

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

ANDREW N. FINKEL, individually.

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) **DOCKET NO. C-4338**
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COMPLAINT

The Federal Trade Commission, having reason to believe that Andrew N. Finkel (“respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Andrew N. Finkel (“Finkel”) is the developer, marketer, or seller of a mobile software application called “Acne Pwner.” At all times relevant to this complaint, Finkel, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices alleged in this complaint. His principal office or place of business is located in Rochester, New York.
2. Finkel has developed, labeled, advertised, promoted, offered for sale, sold, and distributed Acne Pwner to consumers, including teens, through the Android Marketplace, an electronic retail platform operated by Google, Inc., from at least February 1, 2010 and continuing thereafter. From February 1, 2010 through October 8, 2010, there were approximately 3,300 downloads of Acne Pwner.
3. Acne Pwner is a “device” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
4. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

5. Respondent has disseminated or caused to be disseminated advertisements for Acne Pwner through the Android Marketplace, including, but not limited to, the advertisement in the attached Exhibit A. This advertisement contains the following statements and depictions:

Pre-Download Advertisement: (Exhibit A - website print screen capture)

Kill ACNE with this simple, yet powerful tool!

“Light exposure has long been used as a short term treatment for acne. Recently, visible light has been successfully employed to treat mild to moderate acne.”

Blue frequency (Bacteria)
Red frequency (Healing)
Amber frequency (Repair) !NEW!

Keys: ZIT SKIN HEALTH SEX EASY FUN

{REVIEWS}

* * *

6. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that Acne Pwner is an effective treatment for acne.

7. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that he possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

THEREFORE, the Federal Trade Commission, this thirteenth day of October, 2011, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL