

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Andrew N. Finkel, File No. 102-3206

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Andrew N. Finkel (“respondent”).

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 Acne Pwner which respondent developed and sold in Google’s Android Marketplace. Respondent claimed that Acne Pwner 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 a few minutes each day.

The Commission’s complaint alleges that respondent violated Sections 5 and 12 of the FTC Act by claiming, without substantiation, that the app provided an effective treatment for acne.

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

Part II of the order requires respondent to have competent and reliable scientific evidence before making any safety, performance, benefits, or efficacy claim about any device.

Part III of the order requires respondent, within 15 days of the date the order becomes final, to pay the Commission \$1,700.

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 of compliance 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.