

# CONSENT ORDER PROCESSING

## OFFICE OF CONSUMER PROTECTION

Name of Business/Subject DOKOGEO, INC. (Dokobots)

See caption \_\_\_\_\_

Address 665 Chestnut Street City San Francisco State CA ZIP code 94133

Telephone number \_\_\_\_\_ Email \_\_\_\_\_

DAG: Jah-Juin Ho       Supervisor: Laurie Goodman       Investigator: Brian Morgenstern

Docket number / Complaint number: \_\_\_\_\_ Regulated / Licensed Business: \_\_\_\_\_

Statute / Regulation cite number:

56:8-1    45:17A-18    34:8-43    13:45 \_\_\_\_\_

45:14D-1    COPPA - Children's Online Privacy Protection Act

Nature of violation: Children's online privacy

### Type of Case (CMT to Complete)

OCP (All other accounts)

OCP (Kosher / Enforcement)

OCP (Task Force)

HIC (All other accounts)

HIC (Task Force)

Charities (All other accounts)

RGB (All other accounts)

RGB (Health Clubs)

RGB (Home Healthcare)

RGB (Public Movers)

RGB (Temp help)

RGB (Ticket Brokers)

W & M

Other \_\_\_\_\_

### Payment Terms

Penalty \$ \_\_\_\_\_

In lieu of penalty \$ \_\_\_\_\_

Suspended penalty \$ 25,000.00

Net penalty due \$ \_\_\_\_\_

Investigative cost \$ \_\_\_\_\_

Attorney fees \$ \_\_\_\_\_

Restitution \$ \_\_\_\_\_

CALA cost \$ \_\_\_\_\_

CALA penalty \$ \_\_\_\_\_

Other DCA agency \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

### Restitution processing N/A

Sent directly to consumer by Subject with proof to OCP

Sent by Investigator

Sent by CMT

### Payment Schedule N/A

Payment due in full by \_\_\_\_\_

Initial payment due \_\_\_\_\_

Monthly payment terms \_\_\_\_\_ payments of \$ \_\_\_\_\_

**Future handling of complaints through ADR:**     Yes     No

|                                                        |                              |                                                  |
|--------------------------------------------------------|------------------------------|--------------------------------------------------|
| Name <u>Brian Morgenstern</u>                          | <input type="checkbox"/> DAG | <input checked="" type="checkbox"/> Investigator |
| Signature <u>[Signature]</u>                           | Date _____                   |                                                  |
| Name of Investigative Supervisor <u>Laurie Goodman</u> |                              |                                                  |
| Signature <u>[Signature]</u>                           | Date <u>11/14/2013</u>       |                                                  |
| Assistant Deputy of Enforcement _____                  | Date <u>11/14/13</u>         |                                                  |

**Do not write below this line**

Date to Director \_\_\_\_\_     Date returned \_\_\_\_\_     Date routed \_\_\_\_\_

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Division of Consumer Affairs

**FILED**

NOV 13 2013

**Division of Consumer Affairs**

By: Jah-Juin Ho  
Deputy Attorney General  
(973) 648-2500

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

DOKOGEO, INC.

Respondent.

Administrative Action  
No. \_\_\_\_\_

**CONSENT ORDER**

This matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. § 6501-6506, and the Children's Online Privacy Protection Rule ("COPPA Rule"), 16 C.F.R. Part 312, and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") have been or are being committed by Dokogeo, Inc. ("Dokogeo" or "Respondent") (collectively the Division and Respondent, the "Parties").

In the interest of settling this matter without incurring the time and expense of litigation and trial, both the Division and Respondent have agreed to enter into a Consent Order as set forth below.

## 1. BACKGROUND

1.1 COPPA was enacted in 1998 in response to Congressional concern that commercial websites were collecting and disseminating the personal information of children without disclosing that activity and obtaining parental consent.

1.2 To address the growing and ever-changing concerns of children's online privacy, Congress directed the FTC to promulgate rules to implement COPPA. 15 U.S.C. § 6502(b).

1.3 The COPPA Rule governs the collection, use, and/or disclosure of personal information from and about children online. Under the COPPA Rule, an operator of a website or online service directed at children must:

- (a) Post a privacy policy informing parents as to the types of information it collects from children, how it uses such information, and its disclosure practices of such information;
- (b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children;
- (c) Provide a reasonable means for a parent to review the personal information collected from a child;
- (d) Provide a reasonable means for a parent to refuse to permit the further collection, use, or maintenance of such personal information;
- (e) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and
- (f) Establish and maintain reasonable procedures to protect the confidentiality, security and integrity of personal information collected from children.

1.4 Where the Attorney General has reason to believe that an interest of the residents of his State is being threatened or adversely affected by a practice in violation of the COPPA and the COPPA Rule, he may, as *parens patriae*, bring a civil action to enjoin that practice, enforce

compliance with the COPPA and the COPPA Rule, and obtain injunctive and other relief pursuant to 15 U.S.C. § 1305(a).

1.5 Dokogeo is a California corporation, located at 665 Chestnut Street, San Francisco, California, which creates, develops, and distributes mobile device applications (“Apps”).

1.6 Dokogeo offers its Dokobots App for download on Apple, Inc.’s and Google Inc.’s App Stores and is rated for ages four-years old and up.

1.7 Dokobots is a geolocation scavenger hunt App that encourages users to visit new locations and gather “photos and notes from the people they meet.”

1.8 The Division alleges that the Dokobots App is directed to both children and adults through the use of animated cartoon characters. As such, the Division alleges that the Dokobots App is subject to the COPPA and the COPPA Rule.

1.9 The Dokobots App website, located at [www.dokobots.com](http://www.dokobots.com) (“Dokobots Website”), features an animated video which tells the story of the “DokoStar Exploratory Fleet Mothership” that was set adrift in space after it had depleted all its energy reserves during an exploratory mission. The mothership’s mission is saved when an initial survey finds intelligent life on Earth. However, there is not enough energy to activate the Dokobot fleet. They are forced to jettison their “cargo of inactive Dokobots and power cells in hopes that [the] local population will assist.” The mothership must “rely on the inhabitants of ‘Earth’ for help.” The video closes by exclaiming that: “**The Dokobots Need Your Help!**” Below, Figure 1 is a partial screen shot of the Dokobots Website.

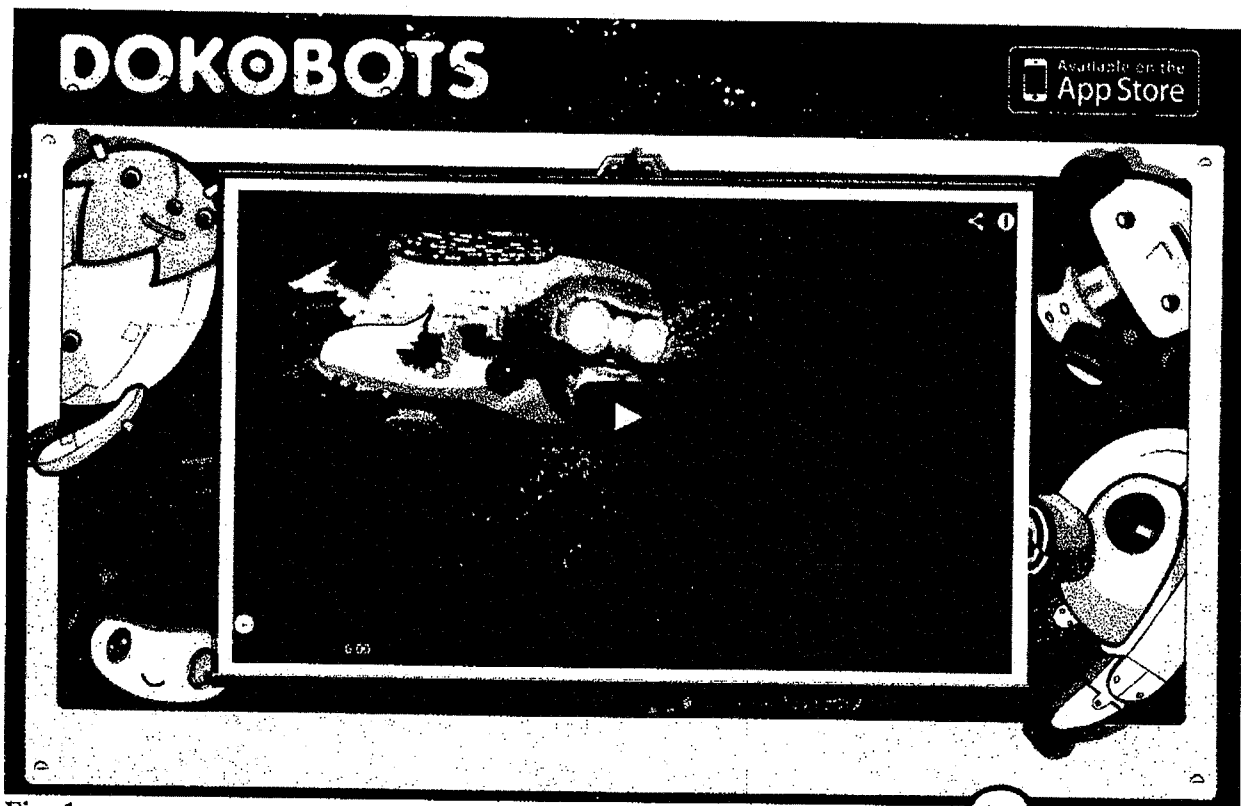


Fig. 1

1.10 Once users download and open the Dokobots App, they are assigned an inactive Dokobot. To activate their Dokobot, users are directed to create a profile, defining the name and function of their Dokobot. To complete the <sup>OPTIONAL</sup> account setup process, users are asked to create a personal username and enter their e-mail address and password.

1.11 Once users activate their Dokobot they can activate the geolocation “scanner” to “pick up traveling robot friends and help them in their journeys as they explore our planet.” The scanner locates other user-created Dokobots within an user’s immediate location. Users can pick up Dokobots near them and drop off the Dokobots at other locations they travel to. Users can also check the location of their own user-created Dokobot as others pick it up and drop it off.

1.12 Dokogeo also sells various game add-ons and upgrades through their Dokobots App. Through Dokogeo's in-App store, users are able to "fly" their Dokobots on Doko Air to different locations, purchase additional battery packs, and purchase inactive bots.

1.13 The Division alleges that the Dokobots App is directed to both children and adults. Respondent denies that the Dokobots App is directed to children.

1.14 The Division alleges that the Dokobots App collects information, including e-mail address, photographs, and geolocation information that would be considered "personal information" under COPPA and the COPPA Rule if collected from children.

1.15 Prior to the Division's investigation, the Dokobots App did not provide any neutral screen registration process to restrict the age of its users to those over the age of 13. Respondent does not have a terms of use agreement and its privacy policy does not disclose that the Dokobots App is restricted to users over the age of 13.

1.16 The Division alleges that the Dokobots App privacy policy, located at [www.dokobots.com/privacy](http://www.dokobots.com/privacy), does not obtain verifiable parental consent prior to the collection of personal information from children. Respondent denies that the Dokobots App was directed to children and therefore did not require verifiable parental consent.

1.17 The Division further alleges that Dokogeo does not offer a link to their privacy policy on their homepage, rendering it difficult for users to find information about Dokogeo's data collection practices.

1.18 Respondent denies that it has engaged in any unlawful or deceptive acts or practices in the conduct of its business within the State.

**IT IS ORDERED AND AGREED** as follows:

## **2. EFFECTIVE DATE**

2.1 This Consent Order is effective on the date that it is filed with the Division (“Effective Date”).

## **3. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

3.1 The terms “child,” “collects,” “collections,” “delete,” “disclosure,” “Internet,” “online contact information,” “operator,” “parent,” “person,” “personal information,” “third party,” “verifiable consent,” and “website or online service directed to children,” have the same meaning as those terms are defined in Section § 312.2 of the COPPA Rule, 16 C.F.R § 312.2.

3.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

3.3 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

3.4 “Covered Conduct” shall mean Dokogeo’s collection of the personal information of children under the age of 13 years through the Dokobots Apps.

3.5 "Person[s]," "Consumer," or "User" shall mean "Person" as defined in N.J.S.A. 56:8-1(d).

3.6 "Represent" shall mean to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "Represent" including, without limitation, "Representation" and "Misrepresent."

3.7 "State" shall refer to the State of New Jersey.

#### **4. INJUNCTIVE RELIEF**

4.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of their businesses in the State and shall comply with all applicable State and/or federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, COPPA, and the COPPA Rule.

4.2 Respondent shall not sell or otherwise distribute mobile device applications to any child under the age of 13 years without first complying with the requirements under COPPA and the COPPA Rule.

4.3 In its sale and/or distribution of Apps, Respondent shall clearly and conspicuously disclose, in its Apps and on the homepage of its websites, information about the types of personal information it collects, the manner it uses such information, and whether it discloses such information to third parties.

4.4 Respondent shall use commercially available tools and/or software to verify that all persons using any Apps which collect personal information, sold or otherwise distributed by Respondent are over the age of 13. Respondent shall comply with COPPA and the COPPA Rule



for all Apps directed at children under the age of 13. Respondent shall not collect the personal information of children under the age of 13, as defined in paragraph 3.1, during this verification process for any purpose other than to comply with the requirements of COPPA and the COPPA Rule.

4.5 Respondent represents that is has removed from the Dokobots Website, all photographs and files containing a child's image and all geolocation information of a child from July 1, 2013 through the Effective Date.

## **5. SETTLEMENT PAYMENT**

5.1 Respondent agrees to pay the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) to settle the Division's investigation into the Covered Conduct ("Settlement Payment").

5.2 The Settlement Payment of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) shall be immediately suspended and automatically vacated within ten years of the Effective Date ("Suspended Penalty"), provided:

- a. Respondent complies with the restraints and conditions set for in this Consent Order; and
- b. Respondent does not engage in any acts or practices in violation of the CFA or COPPA.

5.3 In the event Respondent fails to comply with the restraints and conditions of this Consent Order, the entire Suspended Penalty shall be immediately due and payable to the Division.

5.5 Upon making the Settlement Payment or Suspended Penalty payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies

paid. All interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

## **6. GENERAL PROVISIONS**

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, managers, agents, employees, representatives, subsidiaries, successors and assigns, and any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6.11 The Parties Represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

## **7. RELEASE**

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby releases Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for

violations of the CFA, COPPA, or COPPA Rule arising out of the Covered Conduct ("Released Claims").

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

#### **8. PENALTIES FOR FAILURE TO COMPLY**

8.1 The Attorney General (or designated representative) shall have authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order and the CFA shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties, as provided therein.

#### **9. COMPLIANCE WITH ALL LAWS**

9.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Attorney General or the Director may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Attorney General or the Director to obtain such information, documents or testimony.

**10. NOTICES UNDER THIS CONSENT ORDER**

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Attorney General and the Director or the Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Jah-Juin Ho, Deputy Attorney General  
Office of the Attorney General  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
Newark, New Jersey 07101

For the Respondent:

Cobalt LLP  
Tsan Abrahamson, Esq.  
918 Parker Street, Bldg A21  
Berkeley, California 94710

IT IS ON THE 13<sup>th</sup> DAY OF November, 2013 SO ORDERED.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY


By: \_\_\_\_\_

  
ERIC T. KANEFSKY, DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS  
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**

FOR DIVISION:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:   
\_\_\_\_\_  
Jah-Juin Ho  
Deputy Attorney General

Dated: November 12, 2013

FOR THE RESPONDENT:

DOKOGEO, INC.  
By:   
\_\_\_\_\_  
John-Paul Walton, Co-Founder

Dated: OCT 31, 2013

COBALT LLP  
Attorney for Respondent

By:   
\_\_\_\_\_  
Tsan Abrahamson, Esq.

Dated: Nov 8, 2013