



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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**NOTICE OF PROPOSED LITIGATION PURSUANT TO  
NEW YORK EXECUTIVE LAW SECTION 63(12) AND  
GENERAL BUSINESS LAW SECTIONS 349 AND 350-c**

June 10, 2010

**By Certified Mail**

Greg Tseng, Founder and Chief Executive Officer  
Tagged.com, Inc.  
110 Pacific Ave Mall, Box #117  
San Francisco, CA 94111

Dear Mr. Tseng:

Pursuant to New York General Business Law (“GBL”) sections 349(c) and 350-c, you are hereby notified that it is the intention of the Office of the Attorney General of the State of New York (“OAG”) to commence litigation against Tagged.com, Inc. (“Tagged”) pursuant to New York Executive Law section 63(12) and GBL sections 349 and 350, which prohibit illegal, fraudulent and deceptive acts and practices and false advertising in the conduct of business or the furnishing of services, based on the conduct summarized below. OAG will seek to enjoin Tagged’s repeated and persistent unlawful, fraudulent and deceptive acts and practices and false advertising and to obtain an injunction, disgorgement, damages, civil penalties, costs, and all such other relief as the Court may deem proper.

Based upon information that Tagged was non-responsive to user complaints about sexual solicitation of minors by adults, child pornography and pedophilia on Tagged.com, OAG commenced an investigation during which OAG investigators created undercover Tagged.com accounts attributed to both underage and adult users. OAG investigators have used these accounts to report inappropriate and illegal content and contact to Tagged using the reporting mechanisms that Tagged directs its users to use. During the course of this investigation, OAG made more than 100 reports to Tagged concerning at least 80 users and seven Groups on Tagged

regarding improper or inappropriate content and contact that violates Tagged's Terms of Service. For example, OAG reported (i) profiles that displayed sexual content including apparent child pornography and sexually exploitive pictures of children, (ii) adult users who made sexual advances toward underage users, and (iii) adult users engaged in sexually explicit discussions with underage users or who advocated pedophilia and/or incest. OAG also reported to Tagged graphic pornography and sex themed Groups that welcomed underage users and had sexually explicit discussion threads between adults and minors. Despite these reports, 51 of the users OAG reported still have active accounts with Tagged, and for 27 of those users the reported content remains on the site.

Contrary to its actual conduct as uncovered in OAG's investigation, Tagged makes numerous representations to its users and the parents of users about the supposed safety of the Tagged.com website and the safety features it has in place to track, remove and block illegal or inappropriate content and contact on its website. Despite the evidence uncovered in OAG's investigation, Tagged publicly and repeatedly represents that consumer safety on the Tagged.com website is a priority and that it protects its users in numerous ways. OAG has found, however, that Tagged's representations about the site's safety and safety features are materially false and misleading and constitute violations of New York General Business Law sections 349 and 350 and Executive Law section 63(12).

In fact, despite Tagged's pronouncements about its commitment to safety, OAG's investigation has revealed that Tagged is not appropriately responsive to user reports of apparent child pornography, sexual solicitation of minors, pedophilia and other illegal and inappropriate content or contact on the Tagged.com website. Specifically, OAG has found that (i) child pornography is shockingly common on Tagged.com; (ii) graphic pornography and obscene content is readily available to and shared with and between underage users; (iii) adult users target underage users to engage in sexually explicit dialogues; and (iv) Tagged's responsiveness to user and parental reports and complaints about illegal or inappropriate content and contact is at best haphazard and inconsistent and at worst non-existent. Because of Tagged's failure to respond appropriately to user reports of child pornography and other inappropriate sexual content, such content remains on Tagged.com and is available to harm children. In short, Tagged cannot make claims that it considers safety a top priority and that it will take action against illegal and inappropriate content and contact on Tagged.com when those claims are false and misleading, as OAG's investigation has revealed.

Even worse, due to Tagged's failure to respond promptly to complaints of sexual exploitation of children on its site, Tagged.com may actually facilitate the ability of sexual predators to identify, target and groom child victims. Tagged admittedly targets minors and encourages users, particularly teen users, to interact with strangers, flirt, and date. Tagged enables adults and children to easily interact with one another via private messages, viewing and commenting on one another's profiles, and joining in themed "Group" discussions. In short, Tagged's tolerance of sexual content and advances on the site, and its failure to respond promptly to user complaints of improper activities, makes Tagged.com an open forum for sexual predators and improper interactions among adults and children, conduct which demands redress.

## Tagged's Representations

Tagged is a mixed-age online community of users aged 13 years and older. Although adults use the site, Tagged admits that it intends to target the teen demographic. Moreover, unlike other social networks that leverage existing friendships, Tagged is specifically designed as a place for its users -- including its targeted teen users -- to meet and interact with "new people" or "new friends"-- that is, strangers. As Steve Sarner, Tagged's Vice President of Sales has stated to the public, "[w]e're a social network that focuses on not just keeping in touch with people you know but really social discovery. That means meeting people with similar interests whether it will be friendship, online pen pals, flirting or dating. . . . [W]e focus on . . . meeting new people. That has really made the difference and it's popular in America." *See* Interview by Social Networking Watch of Steve Sarner, dated July 11, 2009 *available at* <http://www.socialnetworkingwatch.com/2009/07/steve-sarner-vp-of-sales-and-louis-willacy-vp-business-development-tagged.html>.

Given Tagged's targeted teen demographic and its stated purpose of encouraging young people to meet strangers online, Tagged repeatedly -- and falsely -- has reassured the public that the company is committed to child safety and that it takes meaningful steps towards that commitment. For example, Tagged has stated the following:

- "[S]afety and privacy are the tenets upon which we built Tagged and we are steadfast in protecting our community"
- "[C]onsumer safety and privacy has been a priority since we built Tagged."
- "We are committed to the security and privacy of all our users. We will continue to . . . ensure that Tagged maintains its position as a safe and enjoyable site."
- "[T]agged [will] continue building a fun, safe, and exciting environment for teens to showcase their personalities and talents[.]"

The above representations are false and misleading.

Tagged.com has "Terms of Service" that prohibit certain content and contact on the site, such as the sexual exploitation of children and pornography and sexually explicit content. Tagged explicitly represents to its users that it takes action with respect to any violations of its Terms, especially conduct that it describes as major violations such as pornography and sexually explicit content. For example, in the website's "Help Center," in the section labeled "Site Abuse," Tagged represents that "[w]e will remove any content that violates our Terms of Service," and that "[w]e are constantly working to remove inappropriate content from the site." It similarly maintains that "[w]e are working hard to make Tagged.com as clean as possible[.]"

In conjunction with these representations, Tagged states to its users that it cannot block all of the content posted to the site that violates the Terms of Service and, therefore, Tagged specifically enlists its members to utilize community reporting features on the Tagged.com website to report content that violates the Terms of Service so that the company "can efficiently

remove unwanted content and precisely target serious offenders[.]” Tagged instructs users to report offensive or threatening private messages via a “Report Spam” link, which Tagged represents are forwarded to Tagged’s Customer Service for appropriate review and handling. In the Online Safety Tips for users and parents, Tagged directs users, and the parents of users, to the email address for the “Tagged Safety Squad” to report inappropriate contact or activity on the website.

Thus, Tagged represents to the public that it is focused on consumer safety and takes wrongdoing on its site seriously by identifying misconduct and addressing it both promptly and appropriately. Tagged also conveys to its users the importance of community reporting of misconduct to Tagged and represents that it responds effectively to user reports of content and conduct that violates the site’s Terms of Service. OAG’s investigation has revealed, however, that Tagged’s representations are false and misleading. Specifically, OAG’s investigation has revealed multiple instances of inappropriate and exploitive sexual conduct and content on Tagged’s website that was not removed following user complaints. The following are just some examples of Tagged’s unlawful conduct.

- *Shocking amounts of apparent child pornography and sexually exploitive pictures of children is readily accessible on Tagged.com*

Most troubling, OAG investigators found, with minimal effort, 29 profiles on Tagged.com that contained sexual material that included apparent child pornography and/or sexually suggestive or provocative pictures of children. These children were both nude and in various states of undress and were engaging in both sexually explicit and sexually suggestive or provocative poses, at times with other children. OAG investigators also have identified users who embed wholly inappropriate content from third-party websites, resulting in a “slide show” of images of children being sexually abused and exploited that appear to be available on the third-party website.

Despite OAG’s reports to Tagged utilizing the mechanisms touted by Tagged, 18 of the 29 profiles still have the reported content on the site. As just one example, on April 17, 2010, an OAG investigator, using an undercover account, used the site’s “Report Profile” link to report a profile containing inappropriate pictures and slide shows of very young children who were, for example, exposing their genitals, naked and in sexually explicit poses or engaged in sex acts with other children. This user’s account and much of the reported content remain intact and the OAG investigator was never notified by Tagged as to any action taken with respect to the reported user. On May 27, 2010, an OAG investigator, using an undercover account, used the site’s “Report Profile” link to report a profile containing, among other images, an adult woman performing oral sex on a young, naked girl, young girls lifting up or down their skirts to expose their genitalia, and a female child holding open her exposed genitals for a cat. This user’s account and much of the reported content remain intact and the OAG investigator was never notified by Tagged as to any action taken with respect to the reported user.

- *Adults routinely engage in inappropriate and illegal sexual communications with minors on Tagged*

In addition, during the course of OAG's investigation, OAG created several undercover Tagged.com accounts attributed to both underage and adult users. Through these undercover accounts, OAG learned that adult users engage in sexually graphic discussions with minors, at times leading to the adult and minor becoming "Friends" and to sexual advances by adult users to their underage "Friends."<sup>1</sup> Adult users routinely join sex-themed Groups that welcome or invite underage users to join and then ask underage Group members to "add them" as friends. The adult users then engage in sexually explicit dialogues with their underage friends, either by leaving comments on their underage friends' profiles or by participating in a Group discussion. These adult users will, for example, leave comments with graphic sexual photos, videos, cartoons or text on their underage friends' profiles. For example, an OAG investigator discovered that a 59-year-old user placed a comment on a profile belonging to a 10-year-old user describing an imagined graphic sexual encounter between the two. In addition, a 49-year-old user left a comment on this 10-year-old's profile that thanked the 10-year old for adding him as a friend and had a graphic picture of a man exposing his genitals. Disturbingly, despite reports of these abuses to Tagged, both comments remain intact, both the 49 and 59-year-old users have active accounts on Tagged.com and the 10-year-old's profile remains active even though Tagged represents that it requires its users to be at least thirteen years of age.

Similarly, OAG's investigators discovered that adult users join sex-themed Groups on Tagged.com, including those that encourage or welcome underage users to join, such as "Younger Women / Older Men" or "[...] Young Girls Want Slightly Older Guys." These adult users use the discussion fora in these Groups to befriend and engage in sexually graphic dialogues with underage members. OAG further discovered that adult users use these Groups to convey their desire to engage in sex acts with underage members, admit to having engaged in sex acts with minors and otherwise encourage underage users to add them as friends in the midst of sex-themed discussions. Through undercover accounts, OAG investigators reported 23 users who used Tagged's Group discussion threads in this manner. Thirteen of those users continue to have active profiles on Tagged.com.

The above troubling instances are just a few examples. During the past several

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<sup>1</sup> Tagged users communicate with one another in a number of ways, including by private messages, discussion threads, and by leaving "comments" on one another's profiles. Private messages operate much like email in that, after becoming "friends," users can send each other one-on-one messages through Tagged's messaging system. In order for an underage user to become friends with an adult user, the underage user must "add" the adult user as a friend. The "comments" feature also enables users to leave messages in the comments section of their friends' profiles. These comments may be viewed either by the friend's friends, any Tagged.com user, or any internet user, depending on the friend's privacy settings. In addition, discussion threads are part of Tagged.com's "Groups" feature. After joining a Group, Group members can start and/or participate in discussion threads. Group members do not need to be friends to communicate with each other in this way.

weeks alone, undercover OAG investigators reported to Tagged 10 admitted adult users who sent inappropriate sexual communications and solicitations directly to underage users. Five of those user accounts remain intact. Even one is too many. In almost all cases, OAG was not notified by Tagged as to any action taken with respect to the reported users.

- *Widespread pornographic and obscene content*

OAG investigators also found a wide range of graphic pornographic content on the Tagged.com website. Much of this content appeared in individual profiles. For example, a profile belonging to a 30-year-old contained a slide show of multiple pictures of exposed male genitalia as well as other pornographic images. The majority of this user's friends were minors who, therefore, were exposed to this graphic pornographic content.

OAG investigators reported this inappropriate content, which clearly violates Tagged.com's Terms of Service, to Tagged in several ways: by clicking on the "Report" hyperlinks for profiles, comments, and messages. To the extent Tagged took any action against the reported content or user, such action was sluggish and arbitrary at best. The company waited an average of two and a half weeks (between 6 and 38 days) to respond to reports of graphic pornographic content and while it removed some of the violative images, many remain on the site to this day.

- *Admitted sex offenders are permitted to remain on the site*

On March 9, 2010, through an undercover account, OAG reported a user who admitted he was a convicted sex offender and who uses the screen name "criminal sex offender." Despite Tagged's recent agreement to use available information to remove convicted sex predators from its website, this profile remains active. Similarly, on April 18, 2010, through an undercover account, OAG reported an adult user who claimed, in the Tagged Group named "Durdy Lil Sluts Hehehe," that he "lately" had sex with a 12 and 16 year old. OAG's undercover investigators were never notified by Tagged as to any action taken with respect to these reported users, and they remain on the site.

### **Tagged's Systematic Failure to Address on a Consistent Basis User Complaints About Illegal Content and Serious Violations of the Site's Terms of Use**

As summarized above, during the course of OAG's investigation, OAG made over 100 reports about at least 80 users and seven Groups regarding inappropriate or illegal content or contact that clearly violated Tagged.com's Terms of Service. Disturbingly, fifty-one of the users OAG reported still have active accounts and for 27 of those users, the reported content remains intact.

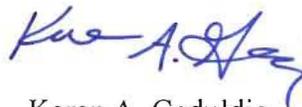
Tagged's failure to take action in response to all of OAG's reports is simply unacceptable.

OAG undercover investigators posing as users and parents of users reported 29 users for posting child pornography and sexually exploitive and provocative images of children. Eighteen of those users still have content posted and an additional user's account remains active although the violative picture he posted has been removed. Similarly, OAG reported 23 users who used Tagged Group discussion threads to solicit underage friends, engage in sexually explicit dialogues with children or to advocate pedophilia. Thirteen of those users still have active Tagged accounts today.

In addition, OAG reported 41 profiles using Tagged.com's "Report Profile" link. To date, 30 of those profiles remain active. OAG reported 23 users for the sexually charged statements they made to or about minors in Group discussion threads and, in conjunction with such sexual discussions, soliciting minors to "add them" as friends. Thirteen of those users have active accounts today. OAG reported five adult users who used Tagged's private messaging to make sexual advances towards a minor. Three of those user accounts remains unaffected.

The fact that Tagged continues to permit *any* -- let alone more than half -- of the users on its site whom OAG reported for child pornography, advocating pedophilia, and other illegal, inappropriate or prohibited content and contact is significant cause for alarm. Tagged falsely claims that it is a safe place for teens to meet strangers online and that Tagged is steadfast in its efforts to protect its users. Accordingly, pursuant to Sections 349(c) and 350-c of the General Business Law, Tagged is hereby afforded the opportunity to show orally or in writing, within five business days after receipt of this notice, why proceedings should not be instituted.

Sincerely,



Karen A. Geduldig  
Acting Attorney General In Charge  
Internet Bureau