

Complaint

IN THE MATTER OF

**KOBY BROWN AND GREGORY PEARSON
DOING BUSINESS AS DERMAPPS**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 5(A) AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4337; File No. 102 3205
Filed, October 13, 2011 — Decision, October 13, 2011*

This consent order addresses allegations that Koby Brown and Gregory W. Pearson, doing business as DERMAPPS (“Respondents”), violated the FTC Act by misrepresenting the effectiveness of its AcneApp mobile software application. The complaint alleges that Respondents falsely claimed its AcneApp mobile software application effectively treated acne, by holding light-emitting display screen next to the area of skin to be treated for several minutes each day. The complaint alleges Respondents falsely represented a journal study proved that red and blue light therapy was an effective treatment for acne. The order prohibits Respondents from making any representation that AcneApp or any other device provides effective treatment for acne, unless Respondents have competent and reliable scientific evidence to substantiate the claim. The order further requires Respondents to pay approximately \$15,000 towards consumer relief.

Participants

For the *Commission*: *Stacey Ferguson and James A. Prunty.*

For the *Respondents*: *Sesha Kalapatapu.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Koby Brown and Gregory W. Pearson (“respondents”), individually and doing business as DERMAPPS, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Koby Brown (“Brown”) is the developer, and a seller or marketer, of a mobile software application called “AcneApp.” At all times relevant to this complaint, Brown,

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individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices alleged in this complaint. His principal office or place of business is located in Houston, Texas.

2. Respondent Gregory W. Pearson (“Pearson”) is a licensed and board-certified dermatologist, and a seller or marketer of a mobile software application called “AcneApp.” At all times relevant to this complaint, Pearson, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices alleged in this complaint. His principal office or place of business is located in Houston, Texas.

3. Respondents Brown and Pearson have developed, labeled, advertised, promoted, offered for sale, sold, and distributed AcneApp to consumers, including teens, through the iTunes Store, an electronic retail platform operated by Apple, Inc., from at least September 24, 2009 and continuing thereafter. From September 1, 2009 through March 15, 2011, there were approximately 11,600 downloads of AcneApp.

4. AcneApp is a “device” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

5. The acts and practices of respondents, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

6. Respondents have disseminated or caused to be disseminated advertisements for AcneApp through the iTunes store, including, but not limited to, the advertisement in the attached Exhibit A. This advertisement contains the following statements and depictions:

Pre-Download Advertisement: (Exhibit A - website print screen capture)

On screen: New York Times:

December 30, 2009 “Better Skin to the Touch?” –
Camille Sweeney

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“... a Houston dermatologist has bypassed the hand-held gadget and tried to harness the power of in-office acne treatments in a more familiar form: the iPhone or iPod Touch.”

FOX News:

January 12, 2009 “Can iPhone Application Treat Your Acne?” – Ned Hibberd

“... self esteem emergency? These flashing lights may be their salvation.”

iTunes REVIEWS [*Selected and featured by respondents*]

- “This app is probably the best thing ever to surface. i’ve (sic) had problems with my skin for years. Acne app is easy to use and you can use it any time of the day. My skin started to clear after the first week and it’s noticable (sic). I’ve used pro activ (sic), roaccutane (sic) and every other skin product but this is truly amazing.” (Australia)
- “I will have to say that I was skeptical at first but am amazed by the results of really dedicating time to this.” (US)
- “I was very hesitant to purchase it a (sic) first because I thought it was simply exploiting peoples’ insecurities, but it works! Maybe the best app I’ve bought!” (US)
- “Hormones go crazy when your (sic) pregnant but you can’t use chemicals to dry up your breakouts[.] [T]his app is the solution!” (US)
- This is the best money I have ever spent[.] [I]t works amazing for me[.] [A]lready seeing the difference in 2 days. It stops me form (sic) getting spots and reduces the redness of the present acne. It’s a gotta buy for people suffering with acne. 5 stars :D (United Kingdom)

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IMPORTANT STUFF:

This app was developed by a dermatologist.

A study published by the British Journal of Dermatology showed blue and red light treatments eliminated p-acne bacteria (a major cause of acne) and reduces skin blemishes by 76%. Studies showed that light treatments were almost twice as effective as benzoyl peroxide, the main ingredient in Proactiv and other common over-the-counter blemish treatments.

INSTRUCTIONS:

Begin by choosing a light from the tab bar below.
Blue & Red alternating light is the recommended option.

Rest the iPhone against your skin's acne-prone areas for 2 minutes daily to improve skin health without prescription drugs.

Blue Light: fights bacteria.
Red Light: helps heal skin.

* * *

This app is for entertainment purposes only and is not intended for treatment of any disease or medical condition.

© Copyright DermApps 2009-2010. All Rights Reserved.

AcneApp. Acne therapy without risky medications.

* * *

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that AcneApp is an effective treatment for acne.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that they possessed

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and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made.

9. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that a study published by the British Journal of Dermatology proves that blue and red light therapy such as that provided by AcneApp is an effective treatment for acne.

11. In truth and in fact, the study published by the British Journal of Dermatology does not prove that blue and red light therapy such as that provided by AcneApp is an effective treatment for acne. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

12. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

THEREFORE, the Federal Trade Commission, this thirteenth day of October, 2011, has issued this complaint against respondents.

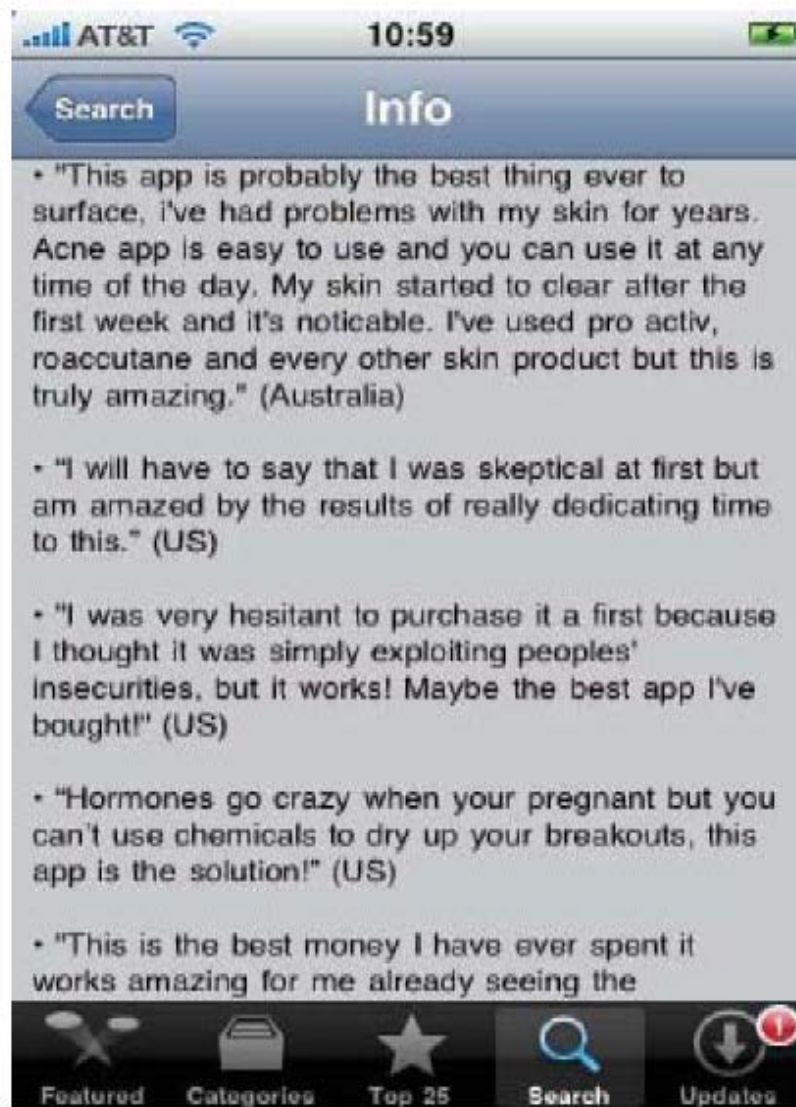
By the Commission.

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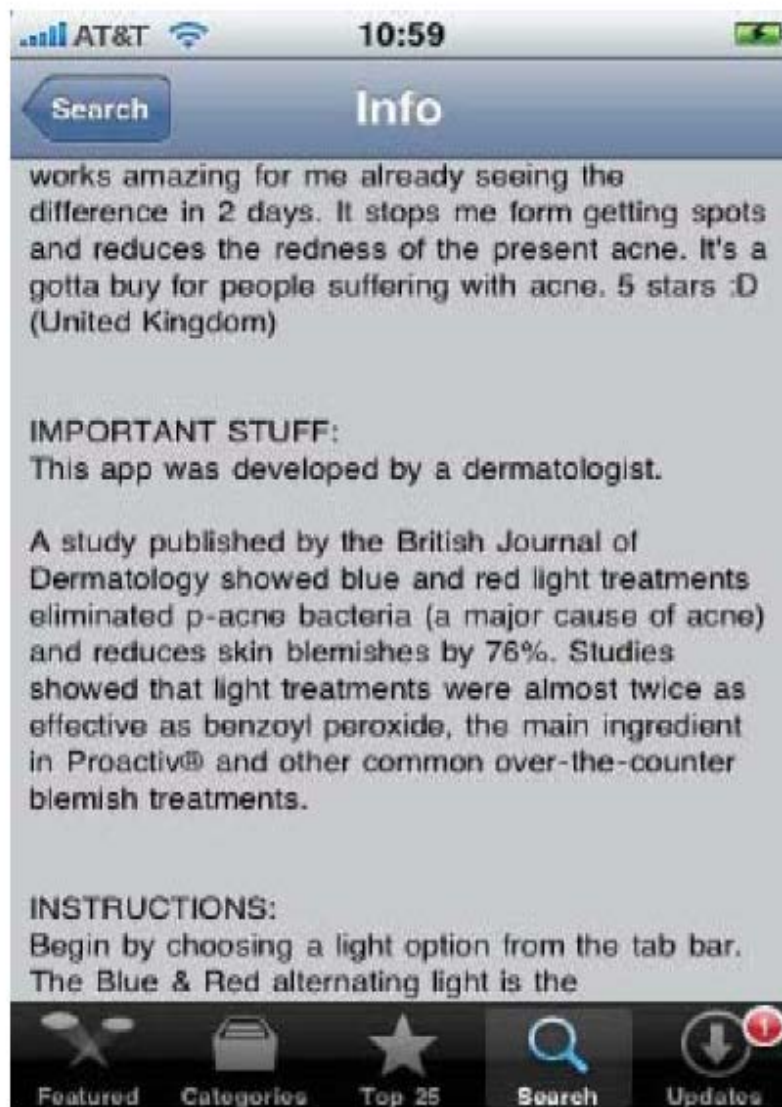
EXHIBIT A



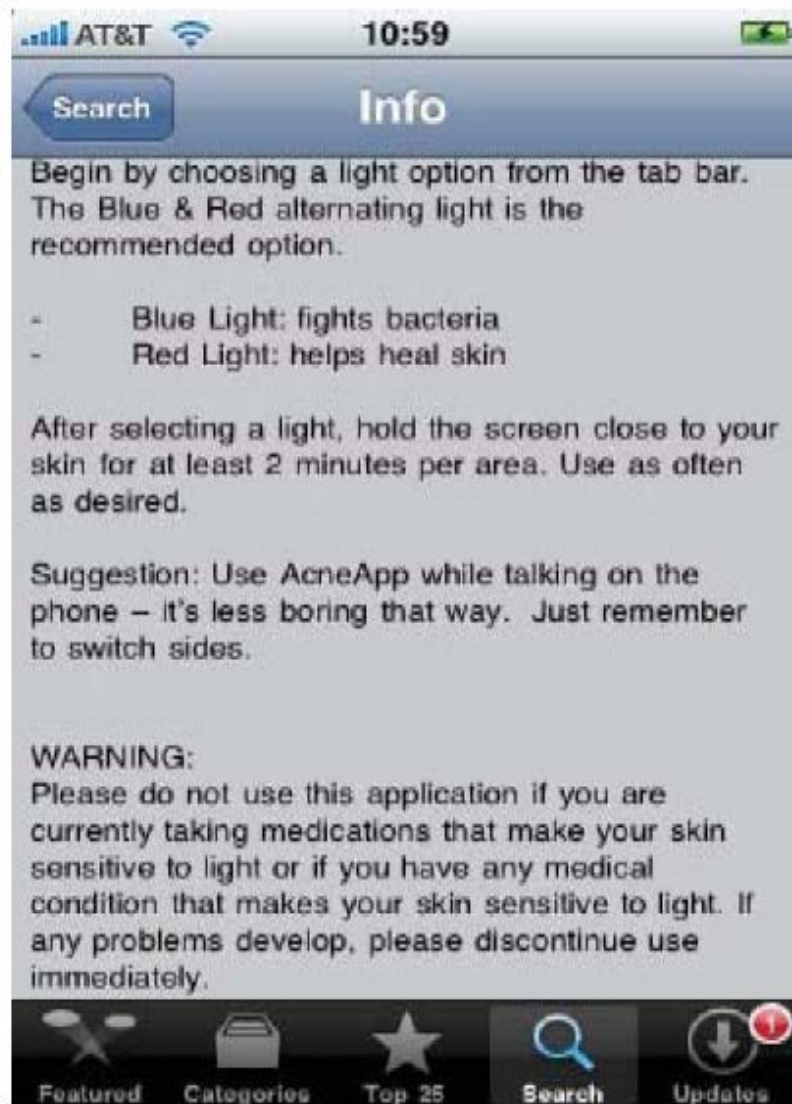
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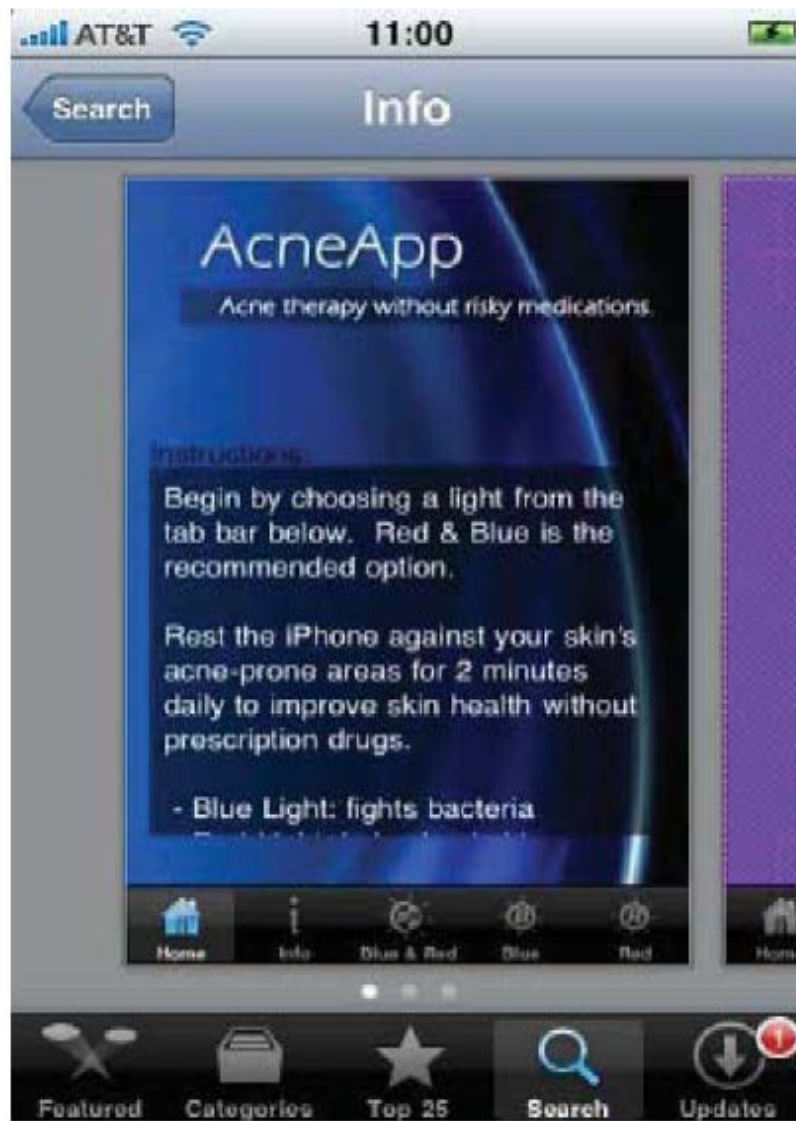
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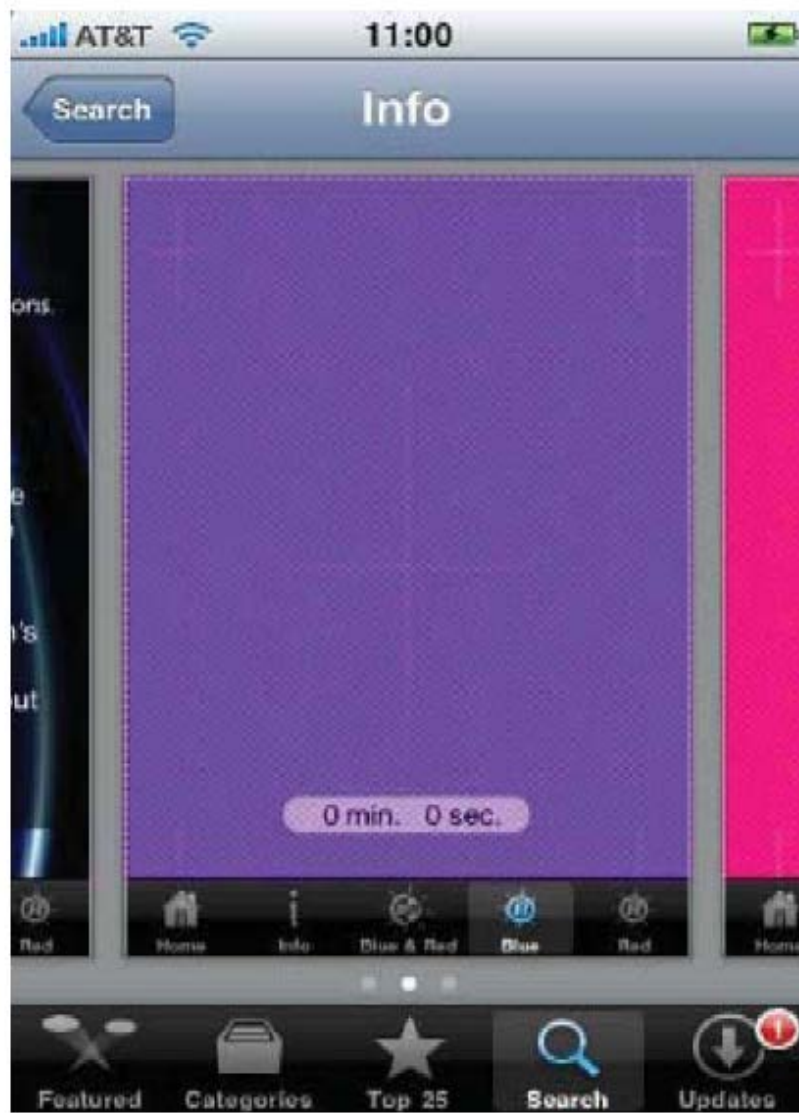
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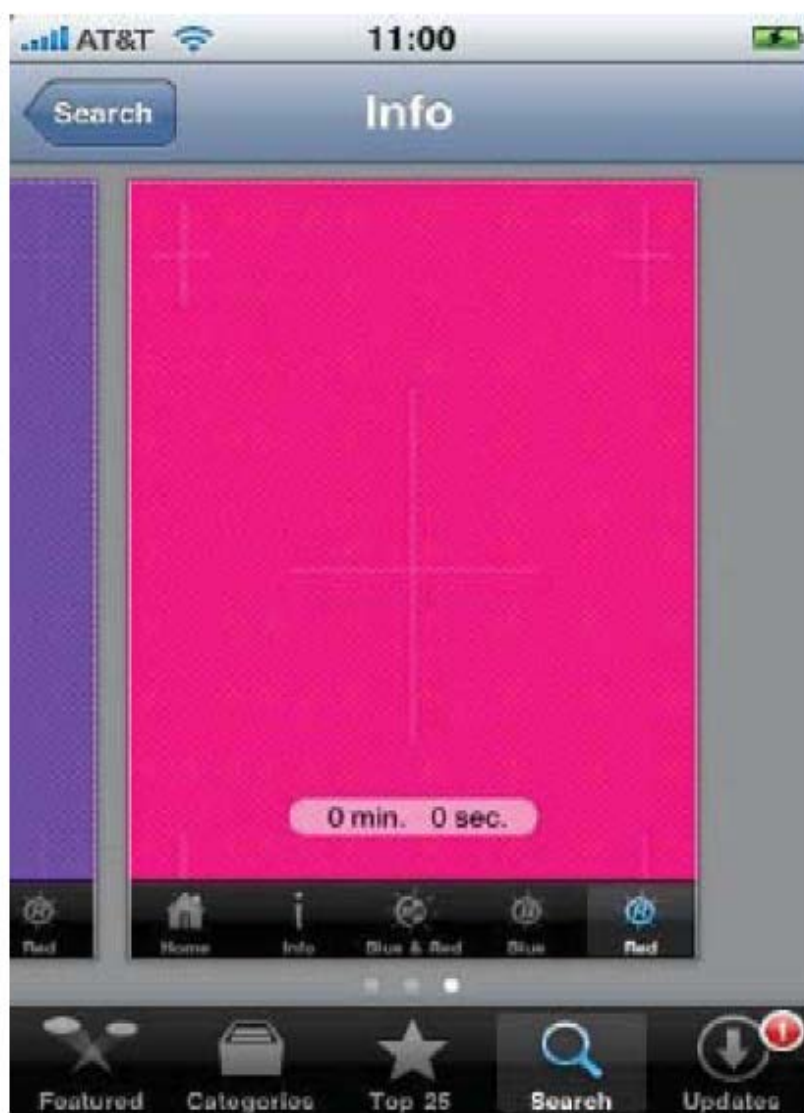
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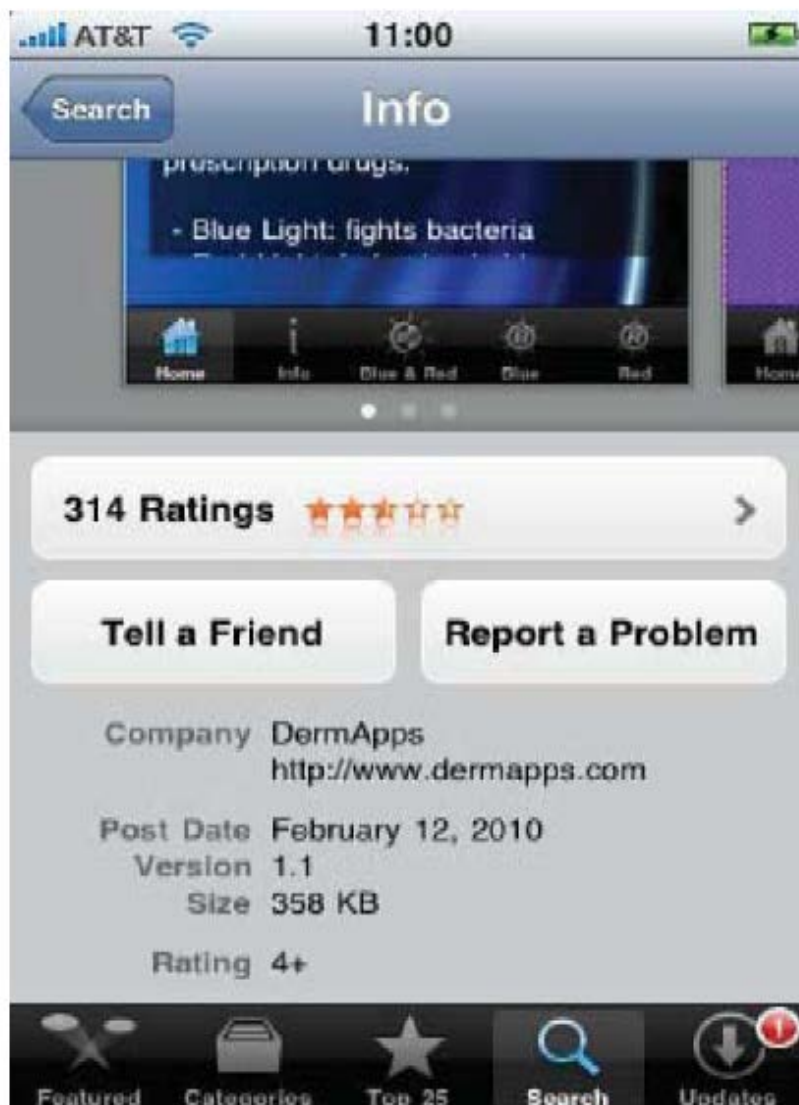
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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

Respondent, Gregory W. Pearson, and his attorney, respondent Koby Brown, who elected to proceed without counsel, and counsel for the Commission, having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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

1. Respondent Koby Brown is the developer, and a seller or marketer, of a mobile software application called “AcneApp” sold under the registered business name DERMAPPS. His principal office or place of business is located in Houston, Texas.

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2. Respondent Gregory W. Pearson is a licensed and board-certified dermatologist. He has also done business under the registered business name DERMAPPS. His principal office or place of business is located in Houston, Texas.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, “respondents” shall mean Koby Brown and Gregory W. Pearson.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. The term “including” in this order shall mean “without limitation.”
4. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.
5. The term “device” in this order shall be construed as a “device” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other

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means, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any device, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that AcneApp or any other device provides effective treatment for acne, unless the representation is non-misleading and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part I, competent and reliable scientific evidence shall consist of at least two adequate and well- controlled human clinical studies of the device, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other means, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any device, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the safety, benefits, performance, or efficacy of any device, unless the representation is non-misleading, and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part II, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

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III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other means, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

IV.

IT IS FURTHER ORDERED that respondents shall pay to the Federal Trade Commission the sum of \$14,294. This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final; provided that all respondents are primarily liable, jointly and severally, for the payment amount, including any default payment amount if the payment is in default, unless and until payment is made in full.
- B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961(a), from the date of default to the date of payment, shall immediately become due and payable to the Commission. Respondents agree that, in such event, the facts as alleged in the complaint shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

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- C. All funds paid pursuant to this Part, together with any accrued interest, shall be used by the Commission in its sole discretion to provide such relief as it determines to be reasonably related to respondents' practices alleged in the complaint, and to pay any attendant costs of administration. Such relief may include, but shall not be limited to, the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive acts or practices as alleged in the complaint. If the Commission determines, in its sole discretion, that such relief is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

V.

IT IS FURTHER ORDERED that respondents shall each, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation;

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- C. All tests, reports, studies, surveys, demonstrations, or other evidence in respondents' possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. All acknowledgments of receipt of this order obtained pursuant to Part VI.

VI.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of this order. For current personnel, delivery shall be within five (5) days of the date of service of this order. For new personnel, delivery shall occur prior to their first assuming their responsibilities.

VII.

IT IS FURTHER ORDERED that respondents shall each notify the Commission at least thirty (30) days prior to creating, or assuming any ownership interest in, any corporation that may affect compliance obligations arising under this order. *Provided, further,* that respondents shall each notify the Commission at least thirty (30) days prior to the dissolution, assignment, sale, merger, or other action involving such corporation that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the name or address of such corporation. *Provided, however,* that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part

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shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the Matter of Koby Brown and Gregory W. Pearson, dba DERMAPPS*. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

VIII.

IT IS FURTHER ORDERED that respondents, for a period of five (5) years after the date of issuance of this order, shall each notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment. The notice shall include the new business address and telephone number and a description of the nature of the business or employment, and their duties and responsibilities. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the Matter of Koby Brown and Gregory W. Pearson, dba DERMAPPS*. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

IX.

IT IS FURTHER ORDERED that each respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

Decision and Order

X.

This order will terminate on October 13, 2031, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of this order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order, if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling, and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO
AID PUBLIC COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Koby Brown and Gregory W. Pearson, dba DERMAPPS (“respondents”).

The proposed consent order (“proposed order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising of a mobile software application (“app”) called AcneApp which respondents developed and sold in Apple’s iTunes Store. Respondents claimed that AcneApp effectively treats acne. The instructions for this app directed consumers to hold the light-emitting display screen next to the area of skin to be treated for several minutes each day.

The Commission’s complaint alleges that respondents violated Sections 5 and 12 of the FTC Act by claiming, without substantiation, that the app provided an effective treatment for acne. The complaint also alleges that the respondents falsely represented that a study published in the British Journal of Dermatology proves that blue and red light therapy, such as that provided by AcneApp, is an effective treatment for acne.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar practices in the future. Part I of the order prohibits respondents from making any representation that AcneApp, or any other device, as defined by Section 15 of the FTC Act, provides effective treatment for acne, unless respondents have competent and reliable scientific evidence to substantiate that claim.

Part II of the order requires respondents to have competent

Analysis to Aid Public Comment

and reliable scientific evidence before making any safety, performance, benefits, or efficacy claim about any device.

Part III of the order is a standard order provision relating to establishment claims, prohibiting the misrepresentation of any research, tests, or studies.

Part IV of the order requires respondents, within 15 days of the order, to pay the Commission \$14,294.

The remaining parts of the proposed order are standard provisions regarding record-keeping, dissemination of the order to officers and employees, prior notification to the Commission of corporate changes, notification of new employment, filing compliance of reports, and sunseting of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

ANDREW N. FINKEL

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 5(A) AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4338; File No. 102 3206
Filed, October 13, 2011 — Decision, October 13, 2011

Respondent Andrew Finkel developed and sold a mobile software application (“app”) called Acne Pwner in Google’s Android Marketplace. The Acne Pwner app directed consumers to hold a light-emitting display screen next to the area of skin to be treated for a few minutes each day. The complaint alleges that Respondent violated the FTC Act by claiming, without substantiation, that the Acne Pwner app effectively treated acne. The order prohibits Respondent from making any representations that Acne Pwner or any other device provides an effective treatment for acne, unless Respondent has competent and reliable scientific evidence to substantiate the claim. The order further requires Respondent to have competent and reliable scientific evidence before making any safety, performance, benefits, or efficacy claim about any device. Further, the order requires respondent to pay \$1,700 in consumer redress.

Participants

For the *Commission*: Stacey Ferguson and James A. Prunty.

For the *Respondent*: Robert J. Lunn, Trevett Cristo Salzer & Andolina, P.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Andrew N. Finkel (“respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Andrew N. Finkel (“Finkel”) is the developer, marketer, or seller of a mobile software application called “Acne Pwner.” At all times relevant to this complaint, Finkel, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices alleged in this