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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **Oakland Division**

14 UNITED STATES OF AMERICA,)

15)

16 Plaintiff,)

17)

CV No. 08-0639

18 v.)

19 INDUSTRIOUS KID, INC.,)

20 a corporation,)

CONSENT DECREE AND ORDER FOR
CIVIL PENALTIES, INJUNCTION, AND
OTHER RELIEF

21 JEANETTE SYMONS,)

22 individually and as an officer)

23 of the corporation, and)

24 Defendants.)

25
26 WHEREAS the plaintiff, the United States of America, has commenced this action by

1 online service directed to children,” are defined as those terms are defined in Section 312.2 of
2 the Rule, 16 C.F.R. § 312.2.

3 6. For purposes of this Consent Decree, the term “blog” means a web-based
4 publication focusing on a particular subject or functioning as an online journal and typically
5 consisting of periodic entries containing text, images, and links to other web pages.

6 7. For purposes of this Complaint, a “blog hosting service” means a website or
7 online service that hosts blogs and often provides the software to use as a template for creating
8 blogs.

9 8. For purposes of this Consent Decree, “defendants” means Industrious Kid, Inc., a
10 corporation, and Jeanette Symons, individually and as an officer of the corporation.

11 **INJUNCTION**

12 9. The defendants, their successors and assigns, and their officers, agents, servants,
13 representatives, and employees, and all persons in active concert or participation with them who
14 receive actual notice of this Consent Decree by personal service or otherwise, are hereby
15 enjoined, directly or through any corporation, subsidiary, division, website, or other device,
16 from:

17 a. Failing to provide sufficient notice on any website or other online service
18 directed to children, or through which they, with actual knowledge,
19 collect, use, and/or disclose personal information from children, of what
20 information defendants collect online from children, how they use such
21 information, their disclosure practices, and all other required content, in
22 violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);

23 b. Failing to include in their direct notice to parents sufficient notice of what
24 information defendants collect online from children, how they use such
25 information, their disclosure practices, and all other required content, in
26 violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);

1 c. Failing to obtain verifiable parental consent before any collection, use,
2 and/or disclosure of personal information from children, in violation of
3 Section 312.5 of the Rule, 16 C.F.R. § 312.5(a)(1); or,

4 d. Violating any other provision of the Children’s Online Privacy Protection
5 Rule, 16 C.F.R. Part 312, and as the Rule may hereafter be amended. A
6 copy of the Rule is attached hereto as “Appendix A” and incorporated
7 herein as if fully set forth verbatim.

8 **CONSUMER EDUCATION REMEDIES**

9 10. For a period of five (5) years from the date of entry of this Consent Decree, the
10 defendants, and their successors and assigns, in connection with the operation of any website or
11 other online service directed to children or through which it, with actual knowledge, collects,
12 uses, and/or discloses personal information from children, shall place a clear and conspicuous
13 notice (1) within the privacy policy required to be posted on its website(s) by Section 312.4(b) of
14 the Rule, 16 C.F.R. § 312.4(b); (2) within the direct notice required to be sent to parents by
15 Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and (3) at each location on its website(s)
16 where personal information is collected, which states as follows in bold typeface:

17 **NOTICE: Visit www.ftc.gov/privacy for information from the Federal Trade**
18 **Commission about protecting children’s privacy online.**

19 Where the above notice is posted on a website or delivered via email or other electronic service,
20 it shall be in the form of a hyperlink to www.ftc.gov/privacy. The Federal Trade Commission
21 may change the hyperlink/URL upon thirty (30) days prior written notice to the defendants, their
22 successors or assigns.

23 11. For a period of five (5) years from the date of entry of this Consent Decree, the
24 defendants, and their successors and assigns, in connection with the operation of any blog or
25 blog hosting service, shall place a clear and conspicuous notice on the homepage(s) and privacy
26 notice(s) of their website(s), which states, in the form of a hyperlink in bold typeface, as follows:

1 Visit www.OnGuardOnline.gov for social networking safety tips for parents and
2 youth, <http://onguardonline.gov/socialnetworking> [“parents” must contain a
3 hyperlink to www.onguardonline.gov/socialnetworking.html, and “youth” must
4 contain a hyperlink to www.onguardonline.gov/socialnetworking_youth.html]

5 The Federal Trade Commission may change the hyperlinks/URLs upon thirty (30) days prior
6 written notice to the defendants, their successors or assigns.

7 CIVIL PENALTY

8 12. The defendants, and their successors and assigns, jointly and severally shall pay
9 to the plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. §
10 45(m)(1)(A), in the amount of One Hundred Thirty Thousand Dollars (\$130,000) due and
11 payable within five (5) days following entry of this Consent Decree. Unless otherwise directed,
12 payment shall be made by electronic fund transfer in accordance with procedures specified by
13 the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, DC
14 20530.

15 13. In the event of any default payment, which default continues for ten (10) days
16 beyond the due date of payment, the entire unpaid penalty, together with interest, as computed
17 pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately
18 become due and payable.

19 DELETION OF CHILDREN’S PERSONAL INFORMATION

20 14. The defendants, and their successors and assigns, within five (5) days from the
21 date of entry of this Consent Decree, shall delete all personal information collected and
22 maintained in violation of the Rule through the date of entry of this Consent Decree.

23 DISTRIBUTION OF ORDER AND COMPLIANCE GUIDE BY THE DEFENDANTS

24 15. The defendants, and their successors and assigns, within thirty (30) days from the
25 date of entry of this Consent Decree, shall provide a copy of this Consent Decree and the Federal
26 Trade Commission compliance guide entitled *How to Comply with the Children’s Online*

1 *Privacy Protection Rule* (Nov. 1999) (“compliance guide”) (attached hereto as “Appendix B”) to
2 each of its current principals, officers, directors, and managers; and to all current employees and
3 agents having responsibilities related to the operation of any website or online service subject to
4 this Consent Decree; and to all current representatives having responsibilities related to
5 compliance with this Consent Decree; and secure from each such person a signed statement
6 acknowledging receipt of a copy of this Consent Decree and the compliance guide. The
7 defendants shall, within ten (10) days of complying with this paragraph, submit to the
8 Commission a signed statement setting forth the fact and manner of the defendants’ compliance,
9 including the name and title of each person to whom a copy of the Consent Decree and
10 compliance guide has been provided.

11 16. The defendants, and their successors and assigns, for a period of three (3) years
12 from the date of entry of this Consent Decree, shall provide a copy of this Consent Decree and
13 the compliance guide to each of its future principals, officers, directors, and managers; and to all
14 future employees, agents, and representatives having responsibilities related to the operation of
15 any website or online service subject to this Consent Decree, and secure from each such person a
16 signed and dated statement acknowledging receipt of a copy of this Consent Decree and the
17 compliance guide, within thirty (30) days after the person assumes such position or
18 responsibilities. The defendants shall maintain copies of the signed statements, as well as other
19 information regarding the fact and manner of their compliance, including the name and title of
20 each person to whom a copy of the Consent Decree and compliance guide has been provided
21 and, upon request, shall make the statements and other information available to the Commission.

22 **COMPLIANCE REPORTING BY THE DEFENDANTS**

23 17. In order that compliance with the provisions of this Consent Decree may be
24 monitored:

- 25 a. For a period of three (3) years from the date of entry of this Consent
26 Decree,

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- i. Individual defendant Symons shall notify the Commission of the following:
 - (1) Any changes in her residence addresses, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
 - (2) Any changes in her employment status (including self-employment), and any change in her ownership in any business entity that may affect compliance obligations arising under this Consent Decree, within thirty (30) days of the date of such change. Such notice shall include the name and address of each business that the defendant is affiliated with, employed by, creates, forms, or performs services for; a statement of the nature of the business; and a statement of her duties and responsibilities in connection with the business or employment; and
 - (3) Any changes in the defendant's name; and
- ii. Each defendant shall notify the Commission of any changes in corporate structure of the corporate defendant, or any business entity that defendant Symons directly or indirectly controls or has an ownership interest in, that may affect compliance obligations arising under this Consent Decree, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with

1 respect to any proposed change in the corporation about which a
2 defendant learns less than thirty (30) days prior to the date such
3 action is to take place, such defendant shall notify the Commission
4 as soon as is practicable after obtaining such knowledge.

5 b. Sixty (60) days after the date of entry of this Consent Decree and at such
6 times as the Federal Trade Commission shall reasonably require, the
7 defendants each shall provide a written report to the Commission, sworn
8 to under penalty of perjury, setting forth in detail the manner and form in
9 which they have complied and are complying with this Consent Decree.

10 This report shall include, but not be limited to:

11 i. For individual defendant Symons:

12 (1) Her then-current residence addresses, mailing addresses, and
13 telephone numbers; and

14 (2) Her then-current employment and business addresses and
15 telephone numbers; a description of the business activities of each
16 such employer or business, and the title and responsibilities of the
17 defendant for each such employer or business.

18 ii. For all defendants:

19 (1) a statement setting forth in detail the criteria and process through
20 which any of their websites register visitors online for any activity
21 requiring the submission of personal information, and a copy of
22 each different screen or page providing or collecting registration
23 information;

24 (2) a copy of each different privacy notice posted on any of their
25 websites;

26 (3) a statement setting forth in detail each place where the privacy

1 notice on any website is located and a copy of each screen or page
2 on which the website collects personal information;

3 (4) a copy of each different privacy notice sent to parents;

4 (5) a statement setting forth in detail when and how each notice to
5 parents is provided;

6 (6) a statement setting forth in detail the methods used to obtain
7 verifiable parental consent prior to any collection, use, and/or
8 disclosure of personal information from children;

9 (7) a statement setting forth in detail the means provided for parents to
10 review the personal information collected from their children and
11 to refuse to permit its further use or maintenance;

12 (8) a statement setting forth in detail why each type of information
13 collected from a child is reasonably necessary for the provision of
14 the particular related activity; and

15 (9) a statement setting forth in detail the procedures used to protect the
16 confidentiality, security, and integrity of personal information
17 collected from children.

18
19 c. For the purposes of this Consent Decree, the defendants shall, unless
20 otherwise directed by the Commission's representatives, mail all written
21 notifications to the Commission to:

22 Associate Director for Enforcement
23 Federal Trade Commission
24 600 Pennsylvania Avenue, NW
25 Washington, D.C. 20580
26 Re: *U.S. v. Industrious Kid, Inc.*, Civil Action No. 08-0639.

1 **RECORD-KEEPING PROVISIONS**

2 18. For a period of three (3) years from the date of entry of this Consent Decree, the
3 defendants, and their successors and assigns, shall maintain, and make available to the Federal
4 Trade Commission for inspection and copying within fourteen (14) days of the date of receipt of
5 a written request, a print or electronic copy in HTML format of all documents demonstrating
6 compliance with the terms and provisions of this Consent Decree, including, but not limited to,
7 copies of acknowledgments of receipt of this Consent Decree; all reports submitted to the
8 Commission pursuant to this Consent Decree; a sample copy of every different form, web page,
9 or screen through which personal information is collected; and a sample copy of each different
10 document containing any representation regarding the defendants' collection, use, and disclosure
11 practices pertaining to personal information of a child. Each web page copy shall be
12 accompanied by the URL of the web page where the material was posted online. Electronic
13 copies shall include all text and graphics files, audio scripts, and other computer files used in
14 presenting information on the Internet. *Provided*, however, that the defendants shall not be
15 required to retain any document for longer than two (2) years after the document was created, or
16 to retain a print or electronic copy of any amended web page or screen to the extent that the
17 amendment does not affect the defendants' compliance obligations under this Consent Decree.

18 **PROVISION OF TAXPAYER IDENTIFYING NUMBERS**

19 19. Defendant, Industrious Kid, Inc., is hereby required, in accordance with 31 U.S.C.
20 § 7701, to furnish to the Federal Trade Commission its taxpayer identifying number, which shall
21 be used for purposes of collecting and reporting on any delinquent amount arising out of its
22 relationship with the government.

23 **CONTINUING JURISDICTION**

24 20. This Court shall retain jurisdiction of this matter for the purposes of enabling any
25 of the parties to this Consent Decree to apply to the Court at any time for such further orders or
26 directives as may be necessary or appropriate for the interpretation or modification of this

1 Consent Decree, for the enforcement of compliance therewith, or for the punishment of
2 violations thereof.

3 **JUDGMENT IS THEREFORE ENTERED** in favor of the plaintiff and against the
4 defendants, pursuant to all the terms and conditions recited above.

5 Dated this _____ day of _____, 2008.

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9 _____
UNITED STATES DISTRICT JUDGE

10 The parties, by their counsel, hereby consent to the terms and conditions of the Consent
11 Decree as set forth above and consent to the entry thereof. The defendants waive any rights that
12 may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation
13 and prosecution of this action.
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FOR THE UNITED STATES OF AMERICA:

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice

EUGENE M. THIROLF
Director
KENNETH L. JOST
Deputy Director,
Office of Consumer Litigation

_____/s/_____
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FOR THE FEDERAL TRADE COMMISSION:

_____/s/_____
MAMIE KRESSES
PHYLLIS HURWITZ MARCUS
Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-2070/2854 (voice)
(202) 326-3259 (fax)

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FOR THE DEFENDANTS:

INDUSTRIOUS KID, INC.

_____/s/_____
JEANETTE SYMONS
President and Chief Executive Officer
Industrious Kid, Inc.
311 Oak Street, Suite 104
Oakland, California 94607

_____/s/_____
RANDAL M. SHAHEEN, ESQ.
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5734 (voice)
(202) 942-5999 (fax)
Attorney for defendant Industrious Kid, Inc.

_____/s/_____
JEANETTE SYMONS, individually and as an officer
of the corporation