

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

In the Matter of

**TAPJOY, INC.,
a corporation.**

FILE NO. 1723092

**AGREEMENT CONTAINING
CONSENT ORDER**

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Tapjoy, Inc. (“Proposed Respondent”). The Commission’s Bureau of Consumer Protection (“BCP”) has prepared a draft of an administrative Complaint (“draft Complaint”). BCP and Proposed Respondent, through its duly authorized officer, enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

IT IS HEREBY AGREED by and between Proposed Respondent and BCP, that:

1. The Proposed Respondent is Tapjoy, Inc., a Delaware corporation with its principal office or place of business at 353 Sacramento Street, 6th Floor, San Francisco, CA 94111.
2. Proposed Respondent neither admits nor denies any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.
3. Proposed Respondent waives:
 - a. Any further procedural steps; and
 - b. The requirement that the Commission’s Decision contain a statement of findings of fact and conclusions of law.
4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission’s Rules, 16 C.F.R. § 2.34 (“Rule 2.34”).

5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Rule 2.34, the Commission may, without further notice to Proposed Respondent: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondent agrees that service of the Order may be effected by its publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondent waives any rights it may have to any other manner of service. *See* Rule 4.4.

6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

8. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order. Proposed Respondent understands that it may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

TAPJOY, INC.

FEDERAL TRADE COMMISSION

By: _____
Jeffrey B. Drobick
President and C.E.O.

By: _____
Matthew H. Wernz
Matthew G. Schiltz
Attorneys, Bureau of Consumer Protection

Date: _____

APPROVED:

David E. Mills
Travis LeBlanc
Cooley LLP
Attorneys for Proposed Respondent

Todd M. Kossow
Regional Director
Midwest Region

Date: _____

Jason Adler
Assistant Regional Director
Midwest Region

Andrew Smith
Director
Bureau of Consumer Protection

Date: _____

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Rohit Chopra
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

<p>In the Matter of</p> <p>TAPJOY, INC., a corporation.</p>

DECISION AND ORDER

DOCKET NO. C-

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondent is Tapjoy, Inc., a Delaware corporation with its principal office or place of business at 353 Sacramento Street, 6th Floor, San Francisco, CA 94111.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. “Advertiser” means any third-party person, company, or entity that advertises, markets, promotes, offers for sale, or sells any good or service in connection with the promotion or offer of a Reward.
- B. “Clearly and Conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“triggering representation”) is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- C. “Gameplay Reward” means a Reward issued after and only in exchange for completing a specified level or challenge within the gameplay of a mobile application.
- D. “Respondent” means Tapjoy, Inc., a corporation, and its successors and assigns.
- E. “Reward” means virtual currency usable within a mobile application.
- F. “Video Reward” means a Reward automatically issued immediately after and in exchange only for viewing a promotional video.

Provisions

I. Prohibited Business Practices

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the promotion or display of any offer of a Reward, must not:

- A. misrepresent expressly or by implication:
1. That consumers will receive a Reward;
 2. The requirements for consumers to receive a Reward;
 3. When consumers will receive a Reward; or
 4. Any other fact material to consumers concerning the receipt of a Reward.
- B. fail to disclose, Clearly and Conspicuously, and in close proximity to such promotion or display of any offer of a Reward (other than a Video Reward):
1. that an Advertiser determines whether a Reward shall issue; and
 2. when consumers are likely to receive the Reward;
- C. before the initial promotion or offer of any Reward (other than a Video Reward) in conjunction with any Advertiser, fail to obtain the Advertiser’s express written agreement that it will prominently disclose all material terms and conditions applicable to any promotion or offer of a Reward, notify Respondent in writing of any material change to

those terms and conditions, not misrepresent any material aspect of those terms and conditions, and will comply with all applicable laws in connection with the promotion or offer of a Reward;

- D. before the initial promotion or offer of any Reward (other than a Video Reward), and upon notice of any material change to any of the items listed in Paragraph D(1) of this Provision for such Reward, fail to:
1. obtain (i) all materials to be used in connection with the promotion or offer of the Reward, including text, graphic, video, audio, and photographs; (ii) the URL of any hyperlink contained in the promotion or offer of the Reward; (iii) all terms and conditions applicable to the promotion or offer of the Reward; and (iv) the instructions that state what a consumer must do to obtain the Reward;
 2. use the information described in Paragraph D(1) of this Provision to attempt to obtain the Reward; and
 3. validate based on successfully obtaining the Reward sought in Paragraph D(2) of this Provision that (i) all material terms and conditions applicable to the promotion or offer of the Reward, and all instructions to obtain the Reward, are Clearly and Conspicuously disclosed and non-misleading; and (ii) the offered Reward is delivered upon completion of the required actions or, if the promotion or offer specifies a time period within which the Reward will likely be delivered, within such specified time;
- E. fail to provide a prominently disclosed and easy-to-use method by which consumers may submit support requests to Respondent; or
- F. fail to promptly investigate any pattern of consumer support requests, offer-conversion data, or other information indicating that, for a particular promotion or offer of a Reward, the requirements of Paragraph D(3)(i) or (ii) of this Provision are not being satisfied, which investigation shall be documented in writing and at minimum entail:
1. repeating the steps described in Paragraphs D(1)-(3) of this Provision for the promotion or offer of the Reward (other than a Video Reward), *provided, however*, that repeating such steps shall be required for Gameplay Rewards only as necessary to confirm that Paragraphs D(3)(i) and (ii) of this Provision are satisfied;
 2. promptly ceasing the promotion or offer of a Reward upon any finding by Respondent that Paragraph D(3)(i) or (ii) of this Provision and the terms of this Order are not satisfied for that particular promotion or offer, until Respondent confirms such promotion or offer of a Reward is corrected to bring it into compliance with Paragraphs D(3)(i) and (ii) of this Provision and the terms of this Order;
 3. promptly and permanently ceasing to do business with any Advertiser if the findings of any investigation by Respondent indicate that the Advertiser has committed fraud; and

4. promptly and permanently ceasing to do business related to Rewards with an Advertiser if the findings of any investigation by Respondent indicate a pattern of violations by that Advertiser of the requirements imposed under Paragraph D(3)(i) of this Provision with respect to more than one promotion or offer of a Reward.

II. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

III. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 10 years after the issuance date of this Order, Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a)

any designated point of contact; or (b) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must 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 re *Tapjoy, Inc.*, FTC File No. 1723092.

IV. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and customer support requests related to a Reward, whether received directly or indirectly, such as through a third party, and any response;
- D. records obtained or created pursuant to Provision I(F) of this Order, including all information obtained to conduct any investigation and the outcome of each such investigation;
- E. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

- F. a copy of each unique advertisement or other marketing material making a representation subject to this Order.

V. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VI. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

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 Provision 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.

April Tabor
Acting Secretary

SEAL:
ISSUED: