

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of Goldenshores Technologies, LLC, File No. 132 3087

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, 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 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.