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<sup>1</sup> The Commission has voted to accept for public comment a consent agreement with the sole respondent in *In the Matter of Health Discovery Corporation* (addressing the MelApp mobile app). In *FTC v. Avrom Boris Lasarow, et al.* (addressing the Mole Detective mobile app), the Commission has authorized the filing of a federal court complaint against four defendants and approved a proposed settlement with two of those defendants, Kristi Zuhlke Kimball and New Consumer Solutions LLC.

<sup>2</sup> See MelApp Complaint ¶ 6(A).

<sup>3</sup> See Mole Detective Complaint ¶¶ 18(A)-(B), 18(D); Ex. A-2

melanoma and increase the chance of detecting skin cancer in its early stages. Because the defendants and the respondent lacked substantiation for those claims, we have reason to believe they violated Section 5. Thus, it is not necessary to hypothesize about what implied claims, such as the accuracy relative to different types of assessments, consumers may have read into the advertising.

Commissioner Ohlhausen also suggests that the orders would, *de facto*, require any future app the advertisers market to be as accurate as a dermatologist or biopsy. Again, we respectfully disagree. The orders do not prescribe a particular level of accuracy the apps must achieve prior to being marketed; rather, they require scientific testing demonstrating accuracy at a level appropriate to the claims being made.<sup>5</sup> Thus, if scientific testing demonstrates that the app is accurate 60% of the time, the advertisers would be able to make a 60% accuracy claim. It would be incumbent upon these marketers to make sure that their advertising conveyed that level of accuracy and did not suggest a stronger level of science to reasonable consumers.

Technologies such as health-related mobile apps have the potential to provide tremendous conveniences and benefits to consumers. However, the same rules of the road apply to all media and technologies – advertisers must have substantiation to back up their claims. The Commission will continue to hold advertisers accountable for the promises they make to consumers, especially when they pertain to diseases and other serious health conditions.

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