UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

FEDERAL TRADE COMMISSION,

                Plaintiff,

      v.

FROSTWIRE LLC, a Florida Limited
Liability Company; and

ANGEL LEON, individually and as
managing member of Frostwire LLC,

                Defendants.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1.   The FTC brings this action under Section 13(b) of the Federal Trade Commission

Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief and other equitable

relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a). As alleged herein, Defendants' FrostWire for Android mobile file-sharing application

was likely to cause a significant number of consumers installing and running it to unwittingly

share personal files stored on their mobile computing devices with the public. Moreover, in their

FrostWire desktop file-sharing application, Defendants misrepresented that certain files

consumers downloaded from a file-sharing network would not be shared from the consumers'

computers with the public.

JURISDICTION AND VENUE

2.   This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),

and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3.   Venue is proper in this district under 28 U.S.C. §1391(b) and (c) and 15 U.S.C.

§ 53(b).

PLAINTIFF

4.   The FTC is an independent agency of the United States Government created by

statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),

which prohibits unfair or deceptive acts or practices in or affecting commerce.

5.   The FTC is authorized to initiate federal district court proceedings, by its own

attorneys, to enjoin violations of the FTC Act and to secure equitable relief, including permanent

injunctive relief, as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

6.   Defendant Frostwire LLC is a Florida limited liability company with its principal

place of business at 1000 5th Street, Suite 200, Miami, Florida 33139. Frostwire LLC transacts

or has transacted business in this district and throughout the United States.

7.   Defendant Angel Leon ("Leon") is a managing member of Frostwire LLC.

Defendant Leon has signed regulatory documents on behalf of Frostwire LLC, and has

disseminated blog posts and online videos marketing and discussing the FrostWire file-sharing

applications described in this Complaint on various public websites. At all times material to this

Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had

the authority to control, or participated in the acts and practices set forth in this Complaint.

Defendant Leon resides in this district and, in connection with the matters alleged herein,

transacts or has transacted business in this district and throughout the United States.

COMMERCE

8.   At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

9.   Since at least 2007, and continuing thereafter, Defendants have distributed "file-sharing" software applications that can be installed on various types of computers, including desktop and laptop computers, or mobile computing devices such as smartphones. When a file-sharing application is installed on a computer, the application can, among other functions, enable the users of other "peer" computers running the same or compatible applications to search for and copy certain files from that computer. A computer's files designated through a file-sharing application for searching and copying by peer computers are commonly referred to as "shared" files. When multiple, individual peer computers connect to one another, they form what is commonly known as a "peer-to-peer" or "P2P" file-sharing network. When peer computers search for and copy files from another peer computer, they use part of its bandwidth and computing resources.

10.   Defendants have designed, in whole or in part, and distribute versions of both a "desktop" file-sharing application (hereinafter "FrostWire Desktop") and a "mobile" file-sharing application (hereinafter "FrostWire for Android"). FrostWire Desktop can be installed on desktop and laptop computers running various versions of the Microsoft Windows operating system and other operating systems. FrostWire for Android can be installed on various mobile computing devices, such as tablet computers or smartphones, running the Android mobile

3

operating system. For purposes of this Complaint, FrostWire Desktop and FrostWire for Android shall refer to the versions of those applications that Defendants distributed through April 2011.

FrostWire Desktop and the Gnutella File-Sharing Network

11.   Defendants disseminated FrostWire Desktop to consumers by offering it as a download through their own website, www.frostwire.com, or through www.download.com, a third-party website that makes multiple software developers' applications available for consumers to download. Defendants did not charge consumers to download or use the application.

12.   FrostWire Desktop was compatible with other file-sharing programs using the same communications protocol, commonly known as the "Gnutella network protocol." When multiple peer computers running this type of program are connected to one another via the Internet, they form the "Gnutella" P2P network. The Gnutella network potentially enables millions of peer computers across the world to share with each other designated files saved on each computer. Although many types of files can be shared on the Gnutella network, music files in the .mp3 format, and image files in the .jpg format, are commonly shared. Any peer computer can be used to search for and copy files that the other peer computers are sharing with the network without the need to obtain authorization from, or provide credentials to, any central computer or any other peer. Thus, any file that any peer computer is sharing is available, without restriction, for copying by any of potentially millions of anonymous peer computers in the world.

Misrepresentations and Omissions in FrostWire Desktop About the Sharing of Downloads

13.   As described below, in numerous instances, FrostWire Desktop's user interface conveyed a misleading impression to consumers that certain files that they downloaded to their own computers from the Gnutella network would not, in turn, be shared from their computers with the Gnutella network when, in fact, those files were shared. This misleading impression was conveyed in the application's installation and set-up process, as alleged in paragraphs 14-17, and also after the application was installed, as alleged in paragraphs 18-20.

14.   Consumers could control FrostWire Desktop's sharing behavior by selecting among a variety of configuration options accessible through the application's user interface. Upon initial installation, FrostWire Desktop presented consumers, via the "Frostwire Setup Wizard," with a series of dialog boxes about how the application would be configured and how it would operate. Consumers had to click through the various dialog boxes to install and use the application. During the installation and set-up process of at least versions 4.21.1, 4.21.3, and 4.21.5 of FrostWire Desktop for Windows, a dialog box appeared on the consumer's computer screen, captioned "Save Folder and Shared Folders." That dialog box appeared substantially as shown, here, in Figure 1:
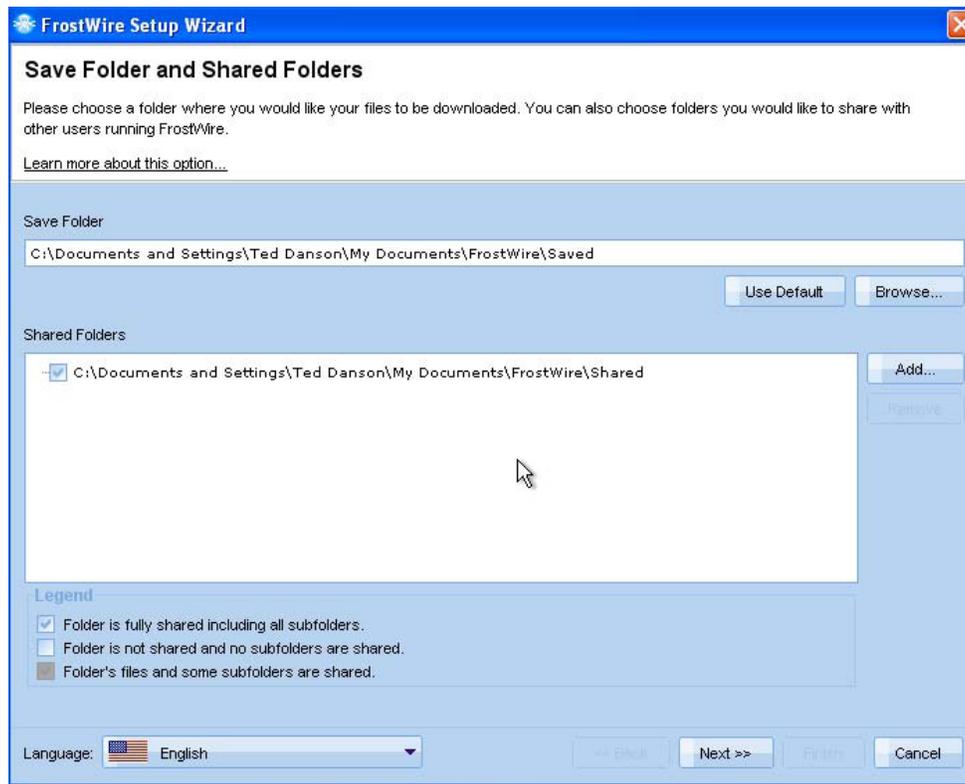
Figure 1

15. Through the dialog box shown in Figure 1, the Defendants conveyed the impression that when FrostWire Desktop was installed with the default settings unchanged:

      a.   the application created a "Save" folder and a separate "Shared" folder;

      b.   files stored in the "Shared" folder would be shared with the file-sharing network;

      c.   files stored in the "Save" folder would not be shared with the file-sharing network; and

      d.   files the consumer downloaded from the file-sharing network would be stored in the "Save" folder and, thus, would not be shared from the consumer's own computer with the file-sharing network.

6

16.   Multiple statements in the dialog box shown in Figure 1, alone and in combination, created the impression described in paragraph 15, above, including:

      a.   the words "saved" and "shared," as they would be commonly understood and understood in context;

      b.   the instruction, "Please choose a folder where you would like your files to be downloaded. You can also choose folders you would like to share with other users running FrostWire.";

      c.   the green check mark indicating that the "Shared" folder is fully shared;

      d.   the "Legend" describing the significance of the green check mark; and

      e.   the absence of a checkmark by the pre-populated "Save" folder name field.

17.   If the installing consumer did not change the default choices presented in the "Save Folder and Shared Folders" dialog box shown in Figure 1 and clicked the "Next" button at the bottom thereof, FrostWire Desktop shared with the Gnutella network any files subsequently downloaded to that computer from the Gnutella network using the application. Those downloaded files would, as represented, be stored in the designated "Save" folder rather than the "Shared" folder on the consumer's computer, and the "Save" folder was not a "Shared" folder whose contents were generally shared just by virtue of being stored in the folder. Nevertheless, the application, in fact, shared these downloaded files with the network because it designated files downloaded from the network as "Individually shared" files. The "Save Folder and Shared Folders" dialog box did not mention the fact that any files subsequently downloaded using the application would, by default, be shared as "Individually shared" files even if they were not saved to a "Shared" folder. Nor did any other part of the FrostWire Desktop installation or set-

up process mention "Individually shared" files.

18.   Once installed and launched, the FrostWire Desktop application's user interface enabled consumers to use the application in various ways. The application presented various "tabs" associated with different functions and types of information. Consumers could click on the "Library" tab, for example, to view the names of and other information about files in the application's "Library" of saved and shared files on the consumer's computer. If they could ascertain how to do so, consumers could share or stop sharing with the Gnutella network, as applicable, files listed in the Library. Examples of how two different views in the "Library" tab might have appeared to a consumer sharing two files downloaded from the Gnutella network after a default installation of FrostWire Desktop are shown below, in Figures 2 and 3. If the consumer were to select the "Shared" icon (as in Figure 2) the two shared downloads would not be listed, but if the consumer were to select the "Individually Shared Files" icon (as in Figure 3) they would be listed.
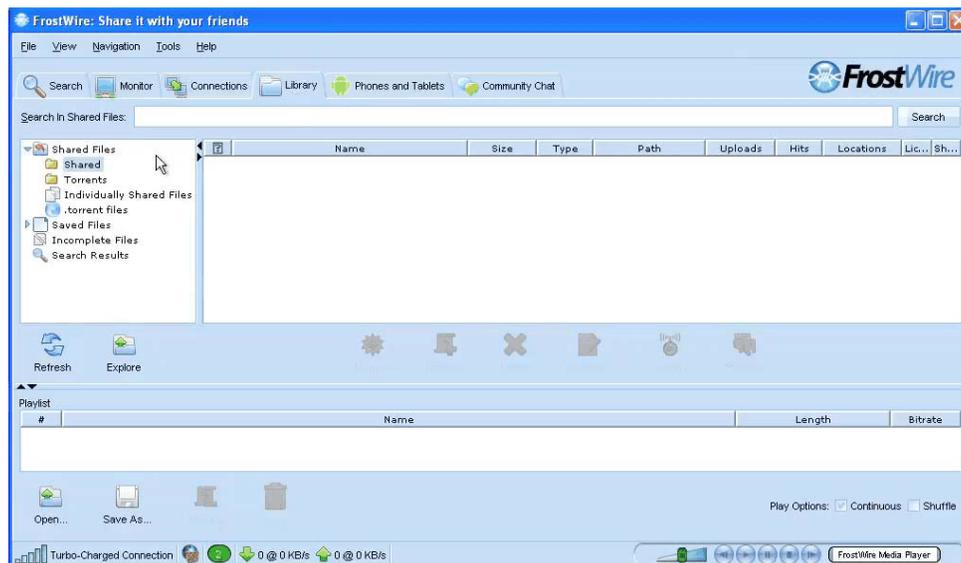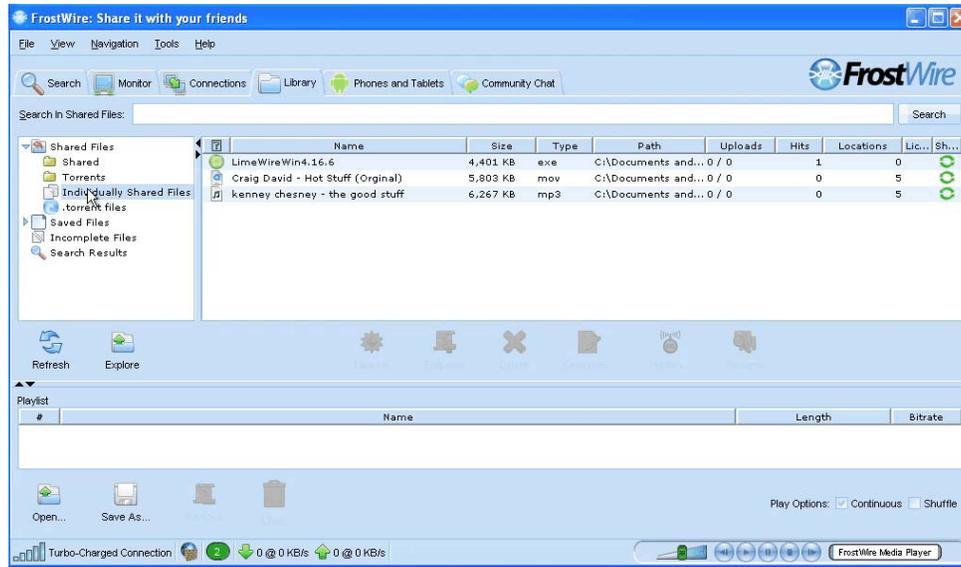

Figure 2

Figure 3

19.   FrostWire Desktop also listed various dropdown menus of configuration settings across the top of the user interface, as shown above in Figures 2 and 3. For example, through the "Tools" menu, consumers could change the application's "Saving" and "Sharing" settings to affect the application's sharing behavior with respect to entire folders or categories of files. Among other choices, FrostWire Desktop presented options that purported to allow consumers to change the application's sharing behavior with respect to files downloaded from the Gnutella network. The relevant dialog box that opened (hereinafter the "Options-Sharing box") appeared substantially as shown here, in Figure 4:
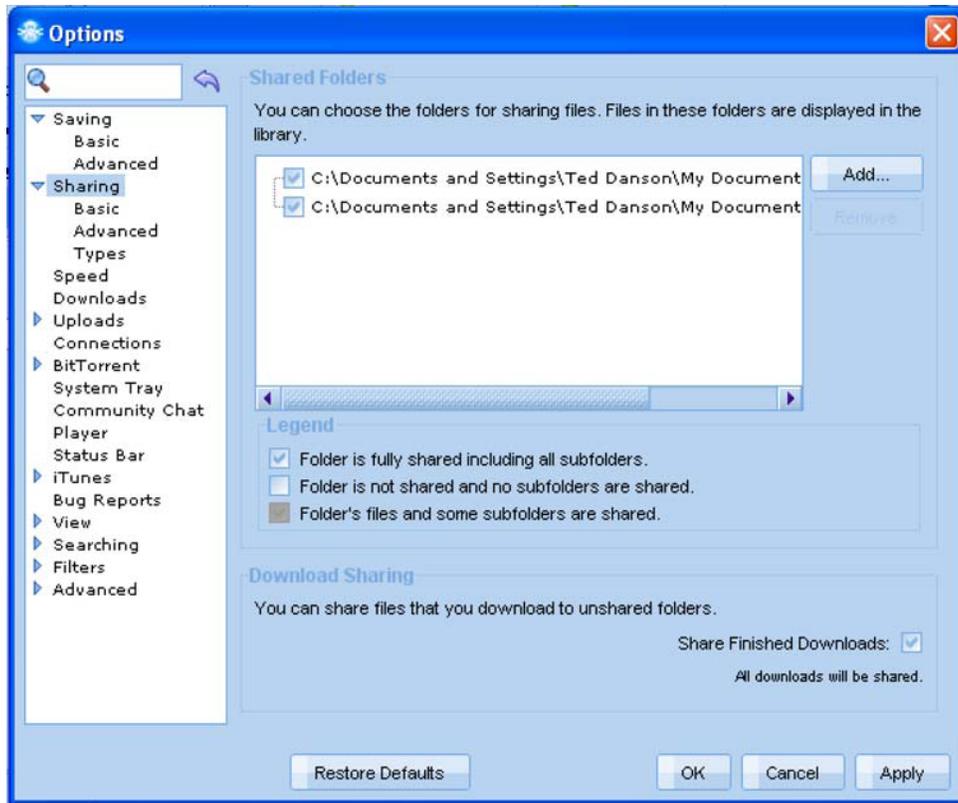
9

Figure 4

20.   The FrostWire Desktop application, by default, stated in the Options-Sharing box,

under the "Download Sharing" heading, that the consumer "can share files that you download to

unshared folders." By default, the "Share Finished Downloads" box was pre-checked and stated

correctly that "[a]ll downloads will be shared." If a consumer unchecked the "Share Finished

Downloads" box in the Options-Sharing box, the text below that box changed to state "[o]nly

downloads in shared folders will be shared," as shown here, in Figure 5:
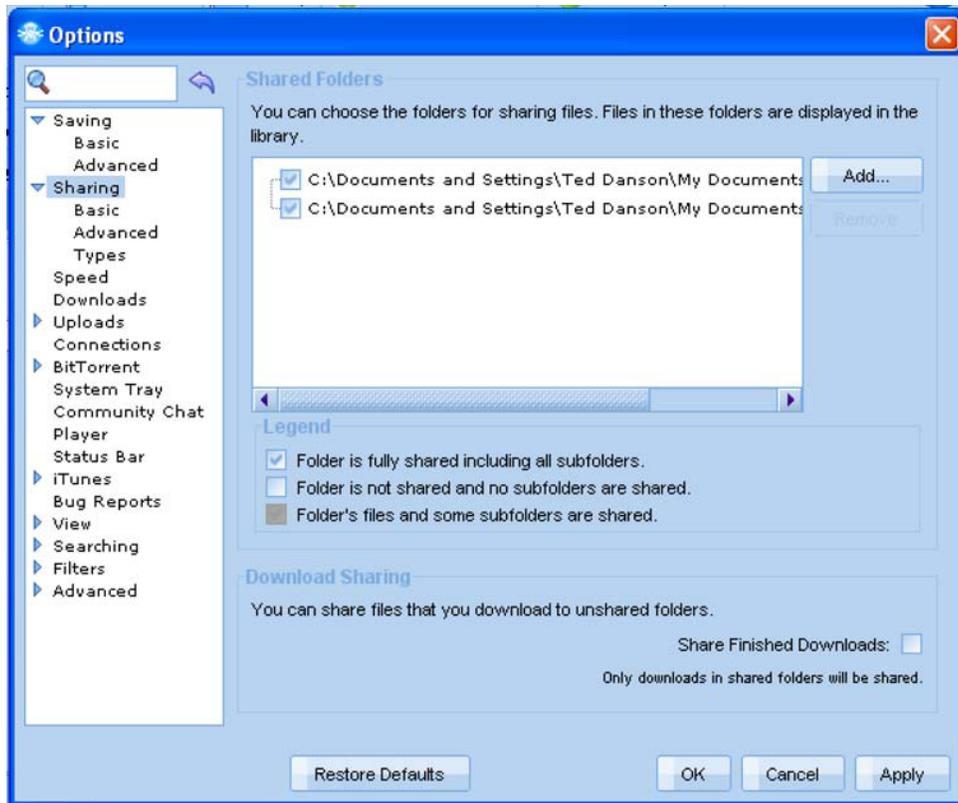
10

Figure 5

If the consumer then clicked the "Apply" and "OK" buttons at the bottom of the Options-Sharing

box, subsequently downloaded files would not be shared with the network. However, the

application continued to share previously downloaded files with the network as "Individually

shared" files even if those files were not saved to "shared" folders. Thus, although the statement

"[o]nly downloads in shared folders will be shared" was true as to subsequently downloaded

files, it was false as to previously downloaded files. No text in the Options-Sharing box

disclosed to consumers that previously downloaded files would continue to be shared even if the

files were not stored in "shared" folders.

      21.   The representations and omissions set forth in paragraphs 14-20, above, would be

material to consumers who wanted to control which downloaded files they shared with the

Gnutella network, and were likely to affect consumers' conduct regarding FrostWire Desktop.

The FrostWire for Android Mobile Application

22.   Since at least autumn 2010, Defendants designed, in whole or in part, and distributed through the Android Market and other online outlets, the FrostWire for Android file-sharing application. As alleged below, Defendants' design and distribution of this application caused or were likely to cause consumers to unwittingly share their personal files publicly.

23.   Defendants marketed and advertised FrostWire for Android to FrostWire Desktop users and the general public through the Frostwire.com website, the FrostWire blog accessible at frostwire.wordpress.com, and the FrostWire Desktop user interface. Defendants did not charge consumers to download or use the application. In the Android Market, Defendants marketed and advertised FrostWire for Android with a pre-installation "Description" stating that consumers could "[s]earch, [b]rowse and [s]hare files locally and over the Internet via WiFi using P2P." Similar to the Description for earlier versions, the Description for version 0.5.3 stated, in pertinent part:

> NOW WITH 3G/4G SUPPORT
>
> You can:
>
> - Search & download files on up to MILLIONS of phones and tablets
> - Browse & download from the closest peers
> - Share files on Social Networks
> - Explore your own files
> - Chat
> - Send files
> - Control what's shared
> - Share files with desktop computers in the same WiFi network

24.   FrostWire for Android enabled consumers to share files with other people whose mobile devices were also running the application or whose computers were running recent

versions of FrostWire Desktop. When activated, FrostWire for Android could, in a matter of seconds, automatically allow other people, locally and throughout the world, to: search for (e.g., by file name) shared files on the consumer's device; display browsable lists of the consumer's shared files; download those files; and share those files in turn. FrostWire for Android provided consumers with little or no notice when others downloaded their shared files. Accordingly, safe and secure use of FrostWire for Android depended on consumers realizing and controlling which files on their mobile devices were designated for sharing.

Unfair Design of FrostWire for Android

25.   FrostWire for Android, as configured by the Defendants, was likely to cause a significant number of consumers installing and running it on their mobile computing devices to unwittingly share files stored on those devices. The Defendants had configured the application's default settings so that, immediately upon installation and set-up, many pre-existing files on the mobile device were designated for sharing. These files could be shared through the Internet, and through any given wireless ("WiFi") local area network (e.g., a "hotspot" within a specific café or public library), with other FrostWire for Android users. They could also be shared with many FrostWire Desktop users through a WiFi network. These shared files thus were available to other people in the consumer's immediate vicinity and throughout the world to download and share further. Nothing in the installation and set-up process, described below, adequately informed consumers of the immediate consequences of installing FrostWire for Android; nor could consumers be expected to know these consequences from any prior experience with other software. Moreover, once FrostWire for Android was installed, consumers who wished to use it to share only specific files on their mobile devices first needed to share all the files within the relevant categories and then laboriously unshare individual files in those categories, one at a

time, with little or no instruction in the application's user interface about how to accomplish this.

26.   To install and set up at least versions 0.4.22, 0.4.23, and 0.5.3 of FrostWire for

Android, a consumer had to click through a multi-screen installation process typical of those

used to install other applications on mobile devices. At the end of this process for at least

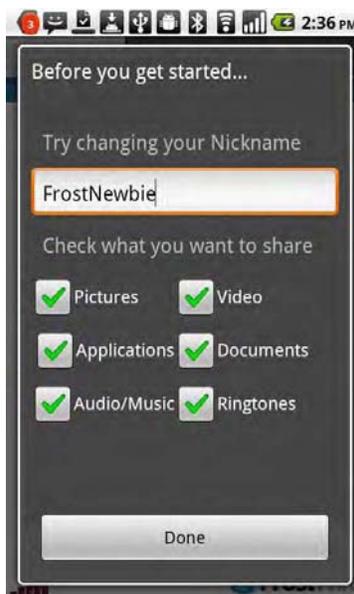versions 0.4.22 and 0.4.23, the following "Before you get started" screen (Figure 6) appeared:

Figure 6

At the end of this process for at least version 0.5.3, the following "Before you get started" screen
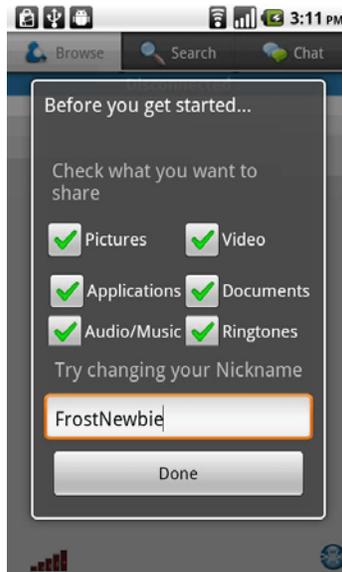
(Figure 7) appeared:

Figure 7

27.   To avoid immediately sharing substantially all pre-existing files on their mobile

devices corresponding to the "Pictures," "Video," "Application," "Audio/Music," and

"Ringtone" categories (including .jpg picture files, .avi and .mpg video files, and .mp3 and .wma

audio files), consumers installing FrostWire for Android had to uncheck each of the pre-checked

boxes shown in the "Before you get started" screen before pressing "Done." Unlike files in the

other categories, pre-existing files within the "Document" category (including .pdf, .doc, and .txt

files) were not automatically designated for sharing despite the pre-checked box. Files

subsequently added to the mobile device corresponding to any shared category, including

"Documents," were automatically, and with little or no notice to consumers, designated for

sharing if the relevant box remained checked. This could include user-originated (i.e., not

downloaded from a file-sharing network) word processing and other "Document" files copied

from a computer running FrostWire Desktop version 4.21.3 or higher, or new photos taken using

the device.

15

28.   Once a category of files was designated as shared in FrostWire for Android, a consumer who wished to share some, but not all, files within the category had to unshare files one at a time. Thus, for example, a consumer with 200 photos on her mobile device who installed the application with the intent of sharing only ten of those photos first had to designate all 200 photos in the "Picture" category as shared, and then affirmatively unshare each of the 190 photos that she wished to keep private. She also needed to remember, when next running the application, to unshare the category or individually unshare any new photos she might have taken in the meantime in order to keep the new photos private. Nothing in the FrostWire for Android installation and set-up process, or the application's user interface, adequately informed consumers that the application operated in this manner.

29.   Consumers using FrostWire for Android could unshare individual files within a shared category only by selecting the "Browse" icon in the user interface, and then touching a small lock icon shown next to each individual file listed. However, no text in the application's user interface explained the significance of the lock icon, or how to unshare either individual files or categories of files.

30.   In light of the application's routine installation process, its default sharing settings, the presentation and wording of the "Before you get started" screen, the steps consumers needed to take to share only select files within a category, and the application's failure to provide adequate instructions on how to unshare files, a significant number of consumers using Frostwire for Android could not reasonably avoid the unwitting public sharing of their private files. These consumers would not have understood that FrostWire for Android operated in the manner described above from either the Defendants' disclosures or from prior experience with other software. Indeed, many desktop file-sharing applications – including

Defendants' own FrostWire Desktop – do not share user-originated files by default upon

installation, and enable users to select either entire folders or individual files they want to share.

31.   Public exposure of the types of user-originated files that FrostWire for Android

shared following a default installation and set-up could increase consumers' vulnerability to

identity theft; reduce their ability to control the dissemination of personal or proprietary

information (e.g., voice recordings or intimate photographs); and increase their risk of legal

liability based on prohibitions against, or limitations on, making any such files publicly available

for download.

32.   Distribution of FrostWire for Android with the design and default settings

described above provided few or no countervailing benefits to consumers or competition.

Configuring software applications to allow the public disclosure of private files by default runs

counter to standard software development guidance, and counter to established practices in the

development of file-sharing applications. Changing FrostWire for Android so that no user-

originated files are shared by default upon completion of the application installation and set-up

process, and so that consumers can affirmatively select the files they want to share, required

relatively minor costs in programming time and expense.

VIOLATIONS OF THE FTC ACT

33.   Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts

or practices in or affecting commerce."

34.   Misrepresentations or deceptive omissions of material fact constitute deceptive

acts or practices prohibited by Section 5(a) of the FTC Act. Under Section 5(n) of the FTC Act,

an act or practice is "unfair" if it causes or is likely to cause substantial injury to consumers that

is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to

consumers or to competition. 15 U.S.C. § 45(n).

COUNT I

False Representation About the Sharing of Downloads in the FrostWire Desktop Application

35.   As described in Paragraphs 11-21, in numerous instances, through the FrostWire

Desktop application's installation and set-up process and through the application's user

interface, Defendants represented, directly or indirectly, expressly or by implication, including

through the Save Folder and Shared Folders dialog box and the Options-Sharing box, that

consumers' computers would not publicly share files that consumers download from the

Gnutella network.

36.   In truth and in fact, in numerous instances in which the Defendants made the

representation set forth in Paragraph 35 of this Complaint, Defendants' FrostWire Desktop

application was configured to publicly share files that consumers download from the Gnutella

network.

37.   Therefore, Defendants' representation set forth in Paragraph 35 of this Complaint

was false and misleading and constitutes a deceptive act or practice in violation of Section 5(a)

of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Failure to Disclose Material Information About the Sharing of Downloads in the FrostWire Desktop Application

38.   As described in Paragraphs 11-21, in numerous instances, through the FrostWire

Desktop application's installation and set-up process and through the application's user

interface, Defendants represented, directly or indirectly, expressly or by implication, including

through the Save Folder and Shared Folders dialog box and the Options-Sharing box, that files

consumers downloaded from the Gnutella network and stored in "shared" folders would be publicly shared.

39.   In numerous instances, Defendants failed to disclose, or to disclose adequately, important aspects of how certain versions of the Defendants' FrostWire Desktop application operated, including the facts that the application:

        a.   by default, publicly shared files that consumers downloaded from the Gnutella network and saved to "unshared" folders; and

        b.   would publicly share files that consumers previously downloaded from the Gnutella network and stored in "unshared" folders even after consumers de-selected the Share Finished Downloads setting in the Options-Sharing dialog box.

40.   The facts set forth in Paragraph 39 would be material to consumers in their decision to install and use the FrostWire Desktop application. Therefore, Defendants' failure to disclose, or to disclose adequately, the material information set forth in Paragraph 39 above, in light of the representation set forth in Paragraph 38, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Unfair Design of FrostWire for Android

41.   As described in Paragraphs 22-32, in numerous instances, Defendants distributed, or caused to be distributed, to consumers versions of the FrostWire for Android application that, when installed on consumers' mobile devices, caused or were likely to cause consumers to unwittingly publicly share files of multiple types already present on, or subsequently saved on, those devices, including consumers' pictures, videos, unprotected applications, documents,

music and audio files, and ringtones.

42.   Defendants' actions caused or were likely to cause substantial injury to consumers that was not reasonably avoidable by consumers and that was not outweighed by countervailing benefits to consumers or competition.

43.   Therefore, Defendants' practices as described in Paragraph 41, above, constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

CONSUMER INJURY

44.   Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act.   Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

45.   Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provisions of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A.   Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

B.   Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act; and

C.   Award Plaintiff the costs of bringing this action, as well as such other and

additional relief as the Court may determine to be just and proper.

                                              Respectfully submitted,

October 7, 2011   Willard K. Tom
                                              General Counsel

                                              s/Carl H. Settlemyer, III
                                              Carl H. Settlemyer, III (Special Bar
                                              #A5501664)
                                              Kial S. Young (Special Bar #A5501665)
                                              Federal Trade Commission
                                              600 Pennsylvania Avenue, N.W., NJ-3212
                                              Washington, DC 20580
                                              (202) 326-2019 (direct)
                                              (202) 326-3259 (facsimile)
                                              csettlemyer@ftc.gov / kyoung@ftc.gov

                                              Attorneys for Plaintiff
                                              FEDERAL TRADE COMMISSION