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10 United States of America

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 RETRO DREAMER, a corporation, and

17 CRAIG E. SHARPE and GAVIN S.
BOWMAN,

18 individually and as officers of
RETRO DREAMER,

19 Defendants.

Case No. 5:15-cv-2569

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

1 Plaintiff, the United States of America, acting upon notification and
2 authorization to the Attorney General by the Federal Trade Commission (“FTC” or
3 “Commission”) for its Complaint alleges:

4 1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the
5 Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§
6 6502(c) and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the
7 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A),
8 53(b), and 56(a) to obtain monetary civil penalties, a permanent injunction, and
9 other equitable relief for Defendants’ violations of the Commission’s Children’s
10 Online Privacy Protection Rule (“Rule” or “COPPA Rule”), 16 C.F.R. Part 312,
11 and Section 5 of the FTC Act.

12 **JURISDICTION AND VENUE**

13 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
14 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and
15 57b.

16 3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c),
17 1395(a), and 15 U.S.C. § 53(b).

18 **DEFENDANTS**

19 4. Defendant Retro Dreamer, is a California corporation with its
20 principal place of business in Upland, California. Retro Dreamer transacts or has

1 transacted business in this district and throughout the United States. At all times
2 material to this Complaint, acting alone or in concert with others, Retro Dreamer
3 has advertised, marketed, distributed, or sold mobile applications (“apps”) to
4 consumers throughout the United States.

5 5. Defendant Craig E. Sharpe is President of Retro Dreamer. At all
6 times material to this Complaint, acting alone or in concert with others, he has
7 formulated, directed, controlled, had the authority to control, or participated in the
8 acts or practices of Retro Dreamer, including the acts or practices set forth in this
9 Complaint. Defendant Sharpe, in connection with the matters alleged herein,
10 transacts or has transacted business in this district and throughout the United
11 States.

12 6. Defendant Gavin S. Bowman is Vice-President of Retro Dreamer. At
13 all times material to this Complaint, acting alone or in concert with others, he has
14 formulated, directed, controlled, had the authority to control, or participated in the
15 acts or practices of Retro Dreamer, including the acts or practices set forth in this
16 Complaint. Defendant Bowman, in connection with the matters alleged herein,
17 transacts or has transacted business in this district and throughout the United
18 States.

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COMMERCE

7. 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.

THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE

8. Congress enacted COPPA in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children’s personal information online by operators of Internet websites or online services. COPPA directed the Federal Trade Commission to promulgate a rule implementing COPPA. The Commission promulgated the COPPA Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect in April 2000. The Commission promulgated revisions to the Rule that went into effect on July 1, 2013.

9. The Rule applies to any operator of a commercial website or online service directed to children that collects, uses, and/or discloses personal information from children, or on whose behalf such information is collected or maintained, and to any operator of a commercial website or online service that has actual knowledge that it collects, uses, and/or discloses personal information from children. Under the Rule, personal information is “collected or maintained on

1 behalf of an operator when . . . [t]he operator benefits by allowing another person
2 to collect personal information directly from users of” an online service. 16 C.F.R.
3 § 312.2.

4 10. The Rule requires operators to give notice to parents and obtain their
5 verifiable consent before collecting children’s “personal information” online. 16
6 C.F.R. §§ 312.4 and 312.5. The definition of “Personal Information” includes a
7 “persistent identifier that can be used to recognize a user over time and across
8 different Web sites or online services,” subject to certain exceptions not at issue in
9 this case. 16 C.F.R. § 312.2.

10 11. Among other things, the Rule requires that an operator meet specific
11 requirements prior to using or disclosing personal information, including, but not
12 limited to:

- 13 a. Posting a privacy policy on its website or online service providing
14 clear, understandable, and complete notice of its information practices,
15 including what information the website operator collects from children
16 online, how it uses such information, its disclosure practices for such
17 information, and other specific disclosures set forth in the Rule;
- 18 b. Providing clear, understandable, and complete notice of its
19 information practices, including specific disclosures, directly to parents; and
20

1 c. Obtaining verifiable consent prior to collecting, using, and/or
2 disclosing personal information from children.

3 **DEFINITIONS**

4 12. For purposes of this Complaint, the terms “child,” “collects,”
5 “collection,” “Commission,” “disclosure,” “Internet,” “operator,” “parent,”
6 “personal information,” “obtaining verifiable consent,” “third party,” and “website
7 or online service directed to children,” are defined as those terms are defined in
8 Section 312.2 of the Rule, 16 C.F.R. § 312.2.

9 **DEFENDANTS’ BUSINESS PRACTICES**

10 13. Since at least 2012, Defendants have offered a number of mobile apps
11 for download from Apple’s App Store, Google Play, and the Amazon App store.
12 The apps include apps that are directed to children, such Ice Cream Jump, Happy
13 Pudding Jump, Ice Cream Drop, Sneezies, Wash the Dishes, Cat Basket, and
14 Tappy Pop (“kids’ apps”). (*See Exhibit A, copies of several kids’ apps’ initial*
15 *screens.*) The apps send and/or receive information over the Internet, and thus are
16 online services pursuant to COPPA. Some apps are free to download and play,
17 while others are paid apps. Revenues are generated through the sale of certain
18 apps, in-app advertising, and in-app purchases.

19 14. Defendants are “operators” as defined by the Rule, 16 C.F.R. § 312.2.
20

1 15. Ice Cream Jump, which has been available since 2012, is an app in
2 which users play an endless jumping game, where users guide the cartoon ice
3 cream scoop character through a colorful setting, moving as high as possible by
4 tilting the device from side to side and collecting gold as they advance. The
5 description of the app in Google Play states, “Meet a happy Ice Cream Scoop who
6 dreams of soaring through the skies. Help our friendly dessert reach new heights
7 in this action packed game.” Users can make in-app purchases to play with
8 different colored ice cream scoop characters and to dress up the ice cream scoop
9 character. (*See Exhibit B.*) An app marketed as Ice Cream Jump for Kids with the
10 character in the same endless jumping game was also available in Apple’s App
11 Store. (*See Exhibit C.*)

12 16. Happy Pudding Jump, which has been available since 2013, is an app
13 in which users play an endless jumping game, where users guide the cartoon
14 pudding character through a colorful setting, moving as high as possible by tilting
15 the device from side to side and collecting gold as they advance. The description
16 of the app in Apple’s App Store states, “Happy Pudding is on the move! Help our
17 friendly pudding reach new heights in this action packed adventure.” (*See Exhibit*
18 *D.*) Users can make in-app purchases for different colored pudding characters and
19 to dress up the pudding character.

20

1 17. Ice Cream Drop, which has been available since 2012, is an app in
2 which users play an endless falling game, where users guide the cartoon ice cream
3 scoop character down through platforms by tilting the device from side to side and
4 collecting gold as they go. (*See Exhibit E.*) Users can make in-app purchases for
5 different colored ice cream scoop characters.

6 18. Sneezies, which has been available since 2012, is an app in which
7 users engage in simple play by tapping the colorful cartoon Sneezies characters
8 floating on the screen to make them sneeze and burst out of their bubbles. The
9 description of the app in Apple’s App Store states, “Sneezies is an overload of
10 cuteness!” (*See Exhibit F.*)

11 19. Wash the Dishes, which has been available since 2012, is an app in
12 which users engage in simple play by scrubbing smiling dirty cartoon dishes to
13 make them clean. The description of the app in Apple’s App Store states, “[t]hese
14 are cute happy dishes, they don’t want to be dirty.” (*See Exhibit G.*)

15 20. Cat Basket, which has been available since 2014, is an app in which
16 users collect falling cartoon cats in a basket, while blocking falling dogs. The
17 description of the app in the Apple’s App store states it is “[e]ndless cute, crazy
18 fun.” (*See Exhibit H.*) An app marketed as Cat Basket for Kids with the same
19 characters and play is available in Apple’s App Store. (*See Exhibit I.*)
20

1 21. Tappy Pop, which has been available since 2014, is an app in which
2 users engage in simple play by tapping on falling colorful cartoon Sneezies
3 characters in order to make them sneeze and burst out of their bubbles. The
4 description of the app in the Apple’s App store reads, “Achoo! Try this fast and
5 frantic new Sneezies game.” (*See* Exhibit J.) An app marketed as Tappy Pop for
6 Kids with the same characters and play is available in Apple’s App Store. (*See*
7 Exhibit K.)

8 22. Pursuant to Section 312.2 of the Rule, the determination of whether an
9 app is directed to children depends on factors such as the subject matter, visual
10 content, language, and use of animated characters or child-oriented activities and
11 incentives. An assessment of these factors demonstrates that Retro Dreamer’s
12 kids’ apps are directed to children under the age of 13. For example, Retro
13 Dreamer’s kids’ apps contain brightly colored, animated characters including ice
14 cream scoops, pudding, cats, and cartoon characters. (*See e.g.* Exhibit L, examples
15 from Ice Cream Jump and Happy Pudding Jump). Their subject matter, which
16 includes washing smiley, cheerful dishes, collecting cats, moving ice cream, and
17 causing cartoons to sneeze, would be highly appealing to children. (*See e.g.*
18 Exhibit M, examples from Wash the Dishes, Cat Basket, and Sneezies.) In
19 addition, as described above in Paragraphs 15-21 and as shown in Exhibits B-K,

20

1 the language used to describe the apps in the app stores is simple and would be
2 appealing to a child under age 13.

3 23. Through the kids' apps, Defendants allowed third-party advertising
4 networks to collect personal information in the form of persistent identifiers, in
5 order to serve targeted advertising on the app based on users' activity over time
6 and across sites. Defendants did not inform these third-party advertising networks
7 that the apps are directed to children and did not instruct or contractually require
8 the advertising networks to refrain from targeted advertising. Nor did Defendants
9 provide the required notices or obtain the required parental consent described in
10 Paragraph 11.

11 24. Defendants were aware of the existence of COPPA, the July 2013
12 COPPA Rule change, and that certain of its apps appeared to be child-directed to at
13 least one ad network. Defendants received notice that the Rule changed in July
14 2013 from a third-party ad network in November 2013, when the network asked
15 Defendants to identify its child-directed apps. In response, Defendants suggested
16 the ad network stop serving Defendants' apps ads. In June 2014, the network
17 informed Defendants it believed that certain apps submitted to the network for ads
18 were directed to children under the age of 13, including Ice Cream Jump, Ice
19 Cream Drop, Cat Basket, Sneezies, Tappy Pop, and Wash the Dishes, and therefore
20 those apps would be excluded from the ad network. Although this ad network did

1 not serve ads to Defendants' apps, Defendants have continued to allow other ad
2 networks to collect personal information in the form of persistent identifiers, in
3 order to serve targeted advertising in Defendants' kids' apps.

4 **VIOLATION OF THE CHILDREN'S ONLINE PRIVACY PROTECTION**

5 **RULE**

6 **Count I**

7 25. Defendants operate online services directed to children, including
8 through the kids' apps, which collect personal information from children under age
9 13.

10 26. In numerous instances since July 1, 2013, in connection with the acts
11 and practices described above, personal information from children younger than
12 age 13 was collected on behalf of Defendants in violation of the Rule. Defendants
13 thus violated the Rule by:

- 14 a. Failing to provide notice on Defendants' online services of the
15 information they collect, or is collected on their behalf, online
16 from children, how such information is used, and their
17 disclosure practices, among other required content, in violation
18 of Section 312.4(d) of the Rule, 16 C.F.R. § 312.4(d);
- 19 b. Failing to provide direct notice to parents of the information
20 Defendants collect, or information that has been collected on

1 Defendants' behalf, online from children, how such information
2 is used, and their disclosure practices for such information,
3 among other required content, in violation of Section 312.4(b)
4 of the Rule, 16 C.F.R. § 312.4(b); and

5 c. Failing to obtain verifiable parental consent before any
6 collection or use of personal information from children, in
7 violation of Section 312.5(a)(1) of the Rule, 16 C.F.R. §
8 312.5(a)(1).

9 Therefore, Defendants have violated the Rule, 16 C.F.R. Part 312.

10 27. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and
11 Section
12 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes
13 an unfair or deceptive act or practice in or affecting commerce, in violation of
14 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15 **THIS COURT'S POWER TO GRANT RELIEF**

16 28. Defendants violated the Rule as described above with the knowledge
17 required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

18 29. Each collection, use, or disclosure of a child's personal information in
19 which Defendants violated the Rule in one or more of the ways described above
20 constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

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Respectfully submitted,

Dated: December 17, 2015

**FOR THE FEDERAL TRADE
COMMISSION:**

**FOR PLAINTIFF
THE UNITED STATES OF AMERICA:**

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Exhibit A

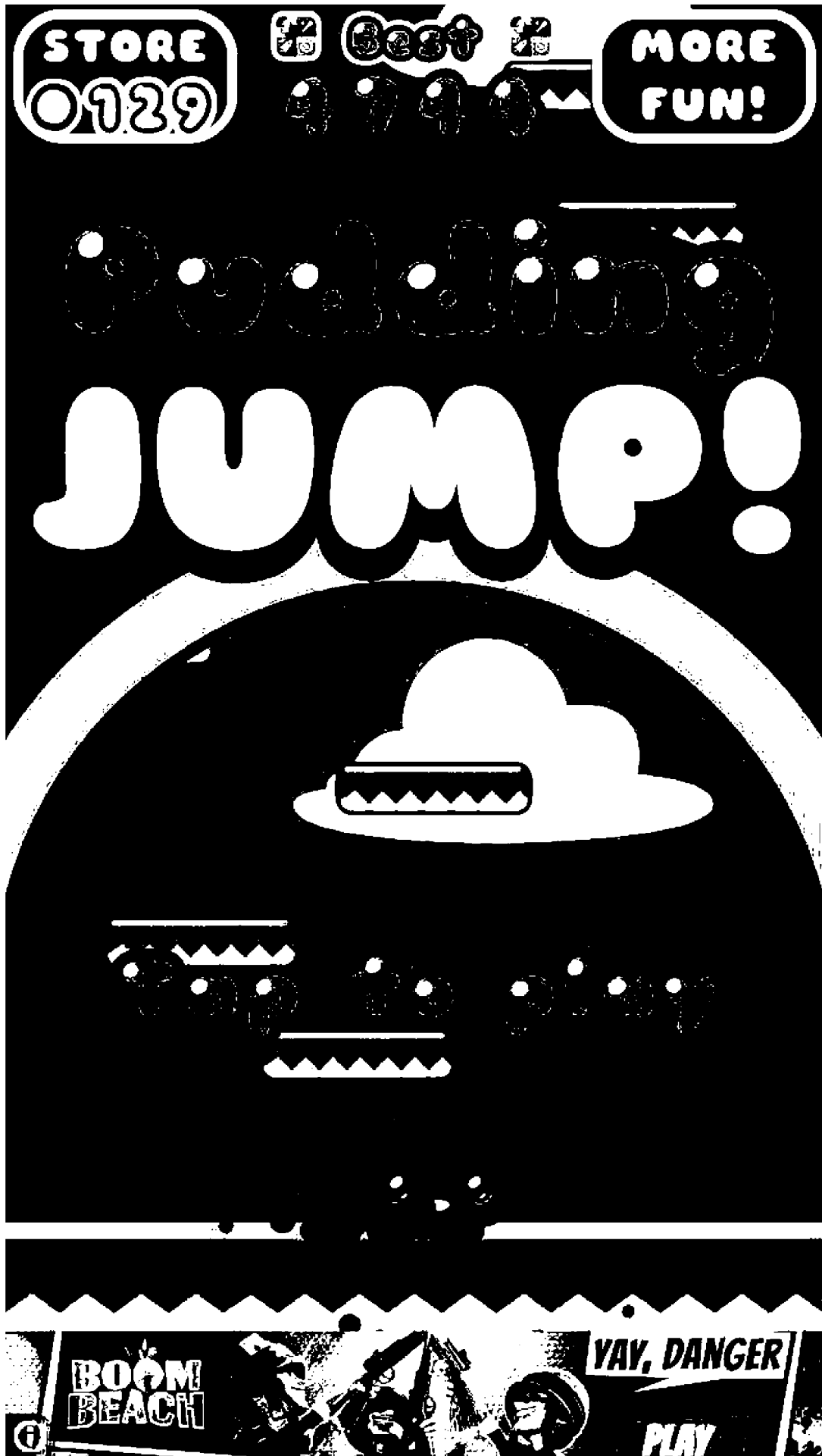


Ice Cream JUMP!



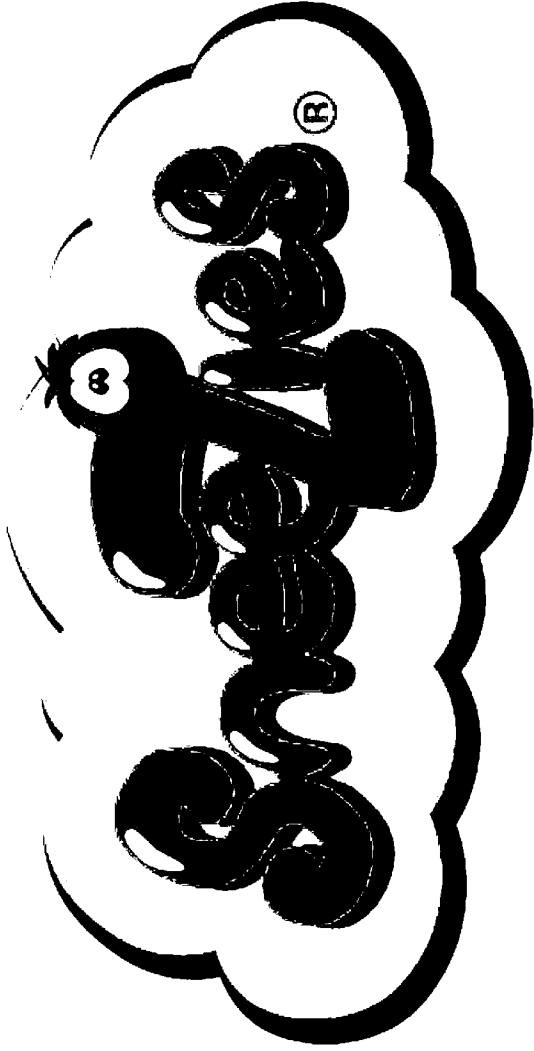
Tap to play







**MORE
GAMES!**



Classic

Score Ex

Challenge

**Free
Popping**



LET'S WASH
SOME DISHES!

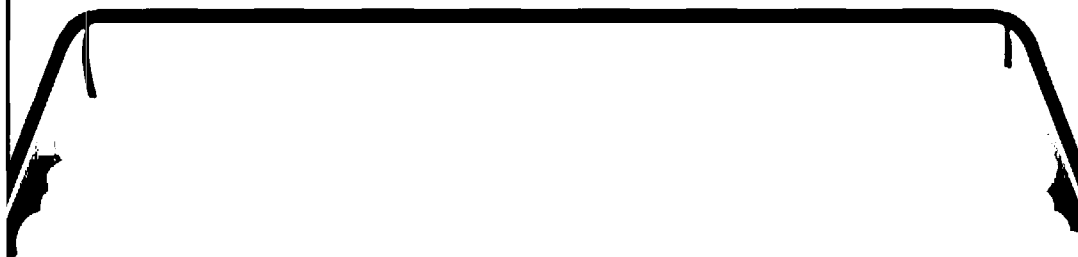






Exhibit B

Search

Sign in

Apps

Categories

Home

Top Charts

New Releases

My apps

Shop

Games

Editors' Choice



Ice Cream Jump

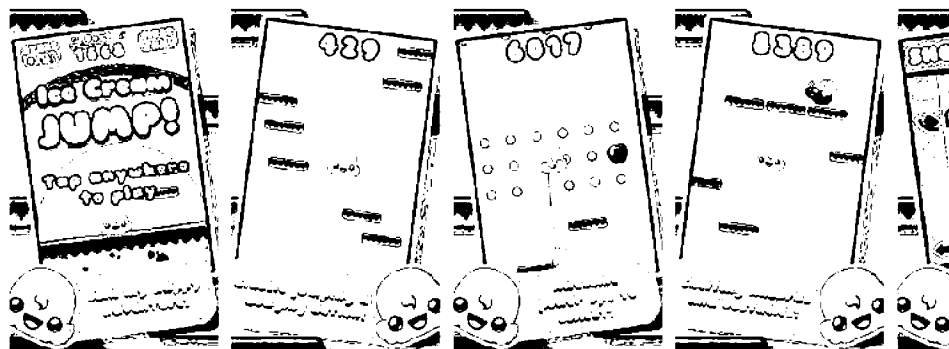
Retro Dreamer - Apr 10, 2014
Casual

Install

Add to Wishlist

1.8 (237)

Get it on Google Play Recommend this on Google



Description

Meet a happy Ice Cream Scoop who dreams of soaring through the skies. Help our friendly dessert reach new heights in this action packed game. Bounce from platform to platform, dodge the mean flies, and grab everything you can to get the highest score. Great fun to play with friends, who can go the highest in Ice Cream Jump.

Reviews

Write a Review

4.1

641 votes

- 5 72,286
- 4 16,376
- 3 10,625
- 2 6,459
- 1 10,682



Teranese Gerber

Ice Cream Jump I loved this game. my sister downloaded it and she showed me and I got so addicted



Kamile Haula

#whatagame My 11 year old brother showed me this game and I cannot put my phone down. with that being said I

What's New

v1.13. New Characters, New Hats, New Accessories, and New Backgrounds!

Additional information

Exhibit C

Exhibit D

App Store > Games > Retro Dreamer

Happy Pudding Jump

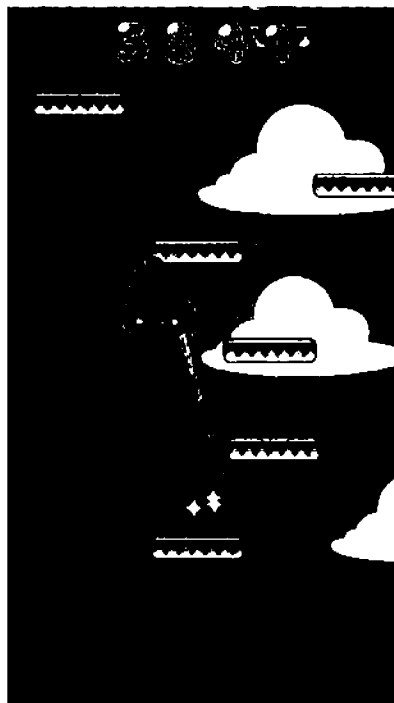
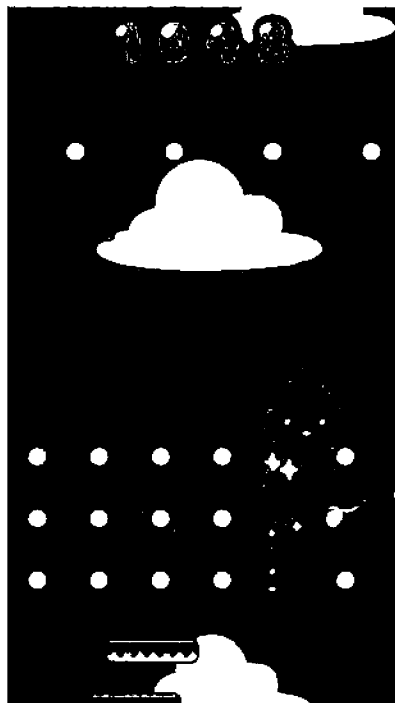
Retro Dreamer >

Details Ratings and Reviews Related

Game Center 

Screenshots

iPad



 Get 
Offers In-App Purchases
This app is designed for both iPhone and iPad

1304

Rating: 4+

TOP IN-APP PURCHASES

- 1. A Cup of Gold \$0.99
- 2. A Bowl of Gold \$4.99
- 3. A Pint of Gold \$9.99
- 4. Remove Ads! \$0.99

LINKS

[Privacy Policy](#)
[Developer Website](#)

Retro Dreamer 2014

Description

Happy Pudding is on the move!

Help our friendly pudding reach new heights in this action packed adventure.

Bounce from platform to platform, dodge the mean flies, grab everything you can to get the highest score...

[more](#)

What's New in Version 1.2.2

Posted Sep 25, 2014

iOS8 Maintenance & Fixes

[show all versions](#)

Performance

- Improved performance
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.2.1

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.2.0

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.9

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.8

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.7

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.6

- Fixed a crash when jumping
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- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.5

- Fixed a crash when jumping
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- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.4

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.3

- Fixed a crash when jumping
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- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.2

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping

Version 1.1.1

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Version 1.1.0

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Version 1.0.9

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Version 1.0.8

- Fixed a crash when jumping
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- Fixed a crash when jumping
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Version 1.0.7

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Version 1.0.6

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Version 1.0.5

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Version 1.0.4

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Version 1.0.3

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Version 1.0.2

- Fixed a crash when jumping
- Fixed a crash when jumping
- Fixed a crash when jumping
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Version 1.0.1

- Fixed a crash when jumping
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Version 1.0.0

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- Fixed a crash when jumping

Exhibit E

App Store > Games > Retro Dreamer



Ice Cream Drop

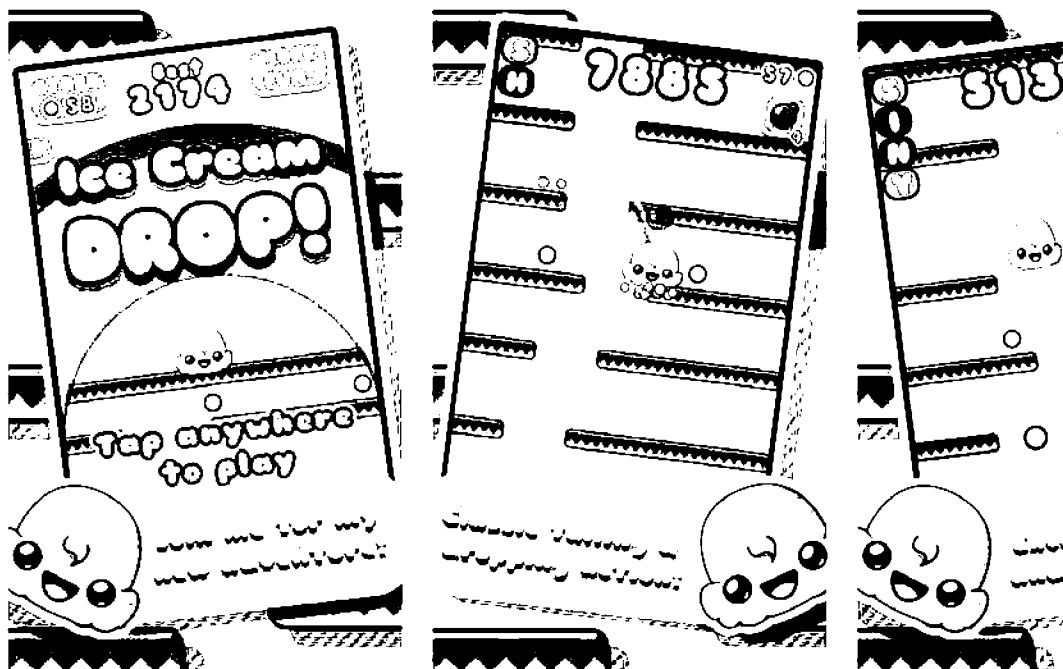
Retro Dreamer >

Details Ratings and Reviews Related

Game Center

Screenshots

iPad



Get

Offers In-App Purchases

This app is designed for both iPhone and iPad

Age Rating: 4+

Rating: 4+

TOP IN-APP PURCHASES

1. Remove Ads! \$1.99

LINKS

Privacy Policy

Developer Website

Retro Dreamer 2014

Description

Drop safely between the platforms to fall down deeper and deeper

Our friends from Ice Cream Jump are back! You still have to dodge the mean files, but this time you have a huge range of power ups to help you fight back.

...

What's New in Version 1.4.1

Posted Apr 14, 2015

Multiple bug/crash fixes, recommended update

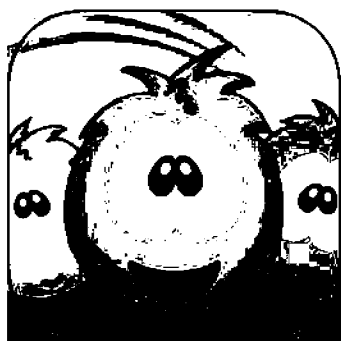
show all versions

Information

Developer: Retro Dreamer
Version: 1.4.1
Size: 1.2 MB
Category: Games
Content Rating: 4+
Compatibility: Requires iOS 7.0 or later. Compatible with iPhone, iPad, and iPod touch.
© 2014 Retro Dreamer. All rights reserved.

Exhibit F

App Store > Games > Retro Dreamer



Sneezies

Retro Dreamer >

Details Ratings and Reviews Related

Game Center

\$1.99 Buy

Available on Mac

Rating: 4+

LINKS

- License Agreement
- Privacy Policy
- Developer Website

Retro Dreamer

iPhone Screenshots



Description

Sneezies is an overload of cuteness!

Grab a cup of tea, sit back in your favorite plush chair, and enjoy the soothing relaxed gameplay featuring fantastic graphics and sweet melodies.

...

[more](#)

What's New in Version 2.4 Posted Oct 1, 2014

iOS8 Compatibility/Fixes

[show all versions](#)

Information

Seller	Retro Dreamer
Category	Games
Updated	Oct 1, 2014
Version	2.4
Size	18.3 MB
Rating	Rated 4+
Family Sharing	Yes
Compatibility	Requires iOS 5.1.1 or later. Compatible with iPhone, iPad, and iPod touch. This app is optimized for iPhone 5.

© 2014 Retro Dreamer. All rights reserved.

TERMS OF SERVICE

PRIVACY POLICY

CONTACT US

ABOUT US

FAQ

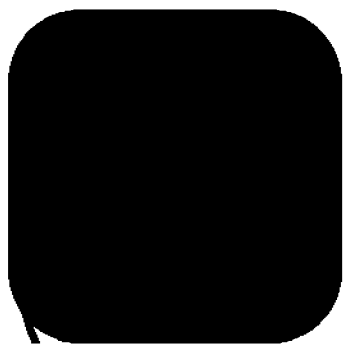
DEVELOPER CONTACT

Exhibit G

Exhibit H

Exhibit I

App Store > Games > Retro Dreamer



Cat Basket For Kids

Retro Dreamer >

Details Ratings and Reviews Related

Game Center

\$0.99 Buy

This app is designed for both iPhone and iPad

Rating: 9+
Made for Ages 9-11

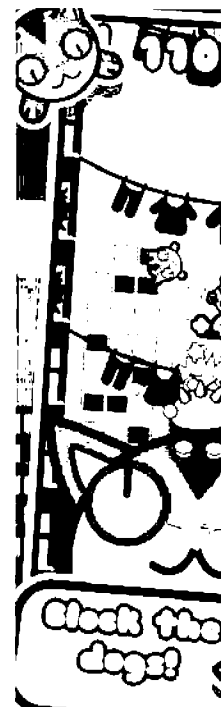
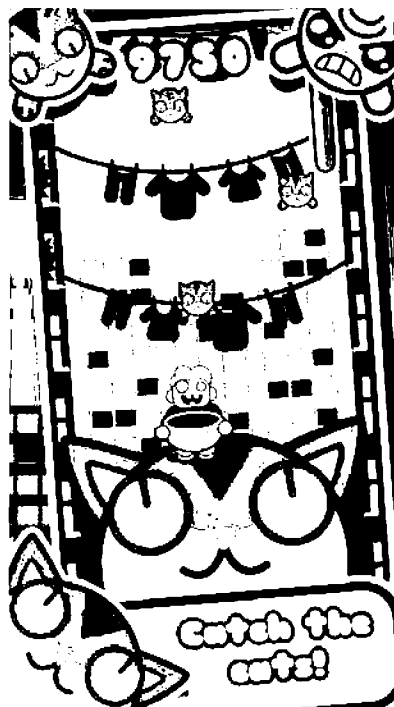
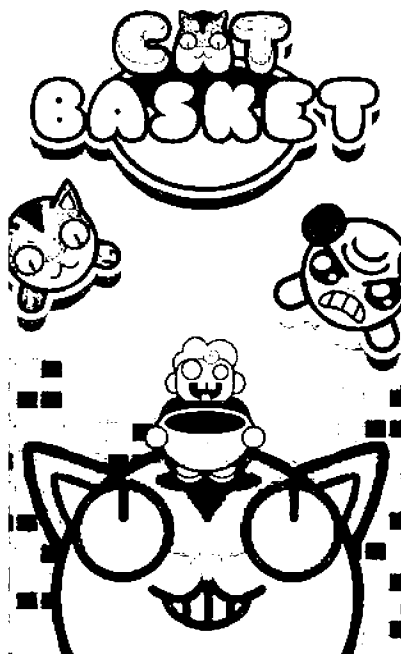
LINKS

Privacy Policy
Developer Website

Retro Dreamer 2014

Screenshots

iPad



Description

Launch Special Price!

This version of Cat Basket is intended to be as child friendly as possible, with no advertising, in-app purchases, or links to leave the application.

...

[more](#)

What's New in Version 1.0.3

Posted Sep 23, 2014

iOS8 Fixes

[show all versions](#)

Performance

• Fixed a crash when...

• Fixed a crash when...

• Fixed a crash when...

• Fixed a crash when...

• Fixed a crash when...

• Fixed a crash when...

• Fixed a crash when...

• Fixed a crash when...

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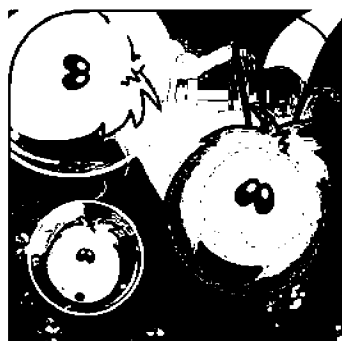
• Fixed a crash when...

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Exhibit J

App Store > Games > Retro Dreamer



Tappy Pop

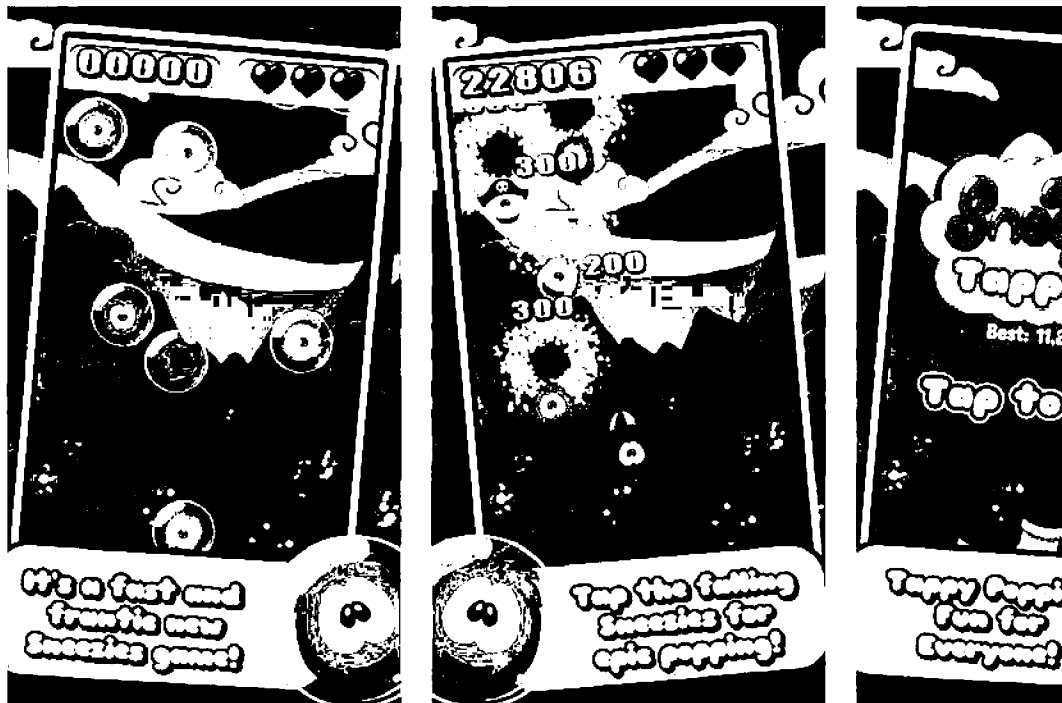
Retro Dreamer >

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This app is designed for both iPhone and iPad

Rating: 4+

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Retro Dreamer 2014

Description

Achoo! Try this fast and frantic new Sneezies game. Simply tap the falling sneezies to create epic chain reactions. Try not to miss any.

What's New in Version 1.1.1 Posted Mar 27, 2015

Maintenance update

[show all versions](#)

Information

Seller: Retro iDreamer

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Exhibit K

Exhibit L



TETRIS RETURNS



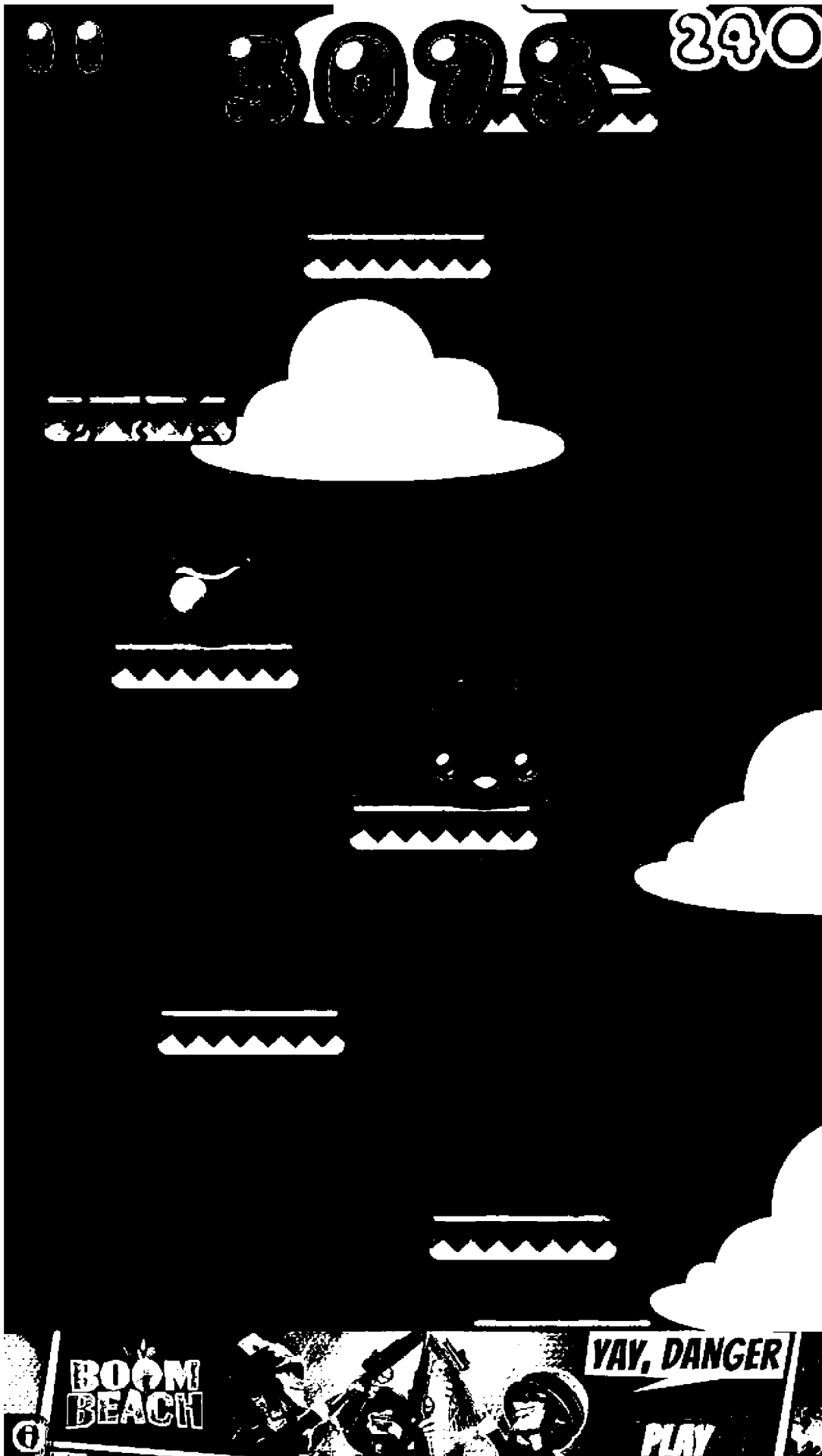


Exhibit M



