FEDERAL TRADE COMMISSION

[File No. 142 3132]

Carrot Neurotechnology, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before October 19, 2015.

ADDRESSES: Interested parties may file a comment at https://ftcpublic.commentworks.com/ftc/carrotneurotechconsent online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Carrot Neurotechnology, Inc. - Consent Agreement; File No. 1423132" on your comment and file your comment online at https://ftcpublic.commentworks.com/ftc/carrotneurotechconsent by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Carrot Neurotechnology, Inc. - Consent Agreement; File No. 1423132" on your comment and on the

envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Mandel, Bureau of Consumer Protection, (202) 326-2491, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 17, 2015), on the World Wide Web at: http://www.ftc.gov/os/actions.shtm.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 19, 2015. Write "Carrot Neurotechnology, Inc. - Consent Agreement; File No. 1423132" on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at http://www.ftc.gov/os/publiccomments.shtm. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at https://ftcpublic.commentworks.com/ftc/carrotneurotechconsent by following the instructions on the web-based form. If this Notice appears at http://www.regulations.gov/#!home, you also may file a comment through that website.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

If you file your comment on paper, write "Carrot Neurotechnology, Inc. - Consent Agreement; File No. 1423132" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at http://www.ftc.gov to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 19, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at http://www.ftc.gov/ftc/privacy.htm.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to Carrot Neurotechnology, Inc., Adam Goldberg, and Aaron Seitz (hereafter "respondents").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondents' advertising for the Ultimeyes software application. The Commission's complaint alleges that the respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. sections 45(a), 52, by representing,

either falsely or without adequate substantiation, that Ultimeyes substantially improves users' vision, including that it: improves the vision of users, including people of all ages, genders, and visual abilities; improves vision with real world benefits, including benefits across a broad range of activities ranging from athletics to more routine lifestyle activities, such as reading, watching TV, and driving; improves vision on average by 31% and two lines on the Snellen eye chart, and improves contrast sensitivity by 100%; and reverses, delays, or corrects aging eye or presbyopia, including, but not limited to, by improving night vision, improving users' ability to read in dim light, and diminishing the need for glasses or other visual aids. The complaint also alleges that the respondents violated Sections 5(a) and 12 by making the false or misleading representation that scientific testing proves that Ultimeyes improves vision in the above ways.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. The order applies to marketing claims for any Covered Product or Service, defined as any Device within the meaning of Sections 12 and 15 of the FTC Act, 15 U.S.C. sections 52, 55, or any program or service that is: (1) Intended for use in the diagnosis of disease or other condition, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or (2) intended to affect the structure or any function of the body of man or other animals; and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes. As additional fencing-in relief, the order requires the respondents to follow appropriate recordkeeping and compliance reporting requirements, as well as document preservation requirements for human clinical studies that it conducts or sponsors on any Covered Product or Service.

Part I prohibits any representation that a Covered Product or Service improves users' vision, unless it is non-misleading and supported by competent and reliable scientific evidence.

Such evidence must consist of human clinical testing of the Covered Product or Service that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant field, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall (1) be randomized, double-blind, and adequately controlled; and (2) be conducted by researchers qualified by training and experience to conduct such testing. In addition, the respondents must maintain all underlying or supporting data that experts in the relevant field generally would accept as relevant to an assessment of such testing.

Part II prohibits any representation about the health benefits, performance, efficacy, safety, or side effects of any Covered Product or Service, unless it is non-misleading and supported by competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons; and that are generally accepted in the profession to yield accurate and reliable results. When that evidence consists of human clinical tests or studies, the respondents must maintain all underlying or supporting data and documents that experts in the relevant field generally would accept as relevant to an assessment of such testing.

Part III, triggered when the human clinical testing requirement in Parts I or II applies, requires the respondents to secure and preserve all underlying or supporting data and documents generally accepted by experts in the relevant field as relevant to an assessment of the test, such as protocols, instructions, participant-specific data, statistical analyses, and contracts with the test's researchers. There is an exception for a "Reliably Reported" test, defined as a test that is

published in a peer-reviewed journal and that was not conducted, controlled, or sponsored by any respondent or by any supplier of the respondents. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part IV prohibits the respondents from misrepresenting, including through the use of a name, endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or that any benefits of a product, program, or service are scientifically proven.

Part V requires the respondents to disclose, when triggered by certain representations as to scientific support or endorsements in connection with the advertisement or sale of any product, program, or service, any material connections to any person that has conducted, authored, or participated in any test, study, or research of the product, program, or service; and all material connections between a person providing an endorsement and respondents or any other person manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product, program, or service.

Part VI provides the respondents will pay an equitable monetary payment of $150,000 and contains other provisions related to the payment.

Part VII requires the respondents to provide sufficient customer information to administer redress.

Part VIII contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III, as well as order acknowledgments covered by Part IX.

Parts IX through XI require the respondents to deliver a copy of the order to officers, employees, and representatives having managerial responsibilities with respect to the order's

subject matter, notify the Commission of changes in corporate structure that might affect compliance obligations, and file compliance reports with the Commission.

Part XII provides that, with exceptions, the order will terminate in twenty years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

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