

Complaint

IN THE MATTER OF

**GOLDENSHORES TECHNOLOGIES, LLC
AND
ERIK M. GEIDL**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4446; File No. 132 3087
Complaint, March 31, 2014 – Decision, March 31, 2014*

This consent order addresses Goldenshores Technologies, LLC, and Erik M. Geidl’s marketing of the “Brightest Flashlight Free” mobile application to consumers for use on their Android mobile devices. The complaint alleges that fail to disclose, or adequately disclose, that, when users run the Brightest Flashlight App, the application transmits, or allows the transmission of, their devices’ precise geolocation along with persistent device identifiers to various third parties, including third party advertising networks. The complaint further alleges that the Brightest Flashlight App transmits, or causes the transmission of, device data as soon as the consumer launches the application and before they have chosen to accept or refuse the terms of the Brightest Flashlight EULA. The consent order requires respondents to give users of their mobile applications a clear and prominent notice and to obtain express affirmative consent prior to collecting their geolocation information; and to delete any “covered information” in their possession, custody, or control that they collected from users of the Brightest Flashlight App prior to the entry of the order. The order also prohibits respondent from misrepresenting (1) the extent to which “covered information” is collected, used, disclosed, or shared and (2) the extent to which users may exercise control over the collection, use, disclosure, or sharing of “covered information” collected from or about them, their computers or devices, or their online activities.

Participants

For the *Commission*: *Kerry O’Brien* and *Sarah Schroeder*.

For the *Respondents*: *Samuel T. Creason*, *Creason, Moore, Dokken & Geidl, PLLC*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Goldenshores Technologies, LLC, a limited liability company, and Erik M. Geidl, individually and as the managing member of the limited liability company (“respondents”), have violated the

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provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Goldenshores Technologies, LLC, is a Delaware limited liability company with its principal office or place of business at 1205 Ponderosa Drive, Moscow, ID 83843.

2. Respondent Erik M. Geidl is the managing member of the limited liability company. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the company, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Goldenshores Technologies, LLC.

3. 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.

Brightest Flashlight Free Application

4. Since at least February 2011, respondents have advertised and distributed products to the public, including the “Brightest Flashlight Free” mobile application (“Brightest Flashlight App”) developed for Google’s Android operating system. Consumers have downloaded the Brightest Flashlight App from a variety of sources, including the Google Play application store. As of May 2013, the Google Play application store ranked the Brightest Flashlight App as one of the top free applications available for download. Users have downloaded the Brightest Flashlight App tens of millions of times via Google Play.

5. The Brightest Flashlight App purportedly works by activating all lights on a mobile device, including, where available, the device’s LED camera flash and screen to provide outward-facing illumination. While running, however, the application also transmits, or allows the transmission of, data from the mobile device to various third parties, including advertising networks. The types of data transmitted include, among other things, the device’s precise geolocation along with persistent device identifiers that can be used to track a user’s location over time.

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6. Respondents have disseminated or have caused to be disseminated application promotion pages (“app promotion pages”) for the Brightest Flashlight App in Google Play, including but not limited to the attached Exhibit A. The app promotion pages provide a description of the application. (See Exhibit A, screens 1 to 3) This description does not make any statements relating to the collection or use of data from users’ mobile devices. The app promotion pages also include the general “permission” statements that appear for all Android applications. (See Exhibit A, screens 12 to 30)

7. Android “permissions” provide notice to consumers regarding what sensitive information (*e.g.*, location information) or sensitive device functionality (*e.g.*, the ability to take photos with the device’s camera) an application may access. The permissions, however, do not explain whether the application shares any information with third parties.

Respondents’ Privacy Policy

8. Consumers may view respondents’ Privacy Policy by clicking on a Privacy Policy link on the Brightest Flashlight app promotion pages in Google Play. (See Exhibit A, screen 9) The Privacy Policy also is available at respondents’ website, www.goldenshorestechnologies.com.

9. Respondents have disseminated or have caused to be disseminated respondents’ Privacy Policy, including but not limited to the attached Exhibit B. Their Privacy Policy contains the following statements concerning the collection and use of device data:

Consent to Use of Data. Goldenshores Technologies and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Goldenshores Technologies Software, and to verify compliance with the

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terms of the License. Goldenshores Technologies may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

(Exhibit B-1, Privacy Policy)

Following this summary, the Privacy Policy provides the contents of the Brightest Flashlight end user license agreement (“EULA”), described below.

10. Respondents’ Privacy Policy does not disclose or adequately disclose to consumers that the Brightest Flashlight App transmits or allows the transmission of device data, including precise geolocation along with persistent device identifiers, to third parties, including advertising networks.

Respondents’ End-User License Agreement Document

11. After installing the Brightest Flashlight App, the application presents users with a Brightest Flashlight EULA, including but not limited to the attached Exhibit C. The Brightest Flashlight EULA instructs consumers to:

[R]ead this software license agreement (“license”) carefully before using the Goldenshores Technologies Software. By using the Goldenshores Technologies software, you are agreeing to be bound by the terms of this license. If you do not agree to the terms of this license, do not install and/or use the software.

(Exhibit C, screens 4-5)

The Brightest Flashlight EULA also represents that users must “Accept” or “Refuse” the EULA by selecting the appropriate button. (Exhibit C) Those buttons appear at the bottom of each screen displaying the EULA.

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12. The Brightest Flashlight EULA reiterates respondents' Privacy Policy, including the following statements relating to the collection and use of device data:

3. Consent to Use of Data. You agree that Goldenshores Technologies and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Goldenshores Technologies Software, and to verify compliance with the terms of this License. Goldenshores Technologies may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

(Exhibit C, screens 14-15)

13. As described in Paragraph 12, the Brightest Flashlight EULA does not disclose or adequately disclose to consumers that the Brightest Flashlight App transmits or allows the transmission of device data, including precise geolocation along with persistent device identifiers, to third parties, including advertising networks.

14. While the "Refuse" button, described in Paragraph 11, appears to give consumers the option to refuse the terms of the Brightest Flashlight EULA, including the terms relating to the collection and use of device data, that choice is illusory. Based upon the statements made in the EULA, as described in Paragraphs 11 and 12, consumers would not expect the application to operate on their mobile devices, including collecting and using their device data, until after they have accepted the terms of the EULA. In fact, while consumers are viewing the Brightest Flashlight EULA, the application transmits or causes the transmission of their device data, including the device's precise geolocation and persistent identifier, even before they accept or refuse the terms of the EULA.

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COUNT I

15. Through the means described in Paragraphs 9 and 12, respondents represented, expressly or by implication, that respondents may periodically collect, maintain, process, and use information from users' mobile devices to provide software updates, product support, and other services to users related to the Brightest Flashlight App, and to verify users' compliance with respondents' EULA. In numerous instances, in which respondents have made such representations, respondents have failed to disclose or failed to adequately disclose that, when users run the Brightest Flashlight App, the application transmits, or allows the transmission of, their devices' precise geolocation along with persistent device identifiers to various third parties, including third party advertising networks. These facts would be material to users in their decision to install the application. The failure to disclose, or adequately disclose, these facts, in light of the representation made, was, and is, a deceptive practice.

COUNT II

16. Through the means described in Paragraphs 11 and 12, respondents represented, expressly or by implication, that consumers have the option to refuse the terms of the Brightest Flashlight EULA, including those relating to the collection and use of device data, and thereby prevent the Brightest Flashlight App from ever collecting or using their device's data.

17. In truth and in fact, consumers cannot prevent the Brightest Flashlight App from ever collecting or using their device's data. Regardless of whether consumers accept or refuse the terms of the EULA, the Brightest Flashlight App transmits, or causes the transmission of, device data as soon as the consumer launches the application and before they have chosen to accept or refuse the terms of the Brightest Flashlight EULA. Therefore, the representation set forth in Paragraph 16 was, and is, false or misleading.

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

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THEREFORE, the Federal Trade Commission this thirty-first day of March, 2014, has issued this complaint against respondents.

By the Commission.

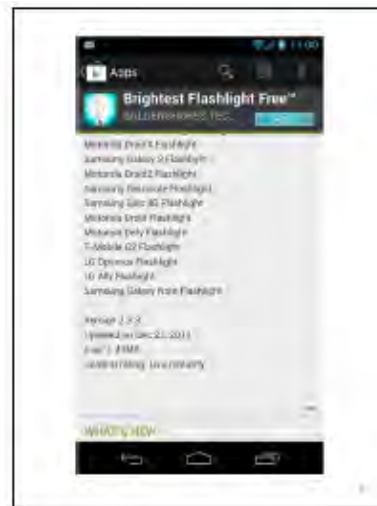
Complaint

Exhibit A



Exhibit A-1

Complaint



Complaint

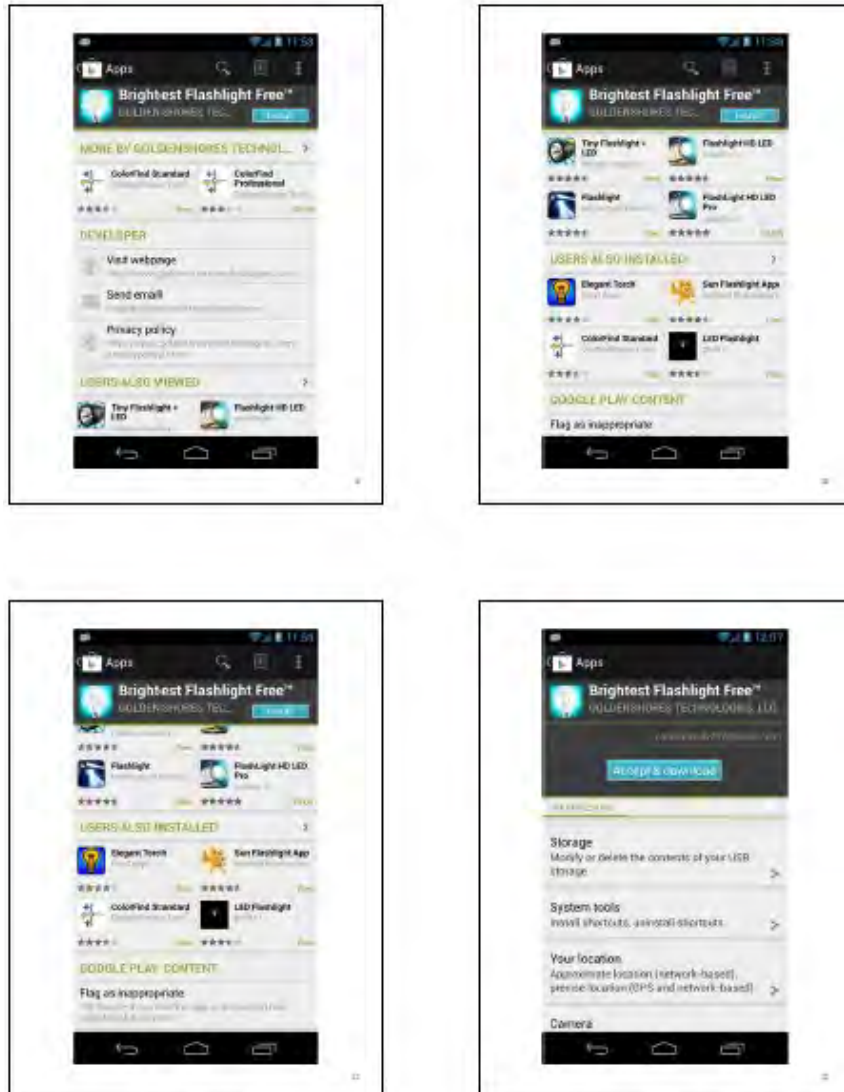


Exhibit A-3

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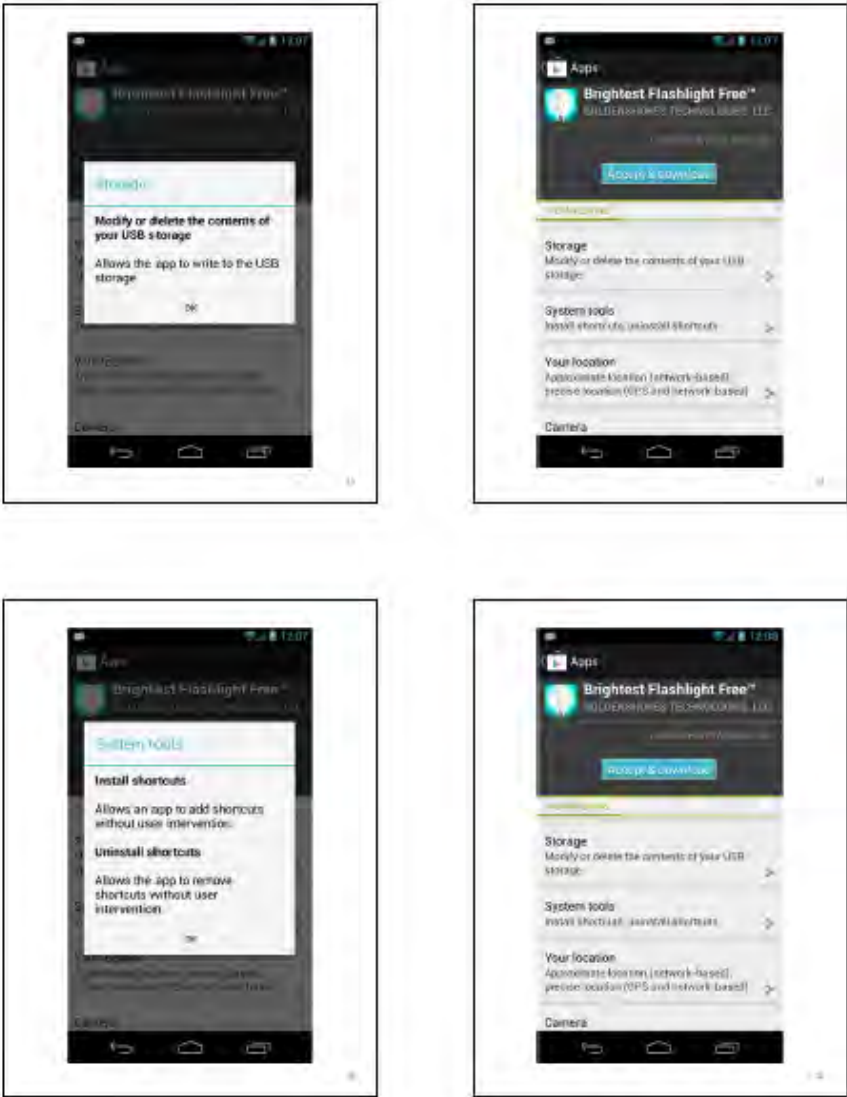


Exhibit A-4

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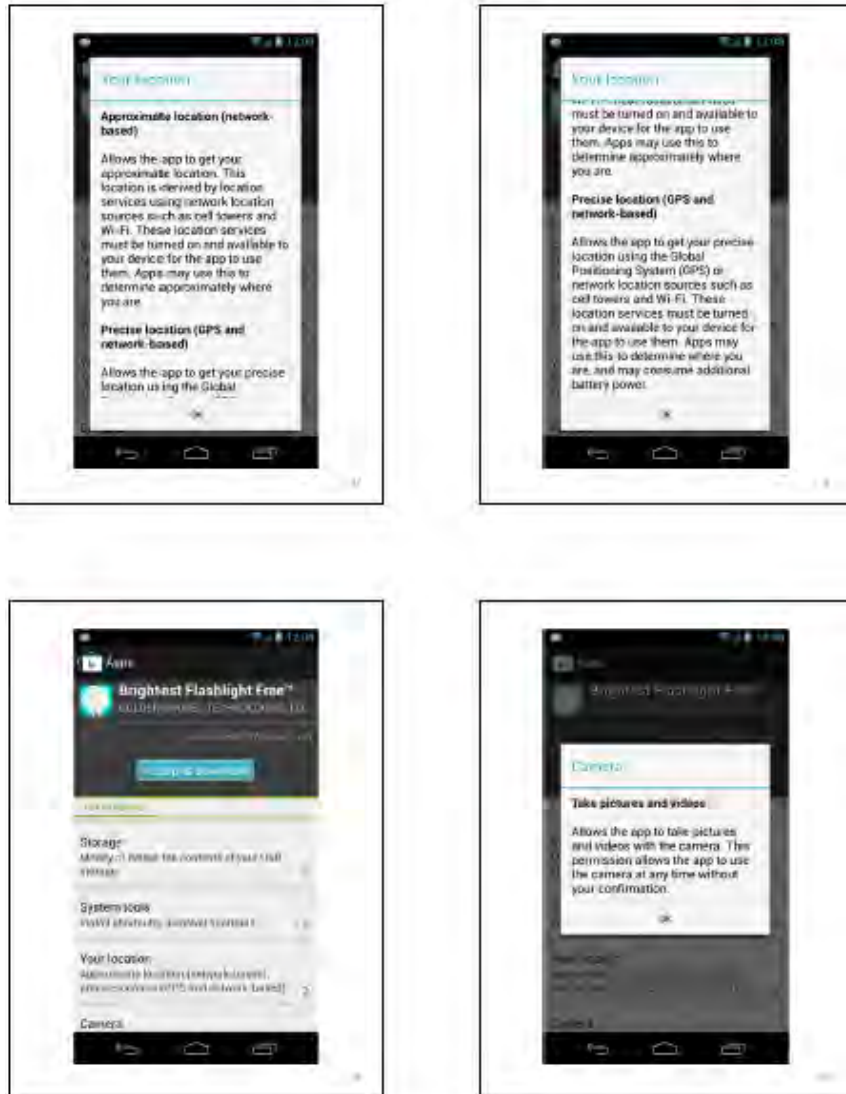


Exhibit A-5

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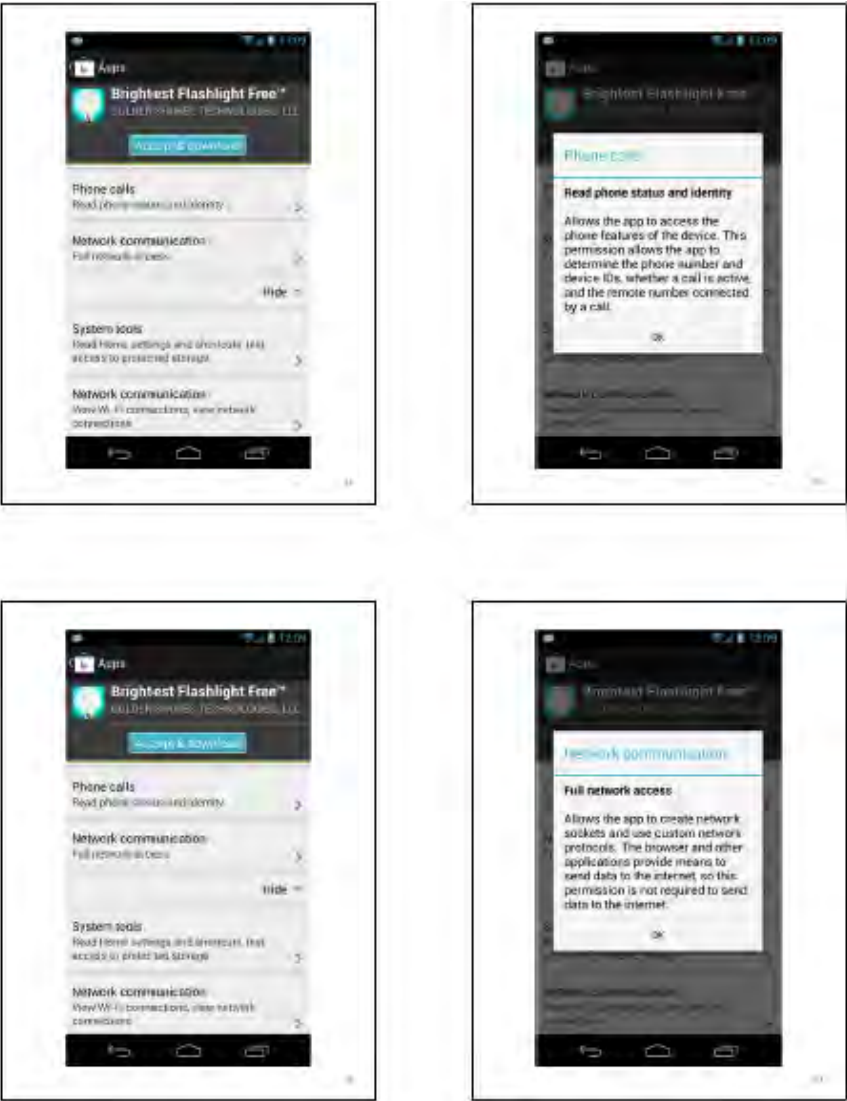


Exhibit A-6

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Exhibit A-7

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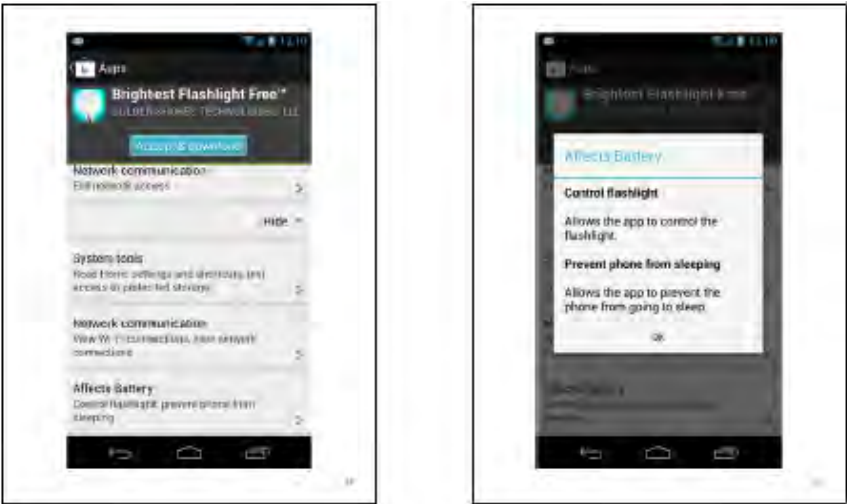


Exhibit A-8

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Exhibit B

Brightest Flashlight®
Android App by GoldenShores Technologies, LLC



[Install Now from Google Play](#)
[Home](#)
[Email Support](#)

Privacy Policy

Below is a summary of the Brightest Flashlight® privacy policy. The full privacy policy is contained within the Brightest Flashlight Free® EULA (End-User License Agreement), which is reproduced below. In the case where the summary and the EULA disagree, the EULA is the controlling document.

Privacy Policy Summary:

Consent to Use of Data. Goldenshores Technologies and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Goldenshores Technologies Software, and to verify compliance with the terms of the License. Goldenshores Technologies may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

Brightest Flashlight Free EULA

GOLDENSHORES TECHNOLOGIES, LLC
BRIGHTEST FLASHLIGHT END-USER LICENSE AGREEMENT

Exhibit B-1

Complaint

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE USING THE GOLDENSHORES TECHNOLOGIES SOFTWARE. BY USING THE GOLDENSHORES TECHNOLOGIES SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL AND/OR USE THE SOFTWARE.

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2. Permitted License Uses and Restrictions.

(a) Subject to the terms and conditions of this License and as permitted in the "Usage Rules" set forth in the Android Market Terms and Conditions, you are granted a limited non-transferable license to install and use the Goldenshores Technologies Software on any Android-branded mobile device that you own or control. You may not distribute or make the Goldenshores Technologies Software available

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over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, redistribute or sublicense the Goldenshores Technologies Software.

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Goldenshores Technologies Software or that desired results will be obtained.

3. Consent to Use of Data. You agree that Goldenshores Technologies and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical and related information, including but not limited to information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Goldenshores Technologies Software, and to verify compliance with the terms of this License. Goldenshores Technologies may use this information, as long as it is in a form that does not personally identify you, to improve our products or to provide services or technologies to you.

4. Termination. This License is effective until terminated. Your rights under this License will terminate automatically or otherwise cease to be effective without notice from Goldenshores Technologies if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the Goldenshores Technologies Software and destroy all copies, full or partial, of the Goldenshores Technologies Software. Sections 6, 7, 10 and 11 of this License shall survive any such termination.

5. Services and Third Party Materials.

(a) The Goldenshores Technologies Software enables access to third party services and web sites (collectively and individually, "Services"). Such services may not be available in all languages or in all countries. Use of the Services requires Internet access and use of certain Services requires you to accept additional terms.

(b) You understand that by using any of the Services, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Services at your sole risk and that Goldenshores Technologies shall have no liability to you for content that may be found to be offensive, indecent, or objectionable.

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6. Disclaimer of Warranties.

6.1 If you are a customer who is a consumer (someone who uses the Goldenshores Technologies Software outside of your trade, business or profession), you may have legal rights in your country of residence which would prohibit the following limitations from applying to you, and where prohibited they will not apply to you. To find out more about rights, you should contact a local consumer advice organization.

6.2 YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE GOLDENSHORES TECHNOLOGIES SOFTWARE AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

6.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE GOLDENSHORES TECHNOLOGIES SOFTWARE AND SERVICES ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND GOLDENSHORES TECHNOLOGIES AND GOLDENSHORES TECHNOLOGIES'S LICENSORS (COLLECTIVELY REFERRED TO AS "GOLDENSHORES TECHNOLOGIES" FOR THE PURPOSES OF SECTIONS 6 AND 7) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE GOLDENSHORES TECHNOLOGIES SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

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6.5 YOU FURTHER ACKNOWLEDGE THAT THE GOLDENSHORES TECHNOLOGIES SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OF, OR ERRORS OR

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8. Export Control. You may not use or otherwise export or re-export the Goldenshores Technologies Software except as authorized by United States law and the laws of the jurisdiction in which the Goldenshores Technologies Software was obtained. In particular, but without limitation, the Goldenshores Technologies Software may not be exported or re-exported (a) into any U.S. embargoed

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12. Third Party Acknowledgements. Portions of the

Exhibit B-8

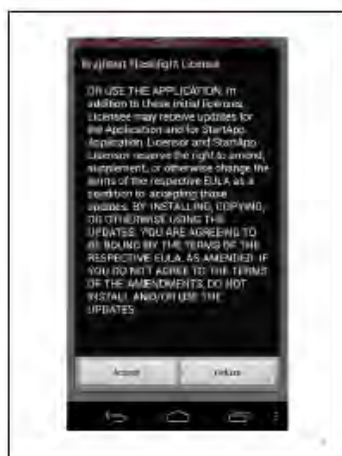
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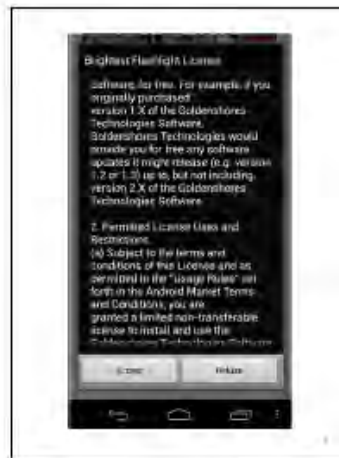
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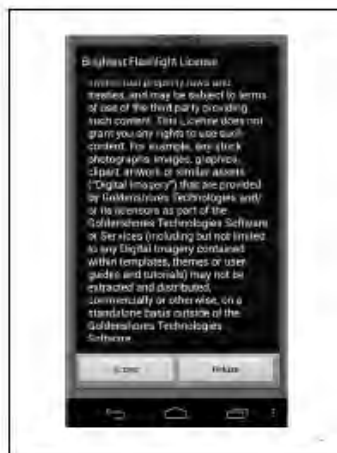
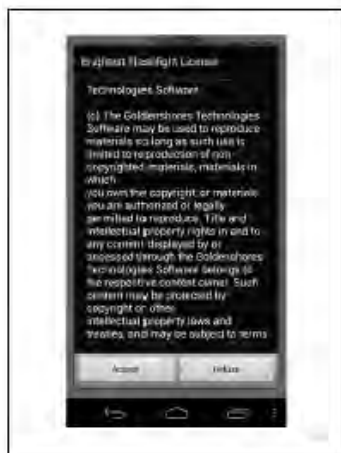
Exhibit C



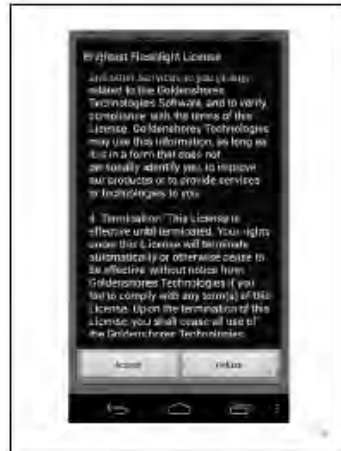
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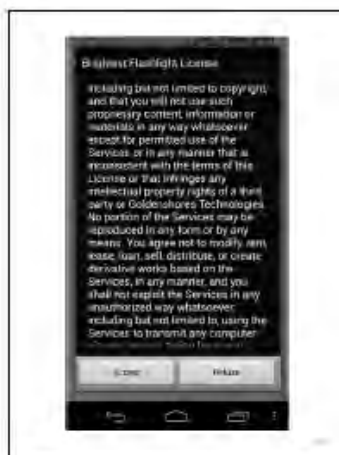
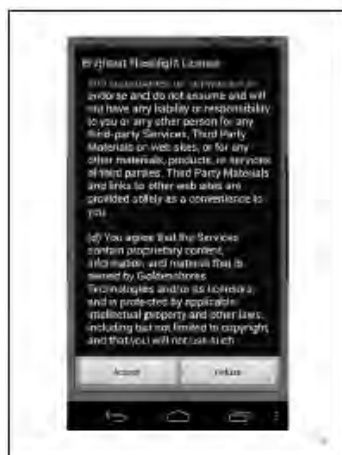
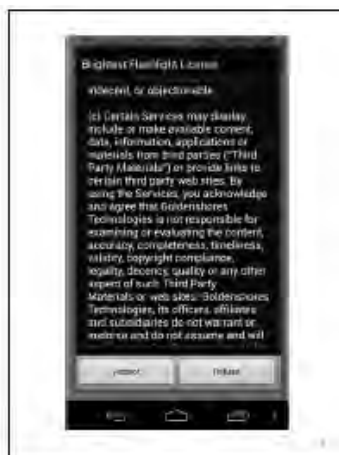
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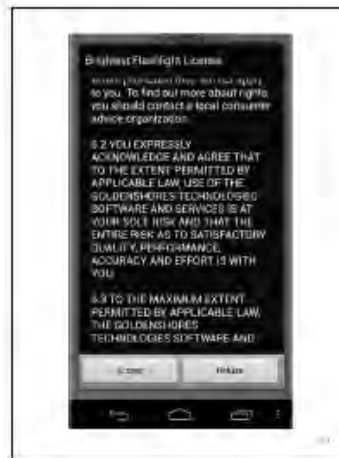
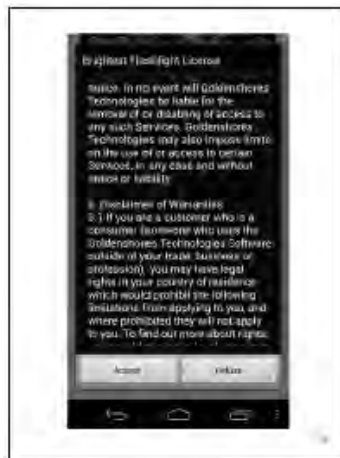
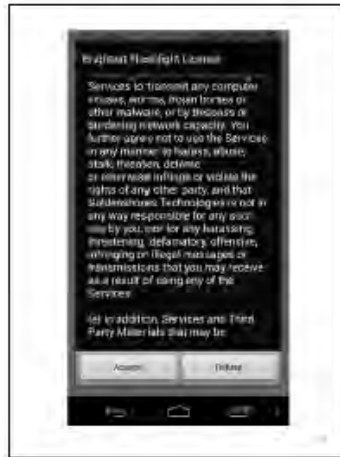
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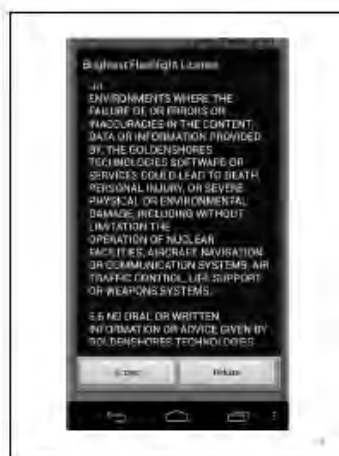
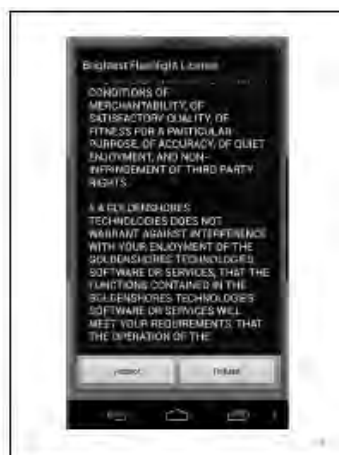
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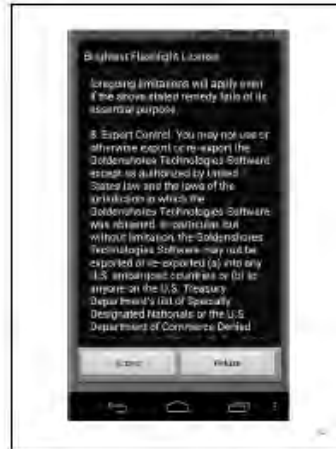
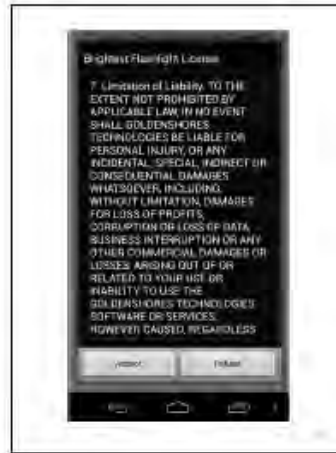
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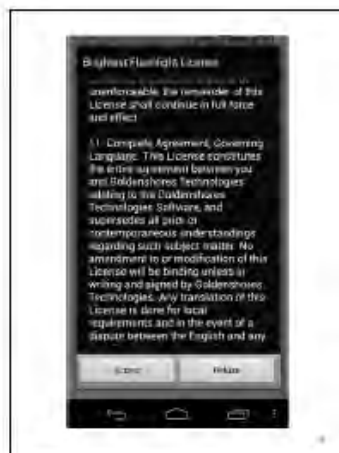
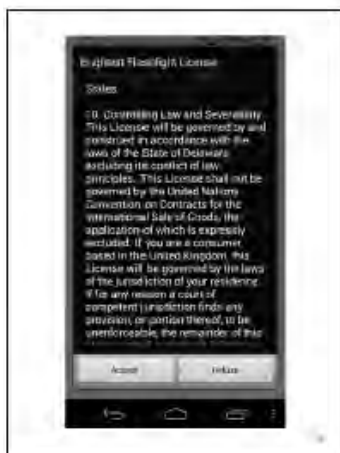
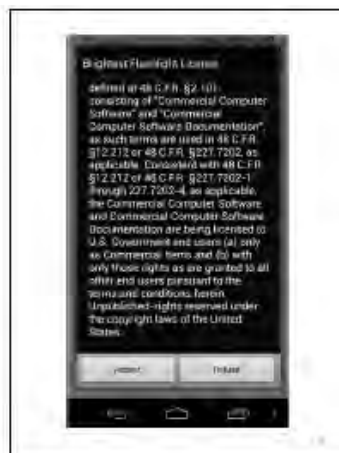
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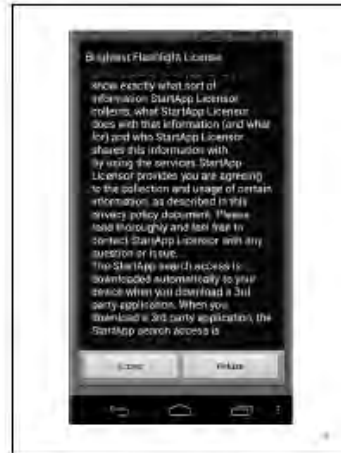
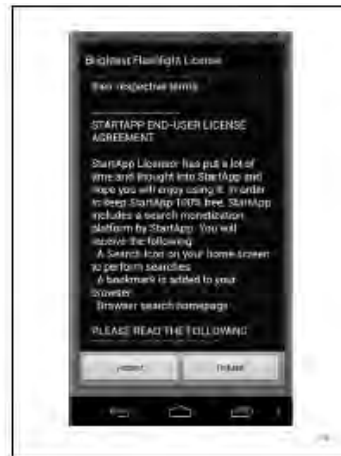
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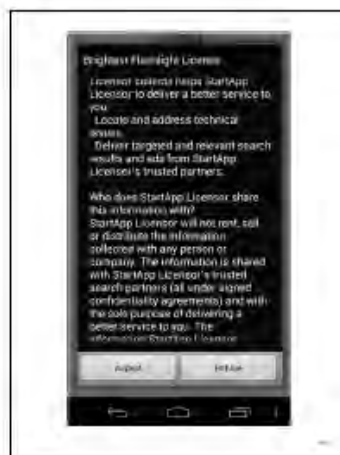
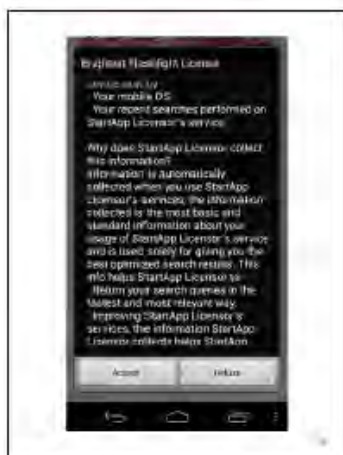
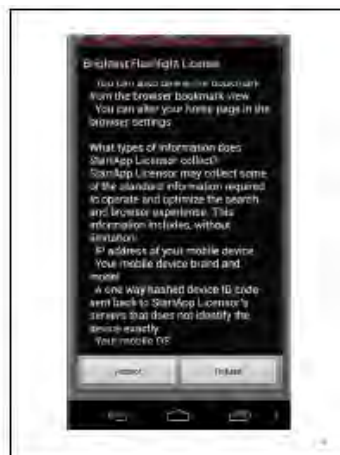
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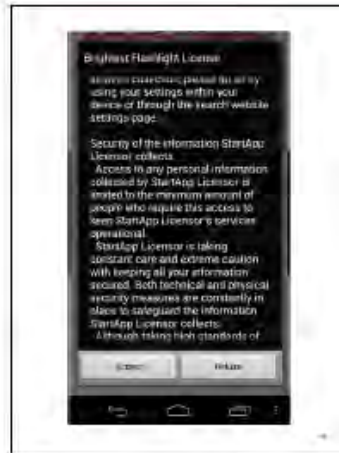
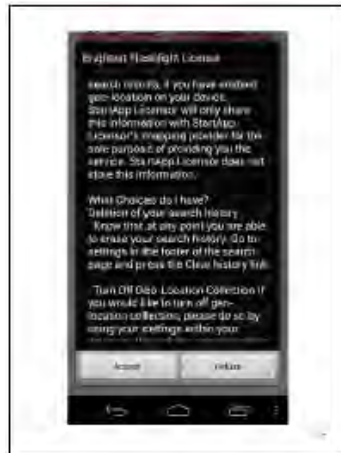
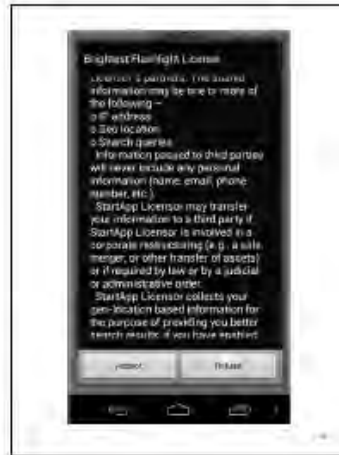
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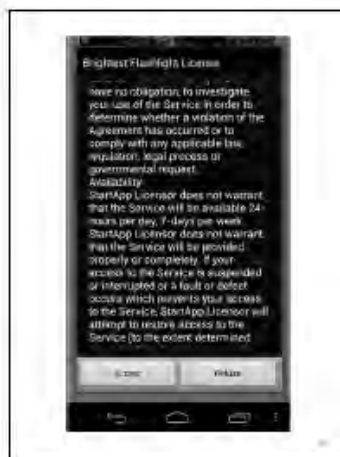
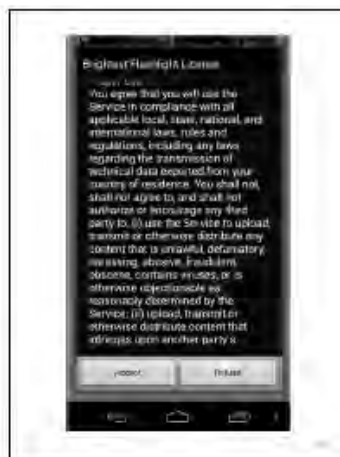
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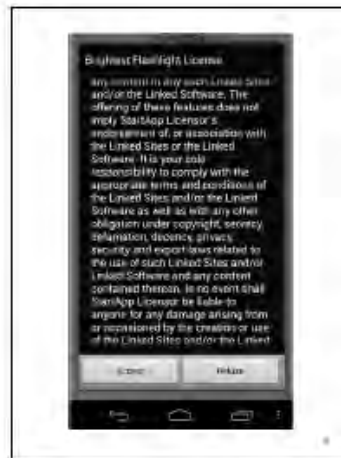
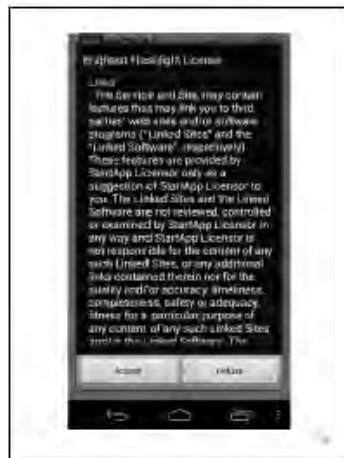
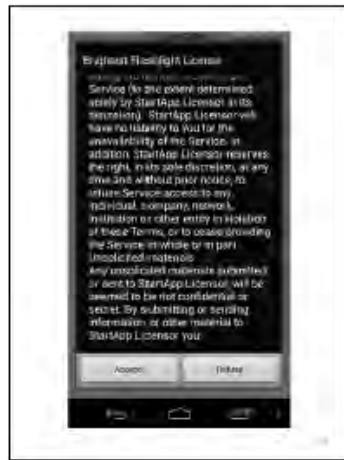
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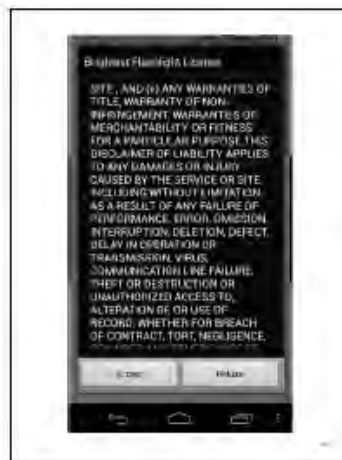
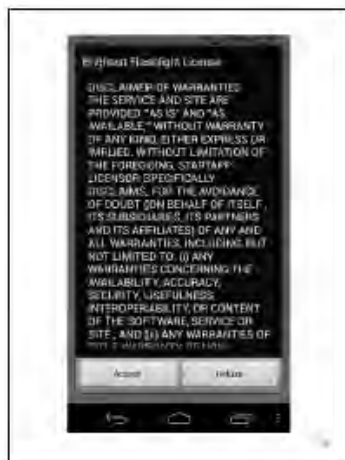
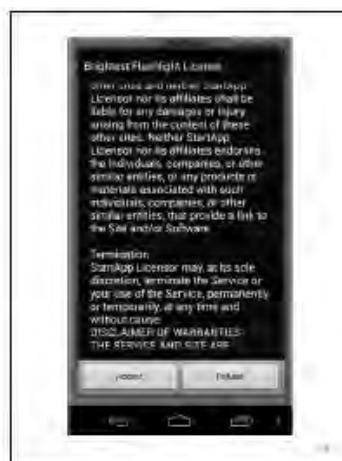
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Decision and Order



Exhibit C -15

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 of a

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complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“consent agreement”), which includes: a statement by respondents that they neither admit nor deny any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admit the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the 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 agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

- 1.a. Respondent Goldenshores Technologies, LLC, is a Delaware limited liability company with its principal office or place of business at 1205 Ponderosa Drive, Moscow, ID 83843.
- 1.b. Respondent Erik M. Geidl is the managing member of the limited liability company. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the company. His principal office or place of business is the same as that of Goldenshores Technologies, LLC.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the

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respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, “respondents” shall mean Goldenshores Technologies, LLC, its successors and assigns; and Erik M. Geidl, individually and as the managing member of the limited liability company.
- B. “Affected Consumers” shall mean persons who, prior to the date of issuance of this order, downloaded and installed the “Brightest Flashlight Free” mobile application on their mobile device.
- C. “Clearly and prominently” shall mean:
 - 1. In textual communications (*e.g.*, printed publications or words displayed on the screen of a mobile device or computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
 - 2. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - 3. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration

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sufficient for an ordinary consumer to read and comprehend them;

4. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
 5. In all instances, the required disclosures are presented in an understandable language and syntax; in the same language as the predominant language that is used in the communication; and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
- D. “Covered Information” shall mean information from or about an individual consumer, including but not limited to (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or other state-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a “cookie,” a static Internet Protocol (“IP”) address, a mobile device ID, or processor serial number; (j) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, WiFi-based, or cell-based location information (“geolocation information”); (k) an authentication credential, such as a username and password; or (l) any other communications or content stored on a consumer’s mobile device.
- E. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

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I.

IT IS ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or dissemination of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication:

- A. The extent to which Covered Information is collected, used, disclosed, or shared; and
- B. The extent to which users may exercise control over the collection, use, disclosure, or sharing of Covered Information collected from or about them, their computers or devices, or their online activities.

II.

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or dissemination of any mobile application that collects, transmits, or allows the transmission of geolocation information, in or affecting commerce, shall not collect, transmit, or allow the transmission of such information unless such application:

- A. Clearly and prominently, immediately prior to the initial collection of or transmission of such information, and on a separate screen from, any final “end user license agreement,” “privacy policy,” “terms of use” page, or similar document, discloses to the consumer the following:
 - 1. That such application collects, transmits, or allows the transmission of, geolocation information;
 - 2. How geolocation information may be used;
 - 3. Why such application is accessing geolocation information; and

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4. The identity or specific categories of third parties that receive geolocation information directly or indirectly from such application; and
- B. Obtains affirmative express consent from the consumer to the transmission of such information.

III.

IT IS FURTHER ORDERED that respondents, within ten (10) days from the date of entry of this Order, shall delete all Covered Information relating to Affected Consumers that is within their possession, custody, or control and was collected at any time prior to the date of entry of this Order.

IV.

IT IS FURTHER ORDERED that respondents shall, for five (5) years from the entry of this order or from the date of preparation, whichever is later, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing any representation covered by this order, including but not limited to respondents' terms of use, end-user license agreements, frequently asked questions, privacy policies, and other documents publicly disseminated relating to: (a) the collection of data; (b) the use, disclosure or sharing of such data; and (c) opt-out practices and other mechanisms to limit or prevent such collection of data or the use, disclosure, or sharing of data;
- B. All materials that were relied upon in disseminating any representation covered by this order;
- C. Complaints or inquiries relating to any Covered Application, and any responses to those complaints or inquiries; and

Decision and Order

- D. Documents that are sufficient to demonstrate compliance with each provision of this order.

V.

IT IS FURTHER ORDERED that respondents shall for five (5) years from the entry of this order deliver a copy of this order to all current and future principals, officers, directors, and managers, and 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 such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent Goldenshores Technologies, LLC, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In the Matter of Goldenshores Technologies, LLC, File No. 132-3087.*

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent Erik M. Geidl, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In the Matter of Goldenshores Technologies, LLC*, File No. 132-3087.

VIII.

IT IS FURTHER ORDERED that respondents, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance 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.

IX.

This order will terminate on March 31, 2034, 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 the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and

Analysis to Aid Public Comment

- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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

By the Commission.

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

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing consent order from Goldenshores Technologies, LLC, and Erik M. Geidl (“respondents”).

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

Since at least February 2011, respondents have marketed a mobile application called the “Brightest Flashlight Free” mobile application (“Brightest Flashlight App”) to consumers for use on their Android mobile devices. The Brightest Flashlight App purportedly works by activating all lights on a mobile device, including, where available, the device’s LED camera flash and screen to provide outward-facing illumination. As of May 2013,

Analysis to Aid Public Comment

users have downloaded the Brightest Flashlight App tens of millions of times.

The Commission's complaint alleges two violations of Section 5(a) of the FTC Act, which prohibits deceptive and unfair acts or practices in or affecting commerce, by respondents. First, according to the complaint, respondents represent in the Brightest Flashlight App's privacy policy statement and end-user license agreement ("EULA") that respondents may periodically collect, maintain, process, and use information from users' mobile devices to provide software updates, product support, and other services to users related to the Brightest Flashlight App, and to verify users' compliance with respondents' EULA. The complaint alleges that this claim is deceptive because respondents fail to disclose, or adequately disclose, that, when users run the Brightest Flashlight App, the application transmits, or allows the transmission of, their devices' precise geolocation along with persistent device identifiers to various third parties, including third party advertising networks.

Second, the complaint alleges that respondents falsely represent in the Brightest Flashlight EULA that consumers have the option to refuse the terms of the Brightest Flashlight EULA, including those relating to the collection and use of device data, and thereby prevent the Brightest Flashlight App from ever collecting or using their device's data. In fact, regardless of whether consumers accept or refuse the terms of the EULA, the Brightest Flashlight App transmits, or causes the transmission of, device data as soon as the consumer launches the application and before they have chosen to accept or refuse the terms of the Brightest Flashlight EULA.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent from misrepresenting (1) the extent to which "covered information" is collected, used, disclosed, or shared and (2) the extent to which users may exercise control over the collection, use, disclosure, or sharing of "covered information" collected from or about them, their computers or devices, or their online activities. "Covered information" is defined as "(a) a first and last name; (b) a home or other physical address, including street name and name of city or

Analysis to Aid Public Comment

town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license or other state-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a "cookie," a static Internet Protocol ("IP") address, a mobile device ID, or processor serial number; (j) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, WiFi-based, or cell-based location information ("geolocation information"); (k) an authentication credential, such as a username and password; or (l) any other communications or content stored on a consumer's mobile device."

Part II requires respondents to give users of their mobile applications a clear and prominent notice and to obtain express affirmative consent prior to collecting their geolocation information. Part III requires respondents to delete any "covered information" in their possession, custody, or control that they collected from users of the Brightest Flashlight App prior to the entry of the order.

Parts IV, V, VI, VII, and VIII of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

THERMO FISHER SCIENTIFIC INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4431; File No. 131 0134
Complaint, January 30, 2014 – Decision, April 1, 2014

This consent order addresses the \$13.6 billion acquisition by Thermo Fisher Scientific Inc. of certain assets of Life Technologies Corporation. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the markets for: (1) short/small interfering ribonucleic acid (“siRNA”) reagents; (2) cell culture media; and (3) cell culture sera. The consent order requires Thermo Fisher is to divest its gene modulation business (which includes siRNA reagents) and its cell culture media and sera business to GE Healthcare.

Participants

For the *Commission*: *Emily J. Kozumbo, Jasmine Y. Rosner,*
and *James R. Weiss.*

For the *Respondent*: *Mark D. Alexander, Morris A. Bloom,*
John D. Harkrider, and Michael L. Keeley, Axinn Veltrop &
Harkrider LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Thermo Fisher Scientific Inc. (“Thermo Fisher”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Life Technologies Corp. (“Life”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that