

RECEIVED

FEB 22 AM 9:44  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney  
2 JOCELYN BURTON (CSBN 135879)  
Chief, Civil Division  
3  
4 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7198  
5 FAX: (415) 436-6748

6 Attorneys for Plaintiff

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

C 02 4054

9 UNITED STATES OF AMERICA, )  
10 )  
11 Plaintiff, )  
12 )  
13 v. )  
14 PEOPLEPC, INC., )  
15 Defendant. )

No. CONSENT DECREE AND ORDER FOR  
INJUNCTIVE AND OTHER RELIEF

16 WHEREAS plaintiff, the United States of America, has commenced this action by filing the  
17 Complaint herein; defendant has waived service of the Summons and Complaint; the parties have  
18 been represented by the attorneys whose names appear hereafter; and the parties have agreed to  
19 settlement of this action upon the following terms and conditions, without adjudication of any  
20 issue of fact or law, and without admitting liability for any of the matters alleged in the  
21 Complaint;

22 THEREFORE, upon stipulation of plaintiff and defendant, it is hereby ORDERED,  
23 ADJUDGED, and DECREED as follows:

- 24 1. This Court has jurisdiction of the subject matter and of the parties.  
25 2. The Complaint states a claim upon which relief may be granted against the defendant  
26 under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act, 15  
27 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).

28 CONSENT DECREE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEFINITIONS**

3. "Mail Order Rule" means the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended. A copy of the Rule is attached hereto as "Appendix A" and incorporated herein as if fully set forth verbatim.

4. "Pre-Sale Availability Rule" means the Pre-Sale Availability of Written Warranty Terms, 16 C.F.R. 702, promulgated under the Maguson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.

5. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

**INJUNCTION**

6. Defendant, its successors and assigns, and their officers and agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any consumer product, in or affecting commerce, are hereby enjoined, directly or through any corporation, subsidiary, division or other device, from failing to make the text of any written warranty on a consumer product readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in Section 702.3(c) of the Pre-Sale Availability Rule, 16 C.F.R. § 702.3(c).

7. Defendant, its successors and assigns, and their officers and agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provision of the Mail Order Rule, including but not limited to:

- a. Failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. § 435.1(b)(1);
- b. Failing, within a reasonable time after first becoming aware of their inability to

1 ship in the time set forth in Section 435.1(a)(1) of the Mail Order Rule, and in no  
2 event later than that time, to offer the buyer an option either to consent to a delay  
3 in shipping or to cancel the order and receive a prompt refund, as required by 16  
4 C.F.R. § 435.1(b)(1); and

- 5 c. Failing to deem an order canceled and make a prompt refund to buyers who are  
6 entitled to such refunds under the Mail Order Rule, as required by 16 C.F.R.  
7 § 435.1(c).

8 8. In the event the Mail Order Rule is hereafter amended or modified, defendant's  
9 compliance with that Rule as so amended or modified shall not be deemed a violation of this  
10 injunction.

#### 11 CIVIL PENALTY

12 9. Defendant shall pay to plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the  
13 Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of one hundred  
14 thousand dollars (\$100,000).

15 10. Defendant shall make the one hundred thousand dollar (\$100,000) payment required  
16 by Paragraph 9 in two equal installments. Defendant shall, within five (5) days of the date of  
17 entry of this Consent Decree, pay the sum of fifty thousand dollars (\$50,000) by electronic fund  
18 transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil  
19 Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.  
20 Defendant shall make the second payment of fifty thousand dollars (\$50,000), in the same  
21 manner, no later than December 31, 2002.

22 11. In the event of any default in payment, which default continues for ten (10) days beyond  
23 the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant  
24 to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become  
25 due and payable.

#### 26 COMPLIANCE

27 12. Defendant and its successors and assigns shall, within thirty days (30) of entry of this  
28 Consent decree, provide a copy of this Consent Decree and the Business Guide to the Federal

CONSENT DECREE

1 Trade Commission's Mail or Telephone Order Merchandise Rule (Jan. 1995) ("Business Guide")  
2 to each of their supervisory or managerial agents, servants, employees and attorneys who are  
3 engaged in defendant's mail, telephone, facsimile or Internet order sales business, secure from  
4 each such person a signed and dated statement acknowledging receipt of the Consent Decree and  
5 the Business Guide, and shall, within ten (10) days of complying with this paragraph, file an  
6 affidavit with the Regional Director, Western Region, Federal Trade Commission, 901 Market  
7 Street, San Francisco, CA 94103, setting forth the fact and manner of their compliance,  
8 including the name and title of each person to whom a copy of the Consent Decree and the  
9 Business Guide has been provided.

10 13. For a period of five (5) years from the date of entry of this Consent Decree, defendant and  
11 its successors and assigns shall maintain and make available to the Federal Trade Commission,  
12 within seven (7) days of the date of receipt of a written request, business records demonstrating  
13 compliance with the terms and provisions of this Consent Decree.

14 14. For a period of twenty (20) years from the date of entry of this Consent Decree, defendant  
15 and its successors and assigns shall notify the Regional Director, Western Region, Federal Trade  
16 Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, at least thirty (30) days  
17 prior to any merger, incorporation, dissolution, assignment, sale resulting in the emergence of a  
18 successor corporation, creation or dissolution of a subsidiary or parent, or any other changes in  
19 corporate status which may affect defendant's obligations under this Consent Decree. Provided,  
20 however, that with respect to any proposed change in the corporation about which defendant  
21 learns less than thirty (30) days prior to the date such action is to take place, defendant shall  
22 notify the Western Region's Regional Director as soon as practicable after obtaining such  
23 knowledge.

24 15. One hundred twenty (120) days after entry of this Consent Decree, defendant shall  
25 provide a written report to the Federal Trade Commission, sworn to under penalty of perjury,  
26 setting forth in detail the manner and form in which the defendant has complied and is complying  
27 with this Consent Decree. This report shall include but not be limited to:

28 a. a specimen copy of each delay option notice used for the purposes of complying with any

CONSENT DECREE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- provision of the Mail Order Rule, and a statement setting forth in detail the procedures in place and method for providing such notices to consumers in a timely fashion;
- b. a specimen copy of each advertisement or telemarketing script containing a shipping or delivery representation; and
- c. a statement setting forth in detail defendant's procedures for providing prompt refunds pursuant to the Mail Order Rule; and
- d. a statement setting forth in detail defendant's procedures for complying with the Pre-Sale Availability Rule, 16 C.F.R. § 702.3(c).

Defendant shall mail this written notification to: Regional Director, Western Region, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103.

**CONTINUING JURISDICTION**

16. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FOR THE UNITED STATES OF AMERICA:

ROBERT D. MCCALLUM, JR.  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice

KEVIN V. RYAN  
United States Attorney  
Northern District of California

  
\_\_\_\_\_  
JOCELYN BURTON  
Assistant United States Attorney  
450 Golden Gate Ave., Box 36055  
San Francisco, CA 94102  
(415) 436-7198

EUGENE THIROLF  
Director  
Office of Consumer Litigation

  
\_\_\_\_\_  
ELIZABETH STEIN  
Attorney  
Office of Consumer Litigation  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530

FOR THE FEDERAL TRADE COMMISSION:

  
\_\_\_\_\_  
JEFFREY KLURFELD  
Regional Director  
Western Region  
Federal Trade Commission

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*KO'Brien*

LINDA K. BADGER  
KERRY O'BRIEN  
Attorneys  
Western Region  
Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, CA 94103  
(415) 848-5100 (telephone)  
(415) 848-5142 (facsimile)

FOR THE DEFENDANTS:

PEOPLEPC, INC.,

By: *Charles P. Ortmeier*  
Charles P. Ortmeier  
Senior Vice President and General Counsel  
PeoplePC, Inc.  
100 Pine Street, Suite 1100  
San Francisco, CA 94111  
(415) 742-4400 (telephone)  
(415) 837-3857 (facsimile)