

**Analysis of Proposed Consent Order to Aid Public Comment**  
***In the Matter of Apple Inc., File No. 112 3108***

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Apple Inc. (“Apple”).

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 will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

Apple bills consumers for charges related to activity within software applications (“apps”) that consumers download to their iPhone, iPod Touch, or iPad devices from Apple’s App Store. This matter concerns Apple’s billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders’ express informed consent.

The Commission’s proposed complaint alleges that Apple offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money. Apple bills parents and other adult account holders for items that cost money within an app—“in-app charges.” In connection with billing for children’s in-app charges, Apple sometimes requests a parent’s iTunes password. In many instances, Apple “caches” (that is, stores) the iTunes password for fifteen minutes after it is entered. During this process, Apple in many instances has not informed account holders that password entry will approve a charge or initiate a fifteen-minute window during which children using the app can incur charges without further action by the account holder. The Commission’s proposed complaint alleges that, through these practices, Apple often fails to obtain parents’ informed consent to charges incurred by children, which constitutes an unfair practice under Section 5 of the FTC Act.

The proposed order contains provisions designed to prevent Apple from engaging in the same or similar acts or practices in the future. Part I of the proposed order requires Apple to obtain express, informed consent to in-app charges before billing for such charges, and to allow consumers to revoke consent to prospective in-app charges at any time. As defined in the proposed order, express, informed consent requires an affirmative act communicating authorization of an in-app charge (such as entering a password), made proximate to both an in-app activity for which Apple is billing a charge and a clear and conspicuous disclosure of material information about the charge. Under the definition, the act and disclosure must be reasonably calculated to ensure that the person providing consent is the account holder (as opposed to the child). The proposed order would require the disclosure to appear at least once per mobile device. Apple must come into compliance with the Part I requirements by March 31, 2014.

Part II of the proposed order requires Apple to provide full refunds to Apple account holders who have been billed by Apple for unauthorized in-app charges incurred by minors. Apple will refund no less than \$32.5 million for these in-app charges in the year following entry of the order, and if such refunds total less than \$32.5 million, Apple will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to

the U.S. Treasury as equitable disgorgement. To effectuate refunds, Apple must send an electronic notice to its consumers that clearly and conspicuously discloses the availability of refunds and instructions on how to obtain such refunds. Within 30 days of the end of the one-year redress period, Apple must provide the Commission with records of refund requests, refunds paid, and any refunds denied.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III of the proposed order requires Apple to maintain and upon request make available certain compliance-related records, including certain consumer complaints and refund requests, for a period of five years. Part IV is an order distribution provision that requires Apple to provide the order to current and future principals, officers, and corporate directors, as well as current and future managers, employees, agents, and representatives who participate in certain duties related to the subject matter of the proposed complaint and order, and to secure statements acknowledging receipt of the order.

Part V requires Apple to notify the Commission of corporate changes that may affect compliance obligations within 14 days of such a change. Part VI requires Apple to submit a compliance report 90 days after March 31, 2014, the date by which Apple is required to come into full compliance with Part I of the order. It also requires Apple to submit additional compliance reports within 10 business days of a written request by the Commission. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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