

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of

APPLE INC., a corporation.

DOCKET NO. C-4444

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and Respondent 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 Respondent with a violation of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq*; and

Respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits 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 has reason to believe that Respondent has violated the FTC 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, and having duly considered any 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. Respondent Apple Inc. (“Apple”) is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. “**Account Holder**” means an individual or entity, with a billing address in the United States, that controls an account to which Apple may bill In-App Charges.
2. “**Application**” or “**App**” means any software application that can be installed on a mobile device.
3. “**Clear and Conspicuous**” or “**Clearly and Conspicuously**” means:
 - A. In textual communications, the disclosure must be in a noticeable type, size, and location, using language and syntax comprehensible to an ordinary consumer;
 - B. In communications disseminated orally or through audible means, the disclosure must be delivered in a volume, cadence, language, and syntax sufficient for an ordinary consumer to hear and comprehend them;
 - C. In communications disseminated through video means: (1) written disclosures must be in a form consistent with definition 3.A and appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and be in the same language as the predominant language that is used in the communication; and (2) audio disclosures must be consistent with definition 3.B; and
 - D. The disclosure cannot be combined with other text or information that is unrelated or immaterial to the subject matter of the disclosure. No other representation(s) may be contrary to, inconsistent with, or in mitigation of, the disclosure.
4. “**Defendant**” means Apple Inc. and its successors and assigns.

5. **“Express, Informed Consent”** means, upon being presented with options to provide or withhold consent, an affirmative act communicating informed authorization of In-App Charge(s), made proximate to an In-App Activity for which there is an In-App Charge and to Apple’s Clear and Conspicuous disclosure of all material information related to the billing, including:

A. If consent is sought for a specific In-App Charge: (1) the In-App Activity associated with the charge (as provided to Apple by the App’s developer); (2) the specific amount of the charge; and (3) the account that will be billed for the charge; or

B. If consent is sought for potential future In-App Charges: (1) the scope of the charges for which consent is sought, including the duration and Apps to which consent applies; (2) the account that will be billed for the charge; and (3) method(s) through which the Account Holder can revoke or otherwise modify the scope of consent on the device, including an immediate means to access the method(s).

Provided that the solicitation of the “affirmative act” and the disclosure of the information in definitions 5.A and 5.B above must be reasonably calculated to ensure that the person providing Express, Informed Consent is the Account Holder.

Provided also that if Apple obtains Express, Informed Consent to potential future In-App Charges as set forth in definition 5.B above, it must do so a minimum of once per mobile device.

6. **“In-App Activity”** or **“In-App Activities”** means any user conduct within an App including the acquisition of real or virtual currency, goods, or services, or other Apps.

7. **“In-App Charge”** means a charge associated with In-App Activity billed by Apple.

8. **“Consumer Redress Period”** means the twelve (12) month period of time between the entry and the first anniversary of this order.

I.

IT IS FURTHER ORDERED that Apple and its officers, agents, and employees, and all other persons in active concert or participation with it, who receive actual notice of this order, whether acting directly or indirectly, are restrained and enjoined for the term of this order from billing an account for any In-App Charge without having obtained Express, Informed Consent to Apple’s billing that account for the In-App Charge. If Apple seeks and obtains Express, Informed Consent to billing potential future charges for In-App Activities, Apple must allow the Account Holder to revoke such consent at any time. Apple shall fully comply with this Section I by no later than March 31, 2014.

II.

IT IS FURTHER ORDERED that Apple shall provide full refunds to Account Holders who have been billed by Apple for unauthorized In-App Charges incurred by minors as follows:

A. Apple shall provide prompt refunds to Account Holders for the full purchase price of any Eligible In-App Charge(s). For purposes of this Section II, an “Eligible In-App Charge” is an In-App Charge that the Account Holder indicates was incurred by a minor and was accidental or not authorized by the Account Holder. For purposes of this Section II.A, a “prompt” refund means a refund provided within the later of fourteen (14) days of a request for refund of an Eligible In-App Charge by the Account Holder or the completion of a fraud investigation. Apple may decline a refund request for an Eligible In-App Charge only if it has sufficient credible evidence that the refund request is fraudulent. Apple may process all refund requests through its customer service channels, which include a contact phone number and web form through which consumers may contact Apple directly.

B. Apple shall refund no less than \$32,500,000.00 for Eligible In-App Charges pursuant to section II.A of this order, and such amount shall not constitute a penalty. Solely for the purposes of this section II.B of this order, Apple may approximate that 50% of all refunds provided to Account Holders for In-App Charges relate to Eligible In-App Charges.

C. Within thirty (30) days of the end of the Consumer Redress Period, Apple shall provide the Commission with records sufficient to show the refunds requested and paid to Account Holders for In-App Charges during the Consumer Redress Period, and any requests that were denied under Section II.A of this order.

D. If Apple fails to refund \$32,500,000.00 pursuant to section II.B of this order, the balance of that amount shall be remitted to the Commission within forty-five (45) days of the end of the Consumer Redress Period.

E. All funds paid to the Commission pursuant to section II.D of this order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, at the Commission’s sole discretion, for informational remedies regarding In-App Charges by children or consumer redress and any attendant expenses for the administration of any redress fund. Any money not used for such purposes shall be deposited to the United States Treasury. Apple shall have no right to challenge the Commission’s choice of remedies under this Paragraph.

F. Apple shall provide an electronic notice to any Account Holder who has made an In-App Purchase prior to March 31, 2014. Apple shall send such notice within fifteen (15) days after March 31, 2014. The electronic notice shall include a subject line relating to the content of the notice and contain the following information, disclosed in a Clear and Conspicuous manner and in writing: (1) that refunds are available for Account Holders that have been billed for In-App Charges incurred by minors that were accidental or not authorized by the Account Holder, (2) that such refunds are available until the end of the Consumer Redress Period, and (3) instructions regarding how to obtain refunds pursuant to section II.A of this order, including

means of contacting Apple for a refund. Apple shall send the notice to the current or last known email address for the Account Holder.

G. Sections II.A and II.B of this order shall be effective beginning on the date that the order is entered, and will terminate at the end of the Consumer Redress Period.

III.

IT IS FURTHER ORDERED that Respondent and its successors and assigns for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to:

- A. All consumer complaints conveyed to Respondent, or forwarded to Respondent by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;
- B. Refund requests related to In-App Charges, and refunds paid by Respondent related to In-App Charges; and
- C. Records necessary to demonstrate full compliance with each provision of this order.

IV.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall deliver a copy (written or electronic) of this order to all current and future principals, officers, and corporate directors, and to all current and future managers, employees, agents, and representatives who participate in the design or implementation of Respondent's process through which Account Holders incur In-App Charges; the billing by Respondent of such charges; or Respondent's customer service relating to such charges, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent 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.

V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall notify the Commission within fourteen (14) days of any change in the corporation 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. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that Respondent or its successors and assigns shall, ninety (90) days after March 31, 2014, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. Within ten (10) business days of receipt of a written notice from a representative of the Commission, Respondent shall submit additional compliance reports.

VII.

This order will terminate on March 25, 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; and
- B. 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. Respondent may seek modification of this order pursuant to 15 U.S.C. § 45(b) and 16 C.F.R. 2.51(b) to address relevant developments that affect compliance with this order, including, but not limited to, technological changes and changes in methods of obtaining Express, Informed Consent.

By the Commission, Commissioner Wright dissenting.

Donald S. Clark
Secretary

SEAL:
ISSUED: March 25, 2014