainment,” including “Breaking News or Op-Ed coverage of hate speech/acts” was considered medium risk, while “Educational, Informative, Scientific, treatment of Hate Speech” including “News features on the subject” are classified as low risk.<sup>113</sup> A similar set of classifications are developed based on the brand safety floor definition for Adult & Explicit Sexual Content which is “Illegal sale, distribution, and consumption of child pornography; Explicit or gratuitous depiction of sexual acts, and/or display of genitals, real or animated.”<sup>114</sup> (See Appendix, Exhibit 1 for the GARM: Brand Safety Floor + Suitability Framework.)

These efforts resulted in a “foundational” framework for categorizing content found on online.<sup>115</sup> Subsequently, GARM also developed an “Adjacency Standards Framework” which helped advertisers assess how spatial and temporal positioning of an advertisement to nearby content affected brand safety risk.<sup>116</sup> Collectively, these frameworks were key products of the collaborative process GARM used to address brand safety concerns in the online advertising ecosystem.

1. GARM and GARM’s frameworks do not determine advertiser placement decisions.

GARM’s voluntary frameworks, which the biggest social media platforms helped

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<sup>110</sup> *Id.* The misinformation category was added to the framework in 2022. Many examples that the Majority alleges as use of “misinformation” to silence conservative voices occurred prior to mid-2022 when GARM formalized its misinformation category as part of its Brand Safety Floor + Suitability framework. Hence, it is hard to see how the GARM framework could have played any role in those examples.

<sup>111</sup> Global Alliance for Responsible Media, *Brand Safety Floor + Suitability Framework*, *supra* note 16.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Adjacency Standards Framework, GARM (June 17, 2022), at 1 (on file with Committee).

<sup>116</sup> *Id.*



develop, provide structures for analysis and created a common lexicon. Much like the terms of art in marketing or expressions in mathematics, a shared terminology facilitates communication that is foundational for constructive working relationships across organizations. Such terminology enhances transparency, making market transactions more efficient. The buyer better understands what sellers are offering in terms of brand safety and the seller better understands what buyers want. Both advertisers and platforms benefit from this common approach and independent decision making is improved.

Crucially, the frameworks do not dictate advertising outcomes. Applying those frameworks is an inherently subjective exercise that includes tailoring to the specific requirements of the brands and leads to outcomes that vary across GARM's members. Juhl described how GroupM customizes its work in ad placement to reflect the specific needs of their advertiser clients:

GroupM works to place our clients' ads on media pursuant to their goals, preferences, and target audiences, and we continually engage with our clients to understand their particular risk tolerance levels. These risk tolerances shift due to our clients' own business conditions and how they view the current political and social environments. Clients shift priorities very quickly and it is our job to execute their strategy with speed and precision. We always follow our client brand's ad placement wishes.<sup>117</sup>

It is also important to recognize that the application of the GARM frameworks usually operates within a firm's set of marketing policies and hence was only one consideration among many. These marketing policies vary by firm. Most were created before the GARM frameworks and continue to shape online advertising choices.

- Unilever has general internal policies under which brand safety policies operate. They have a "Code of Business Principles and Code Policies" that require "advertisements to be truthful, accurate, and transparent" as well as a Responsibility Framework for digital advertising which "focuses...advertising activities toward responsible platforms, responsible content, and responsible infrastructure."<sup>118</sup> Unilever, finds the GARM framework "helpful, but it is just one consideration among many"<sup>119</sup> and it makes independent decisions about advertising which include advertising on platforms that are not using the GARM framework.<sup>120</sup>
- "HP's long-standing beliefs and principles are the basis of our standards and practices, including those that apply to the company's advertising...HP has its own guidelines for brand suitability and content safety, which are not directed at, or influenced by, any specific institution."<sup>121</sup>

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<sup>117</sup> Juhl Statement at 3.

<sup>118</sup> Patel Statement at 2.

<sup>119</sup> *Id.* at 9.

<sup>120</sup> *Id.*

<sup>121</sup> Letter from Counsel to HP to Chairman Jim Jordan (Aug. 22, 2024) (on file with Committee).

- “Kellanova’s global advertising strategy is rooted in the principles outlined in its worldwide marketing and communications guidelines, which have been in place and updated since 2007.... These guidelines have been in place for several years and were developed internally based on a wide range of inputs.... Kellanova’s advertising standards are based on internal guidelines and principles, in compliance with local regulations and the company’s obligations under self-regulatory programs in which Kellanova participates.”<sup>122</sup>
- “While P&G considers the GARM framework, the Company’s decisions regarding placement of advertising for P&G brands and products remains its own and are made in accordance with its own internal P&G policies.”<sup>123</sup>
- The Coca-Cola Company (TCCC) has a Responsible Marketing Policy<sup>124</sup> which is the overarching policy into which applications of the GARM framework would presumably reside. A significant component of that policy is the commitment not to market any of TCCC’s products to children under the age of 13. Online brand safety policies follow TCCC’s Responsible Digital Media Principles which include six key principles involving ensuring quality, promoting respect, protecting people, auditing platforms, transparency, and enforcing policy.<sup>125</sup>
- “[Mondelez’s] decisions to advertise are made independently, with the support of our advertising agency partners, and are based on factors such as reach, consumer data, and return on investment. We have standards in place that are relevant for our business and the industry we operate in. Any decision to update the forums in which our advertising appears is taken independently and based upon our business needs—not at the direction of others.”<sup>126</sup>
- “Red Bull independently plans and executes its unique brand and advertising strategy worldwide. As part of this home-grown strategy, Red Bull works bilaterally, with each of its social media and advertising partners to ensure brand safety. That generally entails reviewing the media and content that appear near Red Bull's advertisements to ensure those advertisements do not appear near harmful, violent, or illegal content. To the extent Red Bull’s brand safety strategy may have been informed by resources and newsletters received from GARM, those materials are but one source among many that Red Bull may have considered when making its own independent decisions about brand and advertising strategy.”<sup>127</sup>

Given advertiser-specific factors, even for those organizations that adopt the entire GARM framework, what policies they use to determine where to advertise, or in the case of programs or

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<sup>122</sup> Letter from Counsel to Kellanova to Chairman Jim Jordan (Aug. 15, 2024) (on file with Committee).

<sup>123</sup> Letter from Counsel to Proctor & Gamble to Chairman Jim Jordan (Apr. 19, 2024) (on file with Committee).

<sup>124</sup> *The Coca-Cola Company’s Responsible Marketing Policy*, THE COCA-COLA COMPANY (Jan. 1, 2022), <https://www.coca-colacompany.com/policies-and-practices/responsible-marketing-policy>.

<sup>125</sup> Coca-Cola, *Brand Safety Playbook Updated* (on file with Committee).

<sup>126</sup> Letter from Counsel to Mondelez to Chairman Jim Jordan (Aug. 15, 2024) (on file with Committee).

<sup>127</sup> Letter from Counsel to Red Bull to Chairman Jim Jordan (Aug. 29, 2024) (on file with Committee).

platforms, what content to allow, depends on their idiosyncratic business considerations as well as broader firm policies.

While GARM was instrumental in developing the brand safety frameworks with its members, it did *not* dictate members' decisions, engage in content moderation, determine what content falls into what category, or interfere with advertisers' freedom regarding where and how to place advertisements.<sup>128</sup> As Rakowitz observed,

[GARM] respect[s] the independence and freedom of companies. Every company needs to make their own policies. We're hoping that, like, platforms are working with governments and NGOs to make those right calls. Advertisers need to have transparency and understand where their ads show up. And those are, again, individual decisions.<sup>129</sup>

Rakowitz further emphasized that,

...GARM is voluntary. Membership is voluntary. Solutions are voluntary. Audits are voluntary. Members are free to review voluntary industry standards and implement practices on their services as they deem them relevant. The freedom to implement our suggestions and practices is something we [GARM] deeply respect. Our goal is to create more transparency and competitiveness in the marketplace by developing voluntary industry standards through an inclusive and open process.<sup>130</sup>

This sentiment was reinforced by GARM members. Juhl testified that “[a]doption of GARM’s definitions is and always has been voluntary. Some companies may choose to adopt one or more of GARM’s brand safety definitions, as we have; others may choose not to adopt any. That is their right.”<sup>131</sup>

Finally, multiple companies underscored that membership in an association does not imply alignment of views among the members or with association leadership. McDonald’s underscored this point in response to Chairman Jordan’s August 2024 inquiry:

...McDonald’s participates in various trade associations and industry initiatives. These associations and initiatives represent a broad spectrum of views on industry, policy, and advertising issues.... Membership provides McDonald’s the opportunity to engage with diverse networks that advance its understanding of the global business environment and the constantly evolving marketplace; it also helps McDonald’s improve efficiency, quality, and its service delivery. McDonald’s recognizes that the groups in which it participates, and the members of those groups, do not share all the same views as McDonald’s. More importantly McDonald’s does not endorse or share all the views of the groups in which it participates.”<sup>132</sup>

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<sup>128</sup> Juhl Statement at 8.

<sup>129</sup> Rakowitz Interview at 117:23-25, 118:1-2.

<sup>130</sup> Rakowitz Interview at 41:16-22.

<sup>131</sup> Juhl Statement at 3. *See also*, Patel Statement at 3.

<sup>132</sup> Letter from Counsel to McDonald’s to Chairman Jim Jordan (Aug. 30, 2024) (on file with Committee).

## 1. Social media platform leaders praise GARM’s accomplishments.

By its third year, GARM had developed and announced the Brand Safety Floor + Suitability framework and the Adjacency framework as well as producing several Aggregated Measurement Reports which aggregated data provided by 8 major platforms on violations of their platform policies along with associated advertising safety information.<sup>133</sup> These efforts received substantial praise from major platforms which included those for which major advertisers had previously paused spending because of brand safety concerns.<sup>134</sup>

- Sarah Personette, Chief Customer Officer, Twitter: “Keeping people and brands safe online continues to be of critical importance. We are proud to be working with the GARM community to help the ad industry make meaningful contributions towards those ends. This latest step to combat the monetization of misinformation and create common standards and definitions related to brand suitability will be critical in creating a safe environment for everyone.”<sup>135</sup>
- Nicola Mendelsohn, VP Global Business Group at Meta: GARM “has demonstrated that industry can come together to meaningfully address the challenge of harmful content online.”<sup>136</sup>
- Debbie Weinstein, Vice President, YouTube & Video Global Solutions, Google: “Through our longstanding partnership with GARM, we’ve made significant progress towards building a more sustainable and healthy digital ecosystem for everyone. We commend GARM...”<sup>137</sup>

These sentiments were shared by others in the advertising community.

### III. Antitrust Analysis

GARM and its members established a commonsense framework to prevent advertisements from being placed by, and thereby supporting, toxic content that harms advertiser’s interests as well as the public. The Majority alleges that these actions seek to suppress conservative viewpoints and somehow, along the way, violate Section 1 of the Sherman Act. Both the thin record provided and an amply established law reveal a fundamentally flawed theory.

Section 1 of the Sherman Act proscribes “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or

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<sup>133</sup> See, e.g., GARM Aggregated Measurement Report, Volume 5 (Aug. 2023), <https://wfanet.org/l/library/download/urn:uuid:db7b8fe2-70c6-4366-a073-c02dee9d2156/garm+vol+5+aggregated+measurement+report.pdf?>

<sup>134</sup> Robin Langford, *10 industry leaders discuss GARM three years on: Unilever, Meta and Google outline brand safety challenges ahead*, PMW (June 23, 2022) <https://www.performancemarketingworld.com/article/1790868/10-industry-leaders-discuss-garm-three-years-on-unilever-meta-google-outline-brand-safety-challenges-ahead>.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

with foreign nations...”<sup>138</sup> To show a Sherman Act violation it is necessary to prove the existence of three elements: (1) a contract, combination, or conspiracy which constitutes (2) an unreasonable restraint of trade that (3) affects interstate commerce or foreign trade.<sup>139</sup> The Majority fails to do so.

#### **A. Participants in GARM have not reached an agreement as required by Section 1.**

An agreement between two or more parties is essential to meet Section 1’s requirement of a “contract, combination, or conspiracy.” It is defined as “a conscious commitment to a common scheme designed to achieve an unlawful objective.”<sup>140</sup> Importantly, while the evidence supporting the finding of an agreement can be either direct or circumstantial,<sup>141</sup> courts require a heightened showing to establish a conspiracy by circumstantial facts alone, as “antitrust law limits the range of permissible inferences from ambiguous evidence.”<sup>142</sup> That is, parallel conduct alone is insufficient to establish an agreement as it may result from independent action. Independent action, of course, remains permissible under Section 1. As the Supreme Court has held, a firm “generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently.”<sup>143</sup>

The necessity of proving a conspiracy is so central to a Section 1 claim that a plaintiff must present, “evidence that *tends to exclude* the possibility that the [parties] were acting independently.”<sup>144</sup> Stated alternatively, “conduct [that] is consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy.”<sup>145</sup> When evidence is in “[m]ere equipoise,” an agreement has not been established.<sup>146</sup> In practical terms this means that even evidence of consciously parallel or interdependent firm conduct without more is insufficient to establish a conspiracy.

The Majority’s July 2024 Interim Report offers no direct evidence of an agreement among GARM and its members. Mere status as a member of GARM would not, without more, support a finding of a conspiracy. Consistent with the key Supreme Court precedents *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*<sup>147</sup> and *Monsanto Co. v. Spray-Rite Service Corp.*,<sup>148</sup> a plaintiff would have to “present evidence tending to show that association members, in their individual capacities, consciously committed themselves to a common scheme designed to achieve an unlawful objective.”<sup>149</sup> In contrast, GARM and its members are absolutely clear that

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<sup>138</sup> See 15 U.S.C. § 1.

<sup>139</sup> *Hobart-Mayfield, Inc. v. Nat’l Operating Committee on Standards for Athletic Equipment*, 48 F.4th 656, 663 (6th Cir. 2022).

<sup>140</sup> *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 768 (1984).

<sup>141</sup> *United States v. Apple, Inc.*, 791 F.3d 290, 315 (2d Cir. 2015).

<sup>142</sup> *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

<sup>143</sup> *Monsanto*, 465 U.S. at 760 (citing *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)).

<sup>144</sup> *Id.* at 764 (emphasis added).

<sup>145</sup> *Matsushita*, 475 U.S. at 588.

<sup>146</sup> *American Contractors*, 989 F.3d at 1233 (11th Cir. 2021); see also *American News, LLC v. American Media, Inc.*, 899 F.3d 87, 98 (2d Cir. 2018).

<sup>147</sup> *Matsushita*, 475 U.S. at 588.

<sup>148</sup> *Monsanto*, 465 U.S. at 764.

<sup>149</sup> *AD/SAT, Div. of Skylight, Inc. v. Associated Press*, 181 F.3d 216, 234 (1999).

their advertising decisions are made independently. As Unilever USA President Patel testified during the hearing,

I want to be very clear on one crucially-important fact. Unilever and Unilever alone controls our advertising spending. No platform has the right to our advertising dollars. As we look across the available advertising inventory, recognizing we do not have unlimited money to spend on advertising, we choose the channels, the platforms, and the outlets that give us the greatest commercial benefit for our advertising investments.<sup>150</sup>

During questioning Patel further confirmed that, “A hundred percent, Unilever makes its own decisions,” and does not follow any outside group’s direction to avoid any outlet.<sup>151</sup> This sentiment is echoed by GARM’s Rakowitz during his transcribed interview:

Q: But just to nail down that point, GARM doesn’t tell individual members—

A: Absolutely not.

Q: —what to do?

A: No, we do not.

Q: Or where to place ads?

A: No, we do not.

Q: Or where to avoid placing ads?

A: We do not.<sup>152</sup>

These comments are consistent with the advertiser decision making process discussed in Part IIB. In the absence of direct evidence, indirect (or circumstantial) evidence must also be considered. For example, a decline in selected websites’ advertising revenues could, at least in theory, suggest that advertisers participated in a group boycott of the affected websites. But if that decline in advertising revenues can reasonably be attributed to independent action, the likelihood of a conspiracy would be undermined.

The evidence is incontrovertible that advertisers fear that their brands can be compromised if their products are advertised alongside content that is unsuitable for the brand image or that the brand’s target customers find objectionable. Matching the context in which an advertisement is placed to the brand image is Marketing 101. A brand’s decision not to advertise on a platform that renders it vulnerable to such placements constitutes a legitimate and independent exercise of business judgment. Decisions reflecting this principle make business sense *regardless* of what the firm’s rivals choose to do.

If an advertiser decides that a website is unsafe, it may decide to advertise elsewhere, whether or not others follow suit. If enough advertisers make such a decision, advertising

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<sup>150</sup> Patel Testimony at 20:426-433.

<sup>151</sup> *Id.* at 76-77:1697-1698.

<sup>152</sup> Rakowitz Interview at 56:5-12.

revenues at the website may substantially decline. Recent history at Twitter, later X, provides a case in point. As discussed earlier, when self-proclaimed free-speech absolutist Elon Musk acquired Twitter in October 2022 and in November fired half the staff, many advertisers paused their advertising because they worried that Twitter’s brand safety policies were weakening.<sup>153</sup> Such concerns were heightened by Musk’s combative outbursts regarding the advertisers as well as his actions to reduce X’s reliance on advertising fees. As alignment between advertiser and X interests declined, so, unsurprisingly, did X’s advertising revenues.

Things did not improve in 2023 during which several major advertisers again paused spending on X, in part, because of a Musk post that was perceived as endorsing an antisemitic post, but also because their ads were appearing alongside harmful content on the X platform. While Musk later walked back the post in question, his reaction to the pausing of advertising was to say, “If someone is going to try and blackmail me with advertising, blackmail me with money, go f--- yourself...Don’t advertise.”<sup>154</sup> It is an understatement to say that such comments did not encourage the building of advertising revenues by calming fears about X’s current and future content moderation policies. The lesson is clear. If an online advertising outlet is perceived to substantially change its policies or the operational support for its policies, many advertisers may independently respond by reducing their advertising spend on that outlet.<sup>155</sup> The affected site’s revenues would then decline, but the decline would reflect the outcomes of normal market processes, not collusion. This is not rocket science.

Independent action is the most compelling explanation for the choices made by the advertisers. But, for now, let’s entertain the story of collusion the Majority peddles in which the purported outcome is the suppression of conservative voices on internet platforms and websites.

A threshold requirement for a collusive scheme is that the successful scheme would benefit the conspirators. In other words, does the alleged scheme enhance profits? For the advertisers in question, if the number of conservative outlets shrunk, then that would amount to a loss of advertising inventory through which politically conservative consumers—a share the Majority characterizes as 50 percent of the public—can be reached. The loss of these platforms could make it more expensive to reach conservative consumers, resulting in an unmitigated loss of profits. This reality cuts squarely against finding a conspiracy.

In the absence of economic gain from the alleged collusive scheme, a court would need to be persuaded that firms would sabotage their economic interests to promote various executives’ personal political preferences. Because such a proposition runs against both common sense, business sense, and duties to shareholders for public corporations, the Supreme Court requires extremely strong direct evidence of an agreement to establish the conspiracy element of a

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<sup>153</sup> Conger *et al.*, *supra* notes 87 & 88.

<sup>154</sup> Goode, *supra* note 12.

<sup>155</sup> Swearingen, *supra* note 93 (“The competition for brand advertising is fierce, with plenty of options for advertisers to pick from...Advertisers can safely dial back spending on Twitter and know they can shift that spending elsewhere without issue.”).

Sherman Section 1 violation.<sup>156</sup> Namely, where “the factual context renders [the] claim implausible” or “one that simply makes no economic sense,” the evidence must be “more persuasive. . . than would otherwise be necessary.”<sup>157</sup> For an alleged conspiracy to be plausible, co-conspirators must stand to reap some sort of foreseeable economic benefit from their participation.<sup>158</sup> The more speculative the plaintiff’s theory of economic reward to defendants, the less likely courts are to find an agreement.<sup>159</sup> The interim Majority report does not come anywhere close to achieving this. Rather, the report cobbles together select quotations infused with innuendo into a vague story of a grand conspiracy involving GARM.

A serious antitrust inquiry would need to address the ease of reaching and sustaining an agreement. Two major obstacles—large numbers of participants and participants with diverse interests—have long been recognized by antitrust law as making collusive schemes less likely.<sup>160</sup> In the GARM setting, overcoming these obstacles would loom large.

The Majority alleges a conspiracy involving GARM and its members.<sup>161</sup> GARM itself has over 100 members and it is farfetched that a group of this size could reach and sustain an agreement. Compare this to the prototypical price collusion scheme which usually entails a handful of sellers who compete in the same oligopolistic market, say the five conspirators in the famous lysine price-fixing scheme<sup>162</sup> in the 1990s or the recent price-fixing case against seven generic pharmaceutical firms.<sup>163</sup>

The problem of agreement is more difficult still when one considers the diversity of interests that characterize the alleged colluders. Because platforms and other online outlets are selling advertising inventory, slots in which advertising can be displayed, the same slots may fit the advertising needs of a wide range of firms operating in quite different product and service markets. Even among just the advertisers (leaving aside the advertising agencies, media buying

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<sup>156</sup> *Matsushita*, 475 U.S. at 587 (where “the factual context renders [the] claim implausible” or “one that simply makes no economic sense,” the evidence must be “more persuasive. . . than would otherwise be necessary”).

<sup>157</sup> *Id.*

<sup>158</sup> *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 468 (1992).

<sup>159</sup> *Anderson News, LLC v. American Media, Inc.*, 899 F.3d 87, 101 (2d Cir. 2018).

<sup>160</sup> Department of Justice, Antitrust Division, *Price Fixing, Bid Rigging, and Market Allocation Schemes: What They are and What to Look For: An Antitrust Primer* (Feb. 2021),

<https://www.justice.gov/d9/pages/attachments/2016/01/05/211578.pdf#:~:text=Federal%20Antitrust%20Enforcement&text=The%20Sherman%20Act%20prohibits%20any,United%20States%20Department%20of%20Justice>.

<sup>161</sup> Collusion in the Global Alliance for Responsible Media, Hearing before the Committee on the Judiciary, 118th Cong. (2024) (Jordan Testimony) at 38-41.

<sup>162</sup> Scott D. Hammond, *Caught in the Act: Inside an International Cartel*, Address Before the OECD Competition Committee (Oct. 18, 2005), <https://www.justice.gov/atr/speech/caught-act-inside-international-cartel>.

<sup>163</sup> Department of Justice, Antitrust Division, *Major Generic Drug Companies to Pay Over Quarter of a Billion Dollars to Resolve Price-Fixing Charges and Divest Key Drug at the Center of Their Conspiracy*, Press release (Aug. 21, 2023), <https://www.justice.gov/opa/pr/major-generic-drug-companies-pay-over-quarter-billion-dollars-resolve-price-fixing-charges#:~:text=All%20News-,Major%20Generic%20Drug%20Companies%20to%20Pay%20Over%20Quarter%20of%20a,the%20Center%20of%20Their%20Conspiracy&text=The%20Justice%20Department%20announced%20today,against%20Teva%20Pharmaceuticals%20USA%2C%20Inc>. See also, Margaret C. Levenstein & Valerie Y. Suslow, *Price Fixing Hits Home: An Empirical Study of US Price-Fixing Conspiracies*, 48 REV. IND. ORGAN. 361, 368 (2016) (an analysis of DOJ cartel cases from 1961-2013 found that the average number of cartel members was 4.94).



companies, ad tech firms, and platforms, among others alleged to be part of the conspiracy), then the diversity of interests regarding the purpose of the collusion and how it is to be implemented would be great. Each advertiser’s concern for brand safety risk would presumably differ, for example, by the nature of the product, the strength of the underlying brand and rival brands, company size and sophistication, the risk tolerance of the brand manager, the private information of the firm regarding preferred target consumer demographics, whether the firm is launching a new product, and so on.<sup>164</sup>

Furthermore, a firm’s brand safety policies are shaped by overall brand advertising policies and core values as the examples provided previously illustrated.<sup>165</sup> And, the interest and engagement of the various members with GARM varies considerably. Some were actively engaged while others were passive members who used GARM as one of many ways to acquire information about trends and best practices in advertising. Membership in associations does not imply common viewpoints, especially not on issues far from the underlying purpose of the association. In terms of the allegation regarding suppression of conservative viewpoints, firms, of course, are headed by both Republicans and Democrats who presumably have different political views and who likely appreciate that, as Michael Jordan observed, “Republicans buy sneakers too.”<sup>166</sup>

Finally, courts, in assessing whether an agreement exists, look for evidence regarding monitoring and enforcing the alleged agreement. In terms of monitoring, GARM members, in accordance with WFA guardrails regarding exchange of competitively sensitive information, are discouraged from sharing advertising decisions with one another.<sup>167</sup> More specifically, GARM does not have any requirements that members take action, they lack binding codes, and they have never considered ejecting a member from the organization.<sup>168</sup> Furthermore, GARM’s processes, such as the development of the Brand Safety Floor + Suitability framework, are public and involve representatives that would be the targets of the alleged conspiracy.<sup>169</sup>

In summary, the selected quotations stitched together in the Majority’s July 2024 Interim Report do not amount to a conspiracy let alone one of the scale and scope alleged. And using that story to propel a Congressional antitrust investigation reflects a fundamental misunderstanding of how the relevant law treats collusion. As Professor Waller explained in the July 2024 hearing, “I have not seen any evidence and publicly [sic] information that suggests that GARM plays a role like a traditional cartel. It does not consist primarily of firms that compete with each other, and they are not agreeing on the price[,] amount or other kinds of market division that a cartel

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<sup>164</sup> See generally Juhl Statement at 3 & *supra* pp. 33-34 (examples of advertising decision making).

<sup>165</sup> *Id.*

<sup>166</sup> Tom Lutz, *Michael Jordan insists ‘Republicans buy sneakers too’ quote was a joke*, THE GUARDIAN (May 4, 2020), <https://www.theguardian.com/sport/2020/may/04/michael-jordan-espn-last-dance-republicans-sneakers-quote-nba>.

<sup>167</sup> WFA Competition Guidance, *supra* note 103.

<sup>168</sup> Rakowitz Interview at 51:2-11.

<sup>169</sup> Waller Testimony at 32:640-649, 33: 650-651. (GARM’s public processes are “very different from the secretive processes by which traditional cartels meet to create and enforce their unlawful agreements”.)

normally does....”<sup>170</sup>

**B. Any agreements reached through GARM would be evaluated under the rule of reason, rather than the per se rule, and would not amount to an unreasonable restraint of trade as required by Section 1.**

Even if the firms at issue had reached an agreement—which on the information presented, they have not—a court would still have to assess whether the conduct constituted an unreasonable restraint of trade. Such restraints are typically analyzed under one of two frameworks, each subject to its own standard of analysis. One category, per se illegality, encompasses conduct that is both inherently pernicious in terms of its anticompetitive effect and also “lack[s]...any redeeming virtue.”<sup>171</sup> It is condemned on a per se basis, meaning that if you can prove the existence of the underlying conduct, it is condemned without further analysis. Per se rules are generally reserved for horizontal agreements between competitors to restrict price and output quantity or allocate markets.<sup>172</sup> Cases that do not involve per se conduct are judged under the rule of reason, the second category, which balances pro and anticompetitive effects. Per se analysis would not be applicable to the circumstances alleged by the Majority which do not involve price or market allocation restrictions. If a rule of reason analysis were applied, any agreements would likely be upheld as not violating the Sherman Act.

Per se analysis applies only when there is strong evidence demonstrating the presence of competitive harm and the absence of procompetitive justifications. Such treatment is typically reserved only for settings for which courts have extensive history understanding the relevant effects and fact patterns. Per se condemnation is usually restricted to cases involving horizontal price fixing or market division which is not the case here. As Professor Waller observed, “[w]hat we’re talking about is the development of terms and definitions. They call it a lexicon.... These terms do not affect the price, production, or quality of the goods and services sold by the members of GARM.”<sup>173</sup> Hence, in advocating for per se treatment, the Majority ignores the weakness of their argument, overlooks their failure to identify any competitive harm, and ignores self-evident procompetitive benefits. This is not a good faith engagement with antitrust law.

Seeking to characterize the alleged misconduct as a “group boycott” does not make per se treatment any more likely.<sup>174</sup> Per se treatment of group boycotts has generally been limited

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<sup>170</sup> *Id.* at 69:1515-1521. Waller also observed that, “with respect to the diverse coalition of firms in GARM, for example, Microsoft does not compete with McDonald’s; Procter & Gamble or Unilever don’t compete with Shell, a pharmaceutical company, or Group M.” *Id.* at 32:627-630.

<sup>171</sup> *Northern Pacific Rail Co. v. United States*, 356 U.S. 1, 5 (1958).

<sup>172</sup> *Copperweld Corp. v. Independent Tube Corp.*, 467 U.S. 752, 768 (1984); *Northern Pacific Rail Co. v. United States*, 356 U.S. 1, 5 (1958).

<sup>173</sup> Waller Testimony at 32:640-644.

<sup>174</sup> *Id.* at 33:657-662 (“[C]haracterizing GARM’s conduct as a boycott doesn’t really change the antitrust analysis in any important way. Group boycotts are only per se unlawful when they’re used to implement some otherwise unlawful cartel agreement or where firms with market power collectively deny a competitor access to some key source of supply it needs to survive.”).

to situations in which the boycott is designed to disadvantage a horizontal competitor.<sup>175</sup> It has also been invoked in settings where the boycott is the means to effectuate a price fixing scheme.<sup>176</sup> Neither of these situations apply here. As such, any group boycott claim would receive rule of reason treatment.

The rule of reason guides evaluation of most competitive restraints.<sup>177</sup> As Justice Brandeis described the rule: “The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.”<sup>178</sup> A rule of reason analysis relies on the plaintiff showing a “substantial anticompetitive effect that harms consumers in the relevant market.”<sup>179</sup> If that effect is established, then the court considers whether a procompetitive rationale exists to justify the restraint.<sup>180</sup> Regarding the first requirement, the Majority fails to provide direct evidence of any anticompetitive effect, offering only vague assertions and innuendos based on cherry-picked communications. Nor do they provide indirect evidence which would establish of an anticompetitive effect in which “the plaintiff must prove that the defendant has market power and present ‘some evidence that the challenged restraint harms competition.’”<sup>181</sup> Furthermore, an assessment of market power depends upon market definition—something that is not even meaningfully broached let alone resolved by the Majority’s Interim Report.

Claiming the restraint harms competition is certainly not helped by their inclusion of a so-called victim of this scheme—the Daily Wire. This is a media outlet run by Conservative political commenter and Republican hearing witness Ben Shapiro. Its website generated \$220 million last year. His show was the 13th most popular podcast in the first quarter of 2024. His website has over 15 million followers across its main social media handles, including on sites that are members of GARM. The Daily Wire “receives more likes, shares, and comments on Facebook”—which, we should note, is a member of GARM—“than any other news publisher by a wide margin” in 2021.<sup>182</sup> And even the video in which Shapiro claimed to be the victim of “global [advertising] organizations” was itself supported by advertising revenue and was available on YouTube, a member of GARM. This hardly sounds like the victim of a conspiracy to suppress content. While particularly successful, Shapiro is not alone. Conservative media generates millions of dollars of revenue each year. “Conservative brands” have made notable gains in corporate reputation<sup>183</sup> and several “anti-woke” brands have entered the market, catering to customers who are fed up with the “political” stances of companies like Bud Light and

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<sup>175</sup> *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 135 (1998).

<sup>176</sup> *FTC v. Superior Court Trial Lawyers Ass’n*, 493 U.S. 411 (1990).

<sup>177</sup> *United States v. Topco Associates, Inc.*, 405 U.S. 596, 606–07 (1972); see *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 66 (1911).

<sup>178</sup> *Board of Trade of City of Chicago v. United States*, 246 U.S. 231, 244 (1918).

<sup>179</sup> *Ohio v. American Express Co.*, 585 U.S. 529, 541 (2018).

<sup>180</sup> *Id.*

<sup>181</sup> *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 983 (9th Cir. 2023) (quoting *American Express* 585 U.S. at 542).

<sup>182</sup> NPR, TWITTER (Jul. 25, 2021, 11:22 PM), <https://x.com/NPR/status/1419498211669911>.

<sup>183</sup> Sara Fischer & Margaret Talev, *Companies Ride a Red Wave Ahead of Election*, AXIOS (May 22, 2024), <https://www.axios.com/2024/05/22/company-reputation-ranking-2024-republican>.

Hershey's.<sup>184</sup>

But even if an anticompetitive effect were established, GARM would still have a clear pro-competitive justification. Substantial evidence exists that increasing transparency around content monetization practices and advertising on online platforms is procompetitive.<sup>185</sup> Given the material concerns of advertisers regarding brand safety, fostering greater transparency of online content monetization policies and enforcement benefits advertisers who seek higher returns on their advertising investments and drives competition among rival online platforms. Maintaining the value of the brand also improves consumer choice and welfare in product and service markets. This work is far from complete. Patel of Unilever summarized the current situation:

Although we have made progress in ensuring that our digital advertising spending is advancing our brands' business objectives, including Unilever's individual efforts and industry efforts like GARM, there is still more to be done. As recently as two years ago, Unilever received notice that certain ads for our brands had been unknowingly placed adjacent to social media profiles involved in selling or soliciting child sexual abuse material. This is wholly unacceptable. We must do everything in our power—both as advertisers and platforms—to ensure that our advertising dollars are serving their intended purpose of reaching consumers and promoting our brands, not funding hate and harm.<sup>186</sup>

To recap, the Majority has failed to meaningfully allege a plausible conspiracy and, hence, no viable antitrust claim exists. Assuming *arguendo* the existence of a conspiracy, a rule of reason analysis (rather than *per se* condemnation) would apply. The Majority has also failed to adequately allege the elements of a rule of reason case. They do not posit a bona fide anticompetitive effect. This shortcoming becomes even more insurmountable given the presence of strong procompetitive effects.

**C. The Majority is weaponizing antitrust to confer on political allies outcomes that they cannot achieve in the marketplace.**

The Majority focused on alleged harm caused by the demonetization of its favored conservative-voices. They assert that this loss of revenue is caused by a large conspiracy involving GARM and its 100 plus members to suppress conservative-voiced online platforms and outlets by stopping advertising support. But the most compelling explanation for this revenue decline is apolitical. Advertisers want to attract and retain customers. When their advertising is placed next to harmful content the advertisement instead repels customers. Not surprisingly, advertisers gravitate to outlets that pose less risk to their brands. Again, this isn't rocket science.

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<sup>184</sup> Conor Murray, *Conservative Brands—Including Beer, Chocolate, Razors and More—Are Trying to Profit on Anti-“Woke” Backlash*, FORBES (Aug. 31, 2023), <https://www.forbes.com/sites/conormurray/2023/08/31/conservative-brands-including-beer-chocolate-razors-and-more-are-trying-to-profit-on-anti-woke-backlash/>.

<sup>185</sup> See *supra* note 107 (discussing the value of transparency).

<sup>186</sup> Patel Statement at 3.

These outcomes do not suggest an antitrust problem. Rather, they reveal a functioning competitive market which is responding to the perceptions and desires of consumers—undermining the Majority’s story of a welfare-reducing conspiracy. The Majority is engaging in a transparently political effort to use the antitrust laws to confer upon competitors outcomes that they could not achieve in the marketplace. These competitors would appear to include X whose owner has embarked on a series of finger-pointing exercises directed at parties he sees as explaining his firm’s plummeting value since his acquisition in late 2022. Since then, Musk has blamed activists (“Twitter has had a massive drop in revenue, due to activist groups pressuring advertisers.”<sup>187</sup>), has sued content watchdogs Media Matters (for a research report that was allegedly intended to “harm[ ] X”<sup>188</sup>) and the Center for Countering Digital Hate (for violating terms of service used to produce results unfavorable to X<sup>189</sup>), and has blamed advertisers both generally (“If someone is trying to blackmail me with advertising...go F--- Yourself”) and specifically (continuing... “Hey Bob, if you’re in the audience.... That’s how I feel. Don’t advertise.”<sup>190</sup>). Musk also played a role in prompting the Majority’s investigation against GARM (explaining to the House Judiciary Chairman that “GARM is harm”<sup>191</sup>). X subsequently brought suit against GARM and several of its members.<sup>192</sup> The Majority’s investigation is not just a misuse of the antitrust laws, but fundamentally subverts those laws. The irony could not be greater. Under the guise of attacking the Biden administration’s so-called weaponization of government, the Majority is invoking the antitrust laws in an attempt to override legitimate market outcomes.

Finally, the Majority bandies about words like censorship, evoking the First Amendment. But as the Majority well knows, the First Amendment only applies to government action. And in this case, the only governmental burdening of speech is the Majority’s onslaught against GARM and its members. It is an effort to bully the advertisers into subsidizing firms whose content moderation policies put advertiser brands at risk. It is an attempt to hijack antitrust for political purposes.

#### IV. Conclusion

Merely invoking words with an antitrust valence—collusion and market power—does not make an antitrust case. The instant perversion is all the more disturbing because no real effort is made to apply established antitrust principles. Individually, each of these flaws—lack

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<sup>187</sup> See *supra* note 91 (Musk tweet addressing revenue decrease).

<sup>188</sup> Mike Scarcella, *Media Matters Must Face X’s Lawsuit Over Report About Ads Next to Extremist Posts*, REUTERS (Aug. 30, 2024), <https://www.reuters.com/legal/transactional/media-matters-must-face-xs-lawsuit-over-report-about-ads-next-extremist-posts-2024-08-30/>.

<sup>189</sup> Nathan Solis, *Judge Dismisses Elon Musk Lawsuit Against Anti-Hate Watchdog on Free Speech Grounds*, L.A. TIMES (Mar. 25, 2024), <https://www.latimes.com/california/story/2024-03-25/judge-dismisses-elon-musk-lawsuit-against-anti-hate-watchdog-on-free-speech-grounds>.

<sup>190</sup> Goode, *supra* note 12.

<sup>191</sup> Matthew Foldi, *Interview: Jim Jordan on the Trump cabinet, the Judiciary Committee’s 2025 priorities, the Hunter Biden pardon, and how wrestling reshaped the political map*, WASH. REPORTER (Dec. 16, 2024), <https://washingtonreporter.news/p/interview-jim-jordan-on-the-trump>.

<sup>192</sup> Compl., X Corp. v. World Federation of Advertisers; Unilever Plc; Unilever United States, Inc.; Mars, Inc.; CVS Health Corp.; Ørsted A/S, No. 7:24-cv-00114-K (N.D. TX, WICHITA FALLS DIV. 08/06/24).

of agreement, absence of competitive harm, and presence of pro-competitive justifications—undermines the claimed basis for antitrust concern against GARM and its members. Collectively, they so thoroughly demolish it that they call into question the Majority’s leveling of such accusations in the first place. Further, as the Majority has presented no credible theory of antitrust harm in this investigation, this needless spectacle, like some that have preceded it, does not represent a constructive discussion of concerns, but rather only serves as a platform for the far-right members of the Majority to air their unfounded conspiracy theories and empty claims of antitrust harm.

As with other of this Committee’s recent investigations, we are left to conclude that its ultimate goal was not to “conduct[] oversight of the adequacy and enforcement of U.S. antitrust laws” as they claim, but rather to silence criticism of harmful online content and those who promote it, deter content moderation, and protect the ability to use mis- and disinformation campaigns to achieve political ends. The Majority’s desperate ploy to launder their failed censorship arguments through an antitrust framing itself fails. The Majority’s actions have intimidated organizations who call attention to the prevalence of hate, disinformation, and other harmful or unlawful content online. Fostering a more transparent, accountable, and responsible digital environment is not only lawful, it is good for businesses, consumers and the general public. Chairman Jordan’s investigation and others like it will undermine this work and lead to the further deterioration of our information ecosystem and will threaten free speech.

Antitrust is not about choosing winners and losers. It is about ensuring a fair fight. In this instance we see that the Majority is willing to condemn any outcome that they do not like as being unfair and the outcome appears to involve both a category of supposed victims as well as a particular victim—X. In fact, this investigation originated after the Speaker of the House Kevin McCarthy, Chairman Jordan, and Elon Musk were talking and Musk said, “‘by the way, there’s this organization GARM, because GARM is harm.’ [sic] I [Jordan] never forgot that sentence.”<sup>193</sup> No he did not. Jordan embarked on an investigation whose outcome was a foregone conclusion and for which the resulting report’s title [GARM’s Harm] was effectively supplied by Musk himself. Despite all of the investigation’s shortcomings, it excelled in one regard—providing taxpayer funded discovery for the richest man in the world and one of Trump’s biggest donors.<sup>194</sup> A lawsuit launched by X just days after the Majority’s interim report was released began by touting that the conduct was “the subject of an active investigation” by the House Judiciary Committee before reproducing the fruits of the subcommittee’s fishing expedition in the form of a document demand.<sup>195</sup> Perhaps this assault

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<sup>193</sup> Foldi, *supra* note 192.

<sup>194</sup> Filip Timotija, *Musk spent at least \$250M to help elect Trump, filings show*, THE HILL (Dec. 6, 2024) (Musk ultimately contributed more than \$250 million during the 2024 election cycle), <https://thehill.com/homenews/campaign/5026691-elon-musk-donates-trump-campaign/>; Ramishah Maruf, *Elon Musk becomes the first person to reach a net worth of \$400 billion*, CNN (Dec. 11, 2024) (Musk, having seen a “huge surge in his personal wealth” in the wake of the 2024 election, is now the wealthiest person ever with worth an estimated \$400 billion), <https://www.cnn.com/2024/12/11/business/elon-musk-400-billion-net-worth/index.html>.

<sup>195</sup> Compl., X Corp. v. World Federation of Advertisers; Unilever Plc; Unilever United States, Inc.; Mars, Inc.; CVS Health Corp.; Ørsted A/S, No. 7:24-cv-00114-K (N.D. TX, WICHITA FALLS DIV. 08/06/24) at para 8.

on legitimate business activity seems worth it to the Majority.

The Majority has fallen into exactly the trap about which the committee was recently warned. Namely, just because you encounter something you do not like that does not mean it is a violation of the antitrust laws or of the Constitution.<sup>196</sup> Historically, this committee has worked hard to protect consumers, ensure a free and fair market, and push back on corporate abuse, greed, and malfeasance. We have advanced bipartisan bills to combat market concentration from online platforms to drug pricing. We did all this because we took our job seriously to protect competition in the marketplace. We understood the unique importance of the federal antitrust laws, not as a weapon to use against our political opponents, but as an essential component of the American social contract.

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<sup>196</sup> Waller Testimony at 69:1524-1529.

**Appendix:**  
**GARM Brand Safety Floor + Suitability Framework**



**CONTEXT FOR THIS SOLUTION**

The Global Alliance for Responsible Media (GARM) is an industry first effort that unites marketers, media agencies, media platforms, industry associations, and advertising technology solutions providers to safeguard the potential of digital media by reducing the availability and monetization of harmful content online. These steps are essential to create a safer digital media environment that enriches society through content, communications, and commerce. Harmful content and its creators threaten the potential for digital media and disrupt the connections everyone seeks. Our first step in safeguarding the positive potential for digital is to provide platforms, agencies, and marketers with the framework with which to define safe and harmful content online.

Our position is that you cannot address the challenge of harmful online content if you are unable to describe it using consistent and understandable language.

The GARM has developed and will adopt common definitions to ensure that the advertising industry is categorizing harmful content in the same way across the board. These eleven key categories have been identified in consultation with experts from GARM’s NGO Consultative Group. Establishing these standards is the essential foundation needed to stop harmful content from being monetised through advertising. Individual GARM members will adopt these shared principles in their operations, whether they are a marketer, agency, or media platform.

We fundamentally believe that, together, these definitions are the cornerstone for us to find balance between supporting responsible speech, bolstering public safety, and providing for responsible marketing practices. With this framework of consistent categories in place, we will be able to improve transparency in the availability, monetization, and inclusion of content within advertising campaigns. This is essential to help platforms, agencies, and advertisers make decisions essential to the advertising industry.

In November 2019, the GARM initiated work towards this challenge under a working group focused on advancing shared language and standards for advertising & media (as seen in our GARM Charter [here](#)). The output of this work is the following:

1. A common understanding of what harmful and sensitive content is via content categories
2. A common understanding of where ads should not appear, as expressed in a Brand Safety Floor
3. A common way of delineating different risk levels for sensitive content, as expressed in a Brand Suitability Framework

The output of the work is a framework of Shared Definitions that sets the limits for monetization of harmful content in agreed upon categories. This work, the GARM Brand Safety Floor + Suitability Framework was first published in September 2020.

In June 2021, we began work to update the framework to include Misinformation as an additional harmful content category. This important addition builds upon individual GARM member work, GARM member collaboration with regulatory and NGO bodies, and more recently GARM collaboration with the European Commission on the Code of Practice on Misinformation.

**GOALS FOR SOLUTION**

This shared framework, which is activated by the IAB TechLab’s industry-wide taxonomy, will provide individual GARM participants with:

A Consistent Categorization	Ensuring that there’s a common way to categorize sensitive content
Transparency	Creating transparency for industry participants on where sensitive content may be present in the interest of consumer safety and responsible marketing
Clarity in Exceptions	Establishing a method for platforms to report on special exception cases in the interest of responsible speech and public interest

**HOW THIS SOLUTION WILL BE USED**

- Platforms will adopt, operationalize and continue to enforce monetization policies with a clear mapping to GARM brand suitability framework

- Platforms will leverage their community standards and monetization policies to uphold the GARM brand safety floor
- Advertising technology providers will adopt and integrate GARM definitions into targeting and reporting services via clear mapping or overt integration
- Agencies will leverage the framework to guide how they invest with platforms at the agency-wide level and at the individual campaign level
- Marketers will use the definitions to set brand risk and suitability standards for corporate, brand and campaign levels

CONTENT CATEGORY	BRAND SAFETY FLOOR – Content not appropriate for any advertising support
Adult & Explicit Sexual Content	<ul style="list-style-type: none"> <li>• Illegal sale, distribution, and consumption of child pornography</li> <li>• Explicit or gratuitous depiction of sexual acts, and/or display of genitals, real or animated</li> </ul>
Arms & Ammunition	<ul style="list-style-type: none"> <li>• Promotion and advocacy of Sales of illegal arms, rifles, and handguns</li> <li>• Instructive content on how to obtain, make, distribute, or use illegal arms</li> <li>• Glamorization of illegal arms for the purpose of harm to others</li> <li>• Use of illegal arms in unregulated environments</li> </ul>
Crime & Harmful acts to individuals and Society, Human Right Violations	<ul style="list-style-type: none"> <li>• Graphic promotion, advocacy, and depiction of willful harm and actual unlawful criminal activity – Explicit violations/demeaning offenses of Human Rights (e.g. human trafficking, slavery, self-harm, animal cruelty etc.),</li> <li>• Harassment or bullying of individuals and groups</li> </ul>
Death, Injury or Military Conflict	<ul style="list-style-type: none"> <li>• Promotion, incitement or advocacy of violence, death or injury</li> <li>• Murder or Willful bodily harm to others</li> <li>• Graphic depictions of willful harm to others</li> <li>• Incendiary content provoking, enticing, or evoking military aggression</li> <li>• Live action footage/photos of military actions &amp; genocide or other war crimes</li> </ul>
Online piracy	<ul style="list-style-type: none"> <li>• Pirating, Copyright infringement, &amp; Counterfeiting</li> </ul>
Hate speech & acts of aggression	<ul style="list-style-type: none"> <li>• Behavior or content that incites hatred, promotes violence, vilifies, or dehumanizes groups or individuals based on race, ethnicity, gender, sexual orientation, gender identity, age, ability, nationality, religion, caste, victims and survivors of violent acts and their kin, immigration status, or serious disease sufferers.</li> </ul>
Obscenity and Profanity, including language, gestures, and explicitly gory, graphic or repulsive content intended to shock and disgust	<ul style="list-style-type: none"> <li>• Excessive use of profane language or gestures and other repulsive actions that shock, offend, or insult.</li> </ul>
Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol	<ul style="list-style-type: none"> <li>• Promotion or sale of illegal drug use – including abuse of prescription drugs. Federal jurisdiction applies, but allowable where legal local jurisdiction can be effectively managed</li> <li>• Promotion and advocacy of Tobacco and e-cigarette (Vaping) &amp; Alcohol use to minors</li> </ul>
Spam or Harmful Content	<ul style="list-style-type: none"> <li>• Malware/Phishing</li> </ul>
Terrorism	<ul style="list-style-type: none"> <li>• Promotion and advocacy of graphic terrorist activity involving defamation, physical and/or emotional harm of individuals, communities, and society</li> </ul>
Debated Sensitive Social Issue	<ul style="list-style-type: none"> <li>• Insensitive, irresponsible and harmful treatment of debated social issues and related acts that demean a particular group or incite greater conflict;</li> </ul>
Misinformation	<ul style="list-style-type: none"> <li>• Misinformation is defined as the presence of verifiably false or willfully misleading content that is directly connected to user or societal harm</li> </ul>

**Brand Suitability Framework: Sensitive content appropriate for advertising supported by enhanced advertiser controls**

CONTENT CATEGORY	High Risk	Medium Risk	Low Risk
Adult & Explicit Sexual Content	<ul style="list-style-type: none"> <li>Suggestive sexual situations requiring adult supervision/approval or warnings</li> <li>Full or liberal Nudity</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of sexual acts or Sexuality issues presented in the context of entertainment</li> <li>Artistic Nudity</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of sexual subjects or sexual relationships or sexuality</li> </ul>
Arms & Ammunition	<ul style="list-style-type: none"> <li>Glamorization /Gratuitous depiction of illegal sale or possession of Arms</li> <li>Depictions of sale/use/distribution of illegal arms for inappropriate uses/harmful acts</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of weapons use presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of arms and ammunition</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of Arms use, possession or illegal sale</li> <li>News feature stories on the subject</li> </ul>
Crime & Harmful acts to individuals and Society, Human Right Violations	<ul style="list-style-type: none"> <li>Depictions of criminal/harmful acts or violation of human rights</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of criminal activity or human rights violations presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of criminal activity or human rights violations</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of crime or criminal acts or human rights violations</li> <li>News feature stories on the subject</li> </ul>
Death, Injury or Military Conflict	<ul style="list-style-type: none"> <li>Depiction of death or Injury</li> <li>Insensitive and irresponsible treatment of military conflict, genocide, war crimes, or harm resulting in Death or Injury</li> <li>Depictions of military actions that glamorize harmful acts to others or society</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of death, injury, or military conflict presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of death, injury or military conflict</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of death or injury, or military conflict</li> <li>News feature stories on the subject</li> </ul>
Online piracy	<ul style="list-style-type: none"> <li>Glamorization /Gratuitous depiction of Online Piracy</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of Online Piracy presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of Online Piracy</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of Online Piracy</li> <li>News feature stories on the subject</li> </ul>
Hate speech & acts of aggression	<ul style="list-style-type: none"> <li>Depiction or portrayal of hateful, denigrating, or inciting content focused on race, ethnicity, gender, sexual orientation, gender identity, age, ability, nationality, religion, caste, victims and survivors of violent acts and their kin, immigration status or serious disease sufferers, in a non-educational, informational, or scientific context</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of hate speech/acts presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of hate speech/acts</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of Hate Speech</li> <li>News features on the subject</li> </ul>
Obscenity and Profanity, including language, gestures, and explicitly gory, graphic or repulsive content intended to shock and disgust	<ul style="list-style-type: none"> <li>Glamorization /Gratuitous depiction of profanity and obscenity</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of profanity and obscenities presented in the context of entertainment by genre</li> <li>Breaking News or Op-Ed coverage of profanity and obscenities Genre based use of profanity, gestures, and other actions that may be strong, but might be expected as generally accepted language and behavior</li> </ul>	<ul style="list-style-type: none"> <li>Educational or Informative, treatment of Obscenity or Profanity</li> <li>News feature stories on the subject</li> </ul>
Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol	<ul style="list-style-type: none"> <li>Glamorization /Gratuitous depictions of illegal drugs/abuse of prescription drugs</li> <li>Insensitive and irresponsible content/treatment that encourages minors to use tobacco and vaping products &amp; Alcohol</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of illegal drug use/prescription abuse, tobacco, vaping or alcohol use presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of illegal drug use/prescription abuse, tobacco, vaping or alcohol use</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of illegal drug use/prescription abuse, tobacco, vaping or alcohol</li> <li>News feature stories on the subject</li> </ul>
Spam or Harmful Content	<ul style="list-style-type: none"> <li>Glamorization /Gratuitous depiction of Online Piracy</li> </ul>	<ul style="list-style-type: none"> <li>Dramatic depiction of Spam or Malware presented in the context of entertainment</li> <li>Breaking News or Op-Ed coverage of Spam or Malware</li> </ul>	<ul style="list-style-type: none"> <li>Educational, Informative, Scientific treatment of Spam or Malware</li> <li>News feature stories on the subject</li> </ul>

CONTENT CATEGORY	High Risk	Medium Risk	Low Risk
Terrorism	<ul style="list-style-type: none"> <li>• Depiction of terrorist actions that are disturbing, agitating or promotes harmful acts to others or society</li> <li>• Terrorist content requiring a viewer advisory</li> <li>• Insensitive and irresponsible treatment of terrorism/ related crimes</li> </ul>	<ul style="list-style-type: none"> <li>• Dramatic depiction of terrorism presented in the context of entertainment</li> <li>• Breaking News or Op-Ed coverage of acts of terrorism</li> </ul>	<ul style="list-style-type: none"> <li>• Educational, Informative, Scientific treatment of terrorism</li> <li>• News feature stories on the subject</li> </ul>
Debated Sensitive Social Issue	<ul style="list-style-type: none"> <li>• Depiction or discussion of debated social issues and related acts in negative or partisan context</li> </ul>	<ul style="list-style-type: none"> <li>• Dramatic depiction of debated social issues presented in the context of entertainment</li> <li>• Breaking News or Op-Ed coverage of partisan advocacy of a position on debated sensitive social issues</li> </ul>	<ul style="list-style-type: none"> <li>• Educational, Informative, Scientific treatment of debated sensitive social issues and related acts including misinformation</li> <li>• News feature stories on the subject</li> </ul>
Misinformation	<ul style="list-style-type: none"> <li>• Glamorization/Gratuitous depiction of misinformation</li> </ul>	<ul style="list-style-type: none"> <li>• Dramatic depiction of misinformation presented in the context of entertainment</li> <li>• Breaking News or Op-Ed coverage of misinformation</li> </ul>	<ul style="list-style-type: none"> <li>• Educational, Informative, Scientific treatment of misinformation.</li> <li>• News features describing various misinformation campaigns as such</li> </ul>